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Lebanon and Syria

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*The Kafala System in Lebanon
– An Unequal Power Balance*

The **Lebanon Kafalas**

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Firstly,

Lebanon is currently experiencing one of the most difficult times in history as the country is wrestling with a dire economic situation, a global pandemic and political instability.

The Lebanon Papers series therefore aims to offer an overview on the current situation in Lebanon and provide possible solutions for a better future.

Its purpose is to prevent disinformation by ensuring sound reporting while explaining the challenges as simple as possible for the information to be accessible to as many people as possible. The paper series consist of well-founded reports on different topics using political, economic and judicial perspectives in order to achieve a comprehensive coverage.

The sixth issue of the series addresses the kafala system in Lebanon. The kafala system is a legal framework defining the relationship between migrant workers and their employers that is widespread in the Middle East. While it is designed to supply booming economies with cheap labour, basic principles of labour and human rights law are often times completely omitted. Consequently, the system has rightly been criticised as it traps migrant domestic workers in potentially harmful situations by tying their legal status to their employer. This paper looks at this system and also explores ways how one can strive for the eventual abolition of a system that has no place in the 21st century.

We hope that you will enjoy reading our paper series and are looking forward to any feedback that you might have.



Kristof Kleemann

*Project Director
FNF Lebanon and Syria*



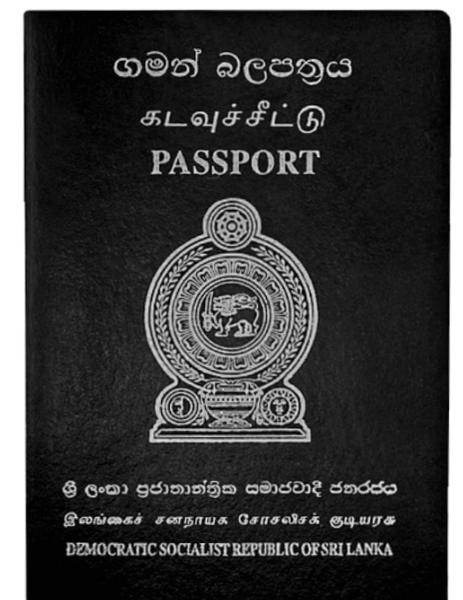
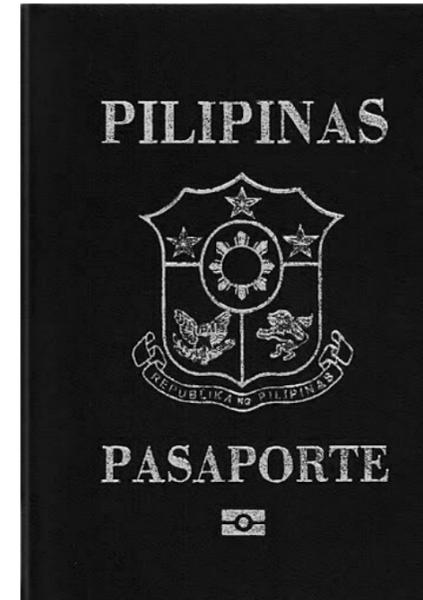
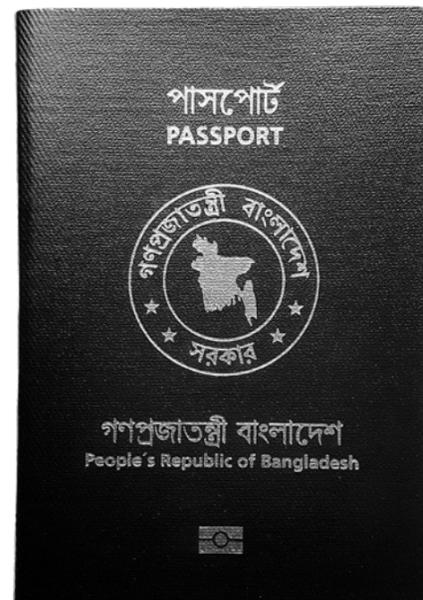
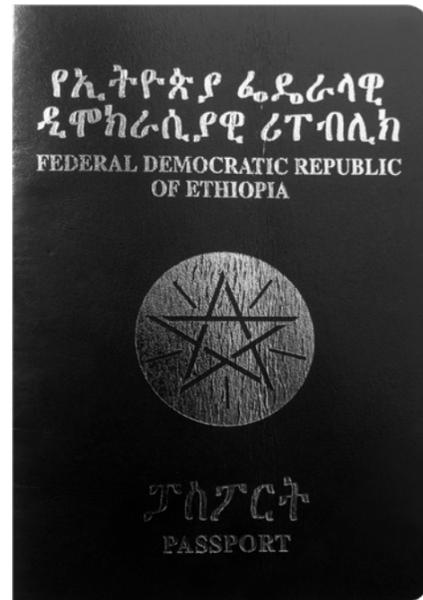


