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Understanding Variations in Gulf Migration and Labor Practices

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Abstract

This article examines labor and migration in the Gulf and variations in the legal provisions for workers. Since the 1970s, there has been a significant increase in South and Southeast Asian worker migration to the states of the Gulf Cooperation Council or GCC (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates). Over the last four decades, these migrant workers have replaced Arab migrants throughout the Gulf. In order to deal with the massive influx of these workers, Gulf States have instituted a sponsorship system (*kafala*) which becomes the legal basis for residency and employment. This article analyzes the *kafala* system used in each Gulf State and explores the factors which account for differences in the structure and legal basis of the sponsor-employee relationship as well as variations in the application of the system to Arab and non-Arab migrant workers. We find that the economy of the GCC country heavily influences the type of *kafala* system used.

Keywords

labor – migration – *kafala* – GCC

In the summer of 2009, Bahrain announced that it was overhauling its foreign worker sponsorship system due to human rights concerns. Human trafficking and sexual slavery had been linked to this system, which had been in place for decades. Bahrain committed itself to removing the most restrictive elements of the sponsorship system involving employer control over workers. Soon after

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in September 2010, Kuwait declared that it was also committed to eliminating this system in the near future.² However, other countries, including Qatar, have stated that they will not change the system due to the need to monitor foreign migrants. Given the large influx of migrants into the region, it is not surprising that many countries are concerned about changing the system which governs foreign workers.

Indeed since the 1970s, migrant workers have constituted a significant percentage of the total population in the states of the Gulf Cooperation Council or GCC (comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates). These migrant workers comprise as much as 70 percent of the total population in some GCC states and represent as much as 90 percent of the foreign workforce.³ The GCC countries rely on two main types of migrant workers: low-to mid-skilled workers in construction and low-tech industries and services, and mid- to high-skilled workers in high value added services.⁴ Over the last four decades, the pattern of immigration has changed as the first generation of migrants was almost exclusively Arab workers,⁵ but over the past twenty years, there has been an increasing effort to recruit Asian and more recently African workers to the region.⁶ South and Southeast Asian governments are often involved in the recruitment and the placement of their workers, facilitating a stable supply of labor to the Gulf.⁷ While the employment of foreign workers is viewed as profitable for the receiving state and a vital source of remittances for the sending state, South and Southeast Asian migration to the Gulf demonstrates many of the general problems associated with labor migration as a global phenomenon.

2 As of this writing in October 2013, neither Bahrain nor Kuwait has significantly reformed their sponsorship system.

3 Andrzej Kapiszewski, "Arab Versus Asian Migrant Workers in the GCC Countries" (paper contributed to the United Nations Expert Group Meeting on International Migration and Development in the Arab Region, Beirut, Lebanon, 2006).; Martin Baldwin-Edwards, "Labour Immigration and Labour Markets in the GCC Countries: National Patterns and Trends," Kuwait Programme on Development, Governance and Globalisation in the Gulf States, No. 15 (March 2011).

4 Robert E.B. Lucas, *International Migration And Economic Development: Lessons from Low-Income Countries* (Cheltenham: Edward Elgar, 2008).

5 We use the term "Arab" in its most inclusive ethnic meaning to capture both cultural and linguistic meaning.

6 Andrzej Kapiszewski, *Nationals and Expatriates. Population and Labour Dilemmas of the GCC States* (Reading: Ithaca Press, 2001).

7 M. Ghobash, *Immigration and Development in the United Arab Emirates* (Cairo: Al Wafa Press, 1986); Maurice Girgis, "Would Nationals and Asians Replace Arab Workers in the GCC?" (paper presented at Fourth Mediterranean Development Forum, Amman, Jordan, 2002).

From the perspective of the receiving states of the GCC, the problems of migration involve first a concern that migrant workers present a security dilemma in the Gulf as many law enforcement positions are held by foreign nationals.⁸ Second, there are fears that the massive influx of these workers dilutes the indigenous culture (for this reason, Asian Muslims from states such as Indonesia are especially welcomed). Third, in some GCC states where foreign workers constitute a majority of the total population, there are concerns that nationals are being crowded-out from private sector employment. From the perspective of the sending states, there are concerns regarding the rights of their citizens as foreign workers and access to social and legal protections.

Over the years, Gulf states have instituted a sponsorship system (*kafala*) which is the legal basis for residency and employment. Migrant workers receive an entry visa and a residence permit only if a GCC citizen or a GCC institution employs them. Sponsorship requires the sponsor-employer to assume the full economic and legal responsibility for the employee during the contract period. This system requires that the worker can only work for the sponsor and renders workers entirely dependent on their contract in order to remain in the country. The *kafala* system has been created to provide the central government with a means to regulate labor flow into GCC states and monitor worker activities to mitigate security concerns.

