



Global Governance and Labour Migration in the GCC

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INTRODUCTION

Despite the shaky or elusive concept of global governance of migration as applied to the Gulf States, recent local state-based legislative governance may be best described as reactive to the pressures of international human rights-based organizations who have over the past two decades called for significant reform. More generally, the many issue-based campaigns have been to improve the rights of migrants, principally refugees, labour migrants and migrant domestic workers. This chapter will focus more generically on labour migrants. Coverage of asylum seekers and refugees as well as migrant domestic workers would require separate analyses.

Migration is a generic term for movement of people both within and across national boundaries, whether voluntary or forced. Article 2.1 of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families defines the term “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she

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is not a national” (UN, 1990). Officials in Gulf countries often object to the use of the term “migrant” as for them it connotes permanency (as in immigrant), preferring “foreign contract” labour or workers, thus highlighting their temporariness. Many analytical categories of migrants are based on their circumstances and motivations for moving. These include factors such as labour migration, migration for family reunion, education and training, economic enhancement opportunities, asylum and protection against persecution, environmental calamities and the like. Global governance of migration is primarily concerned with cross-border international migration, but in the absence of any international organization that is mandated to regulate migration, the difficulty is in the management of migration movements where the sovereignty of nation states over human entry and exit is difficult to circumvent, particularly, “in accessing rights and protection across borders and in foreign states” (Atmavilas, 2009: 17).

Of course there are those who argue against global governance altogether. Fanciful in terms of achievability, they suggest a self-regulating market with open borders will prove an economic boon on a worldwide scale in terms of production and the reduction of inequality and poverty (Caplan & Naik, 2015), making the world some US\$38 trillion richer (*The Economist*, 2017). The principle of open borders is also championed on moral or ethical grounds, suggesting that all schools of philosophy and religion recommend open borders (Caplan & Naik, 2015; Carens, 2007). This is an unlikely ideal, although some Muslim-majority countries have allowed Muslims, wherever they are from, to enter or transit without visas, such as Sudan and formerly Syria and Libya, particularly for asylum seekers.

Individual states, however, cannot singly address the myriad issues involved with international or transnational migration, particularly while there is no central authority, no formal coordinated institutional framework that enjoys multilateral support (Betts, 2012). Until recently, the International Organization for Migration (IOM) lay outside the United Nations (UN) without formal authority. However, in July 2016 it became a related organization of the UN and is now deeply involved with development of a Global Migration Compact, although its role has been questioned on the grounds that IOM is not a human rights-based organization, neither in its operations nor in its constitution (Guild, Grant, & Groenendijk, 2017). The International Labour Organization (ILO) has made considerable efforts in addressing the rights of migrant labour, with

a focus on the Middle East through its regional head office in Beirut. While the ILO, with various conventions related to the rights of migrants, and the IOM often coordinate their efforts, it is not clear whether one or the other is going to dominate in global governance of migration policies and practices.

However, now that the IOM is under the UN umbrella, it seeks a comprehensive mandate on migration. Both the ILO and the IOM remain active within the GCC and other Arab states in attempts to address regulatory and rights-based issues pertaining to migrant labour. Of principal concern have been factors that lead to irregular migration, forced labour and human trafficking, or what generically has been labelled “modern-day slavery”. The importance of the regulation of migrant labour recruitment procedures and costs has been more recently given prominence by the ILO, the IOM and the Abu Dhabi Dialogue, a multilateral forum for labour ministers of the main Asian labour-sending countries and GCC destination states.¹

From 2011, the Syrian conflict and resultant “refugee crisis” in Europe prompted for the first time a global dialogue in the UN to better protect migrants and refugees. In 2016, the New York Declaration for Refugees and Migrants by the United Nations General Assembly acknowledged the need for a more comprehensive and cooperative global solution to migration with a human rights approach. Invoking the 2030 Agenda for Sustainable Development and the 2013 High-Level Dialogue on International Migration and Development, UN member states, including Islamic states, are now committed to cooperate internationally and with consultation from a wide array of stakeholders, including civil society, the private sector, academic institutions, parliaments, diaspora communities and migrant organizations with a commitment towards the adoption of two Global Compacts in 2018—one on refugees and the other on “safe, orderly and regular migration”, the latter to be led by the International Organization for Migration (McAdam, 2017).

The 2016 Migration Governance Index, commissioned by the International Organization for Migration and conducted by the Economist Intelligence Unit (2016), identified five measures for “well-governed

¹This was an initiative launched by 11 labour-sending countries of Asia (Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam) and includes eight destination countries (Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia and the United Arab Emirates).

migration”: institutional capacity, migrant rights, safe and orderly migration, labour migration management and regional and international cooperation and other partnerships. This model of governance is comprehensive enough to cover a myriad of issues related to migration. The chapter will begin with an historical overview of labour migration to the GCC, followed by an analysis of four of the five governance issues and reform guided by the framework of the Migration Governance Index, excluding migration management as it is dealt with in other sections.

