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Beyond Kafala: Remediating Human Rights Abuses of Migrant Workers in the Persian Gulf

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I. Introduction

The states that comprise the Gulf Cooperation Council (GCC), an alliance of nations in the Arabian Peninsula, are in the midst of an epidemic of migrant worker abuse within their borders. The litany of human rights violations befalling these workers has become a hot topic among non-governmental organizations (NGOs), politicians, and media pundits over the past decade, and these critics often direct their ire at a common target: the labor laws that regulate migrant workers and, in particular, the *kafala* system. *Kafala* is a series of laws and customs used to monitor migrants within the Arabian Peninsula by requiring their employer oversee their stay. Critics argue the system plays into the hands of business owners, who stand to gain economically by using and abusing poverty-stricken migrant workers under their employ. And because inequality is rampant in the GCC, poor, non-citizen workers often do not have the clout needed to challenge wealthy natives who seek to maintain the status quo. Consequently, *kafala* detractors have called for the repeal of the system to address the abuses that migrant workers face in the region.

This push is not surprising. As more foreign workers filter into GCC countries, reports of human rights violations against migrants have become commonplace. Many observers who seek to pinpoint the “root causes” of these abuses have focused their ire on *kafala*. However, as evidenced by Bahrain’s unsuccessful efforts to curtail abuse by dismantling *kafala* through outreach and labor law reform, merely removing the traditional pillars of *kafala* is akin to paying lip service to this issue. Instead, the true problem may lie with critics’ mode of analysis.

This paper details some of the wide-ranging abuses occurring against migrant workers in the GCC, and looks at Bahrain’s attempts to curtail these abuses through the repeal of *kafala* as a case study. It then examines the potentially problematic method of “root cause analysis” employed by many NGOs and activist groups, using London School of Economics professor Susan Marks’ critique of such thinking as an analytical framework.

conditions that exist in the GCC, and questions an assertion made by University of Chicago professors Glen Weyl and Eric Posner that the GCC's current regime of migration policy is doing more to reduce global inequality than any other system in the world.

II. A History of Migration in the GCC

A. The GCC's Modest Beginnings and Rapid Rise

For centuries, the Persian Gulf was plagued by famine and drought that kept the region sparsely populated and relatively underdeveloped.¹ But the 20th century brought an enormous global demand for oil, and it so happened that every nation in the GCC was sitting on oceans of black gold.² In 1931, Bahrain became the first country in the Arabian Peninsula to strike oil.³ Soon thereafter, wells cropped up across the remaining nations that would later form the Gulf Cooperation Council—Kuwait, Qatar, Saudi Arabia, Oman, and the future United Arab Emirates.⁴ As oil continued to flow, the economic power of the Arabian Peninsula shifted dramatically in a matter of decades.⁵

By 1970, Persian Gulf states produced 30 percent of the world's oil,⁶ a figure that remains true today.⁷ This combination of vast oil production and low native populations turned GCC members into some of the wealthiest countries per capita on earth. According to the World Bank, Qatar had the highest Gross Domestic Product (GDP) per capita in the world in 2014, while the remaining GCC nations were not far behind: the United Arab Emirates (18th), Bahrain (28th), Saudi

¹ Farzaneh Roudi-Fahimi & Mary Mederios Kent, *Challenges and Opportunities—The Population of the Middle East and North Africa*, POPULATION REFERENCE BUREAU, at 5 (June 2007), <http://www.prb.org/pdf07/62.2MENA.pdf>.

² E. Roger Owen, *One Hundred Years of Middle Eastern Oil*, CROWN CENTER FOR MIDDLE EAST STUDIES, at 1 (Jan. 2008), <http://www.brandeis.edu/crown/publications/meb/MEB24.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Arabia (29th), and Oman (36th) all finished near the top of the list.⁸ While statistics for Kuwait are not available for 2014, the country ranked in the top 20 for GDP per capita from 2011–13.⁹

With this rapid rise in wealth came a push for even more rapid development across the region.¹⁰ Given that the small citizenry of the Persian Gulf could not meet demand for labor, an influx in worker migration from neighboring countries proved the most practicable way to balance the labor deficit.¹¹ Most migrants during the 60s and 70s came from nearby Arab nations, but by the 80s and 90s, the predominant labor-source countries shifted to South Asia.¹² This change was brought on in part by the encouragement of GCC governments, who viewed Asian migrants as less ideologically threatening as well as easier to segregate, lay off, and underpay.¹³

B. Migrants in the Modern Day GCC

Today, migrants comprise huge swaths of the GCC population. By latest count, more than 48 percent of the region's total population was non-nationals, including a staggering 85.7 percent in Qatar and 88.5 percent in the United Arab Emirates.¹⁴ While current figures on migrant demographics are difficult to come by, remittances serve as a guide to where most migrant workers originate. Roughly 90 percent of total remittances from the GCC flow to eight countries: Bangladesh, Egypt, India, Indonesia, Nepal, Pakistan, the Philippines, and Sri Lanka.¹⁵ Not surprisingly, all eight of these nations are categorized as “Developing Economies” by the United

⁸ THE WORLD BANK, *GDP Per Capita (Current US\$)*, http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?order=wbapi_data_value_2014+wbapi_data_value+wbapi_data_value-last&sort=asc.

⁹ *Id.*

¹⁰ Onn Winckler, *Labor Migration to the GCC States: Patterns, Scale, and Policies*, THE MIDDLE EAST INSTITUTE, at 9-10 (Feb. 2010), http://www.voltairenet.org/IMG/pdf/Migration_and_the_Gulf.pdf.

¹¹ *Id.*

¹² *Id.* at 11.

¹³ Sara Hamza, *Migrant Labor in the Arabian Gulf*, UNIVERSITY OF TENNESSEE HONORS THESIS PROJECT, at 5, http://trace.tennessee.edu/cgi/viewcontent.cgi?article=2762&context=utk_chanhonproj.

¹⁴ GULF LABOUR MARKETS AND MIGRATION: *Total Population and Percentage of Nationals and Non-Nationals in*

Nations.¹⁶ Migrant workers make up the majority of the low-income workforce in the GCC.¹⁷ In Bahrain, for example, the government estimates that migrants comprise 98 percent of the low-pay workforce, defined as workers earning less than \$530 per month.¹⁸ Many migrants in the region are poor, uneducated, and unfamiliar with cultural norms and legal systems of their host nations.¹⁹

The consequence of these facts is that the GCC is something of a “perfect storm” for rampant economic inequality. While small native populations lead to the region’s enormous wealth being concentrated in the hands of few,²⁰ a demand for rapid growth and development means migrants are constantly flocking to the GCC to fill the labor deficit. The workers that arrive come from populations that are among the poorest in the world, and they go to work in low-skill, low-wage jobs, often for far less than what GCC citizens earn.²¹ The result is economic inequality between the upper and lower tiers of society unlike anywhere else in the world.²² Some have argued that more economic inequality exists in the modern day GCC than did in apartheid South Africa or the antebellum South.²³

How exactly this inequality factors into the abuses workers face depends on who is asked. Statistically, at least, there is a strong correlation between inequality and human rights abuses.²⁴ And while virtually every human rights activist acknowledges that poverty plays a role in migrant workers becoming the victims of human rights abuses in the GCC, the tendency in rhetoric has

¹⁵ See THE WORLD BANK, *Bilateral Remittance Matrix 2014*, available for download at <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:22759429~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html>.

