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Reforms without Rights: The GCC states' blinkered view of labour reforms

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Reforms without Rights: The GCC states' blinkered view of labour reforms

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Abstract

The Gulf Cooperation Council states – comprising Saudi Arabia, United Arab Emirates, Qatar, Oman, Bahrain, and Kuwait – have launched a series of ‘reforms’ to their labour and immigration laws in the last decade, broadly dubbed as “Kafala reforms.” The catch-all phrase belies the reality that these selective reforms prioritise benefits to the state and its citizens. While labour codes may meet (some) international standards, they are built on social and economic exclusions that preclude the realisation of migrants’ rights.

This paper analyses various reforms between 2012-2022 and argues that labour migration reforms and new policies are bounded in silos, responding to specific critiques from the international community, but fall short of protecting the human rights of millions of migrant workers in the region. Based on recorded cases of labour exploitation, this paper sets out to illustrate that labour reforms are intrinsically limited by the overarching migrant regulatory environment, which restricts migrant mobilities and cedes inordinate power to their sponsors. Reforms are designed to maintain the status quo — access to cheap, plentiful, and flexible labour — and therefore are not holistic vis-à-vis the individual as a rights holder. Accordingly, this paper puts forward a strong case for overhauling labour migration systems to reduce the perpetual overseas recruitment that fixes workers in a permanent state of temporariness. A more dynamic labour market that favours upskilling labour already present in countries and allows for greater employment mobility is an essential precursor to realising migrant workers’ rights.

Introduction

The Gulf Cooperation Council (GCC) countries — comprising Saudi Arabia, the United Arab Emirates, Qatar, Oman, Bahrain, and Kuwait — are among the states most dependent on foreign labour globally. The region's first population surge occurred during the 1970s oil boom, and their economies have been structurally dependent on migrant labour ever since. Saudi Arabia has the third highest number of migrants in the world, while the UAE and Qatar host the largest proportion of migrants as a ratio of their populations (United Nations Department of Economic and Social Affairs, 2021). The other way that Gulf states stand apart is in their migration management system: the employer-tied visa system, referred to as the sponsorship or “*Kafala* system”, shares some similarities with temporary or circular migration programs elsewhere in the world (Migrant-Rights.org, 2021c). But unlike programmes in other countries, the *Kafala* system applies to virtually all migrants, with only recent exceptions for a very select and wealthy group of individuals. The system has long received criticism from international observers, which was amplified in 2010 when Qatar was awarded the right to host the 2022 FIFA World Cup. Since then, a number of reforms to immigration and labour laws — broadly dubbed as “*Kafala* reforms” — have swept through the region in response to both international criticism and socio-economic needs, primarily introducing a degree of job mobility and tweaks to entry and exit regulations. On the surface, these reforms may appear exceptionally progressive to have taken place in just ten years, but they remain limited by gaps in the actual legislation, lack of effective implementation mechanisms, and migrant workers' structural exclusions from social and economic rights. At its core, the *Kafala* and the way in which it disempowers non-national workers to the benefit of the state and citizens remains intact both in law and in practice.

This paper begins by defining the *Kafala* system and contextualising its development within the GCC's larger historical processes. We explore the socio-political and economic functions that the *Kafala* serves before moving to a holistic analysis of reforms made to key aspects of the system, including wage regulations, employment mobility, self-sponsorship, and exit permits. The minimal expansion of these reforms to the large domestic work sector and the weaknesses of complaints and justice mechanisms are then examined to demonstrate the extent of protection and enforcement gaps. We conclude with a short discussion of the logic driving ineffective reforms and ambitious reflections on the changes needed to meaningfully secure rights for the region's migrant workers.

Defining *Kafala*

This paper focuses on the *Kafala*'s impact on migrant workers in low-wage sectors and sectors not covered by labour laws. The conceptual ambiguity of the *Kafala* system has long blurred discussions on reforms, often to the benefit of Gulf states. Several countries have in the past claimed to “abolish” the *Kafala* system by replacing the term *Kafala* with another without changing the underlying structure (e.g. Qatar in 2014, see (Kagan & Cholewinski, 2022)) or reverting to the system of control shortly after (e.g. Bahrain in 2011, see (Black et al., 2014)). However, the *Kafala* is not one particular law, but the interlace

of several laws and regulations across many jurisdictions and their interactions with entrenched practices. At its core, the system ties a non-national's legal residency to a sponsor who, in the case of workers, is their employer (subsequently referred to as sponsor/employer throughout this text), and may be a business or an individual (always a citizen, except in the case of domestic workers or family members); it is further enmeshed in a web of recruitment, labour, and immigration regulations as well as social dynamics that bestow substantial power to employers over migrant workers. Conceptualising the Kafala as a *complex* of legal, economic, and social relations, as scholars Nicolas Blarel and Crystal Ennis (2022) put forward in their theorisation of migration governance in the Gulf corridors, helps to explain the intrinsic limitations of individual reforms, including those targeting fundamental features of the Kafala. In our view, these core features of codified Kafala practices include the following:

- Employer/Sponsor's right to prevent non-national workers from changing employers
- Employer/Sponsor's ability to lodge absconding or "runaway" cases against non-national workers
- Employer/Sponsor's control over workers' residency ID and work permit renewal
- Employer/Sponsor's ability to prevent workers from leaving the country

Underlying and reinforcing these regulations are additional legal, social, and economic exclusions that restrict migrant mobility and cede inordinate power to employer/sponsors. These include: low wages stratified by nationality; language barriers; lack of access to permanent residency or citizenship; limited or no time to find new employment when the contract ends; lack of affordable housing; family separation; and weak and hostile complaints systems, to name a few. We do not argue that all of these issues are a part of the Kafala system per se — again, such conceptual ambiguity does more harm than good, since if everything is Kafala, then any reform can abolish Kafala. However, examining the system in its comprehensive socioeconomic context is critical for assessing the impact of reforms on migrants' rights.

