

# Griffith Asia Institute

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## Regional Outlook

TRANSNATIONAL FILIPINOS IN THE UAE:  
A COMPROMISE OF INTERESTS

Kristin Kamøy

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## About the Author

### **Kristin Kamøy**

Dr Kristin Kamøy (PhD Legal Sciences) is an interdisciplinary early career researcher who has a solid background in social sciences from both the United Kingdom and France. Currently, she teaches at the federal Zayed University in Abu Dhabi. She has lived and worked in West Asia as in the United Arab Emirates for close to seven years.

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# Executive Summary

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The Philippine state is the second largest emigration country in the Asia-Pacific region to migrate to destinations in the Middle East and the United Arab Emirates (UAE), after India. According to the Philippine authorities, the number of land-based Filipinos in the Emirates are 227,076 persons in 2015 compared to 48,076 land-based persons in 2005.<sup>1</sup> In 2005, the UAE was the third most popular destination for land-based Filipino labour after Saudi-Arabia and Hong Kong. Filipinos flock to the UAE in growing numbers. The reasons behind the Filipino migration to the UAE might appear to be the same as other Gulf states, such as higher salaries and network, but how the Philippine authorities have worked to protect its citizens in the UAE since the mid-1990s illustrates how a migrant's origin state appears to balance the need for remittances against the aim to protect and assist its citizens working abroad.

Before 1995, the Philippine authorities promoted export of its labour, but three stories of abuse of Filipinos working in Asia in the 1990s made protection of migrants crucial. One of these stories occurred in the UAE. Since 1995, the Philippine authorities have promulgated several laws related to the issue of working migrants, worked with the Emirati government to attempt to monitor and improve the working conditions of its labourers through Memorandums of Understanding. They made use of its mission abroad in the UAE and participated in regional and international organisations related to the issue. However, both governments seem to acknowledge that the price of protection cannot be so high that Filipinos fail to be attractive labour in the UAE. In brief, the Filipinos working in the UAE illustrate how complex the issue of migrant rights may be in today's globalised world where inequality between states and persons results in compromises.

# 1. The Philippine government and Overseas Filipino Workers in the United Arab Emirates

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The Philippine government effort to protect its citizens working in the UAE is shaped by the government's apparent reliance on remittances and the UAE's reliance on transient foreign labour in legal terms of the jurisdiction.

In the UAE, 88.4 percent of the population are non-citizens but a break-down of nationalities is challenging to source publicly due to the sensitivity of the demographic issues<sup>2</sup> with a minority Emirati population. In addition, statistics on Filipinos in the UAE are unclear as several Filipino authorities supervise the migrants, resulting in fluctuating numbers<sup>3</sup>. However, the UAE has been the top destination for Overseas Filipino Workers (OFWs) since the beginning of the 1990s. As an illustration, in December 2013 there were approximately 822,410 Filipinos living in the UAE<sup>4</sup>. The perception is that Filipino maids make up the bulk of the migrant workers in the UAE, but in reality, only around 10 percent of the Filipinos are domestic workers.<sup>5</sup> In the scant literature on Filipinos in the Arab Gulf and/or the UAE, the maids dominate,<sup>6</sup> mainly due to the intimate nature of their work and the challenge in legislating their working conditions in the private sector. Also, no substantial research exists on Filipinos from other social backgrounds in the UAE, nor of other Asian nationalities such as Indians.<sup>7</sup> The level of remittances to aid the families left behind and boost the Filipino economy appear to explain the government's interest in Filipinos working abroad. Filipinos in the UAE remitted a total of \$1.9 billion from January to November 2016 which makes the Filipinos in the UAE the second top income source in the Gulf Cooperation Council (GCC) region.<sup>8</sup>

