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Gulf Cooperation Council countries:  
Opportunities and challenges as a result  
of COVID-19 and the fiscal crisis**

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# Reforming the sponsorship system in the Gulf Cooperation Council countries: Opportunities and challenges as a result of COVID-19 and the fiscal crisis

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**Abstract:** The kafala (sponsorship) system in the Gulf Cooperation Council (GCC) countries has been highlighted by a number of international labour bodies and human rights mandates, such as the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the United Nations (UN) Special Rapporteurs (on Trafficking in Persons, Especially Women and Children, and on the Human Rights of Migrants respectively) as requiring urgent reform. Despite some changes, the kafala system continues to create heavy dependence of migrant workers on their employers for both their immigration and employment status. This system makes migrant workers vulnerable to labour exploitation, including forced labour, but also results in inefficient labour markets by restricting labour mobility, and thus has an adverse impact on Gulf economies and national employment. In particular, the kafala system is especially problematic for migrant domestic workers, who may become irregular as soon as they leave their employer's residence without permission.

Following years of modest reforms often labelled optimistically as 'kafala abolition', more meaningful transformations have recently taken place in the cases of Qatar and Saudi Arabia, including reforms to the 'no-objection certificate' and the exit permit. This paper provides a comparative analysis of the recent changes to the sponsorship regime across the six GCC countries, exploring the contextual foundations, and the possible relevance of the COVID-19 pandemic in hastening or influencing reforms (noting that in some cases, facilitating internal labour market mobility has been largely geared towards providing flexibility to the employer, and is not necessarily rights-based).

The paper outlines the 'unfinished business' of kafala reform in the region, drawing attention to the structural political economy barriers, which will likely continue to hinder worker mobility despite any legal changes, and highlighting the complementary measures that need to be considered. Despite GCC countries' attempts to minimize recruitment and deployment of 'low-skilled migrants', the paper emphasizes the continuing need for workers in such sectors as care work, construction, facilities management and hospitality, and highlights why sponsorship reforms, together with complementary reforms such as improved job matching, can align with national development-related objectives of demographic 'rebalancing' and developing a knowledge economy.

**Keywords:** Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE, Sponsorship

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## Introduction

The kafala system has been the subject of scrutiny by civil society and international organizations for the last two decades, including repeated calls for its abolition or dismantling. The international pressure led to varying responses amongst countries in the GCC, all periodically pronouncing that one reform or another had finally ‘abolished’ the kafala system (Khan and Harroff-Tavel 2012).

The first major reform to be announced in the region, in 2009, was the government of Bahrain’s decision to allow workers to change jobs at any time, without their employer’s permission, by providing a notice period of no more than three months. Additionally, workers would be allowed a grace period of 30 days to find a new employer (Motaparthy 2015; Zahra 2019). Kuwait followed suit soon after, with the then Labour Minister announcing, also in 2009, plans to abolish the sponsorship system, and allow migrant workers to sponsor themselves if they maintained ‘a clear record’ for two years (Motaparthy 2015). In 2011, Oman informed the UN Human Rights Council that the government was researching options for a new system to replace kafala; while a year later, in 2012, Saudi Arabia proposed reforms to eliminate individual sponsorship (Diop et al 2018). In the decade since, many if not most of these proposals were ultimately shelved or rolled back. In 2011, the Kuwait government cancelled plans to ‘replace’ the kafala system, while the Bahrain government announced a roll back of its reforms, necessitating all workers to serve a minimum one-year period in their job before they could switch jobs without permission of the (first) employer. Efforts then turned, in several countries, to cleansing their respective legislation of the word ‘kafala’ (Zahra 2019), to make their sponsorship systems appear indistinguishable from other employer-based temporary labour migration programmes globally. A more recent and dramatic change was the introduction by the Bahrain government, in 2017, of the flexi-permit – a scheme which enables eligible workers whose work permits have expired to “self-sponsor,” meaning they are no longer dependent on an employer for their residency or work permit (ILO 2017). Despite publicity regionally and globally (albeit not without criticism<sup>1</sup>), the experiment of a ‘sponsor-less’ system has not been replicated in other GCC countries.

A key factor behind the entrenched nature of the kafala system has been the galvanizing of actors who benefit from the status quo, and their alliances with the state (Diop et al 2018; Dito 2014). Businesses benefit from ‘cheap labour’, as they do not have to compete with one another for workers, thus suppressing workers’ wages. A flawed recruitment process results in private recruitment agencies in the country of origin charging workers vast sums of money, to sometimes obtain labour supply contracts by providing ‘kickback’ payments to placement agencies and companies’ staff in the country of destination (Jureidini 2016). A system of visa trading, where a ‘false sponsor’ brings the worker to the country and then either extracts a fee from the worker, or sells the sponsorship to a company or individual, provides an income to a wide range of individuals (Dito 2014). Although the most significant beneficiaries are elites in countries of origin and destination (Boodrookas 2021), continued application of the kafala system has enjoyed extensive public support generally amongst nationals. Diop et al (2018) argue that – while there may be many broad policy goals behind kafala reform, public support is ultimately dependent on citizens’ narrow reading of personal interests and economic insecurity. Thus, individuals take a personalized perspective on kafala reform (‘Will my domestic worker want a raise? Will my gardener quit and work for my neighbour?’). A 2014-2015 survey in Qatar, indicated that only 12 per cent of respondents were in favour of making workers less dependent on employers, or eliminating the kafala system (Diop et al 2018).<sup>2</sup>