Kafala in Context

While the Kafala is distinguished from other employer-tied-visa systems in a number of ways — namely, that it is effectively the only avenue for migration, with even second- and third-generation communities in the region generally unable to access permanent residency or citizenship — it is important to underscore that there is no innate cultural or religious essence that obstructs Kafala reform. Recent research has cleared up distortions of the system's origins, including Emilia Truluck's elucidation of the sizeable difference between the Kafala system as a system of migration management and its historical and Islamic functions (Truluck, 2023). Similarly, Omar AlShehabi's archival work traces the Kafala system as a system of foreign labour management to British imperialism, correcting the common misconception that the modern-day kafala is an artefact of Bedouin culture (AlShehabi, 2021). Rather, the endurance of the system and barriers to reform are instead products of modern nation-building, rentierism, and economic policies. The Kafala evolved to limit the number of people who can claim citizenship and who could therefore also stake political, social, and economic claims to the burgeoning rentier states, whose

populations boomed with the discovery of oil. Subsequently, the strategic replacement of Arab migration populations with Asian migrants from the 1990s onwards served to constrain the spread of political ideas such as pan-Arabism, or any other ideologies that could threaten the state’s base of power, and to widen and strengthen the demarcations between citizens and migrant workers; in 1972, Arab foreign nationals accounted for 72% of the Gulf population, but by the early 2000s they accounted for only 32% (Kapiszewski, 2006). While sizable Arab populations remain in some GCC countries, in addition to citizens from the Global North, the vast majority of workers are lower-income migrants from Asian and increasingly African countries. Language and cultural distance compound their marginalisation under the Kafala system, as these populations can be easily ‘othered’.

On the other end, migrants continue to come to the Gulf states, despite ever-growing accounts of exploitation and the high costs they bear for recruitment, largely due to the lack of employment opportunities and development at home. “The Gulf Dream” represents different aspirations, but for many, it includes the homes, children’s education, and overall family well-being that is funded by remittances. Large-scale migrations thus continue because of both demand in the Gulf and at home. The inequality between sending countries and the GCC states lends to the “exploitability” of migrants and migrant-sending countries, who have less bargaining power due to their need for employment.

Figure 1: GCC Population Growth 1975-2017

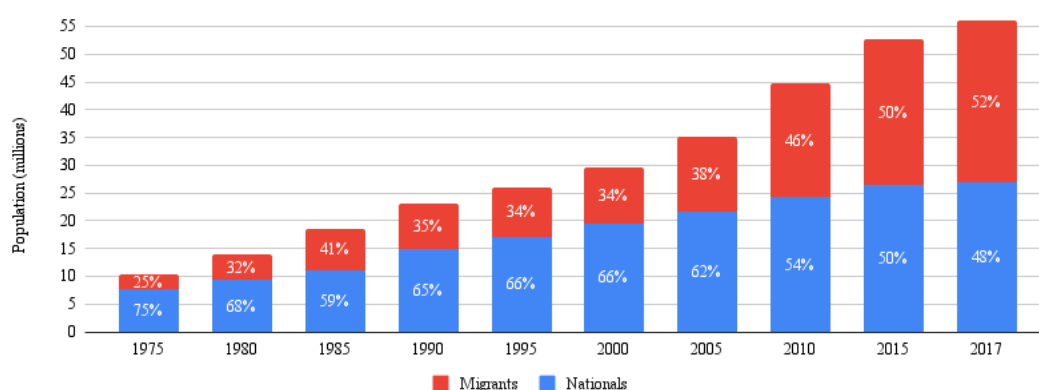


Figure 1: Growth in GCC populations disaggregated by nationality 1970-2017 republished from (Zuaiteer, 2019), based on national population survey data.

Classing the Gulf’s migrant workers as “temporary” — to the extent that most Gulf countries maintain that they do not have “migrants”, only “temporary contractual labour” — functions to justify the exclusion of between 50% and 90% of the population from social protections and economic rights, such as the right to family life, pensions, and unemployment insurance (CEDAW, 2011). In his study of migration systems around the world, Martin Ruhs refers to this trade-off of rights for open labour immigration policies as ‘The Price of Rights’, noting that the Gulf states provide one of the most extreme examples of this framework. Yet, migration to the Gulf is anything but temporary; even if large infrastructure projects were halted tomorrow, the GCC’s dependence on foreign labour would continue. In the short term, Gulf labour markets remain segmented by citizens and foreigners, as low-income jobs are not appealing to

nationals who are able to access public sector jobs and other state benefits. Regardless of whether efforts to integrate nationals into the public and private sectors are successful, declining fertility rates in the GCC (Shah & Fargues, 2019) will keep labour markets migrant-dependent so long as the scale of economic activity remains as high as is planned. This is particularly the case in low-paying, labour-intensive sectors such as construction, facilities management, and domestic work, which are perceived as menial and therefore unattractive to citizens (Huckstep, 2021).