HISTORICAL OVERVIEW

Global governance of migration as applied to the GCC may be best described as weak and reactionary, but with growing signs of development. On the whole, governments of the GCC countries and the major migrant labour-sending countries have been reluctant to cooperate in practice while paying lip service to the desire for orderly and rights-based arrangements, particularly in recruitment and conditions of migrants in low-skill, low-income jobs, the main targets of international human rights critiques. A major impediment to proper governance is the unequal power of market demand by the wealthy GCC countries and the mostly Asian origin countries that have come to rely so heavily on migrant worker remittances as one of their most important sources of foreign currency earnings. At the same time, however, there have been creeping reforms to accommodate the mounting criticism from human rights-based organizations, both internationally and regionally.

There have always been inflows, outflows and transition flows of migration throughout the Middle East that resulted from interregional and international trade, pilgrimage, war and colonialism. For the GCC, the first migration stage (see Girgis, 2002), from the 1930s to 1950s, foreign managerial, technical and administrative personnel were needed for commercial oil exploration and production—coming mainly from western countries such as Iran, Holland, Britain and the United States. In the second stage, from the mid-1970s to the mid-1980s, following the oil price rise, large numbers of non-Gulf Arab workers came from Egypt, Jordan (mainly Palestinians), Yemen and Lebanon as well as Pakistan, India and Bangladesh. The third stage, 1985–1995, is characterized as a period of “replacement migration” following an oil price decline and the first Gulf war against Iraq. The flight of foreign Arab labour including large expulsions saw an increase in sourcing labour from East and South Asia.

The fourth stage, after 1995, arose from a concern over high unemployment of Gulf nationals, weak oil prices and slow economic growth. From that time, Gulf States created policies to “indigenize” their workforces and reduce their dependency on foreign labour, often referred to as “Saudization” (*nitiqat*), “Qatarization” or “Emiratization”. Governments introduced quotas for nationals in various industries, subsidized wages for nationals in the private sector and placed limits on foreigners in some occupations and the public sector. These programmes, though still ongoing, have produced little change (Randeree, 2012; Alsheikh, 2015). As increasing “cheap” labour from Asian, African and former Soviet Union countries filled the region, secondary labour market jobs become “racialized”. That is, the dirty, dangerous, difficult and demeaning jobs become associated with foreigners, so nationals refuse to undertake them, regardless of high levels of unemployment and where nationals are largely made financially secure by the state.

In 1968, the Arab Labour Organization developed the Arab Labour Agreement to facilitate labour movement in the region, giving priority to Arab workers with further provisions in the 1970s and again in the 1980s. The 1984 Arab Declaration of Principles on the Movement of Manpower called for interregional cooperation, but during the 1990s, these principles were considerably relaxed with little evidence of regional intra-Arab labour preferences. In 1975 Arab labour constituted 69 per cent of the GCC workforce, declining to 58 per cent in 1980. By 1985, Asian labour had reached 63 per cent (Castles & Miller, 1998; Cohen, 1995).

Currently, non-Gulf Arab labour is less than 25 per cent of the GCC workforce (Babar, 2015). Of Arab labour-receiving countries, only Iraq and Libya maintained policies of preference for Arab labour (Jureidini, 2005). Despite their affinities, non-Gulf Arabs in the GCC became a problem. From the 1970s, the political activities of migrant workers from Yemen, Egypt and Palestine were viewed as politically threatening, with particular concern over the socialist and pan-Arab tendencies of Nasserist Egyptians and Yemeni liberationist movements. Arabs were also more expensive and accompanied by dependent families requiring education and health services that, in Kuwait and the UAE, for example, were provided free. It was thought that because Arabs were more likely to remain, there would eventually be demands for citizenship and political participation (Yalcin, 2015; Girgis, 2002; Shah, 1994). Asians, on the other hand, were considered more dependable, less demanding, without accompanying families and more easily dispensable (Jureidini, 2005).

TODAY

There are no reliable data on existing migrant labour stocks in the GCC because the governments are inconsistent and do not publish official population or workforce statistics broken down by nationality or other demographics—only nationals and non-nationals. Table 14.1 shows an extraordinary reliance upon non-nationals in the GCC with the unique case of Qatar, where the population of nationals is less than 10 per cent.

Today, the Gulf States region is the largest destination for Asian low-skilled and low-income labour migration. While population and workforce data by nationalities is not published by state authorities, a recent report from the Asian Development Bank Institute (Hervé & Arslan, 2016) provides the most recent statistics on the deployment of Asian migrant workers to the GCC.

In 2014, the Gulf countries received 72 per cent of all labour migrants from the seven main Asian origin countries—Philippines, India, Pakistan, Nepal, Bangladesh, Indonesia and Sri Lanka—the Philippines being the largest, followed by India. The largest intakes are to Saudi Arabia and UAE. Although intakes are variable from year to year and country to country, figures for 2014 deployment of Asian nationals to the GCC included the Philippines (868,515), India (775,862), Pakistan (722,205), Nepal (274,221), Sri Lanka (268,552) and Bangladesh (254,684) (Asian Development Bank Institute, 2016).

