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## 23. Migration intermediation: revisiting the *kafala* (sponsorship system) in the Gulf

*Claire Beaugrand and H el ene Thiollet*

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In recent decades, policy discourses and media representations have emphasised the illegal and exploitative dimension of migration brokerage. The figure of the ‘migrant smuggler’ has emerged as an ideal culprit for the loss of lives in migration, thus obscuring part of the broader phenomenon. Recognising this complexity, research in the social sciences has emphasised the variety of forms of migration intermediation and the importance of regulatory contexts in determining the diverse outcomes of such intermediation. In this chapter, we argue that the broad spectrum of intermediation institutions needs to be understood not so much in terms of individual or collective economic transaction relations, but rather as being a constitutive part of the global governance of migration itself.

To do so, we posit the concept of ‘intermediation institutions’, understood here as a broad framework of rules and norms that governs the mobility and integration of human beings across societies. These intermediation institutions operate both within and between countries and societies. They are inherently transnational, connecting places and individuals, and structuring their relations across space and time. They are composed of formal and informal institutions – in the sense adopted by Douglas North of ‘informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)’, which ‘create order and reduce uncertainty in exchange’ (North, 1991, p. 97) – but they also form a system of representations and values attached to these institutions that variously facilitate, hinder or prevent the mobility, settlement and integration of people across origin and host societies. Values attached to mobility, citizenship and integration are often tied to political authorities and states, especially in the context of the increasing politicisation of migration issues that currently characterises Western contexts (van der Brug et al., 2015) and the Middle East and Gulf region (Thiollet, 2021). These values, representations and hierarchies attached to migration and mobility by state institutions are also appropriated by non-state actors, who either reinforce or subvert them (Azoulay and Beaugrand, 2015).

Our understanding of intermediation institutions borrows heavily from the broad definition of migration regimes as ‘a constellation of political principles, norms and practices, which fall outside the scope of terms like “state” and “policy”’ (Cvajner et al., 2018). The concept of ‘migration regime’ provides a middle ground between two irreconcilable approaches: on the one hand, an exclusively statist one; and on the other hand, an exclusively postmodern approach that challenges the role of states.

Like irregular migration, intermediation is often defined as a set of social processes facilitating mobility that takes place outside the scope of state control: as such, intermediation involves a nexus of actors, including sponsors and sponsored migrants, employers and state agents. They operate within a web of social constraints and values, as well as each individual actor’s own system of beliefs and interpretations of norms. However, intermediation is often conflated with irregular, criminal practices such as smuggling or trafficking, despite the fact

that intermediaries of all sorts are sometimes directly mandated by states for the purposes of both importing labour and controlling migration. The error consists in mistaking the part for the whole, as intermediation encompasses a large spectrum of actors and practices, including both the United States (US) system of ‘sponsors’ and the often exoticised sponsorship system used in the Middle East, known as the *kafala*.

This chapter focuses on the latter, which is a well-studied system of migration regulation in receiving states of the Gulf region and countries of the Levant (Jordan and Lebanon). While studies on intermediation often focus on mobility and smuggling in the context of sending or transit countries, the *kafala* provides a vantage point for analysing the role of intermediation institutions in the host societies.

The role of the *kafala* is of particular interest in the exclusionary contexts of the Gulf societies, where the formal non-integration of immigrants is prescribed by public policy. The *kafala* is an intermediation regime that makes it compulsory for every foreigner wishing to reside and work or invest in the host territory to be ‘sponsored’ by a national (the sponsor or *kafil*, with the plural *kafala*). The *kafala* ties the work visa and residency of foreigners to a local intermediary, the *kafil*, who can be a person or a company. The *kafala* is generally portrayed in migration studies as a sort of exotic institution peculiar to Middle Eastern societies, and in particular as the cornerstone of migration policies in the countries of the Gulf Cooperation Council (GCC). In this context, it is seen as the central vector of the exploitation of migrants. Human rights activists have long condemned it as one of the main sources of abuses and exploitative practices in the GCC countries (Human Rights Watch, 2010). Scholars have also generally analysed the *kafala* as an institution that ‘keep[s] migrants in check’ (Longva, 1999) and forms the legal foundation of their exclusion (Dito, 2015). Yet, while true, these analyses offer only a partial understanding of the *kafala*, as this involves not only public and state actors, but also private, non-state actors, and leads to contradictory outcomes, as shown by Noora Lori (2019): the private sponsors involved in the *kafala* system both reproduce the state’s hierarchical policy of labour import, but also subvert the state’s objective of labour rotation through the repeated renewal of ‘short-term’ work contracts. The social relations at work in the *kafala* are embedded in deep socioeconomic and political histories in the region, which have been challenged by labour market reforms in the 1990s and 2010s (Thiollet, 2021).