¹⁶ UNITED NATIONS, *World Economic Situation and Prospects 2015*, at 140 (2015), http://www.un.org/en/development/desa/policy/wesp/wesp_archive/2015wesp_full_en.pdf.

¹⁷ HUMAN RIGHTS WATCH, *For a Better Life: Migrant Worker Abuse in Bahrain and the Government Reform Agenda*, at 3 (2012), <https://www.hrw.org/sites/default/files/reports/bahrain1012ForUpload.pdf>.

¹⁸ *Id.*

¹⁹ *Id.* at 1.

²⁰ See Waheed Abbas, *GCC has Highest Concentration of Millionaires in the World*, EMIRATES247 (Sept. 7, 2008), <http://www.emirates247.com/eb247/banking-finance/finance/gcc-has-highest-concentration-of-millionaires-in-world-2008-09-07-1.177718>.

²¹ INTERNATIONAL MONETARY FUND, *Labor Market Reforms to Boost Employment and Productivity in the GCC*, at 10 (Oct. 5, 2013), <http://www.imf.org/external/np/pp/eng/2013/100513.pdf>.

²² Eric A. Posner & Glen Weyl, *A Radical Solution to Global Income Inequality: Make the U.S. More Like Qatar*, NEW REPUBLIC (Nov. 6, 2014), <https://newrepublic.com/article/120179/how-reduce-global-income-inequality-open->

been to focus more attention and ire at the laws underlying GCC migration policy. For many, this starts with the *kafala* system.

C. The Rise of the Kafala System

As more workers arrived, host nations had to find a way to handle the massive increase of foreigners. The system that emerged is *kafala*—meaning “sponsorship” in Arabic²⁵—which first took hold across the Persian Gulf nations in the 1950s.²⁶ While the details differ slightly by country, the core principle of *kafala* is that it ties each migrant worker to a “sponsor,” called a *kafeel*, who signs off on various legal documents and serves as a proxy for workers in dealing with the government.²⁷

At the outset, the *kafeel* is responsible for procuring the migrant’s work visa.²⁸ Further, migrant workers must receive consent from a *kafeel* to quit or change jobs before their contract expires.²⁹ In two countries—Saudi Arabia and Qatar—the worker must receive permission from the *kafeel* simply to leave the host nation.³⁰

Perhaps the most concerning aspect of the system to critics is the fact that a worker’s *kafeel* is usually his employer,³¹ meaning that scores of foreigners have their legal statuses tied directly to someone with an economic stake in their presence in the host nation.

III. Human Rights Violations and Other Abuses of Migrant Workers in the GCC

²⁴ Todd Landman & Marco Larizz, *Inequality and Human Rights: Who Controls What, When, and How*, 53 INT’L STUD. Q. 715, 716-17 (2009).

²⁵ Andres Rodriguez, *The Kafala System in the GCC*, THE GAZELLE (March 15, 2014), <http://www.thegazelle.org/issue/33/features/kefala-system/>.

²⁶ MIGRANT FORUM IN ASIA, *Reform of the Kafala (Sponsorship) System*, at 1 (2011), <http://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>.

²⁷ *Id.*

²⁸ *Id.*

The types of human rights violations and other abuses that workers endure in the GCC vary widely. The following section outlines some of the most common violations that migrant workers face.

A. Predatory Recruiting Practices

In order to find work in the GCC, many Asian migrants go through recruiting agencies, which charge large sums to match hopeful workers with employers.³² Workers typically cannot afford the agency's fees, which can range from a few months' to 20 months' wages,³³ and take out loans to cover the costs up front.³⁴ As a result, many workers enter the GCC in a worse economic position than they started.³⁵ Even if employers cover the costs of recruiting for the worker, they can use this as an excuse for cost-cutting and other restrictive measures they take on workers later.³⁶

B. Insufficient and Nonpayment of Wages

The most common complaint among migrant workers is unpaid wages. In 2009, the Bahraini government received 987 complaints of unpaid wages from migrants, more than any other form of abuse.³⁷ Workers in Saudi Arabia and the United Arab Emirates also told Human

³¹ *Id.*

³² AMERICANS FOR DEMOCRACY AND HUMAN RIGHTS IN BAHRAIN, *Slaving Away: Migrant Rights and Human Trafficking in the Gulf*, at 11, 27 (April 2014), http://www.adhrb.org/wp-content/uploads/2014/06/ADHRB_Slaving-Away-Migrant-Rights-and-Human-Trafficking-the-the-Gulf-Web-Pre-Publication.pdf.

³³ *Id.*

³⁴ Francois Crepeau, *Report of the Special Rapporteur on the Human Rights of Migrants*, UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, at 8 (April 23, 2014), http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1_en.pdf.

³⁵ *See id.*

Rights Watch that they had wages delayed or unpaid for periods ranging from two weeks to 31 months.³⁸

Even when wages are paid, workers commonly face underpayment.³⁹ Prior to leaving their home countries, these workers are promised a wage significantly higher than what they are paid upon their arrival in the GCC.⁴⁰ Pay is especially low in comparison to the average salaries of native populations: In Bahrain, for example, foreign workers earn on average less than one third of the money that Bahraini citizens do.⁴¹ Although GCC governments occasionally enter into bilateral agreements with labor-source countries to standardize a minimum wage for migrant workers from that nation, these agreements are hardly enforced and can be largely ignored by employers.⁴²

C. Exit Visa Requirements and Passport Confiscation

Two nations in the GCC—Saudi Arabia and Qatar—require workers to receive sponsor approval before they can legally leave the country through a document called an exit visa.⁴³ Migrants who do not follow this restriction can be arrested and criminally charged.⁴⁴ Employers also regularly confiscate workers' passports upon arrival, leaving migrants without a form of ID.⁴⁵ This restricts workers' freedom of mobility, as well as their ability to utilize various appeals processes.⁴⁶

D. Inhumane Living and Working Conditions

³⁸ HUMAN RIGHTS WATCH, *'As If I am Not Human': Abuses Against Asian Domestic Workers in Saudi Arabia*, at 74 (2008), https://www.hrw.org/sites/default/files/reports/saudiArabia0708_1.pdf; HUMAN RIGHTS WATCH, *'I Already Bought You': Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*, at 36 (2014), https://www.hrw.org/sites/default/files/reports/uae1014_forUpload.pdf.

