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TRANSFORMING THE KAFALA IN SAUDI ARABIA: TURNING  
WEAKNESSES INTO OPPORTUNITIES

CRANFIELD DEFENCE AND SECURITY

PhD

Academic Year: 2022-23

Supervisor: Prof Ron Matthews  
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## **ABSTRACT**

The research sought to find out what is really going on in the modern Kafala and to create solutions for reform based on what is right for Saudi instead of being led by outside voices. The research focuses on migrant domestic workers as one of the most marginalized and vulnerable groups in Saudi, with Kafala practices that amount to modern slavery. The value of this lies in, firstly, promoting the interests of Saudi and the GCC; secondly, upholding human rights and associated principles; thirdly, contributing to an international understanding of Islam and the GCC; and fourthly, providing a culturally specific solution to reforming the Kafala. The selected research methodology consists of mainly qualitative interviews of government officials and other professionals. The research has identified cross-cutting issues that must be addressed by reforms of the Kafala, and that are borne out of the intersecting issues of slavery, Islam, and gender. These cross-cutting issues include: culture (in particular the fact that the status of women and foreigners means that their exploitation may be culturally accepted); migration (which includes the global context of migration and Saudi's own aims in relation to the system); and access to justice (such as the problem of ensuring that legal reforms are implemented and people are able to exercise their rights).

### **Keywords:**

Kafala System, Saudi Arabia, GCC, migrant worker rights, migrant domestic workers, female domestic workers, anti-trafficking, labour exploitation, migration reform, Islam and gender, Islam and slavery, gender and slavery, access to justice

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# Chapter 1

## Introduction

### 1.1 Reforming the Kafala

This study critically assesses the current Kafala framework in Saudi Arabia and suggests possible legal reforms to address the needs of vulnerable trafficked female migrant domestic workers in accordance with the responsibilities of the Saudi Arabian government. The study therefore considers both the needs of female migrants, who have so far been largely unaddressed in law and policy, and the social and political concerns of the Islamic Government, ensuring that reforms are underpinned by these values. It will be shown that an approach that affirms human rights and gender equality is not only compatible with this aim but actually helps to further it. The Kafala system in Saudi Arabia is considered in the context of the Gulf Cooperation Council (GCC) countries as a whole (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) because it is a system that has been adopted across the region and there are many commonalities, as well as overlapping research. Instead of seeking to eradicate the system, the study seeks to improve upon it and preserve its strengths, while acknowledging that unfortunately in its current form it creates an environment that is fertile for abuse and exploitation of vulnerable people, in particular women and girls who enter the country for domestic servitude and are likely to be trafficked into sexual exploitation. However, the research is not solely focused on those who are sexually exploited and instead addresses a range of exploitative practices.

The impact of the research and study will primarily be to offer a framework of reforms that will reduce (if not eradicate) exploitation of female migrant workers who suffer human rights abuses within Saudi Arabia and the GCC more generally. There is a gap in understanding of the specific context of exploitation of foreign workers in Saudi Arabia and particularly how the system impacts foreign migrant women in lower status roles. The opportunity has been missed to develop stronger interventions that both help women to recover and create an environment that is unattractive/resistant to traffickers and others who seek to exploit and enslave human beings for profit. This study calls for a new approach to the Kafala system that addresses the impact of the system on this group of female migrant workers, at the same time as strengthening the system for the Government of Saudi Arabia. In this context, the interests of the Government will also remain central and ensure that this approach considers the Government's wider aims in relation to migration – such as stronger control of the system, removing illegal practices, and addressing unemployment through removing any reliance on

slavery as opposed to legitimate employment. Further, Saudi Arabia and the GCC are poorly understood in the global context, which has created a barrier for shared learning between the GCC and outside countries. This research will offer a much more nuanced understanding of Saudi Arabia, which has the effect of expanding knowledge of the area and of allowing for innovation in law and practice that is more suited to Islamic countries.

The Kafala system, which is similar across GCC countries, is a system of sponsorship of foreign workers that creates a guardian relationship between a national sponsor and working migrants, whereby the sponsor has significant power over their lives and freedom of movement (1). In Saudi Arabia, the guardian, for example, is or has been, responsible for the sponsored person's movements in and out of the country, whether they can travel within the country, open a bank account, and even in some cases get married (2). One of the most crucial features of the Kafala is the fact that the sponsored person cannot change employers without permission (1). However, it is not just the system itself but also the absence of social and political protections that shape the Kafala (3); the level of labour law protection is often dependent on the status of the workers and whether they are a professional or lower skilled (4). Unfortunately, with its current structure, the system affords the opportunity for exploitation from profiteers and unscrupulous individuals, leading in some cases to forced labour and trafficking. Historically, the problems of modern day slavery and trafficking have not been a central concern of the Saudi Arabian government, despite migration itself being an important issue (5). However, this has changed because of political pressure to be part of international anti-trafficking initiatives and anti-slavery initiatives, as well as national concerns relating to human rights, migration, security and organised crime, which are addressed in the National Plan for Anti-Trafficking in Persons (6; 7).

The problem of exploitation in the Kafala has been well documented by those concerned with human rights (7, p.4), but at the same time has been largely invisible in Saudi labour and migration reforms (8). This means that for the most vulnerable there is very little in place to either make sense of their experiences or to reform the system. One such vulnerable group is female migrant workers who work in low skilled jobs, predominantly in domestic work in private households, and are particularly vulnerable to exploitation and abuse because of their low status in Saudi Arabia and the process of migration. The human rights abuses against these women are evidenced in research and human rights reports (9). They are particularly affected by violence, sexual violence, and coercion into prostitution. Although some reforms of migration in Saudi Arabia have been put in place, they do not address this particular vulnerable group. Additionally, the invisibility of the problem has created a gap in understanding of the specific context of exploitation of foreign workers in Saudi Arabia. With that, the opportunity

has been missed to develop stronger interventions that both help women to recover and create an environment that is unattractive/resistant to traffickers and others who seek to exploit and enslave human beings for profit. This research suggests that by exploring opportunities for reform that include both the voices of Government and amplifying victim's voices, human rights will be promoted, organized crime undermined, and stronger national defence and security strategies developed.

In the context of a Government department on human trafficking being set up in Saudi Arabia and launching a National Strategy in 2017 (7) and a focus more generally on both transforming migration and combatting modern slavery, there is an opportunity to develop and implement stronger solutions to the problem of exploitation of migrant workers, as this has strong links to trafficking (7, pp.13,14). Saudi Arabia, as in many GCC countries, is currently concerned about employment rates amongst Saudi nationals and is seeking to boost employment amongst this group. One positive of reforming the Kafala is that it would reduce the opportunity for would be employers to exploit foreign labour instead of offering legitimate employment with fair working conditions. Thus, the reform of the Kafala not only promotes the wellbeing of foreign workers but also boosts working conditions for all, potentially positively affecting Saudi nationals. Notwithstanding, one of the most important reasons for analysing possible reforms of the Kafala system is that it would help to prevent human rights abuses. Slavery is fundamentally against the tenets of Islam, despite historical attempts to justify it (10, p.19). An Islamic country, such as Saudi Arabia, has not only a political drive to promote human rights due to international pressure but also a cultural imperative because it is a religious nation with fundamental values that transcend political concerns.

The specific context of the Gulf and Saudi Arabia is understood to present both unique challenges and opportunities for innovation in policy, law and practice. The dominant Western agenda is underpinned by neo-liberal values that can actually create a more fertile environment for exploitation (11) therefore instead of simply adopting policy transfer from existing international frameworks, lessons can be learned but solutions shaped from the specific context of Saudi Arabia and the Gulf. This should be underpinned by values that are compatible with the culture and Islam, as opposed to the misinterpretations of Islam that have been used by some to justify the promotion of slavery and human rights abuses of women through the Kafala (10, p.80). It is evident in the literature that certain individuals in Islamic countries have attempted to use the religion of Islam to justify both slavery and mistreatment of women, neither of which are compatible with the faith (10, pp.19-22). One challenge is to reform the system in a way that ensures these individuals cannot use the Kafala system for exploitation. Although the global community has commented on the need for reform of the

Kafala, this research seeks to preserve the unique and positive aspects of the system and ensure that reforms are suitable for the specific Saudi context.

In summary, the research addresses the gap of developing solutions to exploitation in the Kafala and identifying opportunities for reform that address the needs of female migrant domestic workers in combination with the needs and values of Saudi in relation to migration more generally. In this way it is ensured that recommendations are not only compatible with the specific GCC/Saudi context but also incorporate the previously unheard voices of exploited women. The remainder of this Chapter sets out the context and makes a case for the importance of the research. Beginning with an overview of the historical context, demonstrating that the Kafala is actually borne out of a cultural paradox of hospitality towards foreigners juxtaposed with a mistrust of the same, the chapter then goes on to outline the rationale for the research and the need for reform, showing that reform is needed both because of international pressure and the need to protect Islamic values and strengthen society against exploiters. The Government must lead the way because exploitation cannot be eradicated without strong guidance and support from the central Government, which has significant influence and control within the country over not just law and policy but also culture and values. The aim of critically assessing the current Kafala framework and suggesting possible legal reforms is then expanded and set out in more detail, with further information on the contribution that this will make, including promoting the positives of the Kafala, upholding human rights and Islamic values, and contributing to international understanding. In particular, the research will strengthen understanding of the interplay between slavery, Islam and gender. This interplay is explored through a conceptual model that is introduced in this Chapter. Finally, the Chapter offers an outline of the study structure.

## **1.2 Historical evolution**

There is very little scholarship on the origins of the Kafala (12); however, many theorists believe that it originates from the traditional practices of the Bidoon and their understanding of hospitality and protection of foreign guests, which establishes a kind of guardianship on the part of the receiving party as a way of looking after their guest (13). Its meaning derives from Arabic for providing for, vouching for someone, or being a legal guardian (14, p.78). When viewed from this perspective, the notion of guardianship can be viewed as having positive intent. However, other historical interpretations shed a different light. For example, this is not the only influence the Bidoon has had on the construction of the Kafala. The Bidoon are nomadic Arab tribes who subsequently began to settle on Arab lands but were nevertheless without specific citizenship (15, p.52), even in cases where they played an active role in



society, such as in Kuwait, they were denied citizenship when the country became independent but nevertheless actively supported Kuwait in the country's defence (16). Across the GCC, the "citizenless" Bidoon have been left without certain fundamental protections because of the denial of their citizenship, which is a vulnerability that continues to this day. For example, they may be denied voting rights and social protection or support (17). This demonstrates that as Arab nations evolved and developed their national identity, there was a closed system of migration, whereby even those who settled on the land were denied citizenship. From this, it is possible to see the roots of the Kafala as a way of retaining strict controls in the context of restricted notions about citizenship and who has rights and privileges in society.

It has been suggested that the sponsorship system is actually borne out of mistrust of foreigners and a desire to ensure that migration is discouraged and that foreigners are properly supervised when in the country (2, pp. 6,7). It is further suggested that this is a social and cultural attitude as opposed to a political drive, deeply rooted in the region's values and protection of their notion of citizenship (2, p.7). However, an alternative view of history actually suggests that the *Kafala* is in fact a practice that evolved out of British colonialism. Alshehabi (18) describes in detail the evolution of the *Kafala* during the same period discussed above in relation to the Bidoon (as the GCC gained independence between the 1920s and the 1970s). He describes how in Bahrain, the British became responsible for 'foreigners' but not 'citizens', which again created this strong distinction between the rights and responsibilities of one as compared to the other. Over time, it became more and more necessary for foreign migrants to offer their labour to the country and yet the British saw this as a practical nuisance to control, particularly from a distance and as outsiders themselves. Their solution was ultimately to make citizens themselves responsible for these foreign migrants so that they could ensure they were properly controlled and that people could be held accountable. This was actually a cost effective and practical solution from the British perspective, despite the increased burden on citizens (19).

The British applied a similar scheme across the Gulf. However, upon gaining independence, Kuwait tightened the *Kafala* by not allowing non-citizens to be sponsors (the British had allowed this). This was arguably the first system of *Kafala* as it looks today. Alshehabi (20) outlines how by 1971 all GCC states had gained independence and in doing so further entrenched the distinction between citizens and non-citizens, passing laws that restricted many benefits to citizens only. The *Kafala* system neatly fitted into this because it enabled foreign migrants only to be allowed into the country in a situation whereby their rights and responsibilities were dependent on someone who is already a citizen and can both watch over

and vouch for them. Being born out of the British practical approach to controlling newcomers, the Kafala system enabled countries to retain this control over migrants at the same time as ensuring that citizen rights were primary. At the same time this also made citizens responsible for the 'guests' in their country, which was a practice that the region had become accustomed. The *Kafala* (sponsorship) system also emerged following the abolition of slavery in the region in the period ranging between the 1950s and the 1960s (21), followed by an influx of workers in the 1970s and 1980s due to the increased price of oil and the booming oil industry (22, p.2). This meant that two important factors combined. The first is that there were now many migrants within a country that sought to be very careful about who crossed its borders and the second is that the idea of 'ownership' or at least 'guardianship' of employees was still culturally strong because slavery had recently been a normal part of the system. Not only did the Middle East become an attractive destination for migration, but there was also great demand for workers within the GCC countries as their infrastructure expanded. There was a demand for both skilled and unskilled labour; most notably, there was a demand for domestic workers because of the rising affluence of the population (23). This demand for domestic workers has remained up to the modern day context whereby there are high levels of migration and a continuing demand for unskilled workers. In this modern context, the Kafala system continues to operate with the historical values of tight control and citizen responsibility still intact.

According to Halabi (23), in 2008 Saudi Arabia was the largest recipient of migrant domestic labour, with the UAE close behind. O'Kane (24, pp.1-3) suggests that 80% of Saudi households rely on domestic workers, with demand steadily increasing since the 1980s when The Kingdom actively sought to attract migration in order to fill roles that Saudi nationals found unattractive. The Gulf has become an important destination for migrant workers, with around 1.5 million domestic workers working in Saudi Arabia alone, which is identified by the International Monetary Fund (IMF) as the world's second top remittance-sending country (25). In Qatar, the United Arab Emirates, and Kuwait, non-natives additionally speak to the larger part of every nation's aggregate population (26) with Qatar numbering as high as 90% (27). Studies have shown that migrants are attracted to economically advanced countries with fast GDP growth when considering the location of their destination country (28, p.27; 29). Poverty is one of the 'push factors' that determine an individual's choice to migrate in search of better economic opportunities (28, p.27) and the connection between the economy and forced labour has been discussed at length by the ILO (30). Compared to non-GCC countries, those in the GCC remain on stable economic ground despite the decline of oil prices (31). This economic environment has attracted migrants from across the world, in South Asia alone an annual estimate of 2.5 million workers migrate to the GCC (32). As the affluence of the region expands, the demand for domestic support has increased, and there is an estimated 2 million

domestic workers employed across the Gulf (33). Migrants come from all over the world, including South East Asia and sub-Saharan Africa looking for employment in the construction, agricultural, hospitality and manufacturing industries as well as in private homes, taking up positions deemed to be 'unappealing' to the nationals (34, p.12). In particular, labour in the construction field is fuelled by a continued need for low skilled blue collar workers to deal with the rapid changes underway in places like the UAE, and to aid the construction of on-going and planned infrastructure projects in countries such as Qatar, Kuwait and Saudi Arabia.

Thus, the modern day Kafala operates in the context of expanded migration to the Gulf, with globalisation making this easier and more attractive to migrants as they seek new opportunities in the thriving and affluent GCC countries. The Kafala has not changed considerably since its beginnings in the 1970s. Citizens are still asked to vouch for and watch over the migrants who are brought in, many of whom in the modern context will be unskilled workers in the domestic or construction sectors. Additionally, citizens still generally have stronger rights than the migrants, including stronger labour protection for all but the most skilled workers (35). As the popularity of unskilled migrants has grown, it becomes easy to see how exploitation is afforded by the system. The system seems to be rooted not only in the principle of hospitality, through the influence of the Bidoon, but also in the principle of delegating responsibility, through the influence of the British. This means that individuals made responsible for foreign migrants are responsible themselves for offering hospitality and guardianship and this is entrusted to them by the Government.

### **1.3 The Modern Kafala**

It should be noted that the term 'Kafala' is no longer used in Saudi law and policy, however, it continues in practice, despite ongoing reforms (see Chapter 4). Unfortunately, the responsibility entrusted to citizens by the Government through the Kafala is not always lived up to, and, as described, many use the system to gain the power to exploit and control others. In fact, as industry has rapidly expanded so too has trafficking and sexual slavery, not least because of a purported rise in demand for sexual services within the construction industry (34, p.1). This means that a growing concern is of security and modern slavery, matters that cannot be delegated to individual citizens, not least because these are the very individuals who may be involved in organised crime. Despite the fundamental notion of vouching for, watching over, and providing legal guardianship to foreign guests, this can only work in circumstances where those guardians are honourable and upholding the country's values and unless they do so, these individuals are left with considerable power to exploit and abuse others. It seems clear,

therefore, that state intervention is needed in order to regain both control and responsibility of foreign guests.

Despite this call for reform, it must be understood that the GCC countries are unlikely to adopt a system of immigration similar to those in western neoliberal countries despite this being popular internationally (36). The social and cultural landscape within the GCC differs from western systems in two respects: the first is that the legal and social structure within GCC countries derive from a strong Islamic tradition and customs, which are not directly compatible with the increasingly secular legal and political systems in the West, as well as the neoliberal values that dominate these countries and, in turn, often influence migration policies (11). The second is that the Kingdoms are often led by monarchy, with civil society intertwined with the government, meaning that there are no 'non-governmental organizations' in the same way that there are in Western countries (37). Thus, the responsibility for migration and for supporting migrants rests firmly with governmental organizations such as the Human Rights Commission, Anti-Trafficking Department, and Labour Department. As such, any reforms are likely to be driven by this strong Government and centralist control and are unlikely to include the kind of open immigration that is valued in the west.

The cultural and social context must also be considered when outlining modern day values in relation to the Kafala. Some theorists have suggested that cultural influence has led to different kinds of workers being treated differently under the Saudi system, as well as general distrust and the undervaluing of foreign workers in certain roles (38, p.16). More generally, it is suggested by Human Rights Watch (39) that the labour law generally discriminates against foreign workers, for example by setting pay scales according to nationality as opposed to other factors such as skills and experience. This recalls the historical evolution of the Kafala, whereby citizens in GCC countries were generally afforded greater privilege and protection and very much distinguished from foreign migrants. This is arguably even more important today. Saudi Arabia currently has a problem with unemployment levels amongst its citizens and is therefore pursuing measures to protect jobs for Saudi nationals (for example, by reserving certain sectors exclusively for Saudi nationals) (40). As such, there has been a shift from encouraging and relying on migration to now being concerned with boosting work amongst Saudi nationals and reducing foreign migration. This is very important for understanding current government concerns and how to move forward in addressing the key weaknesses of the current sponsorship system. Both the differing social and cultural values, combined with a concern for promoting jobs amongst Saudi nationals, means that the historical drive to be conservative about foreign migrants is likely to remain strong. Nevertheless, the context has changed because there is a move away from allowing high

levels of migration into the country. This could actually mean that control is focused on numbers – i.e., reducing the amount of people entering the country – leaving room to improve the existing system in relation to the fewer numbers that do migrate.

Considering that migration has expanded in the region, it may be that the sponsorship system remains attractive because it ensures accountability for migrants at the same time as avoiding the need for reform. In addition, the sponsorship system is now entrenched into the social and cultural structure. Perhaps this explains why, despite modern day challenges to the system, particularly international attention criticising the exploitation that occurs in the Kafala, there has been very little appetite for fundamentally changing the Kafala (41). Notwithstanding this fact, it is clear that in the context of abuse, exploitation, trafficking, and sexual slavery, there is an urgent need to address the system's weaknesses.

#### **1.4 The Role of the Government in Reform**

As discussed above, the sponsorship system delegates to its citizens, responsibility for how foreign migrants are treated. This essentially means that the Government must rely on these individuals the need to reflect Saudi Arabian values in the way that they treat their employees. However, this in fact leads to a fundamental undermining of these values, particularly through abuse and exploitation, and even in the expansion of illegal trafficking and modern slavery. It would therefore be in the Government's interests to intervene and bring back some form of centralized control to ensure that its own values are being adhered to and to exercise more influence over the social issues that arise out of the Kafala system.

Islam imposes a moral obligation to protect and support victims, including ensuring that they are not punished (42, pp.33,41). In an Islamic nation, such an obligation is met through Government policy and practice as upholders of Islamic law, thus creating an imperative for reform. The principal organ that allows for the continued exploitation of women in Saudi Arabia is the sponsorship system 'Kafala,' which is the focus of this study. Kafala institutionalizes into law the subordinate position of Migrant Domestic Workers (MDWs) despite Saudi's commitment to international law. Therefore, there is tension between what is essentially a 'legal' route to slavery, since sponsors engage in a practice that is legally acceptable, and the abolition of all forms of slavery in international law. Since Kafala is ingrained in the social, political and cultural roots of Saudi Arabia, as well as other GCC states, the responsibility falls on Governments to take charge of reform in this area as they are uniquely positioned to address all of the competing aspects that drive exploitation in the Kafala. Without Government intervention, entrenched ideas and inertia will derail any progress in this area. International

drivers and economic considerations do not have the force to be able to drive change without strong guidance and a co-ordinated approach that is only possible coming from Government. This is particularly important because Saudi does not have an independent civil society made up of NGOs that would drive this change. Traditionally, Saudi citizens have looked to the Government to drive social, legal, and cultural reform.

### **1.5 Aim**

This study seeks to analyse the potential for reform of the Kafala system in accordance with the following research questions:

1. What reforms should be proposed and adopted to eradicate exploitation of migrant domestic workers under the sponsorship system in Saudi Arabia?
2. What can be learned from the experiences of other GCC countries and the international context?
3. In what way can Islamic, social, and cultural values be incorporated into these reforms as a way of challenging more common Western/neoliberal solutions in the international context?
4. How do lived experiences of victims and the authorities contribute to developing a stronger set of reforms?

The proposed research questions call for an analysis of the weaknesses of the Kafala system and the potential for reform, with lessons to be learned from both international and regional attempts to address the issues that underpin the weaknesses of the system (such as slavery, gender inequality, and cultural barriers). The gap between law and policy and the Kafala in practice is explored through both the experiences of female migrant workers and the practical lessons learned from both the Saudi Government and other countries. The research questions also call for an explicit consideration of how to formulate policy and legal responses that are culturally appropriate and more likely to have a positive impact.

In light of this, the study aim can be summarised as:

Critically analysing the current Kafala framework to recommend possible legal reforms to address the needs of vulnerable trafficked female migrant domestic workers in accordance with the interests of the Saudi Arabian government.

### Enabling Objectives:

1. Identify the means of eradicating exploitation of female migrant domestic workers
2. Determine comparative experiences of the Kafala system in the GCC with a focus on the United Arab Emirates, Kuwait, and Bahrain
3. Identify legal reforms that most strongly uphold Islamic social and cultural values
4. Analyse the lived experiences of victims but also the authorities', to construct a reform agenda
5. Identify the gap between law/policy and practice/lived experiences in order to identify opportunities for reform

### 1.6 Study Value

This study makes four unique contributions to knowledge with respect to the Kafala system:

1. Promoting the interests of Saudi and the GCC through offering a framework of reforms that strengthens the Kafala, preserves its positive aspects, and addresses its weaknesses
2. Upholding human rights and Islamic principles: removing exploitation and promoting freedom and equality, particularly women's rights, which is an emerging issue in the region
3. Contributing to international understanding of Islam, slavery, and gender, as this relates to the Kafala system
4. Providing a culturally specific solution that is nevertheless aligned with the global anti-slavery agenda in the context where there is very limited scholarship from within the GCC but much international scrutiny

The international anti-slavery and anti-trafficking agendas are currently dominated by the voices of Western countries, with their own particular experiences, cultural values, and political concerns. This study offers an alternative to this dominant voice, which also presents an opportunity to innovate and develop potentially stronger solutions than those that are currently on the international agenda. The GCC stands out as a popular destination country for foreign migrants but has so far contributed little to no scholarship in the area of exploitation of foreign migrants. This is partly due to Kafala system itself, which evolved from historical practices about how to treat foreign guests and through the abolition of slavery in the region. These

factors combined to create a system that – through strict controls of foreign migrants in the hands of individual employers – is particularly vulnerable to exploitation and modern-day slavery. In particular, in the context of the region, women’s rights and their experiences of exploitation have only recently emerged as important issues.

Within this context, the study contributes to an understanding of exploitation and migration as it relates to the Kafala. This expands understanding of both the problem in hand and the context of Saudi Arabia and GCC, as well as women’s lives within this context. The study takes a unique perspective in that it offers a two-pronged approach seeking to reconcile two potentially contradictory issues: the interests of the Saudi Government in relation to migration, which is based on the idea of having a guardian for those who enter the country to work, and the need to eradicate (or significantly reduce) exploitation, which unfortunately occurs when these guardians knowingly or unknowingly engage in practices that undermine the human rights of the migrant worker. By promoting the interests of Saudi and the GCC, at the same time as removing exploitation and upholding human rights, the study has the potential to find a much-needed balance between preserving cultural and social values, and innovation and modernisation.

The impact of the study will primarily be to offer a framework of reforms that will reduce (if not eradicate) exploitation of female migrant workers who suffer human rights abuses within Saudi Arabia and the GCC more generally. In this context, the interests of the Government will also remain central and ensure that this approach considers the Government’s wider aims in relation to migration – such as stronger control of the system, removing illegal practices, and addressing unemployment through removing any reliance on slavery as opposed to legitimate employment. Further, Saudi Arabia and the GCC are poorly understood in the global context, which has created a barrier for shared learning between the GCC and outside countries. This study will thus offer a much more nuanced understanding of Saudi Arabia, which has the effect of expanding knowledge of the area and of allowing for innovation in law and practice that is more suited to Islamic countries.

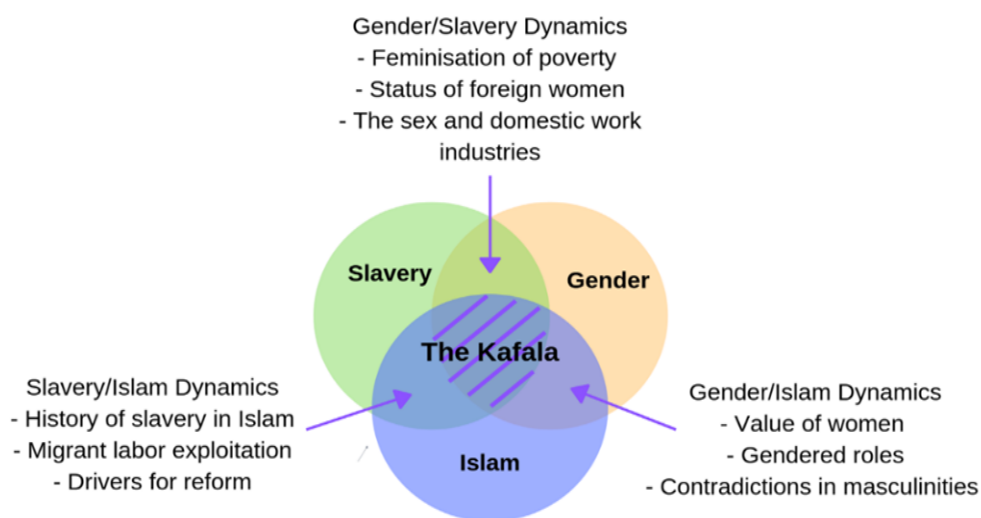
## **1.7 Conceptual Model**

The following diagram represents three interlinking weaknesses of the Kafala system that must be considered when shaping reform of the Kafala system. These are: slavery, Islam, and gender. These combined factors offer framework for researching the Kafala in Saudi Arabia, as well as the Gulf more widely, in order to strengthen the system. The three independent variables of Islam, slavery, and gender combine to influence the operation of the Kafala



system, with interlinking issues between the variables, as set out in the diagram below. As the combined impact of these variables is explored, it shapes the understanding of the Kafala and the reforms that are needed. These reforms are suggested for the benefit of both the Saudi Arabian Government and its citizens and those who are particularly affected by current weaknesses in the Kafala – namely, female domestic migrants. It is demonstrated that all beneficiaries of the reforms are better served by an understanding of these combined variables influencing the system.

Figure 1.1: Conceptual Model



Source: Author

The intersections of slavery, gender and Islam represent exploitation of the Kafala through the feminisation of poverty, a demand for women and girls within trafficking and forced labour; and in particular, the practice of coercing women into sexual servitude (43; 44, p.108). As women are undervalued in the workforce, and because of gender stereotypes and the historic sexual and domestic servitude of women, in the modern context there continues to be a demand for both sexual services and the domestic roles of women (45, pp.2,3). In turn, women’s vulnerability and unequal position in society means that they are targets for trafficking and forced labour. This is exacerbated by a global context whereby the GCC is seen as an attractive destination for migration but where there is also great vulnerability with respect to trafficking and forced labour as a migrant (46).

In relation to gender and slavery, there are a range of gendered ‘push’ factors that compel women in particular to migrate to affluent countries in the Gulf, as well as making them

vulnerable to trickery and coercion, which is exacerbated by the interplay between the domestic and sex industries whereby women are tricked into work that they would not otherwise take, or else coerced after arrival into the sex industry or exploitative domestic roles (42, pp.5-9). Their vulnerability is exacerbated because of the low status as foreign women and restrictions upon women more generally that reflect their vulnerability as migrants.

In relation to gender and Islam, the low status of women combined with the prevalence of violence against women and girls (by no means specific to the region) and continued stereotyping about women's roles mean that women are more vulnerable to exploitation within domestic roles and are kept in slave-like conditions (47, p.40). Coercion into sexual slavery is also common, which is driven by the demand for sexual services and entitlement to women's bodies, at the same time as a strong moral code that condemns such practices and so renders it invisible (44, pp.117,118).

In relation to Islam and slavery, one driving factor of this is the cultural values that have traditionally used foreigners to meet the demand for domestic and other low status roles dating as far back as slavery, and which is legal in Islamic law (10, p.1). To this day, migrants are targeted for coercion into forced labour and sexual servitude, whether this occurs as part of the process of migration, or later when they are in job roles, either becoming 'illegal' because of stringent conditions on their sponsorship, or through mistreatment in the roles to which they are already assigned (48). The context of Islam, however, creates a strong moral imperative to eradicate slavery, which is ultimately incompatible with Islamic values despite attempts from exploitative people to justify this exploitation under the religion (49, p.9).

Overall, in order to generate adequate policy solutions and reform the Kafala system in a way that eradicates – or at least significantly reduces – exploitation, must seek to address these vulnerabilities in the system and understand the relationships between them. Without a gendered perspective, the specific vulnerabilities of women and their low status would be unaddressed and as long as this inequality remains there will continue to be an opportunity for exploitation. Understanding the context in which slavery occurs and how the Kafala system creates conditions in which a person can be exploited in this way, is essential to reforming the system in a way that adequately provides worker protection. Lastly, without an appreciation of the Islamic context and the cultural dynamics in relation to both women and foreigners, the reality of the status of migrant women and the role of domestic servitude cannot be fully understood. Further, the Islamic context gives rise to very important cultural and moral considerations that act as drivers for reform because the social system is not morally neutral and instead should embody true Islamic values that condemn exploitation. As such, this

framework offers a lens through which to fully grasp the dynamics of the Kafala system with a view to developing policy reform that blocks those who seek to exploit the system from doing so.

## **1.8 Study Structure**

Chapter 2, “Exploitation of the Kafala: Pulling Back from the Descent into Modern Slavery”, explores the literature in relation to exploitation of the Kafala, demonstrating the combined effects of gender inequality, slavery and Islam. Setting out a conceptual framework for study of these weaknesses, the chapter explores these interlinking factors, as well as key issues that underpin these weaknesses, which must be addressed in any proposed reforms, covering migration, culture, and access to justice. The chapter also outlines the need for Government direction to drive, develop and implement reforms, as changes cannot be achieved without strong political leadership and commitment.

Chapter 3, “Methodology and Research Design”, outlines the research approach, which adopts the technique of semi-structured interviews with both Government officials and female migrant workers who have experienced exploitation (“survivors”). The research adopts a phenomenological perspective that centralises people’s experiences as a source of knowledge. Government interviews will be conducted in order to understand the political and practical drivers for change and how the law and policy works in practice. The data are combined with analysis of secondary data, including content analysis, to gather evidence of the weaknesses in the Kafala system and identify opportunities for reform, supplemented by participatory observations through the author’s professional work with female migrant workers who have experienced exploitation.

Chapter 4, “International, GCC and Saudi Arabian Kafala Controls”, is a comparative evaluation of the Kafala as applied in the Gulf. Drawing from both Saudi and other countries in the GCC, the chapter explores how the Kafala operates in practice across different contexts, and the weaknesses that can be identified, set against the conceptual model set out in Chapter 2. This Chapter explores Government policies up to the point of Kafala reform and assesses whether they are working in practice, taking into account the views of both Government officials and victims of migrant labour exploitation who were interviewed for this research. A central theme of this chapter is the gap between law and policy and lived realities, exploring the crafting of the Kafala framework in practice.

Chapter 5, “Informed Reform: Crafting a new Saudi Kafala”, is an exploration of the possibilities for reform and an evaluation of the lessons learned in the context of the GCC and Internationally. The chapter begins with an analysis of international and regional efforts to address the issues that underpin the weaknesses of the Kafala and an assessment of the effectiveness and possible application in Saudi. The chapter then goes on to consider current proposals for reform in Saudi and their potential impact, making recommendations for a stronger framework of reform in accordance with conceptual model set out in Chapter 2. Government and survivor interviews are used to shape policy and legal responses that are both suitable at a practical level as well as addressing the lived realities of those exploited in the Kafala.

Chapter 6, “Conclusions and Policy recommendations”, reflects on the identified weaknesses of the system and proposals for reform, linking these back directly to the conceptual model outlined in Chapter 2 and clearly setting out the Government’s key considerations and drivers for reform. This chapter considers some of the most important insights derived from an understanding of the Kafala in practice at both the Government level and the experiences of those who are exploited within the system. Pulling together the most important insights from the thesis, the chapter underlines the potential of the Saudi system to lead the way in reforming migration systems across both the Gulf and internationally, moving away from a “one size fits all” approach to policy relating to slavery and migration.

## **Chapter 2**

# **Exploitation of the Kafala: Pulling Back from the Descent into Modern Slavery**

### **2.1 Introduction**

The Kafala system is similar across GCC countries, although there are variations that are discussed in Chapter 4. The Kafala in Saudi Arabia is understood in the context of the GCC as a whole because of the fact that the system is broadly similar across the GCC, with similar challenges, and research that often looks at the issues in the region as a whole. Where relevant, insights about the Kafala may be offered that apply to the whole of the GCC (such as migration patterns, barriers to human rights etc.), however, where the Kingdom can be differentiated then this is indicated and Saudi specific insights are offered. Both perspectives give insights into the Saudi-specific context. This approach applies throughout this thesis.

'Kafala' or 'sponsorship' has evolved from a combination of both cultural and political factors to create a system that has both strengths, in terms of upholding strict controls on foreign workers, and preserving the region's culture and values, and weaknesses, in that it can be used to exploit migrant workers in conditions of slavery. Depending on the type of work, the system leaves foreign workers at varying levels of vulnerability, with female domestic workers being arguably the most vulnerable. The overall effect of the Kafala system on these workers is to create a situation where the employees are almost totally dependent on their employers, and cannot leave their employment or the country without their consent, and are particularly vulnerable to coercion into sexual servitude.

This chapter explores the dynamics of exploitation of the Kafala system, demonstrating the combined effect of gender inequality, slavery and Islam. The reasons for addressing this exploitation relate to both human rights arguments and the wider national interest. As will be shown, an analysis of the literature demonstrates that there is a call for research that gains a deeper understanding of the exploitation of the system based on the dynamics that drive this exploitation combined with an understanding of the specific context of the GCC and the Kingdom of Saudi Arabia. This will contribute to the understanding of national security and border control, migration, labour exploitation, trafficking, and gender-based violence. The following chapter outlines the context in which the research will be understood, outlining the way that the Kafala operates and its key weaknesses. It is by no means intended to be an indictment of the system as a whole but instead it offers key areas in which the Government

can reduce the opportunity for predatory and illegal activity to be conducted under the umbrella of the system.

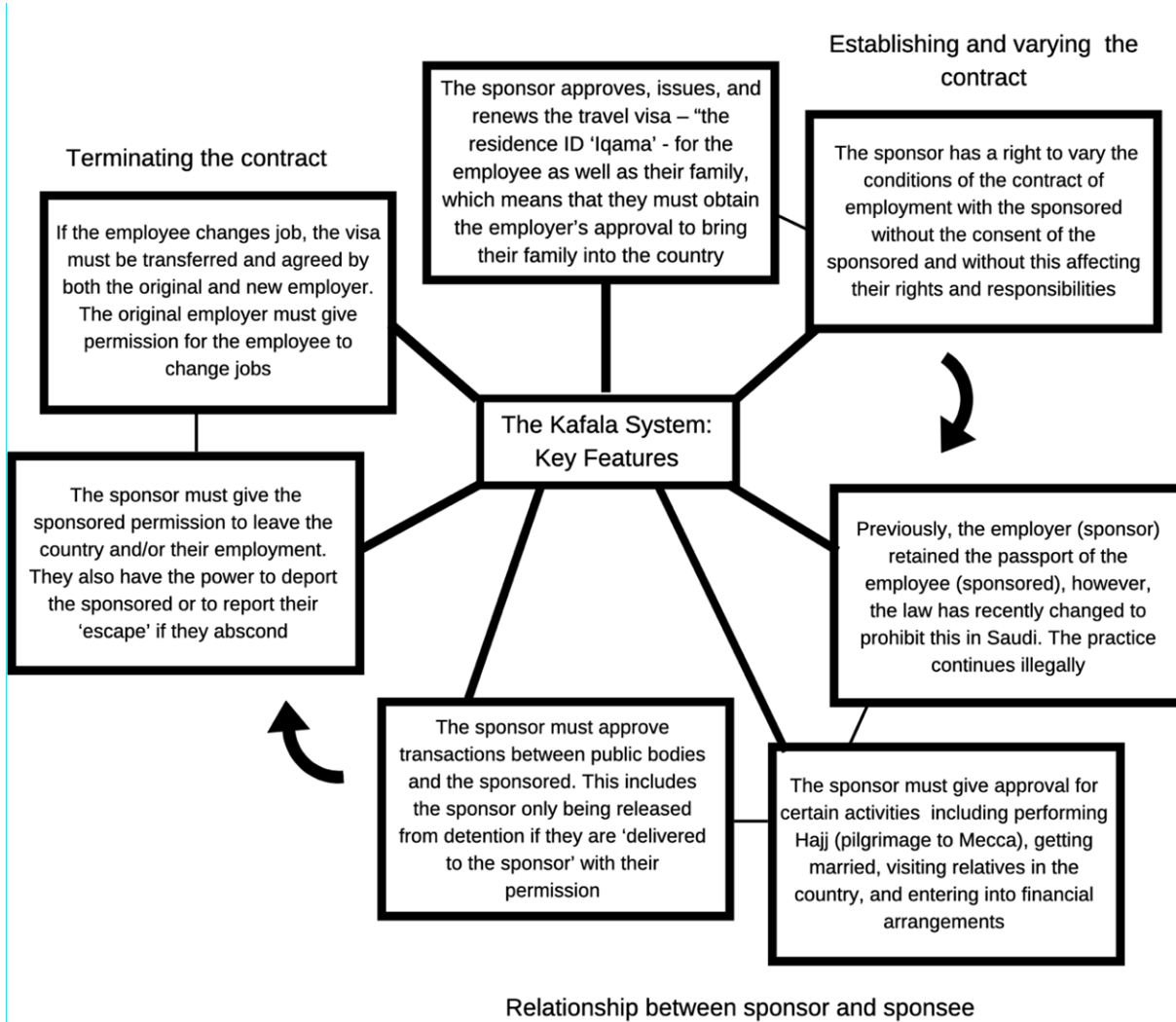
The chapter begins by outlining the key features of the Kafala system, defining trafficking and migration, and setting out the feminist framework used in this research. It then moves on to outlining how the Kafala works and the dynamics of gender, slavery and Islam that underpin it. This sets the stage for the subsequent analysis of the Kafala System at the intersection of Gender, Islam and Slavery, considering the key issues of migrant worker exploitation, the descent into modern slavery, and links to human trafficking. Key issues underpinning the weakness of the system are then explored; these are: a system of migration rooted in exploitation; harmful cultural attitudes to women and foreigners; and a lack of access to justice for victims of exploitation. The research behind this chapter's arguments seeks to offer an in-depth understanding of these specific dynamics and calls for Government reform because Governments are uniquely positioned to effectively address these weaknesses.

## **2.2 Key Features of the Kafala System**

In GCC countries, the sponsorship or 'Kafala' system is commonly used in relation to migration of foreigners into GCC countries. It is a mechanism that regulates a guest worker programme whereby a migrant worker's status is bound to his or her employer or 'kafeel' for the duration of their contract. Broadly speaking, this means that a person's visa for entering and working in the country is linked to an individual citizen in that country as the employer.

Figure 2.1 below illustrates the key features of the Kafala system (2, pp.6-25). As can be seen, the Kafala system governs the establishment of a contract between the employer and employee - the terms of this relationship while under contract, and the termination of this agreement. The employer has the power to approve or deny the employee's family entering into the country; they also have a right to vary the contract as and when they see fit and without the employee's consent. Although it is now illegal to retain the sponsored person's passport, other restrictions are still permitted; for example, permission must be sought for performing pilgrimage, getting married, travelling, and making financial agreements, as well as any transactions with public bodies. Crucially, the sponsor must give permission for the sponsored person to terminate their employment or leave the country and may report them for absconding if agreement is not sought. Visas can be transferred but this must be agreed between the current and prospective new employer, the sponsored person cannot move jobs without permission.

Figure 2.1: Key Features of the Kafala System



Source: Adapted from ‘Abolishment of Sponsorship Provisions and Relationship between the Employer and Expatriate Employee’ (2008); National Society for Human Rights, Saudi Arabia and ‘Labor Education of Major Rights and Duties in the Saudi Labor Law’ (2021), Saudi Arabia (2; 50).