Our chapter thus seeks to unpack the contradictory, multifaceted social dynamics embedded in the sponsorship system. We first define what intermediation institutions are, and locate the *kafala* in the context of the latest theory regarding intermediation and brokers in migration. Secondly, we examine the changing role of the *kafala* in mediating mobility to host societies and integration within those societies.

Our focus on the *kafala* helps us to address several key questions regarding the private institutions of migration governance, in connection to states (domestic politics) and to inter-state relations (migration control, reforms, anti-integration policies), in connection to (labour) markets at the international level, and in connection to the relations between foreigners and locals, and dynamics of social interactions beyond the state’s remit. Ultimately, this approach nuances our understanding of public–private dynamics in migration governance, challenging the assumption that there is a clear-cut dichotomy between these two types of actors.

## LOCATING THE *KAFALA* WITHIN THE LITERATURE ON MIGRATION INTERMEDIATION REGIMES

Intermediation is central to the understanding of formal and informal institutions that enable mobility and shape social integration in migration contexts. By institutions we mean, following Douglas North (1991), man-made constraints that structure political, economic and social interaction. Intermediation institutions ensure that social and economic interactions happen in an orderly and expected fashion between the societies of origin and arrival of migrants. Intermediaries come in all shapes and sizes, and facilitate mobility via formal recruitment processes and businesses, labour brokerage, and family-led or community-based chain migration. On the receiving end of the migration process, brokers and intermediaries, such as placement schemes or, more traditionally, settled family networks, organise the settlement (for various durations) and integration of newcomers in host contexts, with a spectrum of rights and constraints that vary considerably depending on contexts and types of intermediations. They ease the local integration – or adaptation – of newcomers in host communities, often within ethnic neighbourhoods, mediating access to local labour or housing markets, and help to maintain links with the societies of origin. It is generally considered that migration intermediation manifested in the institutions of money transfer amounts to no more than an economic transaction, yet recent research has highlighted the broad spectrum of symbolic ties and institutional ramifications that intermediation entails, often referring to this poorly understood phenomenon as a ‘black box’ (Axelsson et al., 2022; Lindquist et al., 2012; McKeown, 2012).

In fact, intermediaries may be corporate or individual actors, locals or migrants themselves, whether legal or illegal; while they may operate criminal smuggling or trafficking networks (which is the focus of the popular imaginary), they may also belong to tax-paying recruitment companies. They are often found within (extended) family, personal and community networks (Boyd, 1989). The various formal and informal practices of intermediation offer a wide spectrum of social, economic and political institutions, ranging from mafia-like bondage to legal sponsorship, and involve a variety of actors, including migrants themselves, employers, recruiters, state agencies, and various social actors in host contexts. Migration intermediation thus blurs the boundaries between the roles of state and non-state interventions and actors in migration governance. In other words, intermediation is a Janus-faced migration institution that operates not only at every step of the migratory process, but also across time and space: it is deployed transnationally, and it affects different generations of migrant communities, connecting them with local and origin societies.

Intermediation institutions have long been located geographically or culturally in specific contexts. For instance, policy or research discourses often use vernacular terms such as ‘*taikongs*’ and ‘*calos*’ for middlemen and brokers in Javanese migration (Spaan, 1994), ‘coyotes’ for smugglers moving migrants from Mexico and Central America to the US (Singer and Massey, 1998), ‘*salocero*’ for Paraguayan immigrants in Brazil serving as ‘recruitment intermediaries’ for their employers in order to find additional migrant employees, and so on. Terminological exoticism tends to present these intermediation regimes as locally specific and barely generalisable. Using the term ‘*kafala*’ rather than ‘sponsorship system’ or even ‘brokerage’ also tends to exoticise the institution under scrutiny in this chapter. Noora Lori (2012) notes that the *kafala* could be analysed alongside intermediation regimes in the Global North, such as the Italian law of 1998 establishing a direct sponsorship role for individuals, firms or non-governmental organisations (NGOs) in granting migrants’ entry and residence, although

this law was soon reformed in 2002. More broadly, any migration regulation that makes the granting of entry and residence conditional upon access to work permits effectively establishes a form of sponsorship by the employer in relation to the migrant.

