

THE KAFĀLA: GUARANTEED ASYMMETRIES?

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Labour migration to Gulf countries



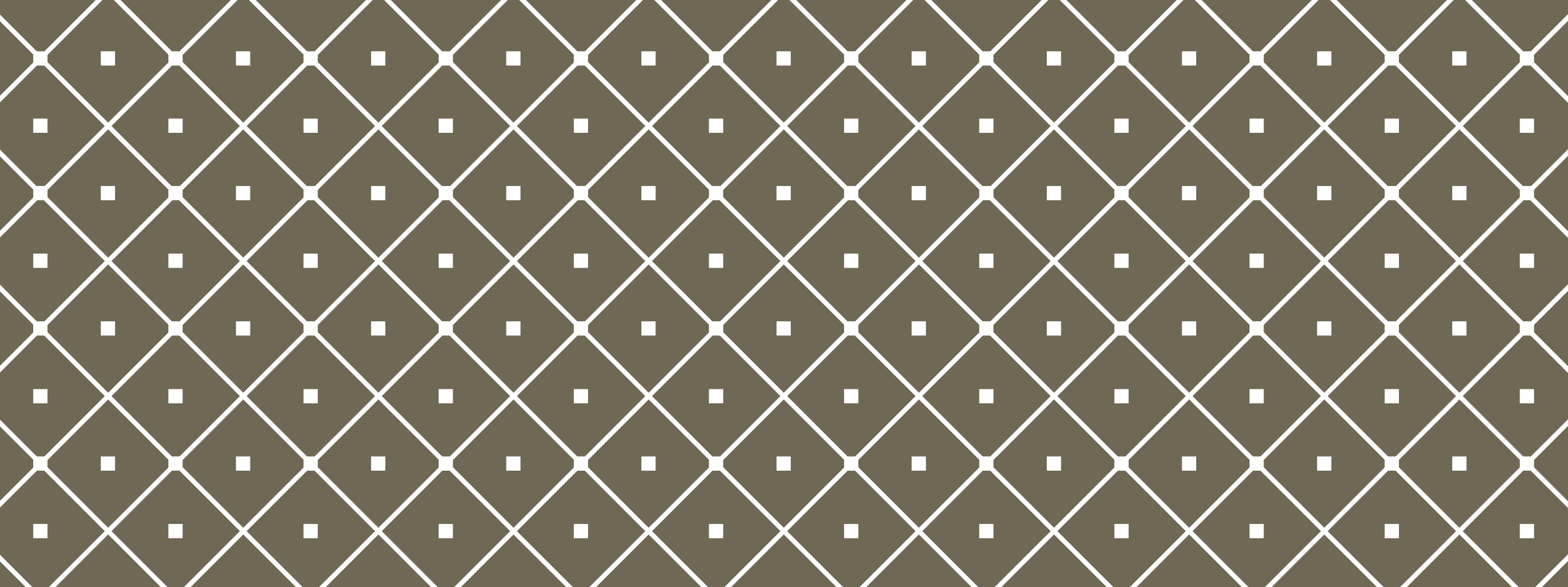
GCC members:

Bahrain
Kuwait
Oman
Qatar
Saudi Arabia
United Arab Emirates

As well as:

Jordan
Lebanon

**COUNTRIES APPLYING
THE KAFĀLA SYSTEM**



THE KAFĀLA: GUARANTEED ASYMMETRIES?

1. What is the *kafāla*?
2. The *kafāla* system in Lebanon
3. The question of contract slavery
4. Research interest and sources