These features of the system are similar across all GCC countries (21). However, both Bahrain and Kuwait have plans to abolish the system (51). Within the GCC, Saudi Arabia is unique in now offering the same protections to foreign workers who hold expertise as are offered to Saudi nationals; however, this does not extend to unskilled workers (52). It is important to note that although there are laws in place, one of the ongoing challenges across GCC nations, including Saudi, is enforcement and access to rights, this is discussed further in Chapter 4.

### 2.3 Defining Modern Slavery and Trafficking

Prior to 1990, there was limited understanding of human trafficking and slavery as it related to migration. Originally limited to the concept of ‘white slavery’, the term referred to the forcing of

women and children into prostitution or servitude. Early agreements relating to white slavery did not specifically define trafficking, but lawmakers were aware that the reason for moving women and girls was for 'prostitution'. In addition, there was no international perspective related to the practice, instead focusing on the national aspects of the problem (53, pp.1-11). It was only in the 1990s that the issue of trafficking women and children began to gain more legal attention, as well as becoming the subject of academic research (53, p.7). By this time, the definition needed to be completely overhauled: trafficking was no longer 'white slavery' instead affecting non-white and disadvantage communities; there needed to be an explicit clause prohibiting sexual exploitation of women and children, and the serious problem of cross-border exploitation needed to be addressed, especially in Asia and Eastern and Central Europe (53, p.2; 54; 55). Therefore, human trafficking became linked with other global criminal movements, such as migrant movement across borders for private profit, as well as illegal organized migration. Later on, the links between trafficking and migration, including refugee movements, began to be more widely acknowledged and The United Nations General Assembly provided further definition to the relationship between trafficking and illegal migration, referring to trafficking as:

*“The illicit and clandestine movement of persons across national and international borders...with the end goal of forcing women and girl-children into sexually or economically oppressive and exploitative situations for the profit of recruiters, trafficking, crime syndicates as well as other illegal activities related to trafficking such as forced domestic labour, false marriage, clandestine employment and forced adoption” (56).*

The second definition of trafficking and illegal migration was defined as:

*“The end goal of forcing women, girls and children into sexuality or economically oppressive and exploitative situations” and the fact that it is done “for the profit of recruiters, traffickers and crime syndicates...” (57).*

These two definitions set out an understanding of trafficking that does not only include sexual exploitation but also covers a variety of purposes including forced domestic labour, false marriage and forced adoption. Thus, the law began to develop a stronger understanding of the complexity and diversity of trafficking, which has grown significantly since the 1980s due to a lack of employment opportunities, poverty, corruption, gender and ethical discrimination, as well as conflict and political instability (58, p.37). Economic globalization has only served to increase the vulnerabilities of these individuals and has caused developed nations to extract



cheap labour and commodities from underdeveloped nations (59, pp.10,25; 60). Just as the legal definitions developed significantly into the 1990s to reflect a growing understanding of trafficking, the law continues to develop – with limited success – to reflect the realities of the modern day phenomenon of global trafficking in persons.

Adopting a wider perspective on exploitation and slavery as it links to migration, opens up the possibility of addressing human trafficking more adequately, protecting these migrant workers, and promoting stronger systems that protect the Gulf from the predatory actions of those who seek to profit from modern slavery. Eroding the distinction between economic migration and “trafficking” as a form of procuring and transporting human beings, this school of thought states that trafficking must be understood as a form of exploitation of vulnerable migrants. (61; 62, p.2). These theorists state that “human trafficking” strategies must account for labour exploitation in this context, suggesting that stronger labour laws are actually a prerequisite for combatting human trafficking at the global level. The Working Group of the United Nations (U.N) recognizes the radical new forms of slavery as trafficking in persons, child labour, sex exploitation, the sale of children and forced labour of adult women and men. The International Labour Organization (ILO), in particular, approaches the subject of slavery from the point of view of forced labour (63). The ILO points to issues such as forced labour, slavery and abductions, forced labour in agriculture, compulsory participation in various public works projects, bonded labour, forced domestic work, forced labour by the military, certain aspects of prison labour, some rehabilitation through work and forced labour of trafficked persons.

According to the United Nation Working Group, a common denominator among the various forms of contemporary slavery is the major role of poverty in creating vulnerability for the victims. This correlation is strongly supported in the works of Kevin Bales, arguably the world’s authoritative voice on contemporary slavery. Bales defines contemporary slavery as “the complete control of a person, for economic exploitation, by violence, or the threat of violence” (59, p.462). In this regard, a slave is anyone forced to work through mental or physical threat; anyone controlled or owned by an employer often through physical, mental or threatened abuse; or anyone physically constrained or with restrictions imposed of their own freedom of movement. Modern slavery therefore encompasses conventional slavery itself, human trafficking, forced labour as well as domestic servitude. Slavery as a human rights violation is pernicious and widespread, hidden, complex and usually well-organized cross-border crime, arising from poverty due to economic inequalities, war, misguided desires for profit, exercise of power over others, greed, and the motivation for immoral pleasure:

*“Slavery is a system in which people are treated as property (servant) to be*

*bought and sold as well as they are forced to work by the owner who use to buy. Slaves can be held against their will from the time of their capture. Purchase or birth and take away from the right to live, right to work or from the demand of any kinds of compensation.” (64).*

The modern definition of trafficking as outlined in the Palermo Protocol can actually be applied to exploitation of migrant women in the Kafala. This is because it encompasses a range of activities, without limiting understanding of trafficking to the idea of physically transporting human beings across borders to be held in conditions of slavery. The definition acknowledges that the global business of trading in and enslaving human beings (for purposes of sexual exploitation or otherwise, such as domestic servitude), is not limited to narrow conceptions of trafficking and instead covers a range of practices and blurs the boundaries between migration, trafficking, and slavery. This research focuses on one of these blurred boundaries – that of domestic servitude that leads to/is bound up with sexual violence, and prostitution. The Palermo Protocol (65) defines trafficking as (Article 3):

*(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

*(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*

*(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;*

*(d) “Child” shall mean any person under eighteen years of age*

This definition removes both the need for ‘transportation’ – instead expanding its scope to ‘recruitment’ and other practices, including ‘harbouring’. This definition also removes the requirement for there to be a lack of consent. This is so that the definition of trafficking covers

circumstances where consent leads to exploitation – for example, where a person willingly migrates for a job but is then coerced and exploited, being forced into work that they would not otherwise do. For example, there is widespread use of debt bondage, whereby migrants incur huge debts and are then told that the only way to pay back the debt is through prostitution or work in conditions of slavery. Note also, that the definition does not require use of physical force and instead can mean fraud, deception, or other forms of coercion (such as threatening family members or even using spirituality and religion by threatening to curse people). However, differences exist in its interpretation; (66) for instance, the term coercion can come to mean an array of things, and methods do not necessarily have to include outright physical abuse and force but have been noted to include more ‘subtle and complex’ methods that range from less violent (but equally exploitative) tools of flirtation, psychological abuse, deception, and cycles of dependency (67). Methods such as deception are made relatively easier if we factor in the predicament of women and children in countries with poor educational standards and those that are less economically developed. Hepburn and Simon identify a range of issues such as loopholes in work visas, conflict and unrest, gender disparities and internal hierarchies (68, pp.1-10).

Under this definition, exploitation in the Kafala system amounts to trafficking. This trafficking commonly occurs in the context of a contract of servitude that then sometimes, or often, ends up in sexual exploitation or being forced into prostitution. Under the above definition, the fact that women willingly migrate to Saudi Arabia does not preclude them from having been trafficked, as once they have migrated their status as migrants and workers under Saudi’s Kafala system leads to exploitation, slavery, and sexual servitude. Most migrant workers who arrive in Bahrain, Qatar or Saudi Arabia are motivated by the belief that they will be able to work and send money home to their families but instead are faced with ill treatment and hardship, such as lower-than-guaranteed wages, poor living conditions, sparse legitimate security, travel permit reallocation, unreasonable demands, physical abuse, and the fear of being expelled from the country (48). Women are often deceived about the conditions of work that they can expect and find that they are exploited on arrival. However, one aspect which distinguishes exploitation under the Kafala system is that the system itself allows for recruitment of women without an intermediary or a gang or serious organised crime to facilitate the process of becoming enslaved.

There are an estimated 40.3 million adults and children in modern slavery, including forced labour, bonded labour, and forced prostitution, around the world today (69). Exploitation of migrants occur in the context of women who have been driven away from their places of

residence in the hope of a better life because of political upheaval, financial difficulties, increased population growth, and high levels of sex discrimination. (70; 71). They then become victims of exploitation, deception, and conditions of slavery or servitude (commonly including sexual servitude/prostitution). Women and children are identified as the most common victims trafficked for both sexual and labour exploitation and have been subject to commodification, although men can also be trafficked, often for similar reasons, such as failure in the economy. Further, it is overwhelmingly men who are both the traffickers and purchasers ('punters' who may or may not be aware or care about whether the woman has been trafficked). Thus, the international global trade in human beings, particularly in the sex trade, is a gendered phenomenon (72, p.1). It is estimated that 800,000 women and children around the world are victims of cross-border sex trafficking every year (73, p.6). Research indicates that trafficking for sexual exploitation in the Middle East occurs with victims coming in from Eastern Europe, the Caucuses, and Central Asia whilst trafficking for domestic services attracts those from South and South East Asia (74). This does not mean however that the two categories are rigidly separated; in particular, sexual exploitation is prevalent within the domestic sector in the case of vulnerable, usually migrant, domestic workers (75). Within these several categories, domestic workers are especially more vulnerable due to their isolation within the so-called 'private sphere' (76).

## **2.4 Establishing a Gendered and Feminist Perspective**

### **2.4.1 Understanding Gender and Feminism**

Broadly speaking, feminism concerns the distribution of power and privilege in society, as well as how gender shapes social norms and values as well as institutions (77, p.27). Feminist theory is a challenge to the existing body of knowledge across academic disciplines that privileged the male perspective (78). The criminological feminist critique argues that theory has made women invisible, taking the male perspective and experience for granted, and has been inaccurate and inadequate when the discipline has written about women (79, pp.1-3; 80, p.337). Not only does feminist criminology bring women back into the picture in a way that reflects their reality, but many scholars also support the notion that it should attempt to empower women (81, p.200). Major contributions from the field of feminist criminology include transforming how research is done by expanding on the use of qualitative methods, (82, p.20) putting new issues on the agenda, such as women's fear and victimisation (83), and critiquing existing theory, for example, by demonstrating that women are actually penalised for not conforming to their gender roles as opposed to being treated with more leniency as criminals because they are women (84). The central theme is that women's experiences, needs, and

voices are being put at the forefront of research (82, p.20) and challenging the notion that previous research was “scientific” and without male bias (85, p.23)

Feminist security studies offer similar criticisms to the genre as those of feminist criminologists, namely that women have been neglected or poorly understood in theory (86). An important observation within feminist security studies is that the very definition of security is different for women, relating more to the absence of violence at any level (military, economic, sexual, domestic) (87, p.16), which immediately places the issue of exploitation of migrants in the context of security not only because of border control but also for protection for victims of violence (discussed further below). Feminist security studies have expanded the focus of security studies, moving away from a focus on the state and instead to include the security of citizens, including issues such as human security, domestic violence, economic security, social security, and environmental security (88, pp.1-14; 89). This opened new lines of enquiry, such as the use of sexual violence as an act of war (90) and the role of women in peace building (91), as well as new perspectives, such as gender and conflict and masculinities in the military (92, p.1).

Human trafficking and migration are most commonly conceptualized in terms of national threat in relation to border control (93, p.29). However, feminist security scholars have suggested that these issues are particularly important and call for a feminist perspective (94; 95). The exploitation of women in relation to trafficking and migration is an important dynamic to understand if these issues are going to be adequately addressed. Lobasz argues that it is necessary to look beyond border security and instead prioritize the security of the victims of migration exploitation and trafficking, including the need to recognize the role of the state in offering protection and upholding their rights. She highlights that the existence of slavery in a society destabilizes that society and creates tension and unease. From this perspective, trafficking and migration are viewed as a human security issue (96).

### *Liberal Feminism*

Liberal feminism is concerned with promoting ‘equal opportunities’. This means that liberal feminists seek more opportunity to make gains within the current social structure. In practice, this means that liberal feminists have predominantly focused on work-based equality (97, p.13). They have sought the removal of gender-based work discrimination, and have fought for equal jobs and wages. Liberal feminism has been critiqued for focusing on issues that mainly affect white, privileged, Western women (77; 98, p.1). Critics point out that the kind of equality of opportunity that they sought was against the white, privileged, Western men that

were in their lives. They were not doing anything to address the lives of all women, including black and disadvantaged women, particularly those from less developed countries. Today, liberal feminists tend to demand more representation within existing power structures at the same time as supporting the fundamental workings of these power structures, particularly the Western dominant neoliberal agenda (99, p.167). In relation to migration and trafficking, a liberal feminist perspective focuses on the lack of job opportunities and poor employment conditions both within origin and destination countries.

### *Radical Feminism*

Radical feminism focuses predominantly on social structure, pointing out that the patriarchy oppresses women through their systematic domination and exploitation (100, p.49). They use the concept of sisterhood – working together as women to support and raise each other up – as an antidote to the patriarchal system and call for the structure of society to be reformed (101, p.1). Radical feminists challenge existing gender stereotypes and suggest that much of what is expected of women is not actually related to their sex at all (for example, being expected to dress in a feminine way) and that women have a far greater potential to express different qualities, including those considered to be masculine (100, p.47). Others suggest that femininity has been belittled and treated as less important and that the aim should be to develop respect and to value the feminine (102, p.1). Within their analysis, radical feminists point out that women's bodies have been exploited and used as property within a variety of contexts and demand the sovereignty of women's bodies (103, p.17). This is particularly relevant to migration and trafficking because it provides a useful lens through which to understand how and why there is a market for exploiting women and what may need to be challenged at a deeper level in society (i.e. challenging objectification, the notion of women as property, and the entitlement to access women's bodies).

### *Socialist Feminism*

Deriving from Marxist feminism (104, p.73), socialist feminism argues that classism in the capitalist economy is the main cause of women's oppression. This perspective points out that access to capital and economic advantage allows women to exploit other women (a major criticism of liberal feminism) and therefore distinguishes between those with economic advantage and those with economic disadvantage (what Marxist feminism terms the 'bourgeoisie' and 'proletariat'). Socialist feminists also acknowledge the role of patriarchy in subjugating women and so has a lot in common with radical feminism (105, p.44). One of the major critiques of socialist feminism is that women are oppressed because their household

responsibilities and domestic and care work are not economically valued (105, p.44). This means that even where women are able to compete in the job market, their labour in the home continues to be undervalued and represents work that is not acknowledged. This also results in women obtaining lower salaries and less power in the workplace, as men's work continues to be valued more and women's work is seen as secondary. The solution offered by socialist feminists is to tackle both inequality in gender roles and women's unequal access to capital (106, p.54). Socialist feminism offers a two-pronged solution, tackling sexism by 'de-essentialising' the concept of male and female, as well as confronting capitalism, so that women can have equal access to capital (106, p.153). In relation to trafficking and migration, socialist feminism would point out that women's domestic servitude is intrinsically linked to gender roles, women's social subordination, and the expectation that women provide domestic labour for little or no compensation.

### *Postmodern Feminism*

Postmodern feminism suggests that it is unhelpful and intellectually misguided to use the categories of sex and gender (107, p.1). It is argued that these are actually socially constructed and artificial binaries and that 'women' as a discrete and coherent group does not exist. This theoretical position was useful in making a distinction between 'sex' – biological characteristics – and 'gender' – the way that 'male' and 'female' is expressed through behaviour and other social norms. However, the theory goes further than this by questioning the very utility of using the categories of sex and gender. This can be helpful in challenging the assumptions about the categories. However, critics of postmodern feminism point out that it silences any discussion of the issues and removes the focal point of political and social reform that is needed. For example, Nussbaum argues that "hungry women are not fed by this [discussion], battered women are not sheltered by it, raped women do not find justice in it" (108, pp.214,215). In relation to this research, it is important to use a gendered lens and acknowledge women's experiences and exploitation in the Kafala; this perspective helps to challenge any assumptions made about women's experiences being homogenised. Further, the postmodern perspective can be criticized for its extremely secular standpoint (for example, going so far as to challenge the sexual reproductive binary),(107, p.174) whereas the aim of Islamic feminists is to promote women's rights that already exist within the Qu'ran. (109; 110, p.147).

### *Intersectional Feminism*

Of more interest to Islamic feminists, perhaps, is the contribution to feminism of intersectionality, which relates to the interaction between gender, race, and other social structural positionings that impact on power structures within society (111; 112). Intersectional feminism points out that the circumstances of women differ across other social factors – like their ethnicity and religion – and as such, their gender cannot be considered without also acknowledging how this interacts with these other factors (113, p.49; 114; 115, p.2). The perspective was developed as part of a critique of earlier, white Western and middle class dominated, schools of thought within feminism that were blind and insensitive to the realities of women's lives in other contexts. This positions Muslim women not just as women but also as Muslims and acknowledges that these two characteristics combine and must be addressed and understood together. It should be acknowledged that socialist and radical feminism have been conscious of intersecting power relations and have often acknowledged the intersection between gender, race, and class (77, p.5; 116). However, the intersectional standpoint makes this more explicit and a call to action, including explicitly attempting to embed this within research methodologies (113, p.144). In relation to migration and trafficking, intersectional feminism places an obligation on the research to consider the effects of race, disadvantage and gender on the experiences of women being exploited.

Despite the utility of acknowledging that gender is contextualized within other factors that are important to women's lives, the overall contribution of feminist intersectionality has been somewhat problematic. Debates have arisen in relation to how different categories are defined, the problem of which characteristics are deemed more significant and why, and how to address the fact that the intersection of these characteristics, as well as their significance, may be subject to change at different times (117). Even assuming that these issues can potentially be accommodated and resolved, there has been concern expressed over the fact that 'intersectional feminism' appears to have lost its focus on the issue of power and instead become an easy way to simply be seen to address diversity without actually challenging these power structures (118; 119). What happens in this case is that often existing bias remains and certain characteristics are privileged over others (120, p.9; 121). This risks allowing the white Western perspective to continue to dominate or to reduce intersectionality to a purely intellectual exercise (122).



### *Feminist Internationalism*

Feminist Internationalism acknowledges that women's oppression is a global issue and advocates using international treaties and instruments to further the empowerment of women, as opposed to focusing on local and specific solutions as has been the norm (123). It seems clear that migration and trafficking must take this position into account because the practices themselves are a global phenomenon and rely on an international economy that benefits from the trade and exploitation of women. The aim of feminist internationalism is to set an international standard of women's rights that is upheld and respected. The drawback of this is that states may resist this because of national culture, tradition and policies (124), arguing they are incompatible with this perspective. In fact, it could be argued that international relations is dominated by a masculinist perspective and that international policy outcomes therefore continue to favour men (125, p.252). Similarly, the fact that the West dominates the international agenda with their own politics casts doubt on whether international issues that affect women, such as trafficking, can be adequately addressed (99, p.167). For example, as discussed later, favouring the free market may actually increase trafficking (126). This is particularly the case in relation to Islamic women because much transnational feminism derives out of non-Islamic regimes and has historically marginalised Islam (110, p.148).

Feminist internationalism calls for putting women more firmly on the agenda at this international level, and encouraging the development of feminist theory in international relations and security studies (87, p.15; 127, p.429) Particularly relevant to migration and trafficking is the critique that women's sexuality and biology has been used to hold women back and deny them social justice, while at the same time being at the root of much of their oppression (128, p.5). Sexual abuse and exploitation are key outcomes of exploitation in the Kafala. However, it must also be cautioned that focusing too much on international standards of women's rights risks losing the appreciation of the contextualized circumstances of women's lives – the concern of feminist intersectionality. In other words, there is the risk of overgeneralizing (129; 130). In fact, Mohanty (131, p.501) points out that history, culture, and geography all significantly impact on women's lives.

### *Islamic Feminism*

The dynamics of gender and Islam will be discussed in further detail below in relation to Gulf countries in particular. This analysis is strengthened by an acknowledgement and appreciation of Islamic feminism. Islamic feminism takes a two-pronged approach, as outlined in Shaikh's comprehensive text on transforming feminisms using an Islamic perspective (110, p.148). On

the one hand, it critiques the xenophobia and cultural imperialism of the West, emphasizing the diversity and agency amongst Muslim women. On the other hand, it critiques discriminatory power relationships within Muslim countries as a contradiction of the high status of women that the Islamic religion in fact establishes. Shaikh describes the fundamental equality and dignity offered to all human beings enshrined within Islam that speak “to the humanity that transcended boundaries of race and that demanded human agency in the quest for social justice” (110, p.147).

As with any branch of feminism, there are different perspectives and insights within this school of thought. Barlas (132, p.1) and Wadud, (133, p.3) challenge existing interpretations of Islam, stating that they can be read in a way that actually reinforces gender equality, dignity, and high status for women. They argue that it is those who have been given the power to interpret Islam that have upheld unequal gender relations, as opposed to the religion itself. Similarly, Mernissi (134, p.25) has shown that it is possible to reinterpret the Hadith through a feminist lens. However, Moghissi argues that there nevertheless continues to be a gendered hierarchy inherent within the religion (135, p.126). This is supported by the fact that under Islam there are fundamentally differing roles for men and women, although this does not necessarily lead to the conclusion that women should be lower in status (135, p.128). In addition, Islamic feminism demonstrates that there have been sexist and racist judgements of Islamic women and their status in society. These judgements disguise the fact that, historically, there have been both improvements and regression in relation to women’s rights and Islam (136, p.241).

Because Islamic feminism critiques both Western imperialism and patriarchal interpretations of Islam, it has a variety of criticisms levied at it. Firstly, as it seeks to reinterpret and challenge the understanding of Islam, those who are resistant to this may accuse Islamic feminists of adopting undesirable and stereotyped characteristics of Western feminism – for example, the stereotyped hypersexuality of Western women (110; 136, p.247). Shaikh (110) argues that this feeds into an agenda that characterizes Islam as opposed to the West, whereas in fact there is the possibility of crossover in relation to many values, such as equality, human rights and love of knowledge (110). This can be appreciated in relation to International feminism, discussed above, which seeks to align international human rights standards with the standards of Islam. In contrast, others criticize Islamic feminism on the basis that Islam and feminism are incompatible ideas. This school of thought suggests that Islam is inherently unequal in relation to gender and women cannot escape the patriarchal structures that are inherent to the religion (137). Others suggest that religion and politics should be kept in separate spheres and so it is inappropriate to map feminism onto a religion (138, pp.1-180). This ignores the fact that for many Muslim women, Islam is a political reality that is intertwined with their social and political

lives. Nevertheless, theorists such as Mestiri do suggest that the boundaries of religion are too restrictive and that feminism should be free to deconstruct even cultural and religious structures. Her fundamental critique is that supporting religion amounts to “justifying the patriarchy” (138, p.72).

Despite these critiques, Islamic feminists continue to embrace their identity as both feminists and Muslims. Their contribution includes addressing issues such as political and legal frameworks, women’s rights organizations, women in decision making, violence against women and girls, labour force and employment, political representation, security, health and education (139; 47, pp.1-9). In Saudi Arabia, international institutions have criticized the country for holding back women’s progress through constitutional barriers, such as freedom of speech and assembly, as well as a lack of civil society organizations to support women and promote their human rights (140). However, women’s activism is present within the country, particularly in relation to changing the law on women’s opportunity to drive and male guardianship (141, p.1). Progress in this area will depend upon a balance of both feminism and Islam, as is advocated by Islamic feminists.

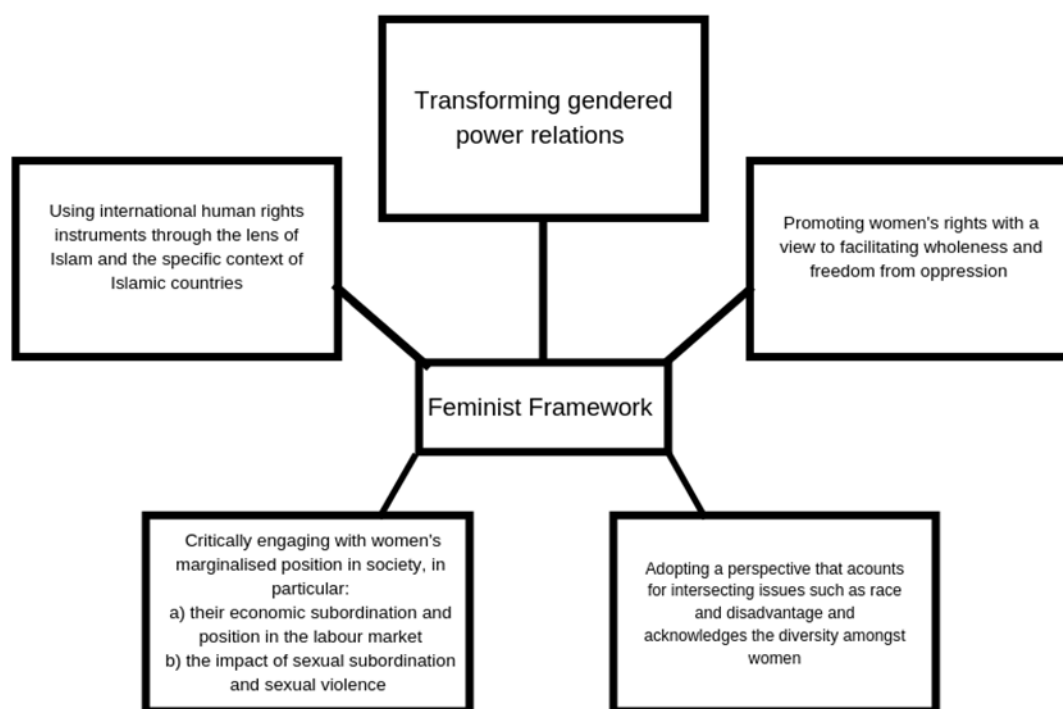
#### **2.4.2 Adopting a Feminist Framework**

As can be seen above, each feminist perspective has both contributions and drawbacks. The two most relevant perspectives for this research appear to be feminist intersectionalism and internationalism as they directly address the lives of women who are not from a white, western, background. However, principles can be drawn from each perspective in order to develop a feminist framework for the research. Considering feminist intersectionalism, radical, and socialist feminism, it seems clear that it is important to keep power as a central point of analysis in order to ensure that change is made. In addition, liberal and socialist feminism call for an analysis of the economic subordination of women and a wider consideration of the labour market, whereas radical feminism highlights women’s sexual subordination and the prevalence of sexual violence. Taking an Islamic feminist perspective informed by transnational feminism involves: critically engaging with the marginalisation of women in society, transforming power relations, and aiming for human wellbeing and wholeness that is free from oppression and based on equality and justice. However, it also involves ensuring that Islam is central to our analysis, being wholly compatible with international human rights standards, and that this specific context is acknowledged and respected.

Taking into account these requirements, Figure 2.2 outlines the feminist framework adopted for the research. The main aim is to transform gendered power relations. Women’s rights are

understood not just in relation to freedom of oppression but also in promoting wholeness. Intersectionality is acknowledged, as is the diversity amongst women. However, the core critical perspective derives from critically engaging with women's subordinate position in society, particularly in relation to economic marginalisation and sexual subordination. International feminism is adopted but also adapted by ensuring that international human rights instruments are critiqued from an Islamic perspective and read in conjunction with women's rights already enshrined in Islam. This avoids an approach that simply adopts the values of the West, adopting an Islamic feminist perspective.

Figure 2.2: Feminist Framework



Source: Author

## 2.5 Process (How the Kafala works)

The Middle East is a particularly attractive destination for migrants from poorer countries because of its relative affluence due to oil wealth and thriving commerce and industry, as well as rapidly developing cities that create the demand for workers to support the development of infrastructure (such as construction) and running of households (domestic workers). The ILO estimates that as many as 784,500 people migrated for domestic work in the period 2009-2011 alone (142, p.32). The ILO describes 'push' factors that encourage migration from countries of origin to be: lack of employment opportunity, escape from poverty, conflict and pressure from family and their community. 'Pull factors' from the destination countries are

described as rapid changes in the local and regional economies, weak protection regimes for migrant workers and the role of recruiters in artificially expanding demand.

This suggests that the Kafala system itself creates an environment whereby employment 'recruiters' and traffickers can abuse the poverty of potential migrants to recruit them into jobs with little protection – due to the fact that people are not aware of the protections available and so the protections in place are not being used – which means they can easily be exploited. (142; 143). Many of these workers are women, particularly within the domestic sector, which can contribute to their vulnerability, particularly as they may be subject to persecution on the basis of gender in their country of origin. Nevertheless, this does not mean that workers are unskilled or unwilling to migrate, or even that they are especially poor. In fact, it has been suggested that many are ambitious and accomplished women in search of more opportunity and independence (144, p.43).

According to the same ILO research (145), recruitment processes within countries of origin are varied, including both licensed and unlicensed recruitment agencies, local brokers, and informal networks (such as others who have returned). Often those 'selling' employment in the destination countries are keen to persuade potential migrants of the benefits and opportunities. Once recruited, it is necessary to arrange transportation, which may involve a network of individuals who are involved in ensuring that the sponsored person arrive at the premises of their sponsor. Thus, there are many possibilities for exploitation before the migrant even arrives at their allocated job. The ILO research also suggests that migrants may be deceived about the circumstances of their employment, particularly the stringent conditions of the Kafala – such as not being able to easily transfer into an alternative job. The risks of exploitation are exacerbated by the use of illegal agents and brokers and by 'legitimate' employment agencies which nevertheless provide illegal services (146).

In Saudi, the sponsorship system/Kafala ties migrant workers' employment visas to their employers for a strict period of two years; however, this can be extended and so the relationship can continue indefinitely. The sponsor has charge of the sponsored person, including giving written permission for all movement to, within, and from the country. The sponsor pays a fee to recruit the sponsored person. In Saudi, although withholding passports is illegal (147), it is rarely enforced (148), creating another pathway to exploitation. The system has been enshrined in law through the Ministry of Labour's Article No. (11), 1371H and the decisions and circulars of the Council of Ministers. However, it is not a part of the Labour Code or its Executive Regulations, meaning that it is not officially part of the system of

employment law (149). Despite this, foreign workers are addressed within labour law documents and ostensibly offered some labour law protections (4).

Sponsored migrants can only exit the Kingdom with a visa. This must be authorized by their employer (150), which means that anyone being exploited by, or having any trouble with, their employer may be trapped and unable to obtain a visa. Although the contract of employment can be broken by either party, there are sanctions on the sponsored person if they choose to do so, including being obliged to pay the cost of their return ticket (which would ordinarily be the responsibility of the sponsor), and possibly being subject to a fine or debt to the recruitment agency. On the other hand, the employer has the power to deport the employee if they are unsatisfied with their performance (144, p.44). If an employee absconds at this point, they are considered to be an 'illegal alien'. This situation is sometimes exploited by recruiters who may convince an employee to abscond in order to be in a position to control their next move into employment (151). Employees may also refrain from leaving employment in order to avoid being criminally prosecuted (152).

In reality, the extent to which a migrant foreign worker is protected depends on the type of work done. As will be shown in chapter 5, professionals are being offered far more protection and flexibility under the law in order to make it easier for skilled migrants to take up posts and engage in international business. On the other hand, migrant domestic workers are offered very few protections because of the low status of their work and the ostensibly 'private' nature of the work. Saudi is still not open for everyone to visit and a lot of migration and trafficking happens in relation to domestic workers, as opposed to others types (although there was historically also an influx of construction workers). In July 2013, the Council of Ministers issued Decision No. 310 (153) governing the work relationship between employers and domestic workers, which affirmed that domestic workers cannot refuse work if it is in their contract. In fact, article 6(6) of the decision states that employees should not 'refuse to work or leave their post without a valid reason', which actually limits the employee's ability to leave the post. On the one hand, this protects employers by ensuring that domestic workers fulfil their roles as agreed, on the other, depending on how the contract is worded, it leaves open the possibility of forced labour. Nevertheless, some protection is offered by Article 15, which states that an employer must pay for the domestic worker's return to their home country when the domestic worker terminates employment for a 'valid reason'. Thus, the effect of articles 6 and 15 is that workers may be able to vary or terminate the contract for a valid reason and that they will not be stranded as illegal aliens if they do so. It seems obvious that forced labour, abuse, and exploitation would all be valid reasons; however, there is very little information available on

how this law has been used in practice and due to the low status of female domestic migrants it is questionable whether they would be able to enforce this in practice.

## **2.6 Three key dimensions of the Kafala: Gender, Islam and Slavery**

The following section explores the way that slavery, gender and Islam underpin the exploitation of the Kafala. Although this section focuses mainly on the weaknesses in the system, these considerations also give rise to opportunities for change. For example, women's inequality in society leads to greater vulnerability as foreign workers, and the history of slavery in Islamic countries has created a cultural legacy that can lead to exploitation by certain individuals. However, greater awareness and activism in Islamic countries relating to both gender and slavery has led to a stronger drive to promote equality for all and to protect victims of human rights abuse, despite the fact that Western countries often stereotype Islamic countries as having little interest in such issues.

### **2.6.1 Slavery and Islam**

Much has been discussed about Islam's relationship with slavery, not least because Muslim countries were some of the last to make slavery illegal, with Saudi Arabia only doing so in 1962 (44, p.108). Although Islam could be perceived to have been slower to abolish slavery than other cultures, it has been abolished and renounced as a human rights violation (10, p.19). Historically, many religions have had periods of allowing slavery and Islam is no exception. When Islam was first introduced, it did not abolish slavery. Some have interpreted this as support for the practice and there are passages in the Quran that support this:

*"Prophet, we have made lawful to you the wives to whom you have granted dowries and the slave girls whom God has given you as booty." (Koran, 33:50)*

*"If you fear that (in your marital obligations) you will not be able to observe justice among them, then content yourself with only one, or the captives that your right hand possesses. And (also forbidden to you are) all married women, save those (captives) whom your right hands possess (and whose ties with their husbands have been practically cut off)" (Koran, 4:24);*

As can be seen, these passages also appear to support concubinage and the rape of female slaves, which Ali (44, p.108) argues has been glossed over in recent years by scholars who wish to forget that slavery has been supported in Islam, particularly the practice of sexual

violence that is very much against Muslim values because of strong moral codes on sexual ethics. This is discussed further below in relation to Gender and Islam. However, it is relevant here to describe how this support for concubinage has created confusion about sexual consent, reciprocity, and coercion in relation to women being exploited within the Kafala system (44, p.50). It is certainly one example of the way in which slavery continues to have a cultural impact.

However, it has been argued that the issue of slavery has actually been used as a racist attack against Islam whereas in actual fact the religion has historically fought for human rights and the eventual abolishment of slavery (154). An alternative viewpoint is that because slavery already existed in the societies where Islam was introduced, the Islamic leaders did not want to radically disrupt these cultures and instead introduced the religion in a more culturally sensitive way, challenging certain practices but also not undermining the fundamental system on which society was based (155). As slavery was very ingrained in their practices, Islam instead offered new rules on how to treat slaves with dignity and human rights:

*“And Allah has made some of you excel others in the means of subsistence, so those who are made to excel do not give away their sustenance to those whom their right hands possess so that they should be equal therein; is it then the favour of Allah which they deny?” (Koran, 16:71)*

According to the Quran, a Muslim can own a slave, but by freeing the slave it erases shortcomings and wrongdoings as a way of encouragement for Muslims to free all slaves (42, p.20). These kind of passages demonstrate that Islam has always provided guidance that encouraged the rightful treatment of slaves, even before slavery was abolished, supporting the notion that the abolishment of slavery was being achieved through gradually influencing practices and behaviour instead of completely disrupting the pre-Islamic society: (156).

*“Those who put away their wives (by saying they are as their mothers) and afterward would go back on that which they have said, (the penalty) in that case (is) the freeing of a slave before they touch one another. Unto this ye are exhorted; and Allah is aware of what ye do.” (Koran, 58:3); “God will not take you to task for a slip in your oaths, but He will take you to task for such bonds as you have made by oaths, when of the expiation is to feed ten poor persons with the average of the food you serve to your families, or to clothe them, or to set free a slave ... If anyone emancipates a soul, Allah will set free from Hell a part of his body for every limb of the slave.” (Koran, 5:89).*



In Islam, a slave owner who releases his slave is to be admired (42, p.19):

*“Allah says I will quarrel with these people on the Day of Resurrection, and he with whom I quarrel, I overcome him ... the second is he who sells a free man (or woman) and devours the proceeds.”* In addition, *“there are three people whose prayers Allah will not accept. One of them is he who enslaves a free man.”* The Prophet added, *“Whoever frees a Muslim slave, Allah will save all the parts of his body from the (Hell) Fire as he has freed the body-parts of the slave.”* Moreover, the prophet stated on his death bed that: *“on the Day of Judgment, I will be the advocate of non-Muslim subjects who were oppressed”* (Al-Mawardi).

In addition, in the context of slavery being the norm, Ibn Omar stated that Allah said that slaves and servants must be treated well (42, p.20):

*‘Whoever slaps his slave or beats him, his expiation is to manumit him.’ One day ‘Umar ibn al-Khattaab passed by and saw some slaves standing and not eating with their master. He got angry and said to their master: ‘What is wrong with people who are selfish towards their servants?’ Then he called the servants and they ate with them.”*

Islam limits the practice of slavery to such an extent that even before its abolishment, it was clear it had no place (157). For example, slaves could only be obtained through war, there were many ways of freeing slaves, which was seen as a pious act, and the relationship between master and slave was protected (158). The Quran and the prophet sayings state firstly, to treat slaves humanely, and secondly, to free them. Hence, these Islamic principles disapprove of any practice that amounts to slavery in practice (42, p.20). Unfortunately, looking solely at the Quran verbatim produces ambiguities as there are passages that could be interpreted to support slavery when read outside of their historical context and out of the context of the religion as a whole (10, p.19). Clarence-Smith points out that the Islamic religion has room for interpretation and there is no one correct reading of the faith. This has allowed some people to justify slavery within Islamic nations; however, it was also the reason that misgivings arose in relation to slavery, leading to its eventual abolishment. However, the reality is that the practice of exploiting workers, particularly migrant workers, is deeply entrenched at a cultural level more than within the Islamic faith itself (49, pp.161,162; 44, p.108). It is the history of slavery within Saudi Arabia, which has become so embedded in cultural practice that when slavery was abolished, it was easy for these practices to continue with the same

levels of control and exploitation, regardless of the fact that these were migrant 'workers' as opposed to slaves. In addition, the cultural practice of "hospitality" towards foreign workers, discussed above, means that there has been a history of guarding foreign visitors very closely (13).

Conversely, the Islamic religion should actually be a driver for reform of the Kafala, because in order to be truly aligned to Islamic values, slavery cannot be tolerated in a Muslim society (49, p.24). Principles within Islam such as the abolition of exploitation, including both labour and sexual exploitation, the promotion of freedom and equality of all, and the imperative to protect victims, all call for measures that seek to eradicate modern slavery and trafficking (42, p.53). It is important, therefore, to ensure that the Kafala system does not allow for individuals to abuse the system and promote exploitation. An important consideration is the fact that the Qu'ran talks about being "*in the care of*", which is very different to the practice of slavery, and that the meaning of '*kafeel*' should be 'guardianship' as opposed to slavery (49, p.9). Therefore, the Kafala as it stands does not reflect the true meaning of these practices. Instead, the migration system must be strengthened to promote and protect the core Islamic anti-slavery values. Islam has always relied on the concept of humanity and treating others with respect and dignity. However, certain individuals in the gulf countries have used people as slaves for satisfying their needs. Not only is this a crime but also inhuman. The religious context in the region calls for an appreciation of the true messages of Islam as opposed to this wilful misinterpretation of its teaching.

### **2.6.2 Gender and Slavery**

Although exploitation of labour affects both men and women, it is a particularly gendered issue. It especially affects female foreign migrants because of the intersecting issue of gender inequality combined with a tradition of using foreigners as slaves (44, p.109). It is important to point out that women who migrate to destination countries may also be victims of abuse in their country of origin (159, p.19; 160). Scholars describe the 'feminization of migration' as a circumstance in which women and girls are more likely to migrate, making themselves vulnerable to both trafficking and enslavement within destination countries (161). Women may be driven away from their place of residence in the hope of a better life because of political upheaval, financial difficulties, increased population growth, and high levels of sexual discrimination. This is especially the case because the lack of economic alternatives, render women and girls more vulnerable to trickery and coercion into labour exploitation or sexual servitude. In particular, high unemployment levels and increased job losses result in the undermining of economic positions for women. A growing gender gap in favour of men, and

increased numbers of informal and part-time work for women push them into long-term poorly paid jobs that leave women and girls more vulnerable.

Women's predicament in terms of the inequalities they face in employment is reproduced globally in different settings (162); therefore, it is not surprising to locate migrant women in employment that corresponds to stereotypical assumptions about the appropriate work for them. As such, their presence is largely found in private households as childminders or maids (163, p.3; 164). Factors such as the undervaluing of, and discrimination against, women and girls, and their suppression in patriarchal societies, sexual abuse and violence, and limited access to education and opportunities, all combine to create an environment in which women and girls are vulnerable to slavery, particularly in relation to migration (165, pp.5-7). However, not all women who migrate are disadvantaged, some do so for opportunity, only to find that they are tricked or coerced and left vulnerable (144, p.43). The 'feminization' of migration has only contributed to the growing demand in sex tourism (166). This is especially the case because the lack of economic alternatives render women and girls more vulnerable to fall victim of trickery and coercion into sexual servitude (42, p.25).

Between 2010 and 2012, 53% of victims of trafficking – which has been internationally defined to include labour exploitation of migrant women - in the MENA region were women (167). Women experience different forms of human trafficking in the region, particularly through forced prostitution and involuntary domestic servitude. Migrants come from all over the world, including South East Asia and sub-Saharan Africa, looking for employment in the construction, agricultural, hospitality and manufacturing industries as well as in private homes, taking up positions deemed to be 'unappealing' to the nationals (34, p.1). The Gulf has become an important destination for domestic workers, with around 1.5 million domestic workers working in Saudi Arabia alone, which is identified by the International Monetary Fund (IMF) as the world's second top remittance-sending country (168). An estimated 2.1 million migrants are said to be enslaved in the countries that make up the GCC (169). With events such as the World Cup in Qatar (2022) and the UAE Expo (2020), likely having contributed to the increased flow of migrants into this region. Human trafficking in the Middle East has become so prevalent that certain countries outside the region such as Indonesia, Sri Lanka and Ethiopia have taken action and imposed bans on their citizens from undertaking any work in domestic service in places like Saudi Arabia (170).