In the Emirates, a non-citizen needs to work to be able to reside (or be sponsored by someone e.g. a husband who is employed), and this system is called the work-permit sponsorship system (kefala). The Emirati authorities have developed this system in order to balance their need for labour with the need to protect the rights of a small national population. The first objective of this working paper is to describe the sponsorship system for work in the UAE in law, its origins in Bedouin society and how it works. Other laws, such as the Federal Labour Law of 1980, add to the conditions of the working Filipinos in the UAE but the sponsorship system is the basic structure shaping their stay. The second objective is to illustrate how the Philippine authorities have dealt with its citizens abroad in general, and specifically in the UAE, through a Memorandum of Understanding between the Philippine government and the Emirati government and how the Filipino missions in the UAE has worked to protect or assists its citizens. Also, Filipino measures through regional initiatives and international fora such as the UN is described briefly to show how the issue of migrants seems to be on the Filipino agenda. Finally, a third objective is to show how the Filipino authorities' need to protect its citizens is balanced against the need for remittances throughout the recent decades but with a shift from promotion of migration to work in the 1970s and 1980s to protection since the mid-1990s.

## 2. The Sponsorship for Work in UAE Law

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Every non-citizen working in the UAE needs to be sponsored or guaranteed financially for by an employer creating invisible bonds between the employee and the employer regulating immigration for work in and out of the state.

This system of sponsorship for work permits (*kefala*<sup>9</sup>) is documented in the Federal Law on Entry and Residence of Foreigners of 1973<sup>10</sup>, the Ministerial Decision issuing the implementing regulation to this federal law<sup>11</sup> and the Cabinet Decision Concerning the Regulation of Supply and Recruitment of Foreign Workers of 1977<sup>12</sup>. This Cabinet decision introduces the idea of the employer as “legal representative” (*kefeel*) in article 7. This federal law declares an alien granted entry to work with a specific employer means the “holder may not work with another individual or establishment unless with his or its written consent” (article 11). This means the employer has exclusive rights. An alien can obtain a resident permit for maximum three years (article 17) but this permit can be cancelled. The Emirati authorities reserve the right due to “public interest” to “at any time cancel any visa or entry permit or residence permit prior to its expiry date” (article 20). The provision is silent on what constitutes public interest.

Additionally, a resident permit expires after thirty days. Staying illegally may result in “incarceration” for three months (article 21). The alien may also be deported afterwards. Furthermore, an expatriate with a valid resident permit may have no legal right to stay. An alien can be deported according to article 23 (with a resident permit “in the following instances: a - When the alien is condemned by a court judgment and the court recommends his deportation b - If the alien has no evident means to earn his living. c - If the alien’s deportation is considered by the Security authorities as required by public policy, public security or public morals”). Again, the provision is silent on what may constitute reasons of public concerns. Any expatriate appearing to challenge the UAE laws may be deported. In addition, “the deportation order may include the members of the alien’s family who are under his support” (article 24). This put extra pressure on an expatriate with family to behave in a legally acceptable way. Some non-citizens are exempted from the legal requirements of sponsorship due to for example “courtesy of nations” such as GCC citizens (article 37 (e)). It seems the law differs based on a person’s legal standing.

The Minister of Labour Saqr Ghobash, called the *kefala* an “admission policy”<sup>13</sup> in an interview in January 2016. He asserted: “*kefala* is not unique to the UAE, or the GCC”. But: “unlike other countries that administer similar employment-related temporary residence programmes in parallel with other schemes, including permanent residency schemes or programmes that offer paths to permanent resident, the UAE immigration code does not provide for such alternative programmes”.

Several other ministerial resolutions deal with employment of non-citizens and support the labour law<sup>14</sup>. Some of these are available publicly and others are not. The *kefala* seems to be codified by law dating from old Bedouin<sup>15</sup> custom, where strangers were given protection for a specific reason, but few rights seem to be a foundation stone in the *kefala* system.