The Kafala system enables Gulf countries to fulfil economic aspirations and satisfy the needs and lifestyles of citizens by ceding control of foreigners' legal and economic status to sponsors, which then offers a menu of rents: in the form of cheap labour for households and businesses, or in the sale of visas to migrants who work freelance or other employers (the "Free Visa", though illegal on paper, remains widespread in practice), and more recently, to support the growing gig economy businesses (Saraswathi, 2022). The power that citizens have over the migrant population also works to soothe local anxieties about the demographic imbalance between foreigners and citizens and between males and females. The gender imbalance is, ironically, the result of regulations that prevent lower-income migrants from bringing their families into the Gulf, and these concerns manifest in the extreme marginalisation of large populations of men – often referred to inaccurately as bachelors – including by their ghettoisation in labour camps far away from 'family' zones within the country (Times Kuwait, 2020). Some GCC governments, notably those with a lower GDP/higher population (Saudi, Oman) and those with some form of representative politics (Bahrain, Kuwait), exploit these anxieties by deflecting accountability for waning economic conditions and other poor public policies onto migrants (Shah, 2006). In the same vein, national security threats are also used to defend the reluctance to reform, with arguments that foreign workers must be closely monitored given their numbers and that permitting workers any sense of permanence would threaten the identity of the state.

Yet, as Abdoulaye Diop et al. (2018) assessed from survey data of nationals in Qatar, public opinion on reform often has less to do with ambiguous threats to identity and national security and more to do with how reforms affect their everyday lives — "Will my maid quit? Will my driver demand a higher wage?" These tangible threats to citizens' livelihoods are reflected in the local pushback against reforms, as seen in the resistance to proposals to regulate domestic worker recruitment and pressure from local businesses when employment mobility is introduced. The lack of popular support has resulted in the gradual rollback of some reforms or the introduction of ordeals or regulations that negate their efficacy.

Analysis of Reforms

The Gulf's immigration and labour architecture has expanded significantly over the past decade, with a flurry of reforms, new laws, and institutions. Some of the first public espousals against the Kafala system from GCC government officials were witnessed in the 2000s — often in response to growing international scrutiny — alongside the enactment of new labour codes, protocols against human trafficking, and regulations on domestic work. Rumours of draft laws that would abolish the Kafala system in its

entirety appeared regularly in local media, though only Bahrain actually took a concrete step towards ‘abolishment’ in 2009 (one that would be walked back a year later) by allowing workers to change jobs without their sponsor’s permission at any time (Human Rights Watch, 2009). Nearly every change to labour or immigration laws has been hailed as a landmark reform and step towards abolishing the Kafala, even if they failed to better protect or secure more rights for workers (Garrett, 2020).

As Baldwin-Edwards (2011) and Diop et al. (2018) note, measuring the impact of reforms in the Gulf is encumbered by the scarcity of transparent official data and the underreporting of complaints. A portrait of the current situation can thus be best illustrated by examining documented cases of labour exploitation alongside an analysis of legislative texts. Previous discussions with affected migrant workers and officials from several countries of origin also inform our assessment. The reforms selected for review are not exhaustive (for example, reforms to occupational health and safety laws are excluded) but are those considered most critical by activists and scholars.

But, as our analysis demonstrates, Kafala must be conceptualised as a “complex” to unravel the interconnectedness between laws and between laws and society; only by moving reforms out of their silos and viewing them in their “lived-in” contexts can we assess the true impact of reform on the rights of migrant workers. We find that what recent reforms have achieved is to reduce or remove one node of control only to replace it elsewhere; in particular, most reforms focus primarily on labour laws, while maintaining or tightening control over migrant workers through immigration and criminal laws that take precedence in the hierarchy of government administration. Limited access to social protection and economic rights further reinforces the power asymmetry between migrant workers and employers/sponsors, particularly in the face of weak legal institutions (Migrant-Rights.org, 2023c).¹

Wages

The absence of minimum wage legislation across much of the Gulf and obstacles to job mobility continue to suppress wages for migrant workers. In most GCC countries, minimum wages for specific nationalities and/or occupations may be determined bilaterally with the country of origin. Only Kuwait and Qatar have established a minimum wage for all migrant workers, including domestic workers, set at KD75/USD 250 per month and QR1000/USD 270 with food and accommodation provided or QR1800/USD 490 without, respectively. While a wage floor is a significant step towards ensuring a fair labour market, these are not living wages in these countries (WorldData.Info, 2022). Allowing wages to remain so low deepens workers’ dependency on their employer/sponsors and consolidates employer/sponsors’ complete control over workers. Wages that are grievously incompatible with the actual cost of living in these countries result in the socioeconomic exclusion of the vast majority of the migrant population, who are unable to afford independent housing, bring their families with them, or even afford transportation and healthcare.