³⁹ *Slaving Away*, *supra* note 32, at 5.

⁴⁰ *Id.*

⁴¹ *Id.* at 12.

⁴² *Id.* at 33.

⁴³ Rodriguez, *supra* note 25.

⁴⁴ MIGRANT FORUM IN ASIA, *supra* note 26.

Many low-income migrants throughout the GCC also deal with a lack of health care and poor housing provided by employers.⁴⁷ Overcrowding is a serious issue, as employers can force eight or more workers to sleep in a single room.⁴⁸ Other problems include inadequate sewage, low-quality drinking water, and unsafe and unsanitary conditions for food preparation.⁴⁹ Fires can be common in these facilities; in 2013, a fire at a migrant dormitory in Bahrain killed 13 Asian workers and injured another nine.⁵⁰ That incident came only a year after 10 migrants were killed in a fire at a dorm that was at more than twice its occupancy.⁵¹

Some workers are subjected to physical abuse, including beatings or burnings used as punishment.⁵² Additionally, extreme heat, long hours, and a general lack of safety oversight create dangerous situations for migrants.⁵³ In 2014, the International Trade Union Confederation estimated that 4,000 migrant workers will die in Qatar during preparations for the 2022 World Cup.⁵⁴ The number is especially staggering when compared to the death rates for previous World Cups: seven workers died leading up to the 2014 tournament in Brazil, while only two worker deaths were reported during the 2010 South Africa World Cup.⁵⁵

IV. Global Criticism of the GCC's Human Rights Record

⁴⁷ Maria Kristiansen & Aziz Sheikh, *The Health of Low-Income Migrant Workers in Gulf Cooperation Council Countries*, HEALTH AND HUMAN RIGHTS J. (July 22, 2014), <http://www.hhrjournal.org/2014/07/the-health-of-low-income-migrant-workers-in-gulf-cooperation-council-countries/>.

⁴⁸ Hamza, *supra* note 13.

⁴⁹ Sevil Sonmez, et al., *Human Rights and Health Disparities for Migrant Workers in the UAE*, at 21 (2011), <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2013/06/Sonmez2.pdf>.

⁵⁰ BAHRAIN CENTER FOR HUMAN RIGHTS, *13 Migrant Workers Killed and 8 Injured in an Apartment Building Fire Due to the Lack of Proper Housing Conditions*, <http://www.bahrainrights.org/en/node/5604>.

⁵¹ *Id.*

⁵² *Slaving Away*, *supra* note 32, at 13.

⁵³ Sonmez, *supra* note 49, at 20.

⁵⁴ INTERNATIONAL TRADE UNION CONFEDERATION, *The Case Against Qatar*, at 15 (March 2014), <http://www.ituc->

As more stories of migrant abuse in the GCC flow in, global condemnation of the region's track record on human rights has reached a peak.

NGOs, which have been lashing out at GCC governments for years, continue to lead the way by releasing reports on conditions in the region and demanding bureaucratic responses, including a repeal of *kafala* and increased labor law protections for migrants.⁵⁶ In 2014, 90 human rights organizations and unions, including Amnesty International and Human Rights Watch, signed a unified call for labor ministers in the GCC to increase protection for migrant workers in the region.⁵⁷ The groups' collective recommendations fall along similar lines: establishing and regulating comprehensive labor law; reforming *kafala*; removing exit permit requirements; and ensuring that migrants have access to support services.⁵⁸

Foreign officials and bodies have also gotten involved. The UN has made numerous overtures to GCC countries on human rights. In 2014, the Office of the High Commissioner on Human Rights released a special report on migrant rights in Qatar, which pegged *kafala* as a "source of abuse" that should be abolished.⁵⁹ The report also called for the repeal of *kafala*, reform of labor law and deceptive recruiting practices, and closer oversight of working conditions, among other changes.⁶⁰

In 2015, Nepal's labor minister urged the Qatari government to repeal *kafala*, just two years after Nepal removed its ambassador from the country and called Qatar an "open jail" for the some 400,000 Nepalese migrant workers there.⁶¹ However, Nepal's call for repeal came only after thousands of Nepalese workers were denied the right to travel home in the wake of a massive

⁵⁶ See AMNESTY INT'L, *'My Sleep is my Break': Exploitation of Migrant Domestic Workers in Qatar* (April 23, 2014), <http://www.amnestyusa.org/research/reports/my-sleep-is-my-break-exploitation-of-migrant-domestic-workers-in-qatar>; HUMAN RIGHTS WATCH, *'I Already Bought You': Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates* (Oct. 22, 2014), <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>.

⁵⁷ HUMAN RIGHTS WATCH, *Gulf Countries: Increase Migrant Worker Protection*, <https://www.hrw.org/news/2014/11/23/gulf-countries-increase-migrant-worker-protection>.

⁵⁸ *Id.*

⁵⁹ Crepeau, *supra* note 34.

⁶⁰ *Id.* at 18-19

earthquake that rocked their home country in April 2015.⁶² Other states have been more guarded with their criticism, allegedly having been ordered by Qatari government officials to “play down” harsh conditions or else face a reduced flow of remittances.⁶³

Media have further targeted the sponsorship system when discussing human rights abuses in the GCC.⁶⁴ For example, a *Guardian* editorial asserted that *kafala* “puts far too much power in the hands of the employer/sponsor” and is “the root of abuses of workers’ rights.”⁶⁵

Kafala does, however, have some supporters, particularly among the business community and elite classes in the GCC.⁶⁶ Business owners and the wealthy yield vast economic benefits from the system as it currently exists and view any change to the status quo as a threat to financial prosperity.⁶⁷ Though they are often outnumbered, the clout of these well-connected classes can make them formidable opponents to change.

The ongoing saga of proposed *kafala* reform in Qatar illustrates this conflict. Though Qatari officials have long promised reform in the wake of rising death tolls among migrant workers, human rights advocates have seen deadline after deadline pass without change.⁶⁸ This is due in part to pressure from “ultra-conservative” business operators who stand to lose out financially on a more equitable system in which workers are paid more, given better accommodations, and more rights.⁶⁹ Reforms finally announced in October 2015, the apparent product of behind-the-scenes power battles with Qatari business leaders, did not repeal

⁶² Travis Waldron, *Qatar Won't Let Nepalese World Cup Workers Go Home for Earthquake Funerals*, THINK PROGRESS (May 24, 2015), <http://thinkprogress.org/sports/2015/05/24/3662492/nepal-labor-minister-blasts-qatar-treatment-world-cup-workers/>.

⁶³ *Case Against Qatar*, *supra* note 54 at 4, 14.