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Meet the Author

I am a graduate lawyer specialised in International, European law and Human Rights. After completing my legal studies at the Ludwig-Maximilian-Universität in Munich I moved to Beirut in order to gain work experience in the region. Currently I am doing my LL.M. in public international law remotely at Utrecht University. During my studies in Munich I gained work experiences, both in law firms such as Freshfields or Beiten Burkhardt, as well as through an internship in a foundation in Bogotá. Cultural exchange, languages and the interaction of traditions and history of each country in the respective legal system, have always fascinated me. I am particularly interested in the question of how best to consolidate the principles of the rule of law. However, it is not only legal aspects that need to be considered, but also the interplay between politics, religion and society,

The Kafala Sytem in Lebanon: An Unequal Power Balance



Migration has many faces. One of these forms is characterised by people being forced to leave their home country due to a lack of economic prospects. Thus, they leave their motherland in search of work in a host country to provide support for their family back home. A visa is required to be able to legally pursue this possibility. In principle, these work visas are issued by the host state, which assumes responsibility for the workers. What happens when the responsibility is not assumed by the host state but by a private company or even a private person?

It opens the door to human trafficking, abuse, and corruption.

The recent events that characterised 2020 and the beginning of 2021 in Lebanon did not only have a huge impact on the population but severely affected the most

vulnerable communities within the country, among them: migrant workers. After the start of the pandemic, the impossibility to return to their home country, a hyperinflation that results in decreased employment opportunities, and the inability to access medical care, marked the lives of many migrant workers in Lebanon. Due to the worrying situation in the country one might lean to the conclusion that foreign workers would stop coming to Lebanon, which in turn could help to end the sponsorship system in place. Unfortunately, this is not the case.

The Kafala system is also known as sponsorship system. Instead of the state, a private person being the future employer sponsors the visa for their employee. Therefore, the migrant worker does not have a specific working visa, and is therefore not protected under the domestic labour law and becomes fully dependant to

his or her sponsor, as their work permit is linked to the sponsor's responsibility. This system is spread all over the Middle East, particularly in the Gulf countries, Lebanon and Jordan. It is composed of various factors that result in the difficulty to dismantle it. Not only the state agencies and the population of the host state, but also the home state are stakeholders in this system. Therefore, it is necessary to first get a better understanding of what the Kafala system actually is, how it is composed, in order to have a closer look at the current challenges migrant workers face and lastly what could be done to put an end to the system.

"The migrant worker does not have a specific working visa, and is therefore not protected under the domestic labour law."

I. Overview of the Kafala System and its Roots

"The Kafala system facilitates modern day slavery."

