



The Kafala System and Its Implications for Nepali Domestic Workers

Rooja Bajracharya and Bandita Sijapati*

SUMMARY

Over 16,000 Nepali migrant workers leave every month for the Gulf Cooperation Council (GCC) countries in search of employment opportunities and better livelihood options for themselves and their families. Most of these workers reach their destinations after paying exorbitant recruitment fees but without much knowledge about the laws and regulations of those countries. Perhaps the most central amongst these is the kafala system which is a sponsorship system that gives the sponsors complete control over migrants' mobility as well as their visa status. Under this framework, the state of domestic workers is particularly precarious since they are not protected by the labour laws of the GCC countries and come directly under the purview of the kafala system only. This policy brief highlights some of the implications of the kafala system on Nepali domestic workers, and presents recommendations to address the plight of these workers.

I. Introduction

The six countries that comprise the Cooperation Council for the Arab States of the Gulf (CCASG), better known as the Gulf Cooperation Council (GCC), namely, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE), are among the top destinations for Nepali migrant workers. On an average, every month around 16,000 Nepali migrants leave for the GCC countries in search of a better future.¹ Despite the significance of this outflow, there is a lack of proper understanding and knowledge in Nepal of the laws and regulations that govern migra-

tion into these countries. As part of an attempt to address this gap,² this policy brief examines the kafala, or the sponsorship system, the most important framework that binds migrant workers to their employer(s) and/or sponsor in the GCC countries. Although the kafala system is *applicable to all migrants who enter the GCC countries*, this brief focuses mostly on domestic workers, mainly because they are part of the informal sector and hence are explicitly excluded from the protection provided by the labour laws of the GCC countries.

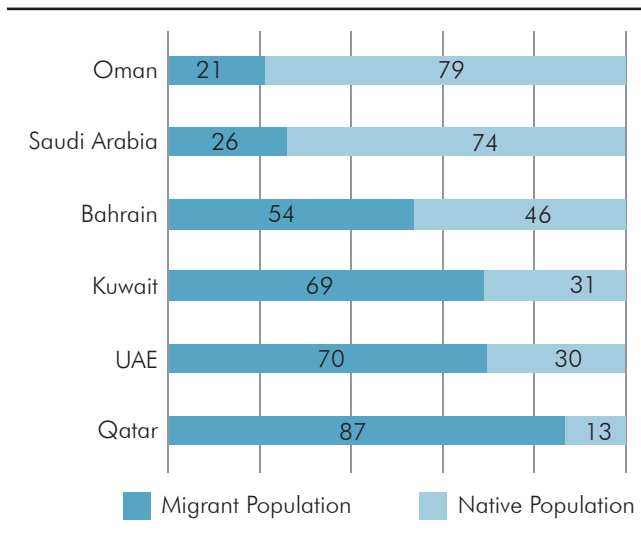
1 The figure is an aggregate taken from the Department of Foreign Employment's monthly report on labour migrants to the Gulf. Department of Foreign Employment, www.dofe.gov.np

2 The initial impetus for this policy brief came from the presentation made by Mehru Cyrus Vesuvala during the workshop 'Kafala System and Legal Rights for Nepali Migrants in the GCC Countries', Kathmandu, Nepal, 5-9 September, 2011.

* The authors are with the Centre for the Study of Labour and Mobility.



Figure 1: Percentage of native and migrant population in GCC countries



Source: Vesuvala, 2011.

II. Migration Patterns into GCC Countries

The demand for foreign workers has led the Gulf region to emerge as a prime destination for skilled and unskilled workers from around the world. In most of the GCC countries, the migrant population exceeds the native population (Figure 1), with the proportion of the former ranging from a high of 87 per cent in Qatar to 21 per cent in Oman. Further, owing to the growing demand for domestic workers in those countries, between 2009 to 2011, 1,604,922 migrant domestic workers were employed, of whom 986,566 (62 per cent) were female.³

In terms of Nepali migrants to the GCC, recent data from the Department of Foreign Employment (DoFE) indicate that over a six-

month period (mid-July 2011 to mid-January 2012) 145,310 Nepalis received permission to work in those countries, of whom 8,700 (or 6 per cent) were women.⁴ In general, as shown in Table 1, the number of Nepali women going to these countries as labour migrants is relatively low compared to the number of men. However, it is also clear that this number is on the rise. Between mid-July 2010 and mid-January 2011, the number of female migrants to the GCC countries was 2,502 (3 per cent of the total Nepali migrants to those countries), a figure that increased more than three times over the same period the following year (i.e., from mid-July 2011 to mid-January 2012) to 8,700 (6 per cent). It should be noted though that these figures, obtained from the DoFE, are considered to be an underestimation because of the illegal channels that Nepali women use to reach the Gulf countries.⁵

For its part, seeking to capitalise on the demand for domestic workers in the GCC countries, on 4 October, 2011, the Government of Nepal announced that it would be sending approximately 150,000 women to the Gulf countries while also guaranteeing them protection and creating provisions that would allow

3 The figures given do not include the UAE (Esim and Kerbage 2011). The increased demand for domestic workers is also evidenced by the fact that the Ministry of Labour in Bahrain alone received 16,203 visa applications for domestic workers' licences between April and June 2011, of which 13,709 were approved. Of the total applications approved, 10,596 were for domestic housemaids (*Khaleej Times Online*, 11 December, 2011).