In fact, rather than being exotic, ad hoc, or local practices or institutions, regimes of intermediation are globally connected and embedded in global migration governance. They help us to understand dynamics of regulation involving states and non-state actors as being mutually interdependent. Intermediaries may align with or complement state-led regulations (policies), as in the case of large recruitment companies that operate worldwide. They may also bypass them, as migrants smugglers do, or operate at the margin of laws while helping migrants at sea, as search-and-rescue NGOs do in the Mediterranean. They may operate in exchange for financial or symbolic resources, and rely upon sources of legitimacy and efficacy that may be social, cultural or economic. To a large extent, intermediaries are part of a 'migration industry' operating differently depending on the region, but especially depending on the classes of migrant workers in question, and contributing to the commercialisation of migration (Gammeltoft-Hansen and Sørensen, 2013). Yet intermediaries are also sometimes 'not-for-profit' and involved in networks of solidarity, as shown in the case of Italy (Ambrosini, 2017); or they may facilitate chain migration in migrant networks, as shown in a classical work on India (Banerjee, 1983). More generally, intermediation has sometimes been framed as part of the neoliberal evolution of migration governance (Adamson and Tsourapas, 2019; Ong, 2006; Osella and Bristol-Rhys, 2017), not only serving migrants' mobility and incorporation, but also sometimes supporting their deportation (Collyer, 2012; De Genova and Peutz, 2010; Thiollet, 2019; Walters, 2016), through the use of subsidiaries to accomplish migrant-related tasks that used to be conceived as belonging to the purview of the state.

Migration studies have until recently mostly focused either on state actors (their concern with border control and incorporation, as well as the policies and legal frameworks they produce, especially in Western countries desperate to maintain the fiction that the state is in perfect control of migration), or on migrants themselves (their networks, aspirations and agency). Yet, this binary focus has left the role of private intermediating actors in the background, despite its importance. Since the 2010s, against the backdrop of the growth of circular migration schemes regulated by South Asian states, research on the region has cast critical light on the role of brokers and intermediaries, who have thus suddenly been recognised as an essential part of the broader infrastructure of migration that makes mobility possible and 'move[s] migrants from one place to another' (Lindquist et al., 2012, p. 9). Lindquist et al. (2012) emphasise the heuristic value of studying the brokers themselves, noting the complexity of the image that such an approach leads to. They argue that 'paying ethnographic attention to brokers illuminates the broader infrastructure that makes mobility possible while revealing that distinctions between state and market, between formal and informal, and between altruistic and profit-oriented networks are impossible to sustain in practice' (Lindquist et al., 2012, p. 12). Overall, intermediation institutions have performed several functions within migration governance, including the regulation of flows and individuals, and the definition, development and protection of migrants' rights.

A value-loaded distinction is generally made between social intermediaries and the intermediaries that work as corporate partners to state policies. The latter are involved in the delegation or externalisation of migration control, both in support of labour import and in the implementation of deportation and anti-immigration policies (Andersson, 2014). This privatisation of migration and border control has been much studied as a form of public delegation or

public–private partnership, which therefore belongs to a neoliberal turn in migration governance. While this public–private governance has often been praised for its efficacy, it has also been criticised as undemocratic, notably when private security companies end up controlling borders (Pedersen, 2013), running detention centres and carrying out deportations (De Genova and Peutz, 2010). Conversely, social intermediaries, be they legal or illegal, are more often than not vilified, as they are conflated with the highly mediated figures of smugglers, who are generally presented as bearing sole responsibility for migrant fatalities: ‘smugglers have been consistently portrayed in political discourse as the main culprits in the abuse and exploitation that migrants suffer and, moreover, as the driving force behind unwanted immigration flows’ (Thiollet, 2022b). However, various social actors are also increasingly being formally recognised and used as formal partners in policies aimed at integrating foreigners in Western democracies, as states come to rely heavily upon civil society organisations and migrant networks (European Economic and Social Committee, 2020; Salamońska and Unterreiner, 2017).

With regard to the *kafala* more specifically, political scientists, economists and anthropologists in the past two decades have shed light on the ‘structural dependence’ that characterises the relation between employer/*kafil* and employee (Longva, 1999). This sponsorship is often framed as the enabling condition for ‘unfree labour’ (Frantz, 2013) in Jordan, Lebanon or in the Gulf. In 2021, two anthropologists working on female migrant domestic workers offered another radical assessment of the *kafala*, as ‘the legal mechanisms that discipline migrant domestic workers into servitude in the UAE [United Arab Emirates]’ (Parreñas and Silvey, 2021). As a result of this asymmetric power relation, the system has become almost synonymous with exploitation, abuse and authoritarian control over the lives and bodies of migrants, as found, for example, in research conducted about low-skilled migrants in Qatar (Gardner et al., 2013), or about migrant women’s motherhood and sexuality (Mahdavi, 2014). This approach has been picked up by the increasing activism of human rights organisations and advocacy networks working in favour of migrants’ rights (Human Rights Watch, 2010), at a time when the governments of Gulf states have been seeking to expand their soft power and international visibility (Thiollet, 2019, p. 17), particularly through the construction of iconic buildings and infrastructures: firstly the construction of branches of the Guggenheim and Louvres museums and of foreign universities in Abu Dhabi, and later the construction of football stadiums in Qatar. Media groups, such as *The Guardian*, have devoted specific investigative journalism resources to following the issue of migrants’ human rights. Interestingly, in the 1980s, anthropologists working on Gulf societies offered a nuanced approach to the sponsorship system. Longuenesse (1988) explained that the *kafala* could work as a relationship of ‘protection/collaboration’, particularly for long-term residents (Longuenesse, 1988, p. 3), and demonstrated that it allows migrants to be shielded from state control, notably in times of anti-immigrant policies or harsher labour market control. This chapter, in an attempt to synthesise different perspectives, recognises the contribution of the two approaches mentioned here, by viewing one of them (the overall effect of the *kafala*) as encompassing the other (its role in enabling abuse). We contend that the *kafala* has had discretionary and holistic effects besides those that are most visible and that have justifiably been the object of considerable critical attention, such as the power asymmetry and rights abuses. We wish to extend our understanding of the *kafala* by exploring how outcomes of sponsorship relations differ starkly, not only according to periods or countries across the Middle East, but also according to migrants’ origins, duration of stay, gender, age, and so on, and according to social relations between migrants and brokers/sponsors. The next section of this chapter presents the broad outlines