Table 14.1 GCC: Total population and percentage of nationals and non-nationals (from national statistics, 2010–2017)

| <i>Country</i> | <i>Date/Period</i> | <i>Total population</i> | <i>% Nationals</i> | <i>% Non-nationals</i> |
|----------------|--------------------|-------------------------|--------------------|------------------------|
| Bahrain | Mid-2016 | 1,432,726 | 46.7 | 53.3 |
| Kuwait | End-2016 | 4,411,124 | 30.3 | 69.7 |
| Oman | Mid-2017 | 4,559,051 | 54.1 | 45.9 |
| Qatar | Early-2017 | 2,673,022 | 9.1 | 90.9 |
| KSA | Mid-2016 | 31,742,308 | 63.2 | 36.8 |
| UAE | Mid-2010 | 8,264,070 | 11.5 | 88.5 |
| Total | | 53,113,301 | 48.5 | 51.5 |

Source: Adapted from Gulf Labour Markets and Migration (GLMM), Gulf Research Center. <http://gulfmigration.eu/gcc-total-population-percentage-nationals-non-nationals-gcc-countries-national-statistics-2010-2017-numbers/>

Although much lower than originally, the number of Arabs in the GCC persist, but they are more likely to be in more professional and managerial positions commanding much higher salaries than Asians (Babar, 2017). While there are no reliable statistics, the Gulf Labour Market and Migration Research Centre at the European University Institute calculates that in 2014 the following total of non-Gulf Arab nationals in the GCC as a whole were Egyptians (2,320,569), Syrians (1,440,554) which include refugees after 2011, Yemenis (945, 462) primarily in Saudi Arabia, Palestinians (683,572), Sudanese (642,418), Jordanians (559,484), Lebanese (329, 886), Iraqis (100,397), Moroccans (47,295), Tunisians (34, 863) (GLMM, 2015).

The workforce in the GCC is distinguished in common parlance between “nationals”, “migrant workers” and “expats” (the latter, largely Arabs, Westerners and Indians in professional, technical and managerial positions). It is a three-tiered system where the salaries, working and living conditions are considerably different in scale and comfort.

Altogether, around US\$109 billion was remitted from the GCC to labour countries of origin in 2014 (Van de Glind, 2014). Remittances from the Gulf States to the main Asian labour origin states have been significant. Table 14.2 shows six out of the seven Asian countries have more than half of total global remittances coming from the GCC. Nepal is the most dependent as 71.2 per cent of financial remittances from abroad come from the GCC. From a relatively low population size, in 2013 more than 500,000 workers were deployed from Nepal, representing almost 2 per cent of its population (Asian Development Bank Institute, 2016: 2).

Table 14.2 Migrant labour remittances received by Asian economies from GCC, 2013 (%)

| <i>Country</i> | <i>GCC % of total remittances</i> | <i>US\$bill from GCC</i> |
|----------------|-----------------------------------|--------------------------|
| Bangladesh | 56.2 | 8.41 |
| India | 52.5 | 36.95 |
| Indonesia | 51.9 | 4.44 |
| Nepal | 71.2 | 4.18 |
| Pakistan | 61.4 | 10.48 |
| Philippines | 31.7 | 9.00 |
| Sri Lanka | 51.2 | 3.60 |

Source: Adapted from Asian Development Bank Institute, 2016: p. 15, Table 1.4; p. 83, Table A2.5

From such financial dependence of Asian countries on the GCC and the large supply of labour desperate for jobs and better incomes, there is a labour market power imbalance that has always favoured the Gulf States.

GOVERNANCE OF LABOUR MIGRATION IN THE GCC: ANALYSIS OF REFORM

Institutional Capacity

The idea of institutional capacity as articulated in the 2016 Migration Governance Index requires an assessment of the institutional frameworks and strategies, migration governance legislation and the availability of transparent data. For the GCC states, the more or less sudden oil wealth generation in the 1970s brought grand plans for development without adequate governance capacity to manage the immense need and flow of foreigners required—from low-skilled workers to high-skilled professionals in all industry sectors. The key GCC strategy for managing the entry, stay and exit of migrants was the *kafala* or sponsorship system.

For temporary foreign labour, *kafala* was an adaptation of the Islamic Bedouin principle of hospitality towards foreigners that originally included obligations and responsibilities of the *kafeel* (sponsor/employer) towards the foreigner. However, it was introduced in the 1950s as a convenient method of regulation and control of “guest workers” in the hands of private citizens, along with the state, backed up eventually by labour legislation and laws on the entry, exit and residency of foreign workers. In this sense, *kafala* may be seen as a privatization of migration governance (Babar, 2013) that also ensured the exclusion of foreigners in the socio-political power structures, deemed essential where foreigners far outnumber nationals in the population and workforce (Dito, 2014). Thus, under the *kafala*, there is no direct government control over migrant workers. Authority over workers is delegated to private citizens and residents, making them accountable for the workers (Shah & Fargues, 2011; Longva, 1997).

Sponsorship means an employer must take full responsibility for the foreign employee who may not leave the sponsor’s employ without his/her permission. To do so would criminalize the foreigner as an illegal alien and liable to arrest, detention and deportation. The *kafeel* informs the government of any change in the employment contract status of the worker (such as breach, renewal, expiry or absconding) and generally is responsible for

the cost of repatriation upon completion of the contract (Longva, 1997). Governments provide work visas more or less on demand from corporate and individual employers in accordance with their project needs, whether in oil and gas production, construction, retail and hospitality services as well as domestic workers in private households (who are excluded from the protection of local labour laws although Qatar and Kuwait have recently enacted separate laws for domestic workers). These work visas have been subject to manipulation and illegal “visa trading” which has decreased in recent years with the increasing use of electronic regulation and monitoring.

