

Introduction

The region of the Middle East is home to one of the greatest populations of labor migrants in the world. Accompanying the significant number of individuals who have journeyed to the region for various forms of work is a unique history and a complex legal system regulating their movement. The development of the Kafala System, the legislative outline for entering and exiting labor migrants is important to examine due to the increasing debate over possible human rights violations taking place.

Presentation Outline

This project will analyze the Kafala system through the lens of human trafficking. It will begin by presenting definitions agreed upon at the international level regarding the issue of human trafficking as well as discussing the problematic nature of the “rescue industry”. The presentation will continue by discussing the establishment of the Kafala system. Once a clear understanding of the historical and cultural implications is covered, the presentation will highlight the human rights violations that have taken place at all stages throughout the Kafala system. It will conclude by illustrating how the system does violate international conventions and what can be done to address those violations through the perspectives of those who have actively been a part of the Kafala system. This research seeks to expose how and why the Kafala system not only violates various human rights but also facilitates human trafficking networks and exchanges, and what can be done to promote the agency of labor migrants within the system so that it can be reformed to eliminate these violations

Human Trafficking

The issue of human trafficking has continued to receive significant international attention from both governmental and non-governmental institutions as well as the average, informed citizen. The response it has received has prompted multiple, significant conventions leading to various protocols. The most widely endorsed protocol is the 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, also referred to as the Palermo Protocol. Being party to the protocol requires countries to criminalize human trafficking and develop anti-trafficking laws that align with the protocol. The definition set forth is important as it determines what does and does not constitute human trafficking, and therefore, what is punishable. The United Nations defines human trafficking in persons as “the recruitment, transportation, transfer, harboring, 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”. Human trafficking takes many forms, including forced labor and domestic servitude. The movement of a person is intrinsic within the

definition; however, the nature of this movement is complex. It can take place both within and across borders. Trafficked individuals may willingly move if deception was used. Geographical movement is not necessary for human trafficking to arise as harboring is a qualifier

The Rescue Industry

Accompanying the increased domestic and international attention human trafficking and other forms of contemporary slavery has been the development of what has been termed “the Rescue Industry”. The idea of the rescue industry is that individuals, governments, and non-governmental organizations are addressing cases of human rights violations as the “rescuer” and as individuals trapped in these systems as the “victims”. The idea has its roots in the postcolonial framework that was created to, from a western perspective, help non-Europeans, particularly women. In its present-day form, it provides everyday individuals the opportunity to achieve a feeling of moral accomplishment. Despite the well-set intentions that many within the rescue industry have, it has proven detrimental for migrants. Migrants are portrayed through one lens, as a victim. This overlooks the entire past life the migrant has lived. The situation for many migrants has worsened, paralleling the development of “rescue campaigns”. The most frequent action taken to save migrants is removing them from the situation without presenting them with alternative work. By taking migrants out of the situation, they are simultaneously being stripped of any possible income, however slight that might have been. The most detrimental consequence of this is the increased secretness surrounding situations of human trafficking and forced labor. This has also limited the number of migrants who have reached out for help. Another key problem the rescue industry perpetuates is the importance placed on the severity of crimes. The industry unintentionally glamorizes certain situations of contemporary slavery over others. This leads to international focus being placed on crimes that seem the most egregious. A problem migrants have rallied around within the rescue industry is its failure to connect survivors. Connecting migrants to one another helps to provide legal but also emotional and psychological support. They are unable to develop a social network, similar to when they were being exploited

Methodology

In deciding to conduct this research project, I had two broad passions I wanted to explore as a Middle Eastern Studies minor and an International Affairs Major. After briefly hearing of the Kafala system, I knew I wanted to delve as deep into it as an institution as I could. I did so primarily through initially reading the legislation provided by each country that practices the Kafala system. From there, I was able to read first-hand accounts from domestic workers who

were involved in the system and their perspectives and experiences. I then analyzed the international framework regarding contemporary slavery and human trafficking to be able to categorize and support why the system has facilitated these issues. I concluded my research by reading recent scholarship on the “rescue industry”. The primary question guiding my research was what specific human rights abuses, if any, did the Kafala system facilitate, specifically for female domestic workers. From there I was able to come up with the secondary research question, why has the action taken to combat this been insufficient, and what can be done to protect migrants and ensure they are still able to engage in migratory labor within the Middle East. The goal of this project has been to bring to light that the Kafala system does not only perpetuate forms of debt bondage but also leads to cases of human trafficking, and the most efficient way to combat this is not by preventing this type of migratory institution but by engaging those who are a part of the system to address the limitations it has.