4 Please note that the data on Nepal provided by the Department of Foreign Employment (DoFE) throughout this paper represents the number of people who have received labour permits from the Government of Nepal.

5 In 1998, the Government of Nepal had banned female migrants from going to the Gulf countries as domestic workers after a Nepali maid who had been abused committed suicide in Kuwait, creating a national scandal. In 2003, the government partially lifted the ban by allowing women to work only in the organised sector, and, in 2010, it was lifted completely. In practice however, despite the end of the ban, female migrant workers from Nepal often use illegal channels, mainly through India, to go to the Gulf. As a result, there are no proper records of the actual number of women who have gone to the GCC countries as labour migrants. Moreover, until 2006, there was no gender-disaggregated data available with the DoFE.

Table 1: Number of Nepali migrant workers in GCC countries, mid-July 2011 to mid-Jan 2012

Country	Male	Female	Total
Qatar	59,392	453	59,845
Saudi Arabia	34,713	78	34,791
United Arab Emirates	31,311	2,260	33,571
Bahrain	3,327	300	3,627
Kuwait	6,146	5,357	11,503
Oman	1,721	252	1,973
Total	136,610	8,700	145,310

Note: The fiscal year in Nepal begins from mid-July.

Source: Department of Foreign Employment, Nepal (www.dofe.gov.np)

them to work as housemaids only with sponsors who agree to certain terms and conditions.⁶

III. The Kafala System: A Brief Overview

The kafala, or the sponsorship, system is based on the Bedouin⁷ principle of hospitality, which sets certain obligations in the treatment and protection of foreign guests.⁸ Historically, the kafala system functioned as a mechanism for hosting foreigners in their societies. Through the system, the host vouched for the foreigners' visit and assumed responsibility for their behaviour. The system also implied that the sponsor was responsible for the safety and protection of foreigners and guests.⁹ Over time, however, the true meaning of the kafala system has changed and is now being used primarily to provide the central governments of the GCC countries with the means of regulating labour flow into their respective countries.¹⁰

The contract period under the kafala system is a minimum of two years¹¹ during which

a domestic worker's visa and legal status is tied to the sponsor, or the *kafil*. More specifically, this means that the sponsor is required to take full economic and legal responsibility of the worker, including the worker's recruitment fee, medical examination and issuance of national identity card, or the *iqama*, upon arrival in the GCC countries.¹² By doing this, the *kafil* has complete control over the mobility of the worker, rendering him/her completely dependent on the sponsor since an employee cannot transfer employment without the consent of the *kafil* or even leave the country without obtaining an exit visa from the latter.

Given these circumstances, low salary, long working hours and physical, verbal, sexual and psychological abuses often characterise the situation of domestic workers in the GCC countries.¹³ Since they are considered a member of the *kafil's* family, domestic workers are not covered by labour laws and their work

Features of the kafala system

- Contract period—minimum of two years
- Domestic workers' visa and legal status is tied to the sponsor
- Sponsor takes full economic and legal responsibility of the domestic worker
- Sponsor has complete control over the mobility of the domestic worker

is not legally recognised or even classified as a form of work. Consequently, these workers are unable to exercise their rights and freedoms and hence form the 'invisible working class' in the GCC countries. This 'invisibility' makes it all the more difficult to scrutinise and regulate their working conditions.¹⁴

6 Sambidge, 2011.

7 Bedouin is a term used for Arab nomadic pastoralist groups well known for their hospitality and generosity towards their guests.

8 Khan and Harroff-Tavel, 2011.

9 Gardner, 2011.

10 Khan and Harroff-Tavel, 2011.

11 Though the system and contract period may vary from country to country, considering the high cost of recruitment borne by both the employer and domestic worker, the contract period is generally for a minimum of two years.

12 Roper, 2008; and Human Rights Watch, 2008.

13 Bahrain Center for Human Rights et al, 2008.

14 Human Rights Watch, 2008.



IV. Invisible and Tortured: The Plight of Domestic Workers

Though the kafala system is regarded as a system that helps governments monitor the movement of migrant workers within the GCC countries, what is often not known, especially in Nepal, are the implications of the system on workers' mobility and the violation of their labour and migrant rights. Moreover, the instances of reported cases of foreign workers being abused, denied wages or mistreated have become so common that they rarely attract attention and it is only the most gruesome and shocking ones that receive media coverage and attention from the authorities.¹⁵

A. Contractual agreements

A major challenge faced especially by domestic workers with regard to contractual agreements is the absence of a contract and/or contract substitution. Oftentimes, there are no contracts signed between the employer and the employee,¹⁶ and, where a contract does exist, the domestic worker is unaware of the terms and conditions laid down by the employer; and/or the contract is signed by intermediaries without the knowledge of the worker.

Moreover, recruitment agencies at home countries often substitute contracts drawn at the destination countries with one that has different terms and conditions. Such malpractices involving contract substitution also occurs in destination countries.¹⁷ Consequently, during a dispute, GCC countries

only recognise contracts drawn in Arabic, which leaves domestic workers with no basis for fighting for their rights since they either would not have signed a contract or their contracts would have been substituted by the one in Arabic mentioning different terms and conditions.