⁶⁴ See Azfar Khan, *Why it's Time for Kafala to End*, THE GUARDIAN (Feb. 24, 2014), <http://www.theguardian.com/global-development/2014/feb/26/time-to-end-kafala>; Tahmima Anam, *Migrant Worker Nations, Unite!*, N.Y. TIMES (April 4, 2014), http://www.nytimes.com/2014/04/05/opinion/anam-migrant-worker-nations-unite.html?_r=0.

⁶⁵ Azfar Khan, *Why it's Time for Kafala to End*, THE GUARDIAN (Feb. 24, 2014), <http://www.theguardian.com/global-development/2014/feb/26/time-to-end-kafala>

⁶⁶ Shabina S. Khatri, *Ahead of Expected Changes, UN Official Hits Out at Kafala Supporters*, DOHA NEWS (April 26, 2014), <http://dohanews.co/ahead-expected-changes-un-official-hits-kafala-supporters/>.

⁶⁷ Yasin Kakande, *Slave States: The Practice of Kafala in the Gulf Arab Region*, ZERO BOOKS, at 13 (2015).

⁶⁸ KUWAIT TIMES, *Qatar's Sponsorship System Clings Stubbornly to Life, June 30, 2015*, <http://news.kuwaittimes.net/qatars-sponsorship-system-clings-stubbornly-to-life-troubled-kafala-system-proves-hard>.

requirements that migrants receive permission to exit the country, and in fact provided for three-year prison terms for migrants caught leaving without proper forms or changing employers without sponsor consent.⁷⁰ The reforms were attacked as a “sham” that failed to address the system’s biggest flaws and a “smokescreen to draw in companies and governments to do business in Qatar.”⁷¹

But global opinion seems to push against *kafala* due largely to its perceived impact on migrants. A common thread amongst critics arguing for *kafala*’s repeal is that the sponsorship system, along with inadequate labor law, are the root causes at the heart of many abuses that workers face in the GCC. Put another way, the call to change the system of laws, including *kafala*, seems motivated by a notion that such a reform would significantly improve conditions for migrants in the region. But is this necessarily the case?

V. Bahrain: A Case Study

In order to see how a repeal of *kafala* might function in the real world, it is helpful to look at a real world example. The first such case came to be when Bahrain’s government attempted to alter its migration policy as part of an effort to redress human rights abuses occurring within its borders.

Among GCC nations, Bahrain has developed a reputation for, at least facially, showing the most commitment to improving migrant labor practices.⁷² In 2006, the country critically altered *kafala* when it created a regulatory department called the Labor Market Regulatory Authority (LMRA).⁷³ The entity was tasked with overseeing recruitment of migrants, issuance of work visas,

⁷⁰ HUMAN RIGHTS WATCH, *Qatar: New Reforms Won’t Protect Migrants* (Nov. 8, 2015), <https://www.hrw.org/news/2015/11/08/qatar-new-reforms-wont-protect-migrant-workers>.

⁷¹ INT’L TRADE UNION CONFEDERATION, *Qatar’s Labor ‘Reforms’ a Sham* (Oct. 28, 2015), <http://www.ituc-psi.org/qatar-s-labour-law-reforms-a-sham>

and employee transfers.⁷⁴ The LMRA's duty of issuing work visas meant that workers were no longer tied to employer-sponsors, but went through an independent government agency instead.⁷⁵ Further, the LMRA created a number of innovations geared toward migration reform, including a digital platform to check the status of work visas, a call-in radio program to answer questions migrants may have, and the production of a Know-Your-Rights informational pamphlet distributed to migrants in eight languages upon entry into the country.⁷⁶

Then in 2009, Bahrain became the first country in the GCC to attempt to functionally repeal *kafala*.⁷⁷ This came shortly after the country's then-minister of labor likened the *kafala* system to slavery.⁷⁸ Arguably the biggest change to Bahrain's system was that workers no longer needed employer approval to change jobs once a contractual notice period had elapsed.⁷⁹ These notice periods could not legally exceed three months.⁸⁰ Further, the LMRA promised to provide services to migrants with or without passports, as it claimed it could use fingerprinting or other methods of identification instead.⁸¹ Bahrain also announced policy changes geared at improving worker safety, fighting against human trafficking, and educating workers on their rights.⁸² Finally, it implemented criminal penalties that violators could face for worker abuse and nonpayment of wages.⁸³

On its face, the reforms of 2006 and 2009 seemed to touch on almost every area that NGOs and other critics had identified in analyzing the mistreatment of workers in the GCC. In fact, Human Rights Watch (HRW) issued a report praising the 2009 reforms shortly after they were

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 6.

⁷⁸ Mohammed Harmasi, *Bahrain to End 'Slavery' System*, BBC (May 6, 2009), http://news.bbc.co.uk/2/hi/middle_east/8035972.stm.

⁷⁹ *For a Better Life*, *supra* note 17 at 7.

⁸⁰ *Id.*

⁸¹ *Id.* at 33-34.

announced, calling them a “major advance” and predicting the changes would “dramatically improve the status of most migrant workers and reduce their risk of exploitation.”⁸⁴

And yet, even in the wake of the deconstruction of the most criticized pillars of *kafala*, the overhaul failed to achieve its goal of curbing many of the human rights violations that have plagued the country for years.⁸⁵ Three years after it had openly praised Bahrain for its progressiveness, HRW released a detailed report that showed, in essence, little had changed regarding the treatment of migrant workers.⁸⁶

According to the report, workers are regularly shorted on wages, with as many as half of migrant workers in Bahrain having their wages withheld at least once during their contract.⁸⁷ Although this practice is the leading cause of complaints filed with the Bahraini Ministry of Labor and is a violation of Bahraini labor law, it continues virtually unabated.⁸⁸ The average length for wage withholding is anywhere from three to 10 months, a period that can be catastrophic for poor workers who face steep loan interest rates and mounting debts at home.⁸⁹ While the Bahraini government requires employers to furnish receipts signed by employees showing wage payments, these are often forged by means of fraud or intimidation.⁹⁰

Migrants also still face poor conditions both at work and in employer-provided living.⁹¹ Some workers are forced to perform dangerous tasks that fall outside the scope of their agreed upon positions, while excessive hours, especially among domestic workers who live and work in private homes, are commonplace.⁹²

Although migrants are no longer tied to employer sponsors, many in Bahrain report that passports are still confiscated regularly by employers, despite laws explicitly banning the

⁸⁴ HUMAN RIGHTS WATCH, *Bahrain: Labor Reforms a Major Advance* (May 13, 2009), <https://www.hrw.org/news/2009/05/13/bahrain-labor-reforms-major-advance>.

⁸⁵ See generally, *For a Better Life*, *supra* note 17.

⁸⁶ See generally *id.*

⁸⁷ *Id.* at 35.