In particular, women and girls are often subjected to sexual abuse within their roles, or else effectively trafficked into sexual servitude – a particularly gendered consequence with regard to the abuse of the Kafala system. In particular, women who are promised work opportunities

arrive in the destination country only to find themselves in a position where they are forcefully recruited into the sex trade (171). An explosion in the building trade in the region has caused a flood of single men willing to work on the construction sites. The majority of the workers stay in labour camps and compounds. This is perceived to create a market for sexual services from women. Traffickers then collaborate to procure women under bogus pretences from Asia, Eastern Europe, Russia, the Philippines, and other nations, offering lucrative work as waitresses or domestic workers at good salaries. It was – and still is - only when the women arrived that they became aware of the real purpose of being trafficked into prostitution, thus being forced into sexual servitude (172). The links between trafficking and labour exploitation are discussed in further detail below; however, it is important to understand at this point that trafficking and slavery are so closely linked that the gendered dynamics of both are relevant to this analysis.

The gendered dynamics of slavery and trafficking call for a gendered response to the issue. Unfortunately, mistakes have been made in this regard, including imposing restrictions on women's migration that have actually resulted in more illegal movement and greater vulnerability (173). One effective strategy has been to shape law, policy, and practice in a way that is "gender-sensitive", which includes consulting women's organisations and victims about the extent to which "gender" shapes experiences (174). In the context of Saudi Arabia, two factors are particularly relevant to the culture that must be addressed. These are, the high demand for women and girls in domestic servitude, and the limited protections that are in place for them, particularly in the context of a private residence that is not as easy to scrutinise as public places of work. Secondly, the history of concubinage seems to have created a cultural legacy of sexual exploitation, which although denied is nevertheless present through the sexual exploitation of women in the Kafala (44, p.107). D'Cunha (175) recommends implementing a programme that specifically aims to empower women and girls, maintaining a gender responsive focus at all levels of policy and practice.

### **2.6.3 Gender and Islam**

The Gulf is a particularly interesting context because it is home to a rich and diverse Muslim population and is the focus of political attention due to the role of Islam and the international war on terror (176, p.2), as well as the attention on the status of women, which is used by some to judge progress in the region (47, p.2). The key debate concerning women and Islam is whether Islam promotes or undermines the freedom and equality of women. It is undeniable that the Gulf countries have many challenges relating to women's equality; however, it is simply lazy to ascribe these challenges directly to Islam, without fully understanding the

historical, cultural, and political context (176, pp.1-19; 136, p.125) an issue that will now be explored in this section. The veil, in particular, has become a symbol of oppression to many outside the Muslim faith, whereas in actual fact it has many meanings to Muslim women, who may themselves see the dress of Western women to be oppressively hyper-sexualised (177, p.141). The first point of departure for understanding women in Islam is to appreciate the diversity amongst women and that they may desire a form of emancipation that does not look like Western culture but instead incorporates their own cultural and religious values (44, p.153). It is also particularly important to distinguish between the status of women in Muslim countries and the status of women in Islam itself.

In Muslim countries in the Gulf, there are specific gendered structural and cultural dynamics that shape experiences, including the experiences of those who have been trafficked for sexual exploitation. These structural and cultural dynamics also shape law, policy, and practice. It is necessary to understand these dynamics in order to fully contextualise the life trajectories of women and girls exploited within the Kafala system; it also helps to identify better solutions. Relevant gender dynamics include: (47, p.2; 178, pp.1-8)

- Changing norms around women's roles
- The historic position of women in society, including a strong tradition of controlling and oppressing women's sexuality and promoting their domestic roles
- Patriarchal power structures
- Strong moral codes, at the same time that male entitlement and demand for sexual services and sexual exploitation is occurring
- Continued challenges around violence against women

It has often been pointed out that women have low status and very confined roles within Saudi Arabia and are subject to strict social and cultural practices (47, p.17). When social media was launched in Saudi Arabia, there were fears that this would lead society in an undesirable direction through the influence of the outside world, particularly for women and girls (179). Today, social media in Saudi Arabia is recognized as one of the main tools that provide women and girls with some freedom. Several religious and cultural groups in Islamic countries consider women as inferior and hence lots of restrictions are imposed on them in their daily lives, such as male guardianship of women that requires permission for a range of activities such as travel, education, and getting married. However, the actual cultural commitment to male consent is diminishing (141, pp.7-9) and women are also taking up positions of power such as becoming ambassadors and politicians, women are also now allowed to drive and

travel alone. Nevertheless, vulnerable women, such as foreign migrant women and women who have been sexually exploited, are considered to be low status because they do not conform to the strict moral codes and social hierarchies that are imposed in the GCC countries (180). In addition, international organisations have criticized Gulf countries for failing to adequately address violence against women and girls and provide essential services, arguing that despite some legal protections against sexual violence and other forms of abuse, not enough is being done to combat these issues (47, p.52). These factors combine to produce an environment in which the exploitation of women is not being adequately addressed.

Unfortunately, the Islamic context has led to some perpetrators using the religion to shape their exploitative practices and justify their acts. For example, sex traffickers have used traditional notions of temporary marriage, which allow woman to have sexual relations within the confines of a legitimate marriage, to essentially sell women as prostitutes under the umbrella of temporary marriage in order to legitimise the act (181), even though the substance of these kinds of marriages is forbidden in Islam, which demands that a man respects and provides for his wife. Therefore, the marriage although temporary in reality cannot be identified as such, overtly, as this would be against the teachings of Islam (182). Since the practice (called 'Misyar') is a religiously sanctioned action, it is hard to limit its use and this is a potential problem due to the vulnerabilities of women and girls. At the extreme end of this trend towards using Islamic ideas to justify exploitation and oppression of women, is the case of ISIS. Islamic Fundamentalists have been committing acts of violence against women in the name of Islam and have developed a vast network of sexual slavery, including an elaborate pricing system, violent treatment by slave masters, the casual branding of female bodies and reselling of "used goods" (183, p.18); they also use rape as a war tactic and promote extremely regressive attitudes towards women. The brutalization of women and girls is a central feature of their ideology, thus institutionalizing sexual violence, although again in reality this is forbidden in Islam and they rely on spurious interpretations of certain texts (184, p.10).

It would be a mistake, however, to accept the false claims that the oppression of women is sanctioned by Islam. In fact, some argue that the reverse is true. As discussed above, the status of women in Islam has emerged as a growing issue with the expansion of feminist scholars addressing this issue. Although it is certainly true that Islam does not advocate that women and men be treated the same, Islam establishes complete and genuine equality between men and women (132, p.2). This is a fact readily acknowledged by everyone who knows Islam well and understands Islamic law as outlined in God's book, the Qur'an, and in the sayings and practices of the Prophet Muhammad. Islam asserts the equality of men and women in their creation. The Qur'an states:

*“God has created all mankind from a single soul and from it He created its mate, and from the two of them He spread abroad so many men and women. [Koran 4:1] He also says: Mankind, We have created you all out of a male and a female. [Koran 49:13]”*

Thus, men and women are given equal value but slightly different roles in that men take on the role of protector and provider and must treat women well, promoting women’s dignity and independence (185). In fact, it is arguable, that acknowledging and allowing for differences between the sexes actually promotes fairness because women’s interests are protected, for example, through protecting women in marriage and ensuring that they are provided for (186). It is, however, perhaps challenging for Islam to be read in an egalitarian way because of the historical and cultural context in which the religion has emerged (136, p.5; 141, p.3).

It is suggested that some of the recommendations towards men and women are actually ways of addressing prior cultural practices and making them fairer with the introduction of Islam (136, p.12; 132, p.10). It has been pointed out that many of the beliefs about women in Islam are much more to do with interpretation than the texts of the revealed word of God and there has been scholarship that has skilfully shown that these texts can be read in a way that favours women’s equality (132, p.10). A similar critique is levied at Islamic fundamentalism (176, p.20) which, as discussed above, has also used its interpretation of Islam to justify violence against women (184, p.10). Certainly, it is the case that many people outside of Islam have stereotyped ideas about Muslim women and do not appreciate the complexity of their lives and their relationship to Islam. Islamic women have more freedoms and agency than has been suggested at a global level and negotiate their identities and freedoms within the context of their relationship to Islam (187). It is also the case that in Saudi, the majority of both men and women support women’s rights (188). Nevertheless, perhaps one of the strongest challenges women face is the continued practice of male guardianship, which can mean that their access to their rights is limited if the male guardian chooses not to support them (for example, by refusing to support women’s travel or right to vote) (141, p.7; 189).

It must also be pointed out that one of the fundamental problems with women’s status in Islam is that under the religion’s moral codes, they should be protected from sexual violence and prostitution and yet in reality these practices are occurring. This represents a contradiction in masculinities within Islam, whereby men are acting outside of the religious codes in secret. These practices are so against the culture that to some extent it is denied that they occur and it is challenging for women to directly raise them as issues because the subject continues to

be taboo (141, p.15). Relatedly, there is an issue with regard to sexual morality and the role of men. On the one hand, it is forbidden in Islam to perpetuate sexual violence (42, p.125); however, on the other hand, there is a problem with sex trafficking in the region, as well as sexual exploitation of migrant workers, which means that certain men are carrying out these forbidden acts. This creates contradictions in masculinities, because some men are carrying out practices that amount to sexual entitlement and enslaving women, whereas this goes against the ideas about men's roles in Islam. The struggle of society to face the problem of sexual violence (141, p.15) – as well as the demand for sexual services - makes it easier for these human rights abuses to continue and as such must be addressed as an insult to Islam.

## **2.7 The Kafala System at the Intersection of Gender, Islam, and Slavery**

At the intersection of gender, Islam, and slavery is exploitation within the Kafala system. The section below describes the resulting system. In summary, it demonstrates that there is widespread exploitation of migrant workers, particularly women in domestic roles; that the system itself has descended into modern slavery, and that this has strong links to human trafficking. The exploitation in question refers to all forms of physical, mental and sexual abuse.

### **2.7.1 Migrant worker exploitation**

The conditions of workers who live under this system leaves room for improvement. Much has been said in the literature on the Kafala system resembling a form of almost total domination over migrant workers (190, p.12). Kafala today has contributed to negative perceptions of the Gulf nations, and has likened worker dependency on their sponsor to the dependency of a slave to its owner (190, p.16). Moreover, the quality of working conditions in the region (191; 192; 193) coupled with inadequate reform has brought with it condemnation from the international community (194).

Workers may come to the GCC in search of a better life for them and their family but who are deceived about the circumstances that they will be subject to once they arrive in their new country, and many of them are also forced to pay high fees to the agencies and brokers that arrange this employment and residency for them. This highlights one of the main problems with this system, a complete lack of transparency. Because brokers and agencies facilitate this process, the actual migrants are left very much without information and are easily deceived about what they are getting themselves into (195). Migrant workers regularly confront numerous hardships on entry; for example, lower-than-guaranteed wages, poor living conditions, sparse legitimate security, travel permit reallocation, obligation, physical



mishandling and apprehension of immediate expulsion. Abuse and deception regularly start even before migrant workers leave their nations of origin (196). This is due to the fact that the employer does not really have any legal obligations to the worker, which in effect creates a system conducive to modern slavery (197; 198). The employer is free to use the employee as they wish, and the worker has limited to no legal recourse if they feel that they are being treated unfairly. Isolated and frail migrant workers frequently experience the ill effects of serious physical and mental misuse. Some of this misuse comes as cruel disciplines, like beatings or burnings, directed for something as unimportant as neglecting to utilize salt when setting up a dinner (199).

The Kafala system creates an environment that makes the migrant worker entirely dependent on their employer. The fact that domestic workers operate in private means their employers are largely free to dictate their working conditions without watchful eyes; this coupled with the rights given to them under the Kafala only serves to increase the vulnerability and isolation of these domestic workers. As such the Kafala system creates an unequal distribution of power, since the workers' immigration status is tied to their employer. A report on migrant domestic workers from Ethiopia found that they are subject to a range of abuses, including (200) labour abuse and exploitation, low and unequal pay, unpaid wages and salary deductions, excessive workload, long working hours, lack of rest periods, inadequate living accommodations, beatings, indentured labour not receiving food, not receiving payment, sexual harassment, verbal abuse and restricted movement. This is intrinsically linked to the exclusionary ways in which citizenship is defined (201, p.5). For example, a socio-legal study of domestic workers in Saudi Arabia highlighted the 'otherness' of domestic workers as a direct result of the fact that they are predominately foreign, that they are the 'other' woman, igniting feelings of resentment and jealousy in the household (38, p.280).

### **2.7.2 Descent into Modern Slavery**

The International Labour Organization, in particular, approaches the subject of slavery from the point of view of forced labour (202). According to the United Nation and Anti-Slavery International, a common denominator among the various forms of contemporary slavery is the major role of poverty in creating vulnerability for the victims (203, pp.12,31). This correlation is strongly supported in the works of Kevin Bales, who defines contemporary slavery as "the complete control of a person for economic exploitation, by violence, or the threat of violence" (59, p.462). In this regard, a slave is anyone forced to work through mental or physical threat; anyone controlled or owned by an employer often through physical, mental or threatened abuse; or anyone physically constrained or with restrictions imposed on their freedom of

movement. Modern slavery therefore encompasses conventional slavery itself, human trafficking, forced labour, and domestic servitude.

The Kafala institutionalizes into law the subordinate position of migrant domestic workers despite Saudi's commitment to international law. Therefore, there is tension between what is essentially a 'legal' route to slavery, since sponsors engage in a practice that is legally acceptable, and the abolition of all forms of slavery as pertained in the Palermo protocol. Many similarities are present between the system of slavery as it is known historically and the modern-day predicament that workers find themselves in when entering their destination country.

Moreover, the quality of working conditions in the region (200) coupled with inadequate reform has brought with it condemnation from the international community (204; 205; 206). At present, the Kafala system has come under great scrutiny, especially in light of media attention on the abuse of migrant workers in the Gulf (207). The fact that there are almost 2 million domestic workers (208) in the Gulf means that this issue needs to be addressed urgently. In addition, 99.6% and 94.8% (209) of all domestic workers and personal assistants in Saudi Arabia and the UAE respectively, are migrant workers. With average weekly working hours numbering 63.7 (210) in Saudi Arabia, the condition of domestic workers must be remedied through acceptance and ratification of international conventions that extend basic rights to these workers.

### **2.7.3 Links to human trafficking and sexual exploitation**

Links can be made between human trafficking and the Kafala system. This study focuses on the blurred boundaries between domestic servitude and the problems that lead to/are bound up with sexual violence and prostitution. As mentioned earlier, the Palermo Protocol expands the scope of 'recruitment' and other practices. It also offers clarification on consent, so that the definition of trafficking covers circumstances where consent leads to exploitation – for example, where a person willingly migrates for a job but is then coerced and exploited, being forced into work that they would not otherwise do. For example, there is widespread use of debt bondage, whereby migrants incur huge debts and are then told that the only way to pay back the debt is through prostitution or work in slavery-like conditions. Note also, that the definition does not require the use of physical force and instead can mean fraud, deception, or other forms of coercion (such as threatening family members or even using spirituality and religion by threatening to curse people).

The extent of the human trafficking problem in the GCC countries (Saudi Arabia, United Arab Emirates, Qatar, Kuwait, Bahrain and Oman) is not well studied, and the body of literature on human trafficking is scarce, mainly due to the lack of developed research material. Yet, evidence exists that human trafficking is an increasing challenge to these member countries (211). Commercial sex work in the UAE is illegal by law and upon conviction offenders are sentenced to prison and then face deportation (if the offender is a non-national); however, the sex and trafficking industry continue to prosper (212). As such, there is a discrepancy between the legal system of these states and its practical employment in real life situations.

In Saudi Arabia, trafficking commonly occurs in the context of a contract of servitude that then sometimes, or often, ends up in sexual exploitation, and frequently in forced prostitution (213). Under the above definition, the fact that people willingly migrate to Saudi Arabia does not preclude them from having been trafficked, as once they have migrated their status as migrants and workers under Saudi's Kafala system leads to exploitation, slavery, and sexual servitude. People are often deceived about the conditions of work that they can expect and find that they are exploited on arrival. However, one aspect which distinguishes exploitation under the Kafala system from human trafficking is that the system itself allows for recruitment of women without an intermediary or a gang or serious organised crime to facilitate the process of becoming enslaved.

The link between sexual exploitation and the Kafala system remains understudied. Research indicates that trafficking for sexual exploitation in the Middle East occurs with victims coming in from Eastern Europe, the Caucuses, and Central Asia whilst trafficking for domestic services attracts those from South and South East Asia (213). This does not mean however that the two categories are rigidly separated, and does not therefore indicate that domestic workers are immune from sexual exploitation (213). In Saudi, these boundaries are blurred whereby the Kafala system results in domestic servitude that leaves women vulnerable to sexual exploitation. The system itself is constructed in such a way that those who wish to exploit women have free reign because of the conditions of their servitude within the current legal framework. Further, a migrant worker may be forced into sexual servitude with their employer but not with other men. Thus, they are effectively forced into prostitution with a single client. Domestic workers are especially more vulnerable due to their isolation within the so-called 'private sphere' (214).

## **2.8 Key Issues Underpinning the Weaknesses of the System**

The following section explores cross-cutting issues that must be addressed within reforms of the Kafala that are borne out of the intersecting issues of slavery, Islam, and gender that lead to exploitation in the Kafala. These are culture (in particular the fact that the status of women and foreigners means that their exploitation may be culturally accepted), migration (which includes the global context of migration and Saudi's own aims in relation to the system) and access to justice (such as the problem of ensuring that legal reforms are implemented and people are able to exercise their rights).

### **2.8.1 Migration**

As can be seen above, the Kafala system as it stands has unfortunately created opportunities for people to abuse the system for purposes of exploitation, forced labour, and even trafficking. The evidence suggests that the human rights of migrant workers in Saudi are being abused, most notably in domestic roles, as well as women who have been deceived or forced into sexual slavery. Most concerning is the fact that migrant domestic workers are excluded from labour laws and therefore have little in the way of protection in the Kingdom, including the lack of any infrastructure to adequately support them as victims. The exploitation of migrant workers is so notable that certain origin countries have secured bilateral agreements with Saudi Arabia to ensure better protection for their workers, although others such as Ethiopia have not yet achieved this (215). The conditions of these bilateral agreements act to preclude the confiscation of passports of workers and the provision of proper resting periods and salary payments on a regular basis (192).

The conditions outlined above make migrants in Saudi Arabia particularly vulnerable to exploitation, including as discussed above, the wider definition of trafficking that includes not just movement of people but also trickery, coercion, and being trapped in conditions of slavery despite consenting to work and migrate. One of the key issues in relation to migration is how to address the issue of trafficking in relation to the Kafala. A key factor is that it is possible for people to exploit the process of migration to enslave people. The US trafficking Report for Saudi Arabia suggests a number of reforms including continued efforts to prosecute, convict, punish, and stringently sentence trafficking offenders, including abusive employers, under the anti-trafficking law; reforming the sponsorship system, and ensuring trafficking victims are able to pursue criminal cases against their employers in practice (216). Internationally, the Kafala system has come under great scrutiny, especially in light of media attention on the abuse of

migrant workers in the Gulf (217). Thus, political pressure and the desire for good international relations is one driver of reform.

However, another important issue is how to change the Kafala in a way that promotes Saudi's wider interests regarding migration. The most significant factors that point towards the need for reform are not international drivers relating to trafficking but instead the Government of Saudi Arabia itself. One notable concern of the Government is to ensure that the system of migration is well controlled and administered. This has resulted in a crackdown on illegal migrants in the Kingdom, although this unfortunately also leads to many vulnerable people being either deported to their countries of origin or becoming criminalised – essentially fugitives – in the Kingdom (218). Further, the Kingdom is concerned about unemployment amongst Saudi citizens and is seeking to reduce the number of migrant workers taking up jobs that could be performed by a Saudi national (219). As discussed above, in the context where domestic workers – and other workers in low status jobs – have very few protections available to them and many changes to the law are for more skilled workers, this creates an incentive to treat people as slaves. This means that rather than create jobs that everybody could apply for, working conditions are driven down by the exploitation of migrants. In order to expand the number of jobs available to Saudi nationals, these working conditions must be improved and employers must know that they cannot simply use foreign migrants as slaves.

### **2.8.2 Culture**

Since Kafala is ingrained in the social, political and cultural roots of Saudi Arabia, as well as other GCC states, its outright abolition will be hard to achieve, and may even make the situation worse since it can mean unregulated flows of people coming in and out of the country. An important point to consider is that simply adopting the dominant neoliberal Western agenda towards migration is unlikely to be the best option. Not only, as discussed above, because of significant cultural and social differences, but also because it is doubtful whether the neoliberal approach to both labour and migration is able to adequately address the issue of modern slavery. In fact, the research of Peksen et al, (220; 11) which measured the correlation between neoliberal policies and trafficking, found that economically liberal regimes had significantly greater likelihood of human trafficking of forced labour. Rudra (221, p.5) and Goodhart (222, p.28) suggest that neoliberal policies do very little to address the needs of vulnerable and poor people, which are central tenets of Islam (223). This is because neoliberalism focuses on economic gains and competitiveness as opposed to the protection of rights, albeit that neoliberal countries have adopted a human rights agenda. Islamic

principles are arguably grounded in a stronger framework of fundamental principles that promote the wellbeing of human beings.

As mentioned previously, harmful cultural attitudes to both women and foreigners underpin exploitation of the Kafala because sexism and racism combine to create low status and a willingness to offer poor working conditions, as well as the impulse to control these groups. For example, the status of women is tied into the Kafala/sponsorship system, whereby it is expected that women will be responsible for domestic work and are not valued for their economic contribution in the same way as men (34, p.1). It also creates particular dynamics that can affect women's experiences at work. For example, a socio-legal study of domestic workers in Saudi Arabia highlights the 'otherness' of domestic workers as a direct result of the fact that they are predominately foreign; that they are the 'other' women, igniting feelings of resentment and jealousy in the household, and purely because they are women (38, p.280).

As pointed out by Silvey (224), there is a distinctly gendered aspect to labour in the GCC and Saudi Arabia. Factors such as restriction on women's mobility and their employment in feminized, domestic roles, mean that women become particularly isolated in their roles, being confined to the homes of their employers. This leaves significant possibility for abuse and exploitation on the part of their employers, whereby women are virtually imprisoned (38, p.239). Coupled with the Bidoon tradition of guardianship of followers and amounts to keeping a strong control over migrants and their activities. It is thus easy to see how culture operates to create norms that result in some cases in slavery and mistreatment as people exploit these cultural norms. In order to challenge the cultural norms that help to drive exploitation, only a region-specific approach will be effective in order to avoid objections on the ground of cultural insensitivity, which would simply mean that people feel they are having changes imposed on them from an agenda that does not respect their point of view. The qualitative interviews conducted for this research are particularly important in this respect because they allow for people to be heard and understood.

### **2.8.3 Access to Justice**

As can be seen above, the Kafala system as it stands has unfortunately created opportunities for people to abuse the system for purposes of exploitation, forced labour and even trafficking. The evidence suggests that the human rights of migrant workers in Saudi are being abused, most notably in domestic roles, as well as women who have been deceived or forced into sexual slavery. Most concerning is the fact that migrant domestic workers are excluded from labour laws and therefore have little in the way of protection in the Kingdom, including the lack

of any infrastructure to adequately support them as victims. Additionally, women do not have access to the courts and so it is difficult for them to enforce their rights (141, p.9). Although law and policy reform are essential, it is important to point out that legal protections alone are not sufficient to address the weaknesses of the Kafala system. There are three factors that need consideration in order to ensure that these policy changes are effective; these are, support for victims, raised awareness of changes in the law and policy, and enforcement of laws and policy. These factors would ensure that not only is the system reformed to avoid exploitation, but also that those affected by the reforms – whether victims, the public, or the exploiters – are fully able to access the benefit of these changes (or in the case of exploiters, are obliged to face the force of the law).

Without support of victims, they cannot be empowered in the way that the law intends. No legal or policy reform will be effective in supporting those who have already suffered at the hands of those who seek to abuse the Kafala system. As such, it is also necessary to ensure that adequate measures are in place to support victims. At present, there is considerable room for improvement, despite some positive changes that have been made to the shelters that provide respite to women who have been exploited, including improving the general conditions and operations of these shelters (225). These shelters were previously reported to be ‘overcrowded, dirty and prison-like and deportation usually follows swiftly’ (38, p.239). Human Rights Watch has suggested that one of the main issues in protecting victims is the fact that many are at risk of being prosecuted for absconding from their jobs or even for adultery and fornication when they have been victims of rape and sexual harassment (226). The charges of adultery and fornication could result in imprisonment, lashes, and even the death penalty. Halabi (144, p.44) suggests that many migrants are reluctant to attempt to escape their employer because of fear of being accused of lying, and of being prosecuted, with their employer publicizing that they are a ‘escaped’, leading to likely deportation (perhaps returning to an unsafe situation), and the fact that their employer holds their passport and must give permission for them to take another job. Without any clear support for leaving an abusive situation, many will remain. Another issue pointed out by the Human Rights Watch report (227) is that victims are unable to access support from diplomats from their country of origin and they are not well informed about their rights.

One of the most problematic aspects of addressing trafficking and exploitation in the region is the criminalization of victims, as well as the fact that when within the criminal justice system, officials often overlook (whether intentionally or not) the warning signs and so are unable to recognize these women as victims of abuse (68, p.62). Police training has already been put on the agenda for a successful route to tackling human trafficking, although this is likely to

remain lacking without the presence of women police officers (228). Interestingly, it has been noted that one of the reasons human trafficking is low risk is due to the lack of awareness surrounding warning signs, in particular within healthcare providers (229). In an Al Jazeera report on trafficking in the UAE, a woman from Uzbekistan told her story as a victim of human sex trafficking; she eventually escaped, only to be picked up by a different group of exploiters and forced into prostitution in Abu Dhabi (211). There was no arrest or punishment of the victims and the woman only found shelter at an institution in Abu Dhabi. This institution offers help to women and children who are sexually abused. The staff at the institution remarked reluctantly that the woman's situation was very common, a further pointer and strong indicator that such incidences are commonplace and attract little attention from the authorities concerned. Reform of the law and criminal justice system is therefore an essential aspect of implementing change.

Relatedly, and particularly important because culture is such an important dynamic in the Kafala, it is important to ensure that the public is made aware of the legal changes and that both employees and employers are mindful of their rights and responsibilities. Unless mechanisms are in place to raise awareness, people will continue in their old practices, whether this is in failing to seek help and support when exploitation occurs, or worse, in continuing to intentionally or unintentionally exploit people or allow this exploitation to occur when it is observed. Very much linked to this is the fact that exploiters must know and believe that their actions will have consequences and that they will not be treated with impunity. This actually offers access to justice to those who are affected by the exploitation and to the public more generally, as they bear witness to the laws and policies being implemented. Laws and policy only have value when they are part of the fabric of society and are actually used.

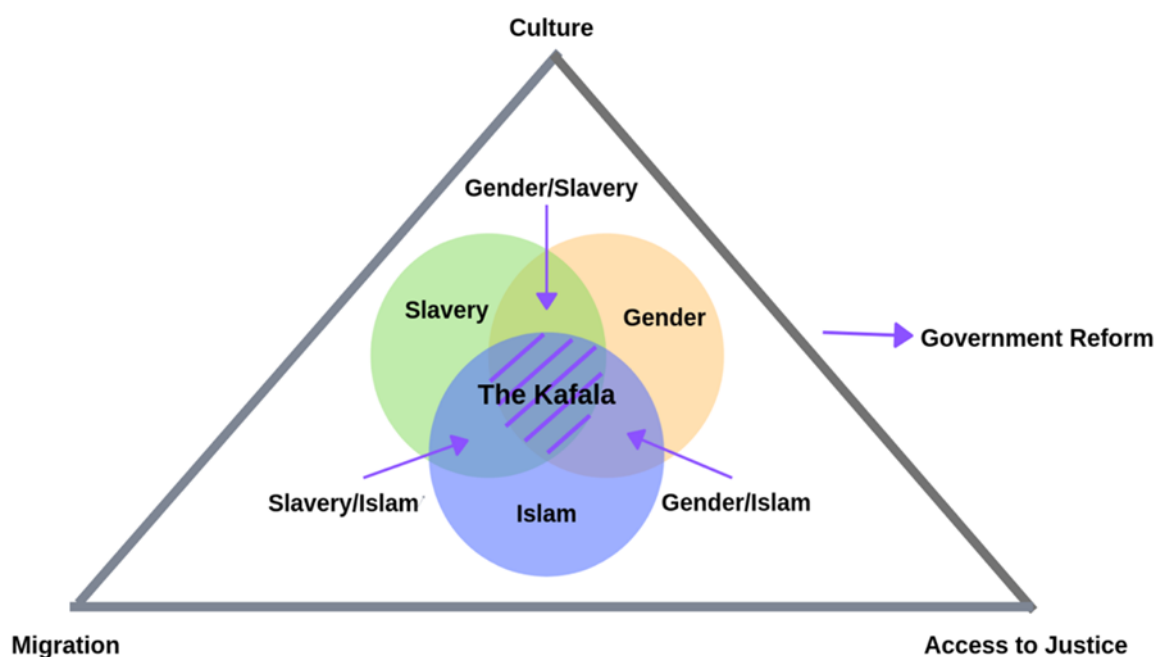
For example, despite enormous amounts of human rights legislation being in place internationally, the sexual exploitation problem continues to be a significant challenge in the GCC. As mentioned, commercial sex work in the UAE is illegal by law and upon conviction offenders are sentenced to prison and then face deportation (if the offender is a non-national); however, the sex and trafficking industry continues to prosper (42, p.25). As such, there is a discrepancy between the legal system and its practical employment in real life situation. Reform of the law and criminal justice system is therefore an essential aspect of implementing change. Segrave, Milivojevic and Pickering (230, p.30) point out that this involves an approach that does not simply focus on the criminal law but instead looks at the situation as a whole and the diversity of the problem, advocating a human rights approach instead. This is in line with the proposed approach discussed here, whereby the rights and responsibilities of citizens must be promoted, including support of victims with consequences for exploiters.



## 2.9 The Research Gap

Reflecting on the literature relating to this subject, the following model depicts the essential elements of addressing weaknesses in the Kafala. The three interlinking elements of slavery, Islam and gender are depicted with the dynamics of migration, access to justice, and culture encompassing these factors, all of which lead to the drive for Government reform. It seems clear that there is a gap in the research that addresses all of these relevant factors and seeks to reform the system in a holistic way. The model provides a blueprint for how to do this.

Figure 2.3: Full Model Illustrating Exploitation of the Kafala System



Source: Author

The literature reveals that it is important to offer solutions that take into account the specific cultural and social context of the GCC and that there is currently a gap in relation to this, with the dominant perspective being the intertwining issues of trafficking/Islam/gender underpinned by a Western neoliberal ideology (that in general relaxes immigration rules and opens up labour markets). In the context of forthcoming reforms in Saudi Arabia and the Gulf, which will be discussed in subsequent chapters, research must be produced that comprehensively analyses the situation in the GCC and Saudi Arabia and suggests reforms to the system based on this. Such an analysis is best developed through both a political analysis combined with an understanding of the realities of the situation as told by female victims of migrant labour exploitation in the region, which are the subject of qualitative interviews in this study.

Therefore, this study seeks to evaluate the possibilities for reform rooted in the realities of the phenomenon within the specific Saudi context: including the context of the GCC. The study seeks to contribute to a body of learning within the region and internationally that is centred on Islamic values, is based on real lived experience of victims, and furthers the Saudi Government's aims and values, taking into account the changing cultural and social context. The analysis addresses the key interlinking factors of slavery, Islam and gender that combine to create the specific weaknesses of the Kafala system, as well as the specific dynamics that must be addressed in order to ensure effectiveness of any reforms, which are migration, culture, and access to justice. This represents an opportunity to reform the sponsorship system in Saudi Arabia that aligns firmly with its culture and values, with anti-slavery being a fundamental value of Islam. The research methodology and design, discussed in the next Chapter, has been developed with this aim and the analytical framework in mind in order to gather and analyse the most relevant data.

## **Chapter 3**

### **Methodology and Research Design**

#### **3.1 Introduction**

The purpose of this chapter is twofold: firstly, to set out the philosophical and theoretical basis of the research and the methods of inquiry used (the methodology), and secondly, to set out the specific methods and process that will be undertaken (the research design). The research methodology is the foundation of the research and sets out the researcher's philosophical assumptions and the theoretical basis for the research; this then shapes the research methods and the final research design, impacting decisions such as what data are collected, how, and why, as well as how the data will be analysed (231, p.55). For example, as will be outlined below, if the researcher takes the perspective that individual experience is central to an understanding of social phenomena, then research must be designed so that it does not simply seek to observe phenomena but instead seeks to understand the way that a research participant's experiences reality. This is unlikely to be achieved by mere descriptions of observations, as would be the case in the natural sciences (232, p.145). As such, this chapter begins from the broadest philosophical foundations, moving progressively into a more detailed account of the perspectives taken, then into the specific methods chosen as a result of this.

The first part of this chapter relates to the methodology – the philosophical and theoretical underpinnings. Taking a broadly interpretivist perspective, the chapter begins with explaining why this approach is taken, particularly focusing on the importance of understanding the perspective of social actors when researching social phenomena. Critical realism is adopted and discussed as a perspective that allows for there to be objective knowledge at the same time as acknowledging that this is mediated through individuals and society, and this is combined with phenomenology as an epistemological perspective. The role of the researcher's influence on research is then discussed, acknowledging that research on social actors can never be truly 'detached' and noting the importance of reflexivity because of this. Part one then goes on to explore the specific use of qualitative research and gender as a lens of enquiry. The latter part of this chapter begins with a detailed discussion of the various research methods available, settling on interviews, participatory observation, and secondary analysis of data as the chosen research methods. In relation to victims of exploitation in the Kafala, an approach was taken that combined both observation and interviews, whereas for engagement with professionals, interviews only are adopted as the data collection method. This chapter also outlines how and why data will be analysed through thematic analysis, as

well as addressing reliability and explaining the use of triangulation. Finally, the Chapter outlines the specific steps taken to gather data, including sample and access, the process of observation, the carrying out of interviews, and the way data were then analysed using the help of technology (Nvivo). This also includes a discussion of how the research unfolded, as well as ethical issues.

## **3.2 Methodology**

### **3.2.1 Philosophical Underpinnings**

#### *The Positivism/Interpretivism Spectrum*

The first philosophical layer to consider is the very basis of understanding and where the research lies on the positivist/interpretivist spectrum. These terms describe what is considered the basis of knowledge to be and how knowledge and understanding are developed. Positivism suggests that the researcher is independent of what is being researched and that in the course of obtaining knowledge, (s)he simply gathers factual, observable information from the world, including observable facts about people (231, pp.44-49; 232, pp.144,145). By contrast, interpretivism suggests that the researcher is part of what is being observed and that each research participant will generate their own unique perspective or truth because of their unique engagement with the world (231, pp.44-49; 232, pp.144,145) This means that knowledge will be subjective and context-dependent and that the researcher must acknowledge their own values and the influence of their own perspective on the research findings, whereas positivism is aimed at gathering neutral and objective knowledge about the world. Most notably, positivism attempts to use the same techniques to generate knowledge and understanding as those used in natural science (231, p.52). The problem with this is that when researching social phenomenon, human beings are not objectively observable in the same way. It must be acknowledged that individuals and their values, perspectives, and unique positions, may influence the research (231, pp.44-49; 232, p.145). Human beings operate in a way that is not objectively observable because their behaviour alone does not give us access to their minds and viewpoints. As such, purely describing what can be seen and observed is unlikely to generate sufficient knowledge.

The research therefore takes a broadly interpretivist perspective, in that pure positivism is not feasible. However, as positivism and interpretivism are two polarized philosophical positions and between them is a spectrum of possible philosophical perspectives, a balance between them can be found and pure interpretivism has not been adopted. Instead, it is acknowledged

that the social world cannot be measured in the same way as observable scientific phenomenon and that the role of the researcher cannot be completely neutral. The researcher's perspective in relation to positivism or interpretivism will influence more specifically their ontological, epistemological, and axiological perspectives. Ontology is concerned with the nature of the world and "what is", epistemology with what and how we know, and axiology with the role of the researcher in shaping knowledge (232, pp.133,134). As will be discussed below, interpretivism informs the position of the author.

### *Ontology: Critical Realism*

This research takes the ontological perspective of critical realism. Ontology spans the 'realist/relativist' spectrum (233, p.13) which is linked to positivism/interpretivism in that the nature of reality determines what can be measured/observed and how knowledge is generated and understood. Realism suggests that there is a knowable, objective reality, whereas relativism suggests that 'reality' is unique to every individual and wrapped up with their personal experience. A realist perspective states that it is possible to observe the cause/effect relationship between objects in the world, whereas relativism states that there are multiple possible understandings of the world because reality can only be captured through personal perception (231, p.52).

Critical realism lies somewhere in the middle of the ontological spectrum, with realism and relativism at opposite ends of this spectrum. It was developed as an alternative to these two extremes (234). While realism states that there is an objective reality that can be known independent of human beings, relativism suggests that all reality is mediated by the individual and so there is only the truth of the reality for each individual as opposed to a shared, objective, independent reality. Critical realism, on the other hand, acknowledges that subjective experience mediates reality but suggests that there is a knowable world behind experience and that it is possible for knowledge to be closer to this reality (233, p.16; 235, p.20) Thus, critical realism does not deny that there is an independent reality but instead acknowledges that it is impossible to have a completely objective account of this independent world because knowledge is socially situated and subject to individual experience and perspective (236, p.21). Therefore, Fletcher (237) suggests that critical realism can be understood as the perspective that some knowledge is closer to reality than others. This is compatible with a gendered and feminist critical perspective, which is also adopted in this research and discussed further below, because it allows for the idea that incorporating the experiences of women actually gets understanding closer to reality and also accounts for why individuals may have a range of both feminist and antifeminist perspectives, as some perspectives may be

more reflective of reality than others.

### *Epistemology: Phenomenology*

Whereas critical realism addresses the understanding of ontology – the nature of reality - epistemology is concerned with what and how it is known. Again, there is a theoretical spectrum, with positivism at one end and interpretivist at the other (238, p.20).-Positivists believe in the objective reality of people's lives and so knowledge is gained through measuring the perceivable patterns that emerge through their interaction with the world. On the other hand, interpretivists see reality as constructed through the meaning and interpretation that people give to their external world and so they are interested in gaining knowledge through understanding people's worldviews, beliefs, and internal constructions of reality. Denzin and Lincoln (239, p.13) suggest that interpretivism is more appropriate to the study of the social world because it accounts for the social actors involved. This research adopts the broadly interpretivist perspective of phenomenology as its epistemological lens without denying—through critical realism – that an external world independent of individual interpretation exists.

Phenomenology simply states that what is knowable is always mediated through individual interpretation and seeks 'to capture, as closely as possible, the manner in which a phenomenon is experienced and its essential structures' (238, p.20). This makes it particularly compatible with critical realism because it combines the element of human experience and understanding with the possibility of there being a 'reality' to know. Lin (240) suggests that whereas positivist studies can identify patterns and causal relationships, interpretivist studies help us understand the mechanisms of this, the nature of the interactions themselves. It is particularly appropriate to this research because the aim is to capture the experiences, relationships, patterns, and mechanisms of the Kafala system and attempts to combat illegal practices. In other words, the author is seeking to understand how the Kafala operates and fits together as a system in relation to its impact on people's lives and experiences of modern slavery.

### *Axiology: The Role of the Researcher*

Broadly speaking, axiology refers to the influence on the researcher by virtue of the role of values within knowledge production (232, p.144). Whereas positivists aim for detached and neutral research, interpretivists suggest that this is not possible and that all research is underpinned by the values and assumptions of the researcher. Crucially, the interpretivist position suggests that the researcher can never be completely detached and value free (232,

p.145). Therefore, whereas in positivist research pains are taken to eliminate researcher influence on findings, interpretivist research seeks to be aware of and acknowledge the researcher's bias and attempt to limit this, justify, or account for this in the findings (241). Thus, from this perspective, our 'humanness' is a research tool. In this project, the value of women's empowerment, anti-slavery, and Islamic morality, guide the focus of the research and the methods used. This is a strength and key underpinning of the research.

As such, the research acknowledges the position of the researcher as instrumental to the research and knowledge produced. To mitigate against researcher bias, a number of tools can be adopted. The specific tools are discussed in Part 2 of this Chapter when outlining the methods used in the research and the issue of reliability. In summary, when rejecting a positivist/realist approach to research, it is necessary for the researcher to be reflexive about their own relationship to the research and to recognise that the aim is not to be detached and purely objective (242). The researcher should aim to give voice to 'the meaning of the situation as it is given in the participant's experience' (243). This acknowledges that their experience is their truth and that the researcher has a duty to seek to understand this truth and that part of the research process is to be reflexive about how this is achieved. Part of this approach includes acknowledging that the researcher and research participants work together to produce the research and so co-produce knowledge (244).

### **3.2.2 Finding Solutions to Modern Slavery Using Qualitative Research**

#### *Qualitative Research*

Traditionally, it has been thought that qualitative research aligns more with an interpretivist perspective; however, it has been acknowledged that this need not be the case and it largely depends on what is being studied (245), and that these perspectives can even be combined depending on the particular issue being focused on (240). Sayer (246, pp.18-22) argues that it is important to understand the role of the individual experiencing reality and to research and acknowledge that the self and society have a reciprocal relationship. In other words, the study of society must involve an understanding of how it is experienced by individuals, as well as how individuals impact on and create society. Similarly, Katz (247) supports the idea that a purely descriptive model of research must be avoided and instead aim to describe how social phenomena are experienced. He suggests that this should frame the research questions and how research is done. The phenomenon of modern slavery is very much about the lives of human beings and the relationship of individuals to society and the social structures that help to create and sustain exploitation. One of the reasons that modern slavery is on the political

agenda is because the international community is seeking to eradicate human suffering and acknowledging that slavery causes this. Law and policy can be used to adopt effective mechanisms to change the circumstances of the Kafala so that suffering can be eradicated or reduced as much as possible.