The kafala system is not applied to all workers equally. Increasingly, wealthy and high-skilled individuals have been offered alternative visa categories or are entitled to relaxed mobility options. Since 2018, the UAE has allowed self-sponsored five- and 10-year residency visas to business owners, investors, and property owners, subject to minimum capital conditions (Alexandrova 2021).<sup>3</sup> Similar provisions are in place in Bahrain, which allows self-sponsorship through property ownership in certain areas, as well as in Qatar and Oman (Migrant Rights 2019). Granting self-sponsorship to high-skilled workers does not challenge the deeply embedded rentier structures that largely benefit from extracting profit from low-wage workers. Furthermore, the presence of highly skilled foreigners, particularly in innovation and technology is well-regarded by governments in the region, as it ostensibly helps to facilitate diversification away from the oil sector (Khadri 2018).

Yet, restricting kafala reforms to the level of the high-skilled cannot be an adequate solution to the labour market challenges facing GCC countries. The COVID-19 pandemic has demonstrated unequivocally that it is not only wealthy investors who are needed to support the future economies of the region, but also nurses, cleaners and domestic workers who have played an essential role in keeping societies afloat during the crisis. Moreover, the looming fiscal crisis facing most GCC countries makes the public sector job guarantee for nationals, an aspect of the social contract in the subregion, unsustainable in the medium to long term (Hertog 2020), and hastens the need to address the lack of productivity and low wages in the private sector. Given that these deficits are clearly underpinned by the kafala system, some broader sponsorship reforms are critical.

The two recent reforms discussed in this paper are those in Qatar and Saudi Arabia, which respectively removed the exit permit for most workers, and in some cases, the need for a ‘no objection’ certificate to unilaterally change employers (without the latter’s permission) during the contract period. Whilst both sets of reforms are significant (particularly in Qatar, where they also cover domestic workers), these legal changes alone will not be sufficient to facilitate genuine internal labour market mobility in the absence of complementary reforms, including job matching services and taking action to minimize retaliatory action by employers such as the filing of absconding charges. Despite advances in technology and automation that will reduce reliance on certain categories of workers, and possible improvements in the implementation of nationalisation policies, the GCC will continue to rely heavily on migrant workers in the future. Reforms to the kafala system are thus urgent and inevitable.

## About the kafala system

The kafala system is not only composed of legal requirements and administrative regulations, but also a complex array of socio-cultural practices that link a migrant worker’s immigration and employment status to one specific sponsor. Like other employer-led temporary labour migration schemes globally, the kafala system ties a worker’s admission to the country to an employer. However, in addition, the legal architecture of the system creates dependence of the worker on the employer for (i) renewal of work and residence permits; (ii) termination of the contract and transfer to another sponsor; and (iii) in some cases, exit from the country (exit permit).

Furthermore, socio-cultural practices associated with the kafala system, often prohibited by law but insufficiently enforced and penalized, include passport confiscation, payment by workers of recruitment fees and related costs, and restricted freedom of movement, particularly for migrant domestic workers. This section will briefly set out the main human rights and economic challenges associated with application of the kafala system.

### ***Human rights and International Labour Standards***

The human rights issues associated with the kafala (sponsorship) system have been highlighted by a number of international labour bodies, such as the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), and UN Human Rights Council Special Procedures mandate holders, such as the UN Special Rapporteurs on trafficking in persons, especially women and children, and on the human rights of migrants. They have all drawn attention to the need for urgent reform due to the risk to migrant workers of exploitation and forced labour as well as other human rights violations.

A number of recent CEACR comments have reaffirmed the incompatibility of the kafala system with two ILO fundamental conventions ratified by most GCC countries, namely the Forced Labour Convention, 1930 (No. 29) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

For example, the CEACR has underlined that, “where a system of employment of migrant workers places those workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, this could result in discrimination based on the grounds enumerated in the Convention, including race, colour, national extraction and sex” (ILO 2021a). In the context of forced labour, the Committee has paid regard not only to workers’ ability to transfer employers in law, but also in practice, regularly requesting governments to provide information on the number of employment transfers that have occurred, disaggregated by gender, type of work and contract (see, for example, ILO 2021c).

In her mission to Kuwait in 2017, the UN Special Rapporteur on trafficking in persons, requested that the government “abolish and replace the kafala sponsorship system, which binds every worker to an employer as a sponsor and creates a situation of vulnerability that favours abusive and exploitative work relationships leading to human trafficking in the domestic work and other sectors, such as construction” (UN General Assembly, Human Rights Council 2017: 18).

With regard to exploitative sponsorship programmes more generally, the UN Special Rapporteur on the human rights of migrants, in his 2014 report on labour exploitation of migrants, called upon governments to “refrain from using sponsorship systems that make immigration status conditional on one given employer, as this creates a precarious status, restricts freedom of movement, increases vulnerability to exploitation and abuse, and leads to forced labour”. (UN General Assembly, Human Rights Council 2014: 19).

The two ILO Conventions concerning migrant workers, which GCC countries have not yet ratified, refer to internal labour market mobility for migrant workers, in particular the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which builds on the equal treatment provisions in the Migration for Employment Convention (Revised), 1949 (No. 97). In its Part II, Convention No. 143 aims to ensure equal opportunity and treatment of migrant workers in a regular situation through the adoption of a national policy, including affording migrant workers in regular situations free access to the labour market subject to certain conditions.<sup>4</sup> The non-binding ILO General Principles and Operational Guidelines for Fair Recruitment stipulate that “employers’ permission should not be required for migrant workers to terminate or change employment, or to leave the country if the worker so desires, taking into account any contractual obligations that may apply” (ILO 2019).

