

The *Kafala* System: the case of Lebanon and ways forward

-Final Master Thesis-

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LIST OF ABBREVIATIONS

GCC	Gulf Cooperation Council
GS	General Security
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IOM	International Organization for Migrations
KSA	Kingdom of Saudi Arabia
LMRA	Labour Market Regulatory Authority
MoL	Ministry of Labour
NGO	Non-Governmental Organization
SORAL	Syndicate of the Owner of Recruitment Agencies in Lebanon
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights

1. INTRODUCTION

As the process of globalization deepens around the world, migration increases due to worldwide transformations that affect the economic, social and political spheres. This trend has been reflected by the International Organization for Migration (IOM) World Migration Report 2020, which estimates the number of international migrants to be 272 million globally, of which around two thirds are labor migrants¹.

This paper focuses on labor migration in the countries of the Gulf Cooperation Council states (GCC), Lebanon, and Jordan. In these countries, labor migration has been particularly contributory for their development by creating abundant job positions, especially in the areas of construction and domestic work that have been occupied by migrant workers from other Arab countries, South-East Asia, and more recently Africa². This phenomenon has had two major consequences. Firstly, it presents a major benefit for the migrant workers, who provide billions of dollars in remittances for their families and countries of origin³. Another benefit is for the host countries, where there has been a colossal development in their economies and societies through imported cheap labor, to the extent that major changes in the population size and other demographic variables have been observed. Currently, all GCC countries, with the exception of the Kingdom of Saudi Arabia (KSA) and Oman, have a larger migrant population than nationals⁴.

In general, there is a paucity in reliable and updated data on foreign migration in these countries, so it is challenging to estimate the impact of the phenomenon. This is partly due to the difficulties in recording demographical data, including the lack of mechanisms and authorities that take part in this process. Moreover, population-based statistics are rarely updated in the region because of political implications. This limitation forces researchers to rely on estimations and inaccurately generated data⁵. Migrants, and subsequently migrant workers, are directly affected by the aforementioned issues that can lead to irregularity and neglect in the receiving country. On the other hand, there is also a proportion of migrant workers that entered the host country illegally or under a tourist visa, since their countries of origin prohibited their employment in some of the host countries. However, due to the stigmatization and false expectations of higher wages and ideal working conditions, prospective migrant workers would most likely still enter the country without being recorded as a labor migrant.

¹ International Organization for Migrations (2020) “*World Migration Report 2020*”. Available at: https://publications.iom.int/system/files/pdf/wmr_2020.pdf [Last consulted: 3rd March 2020]

² European Commission (2010) “*Occasional paper 60*” Volume 1. Page 56. Available at: https://cadmus.eui.eu/bitstream/handle/1814/15254/Labour%20Markets%20Study_vol_I.pdf?sequence= [Last consulted: 4th March 2020]

³ International Labor Organization (2017) “*Labour Migration in the Arab States*”. Available at: https://www.ilo.org/beirut/areasofwork/labour-migration/WCMS_514910/lang--en/index.htm [Last consulted: 3rd March 2020]

⁴ International Organization for Migrations (2020) “*World Migration Report 2020*”. Available at: https://publications.iom.int/system/files/pdf/wmr_2020.pdf [Last consulted: 11th March 2020]

⁵ UN/POP/EGM/2006/09/Rev, 5 September 2006.

Nonetheless, the benefits of the labor migration can be easily overshadowed by the fact that the foreign labor policies in the host countries are notorious for their exploitative nature and the asymmetric relationship between the employer and the employee, which places the migrant in a very vulnerable situation. The term of this migration policy is coined the *Kafala* system, although more recently most of these countries have been trying to include it under the *sponsorship* system⁶. Even though the *Kafala* and sponsorship systems share basic characteristics, they are not exactly identical. For instance, the sponsorship system can be found all over the world, whereas the *Kafala* is specific to the aforementioned countries, and possesses many characteristics that are unique from the sponsorship system. Other particularities for the *Kafala* are, in general terms, that it is customary practice, which creates gaps in terms of the migrant worker's protection. Consequently, the migrant is more prone to abuse, which lead many researchers and journalists to describe the *Kafala* as a form of modern day slavery⁷.

Thus, *Kafala* is the system under which migrant workers are recruited, but also stands as a mechanism to manage and control labor migration. It gives the framework that defines the relationship between the employer and the migrant worker, binding the latter to the former not only as per the labor contract, but also as per the residency permits in the host country. This renders the migrant worker completely dependent on their employer, who not only satisfy their labour needs, but also exercise a high amount of control over the life of the worker. For this reason, the system has been criticized by the international community due to the understanding that it opens doors to violations of human rights and internationally recognized labor standards^{8 9}.

These critiques are various, but they can be summarized into two main ideas. One, the fact that the migrant worker is completely submissive to the will of the employer, who has the responsibility of renewing the residence permit. Secondly, the system does not provide any mechanism that aims to protect the migrant worker. This fact can be exemplified with many common, exploitative situations. Passport confiscation, for instance, ensures that the worker will not abandon the place of employment without fulfilling duties. Threats, concerning the renewal or papers or false reporting to the police for example, from the employer can serve as a means for obedience under certain conditions. Moreover, there have been cases of migrant workers that have been detained and deported when they had reported cases of abuse and

⁶ Sponsorship systems are migration policies that are applied in several countries in Asia, as well as in the US, Australia or Canada. This system is characteristic by being protective of the national workforce by making sure it does not displace it by recruiting migrant workforce. Then, a business or a company can sponsor a foreign worker to work exclusively with them and this person's residency will be tied to that workplace.

⁷ For example Amnesty International; Human Rights watch, Migrant Forum in Asia, etc.

⁸ K. Robinson (2020) "*What is the Kafala System?*" Council of Foreign Relations. Available at: <https://www.cfr.org/backgrounder/what-kafala-system> [Last consulted 19th January 2021]

⁹ Business and Human Rights Resource center (2021) "*14 Governments call on Lebanon to end exploitative Kafala Labour sponsorship system, following UN Human Rights Council Review*" Available at: <https://www.business-humanrights.org/en/latest-news/14-governments-call-for-an-end-to-sponsorship-kafala-in-lebanon/> [Last consulted 12th March 2021]

exploitation^{10 11}. These situations are not *per se* compiled in the *Kafala* as a norm, thus it is not a legal common practice that the system enables, but more of a behavior that it does not regulate. In essence, the *Kafala* system enables labor precariousness, making migrant workers easy to replace, which exacerbates situations of abuse and exploitation. However, the economic incentives for both receiving and sending countries still encourage its application. Moreover, recruitment agencies and brokers, who act as mediators that link migrants to employers, also profit from this system by rendering the migrants victims of debt bondage due to imposed fees prior to the migration process, making them even more vulnerable targets.

In particular, this paper focuses specifically on migrant domestic workers in the GCC countries, Lebanon, and Jordan. In these countries, domestic work is the single most important category of employment among migrant women¹². Among all the foreign workforce that falls under the scope of a *Kafala* agreement or contract, the migrant domestic workers are the most vulnerable of them all. One of the reasons would be that cohabitating with the employer increases their level of dependency, since it affects their daily sustenance, as well as facilitating exploitation and abuse. Moreover, migrant domestic workers are particularly the least protected among migrants, not only because it is much more difficult to verify what happens in a household “behind closed doors”, but also because domestic work is not included in the labor laws of most countries in the region¹³.

Migrant workers are exposed to racial discrimination worldwide, and the GCC countries, Lebanon, and Jordan are no exceptions. It is partly a consequence of them being employed in jobs that are perceived by these societies as inferior, or “the lowest level”. Cultural differences are an additional factor that worsens discrimination, which becomes more prominent in countries where the *Kafala* is applied and the number of migrants exceeds the number of natives, since preserving the national identity is believed to be jeopardized. The system procreates racial discrimination and the alternatives that have been presented during the last years do not aim to address this particular problem. In addition, migrant domestic workers also face gender-based discrimination. This is because migrant domestic workers tend to be females that are working -and according to *Kafala*, also living- in the household of their employer. Such a situation puts the domestic workers not only at risk of exploitation, violence, and isolation, but also physical, sexual, and psychological abuse.

For example, in Lebanon, the country of the main case-study of this paper, an average of two migrant domestic workers die each week according to data from the Lebanese General Security, media reports, and Human Rights organizations. These deaths, mainly due to suicide

¹⁰ K. Tahir (2019) “*The Kafala system in Saudi Arabia as a form of modern slavery*” Research for the Norwegian University of Science and Technology. Pages 3 - 8

¹¹ Amnesty International (2019) “*Their house is my prison: exploitation of migrant domestic workers in Lebanon*” Pages 16 - 30

¹² International Labour Organization (2004) “*Gender and Migration in Arab States: The case of Domestic Workers*”. Regional Office for the Arab States, Beirut. Pages. 9 - 20.

¹³ Jordan and Bahrain in some cases include domestic work in their labor law.

and escape attempts¹⁴, are given minimal national media attention and no major prosecution efforts are done by the authorities involved. In many cases, the lack of coverage and action occurs because the authorities and the media are challenged by the Lebanese employers, who would not provide substantial information, leaving the circumstances of the workers' deaths unexplained¹⁵. The data on the average deaths of migrant domestic workers has become public since a few years, and it has been observed that their situation has worsened drastically in Lebanon since October 2019. The socioeconomic crisis has been deeply detrimental on all the Lebanese population, as well as refugees and migrant workers. The impact is reflected in job loss, inability to afford basic needs, unpaid or a radical decrease in the value of wages due to the devaluation of the local currency. The Lebanese people's impoverishment has also led to a reluctance in employing domestic workers. Consequently, this has ensued in the inability of migrants to send remittances and support their families back home. The economic crisis also incited racial discrimination and worsened the Lebanese society's opinion on migrants occupying their jobs and receiving humanitarian aid¹⁶. Moreover, the global COVID-19 pandemic worsened the living conditions of migrant domestic workers because many of them lack access to healthcare. A major obstacle for the regulars, or migrants that are employed under a contract, is that their access to healthcare is subjected to the will of their employer. As for irregular migrants, the access to healthcare is hindered by the high cost of healthcare or lack of documentation due to passport confiscation by their former *kafeel*. In addition, and because of the concern of disease transmission, migrants that work in several households are facing difficulties in finding employment and sustaining themselves. In consequence, many irregular migrant domestic workers have been evicted and left to survive on the streets in front of their embassies, demanding help to leave Lebanon. This would be increasingly common when they are not able to afford a ticket back home, or pay the large fees that the Lebanese authority imposes when a migrant worker falls into an irregular situation¹⁷. There, they have encountered other desperate migrant domestic workers, whose *kafeels* abandoned them in front of their embassy with their luggage and with many months of wages unpaid.

These situations are just a glimpse of what the *Kafala* system enables. However, little has been done to address it. In Lebanon, efforts were done to draft a Unified Standard Contract (SUC) for all recruitment agencies and employers and employees to abide by¹⁸. This contract that claims to balance rights and duties for both employers and employees was an initiative by the Lebanese Ministry of Labor (MoL) with the support of the International Labor

¹⁴ Human Rights Watch (2020) "*Lebanon: Abolish Kafala "Sponsorship" system*" Report. Available at: <https://www.hrw.org/news/2020/07/27/lebanon-abolish-kafala-sponsorship-system> [Last consulted March 12th 2021]

¹⁵ D. Dermizaki and S. Riewendt (2020) "*The Kafala System: Gender and Migration in Contemporary Lebanon*." Middle East Topics and Arguments; N° 14. Pages 105 - 114.

¹⁶ The Tahirir Institute For Middle East Policy (2020) "*Lebanon's Multiple Crises Also Expose the Racist Kafala System*" Available at: <https://timep.org/commentary/analysis/lebanons-multiple-crises-also-expose-the-racist-kafala-system/> [Last consulted: 4th April 2020]

¹⁷ Randhawa M. (2020) "*Hardships for Migrant Domestic Workers rise*" Humans Rights Watch. Available at: <https://www.hrw.org/news/2020/09/14/hardships-lebanons-migrant-domestic-workers-rise> [Last consulted: 13th March 2021]

¹⁸ UNHCR (2009) "*Creative solution: a unified contract to protect migrant domestic workers in Lebanon*" Available at: <https://www.ohchr.org/EN/NEWSEVENTS/Pages/UnifiedContractLebanon.aspx> [Last consulted: 13th March 2021]

Organization (ILO). Even though it is a step forward, it received many critiques¹⁹ because it left most of the core problems unsolved. It was also presented as an alternative to the inclusion of domestic work in the Lebanese Labor Law, which would provide the workers with the same protection standards as nationals. After much pressure from the Syndicate of the Owners of The Workers Recruitment Agencies in Lebanon (SORAL), the contract was eventually never passed. Other countries also adopted or announced their will to adopt mechanisms that would provide better working and living conditions for migrant workers. Nevertheless, most of these improvements never materialized in practice. On the contrary, international critics still condemn *Kafala* as a system that enables violations of human and labor rights.

In summary, this paper analyzes the *Kafala* System, which regulates the relationship between migrant workers and employers in the countries of the GCC, Jordan, and Lebanon. The norm will be interpreted from its origin and its elements, but also under the light of internationally recognized labor standards and human rights.

In particular, the case of Lebanon is exposed to reveal the real circumstances of migrant workers living under the *Kafala* system. Moreover, the impact of the current situation in the country, namely the socioeconomic crisis and the global pandemic, on the living and working conditions of the migrants is also examined. The main goal of this research is to expose the flaws of such a system and understand why change is a necessity. To do so, alternatives to this system are challenged to evaluate if they address the current problems, or if, on the contrary, other alternatives should be pursued.

A main idea that is highlighted in the course of this paper is that the *Kafala* system perpetrates an asymmetric relationship between employers and migrant workers, putting the latter in an extremely vulnerable situation where their most basic human rights and labor rights as internationally recognized can be disrespected. This topic has been tackled widely by many researchers who qualified *Kafala* as a form of modern day slavery. This analysis also focuses on alternatives to the *Kafala*. Ultimately, the hypothesis is that alternatives to the *Kafala* that have been presented in the aforementioned countries, with a focus on Lebanon, do not solve major issues, including abuse and exploitation. These alternatives are confronted by the personal experiences of migrant domestic workers in Beirut through an exercise of comparison that would predict the outcome of situations they faced under the *Kafala*. These experiences are a result of ground-based research and personal interviews with migrant domestic workers in Lebanon.

1.2 Methodology

To conduct this research I would be resourcing to international primary legal sources, such as international conventions, mainly focusing on Human Rights and Labor rights. For that reason their binding or non binding effects, depending of the case, would be briefly explained. To be able to analyze the *Kafala* System in the countries were it is applied, and in Lebanon in particular, domestic primary legal sources are also used. Primary and secondary research

¹⁹ Anti-Racism Movement (2020) “Statement of “MY WORK, MY RIGHTS” Network on the Standard Unified Contract” Available at: <https://armlebanon.org/content/statement-“my-work-my-rights”-network-standard-unified-contract> [Last consulted 13th March 2021]

sources such as books, papers, journals, case studies, and articles will also be analyzed and resourced in the course of this study, in addition to the opinions of legal scholars, literature, and data collected from Human Rights Organizations. Moreover, real testimonies and experiences of migrant domestic workers in the Lebanese context, as well as advocacy actors that push for alternatives to *Kafala*, will be used to empower this analysis.

The personal interviews with migrant domestic workers residing in Lebanon were conducted from January 2021 until March 2021. Reaching out to them was only possible through the Lebanese non-governmental organization (NGO) Amel Association, and the trust relationship that was built in order for them to share their stories was due to my position as a Field Coordinator in the Migrant Workers Support project. All migrants that consented their stories being shared in this paper, under an anonymous name, share two characteristics. Firstly, they are all women. Secondly, they are all currently irregular in the country, mainly because they ran away from the house of their employer or they escaped the recruitment agency after violence, abuse, and exploitation situations. Different nationalities were included in order to show how violence, exploitation, and abuse do not differ according to their origin as it does with their salaries.

The elements of the interview were firstly asking for consent and if they would prefer to be named under an alias for the purpose of this paper. Secondly, basic information regarding nationality, years living in Lebanon, legal status and documentation were asked. Questions were conducted to understand their motivations to migrate, how this process took place, and whether they were lied to or manipulated to encourage them to migrate. Afterwards, they shared their experiences in Lebanon with the employer or employers and recruitment agency as regular migrants, with a particular focus on exploitative and abusive situations, but also on discrimination, violence, sexual harassment, isolation, and captivity. Finally, some of them also elaborated on the impact and burden of COVID-19 on their situation. Then, they shared their desire to stay in Lebanon or go back to their countries, explaining the reasons of their decision²⁰. Seven interviews were conducted in total, and three of them were selected to be exposed fully in this paper. The others were used to better understand the reality of these workers in order to be able to present ideas related to the practices in Lebanon under the *Kafala* system and the impact of modifications and alternatives to it.