In the past few years a number of reforms have been introduced, particularly in the UAE, Bahrain and Qatar, purporting to reduce the control of the employer and give more discretionary rights to migrant workers. For example, in 2009, Bahrain announced an end to the sponsorship system by allowing employees to switch jobs with three-months notice without the permission of their employer/sponsor. In 2011, however, this was changed to the right to transfer without permission after one-year service (Human Rights Watch, 2013). In the UAE (in 2011) and Qatar (in 2016), new laws allow workers to change jobs without permission of their employer at the end of the contract period. In all GCC states, except Bahrain, a “wage protection system” allows workers to change employers if they have not been paid for two months or more (Jureidini, 2017a). The *kafala* system basically prevented the development of local labour market competition. Relaxing the laws on changing employers will increase development of local labour markets, depending upon the level of restrictions, including administrative procedural difficulties.

Competition in international labour markets are between countries vying for increased share of remittances and between private recruitment agencies and other intermediaries that facilitate recruitment, sometimes referred to as the “merchants of migration” or “merchants of labour” (Martin, 2017). Despite attempts to protect against exploitation of low-skilled, low-educated and low-income migrant workers, the transnational recruitment industry has established a well-honed system with widespread practices of bribery and exaction of extortionate amounts of money from the poorest of migrant workers in order to obtain the jobs they are so desperate to have (Jureidini, 2016a). Even recruitment through social networks exacts costs to many migrant workers (Abella, 2017). The fraudulent charges by private recruitment agencies that include kickback bribes to personnel of employing companies in destination countries amount to billions of dollars (Jureidini, 2016a). This is a system that has so far been

beyond state control although there are increasing calls by the IOM, ILO and civil society organizations for reforming the recruitment system under the auspices of the UN intergovernmental Global Compact for Migration scheduled for September 2018.

If and when Gulf States fully abolish the sponsorship system, the development of local labour markets may create a more ethically competitive environment to improve wages and conditions for low-skilled workers. That is, if the wage rates of migrant workers are to be set by supply and demand, allowing collective bargaining to take place. Indeed, this was one of the recommendations in a report on Qatar by the UN Special Rapporteur for Human Rights of Migrants (Crepeau, 2014). This will only be achieved, however, if there is serious reform of the migrant labour recruitment industry with more global cooperation between origin and destination country governments and recruitment agencies prepared to undermine the current structural culture of corruption (Jureidini, 2017b, 2017c).

Migrant Rights

Migrant rights issues in the GCC are raised continuously by UN agencies such as the ILO and IOM, the World Bank as well as international human rights organizations such as Amnesty International, Human Rights Watch, Anti-Slavery International and the Institute for Human Rights and Business. Civil society organizations and collectives are also increasingly active in influencing global policy with peak organizations such as the Global Coalition on Migration (<http://gcmigration.org/>) and Migrant Forum in Asia (<http://mfasia.org/>), a migrant rights advocacy network of grassroots organizations, trade unions and faith-based groups, as well as the GCC-based advocacy website, Migrant-Rights.org. The International Trade Union Confederation has been particularly vociferous in its criticism and initiated a formal complaint to activate an ILO commission of inquiry into Qatar (ILO, 2017a). Global advocacy organizations have funded critical research and analysis on migrant rights in the Gulf that include Humanity United, the Open Society Foundation and the Swiss Development Corporation. The US State Department's Office to Monitor and Combat Trafficking in Persons initiative has also played a role in ranking GCC countries in relation to anti-trafficking measures along with direct support from the IOM and ILO in establishing anti-trafficking units.

All of these organizations have collaborated directly with governments and businesses in the GCC countries at least over the past decade and on a continuing basis, although demands for reform have not always been met with agreement and compliance. For example, given their exclusion from the labour laws, legislation for the protection of migrant domestic workers has long been called for, but only in Kuwait (2016) and very recently in Qatar (August 2017) have specific protective laws been enacted for this very vulnerable section of the foreign workforce.² On the other hand, institutions such as the ILO in particular, IOM, Human Rights Watch, Amnesty International and Building and Woodworkers International (Chair of the Council of Global Unions' Working Group on Migration) have been invited to assist in reform programmes as well as to monitor for compliance (see ILO, 2017b; IOM, 2016; Qatar Supreme Committee, 2014; Malit & Al Youha, 2014).

The main migrant rights issues that have been directed at the GCC include restriction of freedom of movement such as withholding of passports, requiring sponsor/employer and government permission to change employers and, in the case of Saudi Arabia and Qatar, employer permission for an exit visa or travel notification to leave the country; crowded and poor amenities in barrack-style labour camps; excessive working hours, particularly during the summer months for those working outdoors; inadequate rest periods; long travel times in buses without air conditioning; deceptive and fraudulent recruitment practices leading to forced labour and exploitation related to human trafficking; inadequate food provision; and exclusion of domestic workers from the labour law (see, e.g., Andrees, Nasri, & Swiniarski, 2015; Shah, 2009; Jones, 2015; Kapiszewski, 2001; Crepeau, 2014; ILO, 2015; Verité International, 2016).