The Global Compact for Safe, Orderly and Regular Migration (GCM), a non-legally binding cooperative framework on migration governance, which rests on a range of international legal instruments, including human rights and international labour standards, and which was endorsed by the UN General Assembly in December 2018 (UN General Assembly, 2019), contains the following action in objective 6, para. 22(g), which supports greater internal labour market mobility for migrant workers: “Develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden, while promoting greater opportunities for decent work and respect for international human rights and labour law”.

### ***Economic rationale for internal labour market mobility***

Reforming the kafala system in theory carries a number of economic benefits, though – due to limited data availability in the GCC – the empirical evidence remains scarce. Enabling internal labour market mobility could reduce the practice of ‘labour hoarding’, particularly whereby employers seek more work permits than they actually need to ensure workers are available at short notice as required, but to whom they cannot guarantee full-time employment for the contract period. Instead, workers could be hired much quicker and at a reduced cost from a pool of available workers at destination, with limited need for international recruitment. 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 (ILO 2017).

More generally, allowing workers mobility to work where they are matched best to the needs of employers is optimal for a productive economy. While there is no consensus among economists on what constitutes an appropriate level of labour turnover for an efficient economy, it is generally agreed that some degree of movement is essential to ensure more efficient job matching. Very high turnover could be detrimental to the economy (leading to higher recruitment and training costs, and a temporary dip in productivity). On the other hand, very low transfer rates may suggest structural barriers placed on workers in being able to transfer with the result that workers are ‘stuck’ in jobs that are not best suited to their skill set, reducing their productivity and wages. Some economists posit that a mobility level of around 20 per cent per year (i.e. when one-fifth of the workforce in a firm changes annually) is an optimal turnover rate that maximises productivity but does not disrupt business continuity, and is a common feature in developed labour markets (Harris, Tang, and Tseng, 2006; Siebert et al, 2006).



This needs to be contrasted with the GCC where data suggests that the transfer rate of workers is around three per cent per year or less. Only piecemeal data is available on the number of workers who actually transfer employers. For example, both Oman and the UAE reported to the CEACR on the total number of employer transfers (below), but only Bahrain provides quarterly data on transfers disaggregated by whether the transfer/termination of contract was with or without approval of the employer (unilateral termination).

- Oman reported that 58,744 workers were transferred to a new employer in 2018, and 60,958 in 2019 (ILO 2021b) out of a total of 1,765,496 in 2018 and 1,692,581 in 2019 respectively, indicating transfer rates of just 3.3 and 3.6 per cent.
- UAE indicated that the number of transfers between January 2016 and December 2018 was 229,971 (ILO 2021b), which – out of a migrant worker population of over 6 million<sup>5</sup> – could be a transfer rate as low as one per cent per year.
- Bahrain indicated in the fourth quarter of 2020 that the total number of transfers was 16,468 (Labour Market Regulatory Authority (LMRA), 2021), which implies an annual transfer rate of approximately three per cent, with the vast majority (82 per cent) of transfers occurring after the completion of the contract. Of those transfers during the contract period, only 0.7 per cent took place without the permission of the employer (which is permissible for all workers after 12 months with the employer), while 16.6 per cent were with the permission of the employer.

In each of the above-mentioned countries, workers legally have the right to change employers (see Annex), including in some cases without the permission of the first employer, yet evidently very few avail of the opportunity. This may be, as a number of GCC countries argue, a “positive reflection of labour force stability in employment, which provides evidence of a decent working environment [...] as a result of the efforts made by the Ministry.” (ILO 2021b). It is more likely, however, that workers are not changing employers because they are not aware of their right to do so; or lack the means to find a new employer (particularly during the limited period when they can legally be without a sponsor while looking for new work and because of the limitations of word-of-mouth arrangements in finding a new employer). Workers may also be reluctant to change employers lest they risk retaliation by their first employer. This is particularly so where a worker is owed wages by an employer, and thus may be reluctant to move to a new sponsor, fearing that in retaliation the employer will never pay the wages to which they are entitled.

## Reforms to internal labour market mobility during COVID-19

The COVID-19 pandemic has had a significant impact on employment in sectors most relevant to migrant workers. During the COVID-19 lockdowns, schools and shopping malls closed, taxis were prohibited from operating, hotels were open at a much-reduced capacity, restaurants were closed or restricted in their operations, and amusement parks were vacant. The knock-on effect from these restrictions had an important impact on policies and legislation, including with respect to the kafala system. This section will analyse some of the main changes to the kafala system since the start of the COVID-19 pandemic.