²⁰ Some of the interviews took place in the migrant center of Amel Association, in Chiyah neighborhood of Beirut. Others, due to Covid-19 concerns took place over the phone. Notes were taken during those interviews, but there is no full transcription of the conversations available. Translator from Arabic to English was needed in some cases, but the majority of the interviews were conducted in English.

2. DEFINING THE KAFALA SYSTEM

The main objective of this analysis is the *Kafala system* or *sponsorship system*²¹. Prior to the disclosure of its controversy and presenting the arguments in its favor and against it, a conceptual definition of the system is needed. *Kafala* needs to be understood as an immigration policy, which does not have to necessarily differ from others that can be found around the world. It provides a legal framework that defines the relationship between migrant workers and their national sponsor, or *kafeel*, which is usually their employer²². This system can be found in the GCC countries, that are Bahrain, Kuwait, Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates, and in Lebanon, and Jordan. Each country has its particularities regarding application, which will be explained at a later stage, nonetheless, *Kafala* mainly regulates the labor relation of unskilled temporary migrant workers, which are mostly employed in domestic work and construction. However, in some countries, *Kafala* is the system that regulates the labor relationship of any foreign worker, unrelated to their skills, education level or position, who has to be invited and sponsored by a national in order to be able to work and reside in the host country²³.

Another relevant specificity of the *Kafala* system is its consuetudinary nature²⁴. Again, each country has its specificities and some reflections of the sponsorship are gathered in administrative regulations and to a lesser extent in local legislation²⁵. In this sense, *Kafala* obeys to a pattern of social behavior that has been long established in the societies of host countries. However, the original application and understanding of the *Kafala* has shifted from the current application.

Nonetheless, its main particularity and the root of all controversy regarding *Kafala*, is that it legally binds the immigration status of the foreign worker to their *kafeel*, who will be in many cases an individual employer. In other words, this system allows the State to delegate its responsibility towards the foreign worker in terms of residency, work, and protection to a national and particular sponsor. The delegation of responsibility works for both labor status and immigration status of the migrant worker, which now becomes a duty of the sponsor to manage. Thus, the sponsor will take the role of a mediator between the migrant worker and the State, which absolves the host government of providing the foreign worker of any kind of labor protection²⁶. Then, basic labor rights will be bound to the will of the employer, such as

²¹ These two terms will be used in the course of this paper indistinctly.

²² K. Robinson (2020) “*What is the Kafala System?*” Council of Foreign Relations. Available at: <https://www.cfr.org/backgrounder/what-kafala-system> [Last consulted 19th January 2021].

²³ H.N Malaeb (2015) “*The “Kafala” System and Human Rights: Time for a Decision*”. Arab Law Quarterly; Brill. Page 311.

²⁴ A. Ghaddar; S. Khandaqji; J. Ghattas (2020) “*Justifying abuse of women migrant domestic workers in Lebanon: The opinion of recruitment agencies.*” 2018 SESPAS; Elsevier España. Pages 493 - 499.

²⁵ See for example: *Law no. 4 of 2009 Regarding Regulation of the Expatriates Entry, Departure, Residence and Sponsorship*. C.O. Issue. 3, Dated 29/03/2009, Page 29.

²⁶ A. Pande (2013) “*The paper that you have in your hand is my freedom: Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon*”. International Migration Review 47, no.2. Pages 414 - 418.

the migrant worker's ability to end the contract or to change the sponsor²⁷. At the same time, the sponsor will be the one responsible for the immigration status of the migrant worker, which includes renewing their residency permit. Foreign workers are not able to do so independently. Consequently, when the foreign worker does not have a sponsor, it will end in an irregular situation as their papers are not renewed. Moreover, if the sponsor fails to oblige to their duties towards the migrant worker, they would face no punitive consequences. Meanwhile, the foreign worker would face all the consequences of being irregular, namely jail, fees, and deportation. Additionally, it binds the migrant worker's entry and exit to the host country to the authority of the employer. In such a way, *Kafala* creates an asymmetric relationship between both parties, that puts the migrant worker in a position of complete dependency on their sponsor for both livelihood and residency²⁸. That also has an impact on other basic rights of the foreigners, such as healthcare, because even though providing an insurance to the migrant worker is a responsibility of the sponsor, the migrant needs to possess documentations held under the power of the employer to access medical care.

2.1. Parties

The *Kafala* system sets the relationship between two main parties, namely the sponsored person or migrant worker, and the sponsor. However, the State also can play a role in this relationship and it is postulated that the abusive and exploitative consequences that migrant workers might face are a result of the State not assuming that role. Moreover, recruitment agencies are a third party that can interfere and are considered an additional kind of sponsor.

2.1.1 Sponsored person or migrant worker

This workers' main characteristics are that they are not to be nationals of the country where the labour relation is established, and that they are engaged in a remunerated activity in the host country. The International Convention on the Protection of all Migrant Workers and Members of their Families (1990) defines a "migrant worker" as:

"person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" ²⁹.

In the framework of the *Kafala*, the sponsored person has other relevant characteristics. One of them is that their labor relationship is temporary, and consequently, their stay in the host country as well. Migrant workers are not expected to integrate in the host society, rather to serve a temporary need of labor and leave³⁰. A common misunderstanding, would be the assumption that all sponsored persons are unskilled. Foreign workers in the Arab countries that fall under the *Kafala* system can be businessmen, experts, academic professors, football

²⁷ International Labor Organization (2017) "*Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*". Regional Office for Arab States; Beirut. Page 3.

²⁸ Migrant Forum in Asia (2012) "*Reform of the Kafala (Sponsorship) system.*" Policy Brief No.2. Page 1.

²⁹ UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158.

³⁰ MD Mizanur Rahman (2011) "*Bangladeshi Migrant Workers in the UAE: Gender-Differentiated Patterns of Migration Experiences*". Middle Eastern Studies; Vol 47. Pages 395 - 396.

players, etc.³¹ Nevertheless, these skilled foreign workers are usually called *expats*, while unskilled ones would be called migrant workers. This fact shows once more the levels of discrimination, even through linguistics. However, migrant workers are typically unskilled, mainly working in construction and domestic work, as well as in agriculture, industrial production and other service oriented jobs³². Being unskilled can, in many cases, mean that these migrant workers are at greater risk of abuse and exploitation through the *Kafala* system. The lack of knowledge about their rights, the system, the culture, and values of the host country, once combined with economic instability - which is a recurrent reality - places unskilled migrant workers in a very difficult situation that *Kafala* does not help to solve, but rather worsen.

Migrant domestic workers are at the peak of vulnerability. They are typically females that work in the household of their employer. Thus, there is an important part of their vulnerability that emanates not only from the fact that they are migrants, or the fact that they are employed under *Kafala*, but because from their gender. In addition, the unregulated nature of the domestic work, also contributes to the abuse, violence, and exploitation. The asymmetrical relationship between the migrant domestic worker and her employer is exaggerated by the fact that, in this case, the migrant worker is not only dependent on the employer in terms of their immigration status and job, but also on shelter and daily sustenance. Moreover, even if host countries try to regulate and prohibit some of the abusive and exploitative practices that some sponsors subject their migrant domestic workers to, it is very difficult to enforce them in the privacy of the employer's home.

2.1.2 Sponsor

The term *sponsor* or *kafeel* means the one who is responsible for some other person or thing. In line with this definition, the sponsor could be either an individual employer who is a citizen of the host country, a company that includes recruitment agencies, or in certain cases a governmental body. The main responsibility of the sponsor is providing the migrant worker a visa and a job, since they are to assume legal and economic responsibility for the employee, and inform the appropriate authorities of any changes both in the residency status and working status. In other words, the sponsor will have control over the migrant worker's internal labour market mobility, such as entry to the host country, renewal of stay, termination of employment, transfer of employment, and, in general, exit from the country³³. Moreover, the sponsor will be responsible for covering the travel expenses and the medical insurance of the foreign worker, plus all costs related to the residence permit. However, in general, when the sponsors do not fulfill their responsibilities, none to very little action is taken. In some countries, they can be blacklisted so they will not be able to sponsor other migrants for a quantity of years. Nonetheless, migrants themselves would be the ones penalized by the

³¹ H.N Malaeb (2015) "*The "Kafala" System and Human Rights: Time for a Decision*". Arab Law Quarterly; Brill. Page 311.

³² E. Franz (2011) "*Exporting Subservience: Sri Lankan Women's Migration for Domestic Work in Jordan*". Department of Anthropology; London School of Economics. Pages 96 - 120.

³³ International Labor Organization (2017) "*Reforming visa sponsorship systems for migrant workers can benefit destination countries in the Middle East*". Press release. Available at: https://www.ilo.org/beirut/media-centre/news/WCMS_553086/lang--en/index.htm

inaction of their sponsors, for example, by being deported when their sponsors do not renew their residency permit³⁴.

In the majority of cases, the role of the sponsor would be taken by an individual employer, who in general would be a national, but not exclusively, since diplomats for example can take the role of a sponsor as well. It has been proven that due to the economic responsibilities that the sponsor would take, sometimes, the sponsor is not the actual employer of the migrant worker. This practice is known as visa trading and it is a fraudulent recruitment practice by which a national would sponsor several migrant workers. The migrants would have to pay the alleged sponsor for all the costs involved, and would find a job as a freelance³⁵. The sponsor as an individual employer is the most standard practice especially for domestic work. It is the most worrisome, however, because they tend to exercise their rights in an abusive manner. Some of the most common abusive practices are withdrawing the migrant worker's passport, often on the basis that it is needed to renew their residency permits; delaying or retaining the payment of wages -sometimes on the basis that they had to pay a lot of money to bring the migrant that works for them-; prohibiting vacation days and enforcing unlimited working hours -particularly affecting migrant domestic workers-; providing inhumane conditions of living and starvation -houses without running water or toilets, forcing them to sleep in the floor, in the kitchen or in the balcony, with no privacy for migrant domestic workers-; and many others.

Another modality is the sponsor being a legal person or a company³⁶. The responsibilities in this case are the same, and the consequences can vary. As it happens when the sponsor is a natural person, there are companies who abuse their powers over the migrant workers and treat them inhumanely, while others do not.

There is yet another figure that can exercise the role of the sponsor and that is usually associated with malpractices that can often lead to abusive and exploitative situations for the migrant worker. Those are the recruitment agencies, brokers and agents. Their role would be to link migrant workers with potential employers in the host country, as well as securing their traveling tickets and their entry visa. Recruitment agencies usually operate both in the country of origin and in the host country. In the country of origin, many agencies tend to falsify market information in terms of working conditions, wages, employer's information, and expectations in order to get potential applicants to migrate. Many times, the recruitment agencies impose the migrants very high fees to secure their migration process. This practice is illegal, since the future employer would be covering those fees. This also leaves many migrants at a situation of debt even before having the opportunity to migrate³⁷. In the host country, recruitment agencies, are known to encourage employers on exercising abusive

³⁴ ALEF (2019) "*Promotion and Protection of Rights of Migrant Domestic Workers*". Pages 14 - 20.

³⁵ S. Sönmez, Y. Apostopoulos, D. Tran and S. Rentropé, (2011) "*Human rights and health disparities for migrant workers in the UAE Human rights and health disparities for migrant workers in the UAE*", Health Human Rights 13(2). Available at: <https://www.hhrjournal.org/2013/08/human-rights-and-health-disparities-for-migrant-workers-in-the-uae/>

³⁶ For example RAMCO construction and waste management company in Lebanon. See more details about their recent scandal at <https://www.hrw.org/news/2020/06/05/ramco-strike-key-moment-labor-rights-lebanon#>

³⁷ F.T Malit Jr; G.S Naufal (2016) "*Asymmetric information under the Kafala Sponsorship System: Impacts on Foreign Domestic Workers' Income and Employment Status in the GCC countries*". Institute for the Study of Labor. Discussion paper series; No 9941. Pages 7 - 19.

practices towards the migrants and infringing violence to the migrants that would object to them³⁸. Another common malpractice exercised by recruitment agencies is to “bribe” the migrant workers in exchange of sponsoring. In these cases, the migrant worker would be paying themselves all the fees related to their residency permit, while the recruitment agency would only appear as the real sponsor. However, many times the agency would demand that they pay much higher than the actual fee, threatening the migrant with reporting them to the authorities for being irregular in case they do not comply.

Finally, for some foreign workers who are skilled, the local government can take the role of the sponsor. When this happens, the worker is treated humanely in the framework of the *Kafala* system. For this reason, experts suggest that this should be the modality adopted for all migrant workers³⁹. However, it seems to contradict one of the main purposes of the whole system, which is waiving the responsibility from the State.

2.2. Origins of the Kafala System

Kafala, in the Arabic language, can have a variety of meanings depending on the context where the noun is used. Even though the origin of the word literally translates to the term “guarantee”, it is used to signify “to provide”, “to be responsible for”, or “to be the legal guardian” in different contexts. All four schools of the Islamic jurisprudence agree on understanding *Kafala* as “guarantee”, since the term appears in its origins in the Sharia, both in the Quran and the Sunnah⁴⁰. Accordingly, it needs to be understood in its origins as a contract that unites two parts, the *kafeel* and the *makful*, where the former will assume liability for the latter in various specified terms in front of the state or authorities. Thus, the *kafeel* would be responsible for any breach of law committed by the *makful*. This contract could be used in several contexts, such as the payment of a financial liability, the presence or appearance of a certain person at a certain time and place, the delivery of goods, or the purchase of goods sold⁴¹. Moreover, as pointed by E. Franz, the figure of *Kafala* can also be found in the Ottoman jurisprudence. However, their use of the term is once again in the sense of a “guarantee”, from which the current application of the term would not have evolved from it⁴². Therefore, researchers that analyzed the origins of the *Kafala* have concluded that one can not draw a connection from the original application and meaning to the one used today,

³⁸ F.T Malit Jr; G.S Naufal (2016) “*Asymmetric information under the Kafala Sponsorship System: Impacts on Foreign Domestic Workers’ Income and Employment Status in the GCC countries*”. Institute for the Study of Labor. Discussion paper series; No 9941. Pages 7 - 19.

³⁹ H.N Malaeb (2015) “*The “Kafala” System and Human Rights: Time for a Decision*”. Arab Law Quarterly; Brill. Page 318.

⁴⁰ Azhari A (2016-2017) “*The Kafala “Sponsorship” System in Saudi Arabia: A critical analysis from the perspective of international Human Rights and Islamic Law*”; The SOAS Journal of Postgraduate Research, Volume 10. Page 63.

⁴¹ Jureidini, R., & Hassan, S. F. (2019). “*The Islamic Principle of Kafala as Applied to Migrant Workers: Traditional Continuity and Reform*”. In *Migration and Islamic Ethics*. Leiden, The Netherlands: Brill. Chapter 6. Pages 94 - 96.

⁴² E. Franz (2011) “*Exporting Subsistence: Sri Lankan Women's Migration for Domestic Work in Jordan*”. Department of Anthropology; London School of Economics. Pages 96 - 100.

and have it described as a “*system of oppression and exploitation of migrant labor*”⁴³. Some of them even classify it as a “*genuine contrast*” between its origins and current application⁴⁴.

How this idea of guarantee evolved to the system of the present is a question that many experts tried to answer. For some⁴⁵ ⁴⁶, the projection of the guarantee in labor contracts between nationals and foreigners appears as a reasonable necessity, that at first, customary application of *Kafala* was able to solve. Thus, this practice would provide a mediator, a national, to deal with the relevant authorities in the name of the foreign worker. That would be based in the understanding that the migrant worker might, in many cases, have a complete lack of knowledge of the administrative procedures in the host country, as well as difficulties with the language and understanding the culture⁴⁷. It seems that this practice would have its origins in the Bedouin tradition in GCC countries, where the tribe rules of hospitality would consider foreigners as guests and would designate a local to take responsibility for their welfare and the consequences of their actions⁴⁸. Following this argument, the extrapolation of the *Kafala* system to immigration matters would have been in the benefit of the vulnerable, in this particular case the migrant worker, by using a legal figure that was already integrated in the host society. Nevertheless, one can not forget one of the main points of disconnection between the original idea of *Kafala* and the one that is applied nowadays to migrant workers, which is the loss of responsibility of the *kafeel*. This difference depletes the system of its protective character, resulting in a highly asymmetrical relationship, in which both parties have duties. However, the *kafeel* does not fear any of the consequences related to not fulfilling the duties of its own, whereas the foreign worker would be the one assuming all repercussions. Then, the set of administrative rules and regulations that diminished the migrant worker of any protection in favor of the *kafeel*, and the unwillingness of the State to take part, would be the reasons of the shift in the *Kafala* system definition.