In response to and in collaboration with international agencies, a number of reforms have taken place in recent years, even though it has been piecemeal and many of these reforms still require assessments for compliance. International organizations and other critics consider them to be forward steps but fall short of international standards for migrant worker welfare (see, e.g., Migrant-Rights.org, 2017). To cite just some examples, Bahrain and the UAE have been considered the most progressive and at the forefront of reforms to improve the human and labour rights of

² Domestic workers include foreign female live-in housemaids, drivers, gardeners and others. Just over 50 per cent of domestic workers in the GCC are female, primarily from South and South East Asia (ILO, 2015).

migrant workers, with other states following. For example, since 2010 the UAE has introduced a wage protection system, employer bank guarantees for wage payments, an administrative system to prevent contract substitution, allowing job transfers without sponsor permission at the end of a contract, explicit statements that the legal prohibition of recruitment charges to employees applies to origin countries, a standardized labour contract and the establishment of visa offices in many labour origin countries to monitor and regulate the recruitment process.

In 2004, Bahrain embarked on a liberalization of its labour market to reduce high levels of unemployment of Bahraini nationals. With limited success, “[t]he policy was based on erasing the segmentation of labour between nationals and expatriates by fully liberalising the labour market and on curbing immigration by equalizing the cost of employing nationals and expatriates” (De Bel-Air, 2015). In 2009, Bahrain announced the abolition of the *kafala* system, but with strong internal opposition in 2010 it changed the law to require employees to work for one year before they are able to change employers without permission. Bahrain’s Labour Market Regulation Authority (LMRA) was established in May 2006 as a centralized government agency to regulate and control work visas and to issue licenses for and monitor recruitment agencies and manages a black-list of unethical companies and recruitment agencies.

The scale of the population of nationals and non-nationals in Saudi Arabia makes it a more dramatic case than other GCC states. With an estimated 11.7 million non-national residents in 2016, Saudi Arabia ranks one of the top five migrant destination and remittance-sending countries in the world. Millions pour into the holy cities of Mecca and Medina each year, many overstaying their haj and umrah visas; and with porous borders, particularly from Yemen and Ethiopia, the number of foreigners residing illegally in 2013 was estimated at 5 million (De Bel-Air, 2013). With high unemployment levels of nationals, particularly women and youth, the Saudization of the workforce has been a major policy issue since the 1990s, revived with the *nitaqat* campaign in 2011 (although with strong opposition from the business community in the private sector, preferring better trained and more reliable foreigners). Coupled with this, from 2013, a campaign was launched to reduce the number of irregular residents. In 2013 around five million irregular foreigners had their residency regularized while one million were either deported or left voluntarily (ibid). In August 2017, plans were announced for another round of expulsions of

migrants living and working illegally in the country, with a particular fear for the fate of half a million Ethiopians (Human Rights Watch, 2017).

Pertinent to the demography of all the Gulf States, the issue of second- and third-generation non-nationals born in the GCC (to foreign and local mothers) has been raised and on a larger scale in Saudi Arabia. “They are considered foreigners even if they have spent all their life in Saudi Arabia and foster no ties with their country of citizenship (if any, in the case of Palestinians, for instance)” (De Bel-Air, 2013: 7). In Saudi Arabia, second- and third-generation expats are estimated at between one and two million, with 30,000 third-generation Saudi-born Indians (*ibid*).

In 2015, some 38 reforms to the Labour Law were introduced by the Saudi Ministry of Labour on passport confiscation, wage payment delays, leave entitlements, contracts, injury compensation and labour inspections. No reforms, however, were forthcoming for migrant domestic workers (Human Rights Watch, 2015).

In Qatar, under tremendous external pressure from global human rights institutions since the 2010 awarding of the FIFA World Cup in 2022, as well as the threat of an ILO commission of inquiry (International Labour Office, 2016), recent reforms have included a wage protection system in 2015 as well as legislation reforming the *kafala* system of sponsorship, the exit visa requirement and increased fines for passport confiscation, which came into force in December 2016.

Rewriting the Qatar (sponsorship) law regulating the entry, exit and residency of expatriates, foreign nationals can change jobs without permission (no objection certificate) of their sponsor/employer at the end of their contract period, or after five years of service. The concept of sponsor (*kafael*) was abolished in favour of “recruiter” or “employer”, although a letter from the employer is still required attesting that the relationship was unproblematic. Similarly, the exit visa has been transformed into a “leave notification” whereby employers who object to an employee leaving the country must provide reasons to a special grievance committee that will quickly adjudicate. And in August 2017, the Emir signed a separate law for the protection of migrant domestic workers. These reforms, including violation cases and penalties, were detailed in a report to the ILO in February 2017 and a decision on the commission of inquiry will be made in November 2017 (International Labour Office, 2017).³ Critics, however, have suggested that the changes are only in the nomenclature and do not go far enough to constitute real reform.

³Since the time of writing, the ILO, satisfied with the Qatari reforms and promises of future reforms, withdrew the complaint.