As migration is a multi-faceted phenomenon, there are various aspects in which this activity can be analyzed (*e.g.*, economic exchanges, political/security issues, and human rights). While the *kafala* system is used in every GCC state, there has been surprisingly little research conducted on the variations of how the system operates throughout the Gulf. While Longva reports that in GCC states with a lower percentage of migrant workers (*e.g.*, Bahrain and Oman) the *kafala* system “as a social institution is substantially diluted,”⁹ there has not been a systematic analysis of the types and reasons for variation in the sponsorship system. This is not surprising given that data regarding the number and types of workers and characteristics of the sponsorship system are difficult to obtain. However, because the *kafala* system is such an integral part of the economy, security debates, and more generally human rights conditions in the country, it is important to examine how the system operates in the various GCC countries and determine the factors which influence the variation. This paper analyzes the political/security dimension and human rights issues

8 Anisur Rahman, “Migration and Human Rights in the Gulf,” in *Migration and the Gulf* (Washington, DC: Middle East Institute, 2010).

9 Anh Nga Longva, “Keeping Migrant Workers in Check: The *Kafala* System in the Gulf.” *Middle East Report* 211 (1999), 22.

involving migrant workers in the GCC and explores the factors which account for differences in the domestic legal frameworks and international conventions protecting workers. In GCC states, the sponsorship system is the central institution that defines identities, rights, and obligations for employers and migrant worker employees; however, how the *kafala* system is structured and implemented varies among GCC countries. This article seeks to understand this variation and the factors which contribute to differences in *kafala* policies.

In order to provide a complete account of the *kafala* system, the paper utilizes two forms of data collection. First, data were collected on the number and types of GCC foreign workers over the past four decades and the national laws and international conventions which GCC have signed. A second form of data involves structured interviews which were conducted in 2008 in order to analyze the causes and the effects of differences in Gulf state *kafala* systems. These interviews were conducted with officials in the various ministries of labor and interior, embassy personnel from top sending countries, as well as non-governmental organizations in order to place migrant worker statistics within the specific country cases.

Much of the theorizing regarding the security/political dilemma of the GCC as well as the rights provided by these states involves the relative size of the migrant population. Therefore, we test two hypotheses generally found in the literature to explain the preference for non-Arab workers as well as rights protection. First, we test whether an increase in the number of workers coincides with a preference for non-Arab workers. The argument is that those GCC states with a larger foreign worker population tend to prefer non-Arab workers because they pose less of a security/political risk.¹⁰ Second, we test whether GCC states which afford fewer rights to workers (under both domestic and international legal frameworks) have a higher percentage of migrant workers. The “numbers versus rights trade-off” hypothesis states that the costs associated with rights protections to employers means that those states which extend more rights will tend to have smaller migrant populations.

Literature on the *Kafala* System

Understanding the Sponsorship System

The *kafala* system for regulating labor immigration in GCC countries is essentially an employer-led, large-scale guest worker program. The key feature of the

¹⁰ *Ibid.*, 20–22.

kafala system is that to obtain a temporary work permit migrant workers require a *kafeel* (sponsor) who is given considerable control over the migrant. In addition to providing employment, the *kafeel* essentially takes financial and legal responsibility for the migrant after admission. The temporary work permit requires the migrant to work for their sponsor only. Although technically illegal in many GCC countries, it is in practice common for sponsors to hold migrant workers' passports, and migrants' rights in the labor market and access to welfare benefits are significantly restricted. In most GCC countries, there is no opportunity to obtain permanent residence.

The design and policies of the *kafala* system reflect three types of objectives that are broadly shared among all GCC countries: First and foremost, the system is designed to ensure a steady supply of cheap labor for the low-cost provision of goods and services (including domestic services) in the private sector. Second, the system regulates the perceived impact of immigration on the culture and perceived national identity of the population. Third, the *kafala* system restricts workers' rights due to security concerns potentially arising from large numbers of migrants who outnumber citizens (see Table 1). A key element of the system has been to effectively guarantee citizens a job in the public sector where employment conditions and benefits are much higher and working hours much shorter than in the private sector. Generally, large-scale, temporary labor immigration has been used to staff and develop the private sector and to do most or, in some countries, all of the low-skilled work; although as demonstrated in countries like Qatar, recent attempts have been made to open-up the private sector for citizens and displace foreign workers (so-called nationalization plans).

The employment of citizens in the public sector has become a major policy issue mainly because the public sectors of many GCC countries are unable to continue to absorb all citizens and employ them in a productive way. Largely

TABLE 1. *Migrant Workers as a Percentage of the Total Population*

| | Bahrain | Kuwait | Oman | Qatar | Saudi Arabia | UAE |
|------|---------|--------|-------|-------|--------------|-------|
| 1985 | 32.89 | 71.67 | 25.60 | 69.20 | 35.43 | — |
| 1995 | 37.47 | 65.83 | 26.75 | — | — | 63.93 |
| 2005 | 55.60 | 65.83 | 24.46 | 78.37 | 27.51 | 70.86 |
| 2010 | 53.95 | 60.45 | 29.42 | — | 31.16 | 88.52 |

Source: GCC Statistical Yearbook (available at <http://sites.gcc-sg.org/DLibrary/index-eng.php?action=ShowOne&BID=49> and <http://sites.gcc-sg.org/DLibrary/index-eng.php?action=ShowOne&BID=586>).

by design, the labor markets of GCC countries have become extremely segmented. There is a fundamental divide between public and private sector jobs as well as high levels of segmentation within the private sector. It is not uncommon for different jobs to be dominated by workers with different nationalities and for workers from different countries to be paid different wages. Given the easy access to migrant workers, wages and productivity levels in the private sector are often low.