⁸⁸ *Id.* at 3.

⁸⁹ *Id.*

⁹⁰ *Id.* at 36.

practice.⁹³ In fact, every one of the 62 workers HRW interviewed had their passport confiscated upon arrival.⁹⁴ Police and government officials can ask employers to return documentation to workers, but they lack power to enforce such demands without binding court orders, which can take months to get.⁹⁵ Criminal prosecutions for employers who confiscate employee passports are virtually unheard of.⁹⁶ In fact, Bahraini officials could not cite a single example of a company facing sanctions for such a violation when questioned on this issue.⁹⁷

Marietta Dias of the Migrant Workers Protection Society summed the situation up to HRW: “If you go talk to the ministers and look at the law everything is perfect and nothing can’t be handled. But when you go to the little guys [in the ministries], the guys that process everything, they either don’t have the authority to do anything or they haven’t been told the law.”⁹⁸

At the end of its 2012 report, Human Rights Watch again laid out a series of proposed reforms that mirrored the organization’s earlier calls for change.⁹⁹ The organization chastised the Bahraini government for “a lack of prosecution and enforcement of penalties under its laws,” citing this as the reason that law reform had not worked.¹⁰⁰ HRW also heavily criticized an amendment of the law allowing workers to change jobs without employer permission.¹⁰¹ In 2011, Bahrain reformed the law, increasing the required waiting period to one year before employees could legally leave an employer.¹⁰² The new law was pushed through at the behest of business owners and without consultation of the General Federation of Bahrain Trade Unions, which

⁹³ *Id.* at 8.

⁹⁴ *Id.* at 28.

⁹⁵ *Id.* at 4.

⁹⁶ *Id.* at 31-32.

⁹⁷ *Id.*

⁹⁸ *Id.* at 33.

⁹⁹ *Id.* at 113-121.

¹⁰⁰ HUMAN RIGHTS WATCH, *Bahrain: Abuse of Migrant Workers Despite Reforms* (Sept. 30, 2012), <https://www.hrw.org/news/2012/09/30/bahrain-abuse-migrant-workers-despite-reforms>

represents workers' interests to the LMRA.¹⁰³

While no investigation into conditions for migrants in Bahrain has since mirrored the detail of HRW's 2012 report, HRW has continued to denounce the state of affairs in Bahrain. Specifically, the section on Bahrain in the organization's 2015 World Report runs down the same familiar list of abuses— unpaid wages, passport confiscation, unsafe housing, excessive work hours, physical abuse, and forced labor—still regularly befalling migrant workers in the country.¹⁰⁴ The report pinpoints “shortcomings in Bahrain's legal and regulatory framework and the authorities' failure to enforce relevant labor laws” as the cause of continued human rights violations.¹⁰⁵

VI. The Problem of ‘Root Cause’ Analysis

Clearly, Bahrain's initial foray into migrant reform must be considered a failure. The obvious question that follows is: Why? What caused the Bahraini reforms to fail to yield meaningful change in the treatment of migrant workers when they at least apparently addressed the systematic shortfalls identified by human rights observers? According to HRW and other critics, the issues lie with the Bahraini government: inadequate enforcement, a lack of resource commitment, and an inability to provide the correct legal framework doomed the reform efforts before they could start in earnest.¹⁰⁶

But perhaps the problem does not lie with an inability to implement the solutions proposed by human rights activists. Rather, the issue may stem from the way critics analyze the problem to begin with.

¹⁰³ *Id*

Susan Marks, a law professor at the London School of Economics, offers an insightful critique of the method of “root cause” analysis often employed today by NGOs and human rights advocates.¹⁰⁷ In her article, *Human Rights and Root Causes*, Marks alleges that, in the process of trying to unearth the underlying causes behind human rights violations, human rights organizations create analyses that fall short in three ways. First, a “root causes” framework leads the investigation into causes to halt too soon.¹⁰⁸ Second, critics often treat effects as causes.¹⁰⁹ And third, even when causes are identified, they are often set aside without proper consideration.¹¹⁰

A. Stopping the Inquiry Short

To her first point, Marks argues that critics often fail to take their investigation into causes back far enough, halting after pinpointing vulnerabilities that lead to abuse, but not seeking out the conditions or larger framework that bring those vulnerabilities into being.¹¹¹ Marks claims that this tendency leads to a focus on technical problems and solutions that define inequalities as “accidental aberrations” that are not themselves the product of a greater issue.¹¹² Therefore, the assumption is that these causes can be resolved with the simple rewording of law, when in fact the issue may run deeper.¹¹³ This tendency, Marks argues, stems from the need for NGOs to be able to reformulate proposals into “bullet-point conclusions at the end of reports.”¹¹⁴

To put Marks’ idea into practice using the example of the Bahraini reform effort, advocates often pinpoint *kafala* and other perceived weaknesses in labor law as the “root cause” of the abuses against workers taking place there.¹¹⁵ But rarely does the inquiry go deeper. According to Marks,

¹⁰⁵ *Id.*

¹⁰⁶ *Abuse of Migrant Workers*, *supra* note 99.

¹⁰⁷ Susan Marks, *Human Rights and Roots Causes*, 74 MODERN L. REV. 57, 71 (Jan. 2011).

¹⁰⁸ *Id.* at 70.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 71.

¹¹² *Id.*

¹¹³ *Id.*

these groups must look into the larger framework that make it possible for these laws to exist in order to get a more true understanding of how they came to be.¹¹⁶

Specifically, labor law in the GCC functions within a system of mass migration that sees enormous numbers of migrants flow in and out of the GCC. In fact, it was this increase in migration to the GCC that brought about the emergence of *kafala* in the first place.¹¹⁷ The aforementioned “perfect storm” of factors that exist in the GCC have given rise to incredible migration to the region: GCC nations are newly rich, sparsely populated, and desperately in need of unskilled labor to cope with their demand for rapid development.¹¹⁸ And the need to regulate these migrants has allowed *kafala* to flourish.

But because such enormous wealth is concentrated among such small citizenships, the potential for economic inequality is great, particularly when mass quantities of migrants are pumped in from some of the poorest countries in the world. In fact, by some measures, GCC nations are the most economically unequal societies across the globe.¹¹⁹ Yet these policies continue to survive in the face of enormous global scrutiny largely because they benefit business classes and trading partners of the GCC, who garner a great deal of profit off the backs of cheap labor.¹²⁰

Beyond the conditions that exist in the GCC, it is crucial to consider how and why migrants continue to flock to the region in spite of growing concerns over conditions for workers there. The simple answer is, in fact, too simple: money. But there is more to the story than just that. Some 90 percent of remittances that flow out of the GCC go to eight nations: Bangladesh, Egypt, India, Indonesia, Nepal, Pakistan, the Philippines, and Sri Lanka.¹²¹ As mentioned earlier, all are

¹¹⁶ Marks, 74 MODERN L. REV. at 71.