Embassies of foreign nationals also play a role in protecting the human rights of their nationals in the GCC. They provide consular services, sometimes resolving migrant worker grievances, and may contain safe houses for victims of various forms of abuse, particularly female domestic workers. Labour attaches are usually responsible for checking the bona fides of employers and recruitment requests, employment contracts and accommodation sites. Because of the huge number of Indians in the GCC (around 6 million), the Indian government has opened resource centres and provided regular medical checks for their nationals (Rajan, 2017).

Safe and Orderly Migration

In June 2014, the International Labour Conference in Geneva passed the Protocol to the Forced Labour Convention of 1930 (C29) that came into force in November 2016. The Protocol was designed to update the convention in recognition of changed forms of forced labour and trafficking, specifically with migrant labour. None of the GCC countries ratified the Protocol, although all had ratified the 1930 convention. The Protocol gave new emphasis to protections from abuse and fraud during recruitment and placement, compensation, awareness raising and strengthening labour inspection.

The largely privatized nature of migrant labour recruitment to the GCC with private sponsorship and commercial recruitment brokers have made it difficult for both GCC and origin country governments, as well as the ILO and IOM, to manage, regulate and govern. For example, the structure of the recruitment process has a number of non-transparent elements that has allowed a culture of corruption with an employee-pays model operating (Jureidini, 2016a, 2016b).

Migrant worker indebtedness leaves them vulnerable to exploitation, including contract substitution on arrival with poorer wages and conditions than promised. The indebtedness means that the employer can rely on high levels of labour retention but is tantamount to debt bondage, forced labour and possibly trafficking. Employees may take a year or more of work to pay off the debt in their home country (Harroff-Tavel & Nasri, 2013; Martin, 2017). The 2018 World Bank/ILO Global Knowledge Partnership on Migration and Development (KNOMAD) survey on low-skilled migrant worker “recruitment fees” has been seeking ways to reduce these charges to migrant workers as a part of the safe, orderly and regular migration policy (Abella, Martin, & Yi, 2016; Martin, 2016).

In the view of this author, until a total ban is placed on any charges to workers for recruitment in line with the labour laws of Qatar, UAE and Saudi Arabia, the corruption within the migrant labour recruitment industry will continue at the expense of the poorest low-skilled workers (Jureidini, 2016a). None of the global, bilateral or multilateral discussions and agreements on migrant labour recruitment has seriously addressed this issue for remedial action (Wickramasekara, 2015; Jureidini, 2017b).

Regional and International Cooperation and Other Partnerships

While the UN has adopted three foundational (International Bill of Rights) and nine core human rights treaties, all apply to the rights of migrant workers. However, only one UN convention specifically addresses the rights of migrants—the 1990 UN Convention on the Protection of All Migrant Workers and Members of their Families (that came into force in 2003). Along with all major migrant-receiving countries, none of the GCC states have ratified this convention.⁴

None of the GCC countries have ratified all of the core UN conventions, and each country has ratified at different times. Table 14.3 summarizes the nine core UN conventions showing Kuwait to have been the earliest in accepting them. Most states have entered reservations on some of the articles in these conventions, primarily related to articles that are viewed as incompatible with Shari'ah laws and mainly in relation to personal status such as nationality, gender discrimination, marriage and religious freedom (see Khan, 2016; Mayer, 1998).

The Organization of Islamic Cooperation (OIC) established the Cairo Declaration on Human Rights in Islam in 1990 based upon Islamic Shari'ah but written in quite secular terms. It was ratified by 45 out of the 57 members of the OIC, including the GCC states except Saudi Arabia. It followed the previous Universal Islamic Declaration of Human Rights drawn up by Islamic councils in Paris and London as an Islamic response to the secular Universal Declaration of Human Rights (UDHR) that did not adequately cater for non-western cultures and religion (Johnston, 2015). While the declaration addresses equality between women and men, rights of marriage, rights of the child, right to medical care, right to self-determination and the like, it contains the condition that Shari'ah princi-

⁴As of November 2016, 49 states had ratified the Convention that included Arab states such as Algeria, Egypt, Libya, Morocco and Syria.

Table 14.3 Core UN conventions ratified by GCC states: Year of ratification

| | <i>Bahrain</i> | <i>Kuwait</i> | <i>Oman</i> | <i>Qatar</i> | <i>KSA</i> | <i>UAE</i> |
|--------|----------------|---------------|-------------|--------------|------------|------------|
| ICCPR | 2006 | 1996 | – | – | – | – |
| ICESCR | 2007 | 1996 | – | – | – | – |
| ICERD | 1990 | 1968 | 2003 | 1976 | 1997 | 1974 |
| CEDAW | 2002 | 1994 | 2006 | 2009 | 2000 | 2004 |
| CAT | 1998 | 1996 | – | 2000 | 1997 | 2012 |
| CRC | 1992 | 1991 | 1996 | 1995 | 1996 | 1997 |
| ICMW | – | – | – | – | – | – |
| CPED | – | – | – | – | – | – |
| CRPD | 2011 | 2013 | 2009 | 2008 | 2008 | 2010 |

Source: Derived from UN ratifications by country

ICCPR: International Covenant on Civil and Political Rights (1966)

ICESCR: International Covenant on Economic, Social and Cultural Rights (1966)

ICERD: Convention on the Elimination of All Forms of Racial Discrimination (1965)

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women (1979)

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

CRC: Convention on the Rights of the Child (1989)

ICMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

CPED: International Convention for the Protection of All Persons from Enforced Disappearance (2006)

CRPD: Convention on the Rights of Persons with Disabilities (2006)

ples are the ultimate arbiter. For example, Article 22a states, “Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Sharī’ah.” The Cairo Declaration attracted some intense criticism because of this (Kalanges, 2012).