Arab versus Non-Arab Workers

In the 1950s and the 1960s, the majority of the workforce migrating to GCC, such as Saudi Arabia, came from poorer neighboring Arab states, including poorer GCC states such as Oman. However, the largest groups among them were Yemenis and Egyptians looking for better employment opportunities. In addition to economic migration patterns within the broader Middle East, political turmoil in the region also contributed to various migrant worker flows. For example, there were Palestinians, who began immigrating to the Gulf after the Arab-Israeli War of 1948 and the occupation of Palestine, Iraqis following the 1968 *Ba'ath* party change, and Yemenis after the civil wars in their country. In addition, due to colonial and neo-colonial influence, many Indian and Pakistani traders and laborers used to go to the Gulf as a result of their long-time ties that their countries had maintained with the region (developed especially during the British presence in the Indian subcontinent).

A new phase in the migration started with the post-1973 economic boom. With the increase in oil revenues, Gulf states undertook development efforts on an unprecedented scale. For example, Abella reports that in Saudi Arabia alone, the growth of the capital formation averaged an incredible 27.8 percent a year during the whole decade.¹¹ A massive labor immigration followed these developments: Yemenis, Egyptians, Sudanese, Jordanians/Palestinians, Syrians, Pakistanis, and Indians began to arrive in the GCC in large numbers. Initially, Arab workers were particularly welcomed.¹² Their linguistic, cultural and religious compatibility with the local populations made them more attractive to nationals than other immigrants. Relatively quickly, however, the preference of GCC governments changed, and they began to be more open to Asian workers.

There were several reasons for this change. First of all, the Gulf governments were worried about Arab migrant workers bringing and spreading radical social and political concepts. In the 1970s and the 1980s, numerous immigrant

11 Manolo I. Abella, "Asian Migrant and Contract Workers in the Middle East," in *The Cambridge Survey of World Migration*, ed. (Cambridge: Cambridge University Press, 1995).

12 Kapiszewski, "Arab Versus Asian Migrant Workers in the GCC Countries."

Arab workers were prosecuted, jailed, and deported because of their participation in various leftist and radical organizations which called for the destruction of certain GCC regimes.¹³ Graz argues that another dimension of the Arab presence in the GCC states which worried nationals was the supposed “Egyptianization” of the local dialects and culture that were believed to have resulted from the predominance of Egyptians in the field of education.¹⁴ Finally, the presence of Palestinians, which pushed the GCC states into an involvement in politics related to the Arab-Israeli conflict, was also considered a problem.¹⁵

Legal Protection for Migrant Workers

Legal protections afford under the *kafala* system are generally considered highly restrictive and not based on “best practices”.¹⁶ For Avato, Koettl, and Sabates-Wheeler, social protection for migrants consists of various components: access to social security and social services, regulated and protected labor market conditions for migrants in host countries, a transparent recruitment process for migrants in the origin country, and access to informal networks to support migrants and their family members.¹⁷ Sabates-Wheeler refers to the same social protection components but also includes portability of those occupational benefits that are legally available to migrants, in particular workers’ compensation, severance payments, and benefits from provident funds.¹⁸ While a number of these rights are not available to workers in GCC states, there is variation in the rights afforded to migrant workers.

Ruhs and Martin¹⁹ argue that there is a numbers versus rights trade-off practice that is found in many countries. While the state regulates the number

13 Kapiszewski, *Nationals and Expatriates. Population and Labour Dilemmas of the GCC States*, 2001, 133–144.

14 Liesl Graz, *The Turbulent Gulf: People, Politics and Power*, (London: I. B. Tauris, 1992).

15 Kapiszewski, “Arab Versus Asian Migrant Workers in the GCC Countries.”

16 David McMurray, “Trafficking and Transiting: New Perspectives on Labor Migration,” *Middle East Report* 211 (1999), 16–19; Longva, “Keeping Migrant Workers in Check: The *Kafala* System in the Gulf.”

17 J. Avato, J. Koettl, and R. Sabates-Wheeler, “Definitions, Good Practices, and Global Estimates on the status of Social Protection for International Migrants,” World Bank Social Protection Discussion Paper No. 0909, Social Protection Unit (Washington, D.C.: World Bank, 2009).

18 R. Sabates-Wheeler, and M. Waite, “Migration and Social Protection: A Concept Paper” (IDS working paper T2, Development Research Centre on Migration, Globalisation and Poverty, Sussex, 2003).

19 Martin Ruhs and Philip Martin, “Numbers vs. Rights: Trade-Offs and Guest Worker Programs,” *International Migration Review* 42 (2008): 249–265.

and the types of rights for workers, “migrants will not be employed in high-income countries unless employers demand migrant labor and workers are willing to migrate and take up employment abroad at the conditions offered”.²⁰ Piore argues that especially in terms of low-skilled workers, there is an asymmetry between rights and workers.²¹ From the employer’s point of view, more employment rights for workers generally means increased labor costs, generating the numbers–rights trade-off. Therefore, the international community and the International Labor Organization (ILO) have worked with states to overcome this asymmetry in order to guarantee rights for workers that the states, and especially employers, are reluctant to provide.