¹¹⁷ See MIGRANT FORUM IN ASIA, *supra* note 26.

¹¹⁸ Winckler, *supra* note 10.

¹¹⁹ Posner, *supra* note 22.

considered “Developing Economies” by the United Nations.¹²² Many rely heavily on remittances to sustain themselves. Nepal, for example, took in some \$5.8 billion in incoming remittances in 2014,¹²³ the equivalent of more than 29 percent of its total GDP.¹²⁴ Only two countries in the world received a higher percentage than that.¹²⁵ Many of these countries also have internal strife or other factors that weigh on citizens’ ability to earn a living at home. For example, in India, Nepal, and Sri Lanka, a caste system subjugates many to the lowest rungs of society and leaves millions in abject poverty.¹²⁶ Individually, Nepal faces political turmoil and landlocked borders that have wreaked havoc on its economy.¹²⁷ Similar issues befall the other countries listed, leading migrants to feel their best options lie elsewhere. As one Filipino migrant in Bahrain told Human Rights Watch: “I came because of poverty.”¹²⁸ And while labor-source governments have made some attempts to protect their citizens, at times negotiating bilateral agreements to establish a minimum wage or denouncing *kafala* altogether, there is enormous pressure on these nations not to close the valve through which GCC remittances flow.¹²⁹

It seems, then, the larger framework under which *kafala* operates is one driven by economic inequality, which itself is caused by dozens of external factors. Global inequality—between the GCC and source countries—sets the table for mass migration by combining poor migrants’ search for living wages with the GCC states’ unique ability to support a migrant system that often outnumbers its own native population. Intra-state inequality—that between the upper and lower classes in GCC states—allows *kafala* to be profitable by giving the wealthy enough power to

¹²² *World Economic Situation*, *supra* note 16.

¹²³ THE WORLD BANK, *Personal Remittances, Received (Current US\$)*, (last viewed Dec. 16, 2015), http://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?order=wbapi_data_value_2013+wbapi_data_value&sort=desc.

¹²⁴ THE WORLD BANK, *Personal Remittances, Received (% of GDP)*, (last viewed Dec. 16, 2015), http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?order=wbapi_data_value_2014+wbapi_data_value+wbapi_data_value-last&sort=desc.

¹²⁵ *Id.*

¹²⁶ Jasmine Rao, *The Caste System: Effects on Poverty in India, Nepal, and Sri Lanka*, 1 GLOBAL MAJORITY E-J. 97, 98 (2010).

¹²⁷ Kunda Dixit, *India and Nepal Have No Choice But to End Their Border Dispute and Move On*, TIME MAGAZINE

assert their will over a weaker majority of migrants.

B. Conflating Effects with Causes

Next, Marks claims that effects are often conflated with causes in a “root causes” analysis,¹³⁰ an idea that is especially intriguing in the context of GCC migration. To illustrate her point, Marks uses an example: In a country with gaps in its labor law, it may often be said that the faulty law leads to inequalities within the system.¹³¹ But Marks argues that often the reverse is true.¹³² Rather than being a cause of inequality, the porous labor law may properly be viewed as an effect in place to stabilize the structure that includes such inequalities.¹³³

Similarly, it can be helpful to consider *kafala* less as a cause of human rights abuses in the Gulf, and more as an effect of the GCC’s extraordinarily unequal societies. *Kafala* and other repressive policies do not inherently cause human rights violations. Theoretically, *kafala* could function in a completely legitimate way should employers decide to take action that considered the employee’s best interest. Rather, we should consider that perhaps these structures are in place precisely because the elite classes in the GCC want them as a means of subjugating and objectifying poor, powerless workers. After all, the meddling of business owners has proven the biggest obstacle facing reform of labor law in the GCC.¹³⁴

Nowhere is this more evident than in post-reform Bahrain, where maneuvers meant to empower workers had no effect on their treatment.¹³⁵ Specifically, attempts to repeal the traditional employer-as-sponsor element of *kafala* and issue work visas through the LMRA did not work because employers simply used other tactics—namely wholesale passport confiscation—to achieve

¹²⁹ *Case Against Qatar*, *supra* note 54.

¹³⁰ Marks, 74 MODERN L. REV. at 72.

¹³¹ *Id.* at 72.

¹³² *Id.*

¹³³ *Id.*

the same ends.¹³⁶ Further, repeal of the employer-consent law for changing jobs lasted all of two years before it was reformed into a modified version at the prodding of business leaders and behind the back of workers' rights groups.¹³⁷ Similarly, reform efforts in Qatar have continually been undercut by pressure from employers who benefit from the status quo.¹³⁸ While human rights advocates hoped that repeal of these laws would balance the scale between employer and employee in the GCC, employers have just found ways to add more weight.

So treating *kafala* and other gaps in labor law as a cause of human rights abuses may be problematic. If business owners in the GCC went along with labor law reform, they no doubt would have taken hold; certainly, they seem to be among the few parties still campaigning in favor of the policy. But the policies are still in place because the wealthy want them to be. As a result, the GCC's current paradigm of migration policy is better viewed as an effect of an unequal system that prays upon the weak.

This approach allows *kafala* to be seen as a tool used to perpetuate wrongs by the powerful. But *kafala* does not create the complex set of circumstances that foster a system of highly unequal, migrant-heavy labor that allows the current system of abuse to exist. Without consideration to those external factors, simply repealing *kafala* would be putting a Band-Aid on the problem. Certainly, it may help in the short-term, but it is not responsive to the other underlying factors that create the opportunity and incentives to subjugate.

C. Setting Causes Aside

Finally, Marks asserts that the "root causes" analysis often leads to causes being identified, only to be promptly set aside when it comes time to make practical proposals for change.¹³⁹ Marks argues that the result of ignoring these causes is suggesting action that may not drive at the real

¹³⁶ *Id.* at 28

reason(s) behind the inequality at issue.¹⁴⁰ This in turn leads to “false promises” that the prescribed reforms will sufficiently address the inequality.¹⁴¹

In its 2012 report, Human Rights Watch notes that extreme poverty at home is the driving factor in migrants seeking out new opportunities in GCC nations.¹⁴² The report cites the impoverished backgrounds, lack of education, and low-skill jobs that are often associated with migrants in the Middle East.¹⁴³ It contains first-hand accounts of mistreatment from migrants who seem all but resigned to their fate because of their status at the bottom of the economic ladder, saying, “We expect to be mistreated here but what can we do, we are poor.”¹⁴⁴

And yet, the report’s recommendations largely focus on improving bureaucratic remedies, including more efficient mediation of worker complaints and improving inspection.¹⁴⁵ Although they do touch on some economic concerns—namely establishing a minimum wage and assuring more fairness in payment practices—they make little discussion of the situation in the migrant’s home nation.¹⁴⁶ There are no calls to action by labor-source governments beyond closer monitoring of their citizens and urging Bahrain to change.¹⁴⁷ That is not to say that the reforms HRW suggest are not worth pursuing, but when they are the basis of the entire inquiry, they fall victim to the phenomenon that Marks calls “false contingency”—the misled assumption that inequalities are “random, accidental or arbitrary” without connection to systematic constraints and pressures.¹⁴⁸

D. How activists can reformulate their calls for change

¹³⁹ Marks, 74 MODERN L. REV. at 73.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *For a Better Life*, *supra* note 17, at 2.