## The Historical Background for the Sponsorship

The social anthropologist Anh Nga Longva<sup>16</sup> is one of the first Gulf researchers who describe *kefala* and how it works in neighbouring Kuwait from the perspective of the sponsor, the sponsored, and the state. Longva argues the noun in Arabic comes from the root k-f-l. As a result, the meaning can be to feed or provide for, to vouch for or to be the legal guardian of (*kefeel*). The duality of, to provide for, and to be the legal guardian, provides insight into how Gulf nationals frame their relations with migrants, according to Bahraini labour market researcher Mohammed Dito<sup>17</sup> writing on the Gulf states as transit states in labour. Others like the anthropologist Andrew Gardner<sup>18</sup> working specifically on Bahrain adds that as migration to the Gulf region increased this traditional way of incorporating foreigners was made into law and “state-based system for governing foreign labour in the Gulf”<sup>19</sup> when the oil industry started. In the UAE, immigrants were economically integrated by the 1920s, but as UAE historian Frauke Heard-Bey describes they were socially and legally outsiders meaning the exclusion was there<sup>20</sup>. However, the custom was codified initially after independence. The regional expert Mehran Kamrava<sup>21</sup> in his examinations of the causes, nature, processes, and consequences of labour migration to the Gulf states that the point about *kefala* is that it “fundamentally shape foreign resident’s experience in the Gulf”, not whether the Gulf states created it on purpose or if it came about due to their “limited capacities”. Yet, as anthropologist Neha Vora<sup>22</sup> working on middle-class Indians in the UAE observes, Gulf scholars have focused too much on the citizens as sponsors and non-citizens as sponsored, as some national groups like for example Indians do act as sponsors too due to their silent citizen partner in business. Thus, these Indians “legitimize the state and perform citizenship in Dubai through their governance over the Indians and other noncitizens employees”<sup>23</sup>. So, some non-citizens act as sponsors by proxy for their citizen business partners. As a result, certain expats upheld the sponsorship system through managerial positions on behalf of the Emirati state and the Emirati *kefeel*. From the description of the imbalance of power in the work-permit sponsorship system it should be apparent that even highly skilled expatriates may suffer.

## Sponsorship and All Migrants

At first glance, it might seem like low-skilled workers only are subject to the *kefala* but the philosophy of the *kefala* affects all foreign workers. Yet, as Andrew Gardner acknowledges from neighbouring Bahrain: the middle class with more resources, strategic options and cultural capital “also faces the structural violence endemic to the matrix of the *kefala*”<sup>24</sup>. For instance, the employee may consent to change of contract content under coercion<sup>25</sup>. If the person wants to continue to reside, there appears to be few other options. An employer will cancel the permit to reside immediately as the law requires notice within 48 hours of the termination of the employment relationship. This is according to article 16 in the federal law on entry and residence of aliens of 1973. This means the ex-employee has thirty days to find new employment (article 21). Certainly, the middle-class employees can “mitigate the impact of this dominance” as Gardner emphasizes, but *kefala* still shapes their lives. The sponsor’s power is situated in the work contract, the salary, the non-financial benefits, the hours and the holidays. Work contracts may explicitly state that the employee cannot work for competitor for up to a year<sup>26</sup>. The salary can be held back for months<sup>27</sup>. Little is known about how middle-class employees of any nationality view the *kefala* in the UAE and its conditions as scant research has been conducted on their working conditions<sup>28</sup> due to the sensitivity of the issue.

The 1970s saw an increase of migration from the Asia-Pacific region to among others the Middle East including the Gulf and the UAE<sup>29</sup>. Among Asians arriving were Filipinos. Equally important, the Emirati government actively searched for alternative migrant labour to replace the Arab migrants after the first Gulf War (1990-1991) due to



security concerns<sup>30</sup>. In addition, Asians were considered cheaper, easier to manage, easier to dismiss and more reliant than their Arab counterparts<sup>31</sup>. Thirdly, Asians seem to accept their transient status leaving family at home. Finally, they were not Arabs and could not claim rights based on Arab solidarity. In regard to the Filipinos, they constitute the fourth largest group of Asians working in the UAE after Indians, Pakistanis and Bangladeshis<sup>32</sup>. How the Philippine government learnt that the safety of their citizens had to be protected in the UAE under the sponsorship system in employment is illustrated through the government's shift from a promotion of overseas work to more focus on protecting its citizens due to domestic pressure after abuse internationally.