The Kafala System

The Kafala system emerged in the 1950s. It was rooted in the Bedouin principle of hospitality. This established clear obligations regarding the protection and treatment of foreign guests. The system requires the sponsorship of migrants by citizens living within the Gulf States. The sponsor or employer is referred to as the Kafil and the sponsored person or employee is referred to as the Makful. Within the Gulf States, a citizen must “vouch” for a foreign visitor to be able to enter and become an employed individual. The system places all legal responsibilities regarding the employee into the hands of the domestic employer. Despite having cultural roots in practices of hospitality, the Kafala System in its present form has institutionalized a power imbalance between employer and employee that allows for systemic and severe human rights violations to take place

Human Rights Violations

The vulnerability of domestic migrant workers is targeted from the outset of their migrant journey. The key foundation in ensuring power is held by the employer is through the asymmetric information provided to employees. Agencies and employers hold substantive formal and informal knowledge in practicing the Kafala system. Upon arriving at the airport, these workers are kept in holding rooms while they are being processed. They are often kept without access to food or water and women are often sexually assaulted while they wait for the sponsor to pick them up. The most common, illegal, practice to exert complete control over employees is the confiscation of their passports. Because they are not citizens, migrant domestic workers rely on their passports for identification and to be able to travel, receive medical and legal assistance, and switch employment. Most migrant domestic workers reside within the

homes in which they work. There are no state or local monitoring systems established to check conditions within a home. Many workers are forced to sleep in public rooms of the house all while enduring abuse. Females in particular are rarely allowed to leave their house of employment without being accompanied by their employer. This presents a physical limitation but also a significant emotional limitation in preventing any chance for the employee to develop a sense of community or social network in the host country. The most common violations that arise in the home are long work hours that are far greater than what was agreed upon in the contract, no time off, sleeping in communal spaces in the house, and both physical and sexual abuse. Reported cases include having their hair forcibly cut, being given spoiled food, having their feet burned, being beaten with sticks and mops, being told they are dirty and don't have a brain, and completely depriving them of food and water. Despite residing in the host country for employment terms that are typically longer than a year, domestic migrant workers are both institutionally and societally barred from integrating into their surrounding communities. In the Gulf States, they are actively prohibited and discouraged to naturalize. This amplifies the power imbalance between the employer and employee as the dependence is heightened once the term of employment is over as the employee has no access to money or housing and cannot turn to friends or other sources of income they may have acquired. The terms of the contract period ending written into the Kafala system work to trap domestic migrant workers in a vulnerable position. It is commonplace for employers to intentionally not renew these work papers because it makes the employee have illegal status. This is used to further trap the employee because if they leave to seek any type of outside help and are either stopped outside the house or within any government building, they will be declared illegal and immediately deported. If the sponsor decides to not renew the contract, then the employee is no longer sponsored within the Kafala system and must return home immediately. This often takes place before the employee ever receives their pay.

Violations at the Religious and International Level

Despite the obvious moral and ethical abuses taking place, it is important to highlight the religious and international policies and agreements that are also being violated. Many of the Gulf countries are ruled under Islamic law. A key principle of Islam is Sadd al-Dhara'i. This means "closing off means that can lead to evil" or forbidding any action if it leads to an outcome that is forbidden under Islam. Islam promotes fair treatment between workers and employers. It forbids the mistreatment of employees who in return must display respect for the position of their employer. Other important beliefs within Islam that illustrate the proper relationship between employer and employee are just wages, clear and fair contracts, and the freedom of movement. It is clear that the Kafala system violates the laws and beliefs of Islam governing these countries. The infringement of various international policies and conventions is even greater. All

GCC countries are party to the 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons. This means that they have a requirement to criminalize human trafficking and develop anti-trafficking laws. The Kafala system facilitates the situation of human trafficking by giving the power to control the movement of another individual to the sponsor. Ultimately the use of deception and coercion in the creation of the sponsorship contract is the fundamental underpinning of what gives the employer asymmetrical power. All of the GCC countries have also ratified the Forced Labor Protocol. The Kafala system is in direct violation of this because the consent to work made in the contract by the employee is not informed, and they cannot leave freely at any time. By being party to these two conventions, it raises the significance of the issue to the international stage.

Reforms

Female domestic workers make a significant journey to participate in the Kafala system due to various push and pull factors. The root of why human trafficking arises is traced back to structural and historical impediments to immigration. The more restrictive barriers to migration are, the greater the likelihood migrants will become readily exploitable. Ending the sponsorship is not the solution, as echoed by many of the domestic migrant laborers who have participated in it. It is of the utmost importance that their voices are heard as they are the only ones who hold the experience necessary to tackle the inequities fostered by the Kafala system. One key focus that has been exposed is labor mobility. Providing employees the right to freely switch employers without needing signed permission or the threat of deportation restores their freedom of movement and increases accountability for employers to respect the contract and the rights of their employees. The second change that should take place is formalizing the Kafala system under the Ministries of Labor rather than the Ministries of Interior. This will apply all of the states' labor laws to employees and guarantee the monitoring of living and working situations. Finally, the promotion and use of social networks must be amplified. These networks are necessary to close the information gap that new employees have during and after the recruitment process. The interaction between domestic migrant workers before, during, and after their employment will provide them with knowledge on what they will experience, their rights, and the emotional support necessary when entering and leaving a new country.

Conclusion

Completing research on vulnerable populations, particularly those participating in a state-controlled system, exposes many of the realities that the globalized world has created. The same

advantages to increased connectedness across borders has simultaneously fostered a situation where basic rights are violated with little promise of punishment for the perpetrators. This is not unique to the Middle East and is certainly not unique to domestic labor migrants. Analyzing the Kafala system has illustrated a very particular sector of society that has been systematically alienated at both state and societal levels. By listening to and advocating for the needs of migrant domestic workers, the international community will be able to avoid falling into the trap of the rescue industry while still maintaining the necessary flow of workers and income into and out of the region.