### ***Intensification of nationalization policies***

In the immediate aftermath of the outbreak of COVID-19 and the impact of the restrictions on enterprises, many GCC countries introduced measures to minimize the risk to employment of nationals, while intensifying efforts at nationalizing the workforce. For example, the UAE Ministry of Human Resources and Emiratisation (MOHRE) *Resolution No. 280 of 2020 on establishing a committee to monitor the stability of the conditions of locals working in the private sector*, and *Circular No. 4 of 2020 concerning the stability of the national workforce conditions in the private sector*<sup>6</sup> sought to limit employers’ ability to restructure and reduce wages or employment conditions of national workers. In *Ministerial Orders No. 8/2021 and No. 9/2021*, Oman introduced measures to restrict employment of migrant workers in financial and administrative professions in insurance companies and companies operating in insurance brokerage activities, sale of vehicles, and driving occupations among others. Saudi Arabia strengthened its nationalization policy in certain sectors, further limiting employment of foreign nationals in malls and in pharmacies (Alsahi 2020; Arab News 2021). Kuwait’s National Assembly went further by passing *Law No. 74/2020 regarding the organization of demographics in Kuwait* pursuant to which the government is required to present by 29 November 2021 (a year after the law’s enactment) a plan that will determine a formula and system for “rebalancing the country’s demographics”.

In passing the law, the government announced plans to cut the migrant proportion of its population from 70 to 30 per cent and to stop issuing or renewing work permits for expatriate workers aged over 60 (Alsahi 2020), though the latter decision was revised. In other countries, nationals were also protected from reduced wages through a furlough programme where the employer would receive funds to cover part or all of the national workers' salaries for a certain period.<sup>7</sup>

### ***Flexible work permits, but on employers' terms***

To provide flexibility for companies struggling to cope with the impact of COVID-19 restrictions, several countries enabled employers to reduce the hours of work and wages of migrant workers, and to terminate their contracts. In the UAE, employers were able to reduce the wages of migrant workers as long as this was mutually agreed and that other measures (such as remote working and paid and unpaid leave) were first explored.<sup>8</sup> Likewise, in Oman, private sector companies could mutually agree with their workers on salary reductions in writing. Given the absence of trade unions in the UAE and limited collective bargaining opportunities in Oman, however, the requirement that individual workers agree to the changes is problematic in light of the unbalanced employment relationship existing under the kafala system. With reference to the ILO Protection of Wages Convention, 1949 (No. 95), the CEACR has underscored that workers' wages cannot be reduced on the basis of individual agreement with or consent of the worker.<sup>9</sup>

Other measures to provide flexibility to employers included 'sharing employees'. In the UAE, employers with a 'surplus' of migrant workers could register them on the MOHRE's newly established 'Virtual Labour Market System' so that they could be matched with, and work for, other employers. The first employer remained the 'primary' employer and was liable for the worker's minimum entitlements (save for their salary) under the law (i.e. leave, allowances, medical insurance, etc.), while the second employer would be liable for paying the salary during the period of work (Clyde & Co 2020). Similarly, work permit changes in Oman allowed migrant workers to work partially or temporarily during the "transition period" for an employer who was not the worker's sponsor, including if a company required part-time workers to undertake a certain job. Other types of 'sharing' of workers allowed different companies owned by the same shareholders to assign their employees to work in any of their companies "at the time of necessity" and other worker 'swaps' were allowed, provided that there was a written agreement between the companies (Clyde & Co 2020).

Whether these changes will be permanent or amended post-COVID-19 remains to be seen; it is noteworthy, however, that most of this internal labour market mobility has been largely geared towards providing flexibility to the employer rather than affording migrant workers greater freedom to change jobs.

### **Historic changes in elimination of exit permits and changing employers**

More impactful reforms from a labour rights perspective can be seen in Qatar, where most legal restrictions on migrant workers' ability to change jobs were eliminated through two new laws amending Labour Law No. 14 of 2004 and Law No. 21 of 2015 on the entry and exit of expatriates and on their residence respectively. Both laws entered into force on 8 September 2020.<sup>10</sup> The new legislation removed exit permit requirements for all workers, including domestic workers, workers in government and public institutions, and agriculture and grazing, with only a small number of exceptions remaining.<sup>11</sup> All workers, including domestic workers, can also change employers (a) at the end of their six-month probation period, after giving written notice (one or two months, depending on their length of service), or (b) during the probation period (one month of notice), in which case the future employer must pay the current employer compensation not exceeding two months of the worker's basic wage. Furthermore, if the employer has failed to fulfil his/her legal obligations, the worker will not be bound to observe a notice period in order to change jobs. In the 13 months from 1 October 2020 and 31 October 2021, 242,870 workers changed jobs without their employer's permission (International Trade Union Confederation (ITUC) 2021). Despite internal pressure to backtrack on the reforms through recommendations proposed by the Shura Council, which, if taken forward, would have undone many of the changes, the government has so far resisted the pressure to roll back on the reforms (Migrant Rights Org 2021).<sup>12</sup>



Qatar's changes were the culmination of over a decade of international pressure, following FIFA's decision to award the country the right to host the FIFA World Cup in December 2020, including a complaint of non-observance of the ILO's Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), made in 2014 to the ILO Governing Body by the ITUC. As part of the settlement of the complaint in 2017, an ILO technical cooperation programme, funded by the Qatari government was instrumental in supporting the government to introduce the long-awaited reforms to the kafala system. Whilst the legislation had been drafted in 2019, the official adoption may have been hastened by the start of COVID-19, given that a hard brake on international recruitment made the case for greater internal labour market mobility all the more urgent, including for employers. In addition to these reforms, the government introduced important complementary measures, such as a non-discriminatory minimum wage which covers all migrant workers, including domestic workers (ILO 2020),<sup>13</sup> and has signalled the reform of the absconding regime as an upcoming priority (Ataullah 2020).