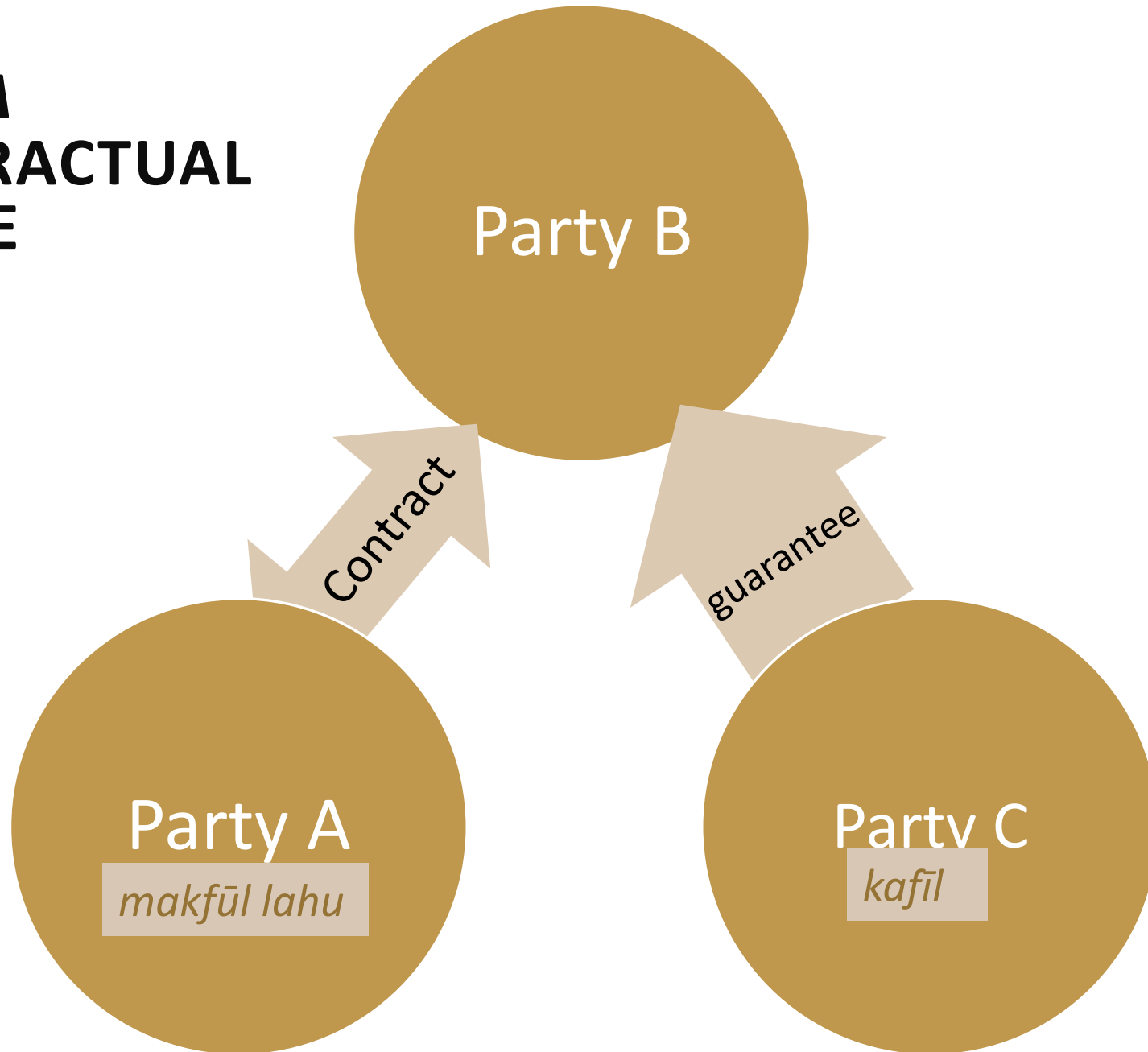
THE *KAFĀLA* AS A «CLASSICAL» GUARANTEE

Commercial guarantee (surety-bond / bail)

known to Islamic law from the 2nd/8th century onwards (e.g. another person's appearance in court or the fulfilment of a principal debtor's obligation)

gratuitous nature, benevolent act of generosity on the part of the *kafil* (free of charge)