This research is aimed at finding solutions to the problem of modern slavery arising out of the Kafala system. This involves both changing individual lives and addressing practical constraints, particularly in the lives of those who are responsible for law and policy. To achieve this social change, the realities of *both* the lives and experiences of those individuals affected by modern slavery *and* the practical realities of law and policy making must be considered. As such, the perspectives of those affected by law and policy - those exploited in the Kafala and the Government - must be central to this research and to any proposed changes in law and policy arising from it.

Therefore, the lived realities in both a government context and the lives of victims must be explored, explained, and analysed through qualitative research. Qualitative research is appropriate when seeking to examine lived experiences, how people interact with and experience the world, and the relationship between self and society (248, p.40). It enables one to make sense of people's experiences, putting their perspective at the centre of enquiry. Human emotions, perspectives, and experiences are all valued in qualitative research because they help to better understand the phenomenon studied, even where they do not give the same clarity of data that is expected in quantitative research (248, p.52; 249). Quantitative research would not be able to offer the rich descriptions, context, and understanding of human experience that is required to address modern slavery and its legal and policy responses. The literature establishes that exploitation in the Kafala is a problem (49, pp.5-8; 250). and so this research chooses not to interrogate the size and scale of the problem through quantitative studies. Instead, the aim of this research is to better understand, through qualitative research, the mechanisms within the Kafala system that lead to exploitation.

A qualitative approach allows an in-depth understanding of people's experiences and perspectives and the possibility of challenging the existing body of knowledge and assumptions about phenomena. The research is qualitative in approach because this is a suitable method for understanding individual lived experiences and identifying the interplay between structure and agency, from which policy and practice can be developed. Mere descriptions from quantitative data could not give details of social phenomenon as they are actually experienced, offering insights into the realities of exploitation within the Kafala, as well as the gap between law/policy and what happens in practice. A public engagement approach



was considered but seemed unlikely to yield sufficiently rich results because it is not possible to capture a full understanding of trafficking without the qualitative understanding of women's experiences, as well as the practical considerations of the government. Qualitative methods are commonly used in relation to researching issues such as migration, women, and modern slavery (251; 252). The literature emphasises that an appreciation of intersectionality should be included in order to consider the interplay between race, class, gender, and any other relevant structural factors (253, p.163).

### *A Gendered Perspective*

The research takes a gendered perspective, aiming to identify gender dynamics, address the neglect and distortion of women's voices in current practice, and promote empowerment (254, pp.27-36; 255, pp.176-185). Historically, social and criminological research takes a gender-blind approach, either ignoring the issue of gender or assuming that it is not needed (256, p.336). Often, assumptions underpinning research are based on a perspective that does not and cannot account for gender and the way that gender may shape experience. Much of the time, this involves research that focuses solely on men, particularly in relation to criminality, whereby men are overwhelmingly the perpetrators of crime (256, p.336). A feminist – or gendered – approach instead seeks to avoid sexist assumptions, to focus on women and their experiences, and to test and challenge current thinking (257).

Drawing upon feminist critical theory, the focus is on considering power dynamics and the opportunity for institutional and ideological structures to better promote empowerment of women (258). Literature suggests that promoting gender equality results in stronger nation states (259). As such, the research also promotes women's empowerment as a way of improving Government policy. A gendered perspective explores the gender dynamics of femininity and masculinity that contribute to female exploitation. In the Gulf, there are specific gendered structural and cultural dynamics that shape experiences, including the experiences of those who have been exploited by the Kafala system (47, p.61; 260). These structural and cultural dynamics also shape law, policy, and practice. It is necessary to understand these dynamics to locate the life trajectories of trafficked women and girls in their specific context. It also helps to identify better solutions. Sen (261, p.18) suggests that there are two types of freedom that are restricted by gender inequality; these are wellbeing freedom – which relates to physical and economic security – and freedom of agency – which relates to the decisions and opportunities that women have access to. It is particularly important to acknowledge this in the context of modern slavery because not only are women's lives affected by material disadvantage and abuse, but it must also be acknowledged that there may be a complex

interplay between structure and agency that constrains and shapes the choices that women are making. For example, the fact that women 'choose' to emigrate to Saudi Arabia may be compelled by experiences of disadvantage in their country of origin. This consideration of both material and physical circumstances and women's capacity to make positive choices and shape their lives must form part of our understanding of the Kafala.

Hammersley (262, p.159) points out that qualitative approaches are seen as feminist and 'female', as opposed to the 'masculine' quantitative approaches. It is certainly the case that feminist research has developed and championed qualitative methods as a way of gaining knowledge about the experiences, understanding, and worldview of women (82, p.21). However, the use of a qualitative approach when using a gendered lens should not be taken for granted and should instead flow from the aims and focus of the research (263, p.244). As discussed below, gaining an understanding of the Kafala as it operates in practice necessitates a qualitative investigation of both the women affected by the Kafala system and those who are responsible for law, policy, and practice, many of whom are men. Nevertheless, it must be acknowledged that the use of qualitative methods in this research does achieve the aim of making visible those women who have previously been unheard. The use of qualitative techniques necessitates what Humberstone (264, p.199) refers to as 'deep reflection' whereby the researcher takes care to ensure that they are accurately portraying the voices of the women in their research to avoid the historical misrepresentation and neglect of women (263, p.248). This approach involves being reflexive by reflecting on and questioning the interview data. In essence, the feminist approach calls for particular care and accountability and a consideration of the power imbalance between the subjects researched and the researcher (265). Underpinning this is an acknowledgement that women are best placed to tell the stories of their own oppression and struggles and so qualitative methods are particularly fruitful in achieving the aim of allowing them to communicate this (263, p.242). This can also be referred to as 'knowing as a feminist' (266, p.208): putting women's lived experiences and perspectives at the centre of the research in order to enhance the research design and subsequent data. It also enables exploration of the wellbeing and agency freedoms alluded to by Sen (261, p.18).

When analysing victim experiences, it was expected that a number of 'turning points' (267; 268, p.368) would be identified that offer opportunities to develop stronger and more suitable anti-slavery solutions. Turning points are events that have a significant impact on life trajectories – i.e., that change a person's life path. Conventional turning points are events such as having a child and getting married. In the case of women exploited in the Kafala system, these are more likely to revolve around the process of entering the system, key events while being a foreign migrant, and subsequently leaving their situation and trying to move forward.

Possible turning points include:

- The decision to migrate and/or first contact with people who facilitated migration/trafficking
- Entering the Kafala system
- Seeking help from Embassies in relation to exploitation
- Continuing abuse (identifying points where they are most vulnerable to this)
- Seeking to access support (the lack of support being a possible turning point that leads to further exploitation)
- Returning/being deported (including risk of being killed)

Beyond turning points, the research also analysed institutional, legal, political and economic factors that cause, sustain and legitimise the existence of exploitation within the Kafala – including by rendering it invisible – through the lived realities of women’s lives, as opposed to theoretical or numerical data that fail to capture the real impact of these factors. In addition, it was possible to develop an understanding of how social structure impacts on women’s agency – for example, the fact that there are no frameworks for protecting women’s rights has meant that women have no way of making sense of their experiences or even understanding that they have been exploited.

### **3.3 Method**

#### **3.3.1 Choice of Method**

The specific method chosen is a mixed methodology of:

1. Qualitative interviews of government officials and other professionals
2. Qualitative interviews of victims of exploitation in the Kafala, combined with observation of their paths out of exploitation
3. Secondary analysis of literature, policy, and other related documents to fill any gaps in understanding

The research aims and questions in this thesis are inductive in that they aim to ‘build broader themes and generate a theory interconnecting the themes’ as opposed to testing a hypothesis built from existing theory (269, p.23). In addition, the research takes a broadly interpretivist approach, albeit with the critical realist assertion that a truth can be aimed towards although it

is mediated by individuals. A range of methods emerged as the most suited to this type of enquiry and were therefore considered in more detail before settling on the three approaches listed above. These methods were: ethnography and other participatory approaches, interviews, case studies, focus groups, surveys and action research. This group of methods are qualitative in focus, being most suited to the interpretive focus of the research (231, pp.44-49), the critical feminist focus (240), and the aim of understanding not just cause and effect but the mechanisms of interaction between structure and agency (82, p.21). Further, they are suitable for an inductive approach because they enable more exploratory processes beyond simply quantitative data gathering.

Textual analysis was considered because of the range of media commentary related to the issue of trafficking and the potential to better understand the social and cultural context in which trafficking occurs. Textual analysis of such data can help with the understanding of the social dynamics that are operating in relation to the discussed phenomenon (270, p.22). However, there are limitations to the approach, firstly because there was in fact very limited peer reviewed literature or government research and secondly, because it would be unable to offer a significant insight into the cyclical patterns of abuse that women face as a consequence of sex trafficking. Therefore, fieldwork is essential to gather such data, which can then be combined with secondary textual analysis as a complement to the research (271, p.310).

The use of both fieldwork and secondary textual analysis means that the research uses mixed methods. In fact, when considering which methods to use, the possibility of using mixed methods in relation to fieldwork was considered and ultimately adopted for the research (participatory observation and interviews). The use of mixed methods can also be referred to as *methodological triangulation* (272, p.1538) This form of triangulation, when used in the context of inductive and interpretivist research (272, p.1539), allows for greater depth and richness of data and gives a broader perspective of the phenomenon being researched (273, p.227). This is because it makes it possible to explore the phenomenon in different ways, potentially expanding the information made available and increasing understanding. For this reason, when deciding on suitable methods, the emphasis was not on choosing one method only but instead on choosing the most appropriate method or methods, with the potential for more than the single fieldwork method chosen, to help expand understanding and create a more comprehensive picture.

Several approaches were considered and ruled out. Ethnography is participatory observation of research subjects in their environment with the researchers being part of the environment and immersing themselves in that context (274). Although ethnography offers the opportunity

to develop rich and in-depth analysis, it is not appropriate in this context because of safety, abuse, exploitation and trauma and the need to fully immerse as a researcher in the experiences of victims. Although ethnography has been used to research similar topics such as drug trafficking and women and the drugs markets (275, pp.1-296; 276, pp.1-279), the additional risks associated with modern slavery, not to mention the fact that much of the exploitation occurs in private homes, means that this kind of fieldwork would not be possible. For example, Fleetwood's (277, p.12) research was conducted in prison as opposed to the context of the drug trafficking market itself because of similar safety concerns. Action research was also considered and rejected for similar reasons. Action research is a form of research that bridges the gap between research and its implementation. The research attempts to make change a part of the research itself and, depending on the context is likely to focus either on community/social action or organisational change (278, p.242). As with ethnography, some aspects of the Kafala could not be explored in this way because of dangers associated with the trafficking/modern slavery networks, or even simply the employers themselves who are abusing domestic workers. However, as will be discussed below some participatory observation was possible at the level of offering support to women who have been exploited through the Kafala. Further, as the research calls for an exploration of the legal and policy context, it focuses more on establishing a framework for change rather than testing these proposed changes in practice. This is because there is a considerable amount of expertise that needs to be explored before action would be feasible, including an understanding of what can be adopted by the Government. In addition, as action research tends to be cyclical – whereby action is tested, conclusions drawn, and then further exploration – as well as collaboration with research participants (278, p.243), the scope of this research did not allow for such a process.

The focus of this study is thus a small, passionately committed and fractious network of individuals that were not well known to each other, with considerable 'specialist' understanding of the issues (whether survivors, government, or civil society officials). Surveys generally ask standardised questions, although they may allow room for qualitative answers (279, p.5). As these answers cannot be elaborated on, surveys would have been an inappropriate tool to use, unsuited to the potential sample set and would not have enabled any exploration of the reasoning behind participants' views. Although it is possible to combine surveys with qualitative interviews to overcome this, an additional barrier was that surveys also tend to be most useful for accessing information from a large cohort of people, which was not needed in this research (279, p.4). Further, for both Governmental/organisational participants and for those exploited in the Kafala, their involvement in the research depended upon a personal relationship so that trust and rapport could be established. Therefore, surveys would have

been too impersonal. Focus groups were considered as an alternative as they involve face to face discussion. However, this risked stifling rather than enriching the data gathering because of the necessity of gathering detailed information from the perspective of individuals. Bedford and Burgess (280, p.133) argue that focus group participants may be less comfortable in groups with people they already know. Thus, particularly in relation to Government and civil society officials, the assumed intense pre-existing enmities between different actors involved make it unlikely that many would have agreed to participate nor would have spoken openly in each other's company. Similarly, survivors of trafficking would be unlikely to disclose intimate details in a focus group setting because of the personal nature of the subject matter.

### **3.3.2 Interviews**

Interviews were selected as a method because they are appropriate for understanding individual experiences and perspectives, including people's reflections on their experience and evaluations of the world (281, p.3). The research calls for an understanding of how both professionals and victims experience the Kafala system and what they think is needed/practical to make change. In particular, with government officials it is important to understand how law and policy is actually engaged with at a practical level and what may be possible. For victims, it is important to understand their awareness of their rights, as well as the lived realities of the barriers and facilitators to change that they encountered. Therefore, interviews were the best method for gaining an in-depth understanding of thoughts and experiences on these issues. Interviews were conducted with professionals, including government officials, and with victims of exploitation in the Kafala system (access and interview participants are discussed in more detail below).

In both cases, interviews were semi-structured to allow some structure to obtain what is needed from the interview and keep focused on research at the same time as allowing plenty of room for conversation and to pursue interesting topics that arise organically from the interview (281, p.156). Semi-structured interviews involve using broad themes as a guide for questioning but allowing room for varying the order, probing whatever comes up in the interview, and for the conversation to flow naturally and be directed to other topics if relevant. Semi-structured interviewing is compatible with an interpretivist approach because they allow the researcher to be responsive to the interviewee in how they engage with the subject matter, interpreting the questions, and choosing to respond and communicate their experiences. This kind of interviewing is useful when trying to understand a person's worldview and meaning (232, p.315).

### **3.3.3 Participatory Observation**

In order to understand the lived realities of victims of exploitation in the Kafala system, the research combined semi-structured interviews and participatory observation of support offered to women in order to understand their journeys out of exploitation. This approach allows the stories and the realities of participants' lives to be revealed due to the close proximity of the researcher to the phenomenon and the people being studied (282, p.20). Participatory observation is a tool that lends itself to studies that seek to understand how and why a social phenomenon or organisation operates the way it does in a contemporary context and in relation to circumstances over which the researcher has little or no control (283, p.14).

Combining interviews and participatory observation enables a researcher to draw similar benefits as from a case study approach by having an in-depth and holistic understanding of the phenomenon within a real-life social context (283, p.64). The approach differs from case studies because the interview remains the main focus of the research as opposed to aiming for 'empirical inquiry that investigates a contemporary phenomenon within its real-life context' (284, p.16). Participatory observation alone does not have the capacity to delve into a person's worldview and way of thinking and is not an appropriate method of enquiry in relation to understanding the perspective of professionals in the Government and other organisations, not least because of the intrusion into their working lives and issues of confidentiality. Therefore, a combined approach was adopted to enrich the understanding of the data, particularly in relation to victims, as opposed to being the primary data source.

As has been discussed above, immersion into the Kafala would be unsafe and impractical; however, understanding the impact of the Kafala can be witnessed in its real-world context through observing victims as they attempt to rebuild their lives. This is a phenomenon that the researcher has 'little or no control' over (unlike, for example, experiments in the natural sciences). Using participatory observation allows observation of the experiences of both professionals and victims without being fully immersed in their world to preserve the researcher's safety and avoid unnecessary intrusion. However, it also allows identification of the dynamics at play between individuals and the wider societal context (285) (including issues such as the availability of services and the legal system). It enables the researcher to identify and contextualise the barriers, challenges, and successes that the victims encountered.

### **3.3.4 Secondary Data**

Aside from an initial policy and literature review, which is necessary to investigate what is

already known about the subject area, the research also uses secondary data in order to answer the research questions (286). Secondary data can be beneficial to research because it enables access to information that already exists, making it both time and cost efficient (271, p.310). The researcher may offer new interpretations or apply the evidence to alternative theoretical ideas (287, p.372). On the other hand, there are drawbacks to using secondary data because it may be out-dated, not directly relevant to the research questions, or lacking a robust methodological approach. For this reason, when drawing from secondary data it is important to focus on authenticity, credibility, representativeness, and meaning (288, pp.19-35).

When considering the use of secondary data, the quality of data available are important. When good quality data are available that directly answers the research questions, it is practical and timely to rely solely on secondary data (289). However, in circumstances where there is conflicting information or limited Government, peer reviewed, or other good quality research, and the data do not directly answer the research questions, then it is necessary to also conduct primary data analysis. In this case, therefore, secondary data is used to fill in gaps and vice versa with primary data. This is because, as previously discussed there is a gap in research relating to the realities of exploitation in the Kafala and how to effectively introduce reforms. In addition, much Government and non-Governmental work that has been done to combat modern slavery is not formally documented. On the other hand, it is important to understand the existing law, policy, research, and practice that is available to fill in the gaps in relation to the understanding of the Kafala system and its relationship to modern slavery.

### **3.3.5 Thematic and CSH Analysis**

The analysis technique adopted in the research is thematic analysis. Content analysis would not be appropriate because this involves systematically coding, categorizing, and counting the incidences of a particular category being mentioned within the data. This is useful for identifying patterns and trends within discourse (290, p.54). However, instead thematic analysis seeks to determine themes and patterns in terms of meaning within the data, in order to draw out what the important issues and dynamics of the social phenomenon are (291; 292). Thematic analysis is therefore most suited to this research because the research is attempting to gain this kind of in-depth understanding of the issues, themes, and dynamics that shape people's experiences of the Kafala. It therefore needs an approach that allows themes to emerge as opposed to simply understanding the way that the Kafala is talked about, which would be more in line with discourse or content analysis (290, p.53).



The second aspect of data analysis once themes had been established is to subsequently design a framework of reform and recommendations. A decision was taken to use a framework that moves beyond simple policy analysis and instead takes a more comprehensive view of the Kafala as a system, its reality, and how changes are envisioned. For this reason, the 12 questions of Critical Systems Heuristics were adopted because of the benefit of them offering a structured method of analysis, as well as the ability to explore multiple perspectives, develop good practice, and get clarity on what needs to be done (293).

There are many different ways of approaching and understanding policy analysis. Browne et al (294) suggest a tripartite model with the following three approaches: *traditional* approaches that aim to objectively analyse 'facts' and come up with the 'best' solution, *mainstream* approaches that focus on how different stakeholders and political factors shape policy, and *interpretive* approaches that analyse how problems are shaped by meaning and understanding and how this in turn shapes policy. While all these factors: facts, stakeholders/politics, and meaning/understanding are important, none of them present a structured and comprehensive approach to determining reforms. In searching for such an approach, Isaksen's 'ladder of abstraction' to enhance analysis was considered, which is recommended for creative problem solving (295, p.21). The advantage of 'the ladder of abstraction' is that it helps to ensure that the right questions are being asked. As such, it could help to shape the questions that need to be answered to build reforms – and therefore to shape the reforms themselves – in other words, to create a framework for change (295, p.23). If questions/considerations are defined too narrowly then this can stifle creativity. On the other hand, if questions are too broad then there is a danger of trying to do too much and/or losing focus (295, p.76).

The key benefits of the ladder of abstraction are to test assumptions and look at the big picture, to consider multiple perspectives, and to be reflexive (296). This is achieved through the systematic asking of the questions 'why' and 'why else' and 'how' and 'how else' (295, p.77). However, upon further research, the 12 questions of Critical Systems Heuristics ('CSH') offered the same benefits (297) and yet with additional structure and deeper questioning that addresses what needs to be done and how to achieve this in a practical way (298, p.244).

The 12 questions of CSH explore what 'is' and 'what ought to be' through the lens of motivations and values, power and structure, knowledge and skills, and legitimacy (or influence/how to embed into the community) (298, p.244). Crucially, it helps the researcher to understand potential conflict in the system and how to manage this, as well as getting clarity on the distance between the now and the desired reforms and what needs to be done on a

practical level (299, p.38). This approach has actually been adopted in Saudi previously, in relation to educational reform, as a way of incorporating the views of those who have lived experience of the issues as well as to address complexity and develop creative responses (300).

The specific method adopted for data analysis is discussed further below.

### **3.3.6 Reliability**

Qualitative studies rarely utilize a sample size that is statistically representative of the population and this study is no exception. However, qualitative studies using smaller sampled numbers are valuable because they provide an in-depth understanding of people's lived experiences, which means that more effective policy, law, and practice can be developed (248, p.244). As opposed to offering information on frequency of occurrence of a particular phenomenon, qualitative analysis gives further insight into that phenomenon (301, pp.3,86). Another way to put it is that quantitative analysis can provide an insight into relationships in terms of frequency or causation, whereas qualitative analysis gives insights into the mechanisms and how things fit together in practice (246). Therefore, the value of the research lies not in its statistical application to a population but instead in its generalisability through gaining an in-depth understanding of a phenomenon. Yin (284, p.45) describes this as *analytical* generalization as opposed to statistical generalization, whereby the research enables generalization from a set of results to a broader theory that can be applied in other similar circumstances. Patterns and trends can be identified and used to generate theory (302; 303). For this research, in relation to the victims of exploitation in the Kafala, it can confidently be said that an insight into the way in which the Kafala can shape people's experiences is gained and that there are likely to be others who have similar experiences. In addition, the professionals chosen for interview have specialist experience in their field and so offer an in-depth perspective of how law and policy works in practice in this specific context.

As discussed above, methodological triangulation allows for greater depth and richness of data, giving a broader perspective (273). Using multiple data sources enables the researcher to corroborate and confirm the results (273, p.270). The choice to combine interviews and participatory observation was made because, firstly, these methods stood out individually as being suitable to answer the research question, while others were ruled out. Secondly, they work well in combination because whereas participatory observation allows the researcher to locate the phenomenon in context and observe the dynamics that influence a particular set of circumstances (284, p.16), interviews enable the researcher to explore the worldview and

subjective experiences of the participant themselves (281, p.3). As such, in combination, they enable an in-depth understanding of both context and individual perspective. The addition of secondary data analysis as a method also enriches the data because it offers wider context, particularly in relation to law and policy that is essential to addressing the issue of modern slavery. Reliability is enhanced because qualitative research involves the process of identifying emerging patterns and trends, which documentary analysis supports by checking against what is already known and researched (302; 304).

One limitation of the research is that self-reported perspectives in interviews may not be reliable – for example in feminist research it has been found that women may not name violence they have experienced or may minimise it (305; 306, p.138). In addition, participants may try to anticipate what is expected of them and give answers that they think will be correct or acceptable (307, p.98). However, this is improved by using triangulation, as well as involving a diverse pool of research participants (239, pp.5,307). For this research, the subjects will be survivors of exploitation in the Kafala as well as government and civil society officials who witness the experiences of survivors and also understand the possibilities for law, policy, and practice. This can also be mitigated against by keeping detailed notes throughout the research (284, pp.46,113), which enables recording of overall impressions of the interview and any possible issues with trust and other issues that could affect the authenticity of responses. Additionally, establishing rapport is an essential element of creating an environment where honest and open conversations can occur (308, p.74). Lee (307, p.100) suggests that this issue can also be addressed by increasing the depth of the interview, which means asking probing questions where appropriate and clarifying what is said.

More generally, qualitative research is often criticized because of the capacity for bias and influence from the researcher, as it is arguably less objective and numerically measurable compared to statistical information (284, p.46). Because qualitative research relies more heavily on the interaction between a researcher and interviewer, as well as the researcher's interpretations of what is said or observed, this leaves room for bias and potential researcher influence on findings (308, p.76). This can be mitigated against by acknowledging the risk of bias, accommodating the fact that completely 'neutral' and 'objective' research is not possible because of human interaction with findings, and ensuring that the researcher remains reflexive throughout the research process (248, pp.63-66). This reflexivity must include a consideration of the researcher's particular characteristics that may influence their perspective – for example, race, class and sex, as well as other social and cultural characteristics (307, p.18; 243). For the present research, this means ensuring the researcher is constantly aware of one's own beliefs and interpretations and ensuring that 'words are not put into the mouths' of

those interviewed and observed. This is also important for ensuring accuracy when amplifying the voices of marginalised women and ensuring that the diversity of their experience is captured (309, p.421). This reflexivity is also supported by use of triangulation to ensure diversity of data and limiting the risk of influencing the findings (239, pp.2,5). Further, as briefly mentioned above, Yin (284, pp.46,113) recommends taking detailed notes as a specific tool for reflexivity and ensuring that the research is methodical. The researcher therefore adopted this approach. It must also be pointed out that the research itself can actually challenge assumptions and bias and even 'unfreeze thinking' (310) and so it should not be assumed that bias will necessarily occur as a researcher who remains open-minded and reflexive is well positioned to receive unbiased information and in fact change their own views. As such, the researcher was careful to adopt Humberstone's (311, p.199) recommendation of 'deep reflection' to constantly challenge personal assumptions.

### **3.4 Research Design**

The subject matter of this research derives from the author's professional experience and interest in women's rights in the context of also being a strong supporter of Islam and its importance to Saudi Arabia. The author has worked in the context of social policy for many years and has long been an advisor and researcher for public bodies and charities in Saudi. Any success in this area is because the researcher has a strong respect for human rights as well as the systems and laws of the region. Through this experience, the author became involved with organisations and individuals that support vulnerable women and gained an anecdotal understanding of the Kafala and the exploitation that occurs within it. At the same time, public officials began expressing their own concerns about the Kafala and the way that certain individuals were exploiting human rights under the trust of the Government. Far from the stereotype of Saudi Arabia as a country that does not respect human rights (141), it is clear that the exploitation in the Kafala is against the values of Saudi Arabia, as well as a barrier to economic prosperity because it allows people to use slavery instead of contributing to the economy. Again, although researchers have suggested that there are strong barriers to promoting women's human rights in Saudi Arabia (141, pp.2,18), the researcher's experience of engaging in this subject with people at different levels of society and in different roles were all supportive of the need to eradicate violations of other human beings, although as will be seen in subsequent chapters, this does not mean that this particular vulnerable group are a policy priority. Nevertheless, it seems clear that very little is known about the issues and that more research is needed to ensure that policy could be formulated that works both for victims and for the country as a whole. It was from this perspective that the research design emerged. In particular, the author's contacts meant that a realistic approach to fieldwork was possible at

the same time as being aware of limitations, such as the confidentiality of the Government, and being able to establish *rapport* with the victims.

### **3.4.1 Sample and Access**

The research involved accessing two different cohorts of participants. The first cohort was the individual women who have been exploited within the Kafala. The second were individuals from civil society and government bodies who would be interviewed only (although some observations happened because of their contact with the women participants). Considerations of who to include in the sample, as well as practical considerations such as access are discussed below in relation to both cohorts.

It is not possible to determine the numbers of women who are in the same situation in Saudi Arabia as the women interviewed for this research. It is estimated that there were 3.77 million domestic workers in the GCC in 2017, with 2.42 million in Saudi Arabia, which has the highest growth rate at 11.3 per cent per year between 2007 and 2017 (33). Women 'cleaners' are thought to make up 40% of the total domestic worker population in Saudi, with 58% being male drivers (33). To date, there are no studies on prevalence, although figures suggest that 733,000 people migrated into Saudi Arabia as domestic workers in 2017 (312). However, it is difficult to determine exact numbers because the nature of trafficking/migration is such that the population is always shifting (313) and – in relation to victims – many people may not even identify themselves as having been exploited or be willing to admit to it and talk about it (314). As the sample is purposive, and as discussed previously, it offers rich in-depth data that are likely to apply to many other similar contexts.

Twelve women in total were interviewed. The choice to stop interviewing was made when it was deemed that a satisfactory/acceptable level of interviews had been reached while also taking into consideration barriers to access, such as victims being reluctant to share their stories publicly, victim vulnerability, and the fact that at any one time, services may only be in contact with a limited number of women who were able to interview face to face. After twelve interviews were conducted, it was felt that a rich amount of data had been obtained and that repeated themes were emerging, it was therefore not necessary to continue as this would have involved waiting until further interviews became available.

Interviews with victims were selected based on their relevance and the practicalities of accessing these individual women (284, p.61). Participant recruitment entailed 'purposive non-random sampling' (315). The research concerns the experiences of female migrants who have

been exploited in the Kafala system in Saudi Arabia. Therefore, individuals who met this description were selected with the aim of documenting their journey of support when they reach out to individuals or organisations in civil society. There were no additional criteria requiring, for instance, that the women should have been trafficked or sexually exploited; however, women who were effectively trafficked into prostitution through the Kafala system are represented in the study. Some of these women may have been trafficked to other GCC countries but have ultimately accessed support in Saudi Arabia, thus linking them to the Kafala in Saudi. The requirements for cases were that participants must be female, migrants, have moved for employment in the GCC, and be in Saudi when accessing support (which could be both formal and informal). These survivors have first-hand knowledge of their lives before, during, and after being trafficked, which could be explored through interview, and they could be observed engaging with the civil and social system in an effort to release themselves from exploitation.

The sample was bound by the requirements of being in the Kafala system by virtue of moving for employment anywhere in the GCC, which reflects the fact that the Kafala operates throughout the GCC and in similar ways in each country, often with movement between countries. However, there was a requirement that they must be engaged with civil society in Saudi Arabia, as opposed to other countries. It must be acknowledged that this gave rise to inevitable bias because only women who were in contact with civil society organisations were reached. However, this was balanced with meeting the requirements of the research because it meant that experiences of the Kafala could be explored at the same time as identifying the opportunities for change in relation to civil society and government support. It also made the research more practical for the purposes of observation and it would not have been feasible or safe to widen the net and include women who were not in touch with civil society as they would likely still be in an exploitative situation. In addition, it is not advisable – or safe – to research a vulnerable population who are actively being exploited or abused without there being systems of support in place (316).

Participatory observation was not feasible because of the author's role as a professional working as an advisor to not-for-profit companies and other stakeholders who are supporting victims of exploitation through migration and modern slavery. However, through this role, the researcher has an understanding of both governmental and non-governmental bodies in Saudi and the GCC more widely who are seeking to reduce modern slavery and support victims, particularly those who are exploited in the Kafala system. The researcher was thus able to facilitate victims finding support and to observe their engagement with civil society as they attempted to remove themselves from exploitation and affirm their human rights. This included

observing relationships with their employers, providing the benefit of understanding both the experiences of the victims themselves and the system that they are trying to navigate.

Using a 'gatekeeper' approach (232, p.182) – meaning that women were accessed through others who had a stronger relationship of trust and could facilitate the researcher's relationships with them – women were approached through contacts at women's shelters, some of whom approached the researcher as a professional for advice because of expertise in this area. Some of the details of how women were accessed for interview must remain confidential because of their circumstances. Because of the researcher's contacts and participation in civil society, including having trust and rapport with organisations supporting women, there were no major barriers to women participating. Table 3.1 below outlines the participants who were observed and interviewed. These have been anonymised:

*Table 3.1: List of interviewees: Victims*

Who	Details
Victim 1 Fieldwork Interview, V1, Riyadh, 30 <sup>th</sup> July 2019	Country of Origin: India  A woman who came to Saudi under the sponsorship of an old couple. She had just had a baby and came to Saudi to earn money for her family. Her 80 years old employer would come into her room at night and rape her with his wife's knowledge. The situation got worse until she reached out on Facebook, filmed what was happening, and sent the video to a professional who supports women in this situation. This man was arrested and jailed, even given his old age. She was supported to repatriate as this was her wish.
Victim 2 Fieldwork Interview, V2, Riyadh, 30 <sup>th</sup> July 2019	Country of Origin: Philippines  Was smuggled into Saudi and was passed from bad employer to bad employer. She was abused emotionally and physically and made to work 24 hour days with no time off. She came to Saudi trusting those who smuggled her in because she thought there would be a lot of opportunity and she could send money home. She did not know how to seek help and felt that she had no worth.
Victim 3 Fieldwork Interview, V3, Riyadh, 31st July 2019	Country of Origin: Philippines  A woman who described being treated as a slave growing up and who wished to escape these conditions. She came to Saudi to work but was then treated badly by her employer and practically imprisoned while also being forced to work very long days with no time off. Her pay was very small and she was so isolated that she did not know anyone to talk to about what was happening. She thought that this was just how work was. Eventually she was helped through someone noticing how she was treated and contacting people who could support her.
Victim 4	Country of Origin: Egypt  A 14-year-old victim had been sold by her father to a man in her country of origin; this man then changed her passport details and sent her to Saudi. In Saudi she was once again treated as a slave and sexually exploited. She was helped because she was able to reach out to a friend who then found her help. She wanted to have hymenoplasty because of the shame she feels.

Fieldwork Interview, V4, Riyadh, 5 <sup>th</sup> Sept 2019	
Victim 5 Fieldwork Interview, V5, Riyadh, 5 <sup>th</sup> Sept 2019	Country of Origin: India A woman who was sex trafficked into Saudi but then was able to get help to leave. However, she was so poor in her home country that she decided to take a job as a domestic worker in Saudi despite her past. She was then re-trafficked on her return and forced into domestic servitude and sexual slavery. She was subjected to physical and emotional abuse. She was luckily able to go to a shelter for help.
Victim 6 Fieldwork Interview, V6, Riyadh, 5 <sup>th</sup> Sept 2019	Country of Origin: Bangladesh Came to Saudi because she had a friend who had come to Saudi as a domestic worker and was sending home money to her family. She thought that there would be a lot of opportunity. She did not find out very much information before leaving but she found a recruitment agency and they told her everything that she already believed. She knew it would be hard work but when she arrived, she was subjected to abuse and made to work in slavery conditions. She ran away and found the police who helped her.
Victim 7 Fieldwork Interview, V7, Riyadh, 16 <sup>th</sup> Oct 2019	Country of Origin: Indonesia She did not even see her passport and she had no idea how to get help. She did have some contact with officials as she entered the country, perhaps with more awareness they would have been able to help. Also, if she had seen information about organisations that could help her, she might have known who to contact. She believes her father made an arrangement to get money for her as she worked. Although she was only meant to be a housemaid, the master of her house sexually abused her.
Victim 8 Fieldwork Interview, V8, Riyadh, 16 <sup>th</sup> Oct 2019	Country of Origin: Iraq Was sex trafficked into Saudi and smuggled through the border. Her passport was taken from her and she was practically imprisoned. She was also so afraid that she did not dare to seek help. However, she was rescued by people who were already investigating and trying to find victims of trafficking and had identified her. She was returned home. However, at home she was ashamed and isolated. She had no way of making money and so she approached a recruitment company to return and was then abused in domestic servitude again.
Victim 9 Fieldwork Interview, V9, Riyadh, 28 <sup>th</sup> Oct 2019	Country of Origin: Egypt A woman who was smuggled into Saudi and forced into domestic servitude. She was forced to work very long hours and was rarely allowed out of the home. She was living in very uncomfortable conditions with barely enough to eat. She knew nothing about the country and nobody in Saudi and so did not know what to do to get help. She also did not know how much help there would be and whether her human rights would be supported.
Victim 10	Country of Origin: Bangladesh



Fieldwork Interview, V10, Riyadh, 28 <sup>th</sup> Oct 2019	Like many women in her village, went to Saudi Arabia with the promise of a job as a domestic worker with the goal of sending money back to her family. There are so many women doing this and there is an opportunity to educate these women at this point. The agreement was to work for just one family, but that family rented her out to multiple families. She now knows that this is against the laws of the Kafala but she did not know this at the time. She was forced to work long hours with no time off even when she got sick.
Victim 11 Fieldwork Interview, V11, Riyadh, 29 <sup>th</sup> Oct 2019	Country of Origin: Indonesia Victim was enslaved as a domestic worker and verbally, physically, and sexually abused. She had already experienced sexual abuse in her country of origin. She had been prepared for hard work and to be considered low status, but she had not been prepared for the levels of abuse she suffered. She has been helped to return home and she made contact with friends at home who have helped her to find work, but she is still suffering with trauma and does not know how to recover from this.
Victim 12 Fieldwork Interview, V12, Riyadh, 29 <sup>th</sup> Oct 2019	Country of Origin: India Came to Saudi thinking she had legitimate work but then found herself trapped and abused. She was made to work in slavery conditions and was verbally and physically abused. She was not sexually abused. Eventually when she grew too tired, they fired her and refused to pay her final wages. She sought help and accessed support through a women's shelter. She wishes to return home, but she is worried about the lack of opportunity there.

Source: Author

In relation to the second cohort of participants, Government Officials and Practitioners, seven Government Officials and eight Practitioners were interviewed, totalling 15 professionals. As above, it was believed they were interviewed to a satisfactory level after observing a high level of repetition in themes. The decision to stop interviews was also influenced by taking into account the limitations of time, participant willingness to be interviewed in a sensitive political environment, and the difficulties of being able to arrange interviews. In addition, the sensitive and specialist nature of the subject matter limited the number of suitable interviewees. As above, participant recruitment entailed 'purposive non-random sampling' (315) as interviews were requested based on an individual's perceived 'expertise' and specific manner of engagement in the Kafala system in Saudi Arabia. Interview members were selected because of public office and civil society organisations because public officials and civil society organisations are responsible for the structures that impact the lives of people in the Kafala system (such as support services and the criminal justice system). These people would also likely have witnessed the impact on survivors.

The following Tables 3.2 and 3.3 outlines the general descriptions of who were interviewed, taking care to preserve anonymity:

Table 3.2: List of interviewees, Government Officials

Who	Details	Key contributions
Government Official 1  Fieldwork interview GO1, Riyadh, 23 <sup>rd</sup> July 2019	Government Worker with knowledge of human rights. (SA)	No mention of Kafala in laws Not as bad as international reputation – some positive experience, some negative Government serious about eradicating modern slavery Civil society should be considered and adopted More education in countries of origin
Government Official 2  Fieldwork interview GO2, Riyadh, 3 <sup>rd</sup> September 2019	Government Official working on issues of immigration. (GCC)	Preserve what works and then implement reforms Capturing more perpetrators and making sure there are consequences Any system has exploitation – need to identify how this exploitation is happening in the context of the Kafala More needs to be done to inform people of their rights
Government Official 3  Fieldwork interview GO3, Riyadh, 3 <sup>rd</sup> September 2019	Government Official responsible for coordinated policy and practice across the GCC. (GCC)	Any system of supremacy will lead to vulnerability High commitment from GC to ensure violations do not occur Need more about recognizing it in different forms and more support for victims, particularly legal support Strong need for national strategy and committee
Government Official 4  Fieldwork interview GO4, Riyadh, 5 <sup>th</sup> May 2020	Government worker with knowledge of modern slavery and human trafficking. (SA)	Three areas for consideration: recovery and support, economic factors, legal protections and enforcement The problem of hidden exploitation with perpetrators not realising that what they are doing is slavery Empowering victims both legally and economically
Government Official 5  Fieldwork interview	Government worker responsible for policy and practice on human trafficking in the GCC. (GCC)	Both sponsor and sponsee can be abusive – there are examples of both happening Intent to abolish the Kafala from the perspective of being completely tied to an employer

GO5, Riyadh, 6 <sup>th</sup> May 2020		Specific issues relating to women, particularly sexual violence
Government Official 6  Fieldwork interview GO6, Riyadh, 11 <sup>th</sup> May 2020	Government worker with knowledge of labour laws and modern slavery. (SA)	It must be made clear that all human beings, no matter the kind of work they do, are to be protected and supported in Saudi – both to victims and to employers Economic need for reform – can't rely on slave labour – undermines the legitimate economy Education in origin countries
Government Official 7  Fieldwork interview GO7, Riyadh, 10 <sup>th</sup> May 2021	Government worker with knowledge of human rights and civil society. (SA)	It is completely against the law to mistreat women Lack of public awareness that Islam supports women's rights Economic need for reform – can't rely on slave labour Perpetrators of exploitation would only change when there are consequences for their actions

Source: Author

Table 3:3 List of interviewees, Practitioners

Who	Details	Key contributions
Practitioner 1  Fieldwork interview P1, Riyadh, 24 <sup>th</sup> July 2019	A non-profit international network that provides direct training, capacity building, and market access programs to survivors and women at risk of human trafficking, as well as works to eradicate human trafficking. (Global)	The difference between appearance of reform and actual change (gap between policy/law and implementation) Need to address entry points and practices like gradual deception Demand for cheap labour, vulnerable populations, and weak rule of law enable exploitation
Practitioner 2  Fieldwork interview P2, Riyadh, 24 <sup>th</sup> July 2019	A funding organisation that funds projects to eradicate modern slavery and human trafficking. (Global)	Racism being a big factor, potentially more so than gender Poverty and lack of opportunity as key drivers Making it economically beneficial for employers to be more responsible Case by case management approach

Practitioner 3  Fieldwork interview P3, Riyadh, 2 <sup>nd</sup> September 2019	Shelter for victims of human trafficking. (GCC)	Main differentiating factor between Kafala and other systems is freedom to change work Positive about gender balance and gender support in GCC countries with regard to trafficking Economic empowerment such as entrepreneurship
Practitioner 4  Fieldwork interview P4, Riyadh, 5 <sup>th</sup> May 2020	Individual responsible for protection of migrants and refugees at an international and policy level. (GCC)	Awareness of the realities of Kafala amongst government bodies, including the police, hospitals, and administrative departments has grown Working more closely with international organisations The need for different kinds of support for victims – physical (medical), emotional, legal/assistance to return etc.
Practitioner 5  Fieldwork interview P5, Riyadh, 6 <sup>th</sup> May 2020	Network focused on eradicating sexual exploitation. (Global)	Gaps between stereotypes about Islam and the fact that GCC Governments have strong commitment to eradicating slavery Need to address the risk of being re-trafficked Victim focused but in a way that is integrated across different levels and is good for everybody
Practitioner 6  Fieldwork interview P10, Riyadh, 11 <sup>th</sup> May 2020	Global anti-trafficking charity with activities in the GCC. (Global)	Vulnerability of victims is through being unable to seek help, understand how things work, and often even their inability to communicate effectively Registering all labour Awareness and education, making sure people can identify legitimate recruitment companies and how to access support
Practitioner 7  Fieldwork interview	Peace building initiative in the Middle East. (GCC)	Kafala as social contract not regulatory framework Lower status of foreign women Problems with Kafala are similar to any other country Prevention, prosecution, punishment, protection and promotion of international cooperation (WHO)

P11, Riyadh, 11 <sup>th</sup> May 2020		
Practitioner 8  Fieldwork interview P8, Riyadh, 10 <sup>th</sup> May 2021	Shelter for victims of human trafficking and domestic and sexual violence. (GCC)	Using religious influence would be an effective way to further eradicate slavery It is completely against the law to mistreat women Preserve what works and then implement reforms

Source: Author

The majority of interviewees within government and civil society were approached directly, having identified them through their involvement in politics, civil society, or their public commentary on the issue. Although setting up the interviews was a formal process, because of the researcher's strong contacts, it was possible to set up and arrange interviews without being blocked by the very strong Governmental barriers that are in place. However, measures were taken such as agreeing to show them the interview questions beforehand and being very careful about the content of interviews, which is discussed further below.