Compounding the problem of already low wages, one of the most devastating issues migrant workers

¹ Though protection gaps for nationals are also wide, the disparity between migrants and nationals, who often have access to subsidies, remains high

in the GCC face is wage theft, the non-payment or underpayment of wages. Partly in response to this rampant labour abuse, each GCC country has introduced a Wage Protection System (WPS), an electronic salary transfer system that is mandatory for all workers covered by labour law. While employers were already legally obligated to pay workers on time, the WPS introduced additional monitoring mechanisms and penalties, including fines, court cases, and bans on obtaining new visas. The UAE was the first in the region to introduce the WPS in 2009, and Bahrain became the last to do so in 2019. Each country operates the WPS somewhat differently, but generally the process requires employment contracts to be uploaded to the system and a minimum percentage of the contracted salary to be paid via a financial institution within the monthly salary cycle. Notably, domestic workers are excluded from the WPS across the Gulf, though employers in the UAE may opt into the system. The burden of proof for payment to domestic workers remains low, although these workers are at an especially high risk of wage theft because employers often do not calculate overtime and may try to recoup steep recruitment costs by withholding salaries.

Despite the exclusion of millions of domestic workers, the system has been lauded as a means of ensuring full and on-time payments (Times News Service, 2023) and protecting workers' rights (PWC, 2019). However, as scholars such as Ray Jureidini (2017) demonstrate, and ongoing wage theft cases evidence (Saraswathi, 2017), WPS do not effectively *protect* wages — they can only detect missed payments. The weakness of the WPS is due to both blind spots in the system and gaps in enforcement. For example, the system does not require 100% payment of contracted wages. In the UAE, for instance, only 70% of wages must be paid through the WPS, and up to 10% of wages can be deducted within the scope of the labour law (United Arab Emirates, 2023). If workers do not receive a wage slip or are otherwise unaware of the breakdown of their wages (in terms of basic salary and other allowances), they are unable to determine whether a fair deduction has been made. Additionally, the system's digital footprint can be easily bypassed; workers have reported that their bosses hold their ATM cards in order to make a deposit to meet the system's requirements and retrieve the salary themselves. Only later do they pay the workers a reduced amount in cash. (Gulf News, 2018; Migrant-Rights.org, 2015). Although the UAE allows for WPS payments to be made through a number of financial institutions, including money exchanges, in Saudi Arabia and Qatar, the WPS includes only banks. Furthermore, in some countries such as Qatar, workers may hold a salary card without having a relationship with the banking institution. Instead, the employer has access to both cards and pins, which enables them to make deposits into workers' accounts and withdraw the funds themselves. Bypassing the WPS in this way is especially prevalent in the GCC's version of the gig/platform economy, where dispatch riders and app-based taxi drivers have a local sponsor but work on commission instead of receiving a monthly salary. The WPS is not set up to support this employment model, though sponsors are still required to make payments through the system.

Even if the technical design of the WPS functioned perfectly, its flawed penalties, weak enforcement, and broken complaint mechanisms leave workers vulnerable to wage theft. Any fines issued are not paid to the worker as restitution for delayed wages, which often wreak havoc not only on the workers

personally but on their families back home. The 2016 Saudi Oger case illustrates the futility of the WPS without government concern: over 100,000 migrants were stranded unpaid for months by Saudi Oger, whose leading client was the Saudi government. Not only did the WPS initially fail to flag violations, but the government ignored pleas from workers until international media published their plight months later (Migrant-Rights.org, 2016).

The WPS can be an important tool to combat wage theft. However, in its current form, it suffers from technical limitations and is divorced from the realities of its implementation. As with many of the reforms reviewed in this paper, the WPS has been grafted onto fragile socioeconomic foundations and weak accountability mechanisms. Without wider economic rights for migrants, including the right to a liveable wage, and without the inclusion of all migrant workers, the WPS's efficacy is intrinsically limited.

Employment Mobility

One of the most salient features of the Kafala system is its restrictions on employment mobility. Under previous laws, workers could be prevented from changing employers until the end of their contracts or even from doing so once contracts are completed. On paper, the ability of workers to change jobs without their previous employer/sponsor's permission — generally referred to as a “No Objection Certificate” or NOC — has expanded in the past decade, with the exception of domestic workers. Yet, there is often a large discrepancy between the fanfare with which NOC reforms are announced, their actual implementation, and eventual backsliding. For instance, Qatar's 2020 reforms purportedly abolished NOC requirements and were pronounced as the end of the Kafala system, though in practice a “de-facto” NOC came into play in the months after its enactment in the form of signed resignation letters and delayed approvals from the Ministry of Labour (Migrant-Rights.org, 2021a). In Oman, the “removal of the NOC” in January 2021 was celebrated widely until workers began to report troubles attempting to change jobs without one (Pannu et al., 2021); only later, in July of the same year, did the Ministry of Labour announce additional restrictions requiring workers to complete their contracts in order to change jobs without their sponsor's permission. Even workers who fulfilled this condition faced difficulties attempting to change jobs owing to the lack of alignment between the Royal Oman Police, the entity in charge of immigration, and the Ministry of Labour (H. Khan, 2021). Similarly, Saudi Arabia couched its new 2021 labour law as a ‘massive overhaul’ to the sponsorship system (which it had earlier claimed to abolish in 2000). Yet, workers can still only change employers without their previous sponsor's approval after one year of service, unless they can prove specified abuses by their employer (Deloitte, 2021). The UAE's 2022 job change reforms are also seeing the beginnings of a retraction, with the country's parliamentary body, the Federal National Council, accepting a proposal to only allow workers to change jobs after one year (Al Qaidi, 2023).