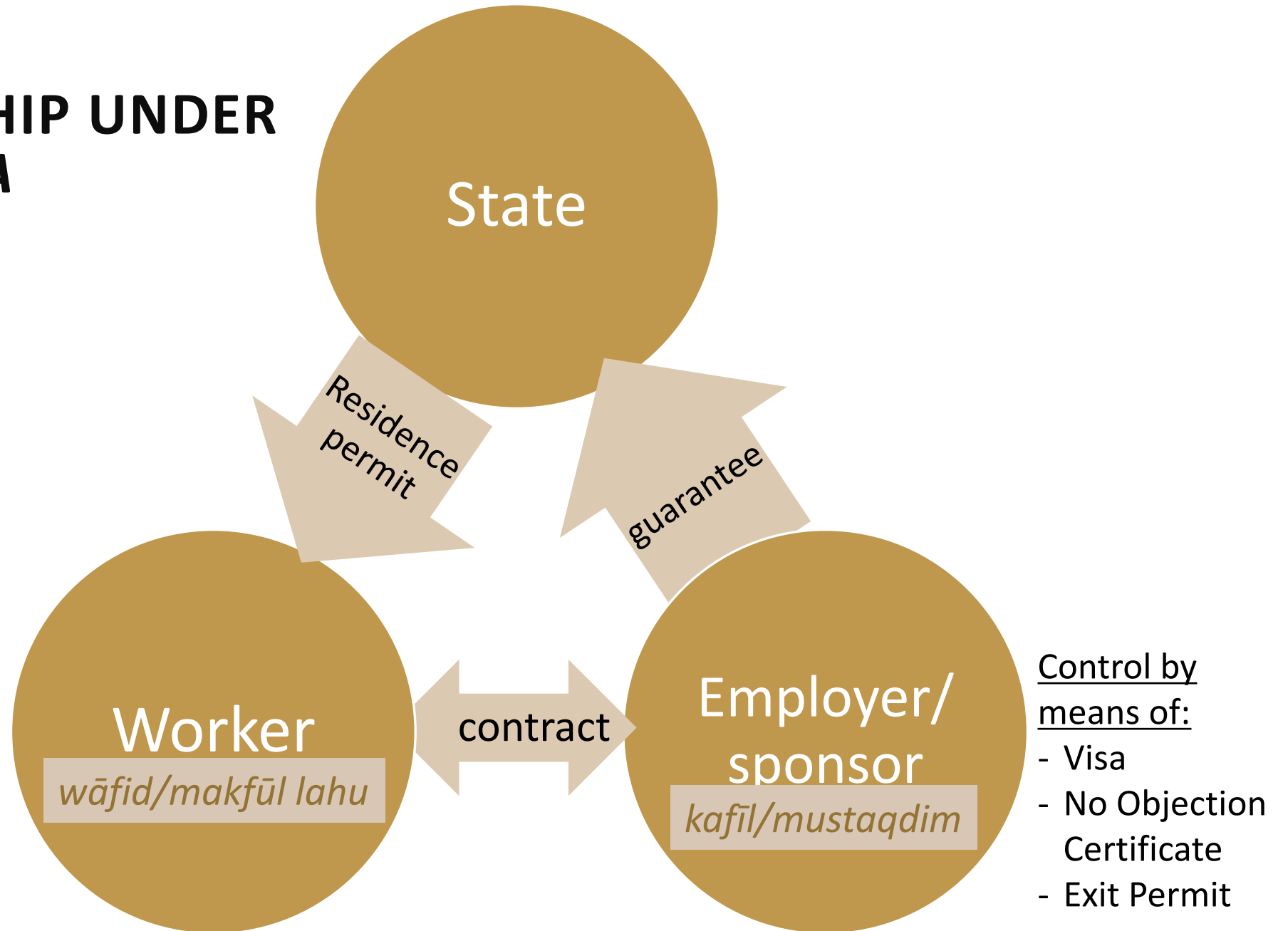
THE *KAFĀLA* AS A CONTRACTUAL GUARANTEE





Labour migration to Gulf countries

SPONSORSHIP UNDER THE *KAFĀLA*



THE *KAFĀLA* AS A MODERN LABOUR MIGRATION SYSTEM

'Privatisation and normalization of authority,'
'deportation regime' (Gardner 2010)

Form of *bonded labour*, elements of *debt bondage*
(debates on «modern slavery»)

political economy: 'labour migration regime,' historical continuity as an instrument for
labour migration control
(AlShehabi 2019, Gulf Centre for Development Policies 2014); regional financial centers
(Kassamali 2017)

B. In case the First Party or a family member of his/hers or any resident in his/her house beats, assaults, sexually abuses or harasses the Second Party, after such has been established through medical reports given by a forensic physician and investigation records provided by the Judicial Police or the Ministry of Labour.

C. In case the First Party employs the Second Party under a capacity other than that under which he/she had recruited him/her without his/her consent.

In these cases, the First Party shall be obliged to return the Second Party to his/her country and to pay the price of the travel ticket.

18) In the event of a dispute between the Parties of this Contract, it may be lodged to the Ministry of Labour to settle it amicably.

19) Upon failure of an amicable settlement of the dispute, the aggrieved Party shall be entitled to seek redress at the competent Lebanese Courts.

20) This Contract has been drawn up before the Notary Public in Arabic and signed by both Parties.