Due to the constraints relating to anonymity and being able to talk freely about a sensitive political subject, it was agreed that interviews would be anonymised. It was agreed to reveal only the names of the interviewee organisations – if they consented to do so - but not their specific responses nor individual identities and job titles. All other organisations are anonymous and identified only by the descriptions above. The same approach was adopted for each organisation so that the relative sensitivity/need for anonymity could not be identified between participants. Organisations who participated in the interviews and agreed to be named were those belonging to the:

Table 3.4: List of participant organisations

Saudi Arabia Human Rights Commission
Saudi Arabia Ministry of Justice
Saudi Arabia Ministry of Labour
Saudi Arabia Ministry of Interior
United Nations Office on Drugs and Crime

United Nations Refugee Agency
On Freedom Fund
SQ Foundation
Nomi Network
Ewaa Shelter for Women

Source: Author

### 3.4.2 Semi-structured interview topics and processes

Interviews differed in length because of the free-flowing nature of semi-structured interviews. Most of the interviews with officials were carried out in Arabic and translated into English. These translations are currently securely stored in password protected computer files. Notes were taken and recordings of the interview where permitted, as advised by Saunders et al; (232, p.326) however, only five participants allowed this because of the confidential nature of what was being discussed. These recordings were subsequently used to take detailed notes and then destroyed to further protect confidentiality.

The Kafala survivors were asked to recount their experiences by offering a chronological narrative of their lives, starting from before they made the decision to move to the GCC for work. The interview reflected on their experiences including looking back on earlier experiences where it was thought they might be relevant to their decision to migrate (for example, their life opportunities or their role and status as women). The prompting question for this conversation was simply to ask: “what brought you to Saudi?”

All interviewees, whether survivors or civil society and government officials, were asked about the following topics, using this as the topic guide, with variations in focus in terms of their knowledge and experience. Details of the interview schedules used and information given to participants can be found in Appendix 1:

- *Defining Exploitation*

How they define or understand exploitation and modern slavery (particularly whether it is viewed as a human rights issue or merely a legal term/policy issue)

- *Government Action*

What is being done by the government to combat human trafficking – including future developments. What more could be done? What more is planned?

- *Gender*

Awareness of wider gender issues and how these might impact on attitudes to female migrants, recommendations for change. What causes exploitation in the Kafala?

- *Provision of Services*

How much support is there for survivors? Is this support adequate? (i.e., shelters in particular). Are the Criminal Justice agencies equipped to support this group of women? What about protection?

- *The Kafala System and other structural factors specific to Saudi*

Flaws and strengths

- *International context*

What can be done in GCC states as a whole? Will the government live up to its international obligations?

Politicians were given a list of interview questions so that politicians could observe the set of questions beforehand (Appendix 1). This was essential in gaining access to them in the first place, and whilst it may produce answers that have been pre-thought, it was possible to analyse their body language and tone of voice during the interview. In addition, although more structured than the other interviews, a 'semi-structured' approach was adopted in the interviews by allowing conversation to emerge.

For interviews with survivors, it was necessary to consider more deeply the power relationship between researcher and interviewee. Feminist researchers have acknowledged that the *rappport* and questioning style and content can all have a strong impact on the outcome of the interview (308, p.67) and it has been proven to be particularly important when researching women who have been sexually exploited, with key researchers suggesting that the interview should be participant-led, privileging their perspective over the researcher (253, p.165; 317; 318, p.38). The researcher therefore adopted these values for the interviews with survivors, ensuring that it was open and led by their perspectives and being aware not to assert dominance as an 'expert'.

In line with Yin's advice for case studies (284, p.113), as well as being good practice for interviews (232, p.327), detailed notes of contextual data were taken, including the location and surroundings of the interview, the date and time, any observations of behaviour before, during, and after the interview, and overall impressions.

### **3.4.3 Participatory Observation**

As an advisor to civil society organisations, the researcher provided advice and support in helping women to access the services that they need to change their lives, as well as with any practical issues that arose. Although not fully involved in the support offered to Kafala survivors, the researcher was nevertheless actively involved and not a passive observer. Therefore, this kind of observation can be appropriately described as participatory (319, p.223).

Focusing on the process of supporting women who have been exploited, case notes were made on the following (284, p.113):

- Activities, interactions and events
- Challenges, barriers, successes
- Anything done or said during these interactions that were relevant to the research
- The researcher's personal reactions

A lot of the information regarding what, where, and how people were supported is highly confidential and is only shared in the research insofar as necessary to answer the research questions. Examples of interactions are attending meetings with victims and practitioners to discuss their options, liaising with professionals on behalf of the women being helped, and accompanying women on appointments and practical tasks. Verbatim notes were not taken because this was not practical in the circumstances. Where possible, notes were taken while participating; however, often fieldwork notes would be taken after the encounters had occurred because there had been no opportunity at the time. It was important to be focused on the interactions with victims and practitioners as opposed to be passively observing and taking notes.

### **3.4.4 Analysis of the Literature**

The use of secondary data is recommended by Yin to add depth to the researcher's



understanding (284, p.113). Through textual analysis, the researcher sought to explore exploitation in the Kafala system in the Gulf as it relates to migration, gender, and Islam. This includes exploring specific factors that are relevant to the experience of foreign migrant women in Saudi Arabia, the history of Saudi Arabia, and relevant laws, policy, and practice.

Documents were accessed through Cranfield's library resources, ResearchGate, and Google Scholar, as well as general internet searches through the Google search engine (this was particularly helpful for identifying documents on the history, social, and political structure of Saudi and the GCC). The literature was searched using the following key words:

*modern slavery, Kafala, reform of the Kafala, exploitation in the Kafala, labour exploitation, labour exploitation in the GCC/Saudi Arabia, GCC/Saudi Arabia and migration, women in GCC/Saudi Arabia, trafficking, sex trafficking, sex trafficking in the GCC, human trafficking in the GCC, history of Saudi Arabia, Saudi Arabia/GCC politics/legal system, international treaties on modern slavery/labour exploitation/sex trafficking, the GCC relationship to international politics, neoliberalism and Islam, Islam and politics, Islam and women, slavery and Islam, Islam and human rights*

The snowballing technique was also used to identify relevant articles and information and then searched where they had been mentioned, as well as the literature mentioned in them. Articles, Government reports, and research reports were also accessed.

### **3.4.5 Data Analysis**

Interviews were transcribed and entered into Nvivo, alongside any relevant textual data, for thematic analysis, coding, storing, and ease of managing the data (such as writing notes and pulling together ideas). Transcription is recommended for thematic analysis (320); however, not all interviews were transcribed verbatim because they were not recorded, and notes were taken instead. This was because of confidentiality and barriers to access. As the data were of a manageable size, immersed in the data was undertaken by reading through the relevant texts, notes, and interview transcripts without the use of the software management tool. This immersion in the data offered the opportunity to get a stronger 'feel' for the data and the patterns and themes emerging. The process allows for a more nuanced and intimate understanding of the data as coding through software risks missing some of the bigger picture and artificially pulling apart the data (321, pp.181,189). However, the software was used to complement this and make it easier to identify useful quotes, make notes, isolate particular

text, see the codes and themes being adopted and how they fit together, and generally sort through the data with more ease.

Braun and Clarke offer an approach to thematic analysis that is based within a qualitative paradigm and allows for both epistemological and ontological flexibility (291), at the same time as offering guidance in relation to the way that themes are identified, analysed, organised, described, and reported (320). The process of thematic analysis involves developing 'codes' that organise and capture both surface and underlying meaning in the data, which are then used to identify themes (322, pp.3,4). Braun and Clarke's approach does not require the researcher to use a strict coding manual, instead the themes and codes are flexible and can evolve throughout the process (241). The researcher used codes within NVivo without using a separate manual or framework for the data. This was less time consuming and facilitated immersion into the data itself. Nevertheless, a thematic map was created using the codes and their descriptions (see Appendix 3) to make sense of the codes, themes, and relationships between them. A six-step process was followed as set out by Braun and Clarke as follows (320): familiarisation with the data, coding, searching for themes, reviewing themes, defining and naming themes, writing up.

When analysing the data in this way, it is important to be aware of adopting a reflexive role as a researcher because developing the codes involved requires interpretation and judgement. Braun and Clarke point out that the researcher is active in the analysis process and so interpretation plays a significant role (323). This contrasts with an ideology that sees the researcher as simply gathering objective information. The choices made were tested by being constantly reflexive and checking that the codes and themes were emerging from the data and the participant's own words, as well as what the researcher observed. Two independent colleagues were asked to check through the codes and themes, challenging assumptions where appropriate, which provided a 'verification step' (324) when analysing data and a process of 'peer debriefing' (325). As the research is focused on the experiences of the Kafala, it was appropriate to focus the codes and themes on what participants think, feel, and do, and capture their experiences and perspectives. Braun and Clarke's 15-point checklist was used for a good thematic analysis to ensure its quality (see Appendix 2) (326).

In terms of Critical Systems Heuristics ('CSH'), the 12 questions were adopted from Ulrich et al's practical guide to CSH. The following table outlines the questions adopted: (298, p.244):

Table 3.5: 12 Questions of Critical Systems Heuristics

Sources of influence	Boundary judgements informing a system of interest (S)			
	<i>Social roles (Stakeholders)</i>	<i>Specific concerns (Stakes)</i>	<i>Key problems (Stakeholding issues)</i>	
Sources of motivation	1. <i>Beneficiary</i> Who ought to be/ is the intended beneficiary of the system (S)?	2. <i>Purpose</i> What ought to be/is the purpose of S?	3. <i>Measure of improvement</i> What ought to be/is S's measure of success	<b>The involved</b>
Sources of control	4. <i>Decision maker</i> Who ought to be/is in control of the conditions of success of S?	5. <i>Resources</i> What conditions of success ought to be/are under the control of S?	6. <i>Decision environment</i> What conditions of success ought to be/are outside the control of the decision maker?	
Sources of knowledge	7. <i>Expert</i> Who ought to be/is providing relevant knowledge and skills for S?	8. <i>Expertise</i> What ought to be/are relevant new knowledge and skills for S?	9. <i>Guarantor</i> What ought to be/are regarded as assurances of successful implementation?	
Sources of legitimacy	10. <i>Witness</i> Who ought to be/ is representing the interests of those negatively affected by but not involved with S?	11. <i>Emancipation</i> What ought to be/are the opportunities for the interests of those negatively affected to have expression and freedom from the worldview of S?	12. <i>Worldview</i> What space ought to be/ is available for reconciling differing worldviews regarding S among those involved and affected?	<b>The affected</b>

Source: Werner Ulrich and Martin Reynolds, 'Critical Systems Heuristics' in Martin Reynolds and Sue Holwell (eds), *Systems Approaches to Managing Change: A Practical Guide* (Springer 2010) p244.

These questions were used to shape Chapter 6 of this thesis and to frame and outline policy questions. As a reflexive researcher, this aided understanding of the issues and the thematic analysis to guide the answers, as well as to determine the detail and depth of analysis in relation to each question. The questions provided a structured approach that ensured a range of perspectives were covered and considered the distance to be travelled in terms of change, and how this could be achieved in practice (299, p.38).

### 3.4.6 Process Analysis

This section reflects on the process of doing the research and reactions to the techniques, including any challenges or surprises during the process. In terms of access, it was blocked

many times by both Saudi officials and government officials from other GCC countries. This was an anticipated barrier because of the sensitive nature of working in Government. However, there were sufficient officials who were willing to speak, many of whom were very interested in the issues and wanting to develop their knowledge further. With respect to victims of exploitation, accessing this group was challenging because there are no formal pathways for these women to take if they are seeking support. This meant that the researcher had to rely on women being able to find someone to help them and eventually be referred into the author's network. At the point where a woman had been identified as in need of support, they were often very willing to participate in the research, although they had to be reassured about confidentiality.

As the interviews progressed, an understanding of the issues and underlying allegiances surrounding them became more nuanced. This meant being able to put across contrasting ideas and arguments from previous interviews. With respect to politicians, there were limitations posed by the researcher's gender, particularly when interviewing government officials and it was important to be sensitive to the political and cultural context in which the interviews were conducted. Nevertheless, any restraint on the part of politicians appeared to be mainly with respect to their roles and the need for discretion. In relation to the victims of exploitation in the Kafala, there were challenges in both engaging through observation and during interviews. This is because the women had experienced distress and trauma and were mistrustful of strangers, meaning that it was important to establish a *rapport*. Even then, some women were reluctant to disclose to engage because of fears about attracting negative attention from officials. In addition, although there was some risk of re-traumatisation, no issues arose out of the interviews. This is likely because the researcher was very sensitive to their needs and careful not to push for responses.

In terms of participatory observation, there were few barriers to this because observations arose out of the professional relationships. The main challenge with observations was to try and balance making notes with engaging in supporting practitioners and victims of exploitation. Often, there was a delay in writing notes and so nuances on what occurred could have been lost. However, as the researcher's understanding developed, it was possible to better record what was most relevant. Lastly, there were several challenges in relation to secondary data analysis because there is only a small amount of literature on the issues focused on in the research. In addition, it was challenging to find written laws and policy relating to the issue in Saudi Arabia. One professional observed that the Kafala exists more in practice than in any written document. Therefore, it was important to do qualitative fieldwork to better understand the realities of the Kafala.

### 3.4.7 Ethics

Ethical approval was gained from Brunel University and retrospectively I also gained ethical approval from Cranfield University. However, the researcher sought to go beyond basic ethical review standards by being reflexive throughout the research process, reviewing ethical considerations as the interviews unfolded and drawing on expertise and experience in liaising with both government and civil society professionals and survivors of trafficking. This wider reflection included considering how best to run each interview on a case-by-case basis, whether anything had changed since they agreed to be interviewed, whether there were any specific issues to be aware of or sensitive to, and the energy and emotional wellbeing of the interviewee on the day. This takes into account that ethical considerations will change throughout the research process, particularly with vulnerable interviewees (327). The key ethical principles guiding the research were:

#### *Preventing harm*

This was relevant to all participants, although different in character depending on each group. For survivors of trafficking, the main concern was to prevent re-traumatizing or any other emotional damage. Survivors were only invited to take part if the gatekeeper service could be confident that that it would not be harmful to them, this was also checked with interviewees themselves. Interviewees were also offered emotional support by gatekeeper services. During the interviews, the researcher ensured that the coverage of distressing subject matter was minimized unless essential to the research question.

For civil society and government organisation representatives, the main concern was their professional boundaries as well as ensuring that they were safe to talk to me about these specific issues without consequences. This involved a discussion with the interviewees, as well as being discreet about how people were invited to participate. However, it was also necessary to consider that they could be emotionally affected by sharing their experiences and the researcher therefore also ensured that distressing subject matter was only minimally covered unless it was essential to the research question.

For all participants it was necessary to ensure that interviews took place in a location that did not pose a threat but also ensured privacy. For the most part, this was at the secure premises of support services or – for professionals – at their office.

The researcher also ensured caution was followed regarding physical and emotional safety.

This meant only meeting in trusted locations and continuously assessing safety with the interviewee. For emotional safety, the researcher was aware of negative personal reactions allowing rest periods if needed and debriefing with supervisors to talk over any personal reactions to the content (while protecting anonymity). In addition, the researcher enlisted private sources of emotional support and pursued activities that assist in releasing stress and promoting wellbeing.

### *Anonymity*

To maintain the confidentiality of participants, all victims, government and civil society officials, and other names have been anonymised, including friends, family, perpetrators, and colleagues. The interviewee pool is small enough that even systematically linking quotations to interview numbers is enough to compromise anonymity, therefore, quotes within the PhD have not been attributed to individuals, with only the information necessary to contextualise the quote. Any details that could identify an interviewee have been removed unless permission has been given by the interviewee. Even where permission was granted the researcher has been careful to avoid any risk of their identity being revealed.

Full transcripts have only been seen by the researcher and supervisors. Any interview recordings and written transcripts are kept in password protected files on a password protected and encrypted computer. Only data relevant to the research questions have been collected and secured. Data will be stored only so long as is necessary. Permission to collect and retain this data was sought from the interview participants.

### *Informed consent*

Written informed consent was obtained from each interviewee prior to each interview and the researcher verbally clarified the information prior to signing. As advised by Kvale and Brinkmann (2011, p.84), the researcher was careful to offer adequate information without overwhelming the interviewees with unnecessary detail. The information provided included details of the interviewer, what the research is for, data security and confidentiality, anonymity, and the right of the interviewee to stop the interview at any time. The information explained that the researcher was a PhD student, interested in how to develop better anti-trafficking solutions in the specific context of Saudi and the Gulf. It also detailed that the researcher is interested in amplifying the voices and experiences of survivors of trafficking as an essential source of information and understanding. Additionally, it was explained that the researcher has direct experience of working with trafficked women as well as contacts within civil society

and government who are interested in promoting the same agenda.

### **3.5 Summary**

Taking the perspective of critical realism, which states that some knowledge is closer to reality than others, and phenomenology, which states that what is knowable is always mediated through individual interpretation, the research uses qualitative methods to develop an in-depth understanding of how people experience and understand the Kafala system. A qualitative approach allows the possibility of challenging the existing body of knowledge and assumptions about phenomena. This is particularly important in the context of the Kafala because relatively little is known about the experiences of victims and how this might feed into policy and practice. As qualitative research helps to gain an understanding of lived experiences and the interplay between structure and agency, it can assist interested parties to come closer to the 'reality' of the Kafala to develop law, policy, and practice that works for both victims, the Government, and society. A feminist critical perspective has also been adopted in the research, with the aim of empowering women and examining how social structures can be changed to achieve this. It is acknowledged that research can never be detached and value neutral and that the researcher will influence the research. Therefore, the researcher's values are acknowledged and the tool of reflexivity was used to challenge thinking as the research was carried out and the data analysed. These values are: women's empowerment, anti-slavery, and Islamic morality. I therefore adopted these as a guide to the focus of the research and the methods used.

Interviews were conducted of victim exploitation in the Kafala, including participatory observation of how service providers and other agencies/individuals engaged with these women. The researcher was able to undertake participatory observation because of being a consultant and playing an active role in helping to share information about the issue of the Kafala. Two other methods were chosen, triangulating the data to provide a richer understanding of the Kafala, both from the lived experiences of victims and from the experiences of professionals who shape policy and practice in relation to it. These professionals were interviewed through semi-structured interviews, with great care taken to protect professional boundaries, which is why observation of these individuals was not possible. To complement these fieldwork approaches, secondary data were also analysed to gain a better understanding of the Kafala in practice. Data were then analysed thematically through Nvivo. Details of the codes used in Nvivo and descriptions of these codes can be found in Appendix 3. Chapter 5 contains a detailed analysis of these themes. This is preceded by a discussion of the literature and the legal and policy frameworks that are relevant to the

Kafala below (Chapter 4), as well as a discussion of the existing policies in Saudi and proposed reforms.



## **Chapter 4**

### **International, GCC and Saudi Arabian Kafala Controls: Existing Laws and Proposed Reforms**

#### **4.1 Introduction**

Understanding the Kafala within Saudi Arabia is illuminated not just by focusing on the specific context of the country but also how the Kafala system operates within other GCC countries (Bahrain, Kuwait, United Arab Emirates (UAE), Oman, and Qatar) (328) due to both commonalities and differences in approach. In addition, it is important to understand the international context in which the Kafala is situated, not least the international pressure on all GCC countries, including Saudi Arabia, to reform. As such the chapter present a local, regional and international perspective and illuminates Kafala's present status, including actual and potential reforms in Saudi Arabia. This chapter provides a particular focus on Saudi Arabia, supplemented by relevant regional and international laws, case studies of law and policy in Bahrain, Kuwait, and the UAE. The Kafala has come under scrutiny from the international community because of human rights violations. There is some academic discussion on whether what happens in the Kafala can truly be called 'trafficking' because it does not always include a conspiracy between middlemen and employers (329). Notwithstanding this academic debate, trafficking and the Kafala overlap in terms of human rights and issues relating to migration. Further, much of the criticism of the Kafala at an international level originates from the anti-trafficking movement. Therefore, this chapter explores law and policy related to both. The Kingdom has made impressive advances to address the exploitation that occurs in the Kafala and has a range of motivations to continue to do so, not least Vision 2030 for Saudi Arabia which includes expanding the economy and skilled migration, as well as increased non-profit services for victims of exploitation and abuse (36). However, instead of adopting the Western Agenda towards migration, it is important that Saudi Arabia finds a country- or region-specific approach that is underpinned by the values of Islam. Overall, exploitation within the Kafala is fundamentally contrary to Saudi Arabia's deepest and longest held values, which are enshrined in the Constitution, such as giving, compassion, cooperation, and empathy (330). This frames the Government's commitment to reform.

## 4.2 Criticism of the Kafala: The Western Agenda

One notable characteristic of the international anti-trafficking and anti-slavery movements, from which much of the international criticism of the Kafala originates, is that it is driven by a Western political and social agenda, with considerable political pressure to conform. Bahrain, Kuwait, Oman, and Qatar have all been criticised by the US State Department for human rights abuses but have objected to this Western criticism on the basis that it is politically driven as opposed to being based on the reality of the status of human rights (331). Although the exploitation and challenges within the system are evident, it is questionable whether the international problematical perception of the GCC is justified. A strong objection to the international focus on the GCC is that academic and international literature have tended to 'exceptionalise' the Gulf and talk about the practices there as if they differ from what is happening at the global level. In fact, the Western perception of affairs is far from true. The repression experienced within the Gulf is actually an extension of a global phenomenon and the process starts in the origin countries, with 'push and pull' factors leading to the growth of migration to the GCC (332). Vora and Koch (332) point out that there are global power differentials and transnational networks at play in the migration equation.

The Neo-Liberal Western approach towards anti-slavery has been criticized as creating environments that facilitate modern day slavery, particularly through trafficking. Segrave, Milivojevic and Pickering (230, p.7) argue that there is a swathe of literature tying sex trafficking to globalisation and 'loosened borders'. This is highlighted by the UN which states that "trafficking must be placed within the context in which the globalized economy generates supply and demand for all forms of trafficking" (333, p.8). Not only does this give some insights into how exploitation occurs and thrives, but also suggests that we need to avoid direct policy transfer from Western approaches to migration and instead consider the context in Saudi and the Gulf more narrowly. This critique should also be considered in the context of arguments that address trafficking, which suggest that a "rights" agenda (language that is often used in the Western context) does not go far enough and that trafficking should be addressed in relation to supporting migrant and employment rights (334; 335, p.71). This fundamentally links labour exploitation to 'trafficking' – which tends to dominate international consciousness as a topic (336) - and casts light on the fact that the Kafala facilitates modern slavery. Samarasinghe (337, pp.6,10) and Limoncelli (338, p.42) suggest that serious attention should be paid to location-specific dimensions of sex trafficking in designing anti-sex trafficking strategies, a principle that can be adapted to the context of the Kafala. This is because, while an international phenomenon, the practice of Kafala is also closely linked to the economic, cultural, and historical context in which it occurs. Taken together, these ideas offer a strong

argument for policy innovation within the Gulf, learning not just from the successes of international movements but also giving consideration to their associated critiques.

Arab nations have been criticized for ignoring the problem of trafficking and labour exploitation for a long time and accused of not doing enough to address the problem. Arab governments have responded powerfully and passed many laws to deal with the problem in their individual countries. There is little option but to adhere to UN Protocols and sign all the agreements relating to Human Trafficking. By doing so, the Arab nations improve their standing in the eyes of the global community. However, two questions remain, firstly, to what extent this results in tangible change, and secondly, what approach can be taken that is more relevant in the context of the Gulf.

Human trafficking in the Middle East has become so prevalent that certain countries outside the region such as Indonesia, Sri Lanka and Ethiopia have taken action and imposed bans on their citizens from undertaking any work in domestic service in places like Saudi Arabia (339). Just recently, the Indian government urged authorities in Saudi Arabia to investigate a reported incident in which a Saudi diplomat was accused of raping and abusing his domestic servants (340). The Saudi government, however, denied all allegations which has put a strain on the relationship between the two countries (341). In fact, Saudi Arabia is not forthcoming in terms of sharing information with the migrants' home countries, even when the Saudi authorities have sent men to their death, and the relevant embassies have not been informed (342). Thus, it is unsurprising that the problems associated with the Kafala system have not only come to the attention of the Saudi government but have also attracted international scrutiny. This has led to widespread criticism of the human rights abuses within the Kafala and a call to abolish the system completely.

#### **4.3 International laws and treaties**

Criticisms of the Kafala system have led to pressures for reform both through international laws and treaties and regionally within the Gulf. Saudi Arabia is a party to a number of International Treaties discussed below, such as the Palermo Trafficking Protocol, as well as The International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination Against Women, and International Labour Office Conventions 29, 105, and 182. Saudi Arabia is not a party to the Migrants Convention or the International Labour Office Convention. It is important to understand the international perspective as a whole as these offer insights into the advice, strategies, and approaches that are endorsed on an international scale and any insights that can be gained for the Saudi context.

Examining the global perspective first, it is clear that the language of human rights has become firmly embedded into the international legal framework, especially because of the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. This declaration proved to be one of the most important tools for promoting human rights on a global scale. Following the atrocities of the Second World War, human rights went from being very much a concept to something that was tangible universally (343, p.4). Several articles helped establish the rights of individuals, regardless of their status as citizens of a particular jurisdiction. Reference is made specifically to the prohibition of slavery (344), though what is meant by this is not elaborated. More importantly, rights are presented as being inalienable and interdependent. This is a key issue since, for instance, a lack of legal protection about women's roles in society can hinder a state's approach in preventing and protecting victims.

Further guidance for issues to be addressed can be taken from UNESCO in trafficking is a (345):

- I. moral problem that leads to intervention for the abolition or prohibition of prostitution or commercial sex;
- II. (organized) crime problem that leads to legislative reforms, policing and the penalising of criminal networks;
- III. migration problem that leads to border controls (passport and identification papers);
- IV. public order problem that leads to awareness campaigns, publicity about risks, and changing cultural practices;
- V. labour problem that leads to intervention such as improving working conditions and labour monitoring systems, and abolishing child labour;
- VI. human rights problem and a gender issue that lead to intervention to address violence against women and children.

In many ways, the Kafala system has elements of each of these above concerns. The best ways to work towards their elimination is to address these approaches simultaneously. In this case, labour exploitation and migration would be addressed alongside all other strands to eradicate the trade in human beings.

Both the United Nations Charter (346) and the Universal Declaration of Human Rights ('UDHR') (344) make explicit that rights are universal and therefore individuals retain their rights regardless of what state or territory they are in. It is thus claimed that rather than placing human trafficking in the framework of criminal activity, the international community should consider using a human rights conceptual framework to address the cycle of human trafficking

(347, p.4). Such an approach allows for the problem of defining human trafficking and the blurred boundaries between different forms of vulnerability to be more adequately addressed as opposed to requiring that it is understood within the context of organised crime. This way of viewing trafficking would include the Kafala as a form of internal and cross-border trafficking due to its links to modern slavery and migration. This is the case even if women 'consent' to their migration and employment because of the element of deception and coercion. International instruments make it clear that there should be a wide view of the meaning of 'consent', particularly where women are deceived or trapped in sexual exploitation and/or slavery (348; 349).

The human rights framework itself helps to establish the importance of the issues and how to address them. Jack Donnelly points out that the concept of human rights is not an accumulation of abstract values but rather a concrete set of specific social practices, which attain set values (350). Essentially, human rights are not just mere theoretical propositions but rather assume distinct mechanisms of protection and promotion. In relation to this, an important theme that emerged from international legal instruments is the issue of victim's rights and the legal principle of redress of wrongs (351, p.2). Victims should be allowed access to remedies by the state which 'owes a duty of reparation' (351, p.5); therefore the threat or act of deportation greatly hampers this procedural right. At the most fundamental level, these human rights principles call for a victim-centred approach to eradicating exploitation.

#### **4.3.1 United Nations**

According to the UN Convention, human trafficking in all its forms violates fundamental rights granted to citizens, such as the right to self-autonomy, freedom, liberty and security as well as the right to be free from cruel and inhuman treatment (352). The United Nations has determined that the best approach to combating trafficking involves prosecution, protection, prevention, and promotion of partnerships, so that all angles of the trafficking problem can be assessed. However, the Convention is criticized for doing very little to actually suppress trafficking; the enforcement measures adopted are weak at best and trafficking or prostitution specifically are not linked to wider socio-economic causes (353).

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practice Similar to Slavery (adopted in 1956) goes some way to strengthening the human rights framework by providing a broader legal concept of slavery that includes debt bondage and serfdom (354, p.199). However, it does not address the tensions between state, trafficker, and victims of trafficking. Moreover, it fails to provide a rigorous enforcement mechanism. This

has led to a significant lack of coordination in dealing with human trafficking amongst member States often resulting in limited coordination or cooperation with each other (355, p.12).

#### **4.3.2 International Labour Office Conventions**

Of particular concern to this study is the continued exclusion of domestic workers from labour laws in the GCC. The vulnerability and abuse that domestic workers face is an issue that has prompted the ILO to create the Domestic Workers Convention N.189 (2011) to address these growing concerns (356). In its preamble, the convention reaffirms the conditions of domestic workers with regard to exploitation, stating that 'domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities, who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights' (356). Under this Convention, domestic workers would have similar entitlements and rights afforded to other workers, particularly with regard to minimum wages, limiting the hours of work and being afforded time off (357). Neither Qatar, Saudi Arabia nor the UAE have ratified this treaty as of date (356).

The ILO Convention on Forced Labour and Abolition of Forced Labour Convention C105 compels states to suppress forced Labour in all its forms within the shortest possible period (358; 359). However, it is weak with respect to any specific legal measures. The Preamble to the ILO Convention 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers states that "evidence of the existence of illicit and clandestine trafficking of labour calls for further standards specifically aimed at eliminating these abuses" (360). Therefore, the ILO Conventions deal directly with forced labour in general; however, their primary problem is over the failure to create a strict regime. The language is not direct or forceful, because it is not directed at an emotive group, such as children or sex trafficking, rather the obligations are inferred and manipulated by other conventions.

#### **4.3.3 Palermo Protocol**

The '3P' paradigm of the protocol, which calls for the simultaneous effort to prosecute, prevent and protect, has served as an international blueprint for states. Preventive measures to combat human trafficking can range from awareness campaigns, policy implementation and tough enforcement by government officials (361, pp.1,2). Protection in this context refers to victim-centred approaches, particularly 'rescue, rehabilitation and reintegration' (362).

Prosecution efforts by states should be in line with the severity of human trafficking crimes and it is considered imperative to hand out sentences to perpetrators of such crimes (361, p.1). The Palermo Protocol (363) also addresses foreign victims in Article 7 by recommending that states pay special consideration to the foreign individuals trafficked to remain in the country (either on a permanent or temporary basis). As of 2016, there are 147 signatories and 186 parties to the Palermo Protocol (363).

Whilst the Palermo Protocol has certainly been significant in the sense that it highlights the complexities of dealing with human trafficking and employs a common language for states to begin to address the problem domestically, it has not been implemented in its fullest form and attacks on the Palermo Protocol emphasise that its focus should be on the perpetrators rather than the victims (364). The Palermo Protocol has also been criticized for inaccurate reporting, wording and the failure of the UN to ensure greater compliance from signatories (365). This also breeds problems with the issue of consent, with some asserting that consent exempts traffickers from being punished (366).

#### **4.3.4 International Covenant on Civil and Political Rights (ICCPR)**

The International Covenant on Civil and Political Rights ('ICPPR') is more generally concerned with political and civil rights. Article 12 states that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence" (367). Article 8 states that "[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform forced or compulsory labour" (367). Article 6 of the International Covenant on Economic, Social, and Cultural Rights guarantees the right to work, including "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts" (367). Article 7 guarantees "just and favourable conditions of work" which includes "safe and healthy working conditions" (367).

Therefore, the convention does deal with work, but in a more general manner. This means it fails to consider the application of labour exploitation, trafficking, and modern slavery operating outside of the law, suggesting that stamping down on these crimes is difficult under the ICCPR. This is especially the case when modern slavery includes voluntary migration and where the immigration system is unduly harsh.

#### **4.3.5 Convention on Elimination of Discrimination Against Women (CEDAW)**

If a state has ratified the Convention on Elimination of Discrimination Against Women it is obliged to “take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation via prostitution of women” (368). Further, a State Party must take all appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women” (368). Article 11 guarantees the right to work, including the right to “free choice of profession and employment,” and the “right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction” (368).

#### **4.3.6 International Convention on the Protection of the Rights of all Migrant Workers**

Article 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states that all migrant workers and members of their families shall be free to leave any State, and shall have “the right at any time to enter and remain in their State of origin” (369). Article 11 states that “[n]o migrant worker or member of his family shall be held in slavery or servitude,” or shall be “required to perform forced or compulsory labour” (369). Article 21 states that “[i]t shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents” (369). Article 37 states that “migrant workers and members of their families shall have the right to be fully informed...of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage” (369). Article 39 states that “[m]igrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there” (369). Article 68 specifies that States Parties “shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation,” and Article 69 states that “States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist” (369).

While much of the language of the Migrants Convention would apply to victims of human trafficking, as of the date of writing, none of the Persian Gulf states have ratified the convention, though they may do so in the future. The convention came into force in May 2008 but has not been widely accepted. This is because it is not treated as a strong-arm convention,



such as the UNCHR or ICPR. The document itself has some advantages, but they need to be properly implemented not only by citizens but through the immigration laws.

#### **4.3.7 Limitations of International Instruments**

One of the biggest tensions with these instruments is that they are politically enforced rather than through legal sanction and historically they have been criticised for not having enough consequences if countries do not live up to the promises they make when signing Treaties. Nevertheless, there is significant political pressure to be signatories and uphold the rights enshrined in them (370, p.4). As will be seen below, Saudi Arabia and other GCC states have in recent years become, or committed to become, signatories of the majority of these mechanisms, but not all. Further, when ratified, at times, these mechanisms may prove to be rather inconvenient and costly to certain states. In addition, certain human rights might pose serious challenges to cultural beliefs or practices. This is especially true since the violation of human rights has been linked with state intervention and the erosion of state sovereignty. The inherent tension between human rights and state sovereignty has been explored by a range of scholars (371; 372). In relation to migration specifically, States may perceive deportation as an unquestionable right of states to practice their sovereignty, yet this adds to the legal vulnerability of 'aliens' as cheap labour, with deportation as a means not only of the removal of unauthorized individuals but as a form of punishment (373, p.3).

Further, the basis or foundation of human rights is to protect individuals against the abuse of power by states; but international law is murkier when it comes to protection of individuals against non-state actors (NSAs) (374, p.725). Whilst it is true that states are obligated to deal with the issue of trafficking, the fact that the state is not an immediate agent of harm, 'problematizes' the extent of the State's obligations and responsibilities in the context of trafficking (370, p.4). These factors combine to create a human rights framework that calls for protection of victims of trafficking, but nevertheless leaves tension and ambiguity with respect to the role of the state, its obligations and the resolution of conflicts in relation to laws relating to migrants.

In international relations, despite the assault from post-positivist thought, the field remains largely state-centric (375) and this has itself contributed to a lack of concrete laws and norms in dealing with non-state actors. This 'statism' has been challenged by a number of different scholars, and has thus paved way for discussions on how international relations and international law can adapt to these changing circumstances (376; 377; 378). Whilst human rights law appears weak in the face of non-state actors, there is no reason to exclude NSAs

from their legal obligations, and the role of the ICC in prosecuting individuals who have committed crimes against humanity is a welcome development that has opened up room to end the impunity of NSAs which engage in criminal behaviour (379). Nevertheless, whether these groups should be prosecuted for violating laws in which they have not signed up, or for merely being associated with organizations, has been questioned (380).

#### **4.4 Regional Level Kafala Policies**

A major challenge in applying legal constraints against exploitation within the Kafala is that there is no common model of the Kafala system within the GCC. Indeed, some observers have suggested that the Kafala is so heterogeneous that it cannot really be defined, and there is no 'typical' migration process that can be ascribed. However, this is an unhelpfully broad understanding of the Kafala, because although there are variations in law and practice, which will be discussed below in the three case studies of Bahrain, Kuwait, and the UAE, the character of the Kafala remains the same and the challenges and opportunities for exploitation are similar. These systems are based on delegating legal and economic responsibility on guests, based around the notion of hospitality but, more importantly, on the means of controlling and holding employers responsible for those who come into the country to work for them (381). There are some variations, with those that have the largest migrant population generally offering fewer rights to migrants due to the costs of protecting those rights in greater numbers (382).

In addition to worldwide instruments, several regional instruments have been elaborated to address labour exploitation and trafficking on a more local level. At both a regional and international level there is a strong need for partnerships and co-operation to combat these issues. In the Gulf region, there has been considerable innovation of law and policy, though implementation and execution remain a challenge. Yet, this is by no means a problem that is limited to the GCC, as implementation and execution of policy and law is a well-studied challenge globally.

##### **4.4.1 The Arab League**

The Arab League is a regional organisation that brings together its current twenty-two members to work collaboratively in the interests of the region (having grown from its original six members - Syria, Jordan, Lebanon, Egypt, Iraq and Yemen – in 1945) (383, p.20). The primary legislative instrument in the region is the Arab Charter of Human Rights, which entered into force in 2008 and was signed by ten of the twenty-two Arab League states. Most relevant

is Article 10, which prohibits “forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation and the exploitation of the prostitution of others or any other form of exploitation” (384). Whilst the Arab charter may not necessarily link slavery to trafficking it does note that both should be abolished (385).

Article 43 makes explicit reference to the duties of the states in particular to the responsibility to uphold the international treaties they have signed. It claims “Nothing in the present Charter shall be interpreted as impairing the rights and freedoms protected by the State Parties’ own laws, or as set out in international or regional instruments of human rights that the State Parties have signed or ratified, including women’s rights, children’s rights and minorities’ rights” (384). Thus, it is argued that any deficiencies in the legislation adopted by the League of Arab States (‘LAS’) is set to be compensated by the international agreements that they have ratified (386). Even so a commitment to combating modern slavery does not necessarily translate into action at the ground level. A criticism can also be laid out arguing that while the LAS may have taken steps in terms of criminalization of trafficking their protection mechanisms remain poor. This may be due to the fact that the Arab league is seen as a relatively newcomer in the human rights game having only launched the Arab Charter on Human Rights in 2008 and lagging behind other regional organizations such as the organization for African Unity (OAU). Moreover, the Arab Charter is not fully enforced and “falls short of international standards” (387, p.135). This is largely to do with the political dynamics of the Arab countries, particularly in the Gulf where states still exhibit authoritarian tendencies (388, p.13).

The Arab League has also developed two regional instruments that directly address trafficking: the Arab Framework Act on Combating Trafficking in Persons (2008, Framework Act), and the Arab Initiative to Combat Trafficking in Persons (2010, Arab Initiative) (389). The Framework Act is intended to guide Arab States as they develop new national legislation and work to bring existing legislation into compliance with the relevant international instruments (specifically the Trafficking Protocol), particularly by defining the crime of trafficking and delineating punishments for its commission. In addition to this focus on criminalization and prosecution, Article 12 of the Framework Act refers also to the rights of victims, stating that the “[t]he competent authorities shall take appropriate measures to protect victims and those who report the offences set out in this Act, as well as injured parties, witnesses, experts and their family members” (390). The Arab Initiative aimed to build national capabilities for the 22 Arab League States to successfully prevent human trafficking. The major partners of the initiative are the Qatar Foundation for Combating Human Trafficking (QFCHT), the United Nations Office for Drugs and Crime (UNODC), and the League of Arab States. The overall goal of the Arab

Initiative was to battle human trafficking via a three-year capacity building programme. It aims to assist the Arab League States to:

- (i) Prevent and fight human trafficking through promotion and the ratification and adoption of the Protocol to Suppress, Prevent, and Punish Trafficking in Persons particularly Children and Women (Trafficking in Persons Protocol)
- (ii) Reinforce the institutional and criminal justice system's human capacities
- (iii) Improve instruments for the proper identification, transfer, support, and safeguard of trafficked victims, and
- (iv) Raise awareness concerning the crime and its destructive consequences on people and societies at large

The project spanned many more than the initial three years, due to delays in implementation (391) but was closed and evaluated in 2020, with the evaluation stating that overall, it had been successful in its aims, although recommendations were made for improving efficiency (392).

#### **4.4.2 Organization of the Islamic Conference (OIC)**

The OIC is another body that is working towards the elimination of human trafficking in the Gulf region. According to the charter of the OIC (393), its main aim lies in the desire to uphold the social and economic fabric that characterizes the lifestyle of the Arab world. This body also aims to foster good political practices among its member states with the sole aim of enhancing peace through arbitration and the sharing of common interests in the fields of science and culture. The body equally commits to adhering to international requirements regarding the preservation of peace and security.

It is on record that the OIC created the famous Cairo Declaration of Human Rights in Islam in 1990 (394). Interestingly, Article 24 of this declaration states that, "all the rights and freedoms stipulated in this declaration are subject to the Islamic Shariah". Article 25 goes ahead to affirm that Shariah law is the only yardstick upon which such a declaration can be interpreted and applied. Such a mandate involves the preservation of the socio-cultural aspects of Islam - the aspects that are solely defined by Shariah law. Although there are many similarities between the Cairo declaration and international law, there are tensions between them and there continues to be debate about whether the Cairo declaration undermines international endeavours to create an agreed foundation for human rights (395; 396).