Only in Qatar do domestic workers have the right, at least on paper, to freely change employers on par with workers under the labour law. However, in practice, workers who apply for a job change risk having

their visa cancelled or reported as absconding due to the misalignment of probation periods between domestic workers, employers, and recruitment agencies (Migrant-Rights.org, 2022a). Elsewhere in the Gulf, the right for domestic workers to freely change jobs has expanded, but only if they have completed their contracts, their employers have died, or they can prove a delimited set of serious abuses and obtain permission from the relevant authorities. Owing to their severe isolation in employers' homes, most domestic workers do not have the knowledge or resources to bring forward or see through such complaints, and most GCC states do not have the infrastructure needed to support them. Often, domestic workers who attempt to leave exploitative working conditions are returned to their employers or embassies, or are reported as 'absconding' (Migrant-Rights.org, 2020c).

Table 1: Conditions under which workers can change jobs without employer's permission

Country	Labour Law workers	Domestic Workers
Bahrain	After 1 year, or specific contract violation	With approval of LMRA
Kuwait	After 3 years, or specific contract violation	Employer death, divorce, imprisonment, or proof of sexual abuse
Oman	After termination of contract, with conditions	Unclear
Saudi Arabia	After 1 year, or specific contract violation	Abuse or specific contract violation
Qatar	Anytime	Anytime
UAE	Anytime, with undefined 'legitimate reason'	Abuse or contract violation; worker must return to agency

Source: (Migrant-Rights.org, 2023d)

Resistance from employers and businesses is the primary reason that reforms often result in shadow practices that prevent worker mobility, such as Qatar's de facto NOC, or eventually backslide entirely, as in the case of the UAE (Migrant-Rights.org, 2021b). A flexible labour market with locally available talent would seem beneficial to businesses — and has proven to be the case for 54% of Qatari businesses surveyed by SESRI in 2021, who reported positive impacts from Kafala reforms. Yet, the perceived loss of control, the reduced ability to suppress wages and conditions due to competitive offers, and overall, the fear of losing access to cheap labour remain a challenge for sustaining reforms. To placate these concerns, in part, absconding regimes have endured with the effect of maintaining employers' control over workers and undercutting workers' ability to change jobs or raise complaints. Employers not only have the right but the legal obligation to report migrants who fail to report to work, for a set number of days, as "absconded." Employers both intimidate and punish workers with absconding charges, which can result in significant fines, detention, deportation, and a ban on re-entry. The threat or actuality of an absconding charge entraps workers in exploitative conditions and can force them into an irregular status.

Throughout the region, the system has seen some reforms over the years, with steeper penalties for employers who file false or malicious charges and expanded opportunities for workers to contest these charges. Simultaneously, the process of reporting absconded workers has become more expedient in most Gulf states, owing to the digitisation of the process, encouragement from officials to report absconded workers through media statements, and increased levies on individuals who fail to report absconded workers. Though publicly available data are lacking,² accounts from workers interviewed by Migrant-Rights.org indicate that misuse remains widespread across the region (Saraswathi, 2020), while removing an absconding charge remains far more difficult for the worker (Migrant-Rights.org, 2022b). In countries with bifurcated absconding systems, different types of absconding charges present additional challenges. For example, in Kuwait (as of 2022) and Bahrain, absconding charges filed through labour authorities are more straightforward to clear than those filed through the police. The process is straightforward only when the employer agrees to do so, which creates further opportunities for extortion (Migrant-Rights.org, 2022b).

Aside from legal restrictions, low-income migrants face added hurdles to changing jobs; since many workers are completely dependent on their employers for accommodation, food, and transportation, they risk eviction and destitution if they attempt to change jobs against their sponsor's wishes. As with other reforms discussed, the practical impact of changes to these regulations is closely tied to the extent of workers' marginalisation or how much social capital they enjoy.

Self-Sponsorship

The only "experiment" with self-sponsorship for lower-income migrant workers in the region occurred in 2017 (Migrant-Rights.org, 2018). Bahrain's Labour Market Regulatory Authority (LMRA) launched the Flexi-Permit, an initiative that allowed some migrants with irregular residency status to sponsor themselves and work legally for multiple employers. Domestic workers were not eligible for the programme (LMRA, 2017a). Though lauded as a model for Kafala reform in the region by many international observers, including the US Department of State, the initiative maintained workers' marginalisation by trading one set of vulnerabilities for another: while workers were no longer tied to a single employer, they had to pay steep monthly fees to the government to maintain their visas. With no minimum wage requirements in place, workers struggled to afford the programme and maintain a decent standard of living, particularly given the lack of affordable housing for low-income migrants. Flexi-permit holders were also not covered by the labour law and were not required to work with contracts. One of the motivations behind the programme was, in fact, to divert money from the free visa black market, which a 2012 LMRA study estimated to be valued at BD70 million (approximately USD 185 million), into government coffers (LMRA, 2017b).