### 3. Labour Export: From Promotion to Protection

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Against the backdrop of economic hardship, President Ferdinand Marcos (1965–1986) formalised the export of Filipino labour in 1974<sup>33</sup> as part of his strategy to create an export-oriented economy to please international lenders. He announced the Labour Code of the Philippines, Presidential Decree No. 442 making sure that the state had monopoly on exporting labour (Articles 14 and 15)<sup>34</sup>. Also, the Code made remitting of foreign exchange earnings mandatory for Filipinos working abroad (Article 22). But, the authorities soon realized they were unable to manage the demand for work abroad and through the Presidential Decree No. 442 in 1978 it granted the private sector the right to recruit and export labour. The authorities kept the privilege of promoting and regulating<sup>35</sup> the labour. In addition, the authorities established several institutions to manage the migrants. First, the Marcos founded a Commission for Filipinos Overseas (CFO) to oversee for example the health of migrants in 1980. Furthermore, in 1982, the Philippine authorities established the Philippine Overseas Employment Administration (POEA) regulating and licensing the recruiting agencies. POEA reports to the Ministry of Labour. However, the Philippine state policy of promotion of overseas employment to create economic growth would come to an abrupt end after three prominent cases involving Filipinas abroad forcing the President to care more about migrant Filipinos. One of these three cases occurred in the UAE in 1995.

After a murder of a Filipina “entertainer” in Japan in 1991 and a hanging of a Filipina maid in Singapore in 1995, the story of Sarah Balabagan in the UAE hit the headlines internationally in 1995<sup>36</sup>. She was a fifteen years old maid who was raped by her eighty-five-year-old employer. When he tried to rape her again she killed him. She was sentenced to seven years in prison for voluntary homicide but after the appeal she was sentenced to death. The Emirati President Zayed commuted the death sentence and she was beaten 100 times with a stick and condemned to a one-year prison term. These stories of female abuse abroad put the protection of Filipinos abroad at the top of the then-President Fidel Ramos (1992–1998) agenda and he announced the Republic Act 8042 of 1995 on Migrant workers and overseas Filipinos. The law acknowledges the contribution of remittances but emphasized that “the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated” (Sec.2 (c)). Also, the law sets conditions for the location for deployment such as the existence of laws protecting migrants (Sec. 4 (a)). Equally important, the law created the Overseas Workers Welfare Administration (OWWA) which works to facilitate reintegration of migrants upon return. At the same time, the embassies and consulates stepped up their work for migrant’s rights. The Philippine Overseas Labour Offices (POLO) supervises the contracts and there is a POLO office in the main destinations for OFW’s such as Dubai. In addition, the Philippine authorities promulgated a Republic act on trafficking in 2002<sup>37</sup> and it amended section 23 of the Migrant Act of 1995 in 2006<sup>38</sup> aiming to regulate further private sector recruitment of workers. In these legal initiatives, the authorities prohibit recruitment to sex work for example indicating the apparent local link in exploitation of Filipinos overseas (section 4) not clear. But, the Philippine authorities took further steps to protect its citizens on the back of the need for remittances. The authorities worked with the Emirati authorities through bilateral agreements intending to create minimum standards for Filipinos working in the UAE.