In November 2020, Saudi Arabia also announced its own reforms (Labour Reform Initiative - LRI), which came into effect on 14 March 2021. Introduced as part of the 'National Transformation Program', the reforms' goals were identified as 'increasing [migrant] worker productivity, promoting protection of workers' rights and increasing competition' (Radwan and AlShamari 2020). Workers covered by the Labour Law can change employers after one year of service with the employer, without the permission of the first employer, bringing the country on par with the requirements in Bahrain (see Annex). This right is subject to certain conditions being met, including that the new employer submits a job offer through the *Qiwa* platform, and the notice period is complied with. For workers under the Labour Law, the exit permit was replaced with an 'automatic exit visa', which workers can apply for through the *Absher* portal, with approval dependent only on the worker not being subject to any unpaid fines or government violations instead of employer approval. Domestic workers and others excluded from the Labour Law, however, are not covered by these reforms.

The timing of the reforms in Saudi Arabia could be put down to several factors. Despite the introduction of wage subsidies to protect Saudi jobs due to the impact of COVID-19, the unemployment rate rose to 15.4 per cent in the second quarter of 2020 (Saudi General Authority for Statistics 2020) and in stark contrast to the 9 per cent goal by 2020, set in the Vision 2030 (Harvard Kennedy School 2019). Meanwhile, the pressure to attract more nationals into the private sector has grown ever stronger, with the volatile oil price and impact on tourism and other investment areas creating a fiscal gap that makes public sector salaries difficult to maintain. Thus, the reforms could be seen as a way to try to hasten contraction of the gap between private and public sector wages. However, another important factor was reputational, in light of Saudi Arabia chairing the G20 in 2020 (the reforms were announced shortly before the virtual G20 Summit on 21-22 November 2020), and the reliance on foreign direct investment and tourism in the short to medium term.

Despite the aforementioned gaps in both sets of reforms in Saudi Arabia and Qatar, they can be considered significant, not least because they promise (with the notable exception of domestic workers in Saudi Arabia) to make exit permits history – at least on paper. The next goal now needs to focus on their implementation, and ensuring that excluded workers are also able to benefit.

### Longer term outlook on internal labour market mobility

Following years of modest reforms, which have often been publicized as 'kafala abolition', 2020 brought more meaningful transformations in the cases of Qatar and Saudi Arabia, including reforms to the 'no-objection certificate' and the exit permit, but relatively limited progress in other parts of the GCC. Change to sponsorship in several countries has focussed on flexibilization of labour in response to job losses during the pandemic and is not necessarily aimed at creating a rights-based framework for workers. Based on current trends, how does the longer-term outlook appear for reform of the kafala system across the sub-region?

In future, the fiscal pressures in the GCC countries, as a result of the COVID-19 recovery as well as the continuing volatility of the oil price, will make the case for nationalization in the private sector more urgent. The long-term fiscal position of all GCC countries has been assessed by the International Monetary Fund (IMF) to have substantial sustainability gaps (despite large asset buffers), unless further fiscal adjustment is implemented, due to the continuing challenges in reducing public sector employment. Already, COVID-19 recovery spending has led Saudi Arabia to cut US\$8 billion from its Vision 2030 to cope with its fiscal budget constraints (Alsharif and Malit 2020).

Other GCC countries, such as Kuwait, Bahrain, and Oman, have also restructured their national fiscal budgets to maintain financial liquidity in 2021 (IMF 2020). Reducing the wage gap between the public and private sectors, to ease the burden on public spending, which uses up more than 50 per cent of public expenditure in some countries (Olver-Ellis 2020), is more urgent than ever.

In the short term, these developments may result in governments enabling greater internal labour market mobility for medium and high-skilled workers, in order to allow wages in the private sector to rise and to reduce the segmentation between national and migrant workers in the occupations that might attract nationals. While this will likely be resisted by some parts of the business sector, which has relied for decades on wages being kept artificially low due to labour market rigidity, the urgent fiscal pressures may leave governments little choice and present an opportunity to change the prevailing business model.

### ***Focus on inclusive reforms***

However, excluding low-wage workers, including domestic workers, from kafala system reforms would be a lost opportunity for genuine labour market transformation in the GCC. Despite predictions about the changing skills needs of the future in the GCC, and the promise of automation, including in such sectors as retail, wholesale trade and construction (Gagnon and Gagnon 2021), this seems unlikely to be a reality in the short to medium term.<sup>14</sup> In particular, many estimates about the impact that technology will have on labour migration to the GCC focus 'more on technological feasibility than on the economic incentives, social preferences and regulatory conditions under which automation is likely to take place' (Hertog 2019: 1).

Thus, while greater automation and a sharper emphasis on job creation in the technology sector may create a need for specialized migrant workers, or increase the proportion of nationals in the labour market, migrant workers employed in manual labour (jobs in which there is little interest by nationals) will still remain relevant in the years to come, despite investment in digitalization and automation – not least because many of the foreign direct investment projects in the region continue to rely on real estate development and tourism.

Amongst the sectors where automation and nationalization is likely to have less effect is the care sector, as the need for migrant domestic workers will likely become ever more acute as demographic trends continue to increase the number of the elderly requiring home-based care (Tayah and Assaf 2018).