In 2008, the OIC drafted a further Charter that redefined its position and commitment towards the various causes both at domestic level and on the international front. Once the commitment towards the dictates of Shariah law formed the ground rules, the next part of the statement aims 'to adhere our commitment to the principles of the United Nations Charter, the present Charter and International Law' (397). The opening statement mentions the promotion of human right and freedoms, and democratic and legal accountability among the member states, although it is stated that this will be in concordance with the constitutional and legal apparatus within the member states (398). This could be viewed as a positive in that it preserves culture and sovereignty, although on the other hand it could be argued that it separates the States from international responsibility, standards, implementation and enforcement mechanisms.

The rights of non-citizens are not applied in the Charter; for example, certain rights granted to citizens are not extended to non-citizens, especially when it comes to freedom of movement and association. Article 24 states that "No citizen shall be arbitrarily or unlawfully prevented from leaving any Arab country, including his own, nor prohibited from residing, or compelled to reside, in any part of his country". Moreover, Article 28 claims that "All citizens have the right to freedom of peaceful assembly and association. No restrictions shall be placed on the exercise of this right unless so required by the exigencies of national security, public safety or the need to protect the rights and freedoms of others".

The Arab Charter raises questions about enforcement and oversight, namely that without a regional judicial body it is very hard for those states that have committed to the Charter to follow through with its various articles.

## **4.5 National Case Studies**

### **4.5.1 Bahrain**

It is estimated that there are 76,249 female migrant domestic workers in Bahrain (in 2017) and that migrant workers account for 10% of the working population (33; 399). There is also a large pool of illegal workers, partly created by the Kafala system because of the fact that workers will abscond from roles that have poor conditions and then will have to work without a visa because the Kafala refuses the right to freely move between employers (400, p.200). The sheer numbers indicate the reliance that Bahrain has on this type of worker and this dependency has been noted by the international community as one factor that contributes to their lack of protection due to the fact that the dependency is related to the ability to obtain

workers who will accept low wages and poor conditions (401). It has been argued that the system creates tensions between workers and employers because citizens are made responsible for workers through the Kafala (400, pp.199-300).

Bahrain is committed to improving conditions for foreign labour, even being called the 'most committed' in the Gulf (402). Ostensibly, Bahrain abolished the Kafala in 2009 (403). Reforms included the removal of the requirement to ask permission to change jobs, the use of fingerprinting instead of a passport, changes to promote human rights, and criminal sanctions for employers who abuse workers (403). As it pertains to prosecution and punishment of trafficking, Bahrain's 2008 law and its enforcement brings it into compliance with this aspect of its international obligations under the Trafficking Protocol and other relevant international instruments. Bahrain needs to show improvement in the areas of protection and prevention to come into full compliance with its international legal obligations (404).

However, exploitation continues to occur, including working long hours, restrictions on migrant movement (i.e., being confined), poor working and living conditions, abuse, including sexual exploitation, withholding of passports, and the withholding of wages. Further, domestic workers are not included under the labour law (404, p.70) and when there are labour disputes these are dealt with by the police, meaning that there is an element of criminalisation, at least in the sense that it could lead to workers being reluctant to raise the issues (404, p.67). There have also been issues with policing and enforcement. For example, there have been no convictions for passport confiscation despite it being made illegal, with the practice still occurring (405).

NGOs in the Kingdom of Bahrain have also noted that the migrant workers pay huge fees so that they can be recruited to work in the country (406). Some workers who cannot afford these fees are forced to accept even the most unacceptable terms of employment from their prospective employers that take on the responsibility of paying these fees. In the event of this fee being paid by the employer, the worker is bound to remain loyal to that same employer while servicing the debt created through the payment of recruitment fees (407). Employers may also act as agents in the sense that once they secure the workers, they transfer ownership to other needy Bahraini employers at a commission, which simply aggravates the situation of migrant workers in the kingdom of Bahrain (408).

With regard to the protection of victims, it is noted that Bahrain has no formal procedure to identify victims of trafficking, rendering protection difficult for unidentified vulnerable groups. The Bahraini government runs the Dar Al Aman shelter for trafficking victims, but it is not well

advertised, is poorly staffed and restricts victims' freedom of movement (409). This is in violation of Bahrain's obligations under Article 12 of ICCPR, which states that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement" (410).

Despite these challenges, some progress has been made. Bahrain created a Labour Market Regulatory Authority (LMRA), is now issuing visas through a government agency, has developed a digital platform to check status or work visas, and has a call-in radio programme for migrants with questions, as well as an information leaflet available in eight languages (403). Flexi-permits have been introduced, which enable an employee to move between jobs freely; however, they are not available to migrant domestic workers (411). A new contract has been introduced for domestic workers to ensure that employers set out working conditions (399); however, it has been criticised for lacking mechanisms of enforcement (412).

Despite significant progress, more can be done, for example, streamlining the process of acquisition, retention and the final discharge of migrant workers, as well as reforming recruitment agencies.

#### **4.5.2 Kuwait**

Article 12 of the Kuwaiti Constitution reaffirms the commitment of the state towards the perpetuation of Islamic principles; the same concept forming the preamble of most Arab Charters in the Middle East. The Kuwaiti Constitution is very clear on employer-employee relationships. Article 22 stipulates that this relationship should exist within the dictates of social justice and mutual benefit. Many employers do restrict the movements of their migrant employees, but Article 31 prohibits such limitations unless carried out in accordance with the law. Articles 29 and 42 reaffirm the equality of human beings before the law and condemns in strong terms forced labour unless carried out with express specifications of the law or under circumstances of emergency. These articles effectively safeguard human dignity and limits the possibility of subjecting people of any given state to any dehumanising circumstances.

Nevertheless, acts of gross human rights violations remain and have been exacerbated somewhat by the global pandemic (413). Challenges include the continued use of forced labour, passport confiscations, and inadequate living conditions (413, p.12). Notwithstanding the continuing challenges, Kuwait has in recent years been upgraded from a Tier 3 country to Tier 2 by the United States Government, which means that it improved in terms of promoting Human Rights (Tier 3 is the lowest Tier, indicating poor human rights enforcement, with Tier

1 being the strongest countries upholding Human Rights) (414). The 2018 Report noted that there have been a number of convictions for trafficking and the existence of a specialist trafficking unit to investigate and prosecute crimes has been instrumental to this improvement (414). One of the most interesting interventions has been the introduction of an employment accreditation system that helps to prevent exploitation in the recruitment process (414). However, criticisms were made, which included issues with how grievances are dealt with, lack of consistency in identifying victims and referring them to support, and the continued deportation of victims (414).

Links have been made to the continued deportation of victims and the Government's policy of wanting to 'Kuwaitize' the national workforce and cut back on foreign labour (415). Further, deportation is supported as a way of controlling and monitoring foreign workers and as such is seen as a security issue (416). Most victims of human trafficking abuse end up being deported to their home countries and do not take part in the investigation and subsequent prosecution of the abusers. Further, without comprehensive anti-trafficking legislation, it is difficult to ascertain the extent to which Kuwait is effectively prosecuting and punishing traffickers. Kuwait lacks a formal procedure for identifying victims of trafficking. Women who are arrested for prostitution-related offenses are not screened to ascertain whether they might be victims of trafficking, and thus are vulnerable to prosecution and deportation (417). The Kuwaiti government does operate a shelter for victims, but even at a capacity of just 40, it is reported to be underutilized (418).

Despite ongoing challenges, significant progress has been made to protect the rights of migrant workers. The government of Kuwait has introduced labour laws that will regulate the recruitment of migrant workers and even prescribe punishment for those employers found contravening such labour relations – this includes improving the minimum wage and allowing days off and annual leave (406). Moreover, the government issued a decree in 2016 allowing employees to transfer sponsors without permission after three years of consecutive service and with three months of notice to the employer. However, as this law does not apply to domestic workers, this group do not experience the benefit of these reforms (419). It is clear from this discourse that much has been done from the policy perspective, and what now remains are the necessary commitment and goodwill of the Kuwait government to implement the various legislations to the benefit of the migrant workers. In other words, there is a need for enforcement mechanisms and the use of sanctions (420). Other efforts that can be observed on the domestic front with respect to the fight against human trafficking and exploitation includes a ban on sex tourism, a ban on confiscation of passports, and induction training for government agencies on human trafficking crimes (421).



Although not yet fully compliant with international obligations, progress has been made. In particular, laws have been put in place to improve the experience of migrants and systems are present that help to monitor the recruitment process. Nevertheless, domestic workers remain vulnerable with limited access to support.

#### **4.5.3 United Arab Emirates**

The establishment of the United Nations Global Initiative to Fight Human Trafficking was made possible by a gift from the UAE, and its leadership in the region is crucial to combating human trafficking (422). UAE prohibits all forms of trafficking under federal law Number 51 of 2006, which includes penalties ranging from one year to life imprisonment (423). Additionally, a special court in Dubai was appointed in 2010 to expedite trafficking prosecutions (424). The UAE also enacted Federal Law 51 in April 2007 to counter Human Trafficking, part of which seeks to provide training to local police officers to establish shelters for victims (425). However, in 2022 the United States Department of State noted that there had been no prosecutions under the law in the previous year (426).

Migration reforms in the UAE have successfully led to a balanced workforce, with migrants employed in skills that complement the needs of the nation and do not compete with locals; however, there continue to be challenges, such as continued asymmetric power relations, lack of job mobility – despite reforms that make it easier to change employment if employers violate labour standards (427) - and lack of inclusion (428). Highly skilled workers benefit from protections such as being allowed to go part time without permission (429). However, such improvements are not easily accessible to domestic workers and many of the legal protections are not extended to domestic workers (despite the reforms outlined above that do benefit domestic workers) (430). These workers continue to suffer from poor working conditions and precarious employment, including the constant threat of being fired without explanation, as well as being denied release from their contracts so that they become trapped in their employment under slave like conditions (431). These workers do not demand fair conditions and instead feel that there is no other choice than to accept them (432). Unfortunately, the UAE is arguably dependent on domestic help and this means that the status quo is protected by the employers themselves (433).

With regard to prevention, the UAE has maintained education campaigns at airports and embassies and launched an awareness-raising website and a toll-free hotline for reporting abuse (434). An annual anti-trafficking report is published in several languages as a

transparency measure. The country has also boosted the capacity of its public bodies to prevent and respond to trafficking and forced servitude (434). Importantly, there have been huge strides forward in developing an infrastructure that supports victims, including offering shelters and legal help (435). However, there have been criticisms that the measures put in place are not always proactively used (426). Victims who are not identified as such may be subject to criminal penalties or deportation arising from their being forced into prostitution, which is illegal in the UAE. Those victims who are identified, however, are not subject to criminal penalties, and are encouraged to aid the investigation and prosecution of the perpetrators by receiving housing and in some cases employment in UAE. This stands out as a positive regional example of protection measures for victims of trafficking (436). A particularly positive measure for domestic workers is that recruitment is overseen by the government and unregulated agencies are closed down (437). However, the UAE has been criticised for ongoing issues with passport confiscation, unpaid or withheld wages, and abuse that has not been investigated (426).

The UAE has taken significant steps to address trafficking and forced labour through prosecution, protection of victims, and prevention. Many of the current measures represent positive examples for other Gulf States to follow. However, more can be done to protect domestic workers, specifically, and ensure that victims are identified and supported.

#### **4.6 Kafala, and the Case of Saudi Arabia**

Saudi Arabia represents the focused country case study for the evaluation of the Kafala system. Saudi is prominent on the international stage and is seeking to lead the way in progressive reform (36). It is a country with a rich political history and in the 21<sup>st</sup> century has a thriving monarchy, in which there is a monarch who also serves as the Prime Minister (438, p.377). The country has a rich cultural and political make-up. The balance between tradition and modernity embedded within the country is reflected in its orientation as both a traditional monarchy and a society in which the monarch strives to meet the needs of subjects in appropriately progressive ways (36). The Prime Minister governs with a council of ministers who comprise the country's cabinet, the judiciary, and a council to serve in a consultative fashion (438, p.377). Historically, the Arabian Peninsula has had a very close relationship with Islam, and that continues to this day (439, p.41). To help unite the region, the country looks to Sunni Islam and Shari'a Law to help citizens develop a new political identity that will ensure their allegiance to the state, and ultimately supersede regional and tribal notions of identity (440, p.268). The citizens of Saudi Arabia are united under a national identity to apply the

doctrine of Islam to all areas of life, including public policy, the judicial system, and elsewhere (439, p.41).

The country's Constitution, or 'basic laws', provides important basic rights and protections for citizens living in Saudi Arabia; the basic laws also outline some key responsibilities of the state (438, p.378). While the Kingdom's formal Constitution contains many of the same elements as constitutional documents found in other countries, there are some important differences. It should be noted that the constitution is not legally binding in the traditional sense; moreover, there is some degree of subjectivity involved in reading the Quranic principles embedded in the document itself (441, p.60). Interpretation of the text is ultimately the responsibility of the ruling authorities, and the Constitution is considered to be fluid. As society changes and technology continues to develop and create new possibilities, Quranic principles must be used and applied in new ways and in reaction to new situations (441, p.60).

Thus, as Saudi Arabia has advanced and experienced change, it has sought to interpret how best to apply the fundamental rules and principles contained within its Constitution to new situations caused by advancements and developments in society. The country's Constitution is fundamentally based on traditional Islamic law, an important tenet of which is that rulers should strive to look after the interests of their subjects and act in ways that benefit all (442, p.121). Over time, Saudi Arabia has experienced a range of political changes and developments. The country's Constitution is best understood as a living document that is grounded in the traditions of Islamic law. Going forward, future changes and developments in society and with technology will create new challenges for rulers, who seek to draw upon the fundamental principles embedded in their constitution to arrive at sound decisions regarding social and political life. The principles contained in the Constitution thus have important implications in terms of their capacity to shape the character of day-to-day life in the Kingdom. These principles, though not addressing trafficking or forced labour directly, nevertheless enshrine the Islamic foundations of Saudi that clearly point to exploitation being fundamentally against Saudi Arabia's deepest and longest held values.

#### **4.6.1 Contemporary Status of Saudi's Kafala System**

The character of Saudi Arabia reflects both a progressive and forward-thinking state while holding traditional and Islamic values. This underpins the country's approach to the Kafala. There is a commitment to reform as opposed to completely abolishing the system, (443 ) which is discussed further below. The 'Kafala' or 'sponsorship' is not actually a term used within the current labour laws of Saudi Arabia because the language of the Kafala has been phased out

as new laws and policies have been introduced. Nevertheless, the practice of sponsorship remains. 'Sponsorship' is provided in the laws relating to migration and residence whereby an employer sponsors a person to enter and become resident in the country. The system of residence is one of the oldest systems in Saudi and was issued in 1371H. The system of Kafala is also supported by a number of decisions and circulars of the Council of Ministers. Despite its framework still being in place, there have been a series of actions to amend the Kafala, and, in particular, the eradication of abuse within the system. In August 2002, a fatwā was issued condemning the exploitation of migrant workers but it did not go so far as to commit to the abolishment of the Kafala – nevertheless this can be seen to be the beginning of reforms (444), which are discussed in further detail below. Further, as well as the Kafala system, there is a black market (445, p.171). This black market includes the sale of domestic workers online (446). This practice is not legal and has links to trafficking and slavery. The Government is committed to eradicating such practices and has publicly denounced trafficking (447).

In relation to trafficking, it has been acknowledged that trafficking is not only a human rights violation but affects society through a multitude of ways, resulting in the 'breakdown of social systems and an increase in organized crime, as well as reducing human capital within countries (448, p.8). Other consequences of this violation include poverty, violence, and the spread of sexually transmitted diseases (449). Similar issues occur in relation to the Kafala. Trafficking and labour exploitation are global phenomena and the reality of trafficking in the GCC shares characteristics with the global trade in human beings. Trafficking in persons is both lucrative and low risk for traffickers because the enslavement of human beings brings enormous returns, with little capital required, and with smooth systems designed to avoid detection (450). Further, the fact that traffickers operate across borders makes their activities harder to police. Thus, a combination of lack of awareness, cross border activity, and specialised tactics to operate in secrecy, mean that that there are considerable challenges in coordinating globally to prevent trafficking. An additional problem is to balance local responses with international cooperation and coordination. Expanding from this, it is easy to see that exploiting the Kafala system offers similar challenges, with their being a strong economic incentive (free labour) for using the system to exploit people. The precarious legal situation of migrant workers, particularly domestic workers, means that it is easier to hide any abuse that is happening. The brokers, middlemen, global capitalism, and policies and practices from the 'sending' countries all combine to influence the impact on Saudi and the ways in which the Kafala is exploited.

Harroff and Khan outline a number of consequences of the Kafala, with the following being most relevant to the country as a whole: driving down wages; poor working conditions and a

lack of respect for the labour laws; illegal passport retention without consequence because of employee reluctance to report (and face sanctions from their employer); poor living conditions that result in ill health - and is a public health concern, particularly in light of COVID19; constrained labour mobility, which reduces employer capacity to benefit from expertise and experience; security concerns and abuse of domestic workers, in particular; and immigration violations, such as bringing in workers for which there is no real demand, expanding informal employment, supporting illegal migrants to remain, as well as making people legal migrants who are actually working in illegal jobs (451).

As can be seen, there are very strong economic consequences of Kafala exploitation. Much has been written about the human rights violations in the Kafala; however, it should also be pointed out that the system is potentially incompatible with modern business systems due to the restrictions, such as not easily being able to move employers, as well as skilled workers not wanting to be controlled by a 'sponsor' (452). This is an important consideration in light of the fact that Saudi is aiming in 2030 to strengthen its position in global business (453). A potential positive of reform would be improving the terms of employment and working conditions, increasing labour mobility, and formalising the recruitment process (451). In light of the fact that Saudi is committed to re-nationalization – or Saudi-ization – of jobs (454), it means that increasing migrant skills and reducing exploitative and unofficial flows of migrants would be in all stakeholders' interests. This would reduce dependence on migrant workers and encourage Saudi nationals to develop the right skills and to overcome the stigma about certain jobs, to reduce unemployment, which is high amongst Saudi nationals.

Saudi nationals also have a range of objections to migration, in addition to concerns about unemployment amongst nationals. For example, there are concerns about the sheer numbers of migrants and the diverse demographics that impact on social norms and customs, potentially eradicating aspects of the local culture (455). GCC nationals state that they do not want people to leave jobs and create disruption, that they should honour the relationship they have with their employer, and that being employed should be the sole purpose for being in Saudi Arabia. Underlying this is a belief that allowing job transfers would result in economic loss and the wish to retain control over foreign workers (456). Nevertheless, research suggests that it is actually common for nationals to be inclusive and non-nationals to feel included (457). Vora and Koch state that approaching the Gulf in a way that presumes foreigners are merely outsiders “risks missing or underplaying numerous, often unexpected, ways that non-citizens feel belonging, and perform their identities as ‘insiders’, while also experiencing stratification built into citizenship and the various exclusions that Gulf nationals experience” (458). Saudi employers have a preference for hiring skilled domestic workers because of the varied roles

that they play in their household. This may range from skills such as childcare and domestic tasks, emotional resilience, ability to read and write English, and even nursing duties, such as administering medication and providing care (312). In the context of a skills deficit in Saudi, this could provide opportunities for locals and skilled workers, if the black market and exploitation were to cease.

#### **4.6.2 Reforming the Kafala**

As Saudi Arabia has one of the largest communities of migrant workers in the GCC, any reforms it effects would impact on other countries. So far, Saudi has been committed to positive changes but without eliminating or fully reforming the Kafala system (459). The Saudi government has intensified a crackdown on all illegal employers, including abusers of human migrants (460). The Government has instituted a unified labour contract for foreign workers that sets out the responsibilities of recruitment agencies and employers (461), has imposed a ban on the act of withholding passports that belong to migrant workers (462), has limited working hours (44 per week or 36 in Ramadan and a limit of 12 hours per day for domestic workers) (463), imposed one day of rest per week, and has funded awareness training in the migrant countries of origin, such as Sri Lanka (461). Further, the law has been changed to remove the requirement for exit visas to be obtained with permission of employers (464). However, some reforms have not been extended to domestic workers, such as holiday and maternity entitlement (465).

Labour law reforms have been made with the aim of ensuring that unsatisfied workers can easily move away or seek help or even employment from other sources on competitive terms. This information includes contact information for support and education on their rights in the Kingdom. The information sharing and crackdown on illegal employers and abuse of human rights directly supports domestic workers; however, the majority of labour law reforms do not apply to domestic workers (466). The labour law sets out what should be in the contract, including the probation period, contract renewal, employee duties, rights, termination of contract, wages, work hours, if employee causes damages, holidays, rights, duties, and leave for women (particularly in case of pregnancy), and sick leave (467). The Government has made it clear that infractions of the labour law will not be tolerated (468). Its firm stance is reflected in other measures to combat exploitation in the system, such as arresting, detaining, and deporting migrants and prosecuting people for withholding passports (469).

In relation to domestic workers, Decision No. 310 or 2013 (470) concerns the relationship between employers and domestic workers. However, this imposes certain restrictions on

domestic workers; for example, they are not allowed to refuse work that is within their contract or to leave their post without a valid reason, which leaves them vulnerable to forced labour. It also asks that workers carry out their duties 'perfectly' and respect the teachings of Islam, as well as obey employers and their family and prevent harm to their children and elderly members. On the other hand, the order did improve their circumstances by obligating the employer to pay for the domestic workers' return to home if they have a valid reason to terminate their employment. Of course, this raises the issue of what constitutes a 'valid reason' and whether it can be proved. In addition, the law forbids employers from asking the worker to carry out tasks that are not within their contract or may harm them, and more generally there are sanctions for employers who do not uphold their obligations. However, this would need to be protected in practice as employers can make counteraccusations and find other ways of denying any abuse or contravention of the law. Regarding victim protection and support, Saudi has made a strong commitment to increasing the resilience and impact of the non-profit sector, including promoting more funding and supporting these organisations to find donors (471). With less than 1,000 non-profit foundations and associations in the country at present, the intention is to increase this significantly, and this has been contained within the Government's 2030 vision (471).

As well as provisions for labour exploitation, Saudi has also strengthened its anti-trafficking measures, which complement their wider anti-slavery activities. A number of departments have been set up and there has been increased funding for anti-trafficking activities (472). The Human Rights Commission monitors human rights in the Kingdom. The Permanent Committee provides legal support and prosecutes traffickers. The Anti-Trafficking Committee has a broad range of obligations, which includes researching, supporting, and following up on the situation of victims of trafficking, supporting the victim to remain or depart - depending on their status, to promote prevention of trafficking through public education, and to gather statistics related to trafficking. Saudi Arabia encourages cooperation with the Islamic community to prevent trafficking by encouraging imams to preach anti-trafficking messages in their Friday sermons, but widespread denial of the existence of sex trafficking in Saudi Arabia remains. The Anti-Trafficking in Persons Committee develop plans, policies, and coordination between authorities and is alongside the Anti-Trafficking in Persons Committee that refers offences and supports victims. Notably, the department developed a National Action Plan to Combat Trafficking in Persons in 2017 (7, p.5), with UNDOC now supporting the Kingdom to develop its next National Action Plan (473). A recent shared initiative with the UN is strengthening the work of the department even further (474).

In 2009, Saudi Arabia passed the “Suppression of the Trafficking in Persons Act” by Royal Decree number, M/40, which criminalizes all forms of trafficking and provides for punishments of up to fifteen years’ imprisonment and a fine. The penalties under this law may vary depending on the gravity of the offence. Such variations refer to whether the parties whose rights are violated, are minors, persons with disabilities or vulnerable women. The punishments under this law are tighter and reach the standard of those for other serious offences; however, the government must be categorical enough in its policy formulation to secure more convictions. Over the years, the use of this law has increased, with 52 cases prosecuted in 2014 (447). In a positive regional example, the law allows victims to remain in Saudi Arabia during investigations and court proceedings, which encourages victims to take part in bringing perpetrators to justice. The US Department’s Report on Saudi Arabia from 2017 noted some positive progress (475), including increases in trafficking convictions, an anti-trafficking hotline, improved shelter for female domestic workers (but not other victims of forced labour), labour inspections being carried out, investigation of violations of the labour law and handing out sanctions (including stopping 126 recruitment offices who were recruiting domestic workers), and implementing a wage protection system whereby wages were paid through bank transfers.

Nevertheless, there are some noticeable absences in terms of reform. For example, although Saudi has begun working with sending countries by setting up bilateral agreements to protect vulnerable migrants, there are a lack of enforcement mechanisms, such as legal consequences for breach of agreements and setting up committees in Embassies that can defend the rights of citizens, as suggested by Akzahrani (476). The Government has also not yet implemented plans to create 13 recruitment agencies with Government oversight, which would formalise the recruitment process and protect individuals from employer abuse as well as protect employers themselves. These plans were announced in 2012 (477). Other issues to consider are protections for victims, such as the Canadian approach of offering unconditional temporary residency (478) and protecting anonymity of victims in trials, such as holding procedures *in camera* as in Jamaica (479).

#### **4.7 Revisiting the Conceptual Roots of Kafala Exploitation**

Key themes have emerged in relation to the chapter 2 conceptual model. Firstly, regarding gender and slavery, there is significant international pressure to eradicate exploitation and both of these issues are scrutinized, with trafficking being a subject that encompasses both. However, the Kingdom has its own drivers for change in relation to this issue, particularly because the 2030 vision will not tolerate individuals exploiting the system or undermining the



strong values on which the country is built. Therefore, although victim support and hearing the voices of victims may be an international concern, it is also of importance to the Kingdom, regardless of this scrutiny, because it ensures that these women are treated in accordance with Islam and that the Government is able to better understand what is happening and how to best respond. One aspect of the Kafala that has been touched upon throughout this chapter is that women fear being criminalized if they attempt to escape their exploitative situation; this emerges as an important factor to address in order to ensure that the Kingdom's reforms are effective and that women come forward to reveal who is not following the law. There are some challenging clashes here, such as the use of lashes as punishment for victims of sexual violence if it also amounts to adultery (i.e., the perpetrator is married). Cultural factors are relevant to women's vulnerability in relation to the Kafala, including the tolerance of domestic violence that then extends to abuse of domestic workers, forced confinement that can be seen as an extension of more general powers over women's movements, and the fact women's testimony carries half the weight of men's (480). Further, domestic work has traditionally been seen as women's work and so is not economically valued or even recognised (481). Access to justice is a key issue, with many women being denied their rights. Interviews with women migrants in the women's prison in Riyadh indicate that most of them had not been informed of their rights, had no understanding of the legal basis for their arrest or the status of their cases, and had no access to lawyers or other forms of legal assistance (482).

With gender in particular, the role of men and women within GCC countries is being challenged externally in a different way to the internal changes that are happening. This is exemplified by the fact that foreign countries often assume that women are completely marginalized and without rights, whereas the reality of Muslim women's lives is that they are varied and that women are engaged in public life and social change within Saudi Arabia. Nevertheless, as discussed above, Saudi Arabia is founded upon Islamic values and it is clear that if these values are upheld by individuals, then the practice of sexually exploiting and enslaving female domestic workers would not be occurring. Therefore, instead of 'strict Islam' being a problem for women in Saudi Arabia, it is when people move away from Islamic values and the absolute obligation on men to treat women with dignity that the exploitation in the Kafala occurs.

In relation to slavery, there are a number of country-wide, regional, and international commitments that have been set out; however, these need to be matched with what is happening on the ground. Chapter Five will explore this in detail. Some observations can be made at this point, however. The Kingdom clearly has both a strong cultural (Islamic) and economic incentive to be anti-slavery, whereas individual employers may not have this incentive because they are focused on getting free or cheap labour.

Further, as outlined so far, there is a focus on legal and policy change but – particularly at international level and in the migrant countries of origin – not so much on public education. There is an opportunity to develop effective mechanisms for 1) raising awareness about changes in the law - as not every sponsor is aware of their obligations (483) - and changing people's consciousness, and 2) better enforcement/regulation/checking that people are not intentionally or unintentionally enslaving people. Using western concepts and standards would only mean that it does not suit the context of the Gulf and Saudi. It needs to be able to challenge unfair practices – including racism and sexism - at the same time as preserving Islamic and cultural values. People are likely to hold on tightly to their practices if change is imposed without genuine understanding of the realities. This may be an area in which Saudi can lead the way. There is the possibility of using best practice approaches; for example, it is known that the Government is a particularly good employer and upholds these rights, whereas companies and individuals may not (484). In particular, in relation to Islam and slavery combined, there is the potential for taking a culturally appropriate approach to public education that supports the Kingdom's deepest values. This is unique to the region as Islam is central in a way that many other nations outside, being more secular, do not have – it affords the opportunity to actually speak to the values and morality, and be a vehicle for change. This would be particularly important because in relation to Islam, there is a tension between the appearance of being devout and actually living the values of Islam (for example, *Misyar* (485) marriage is a way of being seen not to violate Islamic principles and yet going against the values of Islam). It will be important moving forward to ensure that Islamic principles are embedded in reforms and that Sharia law is reconciled with international standards.

In terms of migration, being a valued migrant destination is part of the 2030 agenda and there is no room within this for tolerance of exploitation of migrants. Pursuant to reports of abuse and sexual exploitation similar to those described, Bangladesh, India, and Pakistan have imposed travel bans on women to certain parts of the GCC. This speaks to the intersection of gender and migration because it restricts the movement of women and undermines gender equality, even making them more vulnerable if they choose to migrate illegally. In general, it can be seen above that migration and control is an increasing concern, as well as the vulnerability of migrants generally, particularly female migrants, and trafficking. However, this also extends to black markets and slavery, which ultimately undermine the economy and legitimate employment, particularly in that the system can be used for people to exploit the process of migration to use people as slaves. Two key issues under this would be a) how to address trafficking in relation to the Kafala, and b) how to change the Kafala in a way that promotes Saudi's wider interests in migration (for example, promoting more employment amongst nationals).

Saudi's political environment still remains authoritarian in nature, and it follows from this that much of the police force and legal operations is under political control. This means that the Government's approach to the Kafala is of central importance because it has the power to shape and influence the experiences of victims and perpetrators within the system. The legal structure of Saudi can only adequately serve victims if it understands and addresses the interests of women and migrant workers in general. At present, there is very strong leadership in the Kingdom with a clear direction for Saudi to develop an even stronger presence in the global economic and political arena. This presents an opportunity for the Kingdom moving forward to lead the way in reform of the Kafala while retaining its positives.

#### **4.8 Summary**

An analysis of international, regional, and individual countries, demonstrates that identification of victims and victim support is central to the success of reforming the Kafala and eradicating modern slavery, as well as increased awareness amongst government officials and the public and implementing new laws. The analysis also demonstrates that the GCC as a whole has made progress but still has some way to go in order to eradicate exploitation within the Kafala system. In the past, the Saudi government has rejected the findings of the State Department's Trafficking in Persons report, which consistently ranked the Kingdom in the lowest tier, asserting that "[t]he rules and regulations of Saudi Arabia prohibit exploitation and trafficking of people," and officially disagreeing with the reports of forced labour and prostitution (486). As discussed above, Saudi has ratified a number of important international treaties and is a member of the Arab League. The Kingdom's progress is beginning to be acknowledged and Saudi has been upgraded to Tier 2 by the USDS (487). However, there are opportunities to strengthen and reform policy and to draw from the insights of this Chapter in shaping a new legal and policy framework. These opportunities will be discussed in Chapter 6, taking into account the fieldwork insights discussed in the next Chapter (Chapter 5), which presents the research findings of the current reality, gaps, attitudes, experiences, and policy environment in the Kingdom of Saudi Arabia.

## **Chapter 5**

### **The Kafala in Practice: A Case Study of Saudi Arabia**

#### **5.1 Introduction**

Gulf Countries are considered an important part of global economic development. Saudi is one of the most influential countries in the Gulf and has an ambitious and progressive plan in the coming years to develop economically and take a stronger role on the international stage. Saudi is positioned to be a leader within the Gulf on the issue of trafficking and forced labour, as well as other aspects of national and international policy. Further, because of international scrutiny of the Gulf and the Kafala, there is a need for more progress in this area. For these reasons, this research focuses on Saudi Arabia and its potential to address exploitation in the Kafala and lead the way for reforms in the Gulf and even internationally. Although the Kafala no longer exists in Saudi Arabia in name, its problematic elements have not been fully addressed and the need of the hour is to formulate a foundation for all that prevents exploitation, controls perpetrators, and supports victims.

This chapter explores the reality of the Kafala as reported by the interviewees. Seven government officials, eight practitioners and 12 victims were interviewed for this research. Their experiences and understandings of the Kafala are reported below. The first section of the chapter (5.2) considers the way that interviewees define and understand the Kafala and – specifically – the extent to which exploitation is acknowledged, as well as whether it is agreed that the ‘Kafala’ exists at all. The second section of the chapter (5.3) considers the interviewee findings in relation to the conceptual model developed in Chapter 2 – namely, the realities of Slavery, Islam, and Gender – and this is continued in section 5.4 whereby the core themes (identified in the conceptual model) of Access to Justice, Migration, and Culture are addressed. The next section (5.5) represents a consideration of the potential legal, policy, and practice reforms. This section includes a consideration of the 12 questions of critical systems heuristics and relevant comments that were made by interviewees that help to answer these questions. Finally, section 5.6 offers a summary and a set of guiding principles for reforms that have been drawn from these qualitative interviews.

#### **5.2 Contextualising the Problem**

This section explores the way that interviewees define and understand the Kafala. Interestingly, the practitioners interviewed for this research, all of whom who are directly

involved in the labour and migration system, and have considerable experience, largely rejected the idea that a legally sanctioned system of “Kafala” existed at all. It was pointed out that there is no language of Kafala within Saudi laws and even the term “sponsorship” was abolished in 2005 under Resolution No. 166 “Abolishing the Sponsor Term”. Practitioner 1 clarified that in the 260 articles of the labour law there is no mention of the term sponsor or Kafala. Practitioners pointed out that such changes to the law have been widely publicised. Six practitioners and government officials (40% of those interviewed) explicitly rejected international scrutiny of the Kafala and the reports condemning the system, with 73% of practitioners and government officials pointing out that exploitation is a global problem, and that Saudi has been working hard to eradicate exploitation as it is contrary to the values of the nation. Nevertheless, all practitioners and government officials were supportive of the idea that any exploitation in the system must be addressed, and that the system can be improved.

All practitioners and government officials interviewed (100%) acknowledged the problem of exploitation in the labour market; however, not all were willing to name this as a human trafficking problem, with four (27%) of those interviewed limiting their understanding of this exploitation to a matter of “*wrong practices*” by “*uneducated people*” who do not have the necessary “*culture and understanding*” (government official one) (488). It was argued by these four practitioners that instead of being a structural problem, the practices associated with criticism of the Kafala on an international level were firstly, similar to any other country/area in the world and secondly, a matter of individual exploitation: “*I would almost say it is a social contract more than a regulatory framework, and I personally have not seen it in practice within my work*” (Practitioner Seven) (489). Here, government official one (488) argues that people would not stay in Saudi if the conditions matched its international reputation:

*“So, we say that if the international organizations state that we abuse labour or have forced labour, we say that there might be individual cases, but if we have too much trouble or a bad environment, you will not find anyone staying or remaining or seeking to come to the Kingdom of Saudi Arabia. So, we recruit labour for a fixed-term contract for two years, but they ask to change the contract to be indefinite because they want to stay here as agreed mutually between the labour and employer.”*

Practitioner three suggested that the main differentiating factor between the system in Saudi/the GC and other countries is the fact that “*a housemaid doesn’t have the freedom to change the sponsor based on her own will unless they get signed approval from their sponsors*” (490). Government official one pointed out that experiences vary with some having

very positive experiences and others experiencing poor treatment. He points out that people may come to the country having a set of expectations, whether positive or negative, and they may not have been tricked or coerced but instead find themselves with a bad employer:

*“I asked some workers what do you expect when you come here to Saudi Arabia? Some of them said that we are warned about the bad moral of the Saudis as well as mistreatment. So, this is not human trafficking, but just mistreatment. Others say that we heard that we would find a prosperous life as well as a big salary and clothes, and that we would be very happy here in Saudi Arabia. So, a person’s view is determined by the information given to him in his country.” (488)*

This comment demonstrates an optimism that was present amongst all the practitioners interviewed - that perhaps is not reflected in the literature – but also a readiness to acknowledge potential problems. This optimism was also present when discussing the provision and experiences of victims. Government officials were hugely supportive of the protections that are in place for those experiencing exploitation, although, as will be discussed below, victims and those who work with victims, describe problems with accessing this support.

The lack of “Kafala” as a system did not eradicate the need for systems to be in place to eradicate abuse at the level of both human rights and labour protection. One of the main concerns of practitioners was the lack of awareness in society. For example, government official one described the gap between public awareness and the government’s seriousness about eradicating such practices:

*“So, it is true that this resolution might not be known to everyone because we have not enough awareness of these matters, but the other systems such as the MUSANED (supportive) law is widespread in all Saudi Magazines and newspapers. So, the Ministry of Labour took many steps during the Three Past years in MUSANED. The Ministry raised awareness during the corrective campaign that has been launched and has made it clear that the country is serious and intends to correct its labour issues.” (488)*

Within this perspective was a recognition that the most vulnerable – particularly domestic workers – need protection. Laws have been introduced – such as the Domestic Labour Law – and the focus is on targeting the community and making sure these laws are known. Strategies

discussed include publishing in newspapers and articles, awareness leaflets at airports, and distributing information to Embassies.

A minority of practitioners felt that there was no need for major reform of the system. As government official two stated, there is no reason to “throw the baby out with the bath water” (491). On the other hand, practitioner one acknowledged that a ‘system’ could have the appearance of reform simply by changing its language, without changing much about the system itself (492). Nevertheless, the majority of practitioners and government officials (87%) acknowledged the need for widespread systemic reform. This was rooted in an understanding that vulnerability is inherent within any situation where a worker moves to a foreign country to work, and that this vulnerability needs to be addressed through widespread reform. Government official three echoed this sentiment, analysing the Kafala system in the same way as we should analyse any system of ‘supremacy’ – in other words any context where one person has significant power or influence over the other. He argued that we must name the actual problem, instead of focusing on the ‘Kafala’ as ‘other’: *“that any supremacy comes with privilege that its exercise needs to be regulated because it results in certain vulnerability to the people addressed by such privileges”* (493).

An important point to note is that understandings of exploitation of the Kafala are not limited to victims. Instead, the problem is viewed by those who work in the Saudi government as creating vulnerability for *both* those who are migrating and the sponsors themselves. The system in the GC, which creates a lot of responsibility on the part of the sponsor in relation to the sponsee, means that the sponsor is vulnerable to the potentially criminal and exploitative practices of their sponsee. For example, government official five described circumstances whereby a sponsee is abusive to other workers or involved in smuggling and trafficking themselves. The sponsor would be vulnerable to the consequences of this person’s crimes. (494). In addition, sponsees have committed crimes such as using violence against their employers and engaging in theft. This goes some way to explaining why four of the practitioners and government Officials (27%) were sceptical about defining the Kafala as a human trafficking problem. There is complexity and variety in how exploitation and abuse may be present in the employer/employee relationship. Government officials one and three were adamant that regardless of the victim’s status, female migrant workers should assume the consequences of their crimes. Government official one stated:

*“...when any woman complains about too many working hours or gets bad treatment by the family but commits any crime such as a theft, then if what she*

*said is correct and true, she shall be a victim of human trafficking. But at the same time, if she is an offender of theft, she shall be prosecuted for this crime.” (488)*

On the other hand, practitioners who have worked with victims directly were more likely to understand their vulnerability and that this may lead to ‘crime’ as a way of survival. Therefore, practitioners need to be aware of the realities of being a victim of the Kafala and how this may result in survival strategies. These issues are explored further below in relation to victim support.

### **5.3 Applying the Kafala Analytical Framework to the Saudi Context**

#### **5.3.1 Slavery and Islam**

The interview data reflect the literature insofar as all participants made it clear that Islam is against slavery. No one interviewed, appealed to Islam as a justification for slavery despite this being a myth perpetuated internationally about Islamic countries (155). Instead, interview participants cited other more complex causes of slavery in Saudi and the GC:

*“With some exceptions – and here I am not an expert – I don’t think Islam itself is a significant contributing factor for the most part. There are perversions (ISIS). We engaged with the Grand Imam in Cairo who issued a fatwa that slavery is not condoned under the Quran / by Islam... The only way Sharia is a contributing factor is the treatment of women in those societies – hence exploitation. In places like India where religion and culture are often indistinguishable – in the MENA as well – you must look at it through a power relationship lens. Economics is a key driver – the ILO came out in 2014 and said profits from slavery are \$150b a year which is a massive underestimation. It’s not just about being rich but being able to survive because otherwise some industries would not.” (492)*

All the practitioners and government officials interviewed (100%) viewed slavery as being entrenched in the employment market as opposed to being derived from Islamic values. From this perspective, it is more inherently part of the system of work rather than having a religious support - or even a history that is linked to religion. Government officials one and three and Practitioners five and eight discussed at length the gap between stereotypes about Islam and the fact that government and other professionals have a strong commitment to eradicating slavery. Practitioner five stated that “slavery is against human nature” (495) a belief that was reiterated by both government and civil society interviewees. Overall, perpetrators are viewed



as bad Muslims and the eradication of such exploitation is seen as being important to Islamic values.

As Islam is fundamental to Saudi, its values, and its culture, it was suggested by Practitioner eight that using religious influence would be an effective way to further eradicate slavery (496). In contrast to international discourse, practitioners are clear that a strong commitment to Islam drives anti-slavery sentiment and that this can be capitalised on. Government official six discussed the fact that victims may not be aware of this – that slavery is against the values of the government and Islam – and that this may be a barrier to them accessing support (497). Therefore, the message that Islam and slavery are not compatible can influence perpetrators, victims, and wider society, who will be more vigilant in identifying such practices.

The need for measures to address slavery was acknowledged. In particular, there were concerns about unintentional slavery. Seven participants outlined that there is a gap between the law in Saudi Arabia and individual and employer understanding of this law. This means that some individuals may not be aware that their practices as an employer amount to slavery – or that it is illegal. This is supported by the literature, which states that not every sponsor is aware of the rights of migrant workers (483). Although there is no longer a resistance to protecting low skilled workers at the level of government, a reliance on and undervaluation of these workers is leading to exploitation. The overall effect of this is that slavery practices remain, despite being abolished under Islamic law – for example, buying and selling workers, withholding passports, restricting their freedom, and forcing them to work long hours.