In 2007, the Philippines and the UAE signed the first Memorandum of Understanding on land-based manpower based on the principle of ‘mutual benefit’<sup>39</sup> recognising the

interests at stake. In other words, the Philippines government wanted to protect its workers but not at the cost of employment and the remittances benefitting the Filipino economy while the Emiratis wanted a steady supply of temporary Filipino labour on its terms. The MoU shows how both authorities defended their concerns as the Emiratis ensured that stay is for a limited period of time (Article 2) and the Philippine authorities made sure “the right to remit” (Article 9) was included<sup>40</sup>. The MoU was intended to be in force for five years (Article 14) but was in force until 2013 and new negotiations. In addition, the Philippine government signed another MoU with the UAE in September 2017 on domestic workers against the backdrop of the new federal Emirati law on such workers<sup>41</sup>. The MoU is not publicly available but it deals with standard contracts and the prevention of double contracts as it stipulates a UAE model contract for domestic workers and that the contract first will be signed when the worker arrives in the UAE. The MoU ended what some observers have called a “ban” on Filipinos arriving from the Philippines through agencies to work in the UAE as the Philippine administration tried to control how its citizens were treated. But, Manila refusal to stamp new contracts created worse conditions for some Filipinos as they would arrive on a tourist visa to seek work outside any monitoring. However, the Philippine diplomatic network in the UAE has also taken steps to prevent exploitation of migrants, especially domestic workers.

The Philippines Embassy in the federal capital Abu Dhabi in the UAE tries to prevent abuse of its citizens offering services such as temporary sheltering of runaway maids and advise to skilled workers<sup>42</sup>. Until the new law on domestic workers of September 2017 was promulgated, domestic workers were outside the law in the UAE meaning they had no legal rights or protection. In cases where domestic workers suffered abuse they may run away from the employer and ran the risk of becoming illegal migrants as their sponsor would cancel their visa to stop the legal responsibility of the sponsor towards the state. The Philippines Embassy offers settlement of cases for run-away domestic help where the authorities inform the sponsor that the worker is under the custody of the Embassy and negotiates outstanding payments and repatriation after passport is obtained. Also, the Embassy may provide assistance with filing cases against the sponsor if legal intervention is needed. Finally, the worker may receive assistance with new travel documents if the sponsor does not return them. No statistics exist in public on the number of maids using the shelter. But in 2012, the shelter with a capacity for fifty persons received an average of a hundred domestic helpers per month<sup>43</sup>. Skilled workers may receive assistance from the Embassy as well but they seem to be assumed to be more proactive on their own behalf than a domestic worker. For example, a skilled worker will go to the UAE Ministry of Labour on his or her own to file formally a case against the employer. Furthermore, the Philippine government has worked alongside other source states regionally to protect and assist its citizens working in among others the UAE. These states first joined forces in 2003 in Sri Lanka through the regional consultative process on overseas employment, the Colombo Process. Today both recipient and source states in Asia meet through the Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia or the so-called Abu Dhabi Dialogue, which took over the Colombo Process. The UAE government initiated the AD dialogue in 2008 to facilitate cooperation on temporary contractual labour<sup>44</sup> as one of the top receiving migrant labour states globally. The Philippines is one of the ten original source states participating in the Abu Dhabi Dialogue with ten labour receiving states including the Arab Gulf states, Yemen, South Korea, Singapore and Malaysia. However, the Abu Dhabi Dialogue is a forum and fails to be a regional lawmaker through treaties so its declarations indicate good intentions but cannot be enforced legally. For example, the fourth Abu Dhabi Dialogue Consultative Ministerial Meeting in Colombo, Sri Lanka, in January 2017 announced four declarations on contractual labour such as on recruitment but the challenge is to create national law in each state and to enforce the law. Against the background of domestic, bilateral, local and regional initiatives to protect, the Philippine government has voiced its concerns about migrants in the UN alongside other source states.

