



SOCIAL PROTECTION, NOT JUST LEGAL PROTECTION: MIGRANT LABORERS IN THE GULF

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Recent developments in labor reforms across the Gulf countries are encouraging signs of a much-needed overhaul of protective systems for migrant laborers. Qatar's winning bid to host the 2022 Fédération Internationale de Football Association (FIFA) World Cup drew significantly more attention to the plight of migrant laborers in the country. The COVID-19 pandemic drew renewed attention to issues of social protection of migrant workers in Qatar and the wider Gulf region. While legislative changes aiming to improve the living and working conditions of migrant laborers have been taking place across the Gulf, their actual impact has been mixed.²

As the Gulf states attempt to transition to knowledge-based economies, it is imperative that they ramp up efforts to ensure that labor reforms, including social protection schemes, meaningfully benefit the majority of the population that contributes to their economic growth: migrant laborers. While social protection can be construed in several ways, it is primarily a set of public policies that aim to protect against economic and social distress.³ In the Gulf context, the focus of such policies should be on protection against unemployment and low or unpaid wages, as well as access to remedies for contract violations. Low-skilled migrant laborers are a substantial segment of working migrants who require such social protection the most.⁴ The heavy interdependence of foreign laborers and Gulf nationals requires that social protection measures are implemented with a view to ensuring long-term impact and sustainability. However, legal protection does not automatically ensure actual enforcement.

This policy note presents three key requirements for transforming legislative labor reforms from a predominantly “on paper” existence to one that is increasingly enforced and practiced. Crucially, these requirements are only effective when pursued together as opposed to in isolation from each other. First, there must be enforceable social protection provisions in bilateral labor agreements and in employment contracts, along with more effective state-run enforcement mechanisms. These are important in order to mitigate the ability of employers to escape accountability for violations of labor laws. Secondly, a socialization of reforms that targets the tripartite nexus of the notorious Gulf kafala, or sponsorship, system—the migrant worker, the employer, and the state—is needed.⁵ Finally, the establishment of localized monitoring and evaluation tools would ensure higher quality and context-specific research on labor policy reform. This would in turn enhance knowledge of what works and what does not work in context-specific cases across the Gulf, producing rigorous research to better inform policy recommendations that benefit migrant workers and the state.

As significant reforms have increasingly been undertaken in Qatar, especially following momentum to pursue changes in light of the country’s role as host to the 2022 FIFA World Cup, this note will begin by outlining some of the notable developments in labor reforms there. This will be followed by an explanation of why the three interconnected requirements outlined above are necessary not only in the Qatari context, but across the Gulf region as well.

RECENT DEVELOPMENTS IN LABOR REFORMS: QATAR

The majority of reforms to Qatar’s labor laws since 2014 have aimed to ease the mobility of migrant laborers as well as to bring national legislation in line with international labor standards. Law No. 13 (2018) removed the exit permit requirement, whereby foreign laborers were not able to leave the country without permission from their employer beforehand.⁶ This was extended to domestic workers by way of Ministerial Decision No. 95 in 2019, which allows them to leave the country after notifying their employers at least 72 hours prior to their departure.⁷ Law No. 21 (2015) made it illegal for employers or sponsors to withhold passports of foreign nationals. Though the problem of employers withholding passports persists, this practice has seen a declining trend in recent years.⁸

A significant development in Qatar’s labor law came with the adoption of Law No. 19 (2020), which allows migrant workers to change jobs before the end of their contract without first having to obtain a No Objection Certificate (NOC) from their employer. The NOC system left foreign employees at the mercy of their employers when seeking employment elsewhere. It was a central feature of the kafala system, which essentially shackled migrant workers to their sponsor or employer, leading to exploitative practices that violate international human rights laws and international labor standards. Domestic workers, who long operated within a

legal vacuum as labor laws were not applicable to them, finally obtained legal protection in the form of Law No. 15 (2017), which regulates the relationship between domestic workers and their employers and grants them rights that were not previously specified.⁹

That same year, Qatar passed Law No. 13 (2017), allowing for the establishment of labor dispute committees, which offer a mechanism through which workers and employers could settle their disputes.¹⁰ In May 2021, Ministerial Decree 17 was issued, providing heat stress protection for those whose work must be done outdoors. The decree prohibits work in outdoor spaces between the hours of 10:00 a.m. and 3:30 p.m. from June 1 to September 15.¹¹ Finally, a number of reforms aimed at protecting wage payment, introducing a non-discriminatory minimum wage, and establishing the Workers Support and Insurance Fund, were introduced.¹²