Besides ignorance of contractual agreements, domestic workers are also not aware of the three-month probationary period often applied in the GCC countries. During this time, the employer or the domestic worker can terminate their contract if they are not satisfied with the working environment or the performance of the workers. But, in reality, even when a domestic worker complains about the working conditions, they are forced to work with the same employer without any change in their working conditions after the period of probation is over.¹⁸

To address this issue, Kuwait and the UAE introduced the unified standard domestic workers' contract in 2006 and 2007, respectively, and Oman recently introduced a pilot contract for the employment of house maids.¹⁹ While the unified standard contract is to be signed by either the worker and employer, and/or the private employment agency, worker and employer, the effectiveness of such a contract is yet to be monitored.²⁰

B. Violation of rights

Invisible at the destination and ignored by their home country, the life of a domestic worker is often characterised by undefined hours of work; no off-days; non-payment of wages; psychological, verbal, physical²¹ and sexual abuse; restriction in mobility;²² and constant

¹⁵ Manseau, 2006.

¹⁶ Of the 13 Gulf migrant returnees interviewed by Amnesty International, none had signed a contract before leaving for foreign employment (Amnesty International 2011). Even though under Article 15 of the Foreign Employment Act 2007, Nepal, an agent has to submit copies of the contract to the Department of Foreign Employment in order to receive prior approval for sending workers, which is often done three months before sending workers for foreign employment.

¹⁷ Vesuvala, 2011; and Human Rights Watch, 2010a.

¹⁸ Manseau, 2006.

¹⁹ Esim and Kerbage, 2011.

²⁰ Human Rights Watch, 2010b. For further details on standard contracts please see Section V.

²¹ Physical abuses often range from beatings with slippers and rubber hoses to deliberate burning with hot irons (Human Rights Watch 2007).

²² According to Varia (2011), 'the employers' char-

fear of being further abused or deported, if they protest.

In fact, the abuse of domestic workers begins from the time they land in the GCC countries, if not before they leave their home countries. Once a domestic worker arrives at the destination country, their passports are usually taken away from them by their employers.²³ Without any clear indication of the kind of work to be done, or even specified working hours,²⁴ migrant domestic workers are also compelled to do multiple forms of work not just within the house of the employer but sometimes in other households to which they are 'loaned'.²⁵ Once again, they are required to provide these additional services almost always without any extra pay.²⁶

In general, overtime pay is not something the domestic workers are able to enjoy since

acterisation of domestic workers as "daughters" is also conveniently used to justify paternalistic restrictions over their freedom of movement'.

23 Recognising the prevalence of this practice in general, in 2007, the Kuwaiti Labour Ministry issued a decree prohibiting employers from confiscating worker's passports. The decree, however, excluded the domestic sector (Human Rights Watch 2010b).

24 The average number of working hours for a domestic worker is from 108 hours per week in Bahrain, 105 in the UAE and 101 in Kuwait (Bahrain Center for Human Rights et al, 2008).

25 In 2003, Oman made it illegal for any employer to 'loan' migrant workers to other households, an explicit recognition of the prevalence of this practice (Khan and Harroff-Tavel 2011).

26 A report by the Committee on Overseas Workers' Affairs, House of Representatives, Philippines, provides an account of four Filipino domestic workers who had faced various forms of abuses, including rape, in Saudi Arabia. Two of these Filipino workers recounted being 'loaned' to the son and mother of their respective employers. Their accounts make no mention of any additional pay. Further, the report indicates that this practice is one of the main causes of being overworked, which is a common complaint among Filipino domestic workers (Committee on Overseas Workers' Affairs 2011).

they are not included in the labour laws of the host countries. Salaries are often never as promised; withheld for months or even years; and employers often deduct the cost of recruitment from their already meagre pay. Salaries provided to domestic workers also differ based on the nationality of the worker and the country where they work.²⁷ Many a time, there is increased abuse and deduction in salary when employers feel that they have been duped by recruitment agencies since the domestic worker does not meet the standard of work demanded.

Apart from various forms of mistreatment, domestic workers are often not allowed to contact their families and are kept in social isolation from other domestic workers or friends.²⁸ The rationale often given by the employers for imposing such a prohibition is that it limits the likelihood of the domestic workers leaving the household before they have completed their contract term.²⁹

C. Sexual abuse

In the absence of any kind of protection, domestic workers often become victims of sexual abuse at the hands of their employers, ranging from sexual advances, molestation, unwanted fondling, rape and offers to pay money in exchange for sex.³⁰ Apart from

27 In Saudi Arabia, a Sri Lankan maid gets USD 107 while a Filipino maid gets USD 213 (Human Rights Watch 2007) and a Nepali maid gets USD 110 (Amnesty International 2011). Minimum wage paid to domestic worker in the UAE is USD 115, while in Kuwait it is USD 130.

28 Reasons given by employers for the need to keep domestic workers in isolation include: (1) tendency of the workers to engage in sex work; (2) find a boyfriend and become pregnant; (3) bring home foreign men while the employers are at work and then rob them; and (4) get 'influenced' by foreign men to run away, sometimes for better employment and sometimes to unwittingly be sold into forced prostitution (Varia 2011).

29 Manseau, 2006; and Human Rights Watch, 2007.

30 Human Rights Watch, 2007.



Both the sons...used to remove their clothes and expose themselves to me...They removed their trousers. They have pictures of naked girls on their phones and they showed them to me... They would come and touch me. I can't work like that.