of the *kafala* as an overarching intermediation institution in Middle Eastern migration, then the following section examines this institution in greater depth, particularly with regard to the multifaceted consequences of its adaptation to an ‘exclusionary context’ (Thiollet and Assaf, 2021) in societies characterised by public policy officially aimed at the ‘non-integration’ of migrants (Beaugrand, 2010).

## THE *KAFALA*, MOBILITY AND RESIDENCE: EMPIRICAL DESCRIPTION

The *kafala* is a cornerstone of the regulation of migration flows to the Gulf countries and, to a lesser extent, other Middle Eastern countries, as well as the regulation of migrants’ lives in those countries. It ties the legal presence of foreigners and their access to the labour market to a local sponsor. This type of institution is not peculiar to the Gulf, and has been found in other societies across history (Bosma et al., 2013; Harney, 1979). Yet the very nature of this institution is contentious. The *kafala* could be defined most simply as: an institutionalised intermediation between locals and foreigners, establishing a relation of protection, dependence, exploitation and hierarchy within and beyond that established by the labour market.

### Origins and Evolution of the Institution

The legal origins of the *kafala* have been extensively discussed among scholars, including some from the Gulf, who have tried to identify a link between religious and civil law (Ahmed ‘Abdel Khaleq, 1986; Jureidini and Hassan, 2019), or with tribal law and the customary status of hospitality, which are hard to locate precisely (Beaugé, 1986, p. 110). The uncertain origins of the *kafala* are often hypothesised to be found in a lack of administrative capacity on the part of nascent states; a view that reinforces the private–public dichotomy. Although the migrant sponsorship system is often referred to as a typically vernacular institution and as being ‘exoticised’ to some extent, it in fact emerged in the colonial context for the purposes of migration management and investment. Seccombe, Birks and Sinclair (Birks et al., 1988; Seccombe, 1983) and Thiollet (2022a) trace the institution to the structuring of a colonial and imperial migration system connecting British territories through indentured labour import, notably from India and from neighbouring Arab and African colonies or mandates. Finally, Rycx (2005) ties the emergence of the institution to the beginning of mass labour import and the formation of modern states.

In his seminal article of 1986, Beaugé noted that the *kafala* was best described as an inherited set of practices or a ‘social relation’ (Beaugé, 1986, p. 111) that, through complacency, has been left largely unregulated. Although the *kafala* constitutes a loosely defined legal framework, inscribed in migration legislation, and treated as such (Ali, 2010; Jaber and Métral, 2005), it has effectively remained loosely regulated: within the *kafala* framework, the precise form of the sponsor–migrant relationship is established on a case-by-case basis and dictated, within this asymmetrical power relation, by inter-personal idiosyncrasies, which differ according to, on the one hand, the national background, level of education and occupation of the foreigner; and on the other hand, the needs, values and beliefs of the sponsor. Firstly, the relationship between the employee and employer/*kafil* is regulated by labour law (with domestic workers falling under a separate dedicated law which, in Kuwait, was non-existent until

2015), which defines workers' entitlements and rights. Secondly, the relationship between foreigner and sponsor/*kafil* is governed by laws on alien residency, which define the grounds for deportation, including moral grounds (Longva, 1999). However, these two areas of law do not speak to one another, despite the fact that the employer and the sponsor are one and the same person (who can derail any attempt on the part of their employee at suing them). Since the relation between the foreigner and the employer-sponsor is not effectively regulated by law, abuse can flourish in legal loopholes or grey areas. Within the framework of what Longva (1999, p. 22) calls 'structural dependency', the absence of clear legal provisions also enables individual sponsors to apply their own principles. Indeed, Beaugé shows how the personalisation of the relation between a *kafil* and the person that they sponsor (the *makful*), which is a specific feature of the *kafala*, makes the relation negotiable. The law is not absent from their relationship, but recourse to the law lies entirely at the sponsors' discretion, leaving little room for the legal frameworks of labour relations and external regulation. Employers and employees make 'arrangements' between themselves in order to establish their own labour relations.<sup>1</sup>