The ILO has advocated a number of international conventions that outline a comprehensive set of rights for migrants, including the right to equal protections under labor laws, antidiscrimination laws, and family laws. For example, the International Convention on the Protection of All Migrant Workers and Members of their Families (ICMR), adopted by the UN General Assembly in 1990, sets out a very broad set of rights for migrants, including those living and/or working abroad illegally. The ICMR has become a cornerstone of the “rights-based approach” to migration advocated by many international and national organizations concerned with the protection of migrants. Therefore even if the domestic legal framework affords few enumerated rights, acceding to these conventions provides workers social and employment protections. Given the numbers versus rights hypothesis, this research investigates whether those GCC countries which afford fewer rights to workers have a higher percentage of those workers.

Analysis

Arab versus Non-Arab Workers

One of the few testable hypotheses in the *kafala* literature involves the movement from Arab-speaking to non-Arab-speaking workers as a function of security. It is generally argued in the literature that those GCC states with an overall larger percentage of migrant workers tend to prefer non-Arabs based on these security concerns. As reported in Table 2, the percentage of Arab workers within all GCC states has declined since the 1970s, and for some GCC states such as Saudi Arabia, the decrease has been dramatic. Table 3 shows that in

²⁰ *Ibid*, 254.

²¹ Martin Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (New York: Cambridge University Press, 1979).

2010, many GCC states preferred workers from non-Arab-speaking countries. However, the overall decline in Arab workers has not been uniform. Indeed, McMurray argues that not all GCC states had embraced the use of Arab workers and some had always had a preference for non-Arab workers.²² Looking at Table 2, it is clear that Saudi Arabia and Kuwait had an overwhelming preference for Arab workers historically. Countries such as Qatar have taken a more balanced approach to migrant workers and therefore has not been as exposed to some for the worker-related problems as other GCC states.

While these data show an overall decline of Arab workers, the issue is whether the variation in the percentage of these workers can be explained by the security dilemma hypothesis. As shown in Table 2 for the year 2004, countries such as Kuwait, Qatar, and Saudi Arabia still have a relatively large percentage of Arab workers compared to other GCC states. If we classify GCC states based on the percentage of migrant workers found in Table 1, we have two general groups: those states with a relatively high level of migrant workers (Kuwait, Qatar, and UAE) and those with a much smaller percentage (Bahrain, Oman, and Saudi Arabia). If we compare these two general migrant worker groups to their percentage of Arab workers in Table 2 for 2004, we find that there is no relationship between the overall migrant population and the percentage of Arab workers. In the case of Kuwait and to a lesser extent Qatar, there is still a significant Arab population even though they have a large migrant community. Therefore, declining rates of Arab workers cannot be explained as a security issue. In other words, those GCC states that have large

TABLE 2. *Percentage of Arab Workers in the GCC, 1975–2004*

| | 1975 | 1985 | 1995 | 2004 |
|--------------|------|------|------|------|
| Bahrain | 22 | 15 | 12 | 15 |
| Kuwait | 80 | 69 | 33 | 30 |
| Oman | 16 | 16 | 11 | 6 |
| Qatar | 33 | 33 | 21 | 19 |
| Saudi Arabia | 91 | 79 | 30 | 33 |
| UAE | 26 | 19 | 10 | 13 |

Source: These data were compiled from J.S. Birks, "The Demographic Challenge in the Arab Gulf," *Arab Affairs* 1 (1988): 72–86, and Kapiszewski, "Arab Versus Asian Migrant Workers in the GCC Countries."

22 McMurray, "Trafficking and Transiting: New Perspectives on Labor Migration."

migrant worker populations are no more likely than other GCC states to decrease their Arab workers. Thus, security concerns do not seem to be the basis for a decrease in Arab workers across the GCC.

What else could account for the decrease in the Arab worker population aside from security concerns? One of the key insights from fieldwork conducted in UAE is that Arab laborers and non-Arab laborers are viewed differently within the Ministry of Labor due to the relative importance of specific economic sectors. The interviews at the Ministry of Labor indicated that the preference for non-Arab workers has less to do with security than with the changing nature of economic sectors in the country. Discussion at the Ministry of Labor and Economy in UAE and in Qatar indicated that the preference for workers is dictated based on state economic policies in which certain employers and certain types of workers are privileged due to the changing focus on the financial and tourism sectors.

As Table 3 shows, the vast majority of non-Arab-speaking workers come from South and Southeast Asia. For GCC states, Asian workers offered several advantages: Historically, Asians have been less expensive to employ and viewed as more efficient and manageable.²³ In addition as GCC economies have diversified, there has been a need for middle level management that is educated and speaks the English-language. While South and Southeast Asian workers in the past were hired primarily to work in the natural resource and construction fields, today these workers are hired to supplement the growing needs in the financial and tourism industries in Gulf states such as UAE and Qatar. As a consequence of these factors, Asian governments often became involved in the recruitment and placement of their workers which facilitated their smooth flow to the Gulf. Asian workers are drawn from the Indian subcontinent and increasingly from South East Asia, including the Philippines and Indonesia. Given the importance of South and Southeast Asian migrant workers to the economies in the Gulf, it is hardly surprising that there are significant air links among these states with multiple daily flights to facilitate the steady flow of labor. The immigration patterns within the GCC have required greater state-to-state cooperation which has resulted in diplomatic representation to resolve

23 Ghobash, *Immigration and Development in the United Arab Emirates*. Immigration within the GCC calls into question the notion of so-called "Asian cultural values." This Asian value system has been used within various disciplines to account for the creation of institutions, group socialization as well as domestic and foreign policy-making. One of the reasons cited in the literature as to the preference in the Gulf for South and Southeast Asian migrant workers, especially those from Islamic societies, is due to the work ethic and sensitivity of these migrant workers.