¹⁴³ *Id.* at 1.

¹⁴⁴ *Id.* at 46.

¹⁴⁵ *Id.* at 113-15.

¹⁴⁶ *Id.*

Given the apparent problems with root cause analysis, what are activists left with? Here, Marks' position is somewhat incomplete. She advocates for a new analytic approach that is: 1) anti-moralistic; 2) transitive; 3) relational; 4) materialist; and 5) has repoliticizing thrust, although she admits it to only be a "brief, initial sketch."¹⁴⁹

However, I would argue that the query should be less about root causes than about inclusive solutions. Specifically, I would argue that the range of options for resolving issues like these needs to be much broader than a "root causes" analysis may allow. As has been outlined above, stark economic inequality plays a clear role in creating the conditions necessary on both sides for the current model of GCC migration to exist. And yet while poverty and power are always apart of the conversation, the bullet-pointed lists at the end of NGO reports are almost always targeted toward GCC nations, and rarely at breathing life into struggling labor-source countries. But how is this to be done? What is the most effective way to combat global inequality such as what exists between the GCC and its labor-source nations? Ironically, the answer may be exactly what the GCC is doing.

VII. Is GCC Migration an Enemy to Inequality?

Regardless of how human rights groups approach their analysis going forward, it is clear that greater attention needs be placed on the factors that incentivize the mass migration as they currently exist in the GCC. In particular, analysis should focus more on the global economic inequality that leads desperate migrants searching for a boost to their earning power at any cost, while rich GCC nations waiting to swallow them up en masse. But in considering how best to approach the dual issues of economic inequality and human rights abuses in the GCC, there is one critical caveat that activists must consider.

In an article entitled *A Radical Solution to Global Income Inequality*, University of Chicago professors Eric Posner and Glen Weyl lay out a compelling case for why the current system of migration in the GCC is contributing more to reduction of global inequality than any policy enacted in the Western world.¹⁵⁰ The crux of Posner and Weyl's argument is that by allowing such an extremely high flow of migrants from some of the poorest nations on earth, GCC nations are increasing the earning power of migrants in a way that is not matched on such a scale anywhere else in the world.¹⁵¹

This is so because migrants to the GCC are often so poor that their starting points are extremely low.¹⁵² To illustrate their point, the authors use the example of a Bangladeshi worker who migrates to the UAE and earns \$5,000 for a job he could only earn \$1,000 for in his home nation.¹⁵³ They then draw an analogy to a worker within a wealthy nation like the United States earning \$12,000—relatively poor by the country's standards—and increasing his pay to \$16,000.¹⁵⁴ While both have seen a \$4,000 pay increase, the Bangladeshi migrant's pay has risen fivefold, while the U.S. worker has only received a 33 percent bump in pay.¹⁵⁵

Because inequality is much more severe between countries than within them, Posner and Weyl argue that migration policies adopted in the GCC do much more to reduce extreme global poverty and inequality than does reshuffling of money within wealthy states.¹⁵⁶ This is especially true in GCC nations like the UAE, where migrants send more than 75 percent of their salary home in remittances.¹⁵⁷ And remittance flows are much more efficient in

¹⁵⁰ Eric A. Posner & Glen Weyl, *A Radical Solution to Global Income Inequality: Make the U.S. More Like Qatar*, NEW REPUBLIC (Nov. 6, 2014), <https://newrepublic.com/article/120179/how-reduce-global-income-inequality-open-immigration-policies>.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

reducing inequality than donating money to poor nations, where large shares are lost to corruption, waste, and capture by wealthy elites.¹⁵⁸

But perhaps most critical to Posner and Weyl's argument: The subjugation of migrant workers is part of what makes the system profitable and appealing to GCC members.¹⁵⁹ As previously mentioned, Arab migrants were gradually replaced with South Asian migrants at the encouragement of GCC governments, who saw the latter as easier to control and less threatening to culture and ideology.¹⁶⁰ Posner and Weyl argue that, should GCC nations be made to empower migrants with political, social, and economic rights, they will be unlikely to welcome as many migrants across their borders, and the subsequent effects on global inequality will take a hit.¹⁶¹ While the GCC's humanitarian track record is nothing to celebrate, the authors suggest that achieving global inequality reduction often requires "uncomfortable tradeoffs."¹⁶² Their argument is summed up thus: "The GCC model of accepting migrants on economically and politically subordinate terms, though not humanitarian on its face, has proven so in practice. If this model were adopted in rich countries ... the benefits for the world's poorest people would be vast."¹⁶³

From an economic perspective, the numbers back up the duo's claims. In 2014, the GCC member states combined for some \$102 billion in outgoing remittances.¹⁶⁴ Although this figure trailed the United States' total of \$130 billion—the highest for a single nation¹⁶⁵—the GCC contributed far more in per capita remittances, considering the region has less than one-sixth the

¹⁵⁸ E. Glen Weyl, *The Openness-Equality Tradeoff in Global Redistribution*, BECKER FRIEDMAN INSTITUTE, at 13, <https://bfi.uchicago.edu/sites/default/files/research/Weyl.pdf>.

¹⁵⁹ Posner, *supra* note 149.

¹⁶⁰ Hamza, *supra* note 13.

¹⁶¹ Posner, *supra* note 149.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Suresh Pattal, *Remittances from Gulf Soar to \$100 Billion*, KHALIFEH TIMES (June 11, 2015).

U.S.’ population, *including* its higher proportionate migrant population.¹⁶⁶ And considering that roughly 90 percent of total remittances from the GCC flow to eight developing nations that rely heavily on such payments to stay afloat—Bangladesh, Egypt, India, Indonesia, Nepal, Pakistan, the Philippines, and Sri Lanka¹⁶⁷—the impact on inequality figures to be enormous.

This leads to a paradoxical conclusion: Pushing GCC nations to reform its migration policies too greatly may lead to retrenchment, which will affect the region’s impact on global inequality reduction and in turn *hurt* migrants’ ability to attain more equal treatment. Consequently, NGOs and activists must engage in a balancing act when contemplating the reforms that may best aid migrant workers. Specifically, they must consider how GCC governments will react to proposed changes, and weigh whether the potential losses in economic inequality reduction will counteract gains on the human rights front.