The situation changed in the late 1980s. Transnational recruitment organised by large firms became dominant in certain sectors, thus changing the social configuration of the *kafala*. This scaling up of the intermediation regime in the 1980s, from individual employers to large recruitment companies, increased the dependence of workers, and also reinforced the differences between different categories of foreign workers. As sponsorship started to be handled through large recruitment agencies, the general meaning of the institution changed. Domestic workers, for instance, while bound to the *kafala*, remained excluded from the protection of the law (Shah, 2011, p. 353). It was not until the 2010s, and the 2011 International Labour Organization (ILO) convention on 'decent work' for domestic workers – which provided a regulatory framework setting a minimum wage, limiting working hours and requiring rest days – that domestic workers started to be included within national labour laws or specific legislation devoted to them, as was the case in the Gulf (such as Law No. 68 of 2015 on the Employment of Domestic Workers in Kuwait). Since then, domestic work within the private sphere has gradually gained social and legal recognition, and the employer–employee relationship is gradually coming to be covered by the rule of law everywhere (Delpierre and Malmey, 2021).

The social configuration of the institution was also modified by the change in the origin of immigrants. While Arab migrants represented the majority of foreigners in the 1970s, workers from South and Southeast Asia became more numerous and eventually formed the majority of immigrants in all Gulf countries except Saudi Arabia (Birks et al., 1986). Unlike Arab migrants, Asian workers did not speak Arabic and social ties were more difficult or slower to establish. There was an increase in the number of intermediaries between foreign residents and their *kafil*, with the result that most workers never meet their sponsor, and only interacted with other foreigners who oversaw their recruitment. The complexity of this intermediation has often allowed the state or international NGOs involved in defending migrants' rights to blame these intermediaries, and notably foreign recruitment companies or foreign sponsors employing migrants, whenever a scandal over working conditions emerges, effectively leaving the system itself unquestioned.



### **Ethnographic Observations into the Diversity of Situations**

Instead of considering the *kafala* as a strictly enforced boundary between migrants and non-migrants, new ethnographies suggest that it offers a contact point and a vector of domination, both between migrants and non-migrants, and within migrant communities. The *kafala* is not only an asymmetric social relation between foreigners and citizens, but also a principle of distinction between these two categories. It forces citizens and foreigners to interact, while ensuring that they remain separated.

Lori sums up the paradoxical consequences of the *kafala* in the UAE context: it reinforces ‘the informal hierarchy of the labor force, determined by the national origin, ethnicity, class, education and/or skill of noncitizens’ (Lori, 2019, p. 152); a situation that is not defined explicitly in the text of the law, but keeps on being reproduced. At the same time, the *kafala* explains the mysterious presence of second and third generations who are born and raised in countries where the presence of foreigners is officially not meant to exceed the duration of their work contracts. Inter-personal relationships of trust between *kafil* and employee lead to the continuous renewal of work contracts or even of residence permits, even after the employee has unofficially retired. The *kafala* also explains the reunification of family members who would otherwise not reach the required financial threshold: when a *kafil* wishes to hire a new domestic employee, they can go through an agency or alternatively ask an existing employee to draw on their kin networks or bring in their spouses. Lori further highlights these ‘emotional attachments’, ‘when people live together for so many years and partake in the intimacy of raising children and sharing a home’ (Lori, 2019, p. 156) – an element that is often overlooked – in contrast to the rightly studied reports of abuses. She also underlines that these emotional attachments are not the only reason for a *kafil* continuing to renew a worker’s contract: reducing the turnover of guest workers also makes economic sense. It reduces the entry cost of having new employees to train, and provides an additional form of security for both employers and employees.

Stories of domestic workers or business partners overstaying after the legal age of retirement thanks to the help of their *kafil* or partners, renewing contracts so as to pursue an uninterrupted career in one place, and bringing over dependents, are common throughout the Gulf: Assaf (2017) relates that, in Abu Dhabi, the father of an interviewee, a Yemeni man, managed to stay in the country after retirement age thanks to an Emirati friend who agreed to set up a grocery shop with him, thus allowing him to keep his residence visa. Thiollet (2010) observed similar processes in the case of Eritrean migrants in Saudi Arabia: she explains that Eritrean families of low-skilled migrants settled in Saudi Arabia have been able to bring relatives and have children grow up in Riyadh or Jeddah even without formal work permits thanks to the intermediation of their *kafil*, thus allowing an informal means for the family to gather together. Eritrean immigrants related how their personal relations with their *kafil* allowed them to circumvent labour market regulations, and particularly to change jobs without leaving the country or without the formal agreement of their employer. Beaugé (1986) mentions how the institution of the *kafala*, particularly early on, created personal relationships – including friendships and sustainable relations of solidarity – between Gulf citizens and their foreign partners or business associates. This is particularly true of Arab expatriates who settled in the 1970s and started joint businesses with Emirati, Saudi or Kuwaiti citizens. But this inclusion of migrants in social networks can also be observed for non-Arab long-term residents, including Pakistanis and Eritreans, as shown in ethnographic research (Thiollet and Assaf, 2021).