TABLE 3. *Top Ten Countries of Origin of Migrant Workers in GCC Member-States*

| | Bahrain | Kuwait | Oman | Qatar | Saudi Arabia | UAE |
|--------------------------|---------|--------|------|-------|--------------|-----|
| Arab-Speaking | | | | | | |
| Algeria | 8 | | | | | |
| Egypt | 3 | 2 | 4 | 6 | 2 | 4 |
| Morocco | 9 | | | | | |
| Pakistan | 2 | 6 | 3 | 1 | 3 | 2 |
| Iraq | 10 | | | | | |
| Jordan | | | 8 | | 10 | |
| Saudi Arabia | 6 | | | | | |
| Sudan | 7 | | 7 | | 9 | 9 |
| Syria | | 5 | | | | |
| Yemen | | | | | 4 | 7 |
| Non-Arab Speaking | | | | | | |
| Bangladesh | | 4 | 2 | | 6 | 6 |
| India | 1 | 1 | 1 | 2 | 1 | 1 |
| Indonesia | | 9 | | | 8 | |
| Iran | 4 | 6 | | 4 | | 8 |
| Netherlands | | | 10 | | | |
| Nepal | | | | 3 | | |
| Philippines | 5 | 8 | 6 | 5 | 5 | 5 |
| Sri Lanka | | 3 | 5 | 7 | 7 | 3 |
| UK | | | 9 | | | |

Data: Data are for the year 2010.

Source: *Migration and Remittances Factbook*, World Bank, 2011.

worker issues as well as coordinate recruitment. For example, over 50 percent of the diplomatic missions in Qatar come from South and Southeast Asia.²⁴ While there has been a significant orientation towards non-Arab workers, this has much more to do with economic priorities than security concerns.

Legal Protections for Migrant Workers in the Host State

An important issue for migrant workers and their families are the legal protections provided by the host state. We test the “numbers versus rights trade-off”

²⁴ This statistic is based on information provided by the Qatar Ministry of Foreign Affairs.

hypothesis that GCC states with a higher percentage of migrant workers are more restrictive in the rights they provide. Based on the percentages provide in Table 1, we divide the GCC states into two groups: those with higher percentages of migrant workers (Kuwait, Qatar, and UAE), and those with lower percentages of migrant workers (Bahrain, Oman, and Saudi Arabia). If the numbers-rights hypothesis is correct, we expect to see that those states with a larger migrant population (Kuwait, Qatar, and UAE) provide fewer rights to their workers. An assessment performed by Holzmann and Pouget helps us identify the legal protections available to migrant workers in the GCC states as of 2010.²⁵

There are a number of rights that are either guaranteed or not guaranteed in all GCC states, regardless of the percentage of migrant workers (see Table 4). For example, in all of the GCC countries migrant workers are entitled to health care benefits, work injury, sick pay, maternity leave, vacation pay, and end-of-service benefits. The GCC countries do not provide pension benefits for migrant workers but all have end-of-service benefits arrangements of about one month wage for each year worked. On the other hand, access to finance, anti-discrimination measures, pension benefits wage, and equality with native workers, among others, are not guaranteed for migrant workers in all GCC countries.

However, there are a number of rights that are provided selectively which will be used to test our hypothesis. These rights include emergency repatriation cost coverage, housing provisions, paternity leave, severance pay, training, and unemployment benefits (see Table 5). Grouping the countries by the number of selective rights that they provide we see that Saudi Arabia provides five of the six, Bahrain, Qatar, and UAE provide three of the six, and Oman and Kuwait provide only two of the six. If we do not include Saudi Arabia, the other five countries provide roughly the same number of rights regardless of whether they have a high or low percentage of migrant workers. It appears that there is no substantial difference in the provision of legal rights between GCC states.²⁶

25 Robert Holzmann and Yan Pouget, "Social Protection for Temporary Migrant Workers: Conceptual Framework, Country Inventory, Assessment and Guidance," a study prepared for the Global Forum of Migration and Development (Marseille: World Bank and Marseille Center for Mediterranean Integration, October 2010).

26 It is important to note that the legal rights of migrant workers in the GCC countries are subject to revision as legislation evolves and information is verified/updated. In a number of cases there has been conflicting information in the sources that reflect differences across time or interpretation.