For others, the responsibility of such deviation from the original form should be placed mainly on the consequences of the oil economy⁴⁹. As a precedent, already in the nineteenth century, the GCC countries started to receive important migratory flows mainly from India and Iran, and the sponsorship system presented itself as a way to ensure its control and

⁴³ Jureidini, R., & Hassan, S. F. (2019). “*The Islamic Principle of Kafala as Applied to Migrant Workers: Traditional Continuity and Reform*”. In *Migration and Islamic Ethics*. Leiden, The Netherlands: Brill. Chapter 6. Page 92.

⁴⁴ E. Franz (2011) “*Exporting Subsistence: Sri Lankan Women's Migration for Domestic Work in Jordan*”. Department of Anthropology; London School of Economics. Pages 96 - 100.

⁴⁵ Azhari A (2016-2017) “*The Kafala “Sponsorship” System in Saudi Arabia: A critical analysis from the perspective of international Human Rights and Islamic Law*”; The SOAS Journal of Postgraduate Research, Volume 10. Pages 60 - 65

⁴⁶ H.N Malaeb (2015) “*The “Kafala” System and Human Rights: Time for a Decision*”. Arab Law Quarterly; Brill. Pages 321 - 323

⁴⁷ K. Robinson (2020) “*What is the Kafala System?*” Council of Foreign Relations. Available at: <https://www.cfr.org/backgrounder/what-kafala-system> [Last consulted 19th January 2021].

⁴⁸ International Labor Organization (2017) “*Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*”. Regional Office for Arab States; Beirut. Page 3

⁴⁹ Ibid

protection, at a moment where governmental mechanisms to assume this role were minimal⁵⁰. However, the *Kafala* system as we understand it nowadays would have its origins in the 1960s and the 1970s with the discovery of oil. Since then, GCC countries have been one of the largest labor markets for foreign workers. They are recruited on a temporary basis and *Kafala* gives the means to import unskilled workers on a rolling basis, preventing them from integrating in the host society by applying several restrictions to their personal life and liberties, with the ultimate goal of them returning home⁵¹. This idea was analyzed by M.D.M. Rahman, who described labor migration in the Arab countries generally as demand-driven and South-South, as it is for most developing countries. This signifies that policies, such as *Kafala*, will be applied in order to ensure the hiring of temporary foreign workers to meet the labor market needs. According to M.D.M. Rahman, this system opposes the one of developed countries, where foreign workers are expected to not only work but also reside permanently in the host country⁵².

Nevertheless, experts seem to agree that, one way or another, *Kafala* shifted from protecting the vulnerable to systematically discriminate and abuse them in favor of the Arab identity. Thus, it intends to protect the locals in countries, where, due to the high demand of foreign manpower, nationals have become a minority in their own country. In consequence, *Kafala* is seen by the nationals of these countries as a hardly needed system that avoids their feeling of being misrepresented and outnumbered in their own country, and that is what gives it legitimacy. One can say that it is linked to very racist and discriminatory arguments, such as the concerns on the clash of cultures, values and languages, or the increase of criminality linked to the growth of migrant labor force. In the eyes of nationals who defend *Kafala*, this system was never meant to protect the migrant workers, but to answer their concerns on personal and national identity and security, which are shared concerns around the world towards migration⁵³. However, one can not forget that national security and Arab identity arguments are being used to decriminalize abuse and exploitation, or even as some would say, modern day slavery⁵⁴.

2.3 The modern *Kafala* system

The *Kafala* system, as it was mentioned before, is a migration policy that the GCC countries, namely Bahrain, Kuwait, Oman, Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates; and other countries in the Arab region, specifically Lebanon and Jordan, apply. However, there are some specificities that altogether differentiate the *Kafala* from other sponsorship systems present worldwide and that at the same time puts it at the core of international criticism. While analyzing such specificities, one needs to take into

⁵⁰ E. Franz (2011) “*Exporting Subsistence: Sri Lankan Women’s Migration for Domestic Work in Jordan*”. Department of Anthropology; London School of Economics. Pages 96 - 100

⁵¹ MD Mizanur Rahman (2011) “*Bangladeshi Migrant Workers in the UAE: Gender-Differentiated Patterns of Migration Experiences*”. Middle Eastern Studies; Vol 47. Pages 395 - 396.

⁵² Ibid. Pages 397 - 398.

⁵³ H.N. Malaeb (2015) “*The “Kafala” System and Human Rights: Time for a Decision*”. Arab Law Quarterly; Brill. Pages 323.

⁵⁴ O. Chidiac (2014) “*Migrant Construction and Domestic Workers in the Arab Gulf States: Modern-Day Slaves?*” L.L.M Theses. Page 14.

consideration that not all countries apply this system consistently and that there are some exceptions. In the later years, almost all countries that apply the system have been making efforts to change *Kafala* to different extents, nonetheless this is a topic that will be detailed further in a later chapter of the paper.

The first main characteristic of this system, which is shared by all the countries applying it, is that the migrant worker entry in the country must be tied to a specific employer, whose name would be stated in the entry visa, residence, and working permits. Using this definition, one can argue that there are other countries in the world that require a sponsor for migrants to be able to enter the host country and work in it. Also, entry visas are tied to a specific employment position instead of a person. However, the specificity in the countries that apply *Kafala*, is not only that the entry visa is bound to an individual employer, but also that the level of control that this employer can enforce towards the migrant is unmatched by other migration policies⁵⁵.

Moreover, all the countries that apply *Kafala* place the responsibility of renewing the residency permit of the migrant worker on the employer. Thus, the employer has the power to decide on the faith of the migrant worker. This characteristic is often exploited by the employers by threatening the worker of not renewing it if they do not agree to certain conditions that can be very abusive. Jordan is the exception to this rule, because their application of the system allows the migrant worker to renew the residency permit. To do so, though, the worker needs to hold a valid working permit that the employer has to issue⁵⁶. When the employer fails to comply with this task, which happens quite often because it is a costly process, the migrant worker falls into an irregular status. Then, the migrant would be susceptible to detention and deportation, in addition to the payment of high fines. However, very few countries comprehend that the employer should be held accountable for the inaction.

Another controversial characteristic of the *Kafala* system, which in this case is not shared by all the countries, is that approval of the employer is required to terminate the employment during the contract period. Similarly, changing employer also requires their consent. This characteristic does not apply to Qatar, and countries such as Bahrain, Kuwait and Jordan allow the migrant worker to terminate after one year of contract⁵⁷. This rule is in place to protect the employer, who would have paid a significant amount of money to bring the migrant worker to the host country and issue all the required visas and permits, so the obligations of the employee are fulfilled as per the employer's expectations. However, it presents several problems because when a migrant worker terminates a contract without the written consent of the employer, they would become irregular. This applies even in cases where the migrant worker faced violence, abuse, or exploitation. Thus, situations such as a

⁵⁵ International Labor Organization (2017) *“Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration”*. Regional Office for Arab States; Beirut. Pages 6 - 11.

⁵⁶ International Labor Organization (2017) *“Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration”*. Regional Office for Arab States; Beirut. Pages 6 - 11.

⁵⁷ K. Robinson (2020) *“What is the Kafala System?”* Council of Foreign Relations. Available at: <https://www.cfr.org/background/what-kafala-system> [Last consulted 2nd February 2021].

migrant being imprisoned and deported because of reporting an abusive situation to the authorities after leaving the place or employment are not uncommon⁵⁸. In the past years, most of the countries stopped the practice of requiring written consent from the employer for the migrant to leave the country. Currently, KSA, and in some cases Qatar, are the only countries that have such a requirement. However, an employer in the rest of countries still has several ways to challenge the exit of the migrant worker, by filing a false accusation of theft, for example, or by retaining the worker's passport⁵⁹.

Finally, countries do not set an official minimum wage for migrant workers, because they often take jobs that are seen by the host society as inferior. This can lead to very miserable salaries that enhance the vulnerability position of the worker and their dependency on the employer. Nevertheless, countries like Kuwait, Lebanon, and Jordan, who informally set a minimum wage, have been highly criticized because the amount varies depending on the nationality of the worker. This practice is an example of racial discrimination among migrants by the host society, but the countries pardon themselves by saying that the minimum wage is settled after negotiations with the countries of origin.

2.4 Kafala from the perspective of International Human Rights and International Labor Law

The *Kafala* system has received several international criticisms on the basis that its application is against International Human Rights. In that sense, the system is considered by several researchers and NGOs⁶⁰ as a form of human trafficking or modern day slavery. The accusations of *Kafala* as a form of human trafficking are based on the assumption that the system procreates situations that comply with all the requirements that define human trafficking as per the UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children in its article 3(a):

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;⁶¹"

In that line, one can say that the sponsorship system applied in the GCC countries, Lebanon and, Jordan many times entitles the recruitment of workers through deception, since the information about work conditions, job positions, and rights as a worker in the host country that they receive are usually false. Other means of recruitment and transportation could also be met, but through the analysis of the personal stories of migrant domestic workers in

⁵⁸ See for example: The New Humanitarian (2017) "*Abused Migrant Workers End Up in Prison after trying to Flee*". Available at: <https://deeply.thenewhumanitarian.org/refugees/articles/2017/06/09/abused-migrant-workers-end-up-in-prison-after-trying-to-flee-2> [Last consulted 13 March 2021]

⁵⁹ International Labor Organization (2017) "*Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*". Regional Office for Arab States; Beirut. Pages 6 - 11.

⁶⁰ Amnesty International; Human Rights watch, Migrant Forum in Asia...

⁶¹ A/RES/55/25

Lebanon, one can find the deception pattern highly repetitive. However, to be able to say that the *Kafala* system is a form of human trafficking the “*purpose of exploitation*” has to also be met. This fact is a bit more controversial. For some, domestic servitude is a form of exploitation, where migrants “*are recruited and exploited in the performance of domestic tasks and services, mostly within a private household under physical or psychological threat or coercion*”⁶². Thus, trafficking for domestic servitude would include the obligation to work for a private individual, with low or no salary, no days off, psychological and/or physical violence, limited or restricted freedom of movement, and the lack of privacy⁶³. All or some of these conditions are often met by migrant domestic workers employed under *Kafala* system. Nevertheless, for others, from the forms of exploitation that article 3(a) lists, one can not declare that these conditions constitute a form of human trafficking, even though they agree that these situations are wrong and a breach of human rights and labour standards:

*“Forced labour is different from sub-standard or exploitative working conditions. Various indicators can be used to ascertain when a situation amounts to forced labour, such as restrictions on workers’ freedom of movement, withholding of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debt from which workers cannot escape.”*⁶⁴

Consent is one more particularity of the *Kafala* system that creates some controversy, since domestic workers do agree to be recruited and sign a contract in order to be employed in the host country. First of all, one needs to understand that in general, they do agree to sign a contract of which the conditions are untrue. This idea would be linked to deception. Moreover, from personal stories and practice, it is known that many migrant domestic workers sign a contract that they are not able to understand because it is not translated to their language. Even with those facts, for the defenders of the system, this consent would exempt the actors from any accusation. However, in the case of human trafficking, article 3(b) states that “*The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used*”⁶⁵.

In the eyes of the author, *Kafala* system can not be qualified as human trafficking systematically, but there is a higher risk of trafficking through deception, with the purpose of exploitation for migrant workers, including domestic workers, employed under it. Moreover, even if the definition of exploitation that would constitute human trafficking does not include low or unpaid salaries, no days off, no freedom of movement and other situations previously described, debt bondage would be considered a form of forced labor according to the ILO,

⁶² OSCE (2010) “*Report of the Tenth Alliance against Trafficking in Persons Conference - Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*”. Occasional Paper Series no.4. Vienna 17-18. Page 10.

⁶³ Ibid. Pages 9 - 11.

⁶⁴ International Labour Organization (2021) “*What is forced labour, modern slavery and human trafficking*”. Available at: <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm> [Last visited 15 February 2021].

⁶⁵ A/RES/55/25

and thus a form of human trafficking⁶⁶. Debt bondage might not be one of the most prominent consequences of the *Kafala* system, however, it happens more often than one thinks. In fact, it is quite common that the employers do not pay the migrant domestic workers for a flexible period of months, claiming that the worker owes them for paying their recruitment fees as well as their residency and working permits.

It is important to highlight that the critics of the system acknowledge that those abusive situations do not exclusively occur at all instances when employing migrant workers through *Kafala*. However, the gaps in the system, mainly regarding workers' protection, do facilitate the possibility for abuse. They would also argue that *Kafala* as a rule itself is not the source of violations of human rights and international labor standards. In their opinion, going back to the origins of the rule, this is the idea of a guarantee, and one can not understand that it originates such violations. In their opinion then, these violations are a consequence of unethical and abusive practices perpetrated by the actors of the system (sponsors, recruiters, mediators, brokers, etc.) taking advantage of the gaps that it presents⁶⁷. However, there are other authors which consider that the system itself already allows such violations by putting the system in the hands and the complete will of the employer.

Even if *Kafala* system can not be generally understood as human trafficking, there are many other criticisms that have to do with its violation of Human Rights and International Labour Standards. As per Human Rights documents, the Universal Declaration of Human Rights 1948 (UDHR) sets the basis of the most internationally accepted Human Rights, since it is a fundamental constitutive document of the United Nations. It introduces principles such as equality, non discrimination or freedom of movement, which are not necessarily respected towards migrant domestic workers employed under the *Kafala* system. However, the UDHR does not have binding effects.

Two other basic documents, which do have binding effects and that set the basis for the protection of human rights of all people are the International Covenant on Civil and Political Rights 1996⁶⁸ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1996⁶⁹ (ICESCR). In these documents one can find articles related to the prohibition of slavery and forced labor, the right to liberty and security of person, the right to work, the right to the enjoyment of just and favorable conditions of work, the right to form trade unions, the right to social security, and the right to an adequate standard of living, between others to all people residing in the countries which are bound by them. Nonetheless, some of the countries applying *Kafala* did not ratify them. For example, the ICCPR was not ratified nor signed by

⁶⁶ International Labour Organization (2021) “*What is forced labour, modern slavery and human trafficking*”. Available at: <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm> [Last visited 15 February 2021].

⁶⁷ H.N Malaeb (2015) “*The “Kafala” System and Human Rights: Time for a Decision*”. Arab Law Quarterly; Brill. Pages 317 to 321.

⁶⁸ International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976

⁶⁹ International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 1966 entry into force 3 January 1976

KSA, UAE, and Oman. KSA and UAE also did not sign or ratify the ICESCR. This is due to the fact that these international documents on human rights appear to contradict certain principles of Islamic law, family laws, and customs concerning the equality between men and women and issues related to marriage and family⁷⁰.

Other International Human Rights treaties that tackle migrants and particularly migrant domestic workers as women are being violated by *Kafala* systematically. Those are the Convention against Racial Discrimination 1965⁷¹ and the Convention on the Elimination of All Forms of Discrimination against Women 1979⁷². Both documents have been signed and ratified by all countries that apply the system. However, *Kafala* is not only an expression of discrimination against foreign workers and protection of the national identity, but an entity that exacerbates and procreates discrimination against migrant domestic workers, which are typically women.

Finally, the Human Rights document that focuses in particular on the rights of migrant workers is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990⁷³. This treaty's main particularity is that the rights and protections that it establishes apply to all migrant workers, with no discrimination in terms of their working period or their place of residence, covering even temporary workers such as workers employed under the *Kafala* system. This is of notorious importance, since temporary workers are usually much less protected - or not even included - in national labor laws and other labor protection mechanisms. Its goal then is to ensure that foreign workers would not be granted less rights than nationals⁷⁴. Unfortunately, this treaty has not been signed nor ratified by any of the countries that employ migrant workers under *Kafala* system. Consequently, none of the protections granted by it would apply to them. However, one can observe that it has been ratified by most countries of origin especially in Asia, such as Bangladesh, the Philippines, and Sri Lanka. This is in contrast to Africa, where more and more foreign workers are migrating. However, the set of rights that this Convention provides to migrant workers completely opposes the idea of *Kafala* that was previously discussed. To be able to protect the society, values, and the culture of nationals, temporary workers must be easy to replace and integration must not be encouraged.

On the other hand, *Kafala* also received many critiques because it is believed to violate several internationally accepted labor standards, which are mechanisms and rules established by the ILO that protect migrants in particular. The Convention concerning Migration for

⁷⁰ H.N Malaeb (2015) "*The "Kafala" System and Human Rights: Time for a Decision*". Arab Law Quarterly; Brill. Pages 326 to 329.

⁷¹ International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force January 1969

⁷² Convention on the Elimination of All Forms of Discrimination against Women. New York, 18 December 1979

⁷³ UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158.

⁷⁴ H.N Malaeb (2015) "*The "Kafala" System and Human Rights: Time for a Decision*". Arab Law Quarterly; Brill. Page 328.