LEVERAGING ENFORCEMENT TO TACKLE A CULTURE OF EMPLOYER IMPUNITY

While these reforms are encouraging and have even been hailed as historic in “dismantling” the kafala system, the lack of enforcement is pervasive, and impunity remains endemic.¹³ The problem of non-compliance is largely a problem that lies with employers who fail to fulfill their obligations toward their employees. Lack of enforcement of legal and social protection measures is a major challenge from which migrant laborers suffer across the Gulf region.¹⁴ Legal protection does not automatically ensure enforcement. Mechanisms that aim to ensure abidance by international best practices, while also ensuring that legislative and policy reforms make sense in the unique contexts of each Gulf state, are critical. The opening of the International Labour Organization (ILO) Project Office in Qatar in April 2018, which is the first in the Gulf region, is a significant concrete step that has facilitated such efforts.

Nevertheless, few bilateral labor agreements signed between sending and receiving states include social protection provisions, allowing recruitment agencies and employers to abuse the rights of migrant workers. For example, neither the 2013 Saudi Arabia-Philippines agreement on domestic workers’ recruitment nor the 2008 Qatar-Sri Lanka agreement concerning Sri Lankan manpower employment in Qatar include adequate and accessible social protection provisions for migrant workers.¹⁵ Moreover, the COVID-19 pandemic brought to the fore the severely disproportionate suffering of migrant laborers at the hands of the deadly virus, especially given their cramped living and working conditions, which allowed the virus to flourish.¹⁶

The underlying vulnerabilities experienced by migrant workers extend beyond the pandemic, however. Given strict health policies that require all migrant workers to undergo health screening before they are granted a visa and the ability to gain employment in the Gulf, there is a social stigma surrounding the health of low-skilled migrant workers in particular and their ability to maintain employment. This stigma in part entails a reluctance among migrant laborers “around admitting ill-health, to their employers and supervisors,” for fear of losing their jobs.¹⁷ Following the social and economic fall-out since the onset of COVID-19, Gulf states can no longer afford to exclude migrant workers from adequate access to national health frameworks. As Zahra Babar notes:

There has not been a great deal of effort on the part of the [Gulf Cooperation Council] GCC host states to mainstream labor migrants’ health needs into national health policy frameworks [which is essential] when such a large population of migrants as in the GCC are present...there is no global commitment among state and international bodies that bind them to certain health outcomes for migrants.¹⁸

Enforcement mechanisms thus must take into account both living and working conditions of migrant workers in the Gulf, especially as low-skilled migrant laborers' accommodation is often provided by their employers.

The involvement of international organizations such as the ILO and the role it has played in Qatar are instrumental in ensuring domestic legislation and practice is in line with international standards. However, bilateral labor agreements that address social protection measures are also an important channel through which migrant workers could more effectively claim their social, economic, and health rights. Through more robust bilateral labor agreements, longer-term benefits for migrant laborers could be introduced, such as sudden economic hardship relief (i.e., unemployment) and pensions. While there may be little incentive for sending states to develop such policies, advocacy groups such as unions in the sending states must prioritize the issue of social protection for migrant laborers and apply pressure on sending states to ensure that their citizens benefit from these basic international standards of social and economic security. This is especially important for low-skilled migrant laborers, who experience greater vulnerabilities stemming from marginalization in receiving states as non-citizens, and from economic and social hardship.

SOCIALIZATION OF LABOR REFORMS: AN OPPORTUNITY IN THE POST-COVID-19 ERA

However, enforcement mechanisms and bilateral labor agreements on their own are not enough. A socialization of labor reforms that targets the tripartite nexus of the notorious Gulf kafala system—the migrant worker, the employer, and the state—is needed. In the absence of context-specific social movements that work towards the social protection of migrant workers, such socialization would need to take place through alternative means. This includes,

but is not limited to, ensuring worker representation in policy reform processes and in monitoring and evaluation mechanisms. In April 2019, Qatar issued a decree that allows for the establishment of Joint Committees, whereby workers in companies with 30 or more employees elect their own representatives to discuss workplace issues with management.¹⁹ In June 2021, Qatar's largest public transport provider, Mowasalat, held its first Joint Committee elections to support dialogue between workers and management.²⁰ It remains to be seen whether such Joint Committees will effectively impact policy reform, or whether they will provide an opportunity to discuss the impact of legislative reforms on migrant workers in the workplace. Such efforts, however, are important for fostering an environment conducive to engaging in social dialogue about issues that directly impact migrant laborers. They could also contribute to “reducing tensions between nationals and non-nationals and promoting social cohesion.”²¹