TABLE 4. *Legal Rights of Migrant Workers in the GCC states*

| Rights Granted by All GCC Countries | Rights Not Granted by GCC Countries | Rights Granted by Some GCC Countries |
|-------------------------------------|--|--------------------------------------|
| End of Service Benefits | Access to Finance | Emergency |
| Health Care Benefits | Anti-discrimination Measures | Repatriation Cost |
| Maternity Leave | Facilitation of Remittance | Coverage |
| Sick Pay | Transfers | Housing Provision |
| Travel Provisions | Family Allowance or Similar | Paternity Leave |
| Vacation Pay | Health Care Benefits for Family | Severance Pay |
| Work Injury Benefits | Insolvency Funds | Training |
| | Pension Benefits | Unemployment |
| | Portability Provisions | Benefits |
| | Pre-Departure Information and Training | |
| | Provisions in Case of Bankruptcy | |
| | Wage Equality with Natives | |
| | Work Specific Labor Market Integration | |

Source: Holzmann and Pouget, "Social Protection for Temporary Migrant Workers: Conceptual Framework, Country Inventory, Assessment and Guidance."

TABLE 5. *Legal Rights provide to Migrant Workers by Select GCC states*

| Rights Granted by Some GCC Countries | | | | | |
|--------------------------------------|-------------------|-----------------|---------------|--------------|-----------------------|
| Emergency Repatriation Cost Coverage | Housing Provision | Paternity Leave | Severance Pay | Training | Unemployment Benefits |
| Qatar | Kuwait | Saudi Arabia | Bahrain | Bahrain | Bahrain |
| Saudi Arabia | Oman | | Kuwait | Oman | |
| UAE | Qatar | | Saudi Arabia | Qatar | |
| | Saudi Arabia | | UAE | Saudi Arabia | |
| | UAE | | | | |

Source: Holzmann and Pouget, "Social Protection for Temporary Migrant Workers: Conceptual Framework, Country Inventory, Assessment and Guidance."

Legal Protections for Migrant Workers through International Conventions

When reviewing legal rights for migrant workers, the international standards contained in the UN and ILO conventions must be taken into account.²⁷ We test the numbers-rights hypothesis that GCC states with a higher percentage of migrant workers are less likely to ratify international conventions that would grant more rights and protections to their migrant workers. For this section, we again divide the GCC states into two groups: those with a higher percentage of migrant workers (Kuwait, Qatar, and UAE), and those with a lower percentage of migrant workers (Bahrain, Oman, and Saudi Arabia). We would expect to see Kuwait, Qatar, and UAE ratifying fewer international conventions. The following section provides a brief overview of such conventions and the ratification record of the GCC countries (see Table 6).

In 1990, the UN General Assembly approved the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMR). The Convention includes provisions that stipulate respect of basic human rights standards, freedom of religion, freedom from arbitrary arrest or imprisonment, freedom to join unions and participate in the political life, equal rights for migrants, equal wages and working conditions for authorized and unauthorized migrants, equal access to employment services, public housing and educational institutions, and the right to receive social benefits under social security systems to which migrants contribute or to receive refunds of their contribution upon departure. None of the GCC countries have ratified this convention.

Two ILO conventions cover migrants' rights: Convention 97²⁸ and Convention 143²⁹. Convention 97 regulates migration and the protection of migrants mainly through fair hiring procedures, non-discrimination in wages and social benefits, and allowing migrants to join unions. Convention 143 moves a step further by calling for sanctions on employers who recruit unauthorized migrants and human traffickers, but also equal treatment in wages and social benefits for all migrants including undocumented migrants. None of the GCC countries have ratified these conventions.

The ILO has also identified eight additional conventions covering subjects that are considered as "fundamental" principles and rights at work: freedom of

²⁷ International Labour Organization (ILO), *ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration* (Geneva: ILO, 2006).

²⁸ 1949.

²⁹ 1975.

TABLE 6. *International Conventions Ratified by GCC states*

| Freedom of Association and Protection of the Right to Organize | Right to Organize and Collective Bargaining | Forced Labor (1930) | Abolition of Forced Labor (1957) | Equal Remuneration (1951) | Discrimination (Employment and Occupation) (1958) | Minimum Age (1973) | Worst Forms of Child Labor (1999) | Labor Inspection (1947) |
|--|---|---------------------|----------------------------------|---------------------------|---|--------------------|-----------------------------------|-------------------------|
| Organize (1948) | Organize (1949) | Bahrain (1981) | Bahrain (1998) | | Bahrain (2000) | | Bahrain (2001) | Bahrain (1981) |
| | Kuwait (2007) | Kuwait (1968) | Kuwait (1961) | | Kuwait (1966) | Kuwait (1999) | Kuwait (2000) | Kuwait (1964) |
| | | Oman (1998) | Oman (2005) | | | Oman (2005) | Oman (2001) | |
| | | Qatar (1998) | Qatar (2005) | | | Qatar (2006) | Qatar (2000) | Qatar (1976) |
| | | Saudi Arabia (1978) | Saudi Arabia (1978) | Saudi Arabia (1978) | Saudi Arabia (1978) | | Saudi Arabia (2001) | Saudi Arabia (1978) |
| | | UAE (1982) | UAE (1997) | UAE (1997) | UAE (2001) | UAE (1998) | UAE (2001) | UAE (1982) |

Source: International Labor Organization, Database of International Labor Standards.

association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation. In 1995, the ILO launched a campaign to achieve universal ratification of these eight conventions.

The Freedom of Association and Protection of the Right to Organize Convention,³⁰ guarantees that workers and employers, without distinction whatsoever, shall have the right to establish and to join organizations of their own choosing without previous authorization. It establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by the public authorities. Only Kuwait has ratified this convention, and did so in 1961.