The status of foreigners is partly dependent on their inclusion in social networks, which involve power relations of domination and autonomy between local citizens as well as between nationals and foreigners. Being sponsored by someone important, such as a member of a ruling family, may confer a certain prestige that qualifies the inferior status attributed to foreigners, and can constitute a *wasta*: a connection that serves as a guarantee or recommendation and can grant certain privileges. However, powerful sponsors from important local families may, just like other *kufala*, turn against their *makful* on a whim: inter-personal relationships are precarious at all levels of occupations and can always backfire. The fact that an employee can be dismissed summarily at all levels of qualification and salary shows that the relationship depends less on social level or prestige than it does on a personal understanding of one's place and of the law. Le Renard (2017), in her ethnography of French workers in Dubai, shows that even high-status employees can become unemployed overnight. The outcomes of the intermediation relation depend upon the interpretation of the regulation of inter-personal relations. Interestingly, in certain cases, foreign entities such as embassies and wealthy foreign entrepreneurs can bring in and employ their own countrymen or other foreign nationals. For example, Neha Vora (2013) shows, in the case of the Indian diaspora, how long-standing residents who are part of historical merchant communities rely on the infrastructures of intermediation to exploit their compatriots.

### States and Brokers

As mentioned above, the *kafala* was partly created and used by colonial and modern states to delegate to citizens their power of surveillance over foreigners and responsibility for controlling the temporariness of their stay in the country. This regulation by delegation is then carried out by private actors, be they employers or recruiters, firms or private citizens (Thiollet, 2021, p. 5). As a result of the state-centred approach to countries of the Gulf region that was initially adopted by academics specialised in migratory phenomena, the features of non-state intermediation at first went unnoticed. Yet the concepts of social authority and responsibility are entrenched in the *kafala*, as in other intermediation institutions. In the Bahraini Aliens Immigration and Residence Act of 1965, for instance, the 'work owner' (the term '*kafil*' is never used) is expected to be able to cover the cost of deportation, should the need arise. The obligation for the sponsor to repatriate the worker at the end of the temporary contract is a pillar of the *kafala*; only an order of deportation releases the employer from this obligation.

How has the state used or positioned itself towards the *kafala* in order to further its goals? Political scientists have favoured the state and inter-state level of analysis of the Middle Eastern sponsorship system, comparing it with European guest worker schemes in the period after the Second World War, thus overlooking the specificity of the *kafala*. To quote Lori (2019, p. 141), 'the *kafala* is an extensive and institutionalised inter-Asian guest worker scheme that moves millions of people and generates billions of dollars for sending and receiving countries annually'. This is because the sovereign state, and in particular the Interior Ministry, retains authority for issuing residence permits and is the ultimate authority that legally allows the migrant worker to remain.

However, while enforcement of migration control (the granting of residence permits) is ultimately maintained by states' interior ministries, the role of regulating immigration and the lives of foreign residents is distributed across the whole range of *kufala*. This asymmetry between a unified state authority and an extremely diverse range of intermediations is striking:

sponsors can be formal employers, in large firms or in small businesses, but also recruiters, who may be distinct from the employers, or just individuals lending their names. The configurations of intermediation vary across contexts, sectors of activity, and across skill levels. Under the label of *kafil* one can find international recruitment companies with offices in the Gulf and subsidiaries in immigrants' countries of origin, but also individuals with transnational ties, and sometimes migrants themselves.

Overall, the primacy of the state in the work of the Gulf migration intermediation regime is challenged by the variety of social configurations embedded in the *kafala*. It can thus be more accurately described as a private institution based on market mechanisms and social ties. It serves as an instrument of state policies towards migration, and as such it is embedded in the changing regulations produced by the state, but at the same time it offers the potential to work around state control, since social actors 'do not simply ... execute norms ... [they] are also in a position to carve out room for maneuver' (Bierschenk et al., 2002, p. 10).

As a result, the *kafala* sometimes serves, but also sometimes contradicts, the state's policy objectives. One can say that it has a life of its own, with its own economic rationale. When the *kafala* was first identified as an institution, it was shown to act in shaping both the relations between state and citizens (delegating legitimacy from the former to the latter), and those between citizens and foreigners (giving precedence to the former). In short, it shapes the overall pattern of social relations in the Gulf. At the domestic level, political scientists and political economists have framed the *kafala* as being foundational to the rentier social contract and a source of legitimacy for the Gulf regimes: by privatising their prerogative to regulate foreign workers' entry, they ensure segregation between nationals and expatriates, co-opting the former by turning them into the privileged recipients of material advantages, and maintaining tight control over the residency and labour mobility of the latter (Longva, 1999).