In accordance with UN requirements, all GCC states have established ostensibly independent human rights institutions that have access to government departments and ministries to take complaints, assist in resolutions and report on activities that most often concern violations against migrant labour. On the one hand, Bahrain’s National Institute for Human Rights (established 2014) identifies its creation according to the Paris Principles (a set of international standards which frame and guide the work of National Human Rights Institutions, established in 1991 and adopted by the UN in 1993). On the other hand, Saudi Arabia’s National Society for Human Rights (established 2004) was more circumspect with an explicit Islamic focus, stating its *raison d’être* as: “protecting and defending the human rights in accordance with the ordainments of Islamic Muslim Law, the governing statute, and the international conventions and

covenants that don't contradict with the Islamic Muslim Laws" (<http://nshr.org.sa/>).

Qatar's National Human Rights Committee (established 2002) is a primary avenue for migrant worker complaints, providing pro bono legal services, hotlines and regular meetings with community representatives from different nationalities of the workforce. There is also a government department for human rights within the Qatar Ministry of Interior. And while Bahrain established the National Institute for Human Rights in 2014, its Labour Market Regulatory Authority in 2016 established an Expatriate Services and Protection Center, a one-stop-shop office housing officers of the relevant government departments to deal with migrant worker grievances.

Table 14.4 shows the ILO conventions ratified by each of the GCC states, with the fundamental and governance conventions listed below. Only Kuwait has ratified the two fundamental conventions on the right to form unions (C87 and C98) and only Saudi Arabia and UAE ratified the Equal Remuneration Convention (C100). Of the governance conventions, all states have ratified the Labour Inspection Convention (C081), but again, only Kuwait ratified the Tripartite Consultation Convention (C144). On the surface, this suggests Kuwait's formal acceptance of unions and collective bargaining. However, while Kuwaiti nationals have the right to organize and engage in collective bargaining, only one union for each occupation is allowed and only one federation is allowed, the Kuwait Trade Union Confederation, representing 15 of the 47 licensed unions. Foreign workers, however, can only join unions after completing five years of work and only as non-voting members (Bureau of Economic and Business Affairs, 2015). Indeed, most states allow unions of nationals but in practice not for foreign nationals, while approval for strike action is difficult to obtain and rarely tolerated (Jureidini, 2016b).

The hostility in the GCC states towards industrial relations conflict has been partly explained by an Islamic approach that rejects opposing employee-employer interests, preferring to view them as fraternal, complimentary and in harmony (Azid, 2005). In the post-colonial period, worker unions were viewed as motivated by communist or socialist ideals and thus a political threat. Thus, where unions were allowed, it was only for nationals, excluding foreign workers (Syed, 2010). Thus, mandatory provisions for state conciliation of industrial disputes are common and consistent with the Cairo Declaration of Human Rights in Islam (1990, Article 13) that states: "Should workers and employers disagree on any matter, the State

Table 14.4 ILO conventions ratified by GCC countries

| | <i>Fundamental</i> | <i>Bahrain</i> | <i>Kuwait</i> | <i>Oman</i> | <i>Qatar</i> | <i>KSA</i> | <i>UAE</i> |
|---|--------------------|----------------|---------------|-------------|--------------|------------|------------|
| 1 | C29 | * | * | * | * | * | * |
| 2 | C87 | | * | | | | |
| 3 | C98 | | * | | | | |
| 4 | C100 | | | | | * | * |
| 5 | C105 | * | * | * | * | * | * |
| 6 | C111 | * | * | | * | * | * |
| 7 | C138 | * | * | * | * | * | * |
| 8 | C182 | * | * | * | * | * | * |
| | Governance | (5) | (7) | (4) | (5) | (6) | (6) |
| 1 | C081 | * | * | | * | * | * |
| 2 | C122 | | | | | | |
| 3 | C129 | | | | | | |
| 4 | C144 | | * | | | | |
| | | (1) | (2) | (1) | (1) | (1) | (1) |
| | Technical | 4 | 10 | 0 | 0 | 9 | 2 |
| | Total | 10 | 19 | 5 | 6 | 16 | 9 |

* signifies ratified

Source: Derived from ILO ratifications by country

ILO fundamental conventions

1. C29 Forced Labour Convention, 1930
2. C87 Freedom of Association and Protection of the Right to Organize Convention, 1948
3. C98 Right to Organize and Collective Bargaining Convention, 1949
4. C100 Equal Remuneration Convention, 1951
5. C105 Abolition of Forced Labour Convention, 1957
6. C111 Discrimination (Employment and Occupation) Convention, 1958
7. C138 Minimum Age Convention, 1973
8. C182 Worst Forms of Child Labour Convention, 1999

ILO governance conventions

1. C081 Labour Inspection Convention, 1947
2. C122 Employment Policy Convention, 1964
3. C129 Labour Inspection (Agriculture) Convention, 1969
4. C144 Tripartite Consultation (International Labour Standards) Convention, 1976

shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.”