The Right to Organize and Collective Bargaining Convention³¹ provides protection of all workers against anti-union discrimination, of workers' and employers' organizations against acts of interference by each other, and for measures to promote and encourage collective bargaining. Kuwait, the only GCC country to have ratified this convention, did so in 2007. The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value or Equal Remuneration Convention³² aims at equal remuneration for work of equal value for men and women. Only Saudi Arabia, in 1978, and UAE, in 1997, have ratified this convention.

The Forced Labor Convention³³ obliges governments to eliminate the use of forced or compulsory labor in all its forms within the shortest possible period of time. All the GCC countries have ratified this convention, with Kuwait being the first in 1968, followed by Saudi Arabia in 1978. Bahrain ratified the convention in 1981 while UAE did so in 1982, and Oman and Qatar in 1998.

The Abolition of Forced Labor Convention³⁴ exalts members to suppress and not to make use of any form of forced or compulsory labor (a) as a means of political coercion or education, or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system; (b) as a method of mobilizing and using labor for purposes of economic development; (c) as a means of labor discipline; (d) as a punishment for having participated in strikes; and (e) as a means of racial,

30 No. 87, 1948.

31 No. 98, 1949.

32 No. 100, 1951.

33 No. 29, 1930.

34 No. 105, 1957.

social, national, or religious discrimination. This is another convention that has been ratified by all GCC states. Kuwait ratified it in 1961 while Saudi Arabia did so in 1978. UAE ratified the convention in 1997, followed by Bahrain in 1998. Finally, Oman ratified it in 2005 and Qatar in 2007.

The Convention concerning Discrimination in Respect of Employment and Occupation or Discrimination (Employment and Occupation) Convention³⁵ requires states to enable legislation which prohibits all discrimination and exclusion on any basis including race, color, sex, religion, political opinion, national or social origin in employment, and to repeal legislation that is not based on equal opportunities. The only GCC country that has not ratified this convention is Oman. Kuwait ratified it in 1966, followed by Qatar in 1976. Saudi Arabia ratified it in 1978, Bahrain in 2000 and UAE in 2001.

The Convention concerning Minimum Age for Admission to Employment,³⁶ requires ratifying states to pursue a national policy designed to ensure the effective abolition of child labor and to rise progressively the minimum age for admission to employment or work. Countries are free to specify a minimum age for labor, with a minimum of fifteen years. This convention has been ratified by four GCC states: UAE in 1998, Kuwait in 1999, Oman in 2005, and Qatar in 2006. The Worst Form of Child Labor Convention³⁷ describes the types of child labor to be eliminated by signatory states, such as slavery or practices similar to slavery and commercial sexual exploitation of children. All the GCC countries have ratified this convention. Kuwait and Qatar ratified it in 2000, while Bahrain, Oman, Saudi Arabia, and UAE did so in 2001.

The ILO has also designated another four conventions as “governance” instruments, thereby encouraging member states to ratify them because of their importance for the functioning of the international labor standards system. The Labor Inspection Convention³⁸ requires members to maintain a system of labor inspection in industrial workplaces. The system will apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labor inspectors. This convention has been ratified by five GCC countries: Kuwait in 1964, Qatar in 1976, Saudi Arabia in 1978, Bahrain in 1981, and UAE in 1982.

The Employment Policy Convention³⁹ exalts members to declare and pursue, as a major goal, an active policy designed to promote full, productive, and

35 No. 111, 1958.

36 No. 138, 1973.

37 No. 182, 1999.

38 No. 81, 1947.

39 No. 122, 1964.

freely chosen employment. The Labor Inspection (Agriculture) Convention⁴⁰ requires the competent authority to define the line which separates agriculture from industry and commerce in such a manner as not to exclude any agricultural undertaking from the national system of labor inspection. The Tripartite Consultation (International Labor Standards) Convention⁴¹ requires members to institute procedures that ensure effective consultations, with respect to the matters concerning the activities of the International Labor Organization, between representatives of the government, of employers, and of workers. None of these three conventions have been ratified by any GCC country.

Thus, nine of the fifteen conventions prioritized by the UN and the ILO have been ratified by some of the GCC states. Grouping the countries by the number of conventions that they have ratified, we find that those countries that have higher percentages of migrant workers have actually ratified more international conventions than those who have lower percentages of migrant workers. Kuwait, Qatar, and UAE, which have high percentages of migrant workers, have ratified eight, six, and seven conventions respectively. On the other hand, Bahrain, Oman, and Saudi Arabia, which have low percentages of migrant workers, have each ratified five, four, and six conventions respectively. These results run counter to the number-rights hypothesis.