Booming economies and the necessity for cheap labour first led to the development of the sponsorship system, it was promoted with the argument that it supports the growth of the local economy. However, the system also legitimises the exploitation of migrant workers due to a lack of regulation and protection. As a result, they are not only underpaid and discriminated against, but gender-based violence characterises their daily lives. The events of the last year: increasing demonstrations against discrimination, the start of the pandemic, as well as the preparations for the FIFA World Cup in Qatar 2022 have shed some more light on the controversial and dehumanising system. However, more education, legal and social action is needed to sustainably reform or even abolish this sponsorship system.

The Kafala system is the legal basis for an employment relationship between a migrant worker and his local sponsor, who is usually also his employer. This system is dominant in the Gulf states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE, as well as in Lebanon and Jordan. It gives private individuals or companies permission to hire guest workers. However, the so-called sponsor does not select his future employee personally, but through private recruitment companies.



With the help of these agencies, the sponsor has the opportunity to select workers according to their origin, age and skills. The sponsor then pays for travel costs and accommodation, usually in the form of dormitories, or in the case of domestic help, in their own home. As the guest workers enter the destination country with the help of the sponsor, they do not have a work visa and therefore no work permit. This in turn means that they are not protected by local labour law and are thus vulnerable to exploitation due to their fragile legal position. The residence permit of the guest worker is linked from the beginning to the work permit made possible by the sponsor. Only the sponsor is legally able to extend or terminate both. This creates an unequal power balance that results in the need of the sponsor's consent for the migrant worker to change jobs or to enter and leave the country. If the migrant worker acts without the required consent of his sponsor, this constitutes a crime that can result not only in the termination of the employment relationship, but in imprisonment or deportation. Workers have few, if any, legal means to defend themselves against exploitation. Due to its legal structure, the Kafala system facilitates modern day slavery.¹

¹ Council on Foreign Relations, *What is the Kafala System?*, 20.11.2020 <https://www.cfr.org/backgrounder/what-kafala-system> (viewed: 21.03.2021, 16:55)

	Join Unions	Change Job or Quit without Permission	Leave Country without Permission	Minimum Wage	Domestic Workers Included Under Labor Law	Standard Contract for All Workers
Bahrain	Yes	After 1 Year	Yes	No	No	No
Jordan	Yes	After 1 Year	Yes	Yes	Yes	Yes
Kuwait	Yes	After 1 Year	Yes	Yes	Yes	No
Lebanon	Yes	No	Yes	Yes	Yes	No
Oman	Yes	No	Yes	No	No	No
Qatar	After 1 Year	Yes	In most cases	No	No	No
Saudi Arabia	No	No	No	No	No	No
UAE	No	No	No	No	No	Yes

Source: International Labour Organisation

The word 'Kafala' derives from the root كفل - Kaf - fa - lam, which means "to feed, support for a warrant; hence 'Kafala' refers to bail, guaranty, security or sponsorship"² It describes the relationship between two parties: The كفيل - Kafil "who is responsible, answerable, amendable, or a sponsor or surety"³ and the مكفول - Makful, the sponsored who is the migrant worker coming to a new country for a job. Although the system has its origins in Sharia law, its structure today is not comparable to the initial agreement. As in Islamic family law the word 'Kafala' "refers to a formal agreement to provide temporary support for an orphaned child until adulthood"⁴. Therefore, it appears to be more accurate to trace the contemporary application of the Kafala system back to the British colonial era in the Gulf countries, foremost in Kuwait and Bahrain, in the early twentieth century. Due to Britain's occupation over the territory, it had legal jurisdiction over all foreigners. According to British officials, guest workers were not only a necessity but a problem. Due to the fast-growing economy and the relatively small population in the Gulf countries, additional labour was increasingly needed. At the same time, regulation of migration was necessary for security reasons, and to control the influx of immigrants.