– Chameli W, 27, Sri Lankan domestic worker
in Riyadh, Saudi Arabia

Source: Human Rights Watch, 2007.

sexual abuse, forced 'acceptance' of sex work is also reported as being quite common in the GCC countries.³¹ Employers often expect their maids to not only do the household chores but also perform sexual favours for the guests they bring home. It is when a maid refuses that she is often mistreated and harassed. Moreover, the level of harassment does not just depend on a domestic worker's consent to perform sex but also on the home environment she is working in.³² Most often, cases of rape are not reported mainly because of the stigma attached to it and due to the fact that domestic workers do not have any access to the law or do not know who to report the case to and how.³³ Even if a case is filed for sexual abuse or rape, it is almost redundant if there is no male witness or a strong medical test report to prove the act. There is also a high chance of being prosecuted under Sharia law for engaging in a relationship outside of marriage. Further, in cases where a worker gives birth as a result of rape, the child is not recognised by the state in the GCC countries and faces a great challenge in getting the required legal clearances to bring the child back home to Nepal.³⁴

31 Blanchet, 2002.

32 Ibid.

33 A Nepali maid working in Oman would be sexually assaulted by the employer's son every time his family members were away and despite the continual abuse she did not report the incident for fear of being deported. More importantly, did not know 'what to do or... where to complain' (Pourokhi and UNIFEM 2009).

34 In Nepal, even though a child can obtain Nepali citizenship by virtue of being born to a Nepali mother, issues such as forged identity docu-

D. Breach of contract

Breach of contract and/or abscondment are viewed as serious offences under the kafala system. When these do happen, a domestic worker is often treated as a criminal regardless of the reason for absconding. Often unaware of these rules, abused domestic workers seeking a better work environment run away from their employers, not knowing that they will be trapped in a situation worse than the one they were hoping to run away from. Once a contract has been breached before its term, a sponsor often files a case of abscondment with the police, raising the risk of deportation and making the domestic worker liable to pay back the recruitment fee and other costs borne by the sponsor to hire the worker.

Once charged with fleeing, filed as a 'runaway', and treated as a criminal, chances of justice to the domestic worker is lower despite the obvious violation of their rights or abuse at the hands of the employer. Even in cases where the worker manages to contact the embassy, the procedures are quite cumbersome. The process of identification may take months if the domestic worker does not have any form of identity.

Nepal has embassies in only four of the six GCC countries,³⁵ and though they do have provisions for safe houses they are not very accessible or effective, leaving domestic workers to fend for themselves. This is mainly because domestic workers are ignorant of the embassies' existence or cannot contact them since they are not allowed to go out of the house alone or they do not have access to a telephone. Moreover, even if a domestic worker is identified and receives a temporary identity from the embassy, they are required to obtain an exit visa from their employers,

ments, lack of support from community members, and refusal of local authorities to recommend citizenship on behalf of the child further complicates matters.

35 Nepal has embassies only in Qatar, Kuwait, Saudi Arabia and the UAE, but not in Oman and Bahrain.

which, in most cases, is denied, leaving the domestic worker with little choice but to either go back to working for the employer, be imprisoned, or, as has been the case in general, reach a settlement with the employer which is generally to the detriment of the worker.³⁶

When a case is filed, it often takes months before it reaches the courts, during which time the domestic worker is not allowed to work anywhere and most often the end result is an out-of-court settlement with minimum or no compensation given to the domestic worker.

E. Lack of access to justice

As will be explained further in Section V, being outside the purview of labour laws and social security of the GCC countries, domestic workers face major problems while accessing the legal system. Though there are specific government-run hotlines for domestic workers, lack of awareness as well as access to a telephone make these services ineffectual. Further, as stated earlier, cases of abuse often remain unreported due to the fear of deportation. And, even when a case of abuse is reported to the authorities, it does not always lead to justice being served because of the lack of 'adequate' evidence, and/or interest on the part of the authorities to file a case.³⁷ Additionally, a slow judicial process, language barriers, high cost of the legal and administrative process, and the proscription on alternative employment, while there is a case pending in court, discourages domestic workers from taking an employer to court. Moreover, employers often recourse to falsely accusing their employees of theft which outweighs the domestic worker's complaint, leading to deportation or being further abused once the worker is returned to the employer.

F. Exploitation by recruitment agencies

The exploitation domestic workers experience is not limited to the destination coun-

tries but begins at home. In Nepal, though the government has set a maximum amount payable by migrants to recruitment agencies,³⁸ in reality, the fee charged by agencies is higher than that stipulated by the government.³⁹ Generally, domestic workers' initial arrangement begins with a sub-agent in the village whom they know and trust. Having full faith on the sub-agent, with little or no knowledge of the recruitment process or the laws governing it, domestic workers pay much more than the officially stipulated rates.

By and large, expenses borne by a migrant worker can be broken down into various costs such as commission to the recruitment agency, airfare, insurance, airport taxes, contribution to the Foreign Employment Welfare Fund,⁴⁰ pre-departure orientation and labour permit fee.⁴¹ A World Bank study indicates that the commission to recruitment agencies and airfare together make up the highest percentage (79 per cent) of the total costs incurred by migrant workers going to Qatar (Figure 2).⁴² This is despite the fact that under the kafala

³⁸ According to the Department of Foreign Employment, the maximum recruitment fees for foreign employment to the Gulf countries is NPR 70,000 (approximately USD 900).

³⁹ During fieldwork conducted by CESLAM researchers in Tanahu district in July 2011, a Kathmandu recruitment agency was reported to have charged NPR 150,000 (c. USD 1900) for making arrangements to go to Qatar.