Though the number of Flexi-Permit holders was always relatively small (under 5% of all migrant workers

² (Officials often intermittently report on the number of absconded workers arrested in detention and deportation campaigns, but do not provide regular data on absconding reports. See for e.g. [Arab Times, 2023](#))

in 2022 (Migrant-Rights.org, 2020b)), the business community lamented the loss of its bargaining power over workers, and the programme was constantly criticised by members of parliament (Migrant-Rights.org, 2020b). The Flexi-Permit was cancelled in 2022 and replaced with a more limited programme in coordination with the Bahrain Chamber of Commerce and Industry (Migrant-Rights.org, 2022d). Some observers have taken the failure of the Flexi-Permit to protect workers from exploitation as evidence that reform of the Kafala system will not ensure greater rights for workers. In our view, the Flexi-Permit's failures reveal the limitations of reforms pursued in silos — in this case, reform of sponsorship requirements without attention to labour, economic, and social rights — which work to keep labour cheap and flexible, and maintain the status quo.

Exit permits

With the partial exception of Saudi Arabia, GCC countries no longer require sponsors to approve formal exit permits for foreign workers to leave the country. In 2021, Saudi Arabia reformed its exit permit system to enable workers to request permission from the government instead of their employers. However, employers are still notified of departure requests and can lodge disputes. Domestic workers and dependents remain excluded from these reforms. Qatar ended the exit permit for labour law workers in 2018, and in 2020 expanded the reform to include domestic workers, agricultural workers, workers at sea, and workers in the public sector and government. Employers can identify 5% of their “essential” workforce that must obtain an exit permit (International Labour Organisation, 2020).

Regulations on the exit of domestic workers are less clear-cut, even in Qatar, where the exit permit has been officially abolished. Shortly following its announcement that exit permits for all foreign workers were removed, the Ministry of Interior clarified that domestic workers who leave without notifying their employers would not be allowed to return to the country for four years. The tweet was soon deleted, and the ILO in Qatar later clarified that domestic workers should inform their employers of their departure — to purportedly allow employers to settle due wages and end-of-service benefits — but do not need their permission (Ullah, 2020). As with reforms to job mobility, the abolishment of the exit permit remains at odds with employers' power to report workers for ‘absconding’.

Compounded marginalisations

Domestic Workers

The exclusion and uneven application of these reforms to domestic workers in almost all circumstances is perhaps the greatest evidence of the “Kafala reforms” limitations. Reform to the domestic work sector has been especially slow and ineffective, largely due to its impact on the daily lives of citizens. While Qatar, Kuwait, the UAE, and Saudi Arabia have introduced a domestic workers law, their terms remain far inferior to those of labour law workers. In Oman, domestic workers enjoy the fewest legal protections of all GCC states, with only a bare-bones ministerial circular and phantom standard contract governing their employment. In Bahrain, domestic workers are only partially included in a couple of clauses of

labour laws related to end-of-service benefits. The sheer number of people who are excluded from these reforms in the agricultural and domestic work industry is significant — up to 30% of the labour force in Saudi Arabia (International Labour Organisation, 2021; Saudi Gazette, 2023). A smaller percentage of the workforce, farm workers, and workers in the fishing sector are also excluded from the labour law and subject to even sparser employment regulations (Migrant-Rights.org, 2020a).

Figure 2: Migrant domestic workers as a percentage of total employment

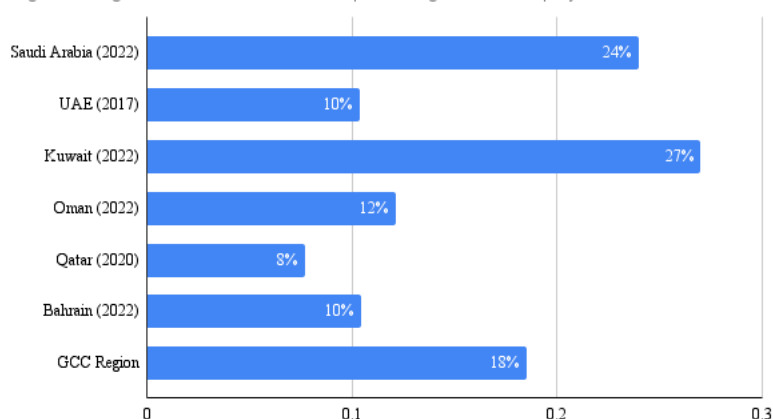


Figure 2 Source: Data collated by authors

Saudi Arabia: (Al Sherbini, 2023; ArgaamPlus, n.d.) **UAE:** (Federal Competitiveness and Statistics Centre, 2023; Malit et al., 2018) **Kuwait:** (Kuwait Central Statistics Bureau, n.d.; Kuwait Times, 2023); **Oman:** (Das, 2022; National Centre For Statistics & Information, 2023) **Qatar:** (Planning and Statistics Authority, 2018, 2021) **Bahrain:** (Bahrain Information and eGovernment Authority, 2022; Labour Market Regulatory Authority, 2022)