Employment 1949⁷⁵ establishes rights and protections that, as it has been exposed, are not being generally respected towards migrants employed under the *Kafala* system. Articles 2 and 3 of this Convention insist on the duty of the members bound by it to provide accurate information regarding the migration process, as well as take appropriate steps against misleading propaganda regarding both emigration and immigration. Then, article 6 establishes that migrant workers that are lawfully in the territory of the host country, as are the ones employed under *Kafala*, should be granted a treatment no less favorable than the one applied to the nationals in terms of remuneration, hours of work, membership of trade unions, social security, etc. However, this document has been ratified by only 50 countries and none of them is a country where *Kafala* system is applied.

The Convention on Migrant Workers 1975⁷⁶ concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers, sets already in its preamble the importance to work against the “*existence of illicit and clandestine trafficking labour calls*” and understanding that labour migration should happen through official agencies of employment. This document can have much impact on the work of recruitment agencies, both in the country of origin and the host country. Moreover, it can have an impact on the practice of “free visas” that puts many migrants in an irregular situation just upon arrival. Nevertheless, this document is also not broadly ratified, and once again none of the countries that apply *Kafala* has ratified it, neither most of the labour-sending countries.

Most importantly, there is the ILO Convention that focuses particularly on domestic workers, which is the Convention concerning decent work for domestic workers from 2011⁷⁷. This document sets the basis of decent working conditions for domestic workers, that is the most vulnerable collective employed under *Kafala* and the obligation of ensuring that domestic workers are informed of their terms and conditions of employment in an appropriate manner. Moreover, this document also focuses on particularities applicable to migrant domestic workers, such as repatriation or workers recruited in one country to work in another country through contracts that are enforceable in the host countries. This Convention has been used in countries that apply the *Kafala* system to understand what should be the basis of protection and to propose possible alternatives to the system. However, none of the countries ratified it.

Once again, these Conventions only bind the countries that ratified it, which are in none of the cases the countries that apply the *Kafala*. However, even in the Preamble of the Constitution of the ILO, the willingness of “*protecting the interests of workers when employed in countries other than their own*”⁷⁸ is established. Thus, as member states, the countries that apply the system are acting against one of the goals that the organization aims to accomplish.

In consequence, it can not be said that the *Kafala* system itself, as per the idea of guarantee, is against neither internationally established human rights or labor standards. Nevertheless, the

⁷⁵ ILO CO97 - Migration for Employment Convention (Revised), 1949 (No.97)

⁷⁶ ILO C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)

⁷⁷ ILO C189 - Domestic Workers Convention, 2011 (No.189).

⁷⁸ ILO - Constitution of the International Labour Organisation (ILO), 1 April 1919

gaps of the system, which in some countries is mainly consuetudinary, allow the breach of these rights and protections. Then, as it was exposed for the majority of cases, the countries that apply the system can not be held accountable for not ensuring such rights and protections to migrant workers, and in particular migrant domestic workers, since they are not bind by them. However, the conditions created by the gaps allow certain employers to take advantage and mistreat their employers and are against universal human rights. Moreover, the countries that apply *Kafala*, even if they are not bind by certain specific treaties, are member states of the ILO, so they should pursue and ensure the accomplishment of its most fundamental principles by granting protection to all workers in their territories.

3. KAFALA SYSTEM IN LEBANON

In this chapter, the *Kafala* system is examined in the context of Lebanon and its effects are particularly discussed for the cases of the female migrant domestic workers. The real experiences of migrant domestic workers that are collected in this paper are not isolated cases or scenarios that do not happen similarly in other countries where the system is applied. In particular, Lebanon applies *Kafala* as the rule that regulates low skilled workers from Asia and Africa, but it does not apply to the numerous migrant workers coming from Syria, for example⁷⁹. Since October 2019, Lebanon has been facing an economic and financial crisis, whose consequences were deeply aggravated by the COVID-19 global pandemic and the explosion on the 4th of August 2020. All of these events have obviously impacted the lives and livelihoods of migrant domestic workers in the country, as it is being reflected on the personal stories shared in this paper. Although the events that have led to these experiences are not found in other countries⁸¹ that apply the *Kafala*, they are not the culprits behind their poor conditions, rather an exacerbating factor. The situation of migrant workers has been objectionable at many levels since the migration waves started to arrive to the countries that apply *Kafala*, and the events in Lebanon had given them a great hardship but also more visibility.

3.1 Domestic work in Lebanon

Domestic work is, according to ILO, one of the lowest-paid occupations in the labor market around the world⁸². This is due to the fact that domestic work is not a commodity-producing activity, and traditionally all quantification of national income would be entirely based on that kind of activities. Thus, labor that would happen in the framework of the household would be systematically undermined, since it is deemed not to produce a surplus. Moreover, this needs to be linked to the patriarchal idea that “men are the breadwinners” and on the contrary, women, who perform the house labor are classified as dependent. In addition, one has to consider race and power relations on top of patriarchal and capitalist influence to explain the fact of the depreciation of domestic labor⁸³. On that note, domestic work is the category of employment that most attract female foreign workers in Lebanon, sometimes well-educated migrants, due to mainly two factors. One would be the possibility of higher wages paid in dollars, and the other would be the inability to easily access other kinds of jobs due to the legislation of the country, which is a reflection of a deeply racist and national protective society.

⁷⁹ Syrian workers enjoy greater cross-border movement with Lebanon. Nonetheless, Syrians mainly work in the informal sector.

⁸⁰ A. Khan & H. Harroff-Travel (2011) “*Reforming the Kafala: Challenges and opportunities moving forward*”. Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 295.

⁸¹ Rather others, see for example: Amnesty International (2016) “*The ugly side of the beautiful game: exploitation of migrant workers on a Qatar 2022 World Cup site.*” Doha, Qatar.

⁸² International Labour Organization (2015) “*Domestic work, wages and gender equality: lessons from developing countries*”. Working paper No.5/2015. Pages 11 - 17.

⁸³ N. Hasan (2017) “*Serving Class and Capital: The Political Economy of Migrant Domestic Work in Lebanon*”. University of London. Pages 8 - 9.

Historically, domestic work in Lebanon was formed by Lebanese and Kurdish women and girls from poor backgrounds and rural areas. Lebanese women employed in domestic work were mainly *Shia*⁸⁴ that would be original from the rural area of Baalbek. Kurdish refugee women were employed for domestic work since 1920 and the term *Kurdiyeh* became a euphemism for “domestic worker” in Lebanon⁸⁵. To a certain extent, also Syrian, Palestinian and Egyptian women and girls from refugee camps in Lebanon would be part of this workforce. They would start working in the households from a young age and mainly stay until the age of getting married, hence the domestic worker would grow into adulthood in the house of the employer, who was known by the worker’s family and who had a duty of care towards the worker⁸⁶.

However, during the Lebanese civil war (1975-1990) and after it, the political tensions between all religious sects and factions acted as a factor to push for change in domestic work. Lebanese started preferring non-Arab women for domestic work because they did not want to bring those tensions into their household⁸⁷. In parallel, Lebanon started emerging as a migration “receiving country”, in particular after the end of the war, but migration waves from Asia and Africa started to happen in the 1970s. This was due to the fact that during the war many Lebanese left the country voluntarily or compulsory, but once the war ended and left place to more stability, Lebanon offered job opportunities again, mainly involving manual labor. These gaps in the labor market were not filled by the displaced Lebanese, who were reluctant about returning and were not very attracted to those kinds of jobs. Thus, it opened the market for foreign migrant workers, both Arab and non-Arab⁸⁸. This immigration trend grew in the post-war 1990s period, with the overall growth of the country, and accelerated exponentially in the 2000 - 2010 period⁸⁹.

Moreover, the replacement of Arab women for domestic work had to do with the fact that foreign domestic work was cheaper, since they were paid lower wages, and the fact that Lebanese domestic workers would not accept to live-in with their employers. They would not work the same amount of hours. But also since they were much easier to replace due to their regulation through *Kafala* contracts, which allowed the employer to return and exchange the employee in the recruitment agency during the first three months of contract or once the

⁸⁴ Muslims of the branch of Islam comprising sects believing in Ali and the Imams as the only rightful successors of Muhammad and in the concealment and messianic return of the last recognized Imam. In Lebanon most of them live in the northern and western area of the Bekaa Valley, Southern Lebanon and Beirut, being the largest Muslim denomination in the country.

⁸⁵ Waves of Kurdish refugees arrived in Lebanon between 1925-1959 fleeing violence and poverty in Turkey and later also from Syria.

⁸⁶ R. Jureidini (2002) “*Women Migrant Domestic Workers in Lebanon*”. Gulf Labour Markets and Migration. Pages 8 - 11

⁸⁷ Ibid

⁸⁸ P. Tabar (2010) “*Lebanon: A country of Emigration and Immigration*”. Institute for Migration Studies. Pages 9 - 14.

⁸⁹ International Labour Organization (2015) “*Towards Decent Work in Lebanon: Issues and Challenges in Light of the Syrian Refugee Crisis*”. Regional Office for Arab States. Pages 16 - 17.

contract was over, after two or three years, repatriating her to her country of origin. Following the trend of increasing demand of foreign work, the first recruitment agency opened in Lebanon in 1978, importing cheap domestic work from Sri Lanka⁹⁰. Then, due to the high number of domestic workers from that nationality, the euphemisms to describe domestic work in the country shifted to *Srilankiyeh*. Simultaneously, the Lebanese society started to associate domestic work to a lower status, thus degrading Arab women. With the proliferation of migrant domestic work and recruitment agencies in the 1990s, domestic work has been linked not only to the status, but most importantly to race⁹¹.

At a first stage, domestic workforce in Lebanon was composed mainly by Sri Lanka and the Philippines nationals. However, with time, other Asian nationalities such as Bangladeshi or Nepali started arriving to the country. This was followed by a wave of immigration from African countries, mainly Ethiopia, but also from Cameroon, Nigeria, Kenya, Sierra Leone, Ghana, Madagascar, Togo, Cambodia, Uganda, Tanzania, and Burkina Faso. Since the 1990s, some of the countries of origin such as the Philippines and Sri Lanka marketed the export of cheap domestic labour, attracted by the remittances which presented an exponential source of income for the countries of origin⁹². Nevertheless, other countries such as Ethiopia or Bangladesh banned their female nationals from traveling to the Gulf countries, Lebanon, and Jordan as a consequence of the stories of exploitation and abuse, and the lack of will from the governments of the receiving countries to control it⁹³. Despite this fact, in the past years, Ethiopians have reached the majority of migrant domestic workers in the country according to data from Lebanon's Ministry of Labor. A total of 144,986 Ethiopian domestic workers out of a total estimated 250,000⁹⁴ migrant domestic workers processed new work permits or renewed them as of November 2018⁹⁵. This number does not take into consideration any of the migrant domestic workers who are in an irregular situation, either because of an irregular entry, entry with a tourist visa or because they overstayed their residency permit. Consequently, in reality these numbers are higher, but there are no official estimations. This is explained by the fact that no national population census has been officially taken in Lebanon

⁹⁰ R. Jureidini (2002) "*Women Migrant Domestic Workers in Lebanon*." Gulf Labour Markets and Migration. Pages 8 - 11

⁹¹ International Labour Organization (2004) "*Gender and Migration in Arab States: The case of Domestic Workers*". Regional Office for the Arab States, Beirut. Pages 63 to 85.

⁹² P. Tabar (2010) "*Lebanon: A country of Emigration and Immigration*". Institute for Migration Studies. Pages 9 - 14.

⁹³ R. Jureidini (2002) "*Women Migrant Domestic Workers in Lebanon*". Gulf Labour Markets and Migration. Pages 8 - 11

⁹⁴ Human Rights Watch (2020) "*Lebanon: Blow to Migrant Domestic Worker Right*" Available at: <https://www.hrw.org/news/2020/10/30/lebanon-blow-migrant-domestic-worker-rights> [Last visited 10th March 2021]

⁹⁵ Amnesty International (2020) "*Lebanon: Abandoned migrant domestic workers must be protected*" Available at: <https://www.amnesty.org/en/latest/news/2020/06/lebanon-abandoned-migrant-domestic-workers-must-be-protected/> [Last visited 10 March 2021]

⁹⁶ Ethiopians kept entering the country illegally until 2018 when the ban was lifted. Either with the assistance of recruitment agencies and arriving to Lebanon through tourist visas for the period of three months, to be exchanged for a working permit under the *Kafala* contract rules after that period. Either, a significantly reduced proportion, entered Lebanon illegally through very dangerous migration paths crossing Yemen and risking their life in a boat across the Gulf of Aden.

since 1932, due to the power distribution concerns in the country. A new census would threaten the current structure of sectarian power-sharing, which currently and based in the last census gives Christians and Muslims equal representation in the parliament⁹⁷.

Even though Lebanon is a country of emigration and immigration, this fact has not been a main concern for the Lebanese government and policy makers. As a multi-confessional republic with nearly 7 million inhabitants, the country has struggled for many years with human loss, brain drain consequences of the socioeconomic hardship, and political chaos due to the sectarian structure and military conflicts. Moreover, the country has been receiving an important influx of refugees and asylum seekers that are often seen as a burden by the Lebanese society. Despite all that the country still lacks a public migration policy and legislation regarding migration flows⁹⁸. This also explains the fact that regarding domestic work, the Lebanese government did not play a major role in regulating it and private recruitment agencies both in the countries of origin and in Lebanon are the ones who have been managing the important waves of foreign migration that is employed in the sector. Therefore, there are no specific laws that ensure the protection of migrant workers' rights in Lebanon. In particular, migrant domestic workers are excluded from the Lebanese labour law⁹⁹ by its Article 7¹⁰⁰. Thus, they are denied from all protections and benefits that are ensured to Lebanese nationals and other non-Lebanese. These protections include a minimum wage, overtime pay, compensation for unfair dismissal, social security and parental leave. However, there is certain legal framework that regulates labor migration in Lebanon, regarding their entry, stay and exit from the country. According to these laws^{101 102}, non-Lebanese seeking work in Lebanon must obtain, prior entry to the country, an approval from the Ministry of Labor.

3.2 Practices under Kafala system in Lebanon

Kafala in Lebanon is mainly a system based on customary practice, meaning that there is no codified law establishing what this system covers, which exponentially increases gaps on protection for both parts. However, due to the position of power that the employers hold in these cases, they might be tempted to resort to certain practices that are unlawful to protect

⁹⁷ P. Tabar (2010) "*Lebanon: A country of Emigration and Immigration*". Institute for Migration Studies. Pages 9 - 14.

⁹⁸ European Training Foundation (2017) "*Migrant support measures from an employment and skills perspective (MISMES)*" Beirut, Lebanon. Pages 6 - 7.

⁹⁹ The Lebanese Code of Labour; Law of 23 September 1946 (including modifications) - English translation. Available at: <https://www.ilo.org/dyn/travail/docs/710/Labour%20Code%20of%2023%20September%201946%20as%20amended.Publication%202010.pdf> [Last consulted :10th March 2021]

¹⁰⁰ Article 7; Lebanese Code of Labour; Law of 23 September 1946 (including modifications):
"Are exempted from the present law:
I - Domestic servants employed in private houses;
(...)"

¹⁰¹ 1962 Law Regulating the Entry of Foreigners into Lebanon, Their Stay and Their Exit from Lebanon. Available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/39235/97114/F1425814770/LBN-39235.pdf> [Last consulted 10th March 2021]

¹⁰² 1964 By-Law No 17561 Regulating the Work of Aliens. Available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/39241/97116/F1805533883/LBN-39241.pdf> [Last consulted: 10th March 2021]

their own interest. Moreover, *Kafala*, being a customary system, can also lead to higher risk of misunderstanding related to its content, which can also cause unlawful practices by both parts since expectations from this labor relationship tend to not be defined. These practices are not allowed by the *Kafala* system *per se*, rather a consequence of it, are being exposed through previous studies in the country and the testimonies of the migrant workers interviewed by the author for this purpose. One must take into consideration that the situations described in this section are related to migrant domestic workers employed under *Kafala*, thus living in the house of their employers.

It is common practice that the migrant domestic worker signs a contract that she can not understand, since the contract that official recruitment agencies should be using to regulate the relationship between the employer and the employee is only available in English and Arabic, two languages, which even if some of the foreign workers are able to speak, might not be able to be read. Moreover, in the majority of cases, the employees do not have access to a copy of the contract that should be facilitated by the recruitment agencies¹⁰³. Thus, it is difficult for them to know what are their rights and duties under their employment relationship. This would be even more difficult when they want to prove to their employer that a part of this contract is being breached. Employers also tend to have misinformation about the contract and the rights and duties of both parts¹⁰⁴. All of the migrant workers interviewed stated that they arrived to Lebanon under a contract. However, the majority did not know what was established on it and stated feeling deceived as per their expectations prior to their arrival to the country.