Such socialization of labor reforms, however, presents a difficult challenge that relates to the implicit social contract between Gulf nationals and their states. As Mustafa Qadri explains, this challenge puts the state in a position where it must balance “the need to maintain a social contract based on an imbalance in labor relations in favor of employers and business owners, who are overwhelmingly citizens, with its international obligations to respect core aspects of human rights and labor rights and the need to respond to a global market increasingly sensitive to rights protections.”²² While Qadri's discussion focuses on the United Arab Emirates, his observations are relevant to the rest of the GCC, where a similar social contract between the state and citizen exists: one that “effectively promises the latter a ready source of revenue and significant control over migrant labor in return for reduced social and political freedoms.”²³ The COVID-19 pandemic presents an unparalleled opportunity to tackle negative stereotypes of migrant workers as well

as the structural inequalities they face due to the discriminatory application of social protection schemes. Without changes targeting society, such as cultivating a respect for the rule of law as well as empathy for others at the family level, the prospects for meaningful and long-lasting change with regards to the social protection of migrant workers will remain limited.²⁴

LESS SENSATIONALIST, BETTER INFORMED: THE NEED FOR REPRESENTATIVE MONITORING AND EVALUATION

Few mechanisms systematically assess the impact of policy reform on migrant workers in the Gulf. Instead, sensationalist headlines and reports that tend to draw conclusions based on anecdotal interviews overlook both deeper, structural problems and positive trends that are not—but should be—newsworthy. The establishment of localized monitoring and evaluation tools, such as the Qatar Guest Workers' Welfare Index (GWWI) developed by the Social and Economic Survey Research Institute (SESRI), would ensure higher quality and context-specific research on labor policy reform. This would, in turn, enhance knowledge of what works and what does not work in context-specific cases across the Gulf, producing rigorous research and policy recommendations that benefit migrant workers and the state.

Abdoulaye Diop et al. emphasize that without valid indicators, it is difficult to gauge the effect of legislative reforms on “the actual lives of workers.”²⁵ They discuss the example of the practice involving the withholding of passports in Qatar, whereby employers or sponsors retain their employees' passports, which is illegal as per Law No. 21 (2015).²⁶ In a SESRI survey conducted in 2014, more than one-third of the migrant worker respondents said they voluntarily handed their passport to their employer for safekeeping, as they feared for the security of their passports in the labor camp where they

reside. Consequently, as Diop et al. observe, the “solution to passport withholding is not only informing workers about their rights or forcing employers not to retain passports against the will of the worker, but also *improving the security of their accommodations.*”²⁷ This example demonstrates the importance of not only ensuring that adequate monitoring and evaluation mechanisms, such as the GWWI, are in place, but that migrant laborers are consistently afforded the opportunity to explain the nuances of their situation. Without such vital input from migrant laborers in such mechanisms, policy reforms will remain misguided.

CONCLUSION

The COVID-19 pandemic has made painfully clear that not all 7.8 billion inhabitants of the planet are in the same boat. While COVID-19 does not discriminate and has impacted both rich and poor and everyone in between, the underlying difficult living and working conditions of migrant laborers in the Gulf have made it increasingly clear that they suffer disproportionately. Work and accommodation conditions are inextricably tied to labor laws and policies in the Gulf. The migrant laborer-employer-state nexus is one that maintains the kafala system that has overwhelmingly favored the interests of employers at the expense of employees' social, economic, and human rights. As countries continue to grapple with geopolitical, economic, and public health policy challenges, the post COVID-19 era presents an especially opportune time to address ways to ensure long-term social protection that will aid Gulf states in transitioning to sustainable knowledge-based economies. The focus on legislative and policy reforms thus far have been encouraging in the Gulf. However, they cannot generate meaningful impact without effective enforcement mechanisms domestically and in bilateral labor agreements, socialization of reforms into society, and context-specific monitoring and evaluation tools that are representative of workers' complex experiences.

ENDNOTES

- 1 Noha Aboueldahab is a fellow at the Brookings Doha Center and a non-resident fellow at the Brookings Institution. She would like to thank Jihane Benamar and Hajer Ouzzani for their research assistance for this paper, the peer reviewers for their valuable comments, and the editors.
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