

The kafala system in Qatar, an incomplete reform?

The kafala system, a modern-day slavery system in the Gulf

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The *kafala* (sponsorship) system is the cornerstone of the legal framework regulating migrant workers' labour contractual conditions in the Gulf Cooperation Council (GCC) monarchies – the United Arab Emirates (UAE), Kuwait, Oman, Bahrain, Saudi Arabia, and Qatar.

Starting from the linguistic aspects, in the Arabic language, the word *kafala* has a dual meaning because it refers to elements of tribal and legal Islamic tradition. From one side, it means “to guarantee” (*daman*) and it expresses the idea of “vouch for” someone or something when dealing in economic affairs. From the other one, it signifies “to take care of” (*kafil*) and it indicates the behaviour to adopt when interacting with someone that it is not an independent or autonomous actor – like minors.

The comparative examination of the legal framework of the sponsorship system of the GCC members reveals that each country has developed its own specific regulations; however, the *kafala* system – conceptually speaking – has the same characteristics across the Gulf. As a matter of fact, it is built on the idea that a foreign worker necessarily needs a *kafeel* (sponsor) to enter the country's borders. In this regard, it is not the central government who will provide the migrant with legal status but, on the contrary, the authority regulating the migrant's formal condition is delegated by the state to the sponsor. In this case, it is the sponsor – who generally is also the employer – that have complete responsibility for all those matters which concerns entry permits in the country of destination, renewal of resident permits or working visas, termination of employment, transfer to a new employer, and exit permits from the country of destination.

Moving from what it has been outlined above, the *kafala* system condemns foreign workers to a condition of total submission to their sponsors by exposing them to a double form of exploitation. From one side, migrants depend on their employers for receiving their salary; while from the other one, migrants are vulnerable to them for having approved their legal residency status in the country. In this context, what emerges it is the fact that the employer-employee relationship is entirely unbalanced, with the former holding an inordinate power on the latter.

According to Professor Anh Nga Longva, the *kafala* system condemns foreign workers to a third form of exploitation. As a matter of fact, by forcing migrants to renounce their individual rights and by delegating them to their employers, foreign workers are bound to fall into a dramatic impasse where their duty-bearers and their rights-abusers are the same people.

Moreover, employers – due to their dominance position – are likely to force their employees to obedience by recurring to several illegal and harmful practices like confiscating passports, imposing the payment of recruitment fees, abstaining from regularly paying the salary, and threatening migrants to arbitrarily denounce them to the state authorities for non-compliance to their duties.

Furthermore, even though some efforts have been made by the GCC countries to address the issue of the migrant workers' exploitation through the implementation of labour reforms, the overall situation remains critical. According to a Human Rights Watch published in August 2020, "*the kafala system remains an inherently abusive system for migrant workers*" because employers still consider foreign workers as a cheap and productive labour force which – despite the institutional efforts done in this way – lacks an accountable and reliable rights protection system.

The Qatari reforms: an evolving path

UN-family organisations, migrants' rights advocacy NGOs, and civil society associations, all welcomed the Qatari reforms – announced on August 30 by the Ministry of Administrative Development, Labour and Social Affairs (MADLSA) and formalised on the official gazette published on September 8 – which significantly reshaped the legal framework regulating the working as well as the living conditions of migrant workers in the country.

In this regard, firstly Qatari authorities abolished the 'no objection certificate' (NOC) clause – which forced employees to obtain their employers' consent when changing jobs – and secondly introduced a minimum wage for all kind of workers regardless of sector and nationality. Moreover, not only do the new amendments represent a substantial innovation in the Qatar labour architecture, but also constitute a significant success at the regional level. As a matter of fact, from one side Qatar is the first country in the Gulf to remove the NOC clause, and from the other one, it is the second country – after Kuwait – to establish a minimum wage for migrant workers.

However, before moving on analysing the amendments' details, the exceptional nature of these reforms requires to take a step back to shed light on the reasons as well as the processes that underpinned the Qatari reform.

Since the oil boom in the 1970s, the country has recorded exponential growth in its total population – including both Qataris and foreigners – which increased from 111,113 in 1970 to 2,545,820 in 2017. Besides, what it is worth knowing it is the fact that the greatest boost in population growth arrived from non-national residents whose percentage on Qataris rose at an impressive rate during the last three decades, with the formers representing the 87.3 per cent of the total population in 2015. Besides, according to the Human Rights Watch report "*How Can We Work Without Wages?*", it emerges how migrant workers represent approximately 95 per cent of the Qatari total labour force. Therefore, it is evident how foreign workers have increasingly contributed to shaping the demographic outlook of Qatar.

According to recent calculations, Qatar recorded a population of 2.8 million people in 2019, of whom about 89 per cent are expatriates. The foreign population may be divided in two main groups: the craft and manual workers and the "urban" population. The formers, which are estimated to constitute roughly the 60 per cent of the expatriates, are usually employed in mega-development projects – as the World Cup's construction sites – and they are generally young (20-49 years of age), male, and single. While the latter – representing the remaining 40 per cent – is constituted both by people working as professionals or employees in the private or governmental service sectors and by their families.