Another unlawful practice is to restrict the mobility of the worker, mainly by locking the employee inside the house or by not letting them out of the house without expressly given permission. Employers might follow this practice as a means to “secure their investment”. This also means that they ensure that the migrant domestic worker will not leave the house to become a freelancer without fulfilling her duties under the contract. Thus, when a migrant worker leaves the house without permission, the employer would inform the authorities that she is a “runaway”, so they are not held accountable for her actions as her *kafeels*. In particular, regarding locking the worker inside the house, some employers would justify the practice by saying that it is a way to protect the worker from strangers and buglers, or to protect themselves from the dishonor of the worker inviting men to their home¹⁰⁵. Moreover, in the same way, employers might restrict the communication means of the worker by not allowing her to have contact with people outside the house or by supervising, limiting, or completely restricting her communication with her family back in her country of origin¹⁰⁶.

¹⁰³ International Labour Organization (2016) “*Intertwined: A study of Employers of Migrant Domestic Workers in Lebanon*”. International Labour Office, Fundamental Principles and Rights at Work; Labour Migration Branch. Geneva. Pages 22 - 40.

¹⁰⁴ Ibid

¹⁰⁵ International Labour Organization (2016) “*Intertwined: A study of Employers of Migrant Domestic Workers in Lebanon*”. International Labour Office, Fundamental Principles and Rights at Work; Labour Migration Branch. Geneva. Pages 22 - 40.

¹⁰⁶ Amnesty International (2019) “*Their house is my prison: Exploitation of migrant domestic workers in Lebanon*”. London. Page 19.

Both these practices have important consequences on the worker's availability to identify and report abusive practices against her.

To protect their investment and on the grounds that it is the responsibility of the employer to renew the residency and working permits of the worker, employers tend to confiscate passports and documentation of the domestic worker¹⁰⁷. Despite this practice is expressly prohibited by Lebanese law, mechanisms are not in place to prevent it. In consequence, this practice has been encouraged by recruitment agencies to the point that upon their arrival to the country and when domestic workers meet their employers for the first time, General Security hands the passport directly to the employer¹⁰⁸. Without these documents in her power, if the worker runs away or gets fired, she does not only become irregular but also undocumented, thus arrested and imprisoned if caught by the General Security. In the current context, it made it much more challenging for the migrant domestic workers that wanted to return to their home country.

There are also common malpractices regarding the payment of the salary. According to the aforementioned contract, the employer should pay the salary at the end of every month. However, delays in the payment are not uncommon. Some employers pay the salary every few months and others when the worker asks for it¹⁰⁹. Due to the current situation, some employers have been facing difficulties to pay the salaries of their employees on time, so the delay in the payments has exacerbated since October 2019. Moreover, even though the salary was typically specified in dollars in the contract, because of the dollar shortage salaries are being paid mainly in Lebanese pound, which not only reduces exponentially the worker's purchasing power, but their capacity to send remittances to their families, which for most is the main reason to be employed abroad. However, another unlawful practice is to retain the salary of the worker for the first months to repay for the employer's investment. Regarding the quantity of the salary, it is stipulated at the notary public -as an official agreement between the parts of the contract- or by the recruitment agency, since the aforementioned contract has a blank space to be filled. One must take in consideration that since domestic work is not included in the Lebanese labor law, there is no minimum wage established¹¹⁰. As it was mentioned before, there is a racial component that affects the quantity of the salary. Thus, even though the contract is the same for migrant workers of all nationalities, meaning that all of them are supposed to have similar working conditions, the salary is defined by their nationality. Accordingly, Filipinas, who are believed to be cleaner, more educated, and speak English, tend to have salaries around \$300 per month, whereas Ethiopians, Sri Lankans and Bangladeshis, who are believed to be less educated and have little to no experience with

¹⁰⁷ 94,3 percent of 1,200 employers surveyed the ILO (2016) "*Intertwined: A study of Employers of Migrant Domestic Workers in Lebanon*". International Labour Office, Fundamental Principles and Rights at Work; Labour Migration Branch. Geneva. Pages 36.

¹⁰⁸ Amnesty International (2019) "*Their house is my prison: Exploitation of migrant domestic workers in Lebanon*". London. Page 18.

¹⁰⁹ International Labour Organization (2016) "*Intertwined: A study of Employers of Migrant Domestic Workers in Lebanon*". International Labour Office, Fundamental Principles and Rights at Work; Labour Migration Branch. Geneva. Pages 22 - 40.

¹¹⁰ The minimum wage is set at 450\$ per month, however due to the current situation, nationals are getting paid now in the local currency.

household electrical appliances, have salaries of around \$200 per month that can increase yearly depending on the will of the employer¹¹¹. The majority of migrant workers interviewed explained how they were deceived by the quantity of their salary. At the recruitment agencies back in their countries of origin, the salaries promised would be higher for less demanding work or better working conditions. Moreover, almost half of the interviewed women were deprived of their salaries for the first months of work, on the grounds that the employer made a big disbursement for their residency and working papers, ticket and insurance.

Regarding the working conditions, the contract stipulates that the working hours should be a maximum of ten, that the employer should not employ the worker in more than one place, and that a day-off per week should be granted to the worker. However, these conditions are not often fulfilled¹¹². Workers can be asked to work from very early until very late continuously without an extra pay, and not being granted 8 hours of uninterrupted sleep because taking care of small children or elderly at night is among their duties. Moreover, they can also be asked to work in the household and workplace of the employer or in relatives' household with no extra payment and thus prolongating their working hours. As it has been explained, their day-off might not be granted when the employer fears that the employee would run away. At the same time, restrictions on the workers access to healthcare seem to be a common practice, even though the employer is supposed to provide the worker with a medical insurance under the contract¹¹³.

Migrant domestic workers are expected to live in their employer's house, who should provide them with food, clothing and accommodation that respects her dignity and privacy according to the aforementioned contract. However, this is not always the case. Domestic workers can be deprived of food by their employers, by limiting their amount or by not allowing them to cook meals that are culturally appropriate for them. In particular, regarding accommodation, Lebanese households have been mainly designed with spaces such as attics or small rooms for the domestic workers. Others are not granted a private space and they sleep in common areas such as the living room, kitchen, balcony or with the children of the employer¹¹⁴.

It is evident how malpractices are performed by individual employers, but also by the recruitment agencies. Recruitment agencies are highly unregulated under Lebanese law, and they assume the role of linking the employer with a potential migrant worker according to previously specified requirements and facilitating the migration process¹¹⁵. However, due to their unregulated nature, there are some abusive practices like the ones discussed that are not

¹¹¹ R. Jureidini (2002) *Women Migrant Domestic Workers in Lebanon*. Gulf Labour Markets and Migration. Pages 8 - 11.

¹¹² Amnesty International (2019) *Their house is my prison: Exploitation of migrant domestic workers in Lebanon*. London. Page 16.

¹¹³ Amnesty International (2019) *Their house is my prison: Exploitation of migrant domestic workers in Lebanon*. London. Page 21.

¹¹⁴ International Labour Organization (2016) *Intertwined: A study of Employers of Migrant Domestic Workers in Lebanon*. International Labour Office, Fundamental Principles and Rights at Work; Labour Migration Branch. Geneva. Pages 22 - 40.

¹¹⁵ European Training Foundation (2017) *Migrant support measures from an employment and skills perspective (MISMES)* Beirut, Lebanon. Pages 12 - 14.

isolated events¹¹⁶. Recruitment agencies seem to perpetrate violence and threats against migrant domestic workers, when the workers are returned by the employer due to “misbehaviors” like asking for their basic rights or trying to run away from an exploitative household¹¹⁷. Moreover, recruitment agencies in some countries of origin are known to demand the migrant workers to pay certain amounts for the facilitation of their documents and traveling ticket. This can leave the migrants at a debt situation and thus extremely vulnerable, even before her arrival to Lebanon. Some of them send their lands, houses and businesses or ask for loans to be able to cover for these unlawful costs, which puts them in a very vulnerable situation since the beginning of their journey and sometimes, when unable to pay back their debt, it stands as one more challenge for their repatriation.

3.3 The Lebanese current context in regards of Kafala

Since October 2019, Lebanon has been experiencing several political and economical challenges. Back then, the Lebanese cabinet announced a new pack of taxes, including a tax on WhatsApp calls, tobacco and petrol to address the loss of value of the Lebanese pound and inflation. Consequently, the Lebanese people across all the country peacefully protested against those taxes and demanded a change in the cabinet, with the aim to end corruption and gain accountability, many of which advocated for the end of the sectarian system. Moreover, the Lebanese people joined efforts to demand basic social and economic rights¹¹⁸. Even though the cabinet resigned and a new Prime Minister was appointed, this did not satisfy the Lebanese people that saw how the figures that have been holding power in the country for decades managed to remain and how the country is still going through a free fall in economy due to the situation of the local currency. Since 1997, the exchange rate of the dollar was fixed at 1 dollar to 1,507 Lebanese pounds¹¹⁹. However, in the past year the local currency has lost more than 80% of its value, and the exchange rate in the black market hit the highest rate on Wednesday 17th of March 2021 reaching the 15,000 Lebanese pounds. The unprecedented inflation rate translates in more than 50% of the population below the poverty line¹²⁰ and the disappearance of the middle class, who is becoming poorer due to the restrictions on their withdrawal of dollars that are already very scarce in the country and the loss of their savings to a currency that is extremely devaluated. Furthermore, the discontent and desperation of the Lebanese society keeps growing as the unemployment rate exceeds 30%, the annual food inflation gets around 190%, and food availability is jeopardized¹²¹. Additionally, the economic

¹¹⁶ M.J.Ramos (2017) “*Sponsorshipped: Reflections on temporary female migration from the Horn of Africa to the Gulf and Lebanon*”. Instituto Universitario de Lisboa. Pages 95 - 97.

¹¹⁷ R. Jureidini (2002) *Women Migrant Domestic Workers in Lebanon*. Gulf Labour Markets and Migration. Pages 11 - 14

¹¹⁸ Amnesty International (2020) “*Lebanon protests explained*”. Available at: <https://www.amnesty.org/en/latest/news/2019/11/lebanon-protests-explained/> [Last consulted: 20th March 2021]

¹¹⁹ PWC (2021) “*Worldwide Tax Summaries - Lebanon*” Available at: <https://taxsummaries.pwc.com/lebanon> [Last consulted: 19th March 2021]

¹²⁰ Harvard International Review (2020) “*Modern Day Slavery: The Kafala System in Lebanon*” Available at: <https://hir.harvard.edu/modern-day-slavery-the-kafala-system-in-lebanon/> [Last consulted: 19th March 2021]

¹²¹ CNBC (2020) “*Already in financial meltdown, Lebanon endures blackouts of around 20 hours a day*”. Available at: <https://www.cnbc.com/2020/07/10/already-in-financial-meltdown-lebanon-endures-daily-blackouts.html> [Last consulted: 19th March 2021]

situation has resulted on fuel shortages and power cuts that in some areas exceeded 20 hours per day and affected basic service providers such as hospitals. The COVID-19 global pandemic has also contributed in worsening the socioeconomic crisis that the country is facing. The government declared the state of emergency mid-March 2020, after the first case of COVID-19 was reported on the 21st of February 2020¹²². Since then, strict periods of self-quarantine have been imposed, requiring all non-essential public and private institutions to remain closed for long periods of time¹²³. Due to the financial impact of closure, which increased unemployment and underemployment and kept aggravating the socioeconomic crisis, the strict lockdown situation is not easy to be maintained. The Lebanese fear that the poverty and a possible famine would kill more than the virus¹²⁴. Yet, Lebanon and its people had to face one more tragedy on the 4th of August 2020, when an explosion in the port of Beirut killed 190 people, injured more than 6,500 and destroyed the infrastructure for several miles out along the path, which is estimated to be around \$15 billion in direct damage¹²⁵. The explosion also left more than 300,000 people homeless, affected nine major hospitals and damaged the source of income for many. Moreover, the blast affected the imports of food in a country that relies on imports to feed its people, since 90% of the imports of food entered the country by the port typically¹²⁶.

Migrant domestic workers, as one of the most vulnerable collectives in Lebanon, have been experiencing even more challenges due to the consequences of the aforementioned situation. Freelancer migrant domestic workers have been struggling with unemployment since the beginning of the crisis, whereas migrant domestic workers under a contract have been experiencing delay or non-payment of wages and especially around June 2020, when more cases of abandonment of workers occurred before the termination of the contract. Many employers, unable to fulfill their duties towards the worker anymore, started leaving the workers in front of their embassies with their little belongings and unpaid wages¹²⁷. That situation got especially critical when the airport closed because of the COVID-19 preventions in mid-March 2020, when only very expensive repatriation flights were allowed to their countries of origin. Among the employers' obligations under the contract, there is the duty of paying for a repatriation ticket when terminating the contract, but this was not being

¹²² Reuters (2020) "*Lebanon confirms first case of coronavirus, two more suspected*" Available at: <https://www.reuters.com/article/us-china-health-lebanon-minister-idUSKBN20F225> [Last consulted: 19th March 2020]

¹²³ DW (2021) "*Lebanon: Coronavirus lockdown weighs heavy on a country in crisis*" Available at: <https://www.dw.com/en/lebanon-coronavirus-lockdown-weighs-heavy-on-a-country-in-crisis/a-56477049> [Last consulted: 19th March 2021]

¹²⁴ BBC (2020) "*Coronavirus: Lebanon's woes worsen as country pushed to the brink*" Available at: <https://www.bbc.com/news/world-middle-east-52756418> [Last consulted 19th March 2020]

¹²⁵ Reuters (2020) "*Beirut Port blast death toll rises to 190*" Available at: <https://www.reuters.com/article/us-lebanon-crisis-blast-casualties-idUSKBN25Q08H> [Last consulted 19th March 2020]

¹²⁶ Harvard International Review (2020) "*Modern Day Slavery: The Kafala System in Lebanon*" Available at: <https://hir.harvard.edu/modern-day-slavery-the-kafala-system-in-lebanon/> [Last consulted: 19th March 2021]

¹²⁷ HRW (2020) "*Hardships for migrant domestic workers rise*" Available at: <https://www.hrw.org/news/2020/09/14/hardships-lebanons-migrant-domestic-workers-rise> [Last consulted 19th March 2020]

fulfilled¹²⁸. And it got even worse with the Beirut Blast that affected many places of employment of migrant domestic workers and left others homeless. Moreover, undocumented migrant domestic workers suffered the most from the COVID-19 pandemic, since they were denied access to Polymerase-Chain Reaction tests and hospitals. They are currently not being able to register themselves to take the vaccine even though the government is working on a plan to amend that fact¹²⁹. Plus it also increased the price of repatriation, since many countries imposed an amount of days of quarantine that the migrant had to cover. In addition, the situation in the country increased tensions and xenophobia, especially when these groups receive aid. This is why, in general, self-organized community migrant groups tend to help each other and provide a quicker response when migrants are in need of food, shelter or medical needs.

3.4 Testimonies

This section presents real stories of three migrant domestic workers in Lebanon, interviewed by the author. Despite these testimonies being qualitative in nature, they represent samples of the impact that the *Kafala* system can have on their lives. These testimonies not only show the reality that live-in migrant domestic workers face, but most importantly it highlights that their struggle would continue if they manage to run away from an abusive employer's household. These three testimonies were selected because they reflect most of the scenarios that have been presented along this paper. Through them one should acknowledge that there is real people behind all the exploitation and abuses that *Kafala* facilitates. Migrant domestic workers that by being employed under a *Kafala* contract are deprived of their most basic rights and dignity. In addition, the fact that these migrants shared their stories between the period of January 2021 and March 2021, also disclosures their vision on the current crisis situation, and the impact that it has in their migration process.

The story of Mimi

"Mimi" first arrived to Lebanon from Ethiopia in 2011, when she was only 18 years old. Back then, she only wished to work to be able to support her family. However, now she denounces that no one explained to her the reality of working in Lebanon. Looking back, she feels that she was not only deceived by the people who recruited her back in Ethiopia, lied about the working conditions, and misled her about the salary, but also about how the Lebanese society would accommodate her. She felt deceived by her family, who pushed her to travel to Lebanon so she could support them while she being left without anything in a country that was so strange to her.

When she first arrived, she was young and did not know much about Lebanon or about her rights, but she felt that what they were doing to her was wrong. After six months she complained to her employers, stating the unfairness of not receiving her salary directly, since it was being automatically transferred to her family. Moreover, she complained about the fact that she was not granted days off, that she was working many hours from very early in the

¹²⁸ Harvard International Review (2020) "*Modern Day Slavery: The Kafala System in Lebanon*" Available at: <https://hir.harvard.edu/modern-day-slavery-the-kafala-system-in-lebanon/> [Last consulted: 19th March 2021]

¹²⁹ Dailystar (2021) "*Lebanon working on Covid-19 plan to vaccinate migrant workers*" Available at: <https://www.dailystar.com.lb/News/Lebanon-News/2021/Feb-11/517269-lebanon-working-on-covid-19-vaccine-plan-for-migrant-workers.ashx> [Last consulted: 19th March 2021]

morning until very late at night, and that communication with her family was being limited. The employers, far from acknowledging their malpractice towards Mimi and start granting her better conditions were rather displeased by her complains. For this reason, they decided to “return her” to the recruitment agency stating that she was no longer welcomed in their house.