Efforts to centralise or otherwise reform the domestic worker recruitment industry have also largely failed across the UAE (Sethi, 2021), Saudi Arabia, and Kuwait (Al Mulla, 2021). For example, most regulations on domestic work are in the form of bilateral labour agreements (BLAs), through which some countries have negotiated a minimum wage and other particulars, such as working hours and access to a phone. However, the enforcement of BLAs is only as strong as the capacity and infrastructure of the origin country, which bears the burden of its enforcement. From the GCC country's perspective, BLAs serve primarily to fulfil demands for domestic work rather than to safeguard the rights of domestic workers, as evidenced by the scramble to sign new BLAs while domestic workers languish in shelters and deportation centres. For example, in early 2023, even as Saudi Arabia deported thousands of Ethiopian workers (Zelalem, 2023), it signed agreements with the country to recruit domestic workers, as did newer source countries with struggling economies (Migrant-Rights.org, 2022c). Domestic workers whose countries of origin have signed BLAs with Gulf states still experience recurrent wage theft and violence, and violations of these agreements result only in bans or moratoriums on recruitment, with no meaningful accountability for destination states or reparations for harmed workers.

Domestic workers remain far more tightly bound to their sponsors than workers covered under the labour law. One reason employers hold over workers remains so strong is that their labour is conducted in the

private sphere of the home, and the Gulf's "live-in" model for domestic work leaves documented workers with few alternative employment options (Migrant-Rights.org, 2019). The lack of a strong regulatory environment further compounds their vulnerability to abuse; while oversight of the domestic work sector has begun to shift from interior ministries to labour ministries in some countries, this shift has generally been restricted to dispute resolution. Further, there has not been a corresponding institutionalisation of mechanisms to adequately safeguard domestic workers' rights, such as shelters, complaint systems that are responsive to their unique needs, or their inclusion in the WPS.

Access to justice

The true test of reforms is workers' ability to raise a voice, easily and without retribution, when their rights are violated. Complaint mechanisms differ substantially in each country, but workers previously interviewed by Migrant-Rights.org and other advocacy organisations report similar obstacles across the region (Migrant-Rights.org, 2023b). Complaints processes require a level of digital literacy, some knowledge of Arabic, the liberty to take time off work or leave the household, and financial support to cover the costs of translation and transport. The time it takes for authorities to resolve a complaint or case often far exceeds estimates, and there is little support for migrant workers who have been denied payment or otherwise exploited by their employers. Workers can easily fall into an irregular status because their employers are responsible for renewing and cancelling their documents, which further complicates their ability to see through complaints. There are no safe homes for workers who need to leave exploitative situations or who fear reprisal from their employers for filing complaints. Although some embassies host unofficial shelters, they are generally only for women and have strict admittance requirements. Consular support varies widely between countries based on their capacity, institutional mandate, and commitment of individual staff. For example, the Philippines has a very clear mandate on the role of the Migrant Workers Office (previously the Philippines Overseas Labour Office) and the support provided to citizens abroad (POLO Migrant Workers Office, 2023). However, in other countries, such as Nepal, Kenya, and Bangladesh, the provision of support for labour disputes often depends on the awareness and disposition of the staff in charge. In the case of Indian missions, the sheer size of migrant worker populations in the GCC often limits support to repatriation services and does not extend to access to justice (Workers & Consulates, personal communication, February 2018 - February 2023).

Among migrant worker communities, both formal and informal support networks exist and are generally, though not always, shaped along national and cultural lines. In countries where civil society organisations and/or trade unions are permitted, such as Kuwait and Bahrain, there is broader support available to workers regardless of nationality, but still limited in reach. In either case, support is often bounded by geographical limitations, with workers in remote areas left particularly precarious. Furthermore, the absence of migrant representation in the decision-making process results in legal and regulatory blind spots. The exclusion of migrants from representation is embedded in the wider political restrictions that also constrain citizens, and is also intended to curb any semblance of civil society organising. Even where

migrants' participation in trade unions is permitted, it is generally limited at best and antagonistic at worst. Tensions between migrant and citizen workers are especially heightened in the case of domestic workers, where there is typically a conflict of interest between union members who are themselves employers of domestic workers (Migrant-Rights.org, 2014).³

Laws are only as good as their enforcement, and, overall, the rule of law in the GCC remains weak. Although reforms in the past decade have tended to increase penalties against employers and appear relatively robust on paper, they are illusory in practice, even in the worst cases of financial (Business & Human Rights Resource Centre, 2022) and physical abuse (Migrant-Rights.org, 2023b). The social power that sponsors possess enables manipulation even when systems are digitised, as in the case of wage protection, job changes, and exit permits discussed above (Migrant-Rights.org, 2022b). Inversely, migrant workers are disempowered and unable to exercise the personal freedoms needed to benefit from reforms.