The ILO estimated in 2021, based on national data, that there are at least 5.6 million male and female migrant domestic workers in the GCC (ILO 2021d). Saudi Arabia is estimated to employ 3.7 million domestic workers alone, followed by the UAE (890,000 domestic workers), Kuwait (745,000 domestic workers), Qatar (177,000) and Bahrain (86,000).<sup>15</sup> In terms of proportion of the labour force, Saudi Arabia's domestic workers represent about 28 per cent of total employment (the highest proportion of domestic workers globally), while in Kuwait domestic workers represent 25.4 per cent of total employment, followed by the United Arab Emirates (12.3 per cent), and Bahrain (14.5 per cent). These figures are a result of a period of rapid growth in the sector over the previous ten-year period, averaging an annual growth rate of 8.7 per cent (11.3 percent in Saudi Arabia and a doubling or tripling of the number of workers in several other GCC countries) (ILO 2021d). Despite the impact of COVID-19, the number of migrant domestic workers has remained relatively stable according to available data.<sup>16</sup>

With demographic data showing an ageing population and a high number of children aged under 14 years despite declining fertility rates, while at the same time, continuation of policies that incentivize home-based care (Tayah and Assaf 2018), it is likely that domestic work as a sector will continue to remain prominent. As such, any employment policies and measures, including reforms to the kafala system, that completely exclude this sector need to be reconsidered.

### ***Tackling the absconding regime***

The term 'absconding' refers to an administrative or criminal offence specific to the application of the kafala system, where charges can be filed by employers against workers who absent themselves from work, and are commonly applied to migrant domestic workers in particular. Unlike Labour Laws,

which create a transparent regulatory system that already enable an employer to take disciplinary action against a worker who does not show up to work, many aspects of the ‘absconding’ system are documented in Ministries of Interior circulars or decrees,<sup>17</sup> which are not publicly available, and the criteria under which employers can file an absconding claim can also be vague and discretionary.<sup>18</sup> As such, there is often very limited information available to workers to navigate justice mechanisms and clear the charges, while the risk of penalty to employers for filing a false charge is minimal. On the contrary, employers are often incentivized to file charges, and government departments make the process easy and straightforward (Saraswathi 2020).

Because it is in the hands of the employer to lodge an ‘absconding’ charge with relatively few checks and balances in place, such power – or even the threat of exercising it – creates an insurmountable imbalance in the relationship between employer and worker. The result is that workers will often be reluctant to make a complaint against breach of contract, or a request to transfer employment without the permission of the employer (where such a right exists) in case it causes the employer to retaliate and file a (false) ‘absconding’ charge.

With increasing opportunities of workers to unilaterally change sponsors during the contract period (anytime in Qatar and after 12 months in Saudi Arabia and Bahrain), ensuring that the ability to do so is not undermined by the threat of absconding charges brought by employers needs to be a key priority in implementation of the reforms.

### ***Operationalizing reforms to the kafala system***

Finally, ensuring that workers are – in practice and not only in law – able to change employers, requires the active intermediation of the state to support job seekers and employers to find out about and access relevant opportunities. Because so much recruitment of migrants is geared towards international recruitment, there were, prior to the COVID-19 pandemic, no national job portals or services that could help match migrant workers and employers. With the establishment of the Virtual Labour Market in UAE and the Talent Portal in Bahrain, as well as the current development of a public job-matching platform in Qatar to facilitate internal labour market mobility (ILO 2020), there appears now to be greater awareness of the state’s role in facilitating job mobility. Quickly finding interested workers within the country is especially critical during the ongoing COVID-19 crisis, as a result of which international recruitment – where it is allowed to proceed – is becoming more expensive in terms of travel and health-related costs and also requires some workers to quarantine on arrival.<sup>19</sup>

## **Conclusion**

This paper has outlined the main reasons why reforms to the kafala system should remain a policy priority, particularly for low-wage workers, focussing both on ensuring the legal right of workers to change employers – which has been achieved in some countries for some workers, but remains elusive in other parts of the region – and on removing other obstacles to internal labour market mobility that hinder nationalization efforts and economic productivity. The profiteering that the system has facilitated created powerful lobby groups, which, despite economic imperatives at the national level, will be hard to dislodge. The COVID-19 pandemic has been disastrous for many migrant workers’ jobs and livelihoods. One positive aspect and opportunity presented by the crisis is that governments in the region may be encouraged to fast track reforms. Yet, modifying the kafala system in legislation is only the first step towards the much greater goal of dismantling the system, and replacing it with a more rights-based approach. Ensuring that reforms are inclusive of all workers, including low-wage and domestic workers, and effective implementation of the reforms will be key.

## End Notes

<sup>1</sup> See for example, Mohammed 2021.

<sup>2</sup> This is consistent with more recent research of 700 Kuwaitis in 2020, where more than half of respondents considered that the kafala system should be changed to make the workers more dependent on the employer (28 per cent) or kept the same (28 per cent). Only 23 per cent of respondents thought that the kafala system should be made more flexible or entirely abolished. Wealthier survey respondents tended to be more supportive of changing the sponsorship system to make workers more dependent on their sponsor. Additionally, 75 per cent of respondents agreed with the statement that “changing employers should be made more difficult for expatriates” (ILO and World of Opinions unpublished).

<sup>3</sup> According to a senior official in the UAE Ministry of Human Resources and Emiratisation (December 2020), 6,800 individuals have been granted this ‘Golden Card’ (Alexandrova 2021).