The recruiters hit her repeatedly because of her misbehavior, which was costing them their business reputation. They could not allow her to complain or to demand anything from any future employers. Not long after that, they found someone else who wanted to employ her. However, Mimi was traumatized by her previous experience and did not want to be treated poorly anymore, so during the first week she left the house where she was supposed to be employed.

She has been working as a freelance for nine years now, procuring herself with shelter and food. In Lebanon, she met her husband, who was a migrant worker from Sudan. They were both working when they had their first baby, but a couple of years later, Mimi found herself pregnant again in a country that did not offer her opportunities anymore. Both her and her husband are unemployed and being sheltered with their baby at a friend’s house, where five other people were also living, due their inability to pay rent. They have to rely on food donations and diaper donations from NGOs to cover for these basic needs.

The story of Lily

“Lily” is from Nairobi, Kenya and she is 27 years old. She holds a certificate from a course on beauty and hairdressing that she completed in her home country. Thus, when she learnt that she could work on something related to that in Lebanon, as the recruitment agency told her, she decided to leave, motivated by the opportunity of making more money and gaining independence. However, upon her arrival in Lebanon back in 2014, she discovered that she was recruited for domestic work. She wanted to return to her home country that same moment, she did not want to leave the airport. But her employer told her that there was no choice for her but stay and work, since they had paid for her and she actually owed them money. That same reasoning was applied when they refused to give her the first two months of salary.

After four months working for her employer, “Lily” was very deceived from the whole situation. Her work in Lebanon was not at all what she was promised back in Kenya, thus she went back to her recruitment agency and asked them to look for another employer for her. The second employer was a man who was single. He expressed from the first day that he did not only want her to work, but also to maintain sexual relations with him. “Lily” was afraid and disgusted by the idea, so she decided to leave, even though that meant falling into an irregular situation and losing her passport. After hearing stories from other migrant workers she met, she felt she was not unlucky with the first employer. They did retain her salary for the first two months but she was not being abused or held captive.

However, she finds life as a freelance very hard, especially with the current situation because job opportunities are scarce and prices are on rise. At the beginning, she struggled to find a place to stay that she could afford and slept in the street for a week. But then, she met a Sudanese man that offered to shelter her. They lived together for a while, married and had a

baby that to this date does not have any legal documentation, so they can not travel back to their country. Moreover, her husband had a work accident and he had to go back to Sudan, leaving her and her baby behind unable to support themselves. She has been facing threats of eviction and needs to resort to NGOs to cover her baby's and her basic needs.

The story of Mary

"Mary" is a 24 year old Sierra Leonian woman from the city of Freetown. She came to Lebanon for the first time in 2018 and remembers the day that all her dreams about migrating to a foreign country transformed into an ugly reality. She decided to come to Lebanon after being approached by a recruitment agency back in Sierra Leone. They told her that traveling was a great opportunity, were she could make a lot of money working in a job of her choice. She was very interested on working in a restaurant, or in a supermarket. But domestic work was never on the table.

When she first arrived and discovered that she was recruited to work as a maid in a private household, she felt very angry. She refused to do so, but they threatened her and told her there was no other choice and that she needed to accept it. She felt even more tricked when she did not receive her salary for the first four months of work, after her employer told her that they did not have the money to pay her, since recruiting her was already very expensive. She was also denied any days off and the employers did not provide her with enough food. She felt very tired after long hours of work everyday, but she did not even have a place to rest properly. Her employer made her sleep on the floor of the kitchen and she was not granted any privacy. Four months passed under these conditions, but then she refused to work anymore. She told her employer that she was not to going to accept that treatment. Consequently, the employer "returned" her to the recruitment agency. There, they found her another employer. "Mary" felt grateful that now her situation was better, was at least receiving her salary, and was not starved anymore. However, because of the socioeconomic crisis and after the explosion, her employer informed her that they were not able to pay her anymore and asked the recruitment agency to reallocate her. But the recruitment agency could not find anyone to employ "Mary", neither could they grant her a shelter.

She found herself homeless and jobless in a strange country. After a few days, other Sierra Leonian workers sheltered her in their flat, but she has been struggling to find freelance work to collaborate on the expenses of the house she shares. She is clear she wants to stay in Lebanon and hopes the situation will get better because she does not have a family to return to and she did not finish paying the debt she has in her home country, as a result of a loan she asked for to travel to Lebanon. However, she wishes to start legal actions against the recruitment agency back in her home country, for the lies they told her and the misery they brought into her life.

4. WAYS FORWARD

Kafala system was put in place in the GCC countries, Lebanon and Jordan to regulate foreign workers. It reduces the role of the government by linking the migrant to the *kafeel*, usually the employer, who would take responsibility for the worker and subordinate the residency status on their employment. However, it does not mean that the government does not have a role at all. It is important to understand that Lebanon and the GCC countries -but not Jordan- decided to involve the Ministry of Interior on the management of foreign work. Thus, by doing so and not involving the Ministry of Labor, national labor law is not applicable to migrant workers. In consequence, none of the protections that the law ensures to nationals is guaranteed to migrant workers¹³⁰. In this section, the main criticism against *Kafala* is discussed with the steps taken by the applying countries to amend this situation at a certain extent. The case of Lebanon is examined in detail, in particular the factors that pushed for reforms recently and how these reforms, namely the Standard Unified Contract, were not materialized and why.

4.1 Pushing for reforms in the region

As it has been mentioned, there has been wide international criticism against *Kafala*. Not only in the sense of the consequences that it has on the treatment of migrant workers and how it clashes with international human rights and labour standards, but also, it has been criticized for its effects on the domestic labor markets¹³¹. Regarding its effects on the labor market, reforming the system would mean potential benefits for the internal labour market mobility of the GCC countries, Lebanon, and Jordan. It would support national employment strategies by reducing the rights and wages gaps between nationals and migrants, thus more nationals would be attracted to fields of work that only target migrants, and there will not be a gain for the employers when employing migrants, because their salaries would be the same as nationals. It would also stand as incentive for businesses and workers, since the reputation of the countries would improve in terms of labour standards and it would make it easier for international investors to open businesses and hire foreign workforce if needed. Moreover, facilitating mobility in the labor market for foreign workers would result in a better coverage of the needs of the employers, and it would also facilitate the stay of foreign workers and eliminate the huge cost of recruitment from the country of origin. All of these economic improvements that could happen if the *Kafala* system was dismantled or reformed, would mean an upgrade and diversification of the economies in the region¹³². For these reasons, in the past years, governments of the countries that apply *Kafala* have been announcing their will to reform or even abolish the system. However, it can be said that the steps that have been taken by the majority of the governments were more in the sense of small improvements in regards to the working and living conditions of foreign workers, rather than reforming the system structurally or getting close to abolishing it. In this sense, the initiatives that have been taken until the moment have been mainly addressing labour market mobility and the most

¹³⁰ A. Khan & H. Harroff-Travel (2011) “ *Reforming the Kafala: Challenges and opportunities moving forward*”. Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹³¹ A. Khan & H. Harroff-Travel (2011) “ *Reforming the Kafala: Challenges and opportunities moving forward*”. Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹³² International Labor Organization (2017) *Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*. Regional Office for Arab States; Beirut. Pages 5 - 4.

exploitative and abusive elements of the system. However, these reforms seem to consistently exclude migrant domestic workers¹³³.

Bahrain is one of the countries that announced in 2009 that the country would dismantle the *Kafala* system, and that the government would be the one responsible for sponsoring migrants, instead of an individual sponsor, through the government lead “Labour Market Regulatory Authority” (LMRA), which originally regulated the work process and post-recruitment phase¹³⁴. Nonetheless, this reform did not materialize entirely and, in practice, the migrant workers still need the approval of the individual *kafeel* to enter the country. The same year, Bahrain issued the “Decision No.79 for 2009 Regarding the mobility of foreign employee from one employer to another¹³⁵”, which was supposed to eliminate the need of the employer authorization¹³⁶ to change the place of employment and stand as a burden to the protracted exploitative and abusive labor relationships. However, in 2011 the government retracted and stipulated that foreign workers would need the employer’s authorization to change employers during the first 12 months of employment, and migrant domestic workers would need the authorization during the full duration of their contract period¹³⁷. In 2016, ten years after the first step towards abolishing *Kafala* in Bahrain¹³⁸, the government acknowledged the lengthy process of dismantling the system and the failure of protecting foreign workers’ rights. Consequently, the Bahraini government announced the introduction of a “flexible” work permit for irregular migrant workers that would allow them to be their own sponsors during two years and covering their own expenses¹³⁹. This visa presents several advantages and facilitates migrant workers mobility in the labour market, however not all foreign workers are eligible for it. Domestic workers, skilled workers and “runaway criminals¹⁴⁰” are excluded¹⁴¹. On another note, to be able to apply for the “flexible” work permit, a migrant worker has to provide a valid passport, which in many cases they will not possess, since there is no specific law in Bahrain that prohibits the confiscation of passports. Despite all that, Bahrain remains the country within the GCC with most flexible mobility policies for migrant workers.

¹³³ Ibid. Pages 12 - 15.

¹³⁴ A. Khan & H. Harroff-Travel (2011) “ *Reforming the Kafala: Challenges and opportunities moving forward*” . Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹³⁵ Decision No.79 for 2009 Regarding the procedures for transfer of a foreign worker to another employer. Adopted 16 April 2009. Entry into force 30 July 2009. Available at: <https://www.legalaffairs.gov.bh/Media/LegalPDF/RLMKT7909.pdf> [Last consulted: 1st April 2021].

¹³⁶ The countries in the region refer to this authorization as “No Objection Certificate” or NOC.

¹³⁷ ADHRB (2016) “*Bahrain Moves to Reform Kafala, Exclusions Remain*”. Available at: <https://www.adhrb.org/2016/10/bahrainkafala/> [Last consulted: 1st April 2021]

¹³⁸ In 2006 the Labour Market Regulation Authority (LMRA) was established.

¹³⁹ International Labor Organization (2017) *Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*. Regional Office for Arab States; Beirut. Pages 12 - 15.

¹⁴⁰ This category includes workers who have escaped abusive employers.

¹⁴¹ International Labor Organization (2018) “*Observation CEACER. Forced Labour Convention: Bahrain*”. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3335218 [Last consulted: 1st April 2021]

Kuwait declared in 2010 that the government would work on abolishing *Kafala* system by February 2011, yet before that date other announcements were made retracting from that position and announcing lighter amendments that would focus mainly on broader mobility in the labor market¹⁴². Even though back then these announcements positioned the country as the second one making more efforts to dismantle *Kafala*, currently the system still regulates the relationship between employers and foreign workers, and workers are highly unprotected. A slight intent of reform was made in 2016 with the Administrative Decision No. 378/2016 allowing migrant workers in the private sector to transfer employment without authorization of the *kafeel* after 3 years of work¹⁴³. However, this decision excluded migrant domestic workers who still need consent to transfer employment. Moreover, domestic workers in the country are also excluded from the labour law. Instead, a law regulating specifically domestic work was issued in 2015¹⁴⁴. However, it has proven to fall short of protecting these workers' rights according to international labour standards¹⁴⁵. Yet, Kuwait was the first country of the region to set a minimum wage for domestic workers, which was set around 60 dinars (\$200)¹⁴⁶.

Oman has taken very few steps to reform *Kafala* in the past, however this changed in 2020 when the government decided to ease restrictions in the field of transfer of employment. Prior to that, in 2003, the government issued a law that made working for an employer that was not the *kafeel* illegal, in order to prevent exploitative practices and human trafficking, but that failed to increase protections in terms of international labor standards for migrants¹⁴⁷. Decision No.157/2020¹⁴⁸ materialized just recently, but the Omani government had announced already in 2016 that authorization from the employer would no longer be mandatory. This was due to the observable improvement in the economy following the same decision that neighboring countries took¹⁴⁹. Nonetheless, this reform applies only after two years of employment. This means that migrant workers can only transfer employment without

¹⁴² A. Khan & H. Harroff-Travel (2011) “ *Reforming the Kafala: Challenges and opportunities moving forward*”. Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹⁴³ HRW (2016) “*Letter to His Excellency Sabah Al-Khalid Al-Sabah*”. Available at: https://www.hrw.org/news/2016/09/30/letter-his-excellency-sabah-al-khalid-al-sabah#_ftn45 [Last consulted: 1st April 2021]

¹⁴⁴ Law No. 68 of 2015 on Employment of Domestic Workers. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101760 [Last consulted: 1st April 2021]

¹⁴⁵ International Labor Organization (2017) *Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*. Regional Office for Arab States; Beirut. Pages 12 - 15.

¹⁴⁶ MEE (2016) “*Kuwait becomes first Gulf state to set minimum wage for domestic workers*”. Available at: <https://www.middleeasteye.net/fr/news/kuwait-becomes-first-gulf-state-sets-minimum-wage-domestic-workers-948977539> [Last consulted: 1st April 2021]

¹⁴⁷ A. Khan & H. Harroff-Travel (2011) “ *Reforming the Kafala: Challenges and opportunities moving forward*”. Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹⁴⁸ Decision No.157/2020 amendments to the provisions of the executive regulations of the Foreigners Residence Law Available at: <https://data.qanoon.om/ar/md/rop/2020-0157.pdf> [Last consulted: 1st April 2021]

¹⁴⁹ International Labor Organization (2017) *Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*. Regional Office for Arab States; Beirut. Pages 12 - 15.

authorization after two years of contract. It is not clear if migrant domestic workers can benefit from this reform, since the amendment is supposed to cover all foreign workers. However, according to Decree No. 189/2004 on labour rules and conditions for domestic employees¹⁵⁰, domestic workers are not allowed to transfer employment without authorization of the employer and the latter has to complete all necessary procedures in this regard¹⁵¹.

Qatar announced back in 2010 one of the most important steps taken by any country of the region to ensure migrants' rights. The government intended to require companies to provide details regarding the monthly salaries of their workers, which would allow the authorities to know which workers were being paid on time or if there were any delays. Yet to this date this measure has not been implemented¹⁵². In 2015, Law No.21 (2015) Regulating Entry, Exit and Residence of expatriates¹⁵³, was supposed to enhance mobility of migrant workers by eliminating the need of authorization for the transfer of employment. However, in practice, this law's main success was to remove the terminology of sponsorship, while conditions for migrant workers remained almost the same¹⁵⁴. This law was amended in August 2020, removing the need for authorization to transfer employment at any point by noticing the employer¹⁵⁵. This law does not cover domestic work, since it is covered by a specific law that allows domestic workers to terminate their employment with or without previous notice¹⁵⁶. Even though these are important steps, they do not address widespread abuse against migrant workers and ineffective implementation of these measures is still a major challenge. This has been captured by the compilation of testimonies of abuse, exploitation and death of migrants in the country, in particular during the World Cup 2022 campaign¹⁵⁷. In these regard, the country made important reforms during 2020 after international criticism increased during the preparations for the World Cup, however in February 2021 the country's Shura Council made took a step behind and most of these initiatives will no longer be applicable.

The United Arab Emirates announced in 2009 the implementation of a Wage Protection System to monitor payments to migrant workers and identify delays. In the same sense,

¹⁵⁰ Decree No. 189/2004 on labour rules and conditions for domestic employees. Available at: https://gulfmigration.org/database/legal_module/Oman/National%20Legal%20Framework/Labour%20Migration/22.2%20MD%20189%20of%202004_EN.pdf [Last visited 19th March 2021]

¹⁵¹ Migrants Rights Org (2020) "Oman eases restrictions on sponsorship transfer". Available at: <https://www.migrant-rights.org/2020/06/oman-eases-restrictions-on-sponsorship-transfer/> [Last consulted: 1st April 2021]

¹⁵² A. Khan & H. Harroff-Travel (2011) " *Reforming the Kafala: Challenges and opportunities moving forward*". Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹⁵³ Law No.21 (2015) Regulating Entry, Exit and Residence of expatriates. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102231 [Last consulted: 1st April 2021]

¹⁵⁴ International Labor Organization (2017) *Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*. Regional Office for Arab States; Beirut. Pages 12 - 15.