⁴⁰ Article 32 of the Foreign Employment Act, 2007 and Article 24 of the Foreign Employment Regulations, 2008 state that any worker who is going for foreign employment must pay a stipulated amount towards the Foreign Employment Welfare Fund before going for foreign employment. The Fund was set up by 2007 'for the social security and welfare of the workers who have gone for foreign employment and returned from foreign employment and their families'.

⁴¹ Under Article 19 of the Foreign Employment Act 2007, a worker going for foreign employment must get the labour permit from the government.

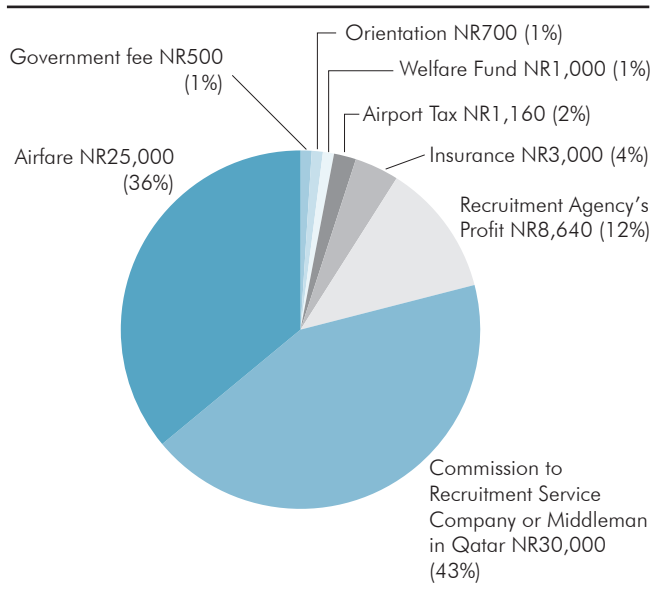
⁴² The World Bank (2011) report is based on 3,200 household surveys conducted between May and September 2009.

³⁶ Vesuvala, 2011.

³⁷ Esim and Kerbage, 2011.



Figure 2: **Estimated breakdown of migration expenses: An example of Qatar**



Source: World Bank, 2011.

system, commissions to the agents and airfare should have already been paid by the sponsor for recruiting a domestic worker. Further, the bilateral agreement signed between the Government of Nepal and Qatar in March 2005⁴³ also states that the recruitment fees and the airfare would be borne by the employer.

A new method being increasingly used by recruitment agencies is the 'go now, pay later' scheme, where a migrant worker does not pay recruitment costs up front but, instead, the cost incurred by the agency is deducted from the worker's monthly salary.⁴⁴ Such a practice could become a major cause for the increase in trafficking and abuse of domestic workers because it not only leads to a situation where they become indebted to the recruitment agencies but are also lured into migrating without much knowledge of the destination country, the process of recruitment, or the

⁴³ For the full text of the bilateral agreement between the Governments of Nepal and Qatar, please visit www.ceslam.org.

⁴⁴ Based on interviews conducted with recruitment agencies in August 2011 by CESLAM researchers. See also Amnesty International, 2011.

nature of work they are being recruited for. Often, it is only when they reach their destination countries that the workers realise that they have been trafficked and/or get a sense of the situation they are in. To make matters worse, the workers receive very little to no wages since a large portion of their wage goes to the recruitment agency as a form of payment under the 'go now, pay later' scheme.

G. Lack of information

Migrant workers from Nepal to the Gulf countries are often from remote areas and/or disadvantaged backgrounds who are driven to migrate due to poverty and lack of employment opportunities in their own country. With the hope of a better future, they migrate for work with little or no awareness about their labour and human rights, the process of recruitment or knowledge about the destination country. This is despite the fact that in Nepal, Article 19(1a) of the Foreign Employment Act 2007 makes pre-departure orientation training mandatory; and Article 20(1) of the Foreign Employment Regulations 2008 provides a list of areas to be covered under the training.⁴⁵ However, migrants often do not attend such trainings since certificates are easily provided by the training providers for a fee and even without attendance. Admittedly, one of the main reasons for potential migrants' disinterest in attending the pre-departure orientation is due to the fact that the 49 government certified pre-departure orientation training institutions are all located in the Kathmandu Valley. Migrant workers who have to bear the

⁴⁵ Areas to be covered, according to the Foreign Employment Act 2007, are: foreign employment law of Nepal; geographical situation, culture, life style, economic, language, social and political situation, labour immigration laws and traffic rules of the destination country; HIV/AIDS, communicable diseases, sexual and reproductive health, occupational safety and health; easy and safe travel; treatment and safety of workers; and repatriation of earnings from destination countries.

additional expenses of travelling and staying in Kathmandu evade such training more so because such a certificate is easily available on payment. Though efforts have been made by INGOs and NGOs to provide pre-employment training and information within the Valley and in a few other districts, these are sporadic efforts and their effectiveness is yet to be seen.