² Wehr Hans, *A Dictionary of Modern Written Arabic*, edited by J. Milton Cowan, 4th edition, Ithaca: Spoken Languages Services, 1994, p. 976

Thus, sponsorship requirements were introduced that resulted in the delegation of responsibility for migrant workers from the state to a private person.⁵

As the Kafala system is shaped differently in each country, this paper will focus on the system in Lebanon. Lebanon's history regarding the implementation of the Kafala System deviates from the GCC states, as migrant workers were not necessarily hired due to the economic boom, but more by wealthy Lebanese families before the start of the civil war (1975-1990). These workers were either from poor Lebanese families or coming from neighbouring countries. From then on Lebanon started relying on labour coming from outside. Due to deteriorating relations with neighbouring Arab countries and increasing insecurity in the labour market, the immigration of Arab guest workers decreased. Lebanon benefited from the first large wave of Asian and African migrant workers in 1970, which reinforced the implementation of the Kafala system in the country.⁶

³ Jureidini Ray, Hassan Said Fares, *The Islamic Principle of Kafala as Applied to migrant Workers: Traditional Continuity and Reform*, Chapter 6, p. 93

⁴ Ibid footnote 3

كفيل

Kafil

"who is responsible, answerable, amendable, or a sponsor or surety"

كفل

Kafal

"to feed, support for a warrant; hence 'Kafala' refers to bail, guaranty, security or sponsorship"

مكفول

Makfoul

"the sponsored who is the migrant worker coming to a new country for a job."

II. Present Structure of the System

Lebanon inhabits nearly seven million people, among them estimated 250.000 migrant workers that are employed under the Kafala system.⁷ Due to the high number of irregular migrants, it is nearly impossible to obtain an accurate number. Recent events resulted in an outflow of migrant workers. According to Nidaa Al Watan approximately 100.000 documented and undocumented migrant workers left in Lebanon. In January 2020, 2844 migrant workers entered Lebanon pursuant to the ILO, whereas in January 2021, 883 migrant workers arrived in the country. They mainly come from the Philippines, Ethiopia, Nepal, Bangladesh, Sri Lanka and other African and Southeast Asian countries. They leave their home countries due to lack of prospects and financial hardship, with the hope of earning some money in Lebanon in order to provide their families with the necessary support. However, the link between the guest workers' residence permit and the work permit granted by the sponsor may have severe consequences the guest workers are mostly unaware of. The legal situation leaves great gaps that employers can exploit to their benefit and the sorrow of migrant workers. Whether the guest workers find a responsible and caring sponsor depends entirely on luck. In most cases however they are not treated respectfully. Once they arrive at their new employer, their passports are often taken away. They are restricted in their freedom of movement, hardly have a day off, and are allowed little to no communication with their family - in short, the majority does not have access to adequate living conditions. The strict measures carried out by the sponsor, domestic migrant workers usually call their bosses Madame and Mister, are legally justified by the fact that the sponsor has taken responsibility for the guest worker. The workers are locked up out of fear that they will run away, steal or even become pregnant, regardless of the fact whether there is sufficient evidence or accusations to support such a suspicion. Only the sponsor can choose his future employee through recruitment agencies. Racist structures are clearly visible within the system. The high society in Lebanon perceives itself primarily as a white society. Thus, a certain hierarchy can be seen due to the salary of the guest workers in comparison: Women from the Philippines have the highest salary, followed by Ethiopians and lastly women from Sri Lanka. This hierarchy in salaries is based on the education, skills, language and attractiveness of the migrant worker.

Legally, such treatment of migrant workers is hardly justifiable. Lebanon is far more advanced than its neighbouring countries in ratifying international conventions. Moreover, the Universal Declaration of Human Rights (hereinafter UDHR) is not only enshrined in the preamble of the Lebanese Constitution, but Art. 2 of the Civil Code stipulates that international conventions take precedence over ordinary law pursuant to the principle of the hierarchy of norms. According to the UDHR, as well as the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter CEDAW), International Convention on Civil and Political Rights (hereinafter ICCPR), the exploitation and treatment of workers described above constitutes a violation of the international legal order. This is because the latter explicitly protects, among other things, safety, equality, freedom from slavery and forced labour, safe and fair working hours within the framework of the conventions.⁸

"Once they arrive at their new employer, their passports are often taken away. They are restricted in their freedom of movement, hardly have a day off, and are allowed little to no communication with their family - in short, the majority does not have access to adequate living conditions."