¹⁵⁵ HRW (2020) " *Qatar: Significant Labor and Kafala Reforms*" Available at: <https://www.hrw.org/news/2020/09/24/qatar-significant-labor-and-kafala-reforms> [Last consulted: 2nd April 2021]

¹⁵⁶ Ibid

¹⁵⁷ Amnesty International (2016) " *Qatar World Cup of Shame*" Available at: <https://www.amnesty.org/en/latest/campaigns/2016/03/qatar-world-cup-of-shame/> [Last consulted: 2nd April 2021]

authorities declared that migrant workers were allowed to transfer employment if their wages were delayed by more than two months and would be entitled to visa extensions. However these reforms did not really materialize in practice¹⁵⁸. Yet, in 2015 the government issued three new Decrees that represented important change in *Kafala* and intended to implement the measures that were announced since 2009. Through these decrees the migrant worker is entitled to unilaterally terminate employment at any time, transfer employment without authorization when the employer has failed to comply with their contractual obligations, and established a mechanism to resolve workers' complaints, as well as issue sanctions against fraudulent employers¹⁵⁹.

The Kingdom of Saudi Arabia and Jordan on the other hand have not been willing to reform or abolish *Kafala*. In the case of KSA, its government announced already in 2011 that they were not predisposed to reform, which is very worrying since it is the country that hosts the largest number of migrant workers¹⁶⁰. In March 2021, the country introduced labor law reforms that affect a limited number of migrant workers by letting them transfer employment without authorization, when certain narrow circumstances are met. This amendment falls very short on protecting migrant workers' rights, not only because it excludes all migrant workers not covered by the labor law, such as domestic workers and farmers¹⁶¹. But also because it does not address any abusive practices or advocate for the respect of international labor standards. In the case of Jordan, no reforms have been conducted even to facilitate mobility of the worker.

All the GCC countries have taken steps to reform the system at different extents. Even in the countries who claimed aiming to abolish the *Kafala* system, namely Bahrain and Kuwait, the implementation of their reforms falls very far from that goal. Instead, these countries have accomplished a more flexible policy in regards of transfer of employment. Amendments to this factor translate to better conditions for the migrant workers, who would be able to shift employers when subjected to exploitative and abusive situations. However, these flexibilities do not apply to migrant domestic workers, who remain unprotected and unable to liberate themselves from exploitation and abuse without falling in an irregular situation. Qatar, UAE and Oman have also been taken moderate steps towards ensuring rights and protections to migrant workers by easing transfer of employment. Moreover, both Qatar and UAE designed mechanisms to control the payment of wages, but they have not been able to materialize them in practice. In general, as it can be observed, these reforms tackle the transfer of employment because it has been proven to convert in economical benefits for the host countries. On the contrary, initiatives that actually translate on granting rights and protections to the migrants are not being entirely pursued.

¹⁵⁸ A. Khan & H. Harroff-Travel (2011) “ *Reforming the Kafala: Challenges and opportunities moving forward* ”. Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹⁵⁹ International Labor Organization (2017) *Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration*. Regional Office for Arab States; Beirut. Pages 12 - 15.

¹⁶⁰ A. Khan & H. Harroff-Travel (2011) “ *Reforming the Kafala: Challenges and opportunities moving forward* ”. Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹⁶¹ HRW (2021) “*Saudi Arabia: Labor Reforms Insufficient*”. Available at: <https://www.hrw.org/news/2021/03/25/saudi-arabia-labor-reforms-insufficient> [Last consulted: 2nd April 2021]

4.2 Lebanon's approach

In general, Lebanon can be placed as one of the countries that has done less efforts to reform the *Kafala* system¹⁶². Human rights defendants and experts have deemed *Kafala* as a modern form of slavery or human trafficking and condemned the abuses to migrant workers in the country. In particular, the United States has been one of the countries who leads such critiques and accusations, by placing Lebanon on Tier 2 Watch List in terms of human trafficking in 2000, where the country still remains today.

“Women from Sri Lanka, the Philippines, Ethiopia, and Madagascar who travel to Lebanon voluntarily and legally to work in domestic service, with the assistance of recruitment agencies, often find themselves in conditions of forced labor, including through the use of such practices as withholding of passports, non-payment of wages, restrictions on movement, verbal abuse, and physical assault. Workers who leave their employer's house without permission automatically lose their legal status unless a change in sponsorship is prearranged and approved by General Security, the government agency responsible for the entry, residency, and departure of foreign workers. In some cases, employers have kept foreign domestic workers confined in houses for years.”¹⁶³

Already then, the recommendations were suggested to the country to redeem itself and put an end to those practices.

“(...) enact the draft Labor Law amendment extending legal protections to foreign workers (...) enforce the law prohibiting the confiscation of domestic workers' passports, (...) increase formal bilateral partnerships and systematic information sharing with governments of source countries to better protect migrant workers from abuse and resolve cases of administrative detention, (...) provide the unified employment contract in the native languages of immigrating domestic workers”¹⁶⁴.

However, still to this date, no major action has been taken by the Lebanese government and none of these recommendations have been materialized in practice. In particular, through the testimonies and interviews conducted for the sake of this paper, one can come to realize that the practice of confiscating passports, even though it is prohibited by law, is still very common and encouraged by recruitment agencies and General Security. With the current crisis and specifically during the months of complete lockdown -including closure of the airport-, bilateral partnerships between Lebanon and countries of origin would have helped alleviate the hardships of stranded migrants whose desire was to return home.

Even though the system affects all migrant workers and these recommendations aim to enhance protections for all of them, one can not forget that domestic workers are placed in a very vulnerable situation among all the migrant collectives. Migrant workers are regulated under the *Kafala*, thus excluded from labor laws and its protections. Moreover, domestic work is not included in the labor laws because of the perceived private nature of housework. Lebanese labour legislation, in line with other GCC countries and Jordan, understands that domestic servants are to be treated as members of the family in order to preserve the privacy of the household. In addition, the fact that households are not considered as a workplace adds

¹⁶² A. Khan & H. Harroff-Travel (2011) “ *Reforming the Kafala: Challenges and opportunities moving forward*” . Asian and Pacific Migration Journal, Vol. 20, Nos. 3-4. Pages 293 - 297.

¹⁶³ United States Department of State (2010) “*Trafficking in Persons Report 2010 - Lebanon*” Available at: <https://www.refworld.org/docid/4c1883e2c.html> [Last visited 19th March 2021]

¹⁶⁴ Ibid

to the circumstance that private persons are also not considered as employers, thus domestic workers are not employees according to the national legislation, and their work remains unprotected¹⁶⁵. Even though this idea justifies the exclusion of domestic work from labor laws, in the past years some countries have been revising this statement or have been exploring alternatives to it. Acknowledging that the exclusion of domestic work from their labor laws puts the workers in a very vulnerable situation, where they are not entitled to any protection, not even from optional protections under any other law¹⁶⁶. Moreover, the protections that should have been granted by an alternative system, namely the *Kafala* system, are being perverted against the worker and misused by exacerbating the asymmetrical balance of power between parties. The exclusion of domestic work from the Labor Code clashes with Article 7 provision of the ICESCR that Lebanon has both signed and ratified:

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:
(a) Remuneration which provides all workers, as a minimum, with:
(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
(b) Safe and healthy working conditions;
(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
*(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”*¹⁶⁷.

Instead, in 2009, Lebanon put in place a Standard Unified Contract for domestic workers that stands as the sole legal document regulating the relationship between the employer and the domestic worker in the country. The SUC was supposed to establish a certain degree of protection to fill the gaps from the lack of coverage from the Lebanese labor law to this field of work. However, this contract has proven unable to successfully guarantee international labor standards. Moreover, even though other countries in the region pushed for reforming restrictions regarding mobility of foreign workers that resulted in economic benefits, no reforms have been conducted to facilitate transfer of employment, since authorization from the employer is still a requirement¹⁶⁸.

Nonetheless, the current crisis situation is striking as a factor of change for the *Kafala* system in the country. Due to the dollar shortage, the migrant worker sector and the system behind it has faced an unprecedented existential challenge. Lebanon has been attracting thousands of foreign workers every year, but the current situation has proved that Lebanese *kafeels* are

¹⁶⁵ International Labour Organization (2004) *“Gender and Migration in Arab States: The case of Domestic Workers”*. Regional Office for the Arab States, Beirut. Pages. 9 - 20.

¹⁶⁶ Ibid

¹⁶⁷ Article 7. International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 1966 entry into force 3 January 1976

¹⁶⁸ International Labor Organization (2017) *“Employer-Migrant worker relationships in the Middle East: Exploring scope for internal labor market mobility and fair migration”*. Regional Office for Arab States; Beirut. Pages 12 - 15.

unable to arrange workers' recruitment processes or to fulfill their obligations under the contract¹⁶⁹. According to experts and activists, the crisis is opening the door to reforms that could extend the coverage of the Lebanese labor law to migrant and domestic workers, abolishing the *Kafala* system. However, despite clear steps in the right direction, the same experts and activists fear that they will not materialize in practice¹⁷⁰. This is affected by the fact that Lebanon is a country very dependent on the *Kafala* system and run by a deeply corrupt government that favors the ones who profit from leaving the system untouched¹⁷¹.

4.2.1 The “new” Standard Unified Contract (SUC)

The consequences of the economic crisis that Lebanon is facing have been affecting employment for both nationals and migrants, but due to the already vulnerable situation that migrants had in the country, it has been extremely challenging for this collective. In April 2019, the Lebanese Ministry of Labor with the support of the International Labour Organization coordinated a Working Group for the reform of *Kafala* that was formed by national and international NGOs that work with migrants in the country¹⁷². Their recommendation was to adopt a revised Standard Unified Contract for the employment of migrant domestic workers that would address the main deficiencies identified on the previous version and would reduce the risk of forced labor associated with the system.

The new Standard Unified Contract was supposed to be adopted in September 2020. In general, it grants a deeper respect to internationally established labor standards, but against what the Ministry of Labor announced, it does not abolish *Kafala* system nor eliminate the dependency of the migrant domestic worker towards their *kafeel*¹⁷³. It introduces improvements in terms of the scope of domestic workers' duties and tasks, making the employer establish in the contract a closed list of them, which can not exceed one or two jobs, and reiterates on prohibiting the *kafeel* to employ the worker in more than one household. It also enhances the duties of the employer to respect the privacy of the worker by ensuring that the worker would have her own room with a key that only her will possess¹⁷⁴. Moreover, it guarantees the worker with the basic rights of mobility, to avoid domestic workers being captive for years, to respect their days off and holiday leaves, and stresses on the rights of

¹⁶⁹ L'Orient Today (2020) “*The crisis, an opportunity to break the corrupt Kafala system*”. Available at: <https://today.lorientlejour.com/article/1243877/the-crisis-an-opportunity-to-break-the-corrupt-kafala-system.html> [Last consulted: 4th April 2021]

¹⁷⁰ The Legal Agenda (2020) “*Lebanon's new standard domestic worker contract: a coin with two sides*” Available at: <https://english.legal-agenda.com/lebanons-new-standard-domestic-worker-contract-a-coin-with-two-sides/> [Last consulted: 4th April 2021]

¹⁷¹ Harvard International Review (2020) “*Modern Day Slavery: The Kafala System in Lebanon*” Available at: <https://hir.harvard.edu/modern-day-slavery-the-kafala-system-in-lebanon/> [Last consulted: 19th March 2021]

¹⁷² International Labour Organization (2020) “*National Consultation on Kafala Reform in Lebanon*” Available at: https://www.ilo.org/beirut/information-resources/WCMS_737980/lang--en/index.htm [Last consulted: 4th April 2021]

¹⁷³ HRW (2020) “*Lebanon: New safeguards for Migrant Domestic Workers*”. Available at: <https://www.hrw.org/news/2020/09/18/lebanon-new-safeguards-migrant-domestic-workers> [Last consulted: 4th April 2021]

¹⁷⁴ The Legal Agenda (2020) “*Lebanon's new standard domestic worker contract: a coin with two sides*” Available at: <https://english.legal-agenda.com/lebanons-new-standard-domestic-worker-contract-a-coin-with-two-sides/> [Last consulted: 4th April 2021]

owning a mobile phone and accessing the internet¹⁷⁵. Moreover, the contract accentuates on the fact that the worker has the right to own a copy of the contract in a language that she can understand. These provisions also represent an upgrade for domestic workers' identification and report of abuse and exploitation.

One of the most important changes that the contract introduces is the establishment of a minimum wage for domestic workers, which is a first step to end the differences between national and non-national workers wages. The minimum wage is set in Lebanese pound and according to the Ministry of Labor maximum deductions of 30% can be made to it to cover for in-kind benefits such as food, clothing and housing fee. Thus, the minimum wage after deductions would be 472,500 Lebanese pounds¹⁷⁶. Then the salary would be established in the contract by the parties, but it would not be less than the established minimum wage. The contract also states that the wages shall be paid at the end of every month. However, as experts pointed, the Ministry of Labor should take into consideration the discrepancy among exchanges rates due to the current economic crisis in wage calculations¹⁷⁷. This upgrade on the international labor standards that are to be guaranteed to migrant workers in the country adds to the fact that the new SUC also establishes a maximum of working daily and weekly hours by applying the same provisions that are granted under the Lebanese labor law. Thus, working hours should not exceed the eight hours per day and, exceptionally, workers might be asked to work overtime for a maximum of 12 hours daily and getting paid at a 50% higher rate¹⁷⁸. Weekly hours can not exceed 48 working hours and a weekly break of at least 24 hours is to be granted to the worker.

The contract further improves conditions for migrant workers establishing more conditions under which the employee can unilaterally terminate the contract and the employer should still pay for all legal entitlements and travel costs back to their country. This provision is of particular importance because it intends to liberate the migrants from the widely common "hostage situation" that many migrants face¹⁷⁹, when employers restrict the rights of the worker in order to protect the investment of the recruitment. To be able to enforce this newly acquired worker's right, but at the same time continue protecting the Lebanese *kafeels*, the Ministry of Labor proposed a formula. In case that the worker is willing to transfer to another employer, both the previous and future employers should split the costs of recruitment based on the time that they would benefit from the worker's services. Whereas in the case that the worker is willing to return home, the recruitment agency would be responsible for paying for part of the costs of the recruitment process. However, it is not specified how the employer and

¹⁷⁵ KAFA (2020) "*The new standard unified labor contract: a first step in abolishing the Kafala system*" Available at: <https://kafa.org.lb/en/node/428> [Last consulted: 4th April 2021]

¹⁷⁶ The Legal Agenda (2020) "*Lebanon's new standard domestic worker contract: a coin with two sides*" Available at: <https://english.legal-agenda.com/lebanons-new-standard-domestic-worker-contract-a-coin-with-two-sides/> [Last consulted: 4th April 2021]

¹⁷⁷ KAFA (2020) "*The new standard unified labor contract: a first step in abolishing the Kafala system*" Available at: <https://kafa.org.lb/en/node/428> [Last consulted: 4th April 2021]

¹⁷⁸ The Legal Agenda (2020) "*Lebanon's new standard domestic worker contract: a coin with two sides*" Available at: <https://english.legal-agenda.com/lebanons-new-standard-domestic-worker-contract-a-coin-with-two-sides/> [Last consulted: 4th April 2021]

¹⁷⁹ Ibid

the agency would share this cost¹⁸⁰. This provision also intends to end with the confiscation of passports, even though there is a specific provision regarding this particular practice in the contract. One of the specific reasons that are listed for the migrant to be able to exercise the right to unilaterally terminate the contract is when the employer withholds her passport or other personal documents. In consequence, these provisions are aiming to reduce the “runaway” phenomenon and the consequently irregular situation that emanates from this practice. Moreover, by enhancing prohibitions on passport confiscation the Ministry is intending to prevent undocumented migrants, thus reducing their vulnerability factors. Moreover, the SUC condemns all forms of abuse, harassment, intimidation and violence by stressing on the fact that the working environment must be suitable and safe, and giving the worker the right of terminating contract when this is not fulfilled.

Finally, the new standard unified contract also establishes the right of the worker to designate a third party in the country, which can be a person or an institution, to be contacted in case of emergency¹⁸¹. This progressive provision intends to guarantee more paths for protection for the worker and motivate workers to claim their rights when there is a dispute with the employer through this third party. However, for this provision to work effectively there must be efforts in place to restore migrants’ trust on the governmental bodies.

Notwithstanding the improvements that the new SUC represents, one can not forget that it is only a temporary solution and that efforts that have been put on drafting such a contract could have been put on stronger steps to abolish the system. Moreover, as experts and activists pointed out, this contract still reflects discriminatory practices and procreates the asymmetric relation between employers and employees, since it keeps the balance of power on the side of the employer¹⁸². In addition, experts are also concerned about the fact that gaps on protection might emanate from the unclear wording and weak content of the new draft¹⁸³. Also, as it has been repeatedly said, even the improvements that this contract represents in paper have yet to be materialized and that would not be possible without a governmental body who acts as a guarantor of such provisions. As it has been seen in practice, for the workers to actually be able to benefit from these upgrades, they should be granted a copy of the contract prior to their arrival to Lebanon in a language that they can understand. There should be in place a mechanism that monitors wages being paid entirely and in timely manner, as well as monitoring the compliance of the working conditions.