V. Exclusion of Domestic Workers from Labour Laws

As stated earlier, one of the main reasons domestic workers suffer at the hands of their employer in the GCC countries is due to the fact that they are neither covered by the country's labour laws nor protected by social security laws. Instead, the labour laws of these countries clearly exclude domestic workers.⁴⁶

Recently, some GCC and neighbouring countries, such as Lebanon and Jordan,⁴⁷ have made efforts to bring domestic workers within the ambit of their labour laws but these are yet to come into effect. For instance, in 2007, Bahrain drafted a labour law with several provisions that included domestic workers but till date, these have not been endorsed by the government. Kuwait, Saudi Arabia and the UAE have also drafted separate labour regulations for migrant domestic workers but these still remain in draft form.⁴⁸ Moreover, in September 2010 the Kuwaiti government announced

the abolishment of the kafala system by 26 February, 2011, the day Kuwait would celebrate its 20th anniversary of liberation from the Iraqi invasion while Bahrain has also issued several public statements committing itself to dismantling the kafala system.⁴⁹ But nothing has come out of these public expressions. On the contrary, recent legal reforms introduced by these states make no mention of domestic workers even though some of these address the issues of the kafala system. For example, on 4 May, 2009, Bahrain removed restrictive elements of the kafala system, allowing migrants workers to change employers without their consent; Saudi Arabia passed a bill in 2009 for the protection of migrant workers; and the UAE passed the wage protection legislation in 2009. However, none of these reforms specifically cover domestic workers.

As stated earlier, in order to reduce possible forms of exploitations of domestic workers, Kuwait and UAE have introduced unified standard contracts⁵⁰ and Oman introduced a pilot contract for housemaids and equivalents. These standardised contracts vary from country to country. For example, the one in use in the UAE includes provisions for paid leave, dispute settlement and for the employer to pay for the repatriation of a domestic worker⁵¹ while the one in Kuwait provides provisions for eight-hour workdays, overtime payment, days off on official public holidays, and penalties for late payment of salaries.⁵² However, some of these provisions such as payment of repatriation costs are rarely implemented in practice, especially in situations where workers are not

46 Bahrain explicitly excludes domestic workers under Section 2 of the Labour Code for the Private Sector No 23 of 1976; Kuwait under Section 2 of the Labour Code for the Private Sector No 30 of 1995; Qatar under Section 3 of the Labour Code No 14 of 2004; Saudi Arabia under Section 7 (b) of the Labour Act, 2006 (Royal Decree No. M/51); Oman under Section 2 of Labour Code, 2003 (Royal Decree No. 35) and the UAE under Section 3 of the Federal Act No. 8 of 1980, that in general regulates employment relationship (Esim and Kerbage 2011).

47 In 2008, Jordan became the first Arab country to pass specific legal provisions on minimum wage for domestic workers (Frantz 2009).

48 Human Rights Watch, 2007.

49 Khan and Harroff-Tavel, 2011.

50 Mandatory unified standard contracts were introduced to formalise the employment relationship in the three countries mentioned above. Since their labour laws do not include domestic workers these unified standard contracts were introduced to provide legal cover to migrant domestic workers (Esim and Kerbage 2011).

51 Migrant Forum Asia, 2010.

52 Human Rights Watch, 2010b.



Advertisement in Kuwaiti newspapers

- 'We offer servants from all the Asian nationalities for competitive prices!'
- 'A polite, clean, and obedient maid to be transferred'
- 'An obedient Indian servant to be transferred; He prays all the five prayers'
- 'An elegant and obedient maid from the Philippines is required, please!'
- 'For the highest price – To be transferred: Beautiful Philippine, good chef, and babysitter: All-in-one!'

Source: www.migrant-rights.org

even paid their salaries. Thus, it can be argued that there is very little added value to these unified standard contracts from the perspective of domestic workers since they are based on provisions similar to the ones currently in force.⁵³ And, as mentioned earlier, their effectiveness is yet unknown.

VI. Kafala System and International Commitments

All the characteristics of the kafala system correspond to its being a form of forced labour. While the GCC countries do not have any provisions to protect domestic workers under existing domestic labour laws, they nevertheless have signed a number of international conventions which should have rendered the kafala system a breach of these commitments.

Of the International Labour Organisation (ILO) conventions relating to forced labour, all the six GCC countries as well as Nepal have ratified ILO Convention No 29 on Forced Labour and ILO Convention No 105 on the Abolition of Forced Labour. These instruments define key elements that constitute forced labour, including work extracted under menace and/or which is not offered voluntarily.⁵⁴ Thus far, the penal codes of the UAE

⁵³ Esim and Kerbage, 2011.

⁵⁴ The ILO defines two key elements of forced labour as: (1) the work extracted from any person under menace and penalty; and (2) undertaken without offering themselves voluntarily by

and Kuwait prohibit actions that constitute forced labour and Saudi Arabia punishes forced labour through special provisions in its labour code.⁵⁵ But domestic workers' experiences with the kafala system suggest that the commitments under these conventions are not enforced meaningfully.

In addition to the above ILO conventions, all the GCC countries have also adopted various other international conventions that protect workers, including female domestic workers, including the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; Convention on the Elimination of All Forms Racial Discrimination (ICERD), 1965; United Nations Convention Against Transnational Organised Crime (UNTOC) and the Protocols Thereto, 2000; ILO Convention No 100 on Equal Remuneration, 1951;⁵⁶ and ILO Convention No 111 on Discrimination (Employment and Occupation), 1958.

Yet, practices that contravene these conventions, including the one on forced labour, are quite rampant. In fact, according to experts, the sponsorship system 'entails elements of servitude, slavery, and practices similar to slavery, as defined by the UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children'.⁵⁷

elaborating a list of elements that can qualify as forced labour, including physical or sexual violence, restrictions of movement of the worker, debt bondage/bonded labour, withholding wages, refusing to pay the workers at all, and other financial penalties, retention of passport and identity documents, threat of denunciation to the authorities, dismissal from current employment or exclusion from further employment and removal of rights of privileges.

⁵⁵ Human Rights Watch, 2007.