### **5.3.2 Gender and Slavery**

A standout finding from the interview data is that the reality of the Kafala producing gendered violence, sexual violence, and slavery is now acknowledged across stakeholders, whereas it was once denied. Practitioner four described how there is now an awareness of this fact across government bodies, including the police, hospitals, and administrative departments (498). There were many stories of sexual violence from both victims and those who work with them. One example is of a female survivor who came to Saudi under the sponsorship of an old couple. She had just had a baby and came to Saudi to earn money for her family. Her 80-year-old employer would come into her room at night and rape her with his wife's knowledge. The situation got so bad that she reached out on Facebook, filmed what was happening, and sent the video to a professional who supports women in this situation. The employer was arrested and jailed, even given his old age. She was supported to repatriate as this was her

wish. Although the story of violence is disturbing, it is a positive example of the support available and of serious action being taken.

Victims and practitioners felt that being a woman was very much linked to this sexual violence. Victims described an attitude that it is a women's role to be enslaved and sexually abused – something that was also noted by practitioners, who stated this was contrary to the social and religious values of Saudi. Interviewees reported that both women and men had these attitudes. Foreign women from undeveloped countries are particularly vulnerable to negative attitudes. Practitioner five, who works closely with such victims, stated that their vulnerability is through being unable to seek help, understand how things work, and often even their inability to communicate effectively, which means that they are targets for the kind of people who seek to exploit others (499). As practitioner 8 pointed out, it is completely against the law to mistreat women, and, in general, practitioners in both civil society and government were clear on this point. Further, this is not a problem that is limited to Saudi or the GC — many of the victims' stories began with inequality in their home countries. For example, a 14-year-old victim had been sold by her father to a man in her country of origin; this man then changed her passport details and sent her to Saudi. The context of global gender inequality was therefore cited as a core underlying factor. However, as practitioner seven pointed out, there are other interlinking factors associated with this problem; in particular, the lower status of foreign women:

*“My sense is that matters of sex trafficking and domestic abuse are actually more interlinked with the systemic racism that we see in the region towards vulnerable communities being imported en masse into the GCC and the broader Middle East. I say this as an Arab woman who spends most of her time in KSA, and I believe that racism strangely cuts across most economic and education layers of society. However, the more educated and economically prosperous the social strata, the less we see problematic gender attitudes. I am of course saying this out of mere observation without having conducted an empirical study to validate my observations. However, I believe it explains why we do hear cases of abuse amongst seemingly wealthy households. And furthermore, we also have evidence that much of this abuse is conducted by the matriarch of the household, and not the patriarch. Again, more empirical research would be required to explain all of this.*

*Gender equality legislation needs significant reform across the region, for purposes way beyond the issue of domestic labour abuse. However, as I mentioned earlier, I believe the strongest push needs to be in the protection of migrant workers and*

*stronger controls over the residential and work permits granted to these workers that come with several conditions for employment that need to be met by employers – companies, government, and private households. That is where I believe the most work is required.” (489).*

In order to combat this issue, practitioner one suggested that implementation of legal and policy reform is essential, stating “*when women are treated as lower status citizens it enables trafficking – people can be exploited, and they are vulnerable – it’s essential to have gender equality laws but even more essential to have the internalisation of these laws*” (495). Some of the key interventions that were mentioned as being effective, included: hiring lawyers for victims; economic empowerment; and educating communities. In particular, it is essential to address the barrier of how women who have been victims of sexual violence are viewed in society. Practitioner one argued that their modesty should not be in question. A barrier to this is that other practitioners did not draw the lines in the same way. For example, government official one and practitioner seven both expressed the view that women would not be given special treatment under the law just because they are victims. This means that they would be acknowledging their experiences of being a victim but also there would be consequences if they committed other crimes or if they were asking for special treatment beyond that which is afforded to them as victims (in other words, not applying the law differently because they are a woman). Issues could arise where a woman engages in survival behaviours, but it is viewed as being beyond what can be justified in the eyes of others. Therefore, understanding the real circumstances of victims and the impact on their lives is essential. One example of the legal barriers is the law about hymenoplasty, which is forbidden, leaving women more vulnerable when they are returned to their own country. 20% of practitioners and government officials, particularly those who work with victims, argued that a robust debate in relation to this is needed that considers the cultural issues and the women’s own sense of healing.

For instance, government official three highlighted the contrasting conditions of supremacy vs inferiority and moral obligation versus professional obligation that may be considered as abuse or pressure facilitating exploitation (493). But this problem applies not only in the case of the GCC or in the case of the Kafala System. Any supremacy relationship may be considered as a material element in the crime of human and sexual exploitation, legally speaking and not politically speaking.

Practitioner two argued that gender equality is important, particularly when it comes to income disparity between men and women (500). But more important are the cultural norms that prohibit women from having a voice, a choice and economic independence. In the US, for

example, porn culture commoditizes women and desensitizes men to think it is okay to rape or harass a woman. That, coupled with the gender norms of women staying at home and taking care of the children, thereby forfeiting their careers - especially as they are unable to reintegrate back into the workplace after taking leave of absence. These factors contribute to the norms on which laws are formulated.

This theme of putting women's experiences at the centre of the debate also arose in relation to understanding the journey that women take in relation to being trafficked and the vulnerability of being re-trafficked. Two survivors (victims five and eight) shared their story of being victims, returning home, and then not being able to survive. Desperate, they returned to Saudi despite knowing the risks; their hope was to find legitimate work but instead they were re-trafficked. Despite their previous unfortunate experiences, they were unable to spot the signs and seek the support they needed to avoid this happening. Further, many victims did not know their own worth outside of exploitation and were unclear on the options of moving forward. For example, one survivor (victim two) stated:

*"I did not feel that I could do anything or had any worth. The trauma, it does this. I could not see a way out or what to do" (501).*

In general, the data suggest that there is a gap in understanding and awareness of the impact of slavery on women – particularly their life cycles and the vulnerability they experience - and the support that they can access. Eradicating slavery will mean putting female victims at the centre so that this cycle can be stopped.

Additionally, it was clear from the data that there is a strong role for women in social change and positions of influence. The global perception of gender inequality in Saudi does not match the role Saudi women are playing in relation to this issue – both on the ground and at government level. Interviewees from both government and civil society described relatively higher salaries, more opportunity for women, women in positions of power, and the acknowledgement of the contribution that women are making to social change.

### **5.3.3 Gender/Islam**

As above, the interview data suggest that there are changing norms around women's roles in society. Although old stereotypes can be barriers, there are also changing attitudes that are pushing forward progress. The government is leading the way in this. For example, women are being supported at many different levels of society. Practitioners and government officials

interviewed described a range of factors, such as supporting women to progress in public life, changing laws to protect women from harassment, and a stronger drive to support victims of violence and exploitation. Nevertheless, some citizens still believe in old attitudes towards women – with sexist ideas and the drive to exert power over others – and this leads to exploitation when combined with the fact that survivors often do not know their own rights or may have had very few rights due to their own background. For example, one survivor (victim three) described being effectively treated as a slave when she was growing up and felt that this made her vulnerable to exploitation because she was unaware of her rights (501).

Survivors (100%) stated that both men and women are perpetrators – although sexual violence is perpetrated by men. Both survivors and practitioners (74%) felt that foreign women are seen as less important, possibly because they do not live an Islamic life or are seen as lower class, and this makes them vulnerable to exploitation. Government official seven linked this to a lack of public awareness of the strong support for women’s rights in Islam itself (502) – a point that was also made in relation to Islam/Slavery. This lack of understanding had contributed to violence against women.

Again, it is important to note that there was widespread scepticism (80% of practitioners and government officials) amongst interviewees about whether these issues are specific to Saudi as an Islamic country. Government official three is experienced in matters of human trafficking in the GC and stated:

*“I don’t actually see a lot of difference in treatment unless there are legal issues in the treatment between the different victims or various manifestations of human trafficking such as the exploitation of institutional or domestic labour issues. They have all been provided equal services and equal support in the victim support centres. I’ve seen that, from our work with the different departments and the different agencies all over the GCC Countries that they are taking this issue of gender balance and gender support very seriously in combating human trafficking”* (493).

#### **5.4 Overview of Gender/Slavery/Islam: Core Themes**

The conceptual model outlined in Chapter 2 identifies certain key policy/legal themes that relate to the intersection of Slavery, Gender, and Islam; these are Migration, Culture, and Access to Justice. These are areas that call for particular attention in terms of reform and are key barriers to be considered. They arise out of the way that Slavery, Gender, and Islam

combine to create specific social issues in relation to the Kafala. This section outlines the data from the interviews relating to these themes.

#### **5.4.1 Migration**

The interview data highlight two key issues in relation to migration. The first is the level of control/responsibility that the Kafala system gives to an employer, which can lead to abuse from both employees and employers. The second is the gap between law and reality and the need for interventions that address the implementation of policy and law that seeks to eradicate exploitation. Interviewees discussed three main issues in this regard, namely: 1) practices that restrict movement, such as passports being withheld, confining people to the house, and refusing them access to phones, computers, and even to other people, such as friends and family; 2) the black market buying and selling of workers, including both organised systems of trade and informal trade, where workers are passed between two individual employers in a private arrangement; 3) sexual and physical violence, which is exacerbated by the vulnerability of foreign migrant women who do not know how to access support, and what to look out for, often leading them to have been tricked in their own countries before arrival.

Interviewees also emphasised the fact that the support provision for victims would need to address a range of different practices and circumstances. For example, some victims described being smuggled into Saudi, whereas others came thinking they had legitimate work but then found themselves trapped and abused. One key concern for practitioners was the need to identify key entry points, both to make arrests but also to raise awareness amongst people at these points on how to access support and the signs of possible exploitation or abuse. Practitioner one noted:

*“People end up in slavery not because they’re kidnapped but because they’re deceived. People know there are risks about what they’re doing but they feel they have no alternative... You have people who go from Nepal because there is no opportunity for them to earn income for their families in [their own country] – they often go with their eyes wide open that it will be tough, difficult, demanding, unpleasant work but their desperation is exploited” (492).*

This was a perspective that all practitioners and government officials shared, noting that one of the most important aspects of addressing migration would be to engage directly with the victims and potential victims to reduce the risk factors.

## 5.4.2 Culture

It is clear from the interviews that culture is seen both as an opportunity and a barrier to eradicating exploitation in the Kafala. The most significant barrier identified was the problem of unintentional – or reckless – slavery/trafficking. This occurs when employers do not realise that their employees have rights and believe that they effectively do ‘own’ their sponsee. Although this cannot be said to be a natural or normal way of treating a human being – and as practitioners and government officials pointed out, as hitherto discussed, it is completely against Islamic values – and driven by greed and power.

In response, around 73% of practitioners and government officials advocated educating employers about how the employee/employer relationship should be conducted, noting that this education will mean the wider community is more likely to spot and report abuse when they see it. The literature supports this idea that not every sponsor is aware of the rights of migrant workers (483). Education would also have the effect of raising more awareness amongst the victims. A related barrier is that some sponsors see low skilled workers as having relatively few rights or values because of their lower social status, with government official six reflecting the general sentiment of all practitioners when he stated that... “it must be made clear that all human beings, no matter the kind of work they do, should be protected and supported in Saudi”. It should be noted that 100% of government officials were very clear that the values – and true culture – of Saudi is to protect human rights and support the vulnerable. Practitioner one set out the economic barriers that may arise in relation to this:

*“We don’t really treat human trafficking as a trade – what we do look at are the economic incentives that enable slavery, and that’s the way we approach it – if your look at a contract for slavery – why it exists, why it thrives – it’s because there are bonds that ensure it thrives: economic demand for cheap labour and inputs – neither good nor bad in itself but when driven to excess, people are exploited to minimise the cost of inputs – Thailand does it because it’s an unviable economic activity if you’re paying good wages... You have societies that are built on a flow of extremely cheap labour – the way it can be addressed will be by actively enforcing the laws by cracking down on employers. The laws are in place, it’s illegal to extort money, coerce people, lock them up, take their passports – but if you don’t have inspection, you are turning a blind eye and thereby enabling these practices to go on. There is a lack of political will to tackle it, as it is wrapped up in a bunch of economic incentives” (492).*

Some 100% of government officials stated that the drive is not to protect cheap labour but instead to protect human rights. In fact, government officials six and seven argued that this could help the economy in the long run, as relying on slave labour has negative consequences for the Government and the country's economy (497; 502).

Additionally, 60% of the practitioner and government official interviewees— both those based outside Saudi and those within – were clear that Islam “is not a significant contributing factor”, rather, it is economic factors that fuel exploitation. Practitioner two stated that:

*“In my experience... poverty and lack of opportunity are the key drivers. With the promise of a job and hope for providing for families, women and children are taken and forced to work like cattle.” (500).*

Similarly, although 100% of practitioners and government officials acknowledged gender as a consideration, there was a rejection of the idea that this was the key cultural factor to address - instead 60% of interviewees mentioned that this must be considered in combination with economic vulnerability. As mentioned above, practitioner seven stated that racism and economic issues were more clearly linked to exploitation than gender issues – and that as the economy improves so do gender attitudes.” (489).

A cultural consideration in terms of victims' experiences is the fact that many victims must consider the impact of returning to their home countries. Cultural issues such as judgment and rejection can mean that they do not want to return. In fact, three of the victims (victims four, seven and 12) expressly stated that they wished to undertake surgery on their hymen (through hymenoplasty) in order to return home with their 'virginity' intact – a procedure that 60% of practitioners and government officials in Saudi were open to considering as an option for victims. Government official three describes the conflicted feelings of victims as follows:

*“There are a lot of victims who don't want to go back home because they will be killed by their families. Well, this is of course subject to the victim countries to decide in conformity with national legislation, traditions and cultures, and will be left to individual cases as to what can and cannot be done.” (493).*

Once again, the research data demonstrate that the journeys of women victims across the full life cycle of the Kafala need to be considered and not just the experiences within Saudi or in one employment.



### 5.4.3 Access to Justice

Access to Justice was a concern both in protecting victims within the Kafala and in protecting sponsors who also had experiences of abuse within the system, in terms of employees who commit theft, crime, and even trafficking. For both employees and employers one of the main barriers is that these crimes can be invisible and hard to identify. Government official one stated in relation to human trafficking:

*“The most significant challenge in all human trafficking crimes is whether there was sexual abuse, begging, or any other form of human trafficking mentioned in Palermo Protocol, or any laws issued by the countries, and that this crime happens in private with no witnesses and often the victim will not – or cannot - speak out” (488).*

As a solution, 100% of practitioners and government officials urged that there must be stronger capacity to recognise and address exploitation in the Kafala system. Government official three summarised this in the following way:

*“But there is of course a lot to be done in terms of building more national capacities to recognise the different manifestations of human trafficking and the various pictures of human trafficking instead of just focusing more on atrocities in the giving countries. There is a lot to be done in terms of services and support to the victims. The only positive thing here is the increasing commitment we see from GCC countries” (493).*

Key to this problem, as expressed is the need to develop much stronger ways of engaging with and supporting migrant victims. As victim nine stated... “for so long I had no clue, no way of knowing where to go, what to do, and even if it mattered to anybody” (503). Government official six expressed the view that... “perpetrators of exploitation would only change when they can see more and more examples of there being consequences for their actions” (497).

## 5.5 A Framework for Reform

### 5.5.1 Reforming the Kafala in Saudi Arabia

This section explores key areas for reform that were raised by interviewees. There were three core activities that practitioners and victims mentioned as being essential in driving forward change with the goal of eradicating exploitation in the Kafala:

#### *Civil Society Activities*

100% of practitioners and government officials acknowledged that, historically, civil society functions had been the realm of government but that expanding civil society organisations would be key to progress. For example, government official one stated:

*“You always find in the US and some European countries that the victim care centres are civil societies and most of them are staffed by female volunteers because they can deal with such problems in a better manner. Civil societies also may undertake the routine procedures taken by the governments; consequently, civil societies are better than governmental authorities. So, civil societies should be considered and adopted” (488)*

Practitioner three mentioned projects that include economic empowerment training programmes, such as ones that promote entrepreneurship, and the opening of shelters. Government officials three and six emphasized creating stronger systems to access legal support. The need for more services was highlighted by 100% of practitioners and government officials.

#### *Legal and Policy Reform*

Although many Kafala reforms have already been implemented, 60% of practitioners and government officials acknowledged that law and policy can go further. Government official five discussed at length the intent to completely abolish the Kafala and to address what he saw as its key problem, that of being tied too strongly to an employer, which leaves both employee and employer vulnerable (494). To address this, he explained, the Government intends to introduce more flexibility, whereby employees will have the right to change their jobs and be released into new employment without economic sanction. Other reforms discussed included legalising hymenoplasty surgery (practitioners one, four, and seven and government official

six), the formation of a national strategy and national committee (government officials one and three) and raising awareness and education about the laws and policies (100% of practitioners and government officials). Additionally, 40% of practitioners and a third of victims were keen to see new ways of ensuring that law and policy are implemented so that the gap is filled between law and the reality of what is happening. Practitioner two made suggestions regarding the kind of approach that would be needed:

*“A top-down approach is required, so making it economically beneficial for corporations to be more responsible. Also, there is a need for a bottom-up approach to provide migrant workers and labourers the support they require as they work in a foreign country. Teaching them what their rights are as well as taking a case-by-case management approach” (500).*

### *Victim Support and Shelters*

As discussed in relation to civil society, there was strong support for expanding civil society organisations. This was coupled with a wider necessity for focusing on victim support. A key aspect of this, as noted by 20% of both victims and other interviewees, was the need to address the life cycles of victims and to find ways to intervene at different stages of their journey. For example, government officials one and six highlighted the need to provide more education within countries of origin as well as a way for those interested in tracing back to check that their intermediaries are legitimate companies. Practitioner two suggested a case-by-case management approach when connecting with victims in Saudi to link with their countries of origin. Government officials three, six and seven focused on educating people within Saudi, as well as at points of entry, on foreign worker human rights.

### **5.5.2 Key learnings from other jurisdictions**

Government official one and practitioner five noted that across the GCC, there are similar frameworks in place to combat the issue of exploitation in relation to trafficking and migration. Certain core concerns emerged amongst practitioners that were derived from lessons learned from other GC countries, including: caution not to simply abolish the Kafala in name but not in practice; and to ensure there are laws in place that coincide with international treaties; that these laws are culturally sensitive and fit well into the system; and that human trafficking and Labour Departments work together or even merge. Some other exemplary practices were identified in relation to specific countries, as follows: adopting a similar WHO framework, by tackling human trafficking using five internationally recognised tactics, namely prevention,

prosecution, punishment, protection and promotion of international cooperation (UAE, practitioner seven); forming partnerships with source and transit countries (UAE, practitioner seven); registering all labour through shelters (Bahrain, participant five); campaigns targeting abuse (Kuwait, practitioner seven - who applauded the campaign launched by the Human Rights Commission in KSA in 2019 on household abuse: based on promoting respect for individuals providing domestic services in private households); provision of substantial resources to bodies that combat exploitation (UAE, participant three); and working more closely with International organisations (UAE and Bahrain, government official three and practitioner four).

Despite optimism relating to Saudi's ability to lead the way in Kafala reform, barriers and challenges were acknowledged by interviewees. Many of these issues have been mentioned above but it is useful here to consider some of the key challenges that were discussed. Practitioner one summarised three key areas that enable exploitation and are therefore barriers to eradicating it; these are the demand for cheap labour, vulnerable or marginalized populations and weak rule of law (little access to law enforcement) (492). These align with the measures discussed in relation to protecting and educating victims, as well as to addressing the cultural demand for cheap labour. Relatedly, 40% of practitioners and government officials mentioned that practitioner engagement and training will be key to ensuring that any reforms are effective.

## **5.6 Analysing Kafala through Critical Systems Heuristics**

As outlined in Chapter 3, this study uses Critical Systems Heuristics analysis to inform and shape reforms. This section explores the fieldwork data from the perspective of the 12 questions of critical systems heuristics that act as a set of key considerations and questions to ensure that reforms are suitable given the context and the most effective possible. The insights from the data will be combined with an overview of the literature in Chapter 6 to form conclusions from the research.

### **5.6.1 Questions 1-3: Sources of motivation**

The first three questions relate to motivation, namely *beneficiary*: who ought to be/is the intended beneficiary; *purpose*: what ought to be/is the purpose; *measure of improvement*: what ought to be/is the measure of success? There was some tension in the interviews between a focus on the victim as beneficiary and the government (and, by extension, Saudi citizens) as beneficiaries. This tension between victims and wider Saudi concerns is also found

in relation to the purpose and outcomes of the reforms. All victims and practitioners put outcomes for victims and eliminating exploitation at the centre of their analysis and 100% of interviewees showed concern and empathy for victims. However, 100% of government officials and 50% of practitioners also raised the wider concerns of Saudi, both on the international stage and economically and placed high value on these concerns. Nevertheless, it was pointed out by 60% of government officials, practitioners, and victims that the concerns of the Saudi as a nation and the needs of victims are in fact compatible. As government official three stated:

*“The exploitation in the Kafala is not compatible with the values of Saudi and is thus not compatible with making the kind of changes we want to see in this country. We must ensure that these violations do not occur”.*

More specifically, government official one argued that the economy must be separated from the greed of people who exploit and attempt to use slave labour as it undermines a healthy job economy (488). On the other hand, practitioner five argued that victims and practitioners who took a victim-focused approach also acknowledged that making changes for victims would only be effective if “we are intelligent about making change so that it is good for everybody and it is supported at every level” (495). Suggestions on how to reconcile this balance will be made in Chapter 6.

### **5.6.2 Questions 4-6: Sources of control**

The second set of questions to consider relates to decision makers and the context (resources and conditions) needed to make change, as follows: *decision maker*: who ought to be/is in control of the conditions of success; *resources*: what conditions of success ought to be/are under the control of the decision maker; *decision environment*: what conditions of success ought to be/are outside of the control of the decision maker? There was widespread acknowledgement and awareness within the interviews that the Saudi Government is the key decision maker in relation to this issue, although some 40% of practitioners and government officials identified the role of international bodies as critical in influencing the situation. 100% of government officials within Saudi were very clear that the sovereignty of Saudi – and even its leadership within the GC and internationally – were paramount. Although international treaties and bodies were largely respected - despite some objections of the criticisms of Saudi and the stereotyping of Islam - the focus was on crafting something that is suitable for the Saudi context while being sympathetic to the international agenda.

With respect to resources, 100% of government officials spoke of a multi-agency approach, and 60% mentioned working with origin countries to raise awareness, as well as 25% of practitioners. Also 40% of government officials also acknowledged that there is perhaps too much centralisation and there is a need for civil society organisations to do more on the ground and specialist work. Some 100% of practitioners and victims mentioned the need to support the growth of civil society. Key areas that are outside the control of the government that were mentioned by interviewees include the hidden nature of trafficking and exploitation making it hard to identify and combat, the international pressure for agenda conformity, and – importantly – the fundamental principles of Islam that are fixed and must shape any response.

### **5.6.3 Questions 7-9: Sources of knowledge**

Questions 7 to 9 cover the skills and knowledge required to achieve the aims of reform. This includes not only identifying the expert/expertise needed but also how to ensure implementation, as follows: *expert*: who ought to be/is providing relevant knowledge and skills; *expertise*: what ought to be/are relevant new knowledge and skills for success; *guarantor*: what ought to be/are regarded as assurances of successful implementation? Very few individuals were mentioned as experts in this field and when interviewees did mention individuals it was often under the request that they remain anonymous. Nevertheless, 100% of both practitioners and government officials within Saudi were clear that the new Human Trafficking Department within the Government would be the centre for experts and expertise. Government official one was keen to stress that expertise is being developed in this area and that the department will be looked upon to guide knowledge and understanding of the issues. These government officials also mentioned the need for more research, with the Human Trafficking Department being a centre for this, including into the nature and extent of exploitation within Saudi – 50% of the other practitioners and government officials that were interviewed mentioned the need for further research. Specific ideas raised in relation to developing and using expertise were raised by practitioners two and seven regarding the need to underpin the reforms with an acknowledgement of the role of racism and culture within the Kafala. Practitioner one argued the need to do more research into perpetrators in the Kafala in order to design prevention measures working with origin countries, and government official three suggested identifying the ways of preventing migration practices that leave women vulnerable. In addition, development of shelters and other civil society organisations were viewed as potential sources of knowledge that could be fed into the Human Trafficking Department. Interestingly, when interviewees were asked about how to ensure that this knowledge shaped reforms, there was little offered in the way of tangible practices. The main emphasis was on the development of a strong Human Trafficking Department.

#### 5.6.4 Questions 10-12: Sources of legitimacy

The final set of questions considers sources of legitimacy. It considers how to incorporate other viewpoints and consider the voices of those who are affected by the reforms but are not involved in driving forward change, as follows: *witness*: who ought to be/is representing the interests of those affected by but not involved with the reforms; *emancipation*: what ought to be/are the opportunities for the interests of those affected to have expression and freedom from the worldview of the source of control; *worldview*: what space ought to be/is available for reconciling differing worldviews regarding reform among those involved and affected? Although potentially beneficiaries, it was clear from the data that only 20% of practitioners and government officials considered victims to be important witnesses and promoted mechanisms for incorporating their voice, such as using research and generally engaging with victims more on what their needs are. However, 100% of interviewees supported building a Human Trafficking Department and civil society organisations. It was clear that 100% of government officials within Saudi took strong ownership of the reforms; however, the role of competing voices, though not dismissed, was not fully addressed. It was mentioned by officials that civil society would have a role in informing the government and the Human Trafficking Department, but the exact nature of this was not discussed. Similarly, 100% of Saudi government officials indicated that international considerations would be incorporated and considered in balance with the interests of Saudi. Practitioners, on the other hand, expressed the view that reforms would only be effective if diverse viewpoints were incorporated and taken seriously. Practitioner five specifically stated:

*“There is so much to learn from the voices of people who are affected by exploitation and trafficking and even from those who are not direct victims but have seen these practices happen. The governments that hear these voices and that even listen to criticism are the ones who will be able to make the best changes”* (495).

A relevant theme in the literature is that victims themselves feel unable to have any influence and often do not even understand their rights. There may be an opportunity to change this through also considering their inputs.

#### 5.7 Summary of Findings

To summarise the interview findings, three guiding principles can be identified. The first is to take a broad human rights approach in considering labour issues. This very much aligns with

the literature that was critically evaluated in Chapter 2 but was a principal factor, practitioners advocated as an effective reform strategy. Other strategies that were discussed included working with victims to support repatriation, if this is appropriate, or to stay in Saudi if this supports them better. Additionally, there is a need for better access to legal support, and more robust labour protection to all employees.

The second guiding principle echoes the approach of feminist security studies and supports moves away from border control and victim centres – practitioners either directly or indirectly supported this via their focus on the victims' 'spacial and educational' Kafala journeys; in fact, even when discussing prolific entry points for trafficking/vulnerable migrants the focus of practitioners and government officials was on educating victims and identifying the risks involved. Practitioners were clear that this is both a) more in line with Islam and b) a more effective approach to reducing exploitation of the system and regaining control of migration and employment, thus having both a 'moral' and a 'practical' justification. As discussed, one aspect of this will be making improvements to victim support and ensuring greater awareness of this mechanism.

The third guiding principle is related to the second, and is focused on the imperative of improving victim support. Victims of sexual exploitation and sexual trauma struggle with dissociation, anxiety, trauma, anger, depression, self-mutilation, eating disorders, post-traumatic stress, and other mental health concerns, all of which were discussed by interviewees and outlined in the literature (504; 318, p.45; 505). The survivors struggle to obtain safe jobs, maintain stable housing, and foster healthy relationships and are in need of support to deal with the trauma they have experienced and to start new lives. Practitioners who work with victims confirm this to be the case as well as the victims themselves. Those victims that have been through the traumatic experience of sexual violence exhibit signs of post-traumatic stress disorder whether they have been abused themselves or have witnessed abuse perpetrated on others. At present, there is no specifically tailored programme for victims of sexual violence in Saudi or the GCC and Middle East more generally.

Based on the above considerations, the following Chapter analyses, summarises and synthesises the data outlined in Chapters 4 and 5 and makes recommendations for policy and practice moving forward.



## Chapter 6

### Conclusions and Policy Recommendations

#### 6.1 Study summary

This research is borne out of both national and international criticism of the Kafala and a recognition that change is needed. This criticism has historically been driven by a Western Agenda and there is considerable political pressure to conform. Academic and international literature have tended to 'exceptionalise' the Gulf and talk about the practices of the Kafala as if they differ from what is happening at the global level. In fact, the repression experienced within the Gulf is actually an extension of a global phenomenon. There is also an argument that the Neo-Liberal Western approach towards migration and other issues creates environments that actually facilitate modern day slavery (230, p.7). Therefore, the research sought to find out what is really going on in the modern Kafala and to create solutions based on what is right for Saudi instead of being led by outside voices. The research focuses on migrant domestic workers as one of the most marginalized and vulnerable groups in Saudi, with Kafala practices that amount to modern slavery, as outlined from the outset in Chapter 1. The value of this lies in, firstly, promoting the interests of Saudi and the GCC; secondly, upholding human rights and associated principles; thirdly, contributing to an international understanding of Islam and the GCC; and fourthly, providing a culturally specific solution to reforming the Kafala. Considering these considerations, the following research questions were designed:

1. What reforms should be proposed and adopted to eradicate exploitation of migrant domestic workers under the sponsorship system in Saudi Arabia?
2. What can be learned from the experiences of other GCC countries reflecting the international context?
3. In what ways can Islamic, social, and cultural values be incorporated into Kafala reforms as a way of challenging more common Western/neoliberal solutions in the international context?
4. How do the experiences of victims and the authorities contribute to developing a stronger set of reforms?

Underpinning these research questions are the following objectives, to:

- a. Identify the means of eradicating exploitation of female migrant domestic workers

- b. Determine the comparative experiences of the Kafala system in the GCC with a focus on the United Arab Emirates, Kuwait, and Bahrain
- c. Identify legal reforms that most strongly uphold Islamic social and cultural values
- d. Analyse the experiences of victims and the authorities to construct a reform agenda
- e. Identify the gap between law/policy and practice/lived experiences to identify opportunities for reform

The selected research methodology consists of mainly qualitative interviews of government officials and other professionals. This was complemented by a search to understand the realities of victim's journeys through fieldwork observation (relating to the practices of civil society as they come into contact with victims) and interviews. This includes observing the victims' paths out of exploitation. The research also includes secondary analysis of literature, policy, and other related documents to fill in any gaps in understanding. Thematic analysis and critical systems heuristics were used to analyse the fieldwork data and these tools are also employed in this chapter.

Chapter 2 offers a conceptual framework that shapes the analysis of the Kafala throughout this study. The chapter outlines the background to the research, focusing on migrant domestic workers, because at present the level of protection afforded to migrants depends on the kind of job that a migrant does, and domestic workers are the most marginalized. Focusing on domestic workers, the chapter outlines the three dimensions of the Kafala that impact on outcomes and practices. These are Gender, Islam, and Slavery. In relation to Slavery and Islam, it has been shown that there is a history of slavery in Islamic countries but that this is not supported within the religion itself. Nevertheless, the reality is that the practice of exploiting workers, particularly migrant workers, is deeply entrenched at a cultural level, more than within the Islamic faith itself. This was found to be true from the fieldwork, with the added insight that the public needs to be educated and made more aware of the importance of being anti-slavery in Islam. In relation to Gender and Slavery, two factors are particularly relevant that must be addressed. These are, the high demand for women and girls in domestic servitude, and the limited protections that are in place for them, and secondly, the history of concubinage that seems to have created a cultural legacy of sexual exploitation. This reflects findings in the fieldwork, such as the fact that victims describe feeling undervalued as foreign women and extremely vulnerable to exploitation, including sexual violence. Chapter 2 points out, in relation to Gender and Islam, that although there are challenges in Islamic countries with regard to women's equality, it is wrong to ascribe this to the religion itself. This sentiment was echoed in the fieldwork, whereby government officials and practitioners emphasized the progress

being made in relation to gender equality. At the intersection of Gender, Islam, and Slavery, it demonstrates that there is widespread exploitation of migrant workers, particularly women in domestic roles, that the system itself has descended into modern slavery, and that this has strong links to human trafficking. The exploitation in question refers to all forms of physical, mental, and sexual abuse.

The research has identified cross-cutting issues that must be addressed by reforms of the Kafala, and that are borne out of the intersecting issues of slavery, Islam, and gender. These cross-cutting issues include: culture (in particular the fact that the status of women and foreigners means that their exploitation may be culturally accepted); migration (which includes the global context of migration and Saudi's own aims in relation to the system); and access to justice (such as the problem of ensuring that legal reforms are implemented and people are able to exercise their rights). These themes will all be discussed in relation to the proposed reforms. The fieldwork data gathered were explored in Chapter 5. All practitioners and government officials interviewed acknowledged that there are problems with the current Kafala system and only a minority (13%) thought that there should be no reform. Having said that, a recurring theme from data analysis was that the international community does not understand the Saudi context and the strong human rights work being done in the area, as well as the promise of further change. It is from this position of optimism that the remaining 87% of interviewees engaged with the prospect of reform. All practitioners and government officials discussed the fact that slavery is completely against the principles of Islam. Victims contributed to the discussion by describing their reluctance to engage with Government bodies – largely because of the fear of deportation or punishment - and their need for more services to support them. This was supported by Government officials. Specific interventions raised by interviewees will be discussed and evaluated in this Chapter.

## **6.2 Conclusions**

Chapter 5 gives rise to some key conclusions and observations, which shall be used to shape the reforms proposed in this Chapter. These key observations are outlined here and grouped under the core themes for reform as identified in the conceptual model (which is revisited below). These key observations and conclusions are:

### **6.2.1 Migration**

Saudi has its own drivers beyond international pressure to reform the Kafala – such as the desire to boost the economic and social wellbeing of Saudi, as stated in Vision 2030. Saudi's

aim is to be an attractive international destination, a hub for business, and an innovator in relation to social change. Being a valued migrant destination is part of the 2030 agenda and there is no room within this for tolerance of exploitation of migrants. The Kingdom clearly has both a strong cultural (Islamic) and economic incentive to be anti-slavery, whereas individual employers may not have this incentive because they are focused on getting free or cheap labour. Therefore, practitioners and government officials called for stronger guidance for employers, and protections for both employers and employees (reflecting the fact that the Kafala can also make employers vulnerable). There is an opportunity to develop effective mechanisms for 1) raising awareness about changes in the law - as not every sponsor is aware of their obligations - and changing people's consciousness, and 2) better enforcement/regulation/checking that people are not intentionally or unintentionally enslaving people.

### **6.2.2 Access to Justice**

Vision 2030 includes the need to expand and support civil society organisations to protect the most vulnerable. This includes the need to hear victims' stories and be responsive to victims' needs as it helps to eradicate exploitation and to uphold Islamic values as well as the vision of expanding civil society and supporting the vulnerable, including migrants. An area for attention is the fear of punishment if women come forward, as well as women's access to justice. There is a need to proactively identify and protect victims, ensuring they can access services. This also includes continued efforts to prosecute, convict, punish, and stringently sentence offenders, including abusive employers, under the anti-trafficking and labour laws, as well as those who sexually abuse. Interview statements emphasize the need to protect victims from being punished for acts committed as a direct result of their exploitation, although not all shared this perspective.

### **6.2.3 Culture**

Cultural factors are relevant to female vulnerability, such as tolerance of domestic violence and domestic work not being valued or recognized. However, instead of 'strict Islam' being a problem for women in Saudi Arabia, it is when people move away from Islamic values and the absolute obligation on men to treat women with dignity that the exploitation in the Kafala occurs. There are misconceptions about women's lives in Saudi. Relatedly, there are misconceptions within Saudi about what is acceptable and what amounts to slavery. Therefore, as discussed above, there is a call from victims, practitioners, and government officials to expand public awareness and transparency.

At present, there is very strong leadership in the Kingdom with a clear direction for Saudi to develop an even stronger presence in the global economic and political arena. This presents an opportunity for the Kingdom moving forward to lead in the reform of the Kafala while retaining its positives.

### **6.3 Reform Using a Critical Systems Heuristics Approach**

This section uses a CSH analysis to create a framework for reform. As will be recalled from Chapter 3 Research Methodology, CSH is a method that offers a structured method of analysis, through the ability to explore multiple perspectives, develop good practice, and get clear sense of what needs to be done (506). Below is a discussion of the 12 critical CSH questions and the associated answers.

#### **6.3.1 Sources of motivation**

1. *Beneficiary*: Who ought to be/is the intended beneficiary
2. *Purpose*: What ought to be/is the purpose?
3. *Measure of improvement*: What ought to be/is the measure of success?

The core purpose of the reforms has emerged both within the literature and the interviews: to eradicate the use of slave labour and exploitation of foreign migrants within Saudi. There are different motivating factors to this, such as wanting to uphold human rights, promoting a strong economy, and international relations. These motivators give a clue as to the beneficiaries of the reforms, which are not just the victims themselves but also Saudi as a nation, its citizens, and its government (which is driving forward this change). Measures of improvement can be ascertained through the different themes for reform discussed above: migration, culture, and access to justice. There would be reduced exploitation and illegal and forced labour, as well as increased awareness of (both societal and victim awareness) and access to rights.

As such, this CSH analysis strongly supports the recommendations for reform and the thematic framework outlined above.

#### **6.3.2 Sources of control**

4. *Decision maker*: Who ought to be/is in control of the conditions of success?

5. *Resources*: What conditions of success ought to be/are under the control of the decision maker?
6. *Decision environment*: What conditions of success ought to be/are outside of the control of the decision maker?

As has become clear, the Saudi Government is at the centre of reforms and their implementation and is the body that is most in control of the conditions of success. However, as victim services and civil society organisations expand, their influence at the level of implementation will be core. In fact, they have already been instrumental in supporting victims and providing insight to the Government. The main resources that have been discussed in the literature and fieldwork are policy, law, and civil society. However, in terms of the decision environment, civil society also has a role in informing the Government of victim and practitioner experiences as these will also shape what is possible. In addition, the Government must consider the international context. This is outside the control of the Government (CSH Question 6) and can be addressed by ensuring that these factors are taken into consideration.

### **6.3.3 Sources of knowledge**

7. *Expert*: Who ought to be/is providing relevant knowledge and skills?
8. *Expertise*: What ought to be/are relevant new knowledge and skills for those responsible/with power relating to reform?
9. *Guarantor*: What ought to be/are regarded as assurances of successful implementation?

The Government and civil society are the two expert elements relied upon to shape law, policy, and practice. However, this research also acknowledges the victim as an expert of her experience and thus this must be incorporated into the sources of knowledge used to shape reform. The kinds of expertise required to shape reform include legal, policy, and strategic knowledge, as well as international tools and on-the-ground experience that can help to inform law, policy, and practice. Successful implementation of changes to the Kafala will not only depend on this international perspective and on-the-ground information, but also on strong partnering between experts (the Government and civil society) and the testing and gathering of information about the impact of changes and the way knowledge and expertise are used.

### 6.3.4 Sources of legitimacy

10. *Witness*: Who ought to be/is representing the interests of those negatively affected by but not involved with S?
11. *Emancipation*: What ought to be/are the opportunities for the interests of those negatively affected to have expression and freedom from the worldview of those holding responsibility/power within the system?
12. *Worldview*: What space ought to be/is available for reconciling differing worldviews regarding the system among those involved and affected?

As stated above, the beneficiaries of change who are not directly involved in shaping law and policy are the victims themselves, and also Saudi society. Although the international community and the rest of the GCC are witnesses in the sense of being indirect stakeholders interested in eradicating slavery, it is the victims and Saudi citizens who are directly affected by the Kafala. Emancipation for victims and Saudi citizens requires freedom from exploitation, eradication of illegal labour markets, and the ability to talk freely about exploitation - assured that there will be consequences for perpetrators. The way that Saudi can remain focused on this emancipation is through focusing the reforms on changes that support this freedom and on maintaining continual dialogue with victims and Saudi citizens as reforms are implemented in order to understand their circumstances and measuring progress against their needs.

The following Table 6.1 offers the core framework of this CSH analysis:

Table 6.1: Sources of Influences, Roles, Concerns, and Key Problems using Critical Systems Heuristic Analysis

Source of influence	Role	Role specific concerns	Key problems
Motivation	<i>Beneficiary</i> Saudi citizens, Saudi Government, victims,	<i>Purpose</i> To eradicate exploitation and use of slave labour within Saudi	<i>Measures of improvement</i> Reduced exploitation, increased awareness of and access to rights, reduced illegal and forced labour
Control	<i>Decision maker</i> Saudi Government (policy and law), civil society practitioners (at the level of implementation)	<i>Resources</i> Policy, law, civil society organisations	<i>Decision environment</i> Civil society informs Government of victim and practitioner experience, Government considers international context
Expertise	<i>Expert</i>	<i>Expertise</i> i) Knowledge of legal and policy	<i>Guarantee</i> Strong partnering between Government and civil society. Testing

	Government experts, civil society practitioners, victims	frameworks, strategic overview. ii) International experiences and tools iii) On the ground witnesses of both reality of the Kafala and implementation of policy and practice iv) First-hand experience	and gathering information about impact. Use of first-hand and on the ground experience to inform strategy and policy formation. International considerations balanced with national concerns.
Legitimation	<i>Witness</i> Victims, Saudi society	<i>Emancipation</i> Freedom from i) Exploitation and slave labour ii) Illegal labour markets iii) Repercussions of speaking up about exploitation	<i>Worldview</i> Continual dialogue between those involved and those affected with the intention to improve human wellbeing

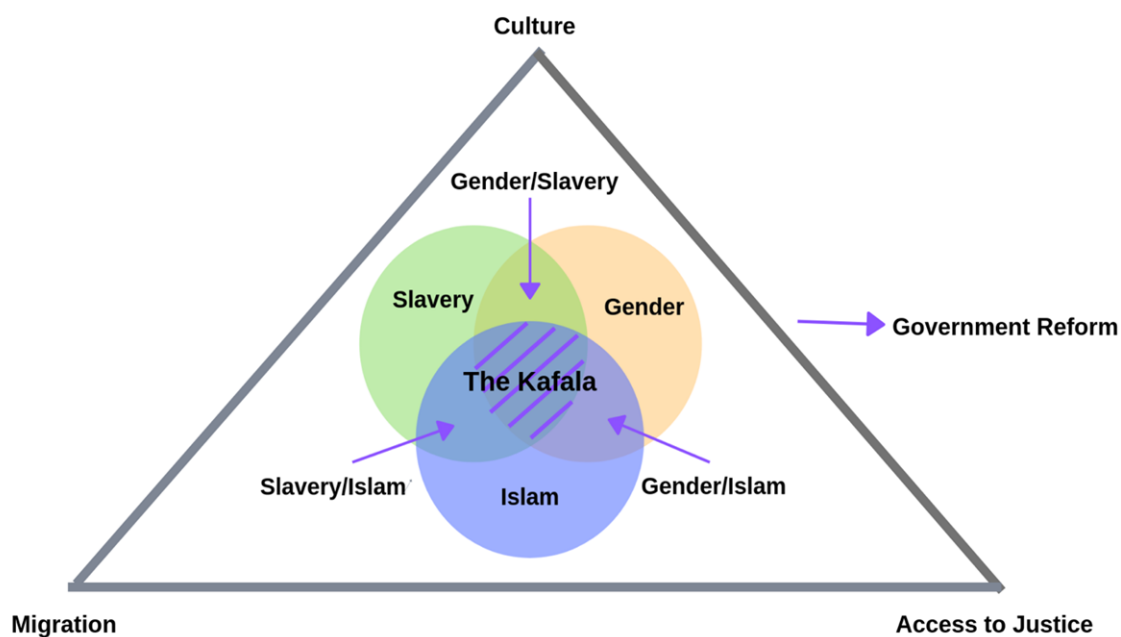
Source: Converted from a table provided by Martin Reynolds, in 'Evaluation Based on Critical Systems Heuristics', *Using Systems Concepts in Evaluation: An Expert Anthology* (2007) p101.

