



POLICY BRIEF 10

Implications of the Kafala System: the Need for Reform

Summary

The Refugee and Migratory Movements Research Unit (RMMRU) organized a two-day training workshop on Kafala system in GCC countries on 26-27 February 2013 in Dhaka with the support of The Swiss Agency for International Development and Cooperation (SDC). The workshop brought together national and international experts, relevant government functionaries, NGO activists and journalists. This Policy Brief is based on the proceedings of the workshop. Through discussion and reflection on various aspects of Kafala system and its manifestation the workshop concluded that Kafala system, although initially upheld the principles of hospitality of Arab culture, over the years, has turned into a system that fosters conditions of exploitation and abuse of migrant workers. The workshop recommended for pro-active role of the Government of Bangladesh to create an understanding on the adverse effects of the system and request for reform to the governments of GCC countries. It also suggested different steps for its civil society to be a part of the global campaign for reforming the system. More importantly, it developed messages to be disseminated among the aspirant migrants through training and awareness campaign activity of the government and the civil society.



Background

Gulf Cooperation Council (GCC) and other Arab countries are heavily dependent on labour migrants. As per ILO's estimate in 2010, there were 25 million migrant workers in these countries (Khan and Helene 2011). Bangladesh is a labour surplus country of South Asia. It participates in the supply side of global labour market. GCC and other Arab countries are major destinations of Bangladeshi workers. Currently 70% of the Bangladeshi workers migrate to these countries for employment.

Labour migration to GCC countries and other Arab States are mostly governed under a system known as Kafala (sponsorship system). The Kafala system provides the legal framework for recruitment, stay, work and exit of a migrant to and from GCC countries. In most cases employers are the Kafeels.

Sohel's Story

Sohel of Mirershorai Union of Chittagong, after going to Dubai learned that his work permit was not for working in a shop rather to work in date orchard.

His passport was taken away by the kafeel. Kafeel had more workers than what he required, so Sohel did not get work regularly and also received irregular salary. He was kept in a room with many other workers under lock and key. He could not stand the heat and quit the job. He started working in another place. His kafeel reported to the police and subsequently Sohel was apprehended by the police. Now he is in jail.

In GCC countries immigration and residency system, the Kafeel “assumes full economic and legal responsibility of the employee during the contract period”. Once the contract is over the migrant is supposed to return to his/her country of origin. This system emerged during the 1950s. It emanated from Bedouin culture of hospitality to guests and worked more or less fine till the 1970s. Over the years, role of middle men such as agents and subagents in the GCC countries as well as in the origin countries and excessive power of the employer over the employee have transformed the Kafeel system into a system of structural dependency between migrant and the Kafeel.

Problems of Kafala system in recent time

Under the Kafala system, the sponsor is supposed to pay commission to recruiting agencies for recruitment of foreign workers; generally the contract is for two years. All other fees including visa, work permit, residency fees, air fare, and insurance are supposed to be paid by the employer. The worker is meant to work for one employer. However in recent decades Kafeels are nominally involved in the employment of foreign workers. They allow their names to be used to sponsor foreign workers in exchange of monetary gains. The intermediaries who could be nationals of the origin countries organize the business. Since migrants from origin countries are willing to pay for visa to work in the Gulf, the Kafeels started making enormous profit through trading visa. ‘Visa trading’ has become a common phrase among those who are involved in migration processing. Practice of visa trading is more common in case of low and semi-skilled workers. ILO has called for a major reform of Kafala system (Khan and Helene 2011). United Nations High Commissioner for Human Rights, Navanethem Pillay observes that the system fosters abuses. Tying of worker with the employer, retention of passport, non-payment and undue deduction of salary, fines for overstay, slow judicial process create adverse work condition for the migrants under the Kafala system.

Consequences of Kafala system

There are many consequences of Kafala system. As workers are under absolute power of the Kafeel, they are made to accept even lower wage than what was contracted initially. No mechanism of wage renegotiation is available therefore wage rate is extremely low in these countries. Contracts are substituted with poorer working condition. Due to withholding of passport by the Kafeel it is difficult to contest under payment, non-payment or delayed payment. Migrants cannot question when their working hours are increased, or, weekly rests and annual leaves are curtailed.

Kafala system is stricter when it comes to movement of female domestic workers. In almost all cases female domestic workers are not permitted to go out of the household premises. Confined status, home sickness and incidence of physical or sexual abuse sometime result in running away of the worker from



the Kafael. Some even jump from multi-storied buildings. They do not have information about the embassy and their right to change employer for three times if they can prove that the Kafael is abusive. A section of them press for returning home before completing their tenure.

Reform of the Kafala system

UN and other international agencies as well as regional and national civil society bodies have been asking for reform of Kafala system (MFA undated). In recent time most of the GCC countries have initiated reforms. Bahrain under the mobility clause of labour market regulatory authority has permitted the migrants to switch employers without the consent of previous employer in certain cases. It has also made retention of passport of the workers by the employer illegal. As early as in 2003, Oman made it illegal for employers to send migrants working under them to other employers. In 2009, UAE has introduced a wage protection system. In 2009, Saudi Arabia passed a bill for protection of foreign domestic workers. In September, 2010, Kuwait announced that it would end “sponsorship system” to mark its tenth anniversary. Qatar has drafted a charter for its migrant workers which need to be abided by all employers in projects of 2022 World Cup (MFA, undated).

Jabbar's Story

Md. Jabbar of Gouripur worked in a company in Saudi Arabia for two years. He did not have any interaction with his kafeel. An employee of the company took all his papers and kept him in a congested place with other workers. He received half the salary that he was contracted for. After his visa expired the company kept him engaged in work without renewing the same. He left the company and took up employment somewhere else. At one point he was caught by the police for not having necessary papers. When he informed the police that all his papers were with his previous employer, the latter denied keeping the papers. The employer made a fictitious claim to the police that Jabbar was absconding once his visa expired. He was then deported to Bangladesh.