In addition to shaping social relations, the *kafala* shapes the composition of immigration through transnational connections between recruiters (and future sponsors) and potential migrants, as well as within migrant networks themselves. Thiollet and Assaf also note that migrants who are well connected can sometimes serve as sponsors for fellow nationals (Thiollet and Assaf, 2021, p. 6), thus facilitating chain migration. It creates constraints with which states (trying to control immigration) and migrants alike have to contend. Moreover, the *kafala* has an impact on the sheer size of flows, in spite of states' targets (particular those that aim to reduce the level of foreign labour, as in Kuwait or Bahrain). It both contributes to and mitigates the regulation of the mass influx of foreigners, as well as the presence of immigrants on national soil, in terms of both security and economics.

The Egyptian scholar SaadEddin (1982) also proposed the idea of the *kafala* serving as a 'secondary rent' for Gulf citizens, and thus acting as a pillar of a Middle Eastern social order. This resonates with the political economy of rentier states, and Thiollet accordingly introduced the idea of a 'migration rent', on the model of 'oil rent', in the sense of a revenue extracted from a commodity that has no production cost (Thiollet, 2021). The economic logic of importing foreign labour to offset the shortage of national workers is now indistinguishable from a widespread practice of brokerage and trade in work permits. Such parasitic brokerage is economically unproductive and fosters the image of a 'society of intermediaries' (Hertog, 2010b). Gulf citizens have also been conceptualised as 'migration rentiers' (Thiollet, 2021) or 'citizen sponsors' (Lori, 2019). The benefits received by citizens because of their privileged situation as nationals, which amounts to several billion dollars across the entire Gulf region (Dito, 2007, p. 8), seems to make it difficult for Gulf states to withdraw this privilege. The

state's difficulty in regulating at the level of individuals was expressed as follows by one of the members of the agency in charge of reforming the *kafala* in Bahrain: 'We need to bring the relationship [dictated by the *kafala*] into regulation. There is a gap between this issue and institutional capacity.'<sup>2</sup>

The next section explores the contemporary dynamics of reforms that have targeted the intermediation regime at work in the Gulf monarchies, and that are trying to challenge the existing power relations between states and brokers.

## STATES' ATTEMPTS TO REFORM INTERMEDIATION

The Gulf states have recently been taking back the initiative regarding the use of sponsorship in both capital and labour flows, thus moving towards the management of foreign workers through direct administration (Rycx, 2005), within their strategy of further integrating into the world economy. There are various reasons for these migration reforms: they are connected to the reputational costs incurred by an institution that has gained a certain notoriety, to the inefficiency of labour markets, and to state strategies for consolidation and regime survival.

In the 2000s, the *kafala* became politically costly for the ruling regimes of the Gulf in their quest for soft power. As Gulf states strived to be involved in large-scale events such as art fairs, sporting competitions and international exhibitions, they became increasingly sensitive to criticism of their labour laws and exploitative practices. Repeated campaigns from NGOs and migrants' advocacy networks directly targeted the sponsorship system as the greatest source of abuses and exploitation of migrant workers.<sup>3</sup> Such reputational costs certainly created incentives for reforms, but there were also political and economic motivations related to the domestic power relations between states and migration brokers.

In countries such as Bahrain where the level of unemployment of nationals had been a problem since the 1990s, the *kafala* was identified as one of the practices that had introduced a strong bias into the free interplay of offer and demand on the labour market, and in particular maintained a salary gap between foreigners and Bahrainis, as well as leading to an inefficient allocation of foreign labour. Firstly, the recruitment of workers from the cheapest labour markets available worldwide contributed to maintaining a segmentation of the labour market between citizens and foreigners, thus standing in the way of the much talked-about objective of a 'nationalisation' of manpower (in the sense of increasing the proportion of nationals in the workforce). Secondly, the privatisation of the regulation of foreign labourers on fixed-term contracts also led to a non-optimal equilibrium: although cheap labour could be found, there was a mismatch between workers' skills and occupations, and coercion gave rise to inefficiencies. The reform launched by the Bahraini authorities in 2006, aiming to 'cancel the *kafala*', was meant to target the economic deficiencies and contradictions of this system that reduced the territory's attractiveness to foreign companies, and to remove the salary gap between nationals and foreigners so that the former would become more competitive on the labour market. This ambition to liberalise the labour market was expressed by interviewees at the Labour and Market Reform Authority in Bahrain: 'Now [foreign workers] will compete on the basis of their skills, not because they are cheap labour'; 'What must be done is to apply labour law provisions that do not differentiate between the status of nationals and non-nationals' (thus leaving the question of entering and exiting the territory as a disconnected issue). Yet in the aftermath of the 2011 uprising, the reform met with fierce opposition from the Bahraini busi-

ness community, and was subsequently emptied of most of its ambitious substance. A similar situation can be observed in other cases.

