



### **Kafala System Remains Resilient in the GCC** *by Kaltham Al-Ghanim*

**D**espite growing international scrutiny and pressure, the six governments of the Gulf Cooperation Council states—with the exception of recent overtures from Qatar—have been unable or unwilling to do away with the highly controversial *kafala* system. This is due to a combination of reasons—historical, economic and political—that will continue to impact these countries’ abilities to substantively change the *kafala* system in the short to medium term.

The *kafala* system first appeared in GCC countries with the advent of modernity in the 1960s and 1970s (Qatar in 1963; UAE in 1973). It was a legal policy aimed at controlling the presence of foreign workers, laborers and employees. Citizens and institutions were entrusted to sponsor foreign labor as a way of acting as a guarantor for them. The *kafala* system obliges the worker to only serve their designated sponsor.<sup>1</sup> This system allows the countries of the region to monitor who enters and leaves their lands. It also helps in securing an overflow of manpower into the community to work on large projects and in the domestic sphere.

Initially, foreigners worked for the government during the modernization phase from the early 1970s until the 1990s. But as property systems changed and projects were privatized, the role of the private sector became more vital at the start of the oil price boom in 2004. Private companies became the biggest importer of labor, with short-term contracts, which expire at the end of a project; especially in building and construction projects.<sup>2</sup>

### Weaknesses and benefits of the *kafala* system

The *kafala* system generates widespread criticism and is a major point of contention with international organizations. It has been and continues to be a point of weakness for GCC states when they try to assert their compliance with international standards in labor laws and human rights.<sup>3</sup> Organizations like the International Labour Organization, Amnesty International, Human Rights Watch and the International Organization for Migration among others have criticized GCC states for their use of the *kafala* system and aim that criticism at international bodies and foreign governments to put pressure on the GCC states. Qatar's hosting of the upcoming 2022 World Cup has opened the need to review the *kafala* system and address the issue of improving workers' welfare, for instance.

*Kafala* enables the owners of major projects and estate developers to bring large numbers of laborers with low wages and short-term contracts that at times end in six months. This minimizes the expenses for those owners, and also for individuals who bring household labor.

Despite this, the *kafala* system remains largely in effect. In fact these countries depend on the *kafala* system to organize the process of migrant workers' entry and exit (for example in Qatar, Law No. 4 of 2009 regulates the entry and exit for all workers and Law No. 14 of 2004 determines the terms of work).

The reasons for this are many and are mostly to do with the benefits employers (both public and private) derive from the *kafala* system. For example, *kafala* enables the owners of major projects and estate developers to bring large numbers of laborers with low wages and short-term contracts that at times end in six months. This minimizes the expenses for those owners, and also for individuals who bring household labor.<sup>4</sup> It also allows the sponsor to control the movements and life conditions of the employee. For instance, in some GCC states consent from the employer is required if the laborer wishes to take a loan, bring his family, go on Hajj (pilgrimage to Mecca), get married, or visit a relative in another region. The sponsor can also prevent the employee from quitting, from transferring to a competitor or even moving to another GCC state to work. A sponsor can also have an employee deported under certain conditions.

### Calls for change

There has been a growing chorus calling for change. Academics, labor activists, government officials and others have agreed that the current system does not work, is subject to too much corruption and abuse, and does not adequately protect foreign workers. Replacing the *kafala* however, is no mean feat and many in the region are skeptical of allowing foreign workers full freedom to work in the region on a level with nationals.

Much time is needed to replace it with another suitable system that ensures labor flows without incurring security risks which might have greater impacts on the demographics and the nature of hosting expats.

Rather than do away with *kafala* completely, some states are addressing the matter individually and piecemeal. In the United Arab Emirates, for instance, several resolutions have been issued to improve the conditions of laborers. For example, Ministerial Decree No. 467 was released in 2005, the First Article of which specified that the working hours in the morning under the heat of the sun in unroofed places should not exceed five hours, and should finish by 12:30pm—Qatar has taken a similar decision recently.

## II. Analysis

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The Third Article stated that in case the working hours went beyond eight hours in the day, any extra time should be considered as overtime with additional pay according to the provisions of the Labor Code.

The Fifth Article stated that every employer should provide appropriate safety measures to protect laborers from the dangers of injuries, occupational diseases that may occur during working hours, dangers of fire and other hazardous risks.

In Qatar, a law was issued in 2014 to transfer laborers' wages in the private sector to banks so as to ensure the delivery of their money every month. In the Kingdom of Saudi Arabia, a Wage Protection System has been effective since 2013, and penalties are imposed upon companies that delay payments. Kuwait and Qatar have also implemented similar pay guarantee efforts.

There remains, however, a gap between laws on the books and the reality for many laborers. While it is definite that labor laws in the countries of the region confirm their compliance with the international stipulations for work—setting certain rules on the type of accommodation and the facilities that must be available along with the continuous inspection campaigns—very frequently these rules are not abided by. In light of persistent abuse, corruption and continued violations, developing a foreign employment regulatory policy remains a priority to improving foreign workers' conditions.

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<sup>1</sup> “Kafala: Dependency and Exclusion in the Gulf Arab Communities [translated from Arabic],” in *Al-Thabit wa al-Mutahawwil 2014: al-Khalij Bayn al-Shiqaq al-Mujtam'i wa Tarabut al-Mal wa al-Sulta* (Gulf Centre for Development Policies: 2014), 277.

<sup>2</sup> Steffen Hertog, *The Private Sector and Reform in the Gulf Cooperation Council* (Kuwait Programme on Development, Governance and Globalization in the Gulf States, LSE: 2013), 16-18.

<sup>3</sup> The analysis is based on data from a study by Kaltham Al-Ghanim et al., *The Conditions of Unskilled Laborers in Qatar* (unpublished study, 2010).

<sup>4</sup> Andrew Gardner et al., “A Portrait of Low-Income Migrants in Contemporary Qatar,” *Journal of Arabian Studies* 3, no. 1 (2013): 14.