## 4. International Forums: Attempts to Influence

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On the international level, the Philippine government has stated how the sponsorship system for work in the UAE may affect its citizens in the fora of the UN during the Universal Periodic Reviews (UPR). In regard to the UPR's, the Emirati government has welcomed peer review of its human rights record through the UN's Human Rights Council<sup>45</sup> and its UPR<sup>46</sup> three times (2008, 2012 and 2017) like all UN members. First, the cooperative mechanism of the Universal Periodic Review (UPR) monitors rights in every member state through peer review and the objective is "to improve human rights on the ground"<sup>47</sup>. The basis of the review is the UN Charter, the Universal Declaration of Human Rights and rights treaties the state has agreed to<sup>48</sup>. A review of the state takes place in the UN in Geneva where states may ask additional questions<sup>49</sup>. A state is expected to follow-up the UPR by implementing the recommendations accepted<sup>50</sup> but there is no way to enforce recommendations. The Philippine government made two recommendations in the most recent final report publicly available on the UAE in 2013. First, the UAE should implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) of 1990 and the ILO Convention No.189 or the Domestic Workers Convention of 2011, according to the Philippine government. Nothing is known publicly about the Emirati state's declination to consent to the ICMW but the demographic situation in the jurisdiction with citizens constituting between 10-20 percent of the population might illustrate the hesitance<sup>51</sup> to grant rights to migrants. A total of 48 states have ratified the ICRMW with the Philippines among these, but no European state nor the USA<sup>52</sup>. The countries that receive migrants searching employment have failed to give consent just like the UAE to protect migrant rights. In brief, the UAE is in line with any other migrant receiving state. In regard to the ILO Convention or the Domestic Workers Convention, nothing is known publicly on the lack of consent but domestic workers were outside the labour law in the UAE until September 2017 when the federal law No. 10 of 2017 on support service workers or domestic labour law was announced indicating that this issue is challenging for the authorities. Also, the convention is ratified by only 24 states and the majority of these are migrant-sending states except for some European migrant-receiving states like Germany<sup>53</sup>. Secondly, the Philippine government stated that the UAE should "step up efforts" to amend the Federal Law 51 of 2006 on combating human trafficking to align it more with the Palermo Protocol. Human trafficking may affect Philippine citizens in the UAE as persons arrive for contracted employment failing to materialize or proving to be different than agreed upon initially or on different conditions and suffer abuse being forced into illegal work such as sex work as other Gulf scholars like Pardis Mahdavi has described<sup>54</sup>. The UAE amended the law in 2015 to make it more in line with the Palermo Protocol as mentioned during the second UPR in 2013<sup>55</sup>. But the Philippine government has taken more steps in international fora to raise its concern for its migrants in the Emirates.

The Philippine authorities state have challenged the UAE regarding the sponsorship system through their representatives on monitoring committees of UN treaties that the UAE has consented to. As an illustration, The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 and its monitoring committee concluded in 2015 on the state of the treaty in the UAE that it urged the state to end *kefala*, to enforce prohibition of passport confiscation and to punish abusive employers<sup>56</sup>. In regard to the confiscation of passports, the UAE Constitution grants freedom of movement to citizens within the limits of law (Article 29) but the laws related to *kefala* and the federal labour law of 1980 fails to mention freedom of

movement for non-citizens. The Emirati government has stated that retaining passports of non-citizens employers is illegal<sup>57</sup> but this is challenging to enforce due to the imbalance of the sponsorship system. Yet, it seems that un-skilled labour has struggled more with passport confiscation than highly- skilled labour. Finally, the issue of abusive employers is mainly linked to domestic workers and the new federal law prohibits this but the private nature of the workplace makes it challenging to monitor the work conditions.

## Conclusion

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The sponsorship system affects all Filipinos working in the UAE. The Philippine authorities have worked to protect its citizens abroad, specifically in the UAE. The Philippine authorities' dual need to market its labour internationally due to its financial reliance on remittances and its wish to protect shows how contractual migration to work is affected by contradictory forces. The Philippine state is one of the large migrant sending states in volume of the Asia-Pacific region alongside Indonesia and Vietnam<sup>58</sup>. However, how the Filipino authorities have worked on several levels and on different arenas simultaneously indicates the difficulty of creating conditions that are acceptable for both the sending and receiving state in the area of migrants. Certainly, in a globalised world where the information about possibilities elsewhere is easier available to those that have the resources to make use of them the issues of the price of protection and the price of granting rights is here to stay on the international agenda.

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