In the 1990s and 2000s, Gulf states launched structural labour market reforms in order to increase the proportion of nationals employed in the private sector and reduce immigration numbers, under broad frameworks of a ‘nationalisation’ of the labour force. Yet the various phases of nationalisation in all six Gulf countries, coupled with ambitions to reform the *kafala*, alongside other migration reforms, led to mixed results. According to Thiollet (2021), labour market and migration reforms after the 1991 war in Kuwait and the 2011 Arab Spring – and notably reforms of the *kafala* – were tied to regime survival strategies in times of political crisis. Gulf states sought to better control not only immigration and immigrants, but also nationals and entities in the private sector, with a view to disarming economic counter-power (when they did not need their political support, as was the case in Bahrain), and thus avoiding social unrest. Stripping intermediaries of their prerogatives formed part of the overall strategy of social and economic control. This was particularly true in Saudi Arabia: there, overseas recruitment was reformed through a decree in 2012 that introduced licenses for ‘Mega Recruitment Companies’. Only ten companies were initially licensed, thus concentrating the business of intermediation, especially for low-skilled immigration, in the hands of a very small number of intermediaries acting under state surveillance (Thiollet, 2021, pp. 13–14). In parallel, the state organised a crackdown on small firms (*Arab News*, 2014). Thiollet (2021) explains that the foreclosures mainly affected ‘fake’ businesses that in fact served as intermediaries for other businesses, since the allowed number of migrants that a firm could sponsor had been dramatically reduced by the nationalisation policies.

The efficacy of nationalisation schemes, in terms of the increased integration of locals into private sector employment (Hertog, 2010a, 2014), remains unclear. Societies and citizens of the Gulf reacted negatively to successive attempts to remove the *kafala* across the region. In the case of Qatar, Diop et al. (2015) show, on the basis of a survey experiment, that Qataris strongly support the *kafala* and oppose reform, forming a powerful coalition of economic interests (uniting business owners, workers and the wealthy). Even more counter-intuitively, Khalaf notes that, while nationals have been increasingly encouraged by state reforms to open their own private businesses and have, as a result, gradually turned into private entrepreneurs, this tendency has maintained the need for foreign labour import, since the new ‘citizen-entrepreneurs’ resort to the *kafala* in order to keep on hiring foreign workers for their newly created businesses (Khalaf et al., 2015, p. 35).

Overall, reforms have been extremely hard to pass and even harder to implement. Several attempts have failed to entirely dismantle the institution, while progressively tying migration control to state agencies. High immigration numbers have persisted, the dependence of labour markets upon foreign labour has continued, supported by the entrenched interests of sponsors and employers, and immigrant communities have continued to settle in the region.

## CONCLUSION

Despite political ambitions to reduce or eliminate it, the *kafala* as an intermediation regime has shaped Gulf societies as much as it has enabled economic development and kept labour markets – albeit segmented ones – afloat. Recent attempts to dismantle this intermediation regime have revealed that it has allowed not only the exploitation and stigmatisation of

migrant workers, but also the long-term settlement and ultimately the long-term presence of migrants in host societies. As Noora Lori notes, '[p]rofit-seeking and trust networks can transform the kafil from an enforcer of restricted residency into a conduit for extending noncitizen residency' (Lori, 2019, p. 257).

Contrary to the idea that the *kafala* is by design an instrument of public policy, the institution has proved to be both ancillary and adverse to state politics; over decades, by shaping social relations and the behaviour of economic actors and cementing powerful interests, it has created effects that go beyond the reach of policies. Moreover, while human rights organisations rightly point to the cases of abuse that the *kafala* system has enabled by placing the migrant into a structurally unequal relationship, a broader vision of this pervasive institution shows that, among the power relations entailed by the *kafala* system, there are as many outcomes of intermediation as there are *kufala*' and configurations; which of course leaves a large arbitrary dimension in this unregulated relationship, far from the rule of law.

Overall, this chapter has advanced the idea that transnational intermediation regimes are central to understanding migration governance, and that a focus on the ever-ambivalent role of intermediaries offers a nuanced and situated vantage point for understanding the complex role of private institutions of migration governance in relation to states and public authorities.

## NOTES

1. By way of comparison, see the analysis of the use of the law by actors in the little-regulated field of domestic work in France (Delpierre and Malarmey, 2021, p. 105).
2. Interview conducted by Claire Beaugrand, 3 October 2011.
3. See, for example, the numerous reports on this subject produced by Human Rights Watch (2010, 2014, 2015).

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