#### 6.4 Comparison of Findings and Proposed Saudi Reforms

This section explores the gaps and possibilities in relation to suggested reforms that were raised in the fieldwork interviews. The suggested reforms are presented through the lens of the integrated conceptual model outlined in Chapter 2:



Figure 6.1: Full Model of Exploitation in the Kafala System



Source: Author

The core themes of Migration, Access to Justice, and Culture were identified in Chapter 2 as being the key areas in which reforms should be focused to introduce changes that adequately address the dynamics of the Kafala as analysed through the lens of Islam, Gender, and Slavery. Below is a discussion of the ideas for reforms raised in the interviews and how Saudi is currently addressing them, as well as how the literature supports these actions on the part of Saudi. Where there is no suggested reform then the gap is evaluated, and the interviewee suggested reforms are compared to and expanded by the literature. The reforms are addressed in line with the three key areas for consideration in the full and integrated conceptual model (Migration, Access to Justice, Gender) and the dynamics of slavery, gender, and Islam are highlighted where relevant. In this section, a final layer of analysis will be introduced using Critical Systems Heuristics to establish a strong and reflexive framework for moving forward and addressing the gaps identified in this section.

Appendix 4 provides a summary of the reforms suggested in the interviews under each key theme, as well as the guiding principles (established in Chapter 5) that relate to this reform, the type of reform, and the current practice, proposed actions, and gaps within Saudi. The contents of this table are discussed in more detail below:

#### **6.4.1 Migration: Law and policy reform focused on labour exploitation with human rights principles**

There has been a huge amount of reform of the labour laws in the past ten years and this has very much been aligned with Saudi's wish to become the most attractive destination in the Middle East for skilled workers and to be at the forefront of promoting human rights and modern business practices (507). As pointed out in the literature, the Kafala in its previous form was not compatible with this (508). One aspect of achieving these goals is to disrupt the black market and promote Saudi national employment (509). This text suggests that the countries need cheap labour with no obligation to support them but this does not match with the human rights interest of Saudi – and overlooks the important work being done in this area, although it does acknowledge the human rights imperative in Sharia law (510). In the legal reforms implemented in 2008, the Government pointed out that skilled workers were reluctant to migrate to Saudi under the Kafala (2, p.17). To make Saudi the most attractive region for expatriates, the Government will focus on protection of rights, attractive wages, and ensuring an attractive work environment (511, p.1).

Saudi's initiative to abolish the sponsorship provisions is because the system violates Saudi law (2, p.19), declaring the principle that all law should be based on residence law instead of pieced together through individual circulars (2, p.12) – as such there was a specific commitment to reforming and unifying the law around labour migration and ensuring that it supports Islamic and human rights values. The National Plan for Anti-Trafficking in Persons (7, p.5) conferred many such rights, and the Government's strategic approach against exploitation has recently been strengthened by a shared initiative with the UN (474). This commitment to uphold human rights has led to Saudi recently being classified as a Tier 2 country in relation to the US State Departments anti-trafficking reports (512). This is huge progress. As stated in a 2018 initiative (to improve the employee and employer relationship) in order to promote rights the government intends to improve transparency about rights, improve ways of resolving disputes, and improve inspection mechanisms (511, p.2). Key measures announced in collaboration with the UN include information campaigns, training recruitment agencies, bilateral agreements (such as a standard employment contract), civil society and private sector engagement (particularly training airport staff, embassies, and the media), introducing a National Referral Mechanism, and training law enforcement (513; 514). UNDOC will also be supporting Saudi to develop its next National Action Plan to Combat Trafficking in Persons (515).

These developments build upon changes that have already been made in Saudi. Specific changes that occurred before the recent initiative with the UN include expanding labour mobility, improving terms of employment, outlawing the retention of passports, and reducing the influence of the employer to only employment matters and not to other aspects of their lives (2, p.65). Other initiatives included in the 2008 Government document relating to protecting both the sponsor and sponsee (2, p.66), including financial support for legal expenses, unpaid wages, traveling home, and unemployment while also making provision for damages if the employer incurs losses because of the wrongful actions of the employee.

#### **6.4.2 Migration: Law and policy reform that reduces employer control**

The interviews highlighted specific concerns about employer control – as this is essentially how work instead becomes slave labour – and a call for reform of the law to reduce employer control. Much has already been done to reform the law in this way. One of the areas of particular concern is that exit permits could only be obtained with the permission of employers (516) and the law has been changed to remove this requirement (464). Other legal changes include offering holiday entitlement, maternity leave, and limiting working hours (50). However, these reforms do not apply to domestic workers, save that their working day should be limited to 12 hours (465).

In 2012, the Government announced plans to introduce recruitment and placement agencies (55). These agencies were planned to replace individual sponsors and essentially hire out workers as temporary staff. This would lessen the ability for individuals to exploit workers as the agencies would provide a second layer of protection. Some 13 recruitment companies (with a minimum of five offices each) were planned. These agencies would include insurance programmes for employers to protect their interests. At the time, these plans were criticised because they did not address the control that sponsors (whether individuals or companies) had over workers. However, in the context of other changes happening in Saudi, the potential for these recruitment companies to provide an additional level of support and protection for both employees and employers cannot be underestimated (51). The risks incurred by employers include robbery, embezzlement, damages, leakage of important business information, and damages caused by the worker to others (517).

In terms of gaps, the main gap is the absence of current concrete plans to create these recruitment agencies and the fact that many of the legal reforms above do not apply to domestic workers. In addition, as will be discussed below, in relation to culture, there must be

a deeper understanding of the reality of victim's lives and journeys embedded into policy and practice.

#### **6.4.3 Migration: Abolition of Kafala in practice and not just in name including stronger implementation of policy and law**

Both the interviewees and the literature demonstrate that there is a need for stronger implementation of the labour laws, monitoring and dispute settlements (518), as acknowledged by the Government in its 'Improving Working Conditions' initiative (511, p.2). In particular, there is a need for enforcement/regulation/checking that people are not intentionally or unintentionally enslaving other people (476). Although it has been mentioned in the literature that such an approach should also include the right for labour to organise (519), there was no appetite for this amongst the people interviewed and it is therefore recommended to focus on other much needed reforms before considering such an approach.

To complement changes to the labour law, such as improving labour mobility, the process of recruitment should be scrutinised. For example, as recommended in the literature, it may be effective to provide recruitment agencies for migrant workers instead of the individual Kafala system to limit the violation of migrant worker' rights and, at the same time, protect the interests of employers. This would help to formalise the recruitment process and improve the terms of employment and working conditions (518).

In addition to creating recruitment agencies, there is a need for more detailed guidance on how law and policy will be implemented. One of the key areas to address is discussed further below in terms of Access to Justice. One key for ensuring that the Kafala is abolished in practice and not just in name will be to ensure that exploitation is not only outlawed but that it is criminalized in practice and that there are consequences. As will be discussed, progress has already been made in this area.

#### **6.4.4 Migration: Working with the countries of origin to prevent people taking exploitative jobs**

As discussed above, the new initiative with the UN addresses the need for greater awareness across several different stakeholders, including more awareness amongst victims as they enter Saudi. To strengthen this, Saudi could consider working with origin countries to expand awareness - potentially through recruitment agencies that could liaise with origin countries as one of their functions.

Some collaboration has happened already in Saudi. Saudi has entered into bilateral agreements with several 'sending' countries in order to better protect vulnerable migrants. Akzahrani (476) suggests that sending countries set up mechanisms of enforcement – such as filing lawsuits if these agreements are breached and setting up legal committees in embassies and consulates that can defend the rights of citizens. Saudi cannot take responsibility for those mechanisms as they are the jurisdiction of the sending countries; however, the government has agreed that it will support international law more generally and ratify any conventions that it is not currently a party to, but has strategic importance for eradicating trafficking and exploitation (7, p.5).

#### **6.4.5 Culture: Addressing reliance on and undervaluation of foreign workers, particularly women**

It is worth considering that reform of the Kafala should take into consideration the needs and wants within the GCC in relation to restrictions that should be in place. Malaeb outlines that the public is keen to make sure that employees cannot cause disruption by simply being allowed to randomly leave jobs and that the economic implications of changing jobs for employers should be considered, that the education and training provided by employers should be honoured, and that people who enter the country for work should not be allowed to remain if they are unemployed (456). However, it should be cautioned that this desire to retain control over foreign workers may also be linked to a denial of slavery and a lack of awareness about the realities of the Kafala (456). Interestingly, Vora and Koch suggest that the Gulf should not be considered as a region that excludes foreigners from integration but instead as a region of 'deep social stratification, a region distinct from the forms of variegated belonging and nation-building elsewhere in the world' (457). From this perspective, approaches should be taken that protect both employers and employees, also acknowledging the integration of foreign workers within Saudi and the Gulf and the region's unique ability to integrate a large foreign workforce. The notion of balance between rights is of central importance when it comes to this. Although there is a strong history of inclusion of foreign workers, there is nevertheless a desire to reduce the numbers of foreign workers and increase workforce participation of Saudi nationals (520). Such a consideration should also be included in the balance. However, improving working conditions for all takes an important step towards both increasing employment of nationals and of eradicating exploitation of foreign migrants, such as those relating to forced labour (521).

#### **6.4.6 Culture: Develop understanding of survival behaviours amongst practitioners and decision makers**

There is a need for increased understanding of victims' stories and how their 'victimization' may also be linked to criminal behaviour. This is to find a balance between the criminal law and ensuring that there are consequences for people's action, on the one hand, and ensuring that victims are not punished for acts committed as a direct result of being subjected to human trafficking, on the other. This was an issue raised by the United States Department of State (522), as well as practitioners and government officials interviewed for this research. For example, a woman who had been forced into prostitution should not be receiving lashings for adultery (Sharia law). This may involve reforming some laws or simply training people to exercise discretion in the way laws are enforced. The Government's collaborative project with the UN involves training people on how to identify and support victims of trafficking and so this could be expanded to develop an understanding of the realities of victims' lives. Certain practitioners and government officials interviewed in this research were adamant that there should be consequences for the illegal behaviour of victims. It is unclear whether they were referring to behaviours that occur as a direct result of their victimization and of survival behaviour. Increased awareness would help to strike a balance between protecting women who have been trafficked and applying the law where appropriate.

#### **6.4.7 Culture: Debate and develop the law around hymenoplasty**

Victims and practitioners mentioned hymenoplasty as a potentially positive procedure for helping women to return home safely and to recover. It was clear within the interviews that there is a lot of interesting debate around this issue but others suggested that it can feed into sexist stereotypes. Examining this issue is something that people on both sides of the debate were open to.

#### **6.4.8 Culture: reduce unintentional trafficking by raising public consciousness, particularly linking this to Islam**

Currently, there is a big focus on training – particularly of police and government officials – as part of a joint initiative with the UN (523). The training covers identifying and dealing with cases of trafficking. This is very much in line with the need expressed in the interviews and to comments made in previous trafficking reports, which call for increased training; also mentioning that the presence of women police officers would greatly increase the

effectiveness of this (524). One way of addressing this issue would be to work with civil society organisations and bring in female workers to support the police when a trafficked woman comes into their care.

Further, there is a need for society-wide awareness and greater consciousness about the fact that Islam is completely opposed to slavery and trafficking. Greater awareness is a major development and one that is central to Saudi's newest anti-trafficking measures (525). The need for such awareness was recommended both in the interviews and in the literature, including calls for specialist religious scholars to educate and change people's consciousness. The Saudi Government and the UN will be working together to raise public awareness both in the sending countries and in Saudi Arabia. They will also be providing detailed guidance on the rights and responsibilities to those entering the country and to employers.

#### **6.4.9 Access to Justice: Developing civil society for victim support**

As discussed above, the government's initiative to reduce trafficking and exploitation includes engaging with civil society and boosting civil society provision (525; 526). Concerns have been raised in the literature about the possibility of Saudi being able to support women and advocate for their needs because civil society is so closely intertwined with the Government (527). This speaks to the gap between the global perception of gender inequality in the region and the strength of women's work and contribution in Saudi and the GCC to eradicate trafficking and slavery. Interviewees did not communicate concerns about civil society and were positive about the support that existing organisations – and even individuals - offer. The main focus was on the ability to support women and share an understanding of their needs and stories. The evidence suggests that a successful and thriving civil society would be focusing on victim identification, exiting from trafficking/exploitation, and restoring psychological wellness (528).

Victims of sexual exploitation and sexual trauma struggle with dissociation, anxiety, anger, depression, self-mutilation, eating disorders, post-traumatic stress and other mental health concerns. The survivors struggle to obtain safe jobs, maintain stable housing, foster healthy relationships, and perform well in school (529). Similar issues are reported by people who specialize in working with sex trafficking survivors (530). The survivors should go through serious counselling by committed individuals to re-empower them and step away from the acts of sexual exploitation they have endured. Those victims that have been through the traumatic experience of sexual violence exhibit signs of post-traumatic stress disorder whether they have been abused themselves or have witnessed abuse of others. A specifically tailored

programme needs to be developed not just for victims of sexual violence in the GCC but potentially for those that have been victimized in the wider Middle East.

#### **6.4.10 Access to Justice: raising awareness amongst victims and promoting access to support for victims**

Human Rights Watch has suggested providing detailed guidance on the rights and responsibilities, as well as where to access support – this should be provided to people on arrival and to all employers (531). The Government and the UN will be working together to raise public awareness both in the sending countries and in Saudi Arabia. As discussed above, Saudi and the UN are introducing an initiative to be provide detailed guidance on rights and responsibilities to those entering the country (as well as to employers).

#### **6.4.11 Access to Justice: ensuring there are consequences for sponsors and raising awareness of their existence**

Further protection for victims could additionally be through protecting victims from being arrested, detained and deported (532), and offering immunity and the right of residency to women who are identified as having been trafficked or exploited (533). Another area to consider in relation to this – and recommended in *Mending the Protection and Prosecution divide* – is to ensure that crimes are prosecuted and that victim protection measures are in place to address the fear of being deported and the fear of incarceration (534). One issue to consider is establishing immunity for victims and considering adopting the Canadian approach of offering unconditional temporary residency but restricting permanent residency (478). Immunity would be complemented by ensuring anonymity for victims as well as protecting them from legal obligations regarding face-to-face events with the abuser. For example, holding procedures *in camera* as happens in Jamaica (479). In addition, offering victim restitution helps to protect them from the consequences of abuse and can also help to put victims in a better position to engage with the legal proceedings (although restitution should not be conditional on this) (535). These are not trivial measures to consider. As demonstrated in both the findings and the literature, victims are deeply distrustful of the legal system's ability to protect them and thus are at risk of re-traumatization (534).

#### **6.4.12 Access to Justice: protection for sponsors**

The interviewees called for protection for sponsors as well as victims. This is in recognition of the fact employers also have a lot of responsibility under the Kafala and means that they have



to bear the consequences of their sponsee's actions, even when the sponsee commits a criminal act completely outside the course of employment. Reappraising the role of the employer through law goes some way to addressing this (511, p.1). The provision of legal advice and protection could form one of the functions of intermediary recruitment agencies.

## **6.5 Policy Recommendations**

In light of the above considerations, concrete policy reforms can be identified. What follows are the recommended policy actions that derive from this study's conclusions. For the most part, the key driver of these reforms will be the Saudi Government. These reforms have been designed to be complementary to the practices already in development in Saudi, as discussed above. The largest area of suggested reform relates to migration; however, the importance of all three dynamics should not be underestimated:

### **6.5.1 Migration**

Drafting and implementing specific legal protections for domestic migrants, as well as amending specific protections to include domestic workers where at present they explicitly exclude them; detailed guidance on implementation of laws that promote rights and good working conditions; proactively investigating and implementing the labour law in order to eradicate continuing practices, such as passport retention; researching and developing reforms that address and embrace the integration of foreigners into Saudi and 'deep social stratification'; developing concrete plans for creating recruitment companies to mediate between employers and employees; and reviewing existing international anti-trafficking and labour treaties, organisations, and practices in order to identify ways that Saudi can support the international community, as well as educate about the realities in Saudi.

### **6.5.2 Access to Justice**

Developing mechanisms for embedding an understanding of victim's lives and journeys into policy and practice, such as training and civil society input into practice and policy formation; training on survivor strategies and the behaviours that may be linked to victimization so as to protect victims from prosecution or further marginalization through survival behaviours; mechanisms to examine and formally debate the law around hymenoplasty; detailed plans and implementation relating to victim identification, exit from trafficking/exploitation, and the restoration of psychological wellness; implementation and development of civil society organisations which can help women to access support; changing the law to protect victims

from arrest, detention, and deportation (immunity) and offering unconditional temporary residency; and, finally, the provision of victim protection measures.

### **6.5.3 Culture**

Strong partnering between experts (the government and civil society) and testing and the gathering of information about the impact of changes and the way knowledge and expertise is being used; religious scholars required to educate and change people's consciousness around Islam and slavery/exploitation; educational campaigns specifically targeted at the public (these are already planned with the UN), as well as employee education about rights and responsibilities and education for potential victims about protections, rights, and access to support; and creating a blueprint and mechanisms for working with countries of origin to raise awareness amongst victims before departure – exploring the possibility of embedding this into the functions of recruitment agencies in origin countries.

### **6.6 Suggested Future Research**

By reference to the proposed changes, there are areas of research that would complement their implementation, as well as areas of research that could be done immediately without the need for reforms to be already in place. In terms of immediate research, there is a need for information and guidance in relation to developing recruitment agencies that can act as intermediaries between employers and employees – for example, key questions would be: what works best in terms of practice? What provision is needed? Are there case studies which are relevant?

Research could evaluate and deepen the general understanding of reform: firstly, through crafting appropriate research strategies to raise awareness of the Kafala's problems and engage with the public consciousness and measure changes in attitudes over time; and, secondly, to identify measures to proactively enforce the law and provide stronger victim protections.

Finally, in the context of raising the level of sharing more information between government and civil society, and supporting civil society to thrive. Further research directed at the civil society sector should be supported to deepen the understanding of victims, their journeys, and how best to support them.

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# Appendix 1

## Interview Themes

### A1.1 Government Interview Pro Forma

Government officials required a set of questions in advance and so the interviews were structured in approach.

Topic: Current efforts, challenges and initiatives

- What are the efforts being made to deal with exploitation in the Kafala?
- What are the challenges that faces the government/public bodies in regard to exploitation in the Kafala, particularly sexual abuse, trafficking, and forced labour?
- What initiatives can be introduced?
- Who could be trained and are there any plans to train professional, the police, or other bodies?

Topic: Victim status and support

- What are the capabilities and resources available with the entities concerned with hosting and rehabilitating victims? What service provision is planned?
- What status and recognition do victims have? Are they treated as offenders or victims?
- To what extent there is a difference between the announced figures and cases dealt with by the concerned governmental authorities?
- What procedures are in place for supporting victims (such as a national referral mechanism)? What is needed?

Topic: Kafala law and policy

- Are there any substitute laws that the government will/would benefit from applying in order to enhance the procedures adopted for combatting exploitation in the Kafala?
- What role does Kafala law play in this exploitation? Also, in whether it is detected?
- Specifically, how does Kafala Law affect the expectations of women recruited to work as a domestic worker in the country?
- Will the country change Kafala Law? If the country does not tend to amend the law, what are the procedures and steps that can be taken to deal with and address some of the risks?
- How does this approach match with international treaties and the Palermo Protocol?



- Is there any contradiction between the GCC countries in dealing with human trafficking and domestic slavery? and what can be done to prevent these contradictions?

Topic: Saudi and the vulnerability of foreign migrants

- What attracts labour to come to Saudi?
- What factors affect how and why someone will be exploited in the Kafala?
- How can we work with countries of origin?
- What needs to be done in relation to public awareness?

## **A1.2 Practitioner Interview Pro Forma**

This is a topic schedule and therefore these are suggested questions around a theme. Each interview covered the core themes but with differences in the questions used and the 'flow' of the conversation.

Topic: Current efforts, challenges, and initiatives

- What are the current efforts to combat exploitation in the Kafala?
- What are the challenges that Governments/civil society face?
- What initiatives should be introduced?
- What laws should be introduced? Are there any currently being considered?
- What training is needed?

Topic: Victim status and support

- What resources are needed to support victims and why?
- What difference is there between what is really happening and what law and policy says should be happening?
- How do you view victims?
- How do you view employers?
- What are victim experiences of the Kafala?

Topic: Kafala law and policy

- What is missing in our approach to the Kafala?
- How can we reduce risk for both employers and victims?
- How do these issues fit into the international context?
- Topic: Saudi and the vulnerability of foreign migrants
- What attracts people to Saudi?
- How can we work with countries of origin?

- What needs to be done in relation to the public and awareness?

### **A1.3 Semi-Structured Interview Pro Forma: Victims**

This is a topic schedule and therefore these are suggested questions around a theme. Each interview covered the core themes but with differences in the questions used and the 'flow' of the conversation.

#### **BACKGROUND**

- Age, nationality
- Current circumstances – legal status, work, resources

Entry: Exploring why they came to Saudi.

- Before you entered Saudi, what were your circumstances?
- What changed for you once you came to Saudi?
- What is your 'story' (allow the interviewee to choose where they start)

Exploitation: What was the nature of the abuse or exploitation?

- How did your employer's – or people around them – treat you?

Attempts to leave

- Did you try to leave and get help? What happened?
- How many times did you attempt to leave?
- How did/does the thought of leaving make you feel?
- What made you start to think about leaving?
- What would/did need to change in order for leaving to be possible?
- How would you describe the process of getting help to leave?
- What barriers did you face?

After leaving

- Do you feel like that part of your life is over? When did you realize this?
- How would you feel about going back? Why?

### **A1.4 Information Sheet**

## **Information for participants and practitioners**

**Title of project:** Reforming the Kafala

### **About the research**

This research looks at the circumstances of women who have been exploited in the Kafala to understand what led to them coming to Saudi, what their experiences were in Saudi, and how they got support to leave their employment.

The aim of the research is to identify opportunities to better prevent exploitation and support women and to identify possible reforms in policy and practice in relation to the Kafala.

### **(For participants)**

#### **How I will work with you**

I would like to talk to you about your experience of exploitation in Saudi. Although I do invite you to talk about your past and your journey to this moment, you do not have to be involved and can stop anytime.

If you agree to being involved, you can still choose which questions you answer and ask me to delete anything you are uncomfortable with. You also have the right to take breaks as often as you need and to refuse to be recorded.

Anything you say to me will be kept completely confidential and anonymous.

If you would like to access formal support, I can give you information on how to do this. The only time that I may need to share any information is when there is a risk to you or someone else of serious harm. Should this happen I will discuss the issue with you before we take any action.

#### **How we will keep any information we discuss with you**

I will take out anything which may identify you personally and will store anything with personal details separate from other information.

Any information you provide to me will be stored in this way for the duration of the research and for a period of two years following the publication of any findings.

### **Research Consent Form**

*Please read the information carefully.*

I ..... have been invited by..... to take part in a research project involving reform of the Kafala. I have been given copies of the research aims and objectives and the policies governing how my information will be kept and used.

By signing below I give consent to take part in this research.

I understand that I may withdraw my permission at any time to take part in this research.

Research participant print name:	*SIGNED:	Date:
Researcher print name:	Signed:	Date:

## Appendix 2

### 15 Point Checklist for Thematic Analysis

Braun and Clarke's 15-point checklist for good thematic analysis to ensure quality.

<u>Process</u>	<u>No.</u>	<u>Criteria</u>
Transcription	1	The data have been transcribed to an appropriate level of detail, and the transcripts have been checked against the tapes for 'accuracy'.
Coding	2	Each data item has been given equal attention in the coding process.
	3	Themes have not been generated from a few vivid examples (an anecdotal approach), but instead the coding process has been thorough, inclusive and comprehensive.
	4	All relevant extracts for all each theme have been collated.
	5	Themes have been checked against each other and back to the original data set.
	6	Themes are internally coherent, consistent, and distinctive.
Analysis	7	Data have been analysed / interpreted, made sense of / rather than just paraphrased or described.
	8	Analysis and data match each other / the extracts illustrate the analytic claims.
	9	Analysis tells a convincing and well-organized story about the data and topic.
	10	A good balance between analytic narrative and illustrative extracts is provided.
Overall	11	Enough time has been allocated to complete all phases of the analysis adequately, without rushing a phase or giving it a once-over-lightly.
Written report	12	The assumptions about, and specific approach to, thematic analysis are clearly explicated.
	13	There is a good fit between what you claim you do, and what you show you have done / i.e., described method and reported analysis are consistent.
	14	The language and concepts used in the report are consistent with the epistemological position of the analysis.

	15	The researcher is positioned as active in the research process; themes do not just 'emerge'.
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Source: Braun and Clarke (n 310) p8. Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 Qualitative research in psychology p80.

### Appendix 3 Thematic Map

Name	Description
Challenges for Reform	Any barriers or challenges in relation to eradicating exploitation in the Kafala in Saudi Arabia
Economics	Challenges in relation to the economic drivers for Kafala, including the interests of employers
Perpetrator Awareness	Problems with people not understanding the law or what exploitation is - includes unintentional slavery/trafficking. Also perpetrator awareness of consequences
Power and Vulnerability	Any discussion of power and vulnerability in relation to the Kafala
Practitioner Engagement	Challenges and action in relation to raising practitioner awareness and promoting best practice, including how to foster a commitment to combatting exploitation
Prostitution and Sexual Exploitation	The specific barriers relating to sexual exploitation and abuse, including the sex industry
Public Awareness	Raising public understanding of and opposition to exploitation
Realities of the Kafala	
Crime or Criminalization	
Experiences of Migrants - Negative	
Experiences of Migrants - Positive	
Gap Between Law and Reality	
International problem not just Kafala	
Victim Journeys	
Background	
Experiences of abuse	

Name	Description
Finding support	
How they entered	
Justice	
Reasons for migrating	
Recovery	
Returning or staying	
Victim Awareness	Victim understanding of exploitation and ability to identify themselves as victims
Critical Systems Heuristics	A framework and questions to consider for reform
Sources of Control	Key decision makers and holders of resources - including the extent of control
Sources of Knowledge	Expertise and professionals, including the building of knowledge
Sources of Legitimacy	Who are the witnesses and stakeholders and how can their worldview be included
Sources of Motivation	Who will benefit, what is the purpose, and how will success be measured
Framework Themes	Relating to the conceptual model developed in chapters 1 and 2. The interlinking factors of gender, Islam, and slavery, as well as the key issues of migration, access to justice, and cultures.
Access to Justice	Includes both access to justice and support, as well as barriers to engaging victims in promoting justice
Victims as important witnesses	The need for victims to be supported in order to ensure prosecutions. Also, victim stories as essential to understanding the Kafala
Culture and Enablers	The way that culture shapes exploitation in the Kafala, including factors that enable exploitation or ideas and cultural practices that can lead to exploitation
Gender	Anytime that women are talked about as a group, as well as specific discussion of the dynamics of gender



Name	Description
Sexual Violence and Exploitation	Instances of sexual violence and exploitation in the Kafala, including attitudes to the same
Status of Women GCC	The position and status of women in the GCC. May be in relation to women's power and influence in civil society or their position as migrants and lower status workers
Gender and Slavery	Themes, events, or issues that combine slavery and gender
Islam and Gender	Themes, events, or issues that combine Islam and gender
Islam and Religion	Any mention of the influence of Islam or other religions
Migration	Any information on the process or experiences of migration
Labour exploitation	Any information on the process or experiences of labour exploitation
Migration Context	Background and context in relation to migration - the factors that help to shape migration journeys - that may include drivers or barriers to reform
Returning	Factors that arise in relation to migrants returning, or whether they should return at all
Status of Foreigners	How foreigners are treated or viewed (attitudes towards foreigners), including the extent to which they are integrated into society
Turning Points	Key points of change in the migration journey that may be an opportunity for intervention
Slavery	Any specific mention of slavery, including beliefs, cultural practices, and history
Slavery and Islam	Themes, events, or issues that combine slavery and Islam
Interviewee Information	Any background to the interviewee that is interesting or relevant
Quotes	Quotes that are useful or standout
Reform in SA	Current, proposed, and potential change in law, policy, and practice in SA
Civil Society Activities	Examples of civil society organisations and their activities to demonstrate possible functions of civil society

Name	Description
Multi Agency Approach	The need for or examples of a multi-agency approach
Current Actions	Reform that is currently in place
International activities	Activities that are focused on the international context or working with other countries
Working with countries of origin	Working in collaboration with countries of origin ('sending countries')
Progress with Reform	Progress or barriers to progress with reform
Reform - Action	Any action in relation to reform - such as changes in policy or practice. This may include actions already taken, ones being considered or committed to, or ones that are simply possibilities
Reform - Law	Any changes to the legislative framework or implementation of the law. This may include changes that have already been made, ones being considered or committed to, or ones that are simply possibilities
Research	Relevant research or research that is needed
Victim Support and Shelters	Specific mention of actual or possible reform in relation to provision of victim support and shelters
Engage with victims to reduce risk	Service provision that focuses on prevention and reducing risk - including any calls to providing more of this kind of provision
SA Laws and Policy	The legal and policy framework in Saudi Arabia relating to exploitation of migrants - this could be relating to human trafficking or labour laws
Commitment to Human Rights	Commitment to promoting human rights in Saudi and/or the GCC
Economics or Wider Interests as Focus	Preference for other interests over human rights issues, particularly economic factors
Rights Focused	Instances where interviewees or other stakeholders used a rights focused lens to understanding the Kafala (instead of being focused on other concerns)
Human Trafficking Laws	Trafficking and modern slavery legal and policy framework.

Name	Description
	including international laws
Implementation	Factors to consider to in relation to implementation of law and policy and/or analysis of its implementation so far
International Obligations	Discussion of international obligations and how these are are being met in Saudi and/or the GCC
Other Countries Law and Policy	Mentions of law, policy, and practice in other locations, including the GCC as a whole and specific countries within and outside of the GCC
Bahrain	
GCC	
Kuwait	
Qatar	
UAE	
UK	
Labour Laws and Policy	Law and policy that relates to labour and migration
Saudi Progress	Developments and progress in Saudi in relation to the Kafala
Debate on hymenoplasty	Discussion of hymenoplasty, particularly whether it should be debated with a view to legalizing it
Saudi Reputation and Standing	The way that Saudi is viewed internationally and/or the kind of voice that Saudi would like to have
Understandings and Definitions	The meaning of the Kafala and exploitation, as well as understandings of migration and labour exploitation. Relates to any mention of what these practices are or what they mean.
Defining Kafala	How the Kafala is defined, including whether or not the term 'Kafala' is actually used
Political and Ideological Position	Political and ideological ideas that underpin law, policy, and practice in relation to the Kafala
Understandings of Labour Exploitation and Trafficking	Ways in which labour exploitation and trafficking are conceptualized

Name	Description
Domestic compared to other exploitation	Specific ways in which exploitation of domestic workers is understood in contrast to other forms of exploitation
Exploitation due to labour market and economics	Analysis of the Kafala that focuses on labour market and economic factors in relation to exploitation
Systemic or individuals	Whether there is a focus on individual 'flaws' or systemic factors

## Appendix 4

### Summary Table of Gaps and Recommendations

Key theme	Interviewee suggested reform	Interviewee remarks/who contributed	Relevant guiding principle	Type of reform	Action and Gaps
Migration	Law and policy reform focused on labour exploitation with human rights principles	<ul style="list-style-type: none"> <li>- Government Officials</li> <li>- Practitioners</li> <li>- Victims</li> </ul> <p>‘One of the big challenges is people wanting cheap labour and being willing to exploit people. This is something that is completely unacceptable and we have to make it clear that this is against people’s human rights.’ (Government Official 6)</p>	<ul style="list-style-type: none"> <li>- Human Rights (to guide policy and practice)</li> <li>- Kafala journeys (to inform better implementation)</li> </ul>	Government and Civil Society Practice	<p>Several legal reforms that focus on human rights and migration. In particular ‘Abolishment of Sponsorship Provisions and Reforming the Relationship between the Employer and the Expatriate Employee 1429H / 2008AD’ and ‘The National Plan for Anti-Trafficking in Persons 1438-1441H / 2017-2020AD’ (which is now being updated in collaboration with the UN).</p> <p>Gap: 1. Stronger and specific protections of domestic workers (as below)</p>
	Law and policy reform that reduces employer control	<ul style="list-style-type: none"> <li>- Government Officials</li> <li>- Practitioners</li> <li>- Victims</li> </ul> <p>‘I would like to see ‘official’ recruitment providers that are vetted and help people find work and working with countries to raise awareness of this and of rights. My job is looking at how we can have more control and that is one thing that could help – not to eradicate trafficking but to help the experiences of migrants be better.’ (Government Official 2)</p>	<ul style="list-style-type: none"> <li>- Human Rights (to guide policy and practice)</li> <li>- Kafala journeys (to inform better implementation)</li> </ul>	Law and Policy	<p>A number of legal reforms have already been put in place, including removing the requirement for exit permits to be obtained with the consent of employers and improving working conditions. However, the improved working conditions largely do not apply to domestic workers.</p> <p>Gaps: 1. Extending legal protections and entitlements to domestic workers 2. Developing concrete plans for creating recruitment companies to</p>

					mediate between employers and employees 3. Developing mechanisms for embedding an understanding of victim's lives and journeys into policy and practice
Abolition of Kafala in practice and not just in name – including stronger implementation of policy and law	- Government Officials - Practitioners  'The Kafala doesn't really exist in name and in law anymore but its impact continues and the exploitation is a problem. We must raise awareness amongst the public and employers that exploitation will not be tolerated.' (Government Official 7)	- Human Rights (to guide policy and practice)	Government and Civil Society Practice  Victim Support Law and Policy	A number of the measures proposed in collaboration with the UN address the practicalities of implementing law and policy and ensuring that the Kafala is eradicated in practice. For example, there are plans for widespread awareness raising, engaging with civil society, and implementing a referral mechanism for accessing support and identifying victims.  Gaps: 1. Detailed guidance on implementation of laws that promote rights and good working conditions. 2. As above, creating recruitment agencies 3. As below, ensuring not just that there is awareness of rights but also that there are legal consequences for being a perpetrator	
Working with countries of origin to prevent people taking exploitative jobs	- Government Officials - Practitioners  'There is a gap for more coordination with origin countries though, as well	- Human Rights (to guide policy and practice) - Kafala journeys (to inform better implementation)	Government and Civil Society Practice	Gaps: 1. Creating a blueprint and mechanisms for working with origin countries to raise awareness	

		as even helping to protect women in the origin countries before they even come here' (Practitioner 8)	- Improving victim support		amongst victims before departure 2. Possibly developing awareness raising in origin countries as a function of recruitment agencies
Culture	Addressing reliance on and undervaluation of foreign workers, particularly women	- Government Officials - Practitioners - Victims  "I felt like, I am not important, I am foreign and a woman and I am not important. This was what they told me – not exactly with those words but this is what I knew to be true. I think. This. This is a problem. We have value. We have human rights. We need to be valued.' (Survivor 15)	- Human Rights (to guide policy and practice)	Government and Civil Society Practice Law and Policy	The Saudi Nationalisation agenda seeks to promote stronger opportunities for Saudi Citizens. Reforms to the law that protect migrants are described above but do not address the needs of many foreign migrant women as they are likely to be domestic workers. Gaps: 1. Protection of domestic workers 2. Reforms that address and embrace the integration of foreigners into Saudi and 'deep social stratification'
	Develop understanding of survival behaviours amongst practitioners and decision makers	- Practitioners - Victims  'We need more public awareness of the vulnerabilities of migrant workers, laborers, etc. Messaging that humanizes the issue of human trafficking and modern day slavery.' (Practitioner 1)	- Human Rights (to guide policy and practice) - Kafala journeys (to inform better implementation) - Improving victim support	Government and Civil Society Practice Law and Policy	At present, nothing planned specifically addresses incorporating an understanding of survival behaviours into policy, law, or practice. In fact, some Government Officials and Practitioners were adamant that there should be consequences for the criminal behaviour of victims. Gaps: 1. Training on survival behaviours 2. Law or policy that allows for discretion or protects victims of trafficking from consequences of their

					exploitation that are outside of their control
	Debate and develop the law around hymenoplasty	<ul style="list-style-type: none"> <li>- Government Officials</li> <li>- Practitioners</li> <li>- Victims</li> </ul> <p>'In my opinion and being a Muslim I would take the opinion of Sharia in this and I'm sure the fatwa for doing it or not will be different according to each case and its circumstances' (Practitioner 3)</p>	<ul style="list-style-type: none"> <li>- Human Rights (to guide policy and practice)</li> <li>- Kafala journeys (to inform better implementation)</li> <li>- Improving victim support</li> </ul>	Law and Policy Victim Support	Hymenoplasty is currently illegal but does occur. Gaps: 1. Mechanisms to examine and formally debate the law around hymenoplasty
	Reduce unintentional trafficking by raising public consciousness, particularly linking this to Islam	<ul style="list-style-type: none"> <li>- Government Officials</li> <li>- Practitioners</li> </ul> <p>'Additionally, there is hidden exploitation, with people not even realising that what they are doing is exploitation... Awareness raising is part of this but that needs to be the message coming from different places – civil society, government messages, religious scholars, the media etc.' (Government Official 4)</p>	<ul style="list-style-type: none"> <li>- Human Rights (to guide policy and practice)</li> </ul>	Government and Civil Society Practice	Gaps: 1. Religious scholars to educate and change people's consciousness around Islam and slavery/exploitation 2. Education campaigns specifically targeted at the public
Access to Justice	Developing civil society for victim support	<ul style="list-style-type: none"> <li>- Government Officials</li> <li>- Practitioners</li> <li>- Victims</li> </ul> <p>'I see the need for protecting the people that are affected by these issues and also for supporting them to stay if they do not want to return. That means that lots of different departments</p>	<ul style="list-style-type: none"> <li>- Human Rights (to guide policy and practice)</li> <li>- Kafala journeys (to inform better implementation)</li> <li>- Improving victim support</li> </ul>	Government and Civil Society Practice Victim Support	The Government has a strong commitment to strengthening civil society in Saudi and there is a strong contribution from female practitioners already in Saudi supporting victims. Gaps: 1. Detailed plans and implementation relating to victim identification, exit from



		need to be working together - for example creating more support services and shelters, training and raising awareness, the justice system.' (Government Official 2)			trafficking/exploitation, and the restoration of psychological wellness
Raising awareness and promoting access to support for victims	<ul style="list-style-type: none"> <li>- Government Officials</li> <li>- Practitioners</li> <li>- Victims</li> </ul> <p>'The first stage is that victims need to know how to access support. This means making it as easy as possible across different platforms.'</p> <p>(Practitioner 5)</p>	<ul style="list-style-type: none"> <li>- Kafala journeys (to inform better implementation)</li> <li>- Improving victim support</li> </ul>	Government and Civil Society Practice Victim Support	Saudi and the UN are introducing an initiative to provide detailed guidance on rights and responsibilities to those entering the country (as well as to employers), including where to access support.	<p>Gaps:</p> <ol style="list-style-type: none"> <li>1. Implementation and development of civil society organisations which can help women to access support</li> </ol>
Ensuring there are consequences for perpetrators and raising awareness of this	<ul style="list-style-type: none"> <li>- Government Officials</li> <li>- Practitioners</li> <li>- Victims</li> </ul> <p>'I am talking about consequences for people who exploit and enslave migrants once they are in the country. There has to be a very clear message.'</p> <p>(Government Official 2)</p>	<ul style="list-style-type: none"> <li>- Human Rights (to guide policy and practice)</li> </ul>	Law and Policy Government and Civil Society Practice	There have been prosecutions of exploitative employees.	<ol style="list-style-type: none"> <li>1. Changing the law to protect victims from arrest, detention, and deportation (immunity)</li> <li>2. Victim protection measures</li> <li>3. Unconditional temporary residency</li> </ol>
Protection for sponsors	<ul style="list-style-type: none"> <li>- Government Officials</li> </ul> <p>'This means that police and legal professionals need to know how to identify what is happening and how to help people. They also need to know</p>	<ul style="list-style-type: none"> <li>- Human Rights (to guide policy and practice)</li> </ul>	Law and Policy Government and Civil Society Practice	Legal reforms are reducing the role of the employer and so reducing the ties between employee and employer, which will protect employers from being responsible for all the acts of their employee.	<p>Gaps:</p>

		ways in which both employers and employees can be vulnerable – as employers can be victims of their employees because of the close ties with the employee.’ (Government Official 6)			1. Providing recruitment agencies that can act as intermediaries, protecting both employee and employer
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Source: author