⁵⁶ ILO Convention 100 on Equal Remuneration Convention has been ratified only by Saudi Arabia (in 1978) and the UAE (in 1997) and is currently under review in Kuwait (Esim and Kerbage 2011).

⁵⁷ Borkholder and Mattar, 2002.

Apart from the possibility of classifying it as forced labour, the kafala system also has elements of human trafficking.⁵⁸ In particular, it has been pointed out that of the four types of visas available under the kafala system,⁵⁹ the 'house visa' issued to domestic workers is the one most likely to hide practices akin to trafficking. This may be due to the fact that under the GCC laws, labour inspectors are not allowed inside the homes and so there is no way of knowing the actual status of domestic workers working there.⁶⁰

It should be noted here that although the above characterisation of the condition of domestic workers in the GCC countries may point towards forced labour or human traf-

ficking, it would be incorrect to generalise that all domestic workers are being trafficked or forced into servitude. However, there are indications to suggest that the situation of domestic workers is increasingly moving in that direction.

VII. Recommendations

Actions to be taken by the Government of Nepal

Bilateral agreements:

- The Government of Nepal has signed bilateral agreements with three of the six GCC countries, namely Bahrain, Qatar and the UAE, but none of these agreements cover domestic workers. The Nepali government must seek ways to revisit and revise the existing agreements to include provisions that protect domestic workers. Alongside the protection of workers, such agreements should also include a provision for compulsory registration of domestic workers at the Nepali embassy in the destination countries. This would allow the Nepali embassies to provide timely and effective assistance to domestic workers.

Pre-departure orientation trainings:

- Pre-departure trainings are seen as a mere formality for migrating and the certificate is easily available by paying the required fee. Given these problems, the Government of Nepal is revising the curriculum and approaches to pre-departure trainings. During the process of revision, the Government should bear in mind that the pre-departure training is an integral element of the migration process and thus take necessary steps to ensure their accessibility, applicability and effectiveness.
- At present, most of the pre-departure trainings are general and not specific to any particular country, region or sector. Much more practical and detail-oriented pre-departure training packages need to be developed, keeping in mind the specificities of the des-

58 The system links domestic workers to a single employer who has control not only over the mobility of the worker but also control over the number of hours, place and the environment in which they work. Moreover since the legal status of domestic workers is tied to the employer in cases where they find themselves in exploitative situation, they rarely report it fearing deportation, which often point towards human trafficking of migrant domestic workers. The Palermo Protocol on Human Trafficking describes three constituent elements of human trafficking: '(a) an action (recruitment, transportation, transfer, harbouring, or receipt of persons); (b) a means (force, coercion, deception, fraud, abuse of power or of a position of vulnerability, etc); and (c) a purpose (exploitation)'. Though the Protocol does not explain the terms used in its definition and the word 'exploitation' is not spelt out, the meaning of 'exploitation' is the core determinant in the international definition of trafficking. However, the examples of various forms of exploitation are provided in Article 3 of the United Nations Office on Drugs and Crime (UNODC) on Trafficking Protocol (Hamill 2011).

59 The four types of visas available under the kafala system include: house visa, company visa, sponsorship by state institution, and sponsorship for business partnership (Hamill 2011).

60 There is a general tendency to assume that only female domestic workers fall victim to sexual abuse. However, Blanchet (2002, pp. 55-57) provides details of how male domestic workers are also victims of sexual abuse.



mination country and its requirements, especially with regards to the kafala system and its variations across countries.

- Pre-departure orientation programmes should also be tailored to address the specific needs of domestic workers in the destination countries. In this regard, measures to provide a detailed understanding of the kafala system and the GCC countries' laws and regulations, with a specific focus on abscondment, are necessary. During the orientation, domestic workers should be provided with a list of institutions, phone numbers and addresses of agencies and institutions they can contact in case of an emergency, and also to keep this information in hiding since they are generally strip-searched upon arrival.
- Rather than a one-off process, orientations to migrant workers, especially on the kafala system, should be an ongoing process which should start at the decision-making phase of migration up until the time the migrant leaves the country and end with post-arrival orientation at the destination countries.
- Currently, most of the pre-departure orientations are held in Kathmandu, making it difficult for migrants from other districts to pay for the associated costs (e.g., travel, accommodation, etc). It is important to open government-approved training centres beyond the Kathmandu Valley by encouraging these institutions to set up branches in other districts. Again, these centres should be well versed on the kafala system.

Better management of the migration process

- It should be made mandatory for domestic workers to carry a copy of all their necessary documents and leave a copy of the documents back at home with their families. This will help in speeding up the process of identification in the Nepali embassy in the destination country and the Department of Foreign Employment, which together can

expedite the process of repatriating Nepali workers, if necessary.

- Though the labour approval forms submitted to the Department of Foreign Employment include details of next to kin for all migrants, there are many problems in identifying the responsible person in case of death, injury or while providing compensation. Efforts must be initiated to make the process of identification easier and effective for Nepali embassies at the destination countries and also easier for families back home to track workers in the destination country.
- The Government of Nepal should also consider opening up more embassies and consulates in the Gulf countries. It should also consider setting up counselling centres and safe houses within the premises of each embassy where such facilities do not exist so that runaway migrants can be provided with shelter without the fear of being arrested by the authorities.