<sup>4</sup> The conditions may include lawful residence for the purpose of employment in the country for up to two years or after completion of the first employment contract if this is shorter in duration. Convention No. 143, Article 14(a). However, these conditions do not require the first employer’s permission for the migrant worker to seek employment elsewhere, although this may mean s/he might be required to meet a labour market test or leave the country before being permitted to take up alternative employment.

<sup>5</sup> The exact stock of migrant workers during this period is unknown as the UAE only reports non-nationals as a percentage of the labour market in administrative data.

<sup>6</sup> The full title is Circular No. 4 of 2020 concerning the stability of the national workforce conditions in the private sector (during the period of implementation of precautionary measures to limit the spread of the Novel Corona virus).

<sup>7</sup> For example, in Saudi Arabia, for three months (May – July 2020) to cover 60 per cent of national employees’ salaries up to a maximum of 9,000s Saudi Arabia riyals (US\$2,400) per employee.

<sup>8</sup> UAE MOHRE Resolution No. 279 of 2020 concerning the employment stability in private sector establishments.

<sup>9</sup> The CEACR’s 2003 General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949, Report III (Part 1B), International Labour Conference, 91st Session, 2003, International Labour Office, Geneva addresses deductions from wages at length (paras 213- 271). The CEACR has stated that “In the Committee’s opinion, provisions of national legislation which permit deductions by virtue of individual agreements or consent are not therefore compatible with Article 8, paragraph 1, of the Convention” (para. 217). To date, only Saudi Arabia in the GCC has ratified Convention No. 95 (in December 2020). The Convention will enter in force for Saudi Arabia on 7 December 2021.

<sup>10</sup> Law No. 19 of 2020, complemented by a new Ministerial Decision No. 51 of 2020.

<sup>11</sup> Exit permit requirements remain in place for members of the armed forces and for a maximum of five per cent of the total workforce per company, under strict conditions.

<sup>12</sup> The recommendations included increasing the percentage of workers who require an exit permit from the employer from 5 to 10 per cent, removing the right to unilaterally terminate the employment contract during the contract period and limiting workers to a maximum of three changes of employer.

<sup>13</sup> Ministerial Decision No. 25 of 2020 stipulates a minimum basic wage of 1,000 Qatari riyals (US\$275), and minimum allowances for food and accommodation, of 300 riyals (US\$82) and 500 riyals (US\$137), respectively.

<sup>14</sup> Aus dem Moore et al (2018) argue that the share of work activities that could be automated with current technologies is 45 per cent for GCC countries and that such sectors as retail, wholesale trade and construction have on average more than 50 per cent of automatable activities.

<sup>15</sup> These estimates (from 2019 except for UAE where the data is for 2018) only cover migrant workers in a regular status.

<sup>16</sup> For example, between December 2019 and September 2020, the number of migrant domestic workers decreased by 8 per cent in Kuwait according to the Labour Market Information System, which is much lower than for other sectors such as retail and construction. Kuwait Integrated Database, Labour Market Information System, Central Statistical Bureau.

<sup>17</sup> For example, in Lebanon, where ‘the General Directorate of General Security (GDGS) took it upon itself, in coordination with the Ministry of Labour and other public departments, to establish this [absconding] system by issuing a number of internal instructions without reference to any legal text’. ILO. The Labyrinth of Justice: Migrant domestic workers before Lebanon’s courts. 2021. ILO Regional Office for Arab States: Beirut, p. 11

<sup>18</sup> For example, Saudi Arabia’s Royal Order No. 17/2/25/1337/1371 states that “Where the employer insists on cancelling an

employee's sponsorship for serious reasons, then the foreign national shall be held wherever found, and he shall be required to leave the country within a period not exceeding one week"

<sup>19</sup> Domestic worker recruitment agencies in some countries have indicated that they intend to increase recruitment fees and related costs by 50 per cent to cover PCR tests and quarantine on arrival. See for example, <https://gulfnews.com/world/gulf/kuwait/recruitment-fees-for-domestic-workers-to-increase-by-50-per-cent-1.1610540993988>

<sup>20</sup> Ministerial Decision No. 842 of 2015, Article 3.

<sup>21</sup> Ministerial Decision No. 142 of 2021.

<sup>22</sup> Ministerial Decision No. 842 of 2015, Article 6. The worker is also required to provide three months' notice to the employer as per Article 44 in the Private Sector Labour Law, No. 6 of 2010.

<sup>23</sup> Ministry of Human Resources and Social Development, Resolution No. 51848 of 1442 (2020). The employee must obtain the new job offer through the Qiwa portal. The worker, taking into account their notice period, must submit a notice of the transfer request to their current employer.

<sup>24</sup> The Ministry may, however, prevent a renewal of the work permit or transfer if the employer violates the standards related to nationalization.

<sup>25</sup> If the worker is on a trial period, this trial period shall be stated explicitly in the employment contract and not exceed 90 days (but can be extended by written agreement between the worker and the employer) to up to 180 days.

<sup>26</sup> Law No. 19 of 2020, complemented by a new Ministerial Decision No. 51 of 2020, removes the requirement to obtain a No objection certificate to change jobs for all migrant workers, while Law No. 18 of 2020 provides new rules on termination of employment.