In addition, it is worth noticing that Qatari demographic outlook shows two peculiar aspects: firstly, the female percentage on the population is extremely limited, by accounting for only a quarter of

the total population; secondly, Qatar's population is predominantly young with only 2 per cent being over 60 years of age.

Besides, as far as expatriates' communities are concerned, Indians represent the most numerous one, by accounting for the 28 per cent of the total population. Then there are Bangladeshis (13 per cent), Nepalese (13 per cent), Egyptians (9 per cent), and Filipinos (7 per cent).

For decades, the harnessing working conditions afflicting migrant workers in Qatar did not receive particular attention at international level, and the political agenda of several international organisations often overlooked the debate about the implementation of effective policies aiming at protecting exploited workers. However, the situation changed after December 2010, when the Fédération Internationale de Football Association (FIFA) awarded Qatar of the right to host the World Cup in 2022. Since then, international scrutiny has exponentially grown because of the multibillion-dollar contracts for infrastructure and construction projects linked to the World Cup. As a matter of fact, not only did this worldwide sporting event require the construction from the scratch of seven new stadiums, but also imply the realisation of parallel infrastructure projects like the Doha Metro and the *Hawad* International Airport - which cost \$36 billion and \$16 billion respectively. As a result of this construction fever, the number of foreign labourers employed in the Qatari construction sector increased from roughly 500,000 to almost 800,000 between 2010 and 2015.

The growing international attention to the labourer's conditions in the construction sectors forced the Qatari authorities to undertake gradual reform processes aimed at improving the working standards for migrant workers in the country.

In this regard, the first step taken was under the initiative of the MADLSA with the introduction of the new regulation: the Wage Protection System (WPS), which came into effect on 18 February 2015 under Law No. 1 of 2015. According to the Article 1 of the Ministerial Decision No. 4/2015, *"the aim of the programme is to ensure that employers are obliged to pay the wages of workers who are subject to the Labour Code within the prescribed deadlines, in accordance with their contracts and the regulations in force in the State"*.

The purpose of the reform is to address two issues: non-payment of workers and wage disputed between employer and employee. The WPS tackles these problems by obliging all employers covered by the Labour Law to transfer their employees' wages through Qatari banks, in Qatari Riyals, within seven days of their due date. As a matter of fact, by adopting this practice, the payment of wages is checked by a special unit inside the WPS framework, whose task is to verify the wages' payment adherence to the actual legislation. The merits of the WPS consist in the fact that not only does it force employers to pay salaries directly to the employee's banking account, but also to respect a deadline when doing it.

However, even though over 1.66 million of the 1.71 million of the eligible workers are registered in the WPS, wage abuse practices are still far too common for five main reasons. Firstly, not all Qatari enterprises and workers have registered to the WPS. Indeed, specific vulnerable categories – as migrant domestic or agricultural workers – are not regulated by the Labour Law, and thus they are excluded from the WPS. Secondly, the WPS' operating procedures are not able to detect some types of wage abuse – as underpayment or non-payment of overtime hours. Thirdly, penalties for non-

compliance are not heavy enough to act as a fully effective deterrent discouraging employers' violation. As a matter of fact, the foreseen penalties are a maximum prison sentence of one year and a fine of not less than QR 2,000 (\$549 USD) and not more than QAR 10,000 (\$2746 USD). Fourthly, employers are not new at preventing migrant workers from withdrawing their salaries from the ATMs by withholding the employees' debit cards. Finally, the WPS Unit is understaffed, whether compared to the huge amount of work that it must accomplish. Therefore, employees whose salaries have not been paid for months may encounter further delays before seeing their practices analysed.

Besides, in 2015, Law No. 21 of 2015 aimed at abolishing the *kafala* system but, on the contrary, it resulted in being a cosmetic reform. As a matter of fact, it only substituted the term "sponsor" and "sponsorship" with "recruiter" and "responsibility" without addressing the disproportionate power of control hold by the employer on the employee.

However, to avoid possible misunderstanding about the idea of sponsorship, it is important to shed light on the fact that this concept – as a mechanism managing the regular entry of a foreigner in a state – is not necessarily an instrument of exploitation. As a matter of fact, the Canadian government, thanks to the Immigration Act issued in 1976, established a legal framework allowing private citizens to sponsor the refugees' entry in the country – the policy is known as *Private Sponsorship of Refugees* (PSR) programme. The strength of this practice is due to the well-structured and highly regulated selection's methods of the sponsor who must adhere to high standard criteria. In addition, not only are the sponsor's duties well-defined, but also the sponsor's ability to effectively fulfil his obligations towards the sponsored person is checked and tested in advance. Therefore, the concept of sponsorship may represent a viable instrument whether accompanied by both a clear definition of the sponsor's duties and effective's monitoring mechanisms.