Information and awareness-raising campaigns

- There is a dire need to improve awareness among prospective migrants to the GCC countries about the kafala system. These workers should be given detailed information on the rules and regulations of the kafala system and especially be made aware of the consequences of absconding.
- Since the labour laws do not apply to informal sectors in the GCC countries, to the extent possible, migrant workers seeking jobs in the GCC countries should be encouraged to work in the formal sector rather than the informal. Working in the formal sector would at least ensure that they are covered by the labour laws of the country and also receive various benefits that are not available in the informal sector.
- Though the GCC countries are a top destination for Nepali migrant workers, a detailed study of the situation of Nepali migrant workers in the GCC countries is yet to be undertaken. In the absence of such infor-

mation, there has been a tendency to rely almost exclusively on studies conducted on migrants from other countries. While the kafala system might work in the same way for migrant workers from various different countries, the state of workers from Nepal and any particularities of their condition can only be guessed at.

Issues for the Nepali Government to take up with the GCC countries

Exclusion from labour laws/social security

- The GCC countries should not view domestic migrant workers as risks or victims but as workers with rights. Though they are not covered by the labour laws, the governments of the GCC countries should adopt measures to ensure them their basic human rights.
- Based on the various international conventions ratified by them on forced labour, discrimination, sexual abuse and others, the GCC countries should at least ensure that domestic workers are able to exercise these rights.
- Orientation programmes should be given to employers in the destination countries. Employers should also be educated about their legal responsibilities and made to respect migrant workers' human rights.

Access to justice:

- Access to justice in the GCC countries should be made easier for domestic workers. The law should be more sensitive to the issues and causes of runaway workers and not consider and treat them as criminals.
- Translation services should be made available to help domestic workers in police stations and in other government offices at the destination countries.
- The judicial process relating to domestic workers in the GCC countries should be fast-tracked. Judicial delays not only inhibit the process of repatriation of domestic workers but also make them

more vulnerable. They tend to work even as they wait for the law to take its course despite the prohibition on working while a case is pending in court. This increases the chance of their being further abused or harassed, and there is little the workers can do, given the illegality of their action.

- Domestic workers should be made aware of and encouraged to use the hotlines provided for them in the destination country. This information should be provided to them upon arrival at their destination.

Visa status of workers

- Exit visas should not be controlled by the kafil. The exit visa gives a kafil undue control over domestic workers and also makes it all the more difficult for them to escape abusive conditions and return home. If it were controlled by the Ministry of Labour or other such institutions in the destination countries, it would not only be easier to control the exit of migrants but also to monitor their condition.
- It should be made mandatory for the employer to report the status of domestic workers to the Nepali embassy periodically. This will provide a sense of security to the domestic workers and also help monitor the conditions they are working under.
- Since the unified standard contract can be used to provide some form of protection for domestic workers, it should also be implemented in the remaining three GCC countries (Bahrain, Qatar and Saudi Arabia). Moreover, the government of the six GCC countries and the government of Nepal should monitor its implementation.

Monitoring:

- The GCC countries should create provisions to allow investigators and authorities to enter the employers' residences to check on domestic workers. This would make it easier for domestic workers to report cases of abuse and exploitation.



- Like other types of workers, domestic workers should also be included in official surveys. This would provide a better understanding of the status and living conditions of domestic workers.

International Organisations, Civil Society Organisations, Trade Unions

Lobbying

- International organisations, national and international civil society organisations should lobby for the protection of migrants' fundamental rights whether or not the receiving country has ratified migration-specific conventions.
- Given the significant number of domestic workers entering the GCC countries, lobbying efforts should also focus on the ratification and implementation of migrant-specific conventions by those countries.
- Trade unions should take a more active role in supporting and promoting the rights of migrants at the national level. To the extent possible, this should be done in collaboration with national, regional and transnational institutions.

Networking

- Though it is currently difficult to form trade unions in the GCC countries because of their restrictive laws, migrants should be encouraged to form networking groups with the help of existing trade unions in the destination countries.
- Trade unions should also be more engaged in raising awareness, lobbying with governments to ratify international conventions, monitoring recruitment agencies, preventing trafficking (especially at the regional level), and facilitating reintegration of returnee migrants.
- Since very little is known about the kafala system and its implications for migrants, NGOs should target villages and local places of employment to inform and educate prospective migrants, especially women, and recruitment agencies about it.
- NGOs should work with local bodies towards removing the stigma attached to women migrating. This could help reduce the number of women using illegal channels for migration and also make the reintegration process easier for the returnees.

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Websites

Centre for the Study of Labour and Mobility, www.ceslam.org
Department of Foreign Employment, www.dofe.gov.np
Foreign Employment Promotion Board, www.fepb.gov.np

The Centre for the Study of Labour and Mobility (CESLAM) is a research centre established in January 2011 under the aegis of Social Science Baha. Its primary objectives are to contribute to broader theories and understandings on labour and mobility by cultivating new insights through interdisciplinary research; conduct reliable, policy-relevant research on critical issues affecting working people and develop policy alternatives; improve understanding about the impact of labour and migration as well as inform migrants, labourers and the public at large about their rights and responsibilities; serve as a forum to foster academic, policy and public debates about labour and mobility through an open interchange of ideas; and disseminate knowledge to a broad range of audience using a variety of academic, policy and media outlets.

Centre for the Study of Labour and Mobility

Social Science Baha, 110 Ramchandra Marg, Battisputali, Kathmandu - 9, Nepal
Tel: +977-1-4472807 • info@ceslam.org • www.ceslam.org
Postal address: GPO Box 25334, Kathmandu, Nepal