Conclusion

The Kafala is entrenched in a socio-political system as much as it is in a legal system, and both require scrutiny for workers' rights to be realised. We do not contend that individual reforms over the last decade have all been entirely superficial; there have been some meaningful advancements to migrant workers' labour rights, such as workers' ability to remain in the UAE and Qatar for longer periods to find a job after the termination of a contract or to change jobs during any time of the contract in Qatar. Rather, what we argue is two-fold: 1) that reforms do suffer from critical protection and enforcement gaps, and 2) that these reforms tend to be bounded in silos, concentrated on discrete regulations rather than reducing the totality of employers/sponsors' control over workers. These controls may be exerted through the overtly legal powers bestowed by the Kafala system in the form of absconding regimes, job change permission, control over visas and residency permits, live-in requirements for domestic workers, and so on. They may also be implicit or 'silent' controls that underpin the Kafala complex — such as the absence of minimum wage regulations that exacerbate the dependency of low-paid workers on their employer/sponsors, the lack of affordable housing for low-income migrant workers and their consequent inability to live independently, the weak complaints mechanisms that are not designed with migrant workers in mind, the family separation which strips workers of their support systems, and so on.

By design, the consequence of duplicitous recruitment, poor working conditions, wage theft, and employment immobility results in perpetual turnover of the workforce. Workers are thus entrapped in a permanent state of temporariness⁴, which both deters demands for better treatment and wages and enables the swift removal of 'excess workers' in times of crisis, as witnessed during the pandemic when workers

³ In his exploration of the Kafala's ideological effects on social relations in Kuwait, Faisal Hamadah (2022) recounts a recent conflict between a local domestic workers group, Sandigan, and a representative of the Kuwait Trade Union that illustrates the deeper dynamics in conflict.

⁴ The concept of permanent temporariness was introduced by Adrian Bailey et al in their study of Salvadoran workers under Temporary Protection Status in the U.S (Bailey et al., 2002); it has since been adopted by a number of Gulf scholars to describe the effect of the kafala system on migrants in the Gulf, such as (Babar, 2020) and (Vora, 2013).

were retrenched and forcibly repatriated, only for the same businesses to recruit afresh within months (Ekanayake, 2020). The irrationalities and inefficiencies of the Kafala's effect on the labour market have been discussed by Diop et al. (2018), as well as by several consulting firms that Gulf governments have hired to revamp their labour and migration policies (McKinsey and Company, 2015). Over-recruitment and rapid workforce turnover are baked into the Kafala system in many ways: recruitment, the act of sponsorship, and the means to control workers all provide different forms of rent. Recruitment acts as a business model, with different stakeholders able to profit from the process. Visa-trading and "Free Visas" also offer a means for sponsors to earn money off visa quotas by charging migrant workers who work freelance for other employers for their permits and renewals (Migrant-Rights.org, 2023a). Perhaps most significant, as Amanda Garrett highlights in her evaluation of reforms in Qatar, is the effect of ensuring cheap labour by creating an immobile labour market, where workers unhappy with their working conditions, poor housing, or wages either do not have the option or face significant obstacles in changing jobs with better employment terms (Garrett, 2020). Scholars, economists, and other observers have long argued that reform of the Kafala is in the state's economic interests, but only in the long term (A. Khan & Harroff-Tavel, 2011). In the short term, immediate gains made from artificially cheap labour and the lack of support from the population are likely to continue to block substantive reform.

More than piece-meal reform of legislation is required to secure the rights of migrants in the Gulf. Instead, the entire Kafala complex needs to be dismantled. This requires, at a minimum, removing employers' legal controls over workers and extending social protection and economic rights such as minimum wages and unemployment insurance to migrants and holding errant employers to account; however, it also requires regarding migrants as more than a dispensable and renewable source of labour, and enabling their full participation in society by allowing freedom of association, inclusion in socio-cultural spaces, and rethinking urban planning and transportation from the perspective of the vast majority rather than the affluent minority. These measures would nurture a vibrant and skilled local labour market, reducing the costly need to constantly recruit and train a new set of workers. We recognise that these are lofty aspirations: Gulf states are politically and economically invested in the illusion of temporary migration and have little incentive to overhaul the status quo. With more source countries struggling economically, the weakening of labour movements globally, and their success in dodging international pressure, they also face little pressure to do so. However, while we advocate for achievable incremental reform, it is critical to maintain international human rights standards and push back against the dilution of migrant workers' rights.

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About the author



Rima Kalush is the programme director of Migrant-Rights.org, an advocacy and research organization focused on the Gulf states and wider Middle East. Her work has been published and referenced by Al Jazeera, the International Labour Organisation, and Jadaliyya among other institutions. She holds a BA in History and in Politics from the University of California, Davis, and an MPhil in Middle Eastern Area Studies from the University of Oxford. She has recently returned to Oxford as a DPhil student in Migration Studies, where she is focused on the situation of migrant workers in Libya.



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Referencing Publications: Citations and quotations should always include either the long or the short reference. Generally the long reference should be used. In exceptional cases (e.g., not enough room) the short reference should be used.

Long Reference: Rima Kalush, Vani Saraswathi, "Reforms without Rights: The GCC States' Blinkered View of Labour Reforms," GLMM Explanatory Note No. 2/2024, Gulf Labour Markets, Migration and Population Programme (GLMM) of Gulf Research Center (GRC), <https://gulfmigration.grc.net>.

Short Reference: R. Kalush, V. Saraswathi, "Reforms without Rights: The GCC States' Blinkered View of Labour Reforms," GLMM EN No. 2/2024, GLMM / GRC, <https://gulfmigration.grc.net>.

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