As far as Qatar is concerned, the reforms' path recorded a significant acceleration after the Qatari decision to establish a technical cooperation agreement with the ILO in October 2017. In this regard, the new ILO-Qatar partnership led to the three main achievements in 2018. Firstly, the residency law was amended, and the exit permit was abolished. By doing this, foreign workers covered under Labour Law No. 14 of 2004 were no more required to present their employer permission when leaving the country temporarily or permanently. Secondly, a new mechanism – the Labour Dispute Resolution Committees (LDRC) – was established both to accelerate the litigation process on labour disputes and to address claimants' grievances through decisions with executory force. Finally, the Qatari authorities created the Work Support and Insurance Fund (WS&IF), which aims at providing financial relief for those workers who have won their cases at the LDRC by shielding them from the negative impact of unpaid or overdue wages.

A possible way out?

At the end of August 2020, the Qatari authorities announced the implementation of two radical reforms: the introduction of a minimum wage for all workers regardless of the sector of employment and their nationality and the abolishment of the 'no objection certificate' clause.

According to the Law No. 17 of 2020 on "*Setting the Minimum Wage for Workers and Domestic Workers*", all new contracts in Qatar will require to provide a monthly QR 1000 (\$274 USD) basic

pay while previous contracts are given a six months transition period to adapt at the new regulation. In addition, whether the employer does not provide housing and food to the employee, the former must guarantee the latter allowances for accommodation and basic staples for a monthly amount of QR 500 (\$137 USD) and QR 300 (\$82 USD) respectively.

Besides, the Law No. 18 of 2020 and the Law No. 19 of 2020 have removed the NOC clause by guaranteeing a greater extent of labour mobility for migrant workers who can now change employers before the end of their contract. The only condition they have to attain it is to provide the employer with a written notice which has to be sent one month before the leaving during the first two years of the contract and two months before the leaving beyond the second year of the contract. What it is more, migrant workers have the faculty of changing jobs during the probation period – the first six months of residency in Qatar; in this case, the new employer will reimburse the recruitment costs to the previous employer. The measure represents a significant result because it means that the transaction costs of changing job are not anymore on the migrant' shoulders but, on the contrary, they are a civil matter between the two employers.

However, even though these reforms undoubtedly represent a success for migrant workers' protection, several critical issues remain largely unsolved as outlined in the Amnesty International's report "*I have worked hard - I deserve to be paid*" released in June 2020 and in the Human Rights Watch report "*How Can We Work Without Wages?*", both focusing on the abuses suffered by migrant workers employed in the construction mega-projects of Qatar's FIFA World Cup 2022. The reports highlight that despite the fact Qatar adopted several mechanisms – as the WPS, the LDRC, and the WS&IF – to uphold migrants' working conditions, workers still experience hard labour abuses.

As a matter of fact, the foreign workers employed in the construction sector are the most vulnerable to unpaid or delayed salary abuses. This is because several companies adopt the '*pay when paid*' clause – a condition which allows a subcontracting firm to pay the salaries only when it is paid by the contracting firm. As a result of this system, workers bear considerable hardship by seeing their wages potentially delayed for months.

Besides, it is proved that migrant workers usually get into debt in their home countries to secure what the local recruitment agencies present as a 'first-class job' in a foreign-rich country. In addition, even though the practice is forbidden under the Qatari law, employers are not unusual to impose on their employees arbitrarily salary's deduction to recoup the recruitment fees paid at local recruitment agencies. Indeed, it estimated that the paying fees are ranging from \$693 USD to \$2613 USD. Therefore, migrants find themselves trapped into a vicious circle of debts.

If it is true that the new regulations implemented in Qatar constitute significant progress toward the amelioration of the migrants' working conditions, it is undeniable that the government surveillance instruments often fail when called to detect and redress salary abuses. Therefore, to definitively free migrant workers from a system based on precariousness, vulnerability, and exploitation, and to ensure them a substantial improvement, the Qatari government must mainly focus on two instances: firstly, to empower the migrant workers' communities and to actively include them in the reform process; secondly, to strengthen and made more rigorous the existent mechanisms monitoring and enforcing the law compliance.

Since the outbreak of the covid-19 pandemic, the severe restrictions imposed by the lockdown exposed migrant workers to a rising number of threats. As a matter of fact, expatriates often work in close contact with their colleagues and live in overcrowded dormitories with scarce access to running water and electricity. Therefore, due to their impossibility of implementing social distance and accessing sanitation means, migrant workers are those who suffered the most the impact of the pandemic. Indeed, a medical-scientific research highlighted that more than half of those found infected until July mainly originated from three migrant communities: Indians, Nepalis, and Bangladeshis, which represented respectively the 30 per cent, the 18 per cent, and the 14 per cent of the total infected people.

Besides, the economic downturn dramatically damaged the migrants' ability of working and earning a living. With several companies stopping paying salaries, holding their employees in labour or detention camps as the Industrial Area, Barwa City, and Labour City in Doha, or forcing them to arbitrarily repatriations – as the case documented by Amnesty International of a hundred Nepali workers deported in mid-March, migrant workers found themselves trapped in escalating dire living and working conditions.

In this regard, as long as the covid19 pandemic represents a constant threat to expatriates' daily life, the Qatari government must protect their vulnerabilities by guaranteeing the regular salaries' and sick days' payments as well as the equal and indiscriminatory access to the health care system.

Vani Saraswathi, 2018, "*Stories of Origin: The Invisible Lives of Migrant Workers*", Migrant-Rights.Org.