First Party

Second Party

For the Notary Public's Use

Annex 7

Annex 7

- 6) The First Party shall pledge to pay to the Second Party by the end of each working month his/her full monthly salary, which is agreed upon in the amount of without unjustified delay. The salary shall be disbursed in cash directly to the Second Party, in pursuance of a written receipt to be signed by both Parties or in pursuance of a bank transfer with a written receipt to be signed by both Parties as well.
- 7) The Second Party shall pledge to perform his/her work in a serious and sincere manner and to comply with the instructions of the First Party, taking into consideration the work rules, customs and ethics and the privacy of the house.
- 8) The First Party shall pledge to meet the requirements and conditions of decent work and fulfil the Second Party's needs, including food, clothing and accommodations with which his/her dignity and right to privacy are respected.
- 9) The First Party shall pledge to guarantee medical care for the Second Party and to obtain an insurance policy from an insurance company recognised in Lebanon in accordance with the conditions prescribed by the Ministry of Labour.
- 10) The First Party shall pledge to obtain a work permit and authorisation of residence for the Second Party in due form at his/her own and full expense. He/she shall also pledge to renew them as long as the Second Party works for him/her.
- 11) The First Party shall fix the working hours for the Second Party at an average of ten (10) non-consecutive hours a day at most, including at least eight (8) continuous hours of rest at night.
- 12) The First Party shall pledge to grant the Second Party a period of weekly rest of not less than twenty four (24) continuous hours, the conditions of the use of which shall be defined by agreement between both Parties. The Second Party shall also be entitled to benefit from an annual leave of a period of (6) six days. Both Parties shall define its timing and the conditions of its use.
- 13) The First Party shall secure at his/her expense a ticket for the departure of the Second Party and his/her return to his/her country, except in the cases agreed upon in Article (16) of this contract.
- 14) The First Party shall undertake to allow the Second Party to receive telephone calls and correspondence intended to the latter as well as to permit the Second Party to communicate with his/her parents once per month on the expense of the First Party, and otherwise the Second Party shall bear the cost.
- 15) If the Second Party has a sickness other than that derived from his/her services and work-related injuries, she or he has the right to a sick leave based on a medical report for half a month with pay and half a month with half pay.
- 16) The First Party shall be entitled to terminate the present Contract in the following cases:
 - A. In case the Second Party commits a deliberate mistake, neglect, assault or threat, or causes any damage to the interests of the First Party or a member of his/her family.
 - B. In case the Second Party has committed an act that is punishable by the Lebanese laws in force in accordance with a court judgement.
 - C. In these cases, the Second Party shall be obliged to leave Lebanon and to pay the price of the return ticket home from her/his own money.
- 17) The Second Party shall be entitled to terminate the Contract with the First Party taking full responsibility in the following cases:
 - A. In case the First Party does not honour the payment of the salary of the Second Party for

Signed between:

The First Party: (Employer): Full Name: Nationality:
 Born in: Having his/her place of residence at:
 Family Status: Location of Register:
 ID, Individual Registration Certificate:
 Address: Telephone:

And

The Second Party: (Employee): Full Name: Nationality:
 Passport no.: Date of issue: Date of expiration:
 Born in: Family Status:
 Having his/her place of residence at address:

Whereas the First Party wishes to employ a person who enjoys competence, experience and skill to work for him/her in the capacity of a domestic worker.

Whereas the Second Party enjoys the aforementioned characteristics.

Therefore, both Parties mutually agreed on the following:

- 1) The introduction to this Contract shall be an integral part thereof.
- 2) The First Party agreed that the Second Party works for him/her as a worker in his/her house. The Second Party consented to the aforesaid capacity in accordance with the terms and conditions stated under the present Contract.
- 3) The First Party shall undertake not to employ the Second Party in any other work or place that is different from the place of residence of the First Party.
- 4) The duration of this Contract shall be defined by one (1) year renewable.
- 5) This Contract shall enter into force as of the date on which it is concluded by both Parties before the Notary Public, including the probationary period of three months.

*As per Unified Contract Decree No. 19/1 dated 31/12/2009.

CONTRACT FOR MIGRANT DOMESTIC WORKERS BY THE LEBANESE MOL

CONTRACT SLAVERY: KEVIN BALES

[Bales argues that] the employment contracts which domestic workers accept, misleads them into believing they are entering into a legitimate contractual relationship with obligations and responsibilities on both parties and backed by legal authorities. In reality, he says, it is merely a ruse: 'an enticement to trick an individual into slavery' (Jureidini/Moukarbel 1999: 20)

CONTRACT SLAVERY: KEVIN BALES

“live-ins and runaways are ‘contract slaves’ because they are ‘held in place’ by violence or the threat of violence (until some finally choose to escape). By contrast, while freelancers are bonded to a formal sponsor, in reality they may be considered more as free labour and, as we shall show later, much less vulnerable to abuse and exploitation.”(Jureidini/Moukarbel 1999: 20)

KEVIN BALES: THREE TYPES OF MODERN SLAVERY

“‘chattel slavery’--where slaves are either captured, born or sold into permanent servitude; ‘debt bondage’--where servitude is ensured against the loan of money and where the length and nature of that servitude is indeterminate; and ‘contract slavery’--where contracts are ‘legal fictions’ rather than legally binding employment agreements, and thus conceal what are in reality conditions of slavery.”

RESEARCH INTEREST

How do various (non-/)legal discourses *impact* conceptualizations of the *kafāla*?
How do local, regional, and international discourses *sediment* into legal discussions of the *kafāla*?

**Emergence of the kafāla
as a labour migration regime**

**Contemporary discourses
and the kafāla system**