There are, however, concerns with Posner and Weyl’s analysis. First, it assumes that migrant workers are paid in a vacuum and earn exactly what employers report. The study ignores that many employers underpay or bilk workers, only to falsify earning documents filed with the government.¹⁶⁸ The result is that some migrants take home less than their reported earnings, meaning the drastic increase in migrants’ earning potential in the GCC may be overstated.¹⁶⁹

Second, the study fails to account for opportunity costs of migration to the GCC. Specifically, Posner and Weyl do not acknowledge that many workers are forced to take out loans, often putting up what little property they own as collateral, in order to pay high recruiting fees that can equal more than a year’s salary.¹⁷⁰ At the outset, migration often puts poor migrants in *worse*

¹⁶⁶ See GULF RESEARCH CENTER, *GCC: Total Population and Percentage of Nationals and Non-nationals in GCC Countries*, <http://gulfmigration.eu/total-population-and-percentage-of-nationals-and-non-nationals-in-gcc-countries-latest-national-statistics-2010-2015/?print=pdf>; UNITED STATES CENSUS BUREAU, *Monthly Population Estimates for the United States: April 1, 2010 to December 1, 2015*, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

¹⁶⁷ See *Bilateral Remittance Matrix 2014*, *supra* note 15.

¹⁶⁸ *Slaving Away*, *supra* note 32, at 5.

financial shape, which must be factored into any gains they make while in the GCC.¹⁷¹ Further, the ability to migrate assumes a certain baseline wealth—that is, the world’s poorest people are often unable to migrate because they lack the “substantial resources” needed to fund such a move.¹⁷² So it stands to reason that while the vast majority of remittances from the GCC flow to some of the world’s poorest nations, the poorest citizens within those nations may not be reaping the benefits.

Additionally, the study is unresponsive to the argument laid out in Samuel Moyn’s article, *Do Human Rights Increase Inequality?*¹⁷³ Moyn asserts that the current conception of human rights can be achieved in a world that still sees rising economic inequality.¹⁷⁴ This is because the human rights movement’s tendency is to focus on increasing economic floors of the world’s poorest rather than focusing on capping the rich’s wealth.¹⁷⁵ Theoretically, it is possible to move the poor’s floor up, while still seeing inequality rise because the rich’s ceiling moves up faster¹⁷⁶—something Posner and Weyl do not address.

While it is true that migrant workers are earning more in the GCC than they would at home, GCC nations also benefit from the oppressive labor regimes in place.¹⁷⁷ Employers save costs from providing workers with higher salaries and benefits or better living accommodations. Infrastructure built on the back of cheap labor has the potential to increase business and tourism. And yet Posner and Weyl never discuss the overall impact of mass migration on GCC economies, or wealthy nations that benefit indirectly through trade partnerships with the GCC.¹⁷⁸ All of these factors might temper the alleged reduction in inequality that Posner and Weyl claim are created by migration in the GCC.

¹⁷¹ Crepeau, *supra* note 34.

¹⁷² Brian C. Thiede, *Heterogeneous Effects of Weather Shocks on Out-Migration Risk: Evidence from Indonesia*, POPULATION ASSOCIATION OF AMERICA 2015 ANNUAL MEETING, at 1 (2015), <http://paa2015.princeton.edu/uploads/150710>.

¹⁷³ Samuel Moyn, *Do Human Rights Increase Inequality?*, THE CHRONICLE OF HIGHER EDUCATION (May 26, 2015), <http://chronicle.com/article/Do-Human-Rights-Increase/230297>.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *See id.*

Above all, critics lament a lack of humanity in Posner and Weyl's analysis. In an op-ed published in the *Middle East Monitor*, English journalist Alastair Sloan admits that Posner and Weyl's position has some validity from an economic standpoint, but criticizes the pair for reducing human suffering to points on a graph.¹⁷⁹ Sloan argues that it is "difficult to explain to a Filipino domestic worker who is raped repeatedly by her Saudi Arabian employer, upon whose grace her continued visa status depends, that her ordeal is acceptable because, on average, an economists' graph shows that her country is getting wealthier."¹⁸⁰ In responding to Posner and Weyl's argument, Sam Bowman, Executive Director of the Adam Smith Institute, likens the GCC's migration system to slavery and concludes "whether we could tolerate this and whether we *should* tolerate it are two very different questions."¹⁸¹

Given these critiques, an unqualified adoption of Posner and Weyl's view on GCC migration seems, at best, irresponsible and at worst, complicit in the wide-scale violation of human rights occurring in the GCC. Not all human rights violations are viewed with equal weight, and it certainly seems unpalatable to suggest economic gains are worth widespread murder or rape of migrant workers.

Nevertheless, the study introduces an interesting wrinkle into the analysis. Regardless of whether NGOs agree that the net effect of reforming *kafala* is positive, policy changes to remedy human rights abuses should no longer be made without consideration of their effects on global income inequality, which may make individuals more susceptible to abuses in the long term. Undoubtedly, economic gains have their limits—it is critical to continue to discuss ways to curb the most egregious abuses occurring in the GCC without imposing so much responsibility on sponsors or empowering migrants to such an extent that the effect on global inequality would take

¹⁷⁹ Alastair Sloan, *Western Academics OK Human Rights Abuses in the Middle East*, THE MIDDLE EAST MONITOR (Dec. 1, 2014), <https://www.middleeastmonitor.com/articles/americas/15563-western-academics-ok-human-rights-abuses-in-the-gulf>.

¹⁸⁰ *Id.*

¹⁸¹ Sam Bowman, *Would Being More Like Qatar Be a Good Way of Fighting Poverty?* ADAM SMITH INSTITUTE (Nov

a substantial blow. But as it relates to lesser rights violations, like delayed wages, recruiting debts, and other problems that frequently arise in this region, it is necessary to recognize that, as Posner and Weyl suggest, sometimes “uncomfortable tradeoffs” must be made in the name of achieving greater global equality. The critical task of NGOs and other human rights advocates will be in finding a tipping point at which the short-term benefit to migrants’ rights do not outweigh the long-term effects on global economic inequality.

VIII. Conclusion

A confluence of unique factors in the GCC has led the region to welcome migrant workers across their borders in incredible numbers. The system provides some obviously benefits to both sides, but the human toll being taken on workers is high. Certainly, the *kafala* system and other gaps in labor law are tools through which the wealthy and powerful in the GCC exploit the poor and vulnerable. But the focus on reform of these policies alone as a means of remedying the situation is misguided. If human rights activists truly hope to address the egregious violations occurring in the GCC, they must take a step back and consider a more holistic approach, and keep the shadow of economic inequality in mind. Because as long as wealth gaps exist on such an extreme level in the GCC, the human rights of poor migrants will perpetually be at risk.