Improving conditions of migrants

Through a series of interactive sessions, the participants of the Kafala workshop of Dhaka identified some actions that government of Bangladesh and the civil society can pursue to reduce the exorbitant cost of migration and harmful work conditions of Bangladeshi migrants who go to the GCC and other Arab countries that practice Kafala system. Those are presented below in two broad heads- actions for the government and actions for the civil society.

Actions for the Government of Bangladesh

In international arena

- As a major sending country Bangladesh should take lead in encouraging other sending countries to highlight the negative features of the Kafala system in various multilateral fora such as Global Forum on Migration and Development and the UN High Level Dialogue on Migration.
- As the GoB may hesitate to raise the issue of the Kafala system in bilateral discussions due to its sensitive nature, it should take initiative so that the issue is discussed in the multilateral regional consultative processes such as the Abu Dhabi Dialogue and the Colombo Process.
- A concerted move is to be mounted in which the origin countries may raise the demand for the abolition of the system that allows individual to be the kafeels. The GCC countries may consider establishing the system where institutions replace individual kafeels. The Bahraini example of setting up a Labour Market Regulatory Authority can serve as an important reference in this regard.
- In various multilateral fora, the origin countries should demand that national labour laws of destination countries to include domestic workers or specific legislation should be developed to protect this group of workers as per the ILO Convention concerning Decent Work for Domestic Workers (C189).

In dealing with destination countries

- In framing MoUs with destination countries that have Kafala system, the Bangladesh government should emphasize a strong human and labour rights normative framework.
- The Bangladesh missions, in particular the offices of the Labour Attaches, should play a proactive role in providing protection as well as



services to the migrants. This should include periodic visits to labour camps, opening of hotline for migrants to access embassy services, setting up of shelter homes and holding of open days under the auspices of the embassy to disseminate information about the Kafala system among other issues.

- The office of the Labour Attaches should be supported by properly trained personnel in extending welfare services as well as providing legal advice to the migrants who often fall victims to labour supply companies. The missions can open a separate desk for attending petitioners and properly guide them in taking follow up steps.
- Lack of access to qualified interpreter is a major problem faced by the migrants in dealing with cases of harassment and mistreatment by Kafaeels or the intermediaries. The Bangladesh missions can appoint translators to draft complaints and interpreters to assist migrants to give proper statement in police and public prosecution. These are crucial elements to secure favourable judgment.
- The missions may make it mandatory for the domestic workers to be present in person when they need to renew their passport. This will provide the missions to have an opportunity to assess the well being of the migrants and the disposition of their employer.
- In many instances once the contract is over, due to lack of resource and place to stay migrants are forced to leave the country of destination while their cases remain pending. Under such conditions the embassies may consider providing those migrants some resource and a place to stay with basic facilities to enable them to continue with litigation.
- The government may also consider appointing

legal and paralegal officers from members of Bangladeshi community who are well versed in native language and local laws of destination countries.

- The embassy officials should make migrants aware about the negative consequences of changing Kafaeels without authorization, particularly jail terms and hefty fines they are likely to face as penalty.

In the domestic front

- While trying to secure better treatment for its work force abroad based on international standards, the GoB should play its role in upholding the migrants' rights through ratifying and implementing key ILO Conventions: C97 on Migration for Employment and Recommendation (Revised), 1949; C143 Migrant Workers (Supplementary Provisions) 1975; C181 on Private Employment Agencies, 1997) and C 189 concerning Decent Work for Domestic Workers, 2011.
- The GoB should undertake national development programmes for creating sustainable employment opportunities at home to ensure that migration under the Kafala system is a choice not a necessity.
- In order to offset the negative effect of the Kafala system strict enforcement measures should be introduced for recruitment agencies and employers that violate migrant workers' rights. A list of errant employers should be prepared that should be made available to all government and non-government stakeholders.
- The GoB should devise effective measures so that no migrants can be lured with "free visas". Any agency or agent trading in "free-visas" should be sternly dealt with.



- The GoB should strengthen its legal provisions to include redress mechanisms and protection of migrant workers who are subjected to wrongdoings under the Kafala system.
- The GoB should develop a module on Kafala system for training courses run by government agencies and non-government organizations. This module must have gender segregated information. It should be made mandatory for any training programme that the government endorses.
- In view of the fact that remittances play a crucial role in Bangladesh economy, the GoB should give priority in launching a campaign to highlight the ill effects of Kafala system in the state owned media. It should also incorporate the Kafala issue in the pre-departure training programmes that BMET organizes and make it mandatory for the skills training programmes as well as domestic workers training programmes organized by various CSOs that it endorses.

The role of civil society organizations

- The CSOs should disseminate information about the adverse impact of the Kafala system among the male and female migrants and the aspirant migrants through their public awareness campaigns.
- The CSOs should incorporate the duties and obligations of the migrants to the Kafalees in the training manuals. In this process migrants will be

informed about the problems that they are likely to endure under the Kafala system. The training programmes for women migrants should include conditions that women migrants are likely to endure, such as long working hours, wearing of hijab, compulsory fasting during Ramadan, restrictions on mobility including confinement and seclusion in the household and lack of privacy.

- Through their networking activities the CSOs need to highlight the plight of migrants under the Kafala system in different global forums and organize campaign in collaboration with their regional counterparts.

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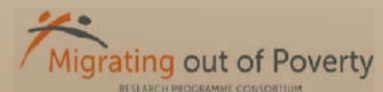




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