## Annex: Summary of internal labor market mobility (right to terminate the employment contract and change sponsor) in GCC countries as at September 2021

Country	With permission of (first) employer		No permission from (first) employer	
	Private sector workers	Domestic workers	Private sector workers	Domestic workers
<b>Bahrain</b>	Anytime.	Anytime.	Only after the completion of <u>one year's</u> service. Workers have the obligation to notify the first employer of their decision to terminate their contract by registered mail.	Only with the permission of the Labour Market Regulatory Authority (LMRA).
<b>Kuwait</b>	<p>Private sector employees who work on government-contracted projects: such workers are permitted to transfer only to other government-contracted projects implemented by the same sponsor and <u>only after the end of their contract</u>, except for workers with certain technical skills and if the implementing government entity approves of the transfer.<sup>20</sup></p> <p>Workers in Free Trade Zones and the manufacturing, agricultural, co-operatives and fishing sectors: transfer is permitted during any period of the contract with the approval of the employer.<sup>21</sup></p> <p>Other workers: transfer is permitted <u>after one year</u> of continuous employment with the approval of the employer.</p>	Transfer of the sponsor is managed by the Ministry of Interior, thus transfer with permission of the employer is permissible if accepted by the Ministry of Interior.	Only <u>three years</u> after the issuance of the work permit. <sup>22</sup> However, if the worker wishes to transfer prior to the end of this period without the consent of the original employer, the worker will have to file a complaint with the Labour Relations Department of the Public Authority for Manpower (PAM).	Generally after the end of the contract ( <u>2 or 3 years</u> ). The Ministry of Interior and the Labour Court have the authority to transfer sponsorship without the permission of the sponsor.
<b>Oman</b>	Anytime.	Anytime.	<p>Only <u>after the end of the contract</u>.</p> <p>Transfer of a migrant worker to another employer is permitted if:</p> <ul style="list-style-type: none"> <li>• the employment contract with the existing employer has ended or was terminated (evidence must be shown);</li> <li>• the new prospective employer meets Omanization requirements; and</li> <li>• the new prospective employer has been granted the requisite labour clearance from the Ministry of Manpower as being authorized to employ the migrant worker.</li> </ul>	<p>Only <u>after the end of the contract</u>.</p> <p>Transfer of a migrant worker to another employer is permitted if:</p> <ul style="list-style-type: none"> <li>• the employment contract with the existing employer has ended or was terminated (evidence must be shown);</li> <li>• the new prospective employer meets Omanization requirements; and</li> <li>• the new prospective employer has</li> </ul>



				been granted the requisite labour clearance from the Ministry of Manpower as being authorized to employ the migrant worker.
<b>Saudi Arabia</b>	Only after at least one year of employment with the current employer.	Anytime.	<p>After <u>one year</u>, without the permission of the first employer, subject to certain conditions being met,<sup>23</sup> including that the new employer submits a job offer through the <i>Qiwa</i> platform, and the notice period is complied with.<sup>24</sup></p> <p>Otherwise, termination without permission will only be permissible in the following circumstances:</p> <ul style="list-style-type: none"> <li>• During the probation period.<sup>25</sup></li> <li>• The employer fails to renew the worker's residency permit.</li> <li>• If the employer fails to pay the worker's wages for three consecutive months, the worker can change employers at any time during the year that follows the due date of the third month of delayed wages.</li> <li>• The worker has denounced a commercial cover-up activity involving the employer, with evidence to this effect and without involvement on the worker's part.</li> </ul>	<p>After <u>two years</u> of work with the employer.</p> <p>Domestic workers can only change employers before two years if:</p> <ul style="list-style-type: none"> <li>• The employer fails to pay the salary for three consecutive or intermittent months.</li> <li>• The employer is not present to receive the worker when they arrive in the country, or does not "pick up" the worker within 15 days of arrival.</li> <li>• The employer fails to obtain a residency permit or to renew the expired permit.</li> <li>• The employer assigns the domestic worker to work for others (i.e. non-relatives).</li> <li>• The employer requires the domestic worker to perform hazardous tasks.</li> <li>• The employer files an "invalid</li> </ul>

				<p>complaint” that a worker has absconded.</p> <ul style="list-style-type: none"> <li>The employer fails to attend two sessions addressing a complaint filed by the worker.</li> </ul>
<b>Qatar</b>	<p>Workers who are covered by the Labour Law, domestic workers and maritime and agricultural workers are now able to change employer <u>any time after their probation period</u>, after giving written notice of one or two months, depending on their length of service. If workers wish to change employer during their probation period, they must give one month’s notice and the future employer must pay the current employer compensation not exceeding two months of the worker’s basic wage.<sup>26</sup></p> <p>If the worker wishes to terminate the contract without observing such notice periods, the worker shall pay the employer a compensation in lieu of notice, equivalent to the worker’s basic wage for the notice period or the remaining part of the notice period.</p>			
<b>UAE</b>	<p>Anytime, except for most lower-skilled migrant workers, who will need to have performed at least <u>six months</u> of service to avoid a prohibition on re-entry. No minimum service requirements apply for skilled migrant workers.</p>	<p>Anytime.</p>	<p>Workers on unlimited-term contracts or renewed fixed-term contracts may terminate their contract with notice. Workers on an initial fixed-term contract do not have a statutory right to terminate the initial fixed-term contract early (i.e. but only <u>after the end of the first contract</u>), and where termination is initiated, compensation is payable according to the Labour Law.</p>	<p>Only <u>after the end of the contract</u>.</p> <p>A domestic worker can terminate the contract if the employer violates their legal obligations. However, the MOHRE decides whether the domestic worker can change their employer or has to leave the country.</p>

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