However, according to Art. 7 of the Lebanese Labour Law, domestic workers are excluded from the scope of application of the national labour law, which means that its protection and guarantees such as minimum wage, annual leave and a certain number of working hours do not apply to migrant workers.⁹ Due to the lack of special regulations in favour of refugees, migrant





workers, and non-Lebanese in general, a standard unified contract enshrined in the domestic labour law, which is compulsory since 2009, is the only protection for migrant workers within the Kafala system. However, this contract is exclusively in Arabic and does not include the right of the guest worker to keep their passport. It stipulates that the employee works a maximum of 10 hours per day and is entitled to 8 consecutive hours of rest. In addition, the migrant worker has the right to sick leave, 6 days' holiday per year, the right to take telephone calls, and the right to health insurance, which is to be paid for by the employer. The salary must be paid at the end of each month with an invoice signed by both parties. Finally, the contract can be terminated by either party. The employee has the

right of termination only if he or she is not paid for three consecutive months, has to work in another capacity, or is mistreated, harassed, assaulted and he or she can show evidence of such behaviour. Without evidence, there is no right of dismissal. The employer can terminate the contract if the employee commits a mistake, violates Lebanese law or acts negligently. Due to the vagueness of these provisions, different interpretations are possible, and the lack of implementation of the scarce rights for migrant workers by state authorities result in the ability of the stronger party to act arbitrarily.¹⁰

Since the 4th of September 2020, the described framework in place is about to change. The Lebanese Labour Ministry

adopted a new standard unified contract for migrant domestic workers, that reinforces core labour protections, such as the retaining of their identification documents, the freedom of communication and movement, as well as the entitlement to a national minimum wage, fixed working hours, overtime pay, annual leave and sick pay. According to the new contract workers can terminate the contract without notice and without the necessity of submitting proof to the suffered ill treatment. Now it remains to be seen how the ministry will conduct the implementation process of the new contract to really ensure the enhancement of the legal status of migrant domestic workers¹¹. Unfortunately the Shura Council, the highest administrative court in Lebanon, ruled in

favour of a recruitment agency federation, that opposed the new guidelines enshrined in the new standard unified contract.¹² This judgment does not mean the end of the new contract, it rather is a demonstration of the hurdles concerning the implementation processes.

⁷ Human Rights Watch, World Report 2021, <https://www.hrw.org/world-report/2021/country-chapters/lebanon> (viewed: 22.03.2021,13:51)

⁸ Dimitra Dermitzaki, Sylvia Riewandt, *The Kafala System: Gender and Migration in Contemporary Lebanon*, Focus Middle: East Topics & Arguments, 01.07.2020

III. Current Challenges and Recent Approaches

Apart from the legal constraints conining the life of several migrant workers in Lebanon, the past year and its challenges have had a worsening impact on their lives. Therefore, civil society actors shifted their focus towards taking a more needs-based approach. As did the feminist organisation Anti-Racism Movement (hereinafter ARM). ARM is symbolically the mother organisation of different sub-centres such as the Migrant Community Centre (hereinafter MCC), Anamê Gnanguenon, community advocacy coordinator at ARM/MCC, explained. While MCC used to offer language and IT classes, as well as different seminars e.g., about first aid, ARM and MCC shifted its focus according to the current challenges, Ms. Gnanguenon continued. Instead of working through different centres as before, ARM is now divided in different teams to tackle the needs of the migrant workers properly. The work is distributed to the cases, eviction, evacuation, relief work or advocacy and communications team. Through these teams ARM is distributing food, assessing eviction threats, negotiating with landlords, and raising awareness around the fact that the landlords pursuant to the legal framework in place are not allowed to demand the rent to be paid in USD, Ms. Gnanguenon elaborated further. While the evacuation team focuses on the repatriation of the migrant workers, by assisting with the PCR-tests and plane tickets. The main challenge in this regard is assisting the undocumented migrant workers. Ms Gnanguenon explained that luckily the Lebanese General Security is willing to waive all fees if the respective embassies would issue a list of names of the undocumented workers. However, some embassies did not follow this sequence and demanded money from their countrymen and women to add