Most GCC countries have accepted ILO conventions on forced labour (1930), minimum working age, child labour and occupational discrimination. The ILO’s Domestic Workers Convention (C189) of 2011 has not been ratified by any of the GCC countries, although Qatar’s new law on domestic workers purports to be consistent with the convention (International Labour Office, 2017). C181 is the first international convention recognizing

domestic work as a formal employment relationship, giving domestic workers the same rights as others.

Three other ILO conventions that relate specifically to the rights of migrant workers have also not been signed by any of the GCC states, namely, Migration for Employment Convention, 1949 (C97); Migrant Workers Convention, 1975 (C143); and Private Employment Agencies, 1997 (C181). Although it should be pointed out that Convention 181 (Article 7) specifies that migrant workers should not be charged for any recruitment fees or costs, a principle that is in the labour laws of Saudi Arabia, UAE and Qatar, as previously noted.

UN and ILO conventions demand of states to ensure compliance with human and labour rights for migrant workers (Cholewinski, Macdonald, & Perruchoud, 2007). While the GCC states may have strong protective laws and regulations, this does not mean that those who do not comply will be seriously challenged and penalized. This level of global governance often ignores the important role of the private business sector that has a fundamental influence in all aspects of the migration process. They are involved in recruitment, employment, accommodation, transportation and facilitating remittances. The usual state-centred approach of human rights organizations has often been the cause of confusion and frustration, but it is widely acknowledged that companies also have human rights responsibilities towards migrant workers that they recruit and employ.

The Institute for Human Rights and Business, an NGO with the backing of the (nonbinding) UN Guiding Principles on Business and Human Rights, has targeted transnational brand-name corporations directly or indirectly conducting business in the GCC to impress upon them the need to implement international standards of corporate social responsibility. With reputational risk at stake, increasing numbers of companies and their subsidiaries are participating in forums to understand and try to deal with the rights and conditions problems associated with migrant labour. A recent example was the “Annual Leadership Forum for Responsible Recruitment” held in Berlin in June 2017. Companies such as Hewlett Packard, Coca Cola, Adidas, Vinci and others were alongside representatives from the US State Department, the International Organization for Migration, manpower agencies and NGOs such as the Interfaith Center on Corporate Social Responsibility and Migrant Forum in Asia (IHRB, 2017). There is also an online Business and Human Rights Resource with a substantial database including standard codes of conduct and the like.

In addition to such appeals to business for adherence to human and labour rights, there are also laws outside the GCC that can be applied to fraudulent and unethical practices within the GCC. Legislation such as the Bribery Act and the Modern Slavery Act in England, the Non-Financial Disclosure Directive of the European Union, as well as the Foreign Corrupt Practices Act and the California Transparency in Supply Chains Act in the United States can prosecute companies from these countries for violations of these laws if they are conducting business either directly or indirectly (through subsidiaries or subcontractors) in the GCC and elsewhere. In one case, for example, a legal NGO in Paris (Sherpa) brought a case against the French corporate giant, Vinci, charging its subsidiary (QDVC) with mistreating its workforce in Qatar. The case remains unresolved, but QDVC quickly addressed the issues raised, including labour recruitment and accommodation and the practices of its subcontractors (Kovessy, 2015).

CONCLUSION

The evidence shown suggests that GCC policies continue with the use of oil and gas wealth for economic development (along with booms and slumps) but will always rely heavily upon temporary foreign labour at all levels of the workforce. To date, the security of productivity has been largely because of the *kafala* system of control and access to highly skilled professionals, managers and technicians from non-Gulf Arab countries and others from around the world, as well as low-skilled low-income labourers primarily in construction, services and household domestic work from South and East Asia and Africa.

The labour migration issues raised here identify multi-faceted activities with a multitude of stakeholders at various levels that constitute an overwhelming complexity for governance and regulation of migration and with due regard for the rights of migrants. There are tremendous challenges to the states in bringing international standards of migrant worker welfare from supranational entities at various levels, including international NGOs, United Nations instrumentalities and civil society organizations. Here we see countervailing pressures and challenges on states in the GCC and elsewhere to both liberalize and privatize, but at the same time to take responsibility for the practices of individual and institutional migration actors that are interconnected and operate both locally and

globally—while simultaneously attempting to remain true to their convictions and versions of Islamic law, culture and beliefs.

Perhaps partly from the colonial heritage and the influence of global rights instruments articulated in secular terms, there is little in the way of transparency in the articulation of Islamic foundations in the drafting of labour and migration laws and conventions. At the same time, human and labour rights institutions critical of GCC countries treatment of migrant workers make no attempt to invoke Islamic ethics and jurisprudence, even though many states use different traditions and interpretations of Islamic principles and laws (Khan, 2016).

The most obvious tension in the notion of global governance of migration is the rights and proclivities of nation states whose right is to determine who can enter (and sometimes exit) their country. On the other hand is the international approach that focuses upon migration as a cross-border effect that requires not only international cooperation but also international law, regulation and governance (Gamlen & Marsh, 2011).

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