The most problematic clauses of the contract are regarding contract termination. Acknowledging that there has been an improvement for the workers to exercise this right, the contract enables the employer to do the same. Thus, the employer can terminate the contract

¹⁸⁰ Ibid

¹⁸¹ KAFA (2020) “*The new standard unified labor contract: a first step in abolishing the Kafala system*” Available at: <https://kafa.org.lb/en/node/428> [Last consulted: 4th April 2021]

¹⁸² The Legal Agenda (2020) “*Lebanon’s new standard domestic worker contract: a coin with two sides*” Available at: <https://english.legal-agenda.com/lebanons-new-standard-domestic-worker-contract-a-coin-with-two-sides/> [Last consulted: 4th April 2021]

¹⁸³ KAFA (2020) “*The new standard unified labor contract: a first step in abolishing the Kafala system*” Available at: <https://kafa.org.lb/en/node/428> [Last consulted: 4th April 2021]

at any point informing the worker with one month in advance, or dismiss the worker without prior notice when the latter fails to complete her duties without cause. However, when the employer exercises the right to terminate the contract, the worker is not able to demand wages owed, nor is she granted any compensation from the employer or the recruitment agency¹⁸⁴. This fact leaves the worker in a very vulnerable situation, because she can be dismissed at any point, which differs from the provisions of the Lebanese labor law that establish the obligation of three written warnings before dismissal and the right of compensation. Moreover, it does not take into consideration that in general workers also incur in high expenses to travel and be employed in Lebanon.

Furthermore, taking into consideration the exploitative and abusive practices in the country, it becomes evident that the new SUC only partially addresses the problems identified. First of all, the fact that rights and duties are written in a contract solves the issue of unclarity that results from *Kafala* being a customary practice. However, as experts have pointed out, the contract itself does not use very clear wording and there is big room for interpretation. Secondly, even if the contract establishes a wider range of protections for the worker, there is no mechanism in place to ensure that the contract will be produced in a language that the worker can understand and that she would be holding a copy of it. As one can come to realize from the testimonies presented, part of the deception from the migrants comes from their country of origin. The contract should not be only be displayed once in Lebanon, but also in the country of origin of the workers, so they would be completely informed prior their decision to migrate. That would solve situations such as what “Lily” and “Mary” faced when they were given false information in the recruitment agencies at their countries of origin. Thirdly, for the provisions that prohibit restriction on mobility, ensure days off, limit the working hours and enable communication with third parties, even though they are extremely positive because these are problems that were identified in practice, the contract does not establish any mechanism to secure that these would be respected. In this regard, one can not forget that to a lower extent, some of these rights were already established in the 2009 SUC, but they were not being respected, nor monitored due to the private nature of the household. Similar challenges can be faced with the right of the workers to keep their passports and identity documents. In this case, the competent authorities should ensure that this practice is not encouraged by recruitment agencies and General Security. Fourthly, regarding the salaries, acknowledging the introduction of a minimum wage for domestic work is a very important step. Challenges due to the discrepancy in the exchange rates have already been explained. Knowing that the expectation of higher salaries due to misinformation in the country of origin is another reason for workers’ deception, there should be mechanisms in place to ensure that the information received in the home country is true. In addition, the in-kind 30% deductible part of the salary can present certain challenges because it leaves it to the will of the employer to determine the amount of food and clothing to provide and the range to deduct from this percentage.

The SUC entered into force in September 2020, however it did not last long. In October, the Syndicate of the Owners of the Recruitment Agencies in Lebanon (SORAL) appealed in the

¹⁸⁴ The Legal Agenda (2020) “*Lebanon’s new standard domestic worker contract: a coin with two sides*” Available at: <https://english.legal-agenda.com/lebanons-new-standard-domestic-worker-contract-a-coin-with-two-sides/> [Last consulted: 4th April 2021]

Shura Council¹⁸⁵ against the reforms that the new SUC established, arguing that it would clash with existing labor laws¹⁸⁶. SORAL was successful with their accusations against the new contract, therefore the reforms were not applied on the grounds that the new contract “could inflict huge harm to the worker recruitment sector”¹⁸⁷. Thus, the version of the SUC approved in 2009 is being applied. Even though the new SUC was not a major reform to the system and did not establish any new mechanisms for the enforcement of the provisions, it faced very strong opposition from the collectives that benefit from the *Kafala* system. This fact shows the difficulty that the country still faces in terms of moving towards meaningful reforms and how the deeply corrupted institutions will not stand by the side of the most vulnerable.

4.2.2 Recent developments and other alternatives

Regardless of the challenges that the process of reforming *Kafala* faces, experts and activists still believe that the current situation, namely the socioeconomic crisis, the global pandemic and the rise of the Black Lives Matter movement, can arise as a catalyst for change in this regard¹⁸⁸. The dismissal of the new Standard Unified Contract was a real disappointment to migrants’ rights and steps to dismantle the *Kafala* system. However, it also arises as an opportunity to leave behind short term solutions that are only patches to the real problems and push for the only long term reasonable solution possible, which is the abolishment of the system.

In this sense, the country has been pursuing other goals that also intend to improve migrant workers’ lives and labor rights in Lebanon. For instance, the National Steering Committee On Women Migrant Domestic Workers was established in 2005. Since its establishment, the partners that are part of this committee, namely the Ministry of Labor, other UN agencies, government institutions and NGOs, have been meeting on a monthly basis¹⁸⁹. Among their most renowned achievements, they have been working on fairer recruitment processes. For this reason, they launched in 2013 a Code of Conduct that serves as a guide for recruitment agencies to promote and protect the rights of the migrant domestic workers in the country. This Code of Conduct was meant to balance the interests of recruitment agencies and domestic workers. However, in practice, the agencies are still one of the actors who perpetrate abuse and exploitation. On the other hand, the National Steering Committee also pushed for a blacklisting process of abusive employers and recruiters conducted by the Ministry of

¹⁸⁵ The Lebanese State *Shura* Council, which was established by Law No. 10434 of 14 June 1975 (Statute of the State Council), is currently the only administrative jurisdiction in Lebanon.

¹⁸⁶ L’Orient Today (2020) “*The crisis, an opportunity to break the corrupt Kafala system*”. Available at: <https://today.lorientjour.com/article/1243877/the-crisis-an-opportunity-to-break-the-corrupt-kafala-system.html> [Last consulted: 4th April 2021]

¹⁸⁷ MEM (2020) “*Lebanon rejects new migrant worker contract*” Available at: <https://www.middleeastmonitor.com/20201030-lebanon-rejects-new-migrant-worker-contract/> [Last consulted: 4th April 2021]

¹⁸⁸ L’Orient Today (2020) “*The crisis, an opportunity to break the corrupt Kafala system*”. Available at: <https://today.lorientjour.com/article/1243877/the-crisis-an-opportunity-to-break-the-corrupt-kafala-system.html> [Last consulted: 4th April 2021]

¹⁸⁹ OHCHR (2013) “*Lebanon: A code of Conduct to recruit migrant domestic workers*”. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/LebanonCodeOfConduct.aspx> [Last consulted: 5th April 2021]

Labor¹⁹⁰. The details of the blacklist are not public and experts agree that there are insufficient audits and inspections to feed it¹⁹¹. However, this procedure took an important role during the pandemic, since according to the General Security, employers that were abandoning their workers with unpaid wages in front of the embassies were being blacklisted. Employers that have been blacklisted are unable to sponsor another worker, but employers can find ways to avoid this prohibition.

Furthermore, activists see the current moment as an opportunity to push for the rights of migrants to form and lead a workers' union. Migrant domestic workers in Lebanon, as all foreign workers, are denied by the Lebanese Labour Law of the right to elect or be elected as union representatives. This disposition of the Lebanese Labour Code clashes with internationally recognized rights to which Lebanon is bound, such as Article 22 of the ICCPR:

“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”¹⁹².

Self-organized groups of migrants have proved to be extremely efficient and necessary in the time of crisis, being able to identify vulnerable migrants and provide basic aid, such as food or shelter, or refer them to organizations who provide services for migrant workers in need. Being able to exercise the right of association would mean that migrants themselves would be able to stand as an actor of change for the improvement of regulations regarding migrant workers and their enforcement¹⁹³.

Finally, one more step towards improvement for the conditions of migrant domestic workers was adopted this past February 2021 by General Security. According to this decision, employers are no longer able to accuse a migrant domestic worker of being “runaways” if they leave the workplace. In consequence, these migrants, who often are escaping from abusive situations, can not be persecuted or taken punitive measures against¹⁹⁴. This decision not only represents an important step in practice, since migrant domestic workers who left an abusive or exploitative workplace will not be treated as criminals, but also it has an impact on the terminology used by the authorities. They will no longer be using terms such as “runaway” or “escape”, because they are contrary to human rights¹⁹⁵.

¹⁹⁰ Dissent (2017) “*A Day Out and a Union: Lebanon’s Domestic Workers Organize*” Available at: <https://www.dissentmagazine.org/article/lebanon-domestic-workers-organize-union-kafala> [Last consulted: 5th April 2021]

¹⁹¹ LAW (2020) “*The Kafala system in Lebanon: How can we obtain dignity and rights for domestic migrants workers?*” Available at: <http://www.legalactionworldwide.org/wp-content/uploads/2020/10/MDWs-Policy-Brief-1.pdf> [Last consulted: 5th April 2021]

¹⁹² Article 22.1. International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976

¹⁹³ HRW (2015) “*Lebanon: Recognize Domestic Workers Union*” Available at: <https://www.hrw.org/news/2015/03/10/lebanon-recognize-domestic-workers-union> [Last consulted: 5th April 2021]

¹⁹⁴ KAFA (2021) “*Complaints of absconding and malicious theft against migrant domestic workers*” Available at: <https://www.facebook.com/323356544336/posts/10158880811139337/> [Last consulted: 5th April 2021]

¹⁹⁵ Ibid

5. CONCLUSIONS

The *Kafala* system is the migration policy that applies in the GCC countries, namely Bahrain, Kuwait, Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates, and in Lebanon, and Jordan, to recruit labor migration. It establishes the framework that defines the relationship between the employer and the migrant worker, with the unique characteristic that it binds the latter to the former not only as per the labor contract, but also as per the residency permits in the host country. This fact stands as the core of the main criticisms against the system, because it renders the migrant worker completely dependent on their employer. Thus, the system enables an asymmetrical relationship between the parties, overbalanced in favor of the employers, who not only satisfy their labour needs, but also are able to exercise an unacceptably high amount of control over the life of the worker. The imbalance of power is such that labor migration in these countries is widely known for situations of exploitation and abuse, as well as inhuman treatment of the workers that are clearly against human rights and internationally accepted labour standards.

Even though the *Kafala* establishes rights and duties for both parts of the labor relationship, a great cause of the power imbalance between the parties is the fact that, in general, only the worker fears the consequences of not fulfilling them. Thus, when the employers fail to fulfill one of the main duties towards the worker, namely renewing the residency permit, there are no punitive measures to be enforced towards them. On the contrary, the migrant workers, who can not perform such bureaucratic duties by him or herself, would fall into an irregular situation and lose their rights to be in the country. Thus, if caught by the authorities, face detention, deportation and high fines. Moreover, there are also no mechanisms that monitor that other duties of the employer are being fulfilled towards the worker. For example, there is not a system in place to oversee if the employer is paying the salaries in full and in a timely manner to the migrant worker. In consequence, many are retained salaries for several months or even the whole duration of their contract, and there is no authority or body they can appeal to to denounce this fact. From the experiences of the workers, one can come to realize that in the majority of cases they can not even resource to their embassies. In general, migrant workers express their lack of trust towards embassies and consulates, based on the fact that they tend to side with the governments of the host countries and corruption. On the other hand, when the countries of origin have aimed to give a response to these situations of abuse that affect their nationals, the outcome has not been in favor of the workers. For example, the case of Ethiopia or Bangladesh that banned their female nationals from migrating to the GCC countries, Lebanon, and Jordan to work. These kind of policies increase the risk of trafficking, and smuggling, and irregularity upon arrival¹⁹⁶.

Such a system is justified on the grounds that the Arab identity needs to be protected. This is due to the fact that nationals have become a minority in their own countries, as a result of the high demand of foreign manpower in the region. A system like *Kafala* facilitates migrant labor force that is inexpensive and easy to replace, since it does not encourage integration. On the contrary, by issuing residency permits that are linked exclusively to work permits and placing a sponsor that mediates between the State and the migrant, the sense of non belonging is enhanced. This fact is taken to the extreme, when one realizes that the personal life of the

¹⁹⁶ R. Jureidini (2002) “*Women Migrant Domestic Workers in Lebanon*”. Gulf Labour Markets and Migration. Pages 8 - 11

workers is highly controlled to prevent their further stay in the host country. Moreover, employers and other sponsors condone their degrading practices towards migrant workers on the basis that their investment needs to be protected. The exploitative and abusive situations are a result of the lack of mechanisms under *Kafala* that protect both parts of the labor relationship. However, employers can make use of the power imbalance to protect themselves, whereas migrant workers do not have any resource.

Female migrant workers are typically employed in the GCC countries, Lebanon, and Jordan as domestic workers. As a collective, migrant domestic workers are deemed to be at the peak of vulnerability among migrant workers. This is not only due to their labor relationship being regulated under *Kafala*, but also because they face gender-based discrimination. Moreover, the most important factor that contributes to their vulnerable situation is that domestic work is generally unregulated and not covered by national labor laws, which increases the risk of abuse, violence and exploitation, due to lack of protections. In their case, the power imbalance is exacerbated because migrant domestic workers depend on the employer for their daily sustenance and shelter, on top of their residency and working permits. Consequently, the level of control that the employer can enforce on the worker is much higher. This fact emerges in the form of very abusive practices, such as passport confiscation, limitation on communication, limitations on mobility, exploitative working conditions, inhuman or degrading living conditions and low or unpaid wages. And even if host countries aim to enforce mechanisms to protect migrant domestic workers from these situations, it has proven very difficult for such initiatives to be enforced in the privacy of the household. However, in practice, when the aforementioned countries have pushed for reforms, almost never migrant domestic workers were included among the collectives that could benefit from them.

Migrant workers and activists have been proclaiming that the only possible long-term solution to end such abusive practices is the abolishment of the *Kafala* system. In the past years, governments of the countries that apply *Kafala* have been announcing their will to reform or even abolish the system. However, countries that were aiming for more drastic steps have retracted with time, facing major opposition from the parties that benefit from the system as it is. Thus, the reforms that have materialized in practice mainly address labour market mobility, rather than increasing protections towards migrant workers and end all the exploitative and abusive practices that have been internationally denounced for years. Nonetheless, one should not overrule all the possibilities of improvement based on the fact that *Kafala* system is far from being abolished. Around the world, other systems of sponsorship are used as migration policies, but they do not share with *Kafala* the imbalance of powers between the parties. Nor do they share the unclarity of the rule itself, since they are not customary practices. Lastly, they also differentiate from *Kafala* by the fact that the State still grants protections to the migrants sponsored, so they do not fall in a complete situation of neglect in the host country. Taking those facts into consideration, there is much place for reform in the framework of *Kafala* that would signify a beneficial development on labour migration in the region.

In these sense, alternatives like the one pursued by Lebanon, namely the Standard Unified Contract, might not be an ideal solution but present advantages that, if materialized in practice, would represent a big step forward. Moreover, as many activists and researchers highlighted, the current moment represents for Lebanon an opportunity to change. Migrant

workers, and in particular migrant domestic workers, have been light shedded into their situation, that until that very moment was not being looked at. The Lebanese society is now more aware of the hardships of this community and increasingly ready to demand for reforms.

Although solutions to the lack of protection of workers might seem clear and obvious to the reader, major obstacles are impeding their implementation. Initiatives that have been aiming to protect workers from these abusive practices, have faced major opposition that impeded their realization. For example, the Standard Unified Contract in Lebanon, had less than two weeks of implementation, before the SORAL appealed against it in front of the Shura Council. On another hand, countries of origin and migrant workers themselves, should make more efforts to ensure that real information about the migrant process and the scenarios in the host countries are reaching potential migrants. The lack of real information is a phenomenon that has been studied by the experts in the field. To this point, it is not very clear what is the reason why migrant workers do not share their experiences of abuse and exploitation in their countries of origin, to prevent others to fall under the same situations. However, it seems to be related to stigma, pride and fear to lose the independency that they gained by migrating. Finally, the fact that there is not enough pressure from the International Community to abolish or reform *Kafala* also stands as a challenge to improve migrant workers conditions in the region. The United Nations, the United States, and the European Union all have criticized the system, but non of them has taken any concrete measures against it.

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