them on the list. Anamê Gnanguenon stated that it is even more important to educate about the procedures in order to prevent exploitation. The International Office for Migration (hereinafter IOM) focuses on conducting vulnerability and needs assessments to better understand the socio-economic, as well as the physical needs of migrant workers. Further, IOM is offering immediate assistance to migrant workers including among others psychological support, access to food and accommodation, medical assistance, protection services, as well as safe and voluntary return assistance. Several stakeholders highlighted the challenges that migrant workers are facing upon return concerning their reintegration into their own communities. To address this challenge, IOM is trying to promote an integrated approach to reintegration, in order to ensure a more sustainable reintegration, as the living conditions to which the migrant workers come back to are poor, and often the main reason why they decided to leave their country in the first place. The access to the COVID-19 vaccine is posing another challenge. Since migrant workers have little, to no access to medical care, but still are exposed to the risk of infection due to their work, it is crucial to grant them access to the vaccine. So far, the ministry of labour clarified that migrants would be included in the vaccination plan. However, it is unclear how undocumented migrant workers will be included. It remains to be seen if this issue could be tackled taking a similar approach as to the repatriation procedure, with the help of the respective embassies. In addition, it is important to understand the perception of migrants towards the vaccine, by translating awareness material and offering discussion groups.



⁹ Leaders For Sustainable Livelihoods, *The Labour Sector in Lebanon: Legal Frameworks, Challenges, and Opportunities*, 31.05.2019 <https://data2.unhcr.org/en/documents/details/69776> (viewed: 22.03.2020, 17:14)

¹⁰ Dimitra Dermitzaki, Sylvia Riewandt, *The Kafala System: Gender and Migration in Contemporary Lebanon*, Focus Middle: East Topics & Arguments, 01.07.2020

¹¹ Human Rights Watch, *Lebanon: New Safeguards for Migrant Domestic Workers*, 18.09.2020 <https://www.hrw.org/news/2020/09/18/lebanon-new-safeguards-migrant-domestic-workers>, (viewed 24.03.2021)

¹² Areeb Ullah, *Lebanon court rejects new migrant worker contract to replace criticised kafala system*, Middle East Eye 26.10.2020 <https://www.middleeasteye.net/news/lebanon-kafala-migrant-worker-contract-rejected>, (viewed 26.03.2020), see also Human Rights Watch, *Lebanon: Blow to Migrant Domestic Worker Rights*, 30.10.2020 <https://www.hrw.org/news/2020/10/30/lebanon-blow-migrant-domestic-worker-rights> (viewed 30.03.2021)



Lastly,

The recent challenges that arose during the past year highlighted the importance of joining forces. It will be nearly impossible to sustainably tackle the challenges migrant workers are facing today if governmental, as well as non-governmental actors and the countries of origin of the migrant workers do not work together. The Lebanese diaspora living in African countries has shown immense solidarity and support towards returning migrant workers. A positive approach for the future would be to enforce the cooperation with the countries of origin and Lebanon. Raising awareness within Lebanon, as well as in the countries of origin is the key factor to dismantle the Kafala system. It is essential to spread the word in African and Southeast Asian countries about the Kafala system itself and what to expect if going to work in one of those countries. As Lebanon is already facing a wide range of strains Anamê Gnanguenon emphasized while campaigning against the Kafala system itself still remains essential, it has become important to tackle the issue from another angle by additionally raising awareness towards the living conditions and the unequal treatment of migrant workers in the country.

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