Legal Protections in the Home Country

One area of the literature regarding the *kafala* system that has received less attention is the legal protections provided by home countries for migrant workers. It is interesting to note that legal protection for migrant workers are increasingly covered by sending countries in Southeast and South Asia through national migration welfare funds.⁴² These protections can range from regulation of recruitment, pre-departure training and information, repatriation, and financing assistance, to support of family left behind. While we do not have complete data on all the legal schemes that have been created, we will briefly discuss in this section some of the general characteristics of home country protections. The Philippines originally set up a welfare fund in 1977, followed by Bangladesh, Pakistan, and Sri Lanka. India is also in the process of creating

40 No. 129, 1969.

41 No. 144, 1976.

42 OSCE (Organization for Security and Co-operation in Europe), IOM (International Organization for Migration), and ILO, *Handbook on Establishing Effective Labour Migration Policies, Mediterranean Edition* (Vienna: OSCE; Geneva: IOM and ILO, 2007).

one. Certain variations exist in the governance structure, representation, funding, and service delivery mechanisms of these welfare funds.

Starting with governance, while the Pakistani welfare fund is managed by the Overseas Pakistanis Foundation, the Filipino welfare fund is run by a special government agency within the Department of Labor and Employment. On the issue of representation, the Filipino fund is considered a model of good governance for having representative bodies from overseas Filipino workers,⁴³ while for example the Sri Lanka Bureau of Foreign Affairs only includes representatives from licensed employment agencies along with government officials.⁴⁴ Concerning funding, while the Filipino welfare fund is fully funded by migrants' contributions, the Bangladeshi Wage Earners' Welfare Fund, for instance, is also based on fees raised on recruiting agencies and institutional contributions. Finally on insurance services, while Sri Lanka and Pakistan use state insurance companies to cover migrant insurance, the Philippines Overseas Workers Welfare Administration is directly in charge of handling insurance claims.⁴⁵

Reaction to Migrant Workers—Nationalizing the Workforce

Whether the workers are drawn from Arab states or Asia, many within the GCC are concerned about the large number of expatriates that reside within their borders. During the October 2004 meeting of the GCC labor ministers, Majeed Al-Alawi, the Bahraini Minister of Labor and Social Affairs warned that “non-Arab foreign workers constitute a strategic threat to the region’s future.”⁴⁶ In November 2005, Abdul Rahman Al Attiya, the GCC Secretary-General, warned about the possible consequences of the situation: “The GCC countries need to look at the massive presence of expatriates basically as a national security issue, and not merely as an economic matter.”⁴⁷ These security concerns have led many GCC states to create nationalization plans in order to ensure that

43 N. Ruiz and D. R. Agunias, “Protecting Temporary Workers: Migrant Welfare Funds from Developing Countries,” Migration and Development Brief No. 7, Migration and Remittances Team (Washington, D.C: World Bank, 2008).

44 T. Del Rosario, “Best Practices in Social Insurance for Migrant Workers: The Case of Sri Lanka,” ILO Asian Regional Programme on Governance of Labour Migration, Working Paper 12 (Geneva: ILO, 2008).

45 OSCE, IOM, and ILO, *Handbook on Establishing Effective Labour Migration Policies, Mediterranean Edition*.

46 As quoted in Kapiszewski, “Arab Versus Asian Migrant Workers in the GCC Countries.”

47 *Ibid.*

more nationals are employed in sectors. For example, the “Qatarization Plan” intends to achieve “a quality 50 percent national workforce in the Energy & Industry Sector in Qatar . . . The development of the Qatari workforce, through proper education and training, is now a primary national objective designed to enhance the development march in the country.”⁴⁸ While migrant workers will be necessary to fulfill national development goals throughout the GCC, there is now a strong emphasis that Arab and Asian migrant workers in key sectors such as energy need to be replaced by nationals in order to ensure the long-term future of GCC states.

Conclusions

Given the economic dynamism in the GCC region, estimates are that the number of expatriates in the next ten years will continue to increase substantially. Most of the newcomers will be Asians, as employers in the GCC states will probably continue to prefer them to Arab workers. However, recently a new trend involving the use of West African workers has begun. Whether from Asia or Africa, the reality is that the percentage of Arab workers will probably continue to decline throughout the GCC for the reasons discussed above. Moreover, as our interviewees indicated, attempts at nationalizing the workforce in the GCC, which have been discussed in various GCC states for over a decade, will gain much more momentum. Recent research indicates that within the GCC region, nationals constitute almost seventy-five percent of the under-20 demographic group. Therefore, there will be a growing number of GCC nationals looking for jobs.⁴⁹

These nationals are now much better educated and can easily compete effectively against foreign workers in the private sector, especially in sensitive areas such as energy. While the need for migrant workers in more work-intensive areas will not diminish given the economic development in the region, the important shift that we saw addressed by policy-makers is to ensure that the national workforce is placed in mid- and upper-management positions in key sectors, thus replacing often Arab and especially Asian migrant workers. Qatar’s five-year plan demonstrates that this change in policy will not

48 A statement of the Plan is at: www.qatarization.com.qa/qatarization/qat_web.nsf. Other initiatives are in other GCC states.

49 Nasra M. Shah, “Recent Labor Immigration Policies in the Oil-Rich Gulf: How Effective Are They Likely To Be?” Asian Regional Programme on Governance of Labour Migration, Working Paper 3 (Bangkok: ILO, 2008).

occur quickly and must be carefully crafted. Our research initially began by looking at the various types of migrant workers and their treatment under the *kafala* system. However in order to understand this system and its consequences in the 21st century, it is imperative to broaden the scope to address important efforts at nationalization which are viewed as an important foundation for GCC states in domestic policies as well as security and foreign policies.