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**Expatriates' Labor Within the Gulf  
Cooperation Council Framework**

Steps forward in  
ending abuses?

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*Vorrei ringraziare,*

*mia mamma e mio papa, che mi hanno  
sempre sostenuto durante questo  
percorso, e tutta la mia famiglia;*

*Chiara, che in questi ultimi anni c'è  
sempre stata, con comprensione, pazienza  
ed entusiasmo;*

*i miei amici di sempre, una famiglia  
allargata, con cui da anni condivido tutto;*

*i miei compagni di vita veneziana, in  
primis Alberto e Alida, senza dimenticare  
Alberto, Marco e tutti gli altri, molto più  
che colleghi;*

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## Introduction

The Arabian Peninsula, until few decades ago, used to be just an endless stretch of desert, and its beating hearts were its trading ports. Oil discovery and its exploitation lead to an unprecedented economic development, whose results are futuristic skylines and unlimited luxury.

The native populations of the six oil-rich member states of the Gulf Cooperation Council, namely The State of Bahrain, The State of Kuwait, The Sultanate of Oman, The State of Qatar, The Kingdom of Saudi Arabia, and the United Arab Emirates, were way too small and they lacked the necessary skills in order to sustain the new economic scenario.

Gulf governments, therefore, decided to look outside their borders for an easy solution: immigration. Foreign workforce has started flowing massively into the Arabian Peninsula, whereby a combination of natives' hostility, a subtle layer of racism, and cultural differences has created a breeding ground for denied rights and abuses.

Indeed, following my working experience in Oman, I have been shocked by the conditions in which low-skilled expatriates used to work during summer (and while fasting for Ramadan), and by the stories I was told by European expatriates living in the Sultanate.

Back then I had questions that could not be answered, and eventually they became the main drivers of this work. "Why there are so many expatriates in the Gulf region? What is this sponsorship system that I always hear of? Why everyone knows that it exists, but it seems like no one aims at dismantling it? How much has the legislative framework contributed to the creation of such a hostile environment for foreign workforce? Is there, at least, one actor able to improve these workers' conditions?"

All my research was focused on trying to give an explanation to this phenomenon.

In order to answer to the aforementioned questions, the work is structured as follows: in the first chapter, it has been carried out a comprehensive portrait of the foreigners' labor market within the Gulf States, in which it has been given emphasis to an historical, a demographic, and a legislative perspective, in order to better understand the conditions in which an exploitative system such as *kafala* could flourish.

Having depicted some of the technical causes of the current situation, the second chapter focus on their consequence, namely the sponsorship system. There the subject is going to be the *kafala* in general, and, in particular, the whole series of abuses and rights violations towards foreign workers.

*Kafala* appears to be the mean through which the states outsource to the private sector the responsibility for migrant workers; however, succumbing to external pressure, some of the



GCC Member States have proposed some reforms to the sponsorship system, whose effectiveness is going to be under the spotlight in the third chapter.

As just mentioned, this part of the work is going to revolve around the first two actors of change: The Gulf Cooperation Council and its Member States. We are going to conduct an in-depth investigation on how the GCC and the single countries have been trying to regulate their internal labor market: on one hand, by means of nationalization policies and subsidies, thus favoring indigenous workforce; on the other, by reforming *kafala*.

Finally, in the last chapter, the focus is going to be on the external actors, other than Gulf governments, involved in the process of transformation of the sponsorship system. In particular, the effectiveness of the International Labor Organization, and its Conventions and Recommendations, is going to be under the spotlight.

Furthermore, we are going to deal with the solutions proposed by labor-sending countries in order to protect their overseas workers, and we will proceed with further investigations concerning the role of international forums or organisms which are the result of the cooperation between GCC member states and sending countries.

At the end of this analysis, one should be able to understand how *kafala* has changed in the various Gulf countries throughout the last decade (if it has actually changed), and which actors were the most effective in this transformation process; furthermore, it will be possible to make assumptions on the players, and their roles, in future revisions of the sponsorship system and in the protection of foreign workers in the Gulf Cooperation Council framework.



# 1. Foreigners' impact on the demography and labor market of the Gulf Cooperation Council Member States

*"In some areas of the Gulf, you can't tell whether you are in an Arab Muslim country or in an Asian district."*

- Majeed al-Alawi, Bahrain Minister of Labor (October 2007)

## 1.1 History and causes of the migratory phenomenon towards the Arabian Peninsula

Gulf Cooperation Council member states' histories are strictly intertwined, hence the decision to analyze migratory phenomenon's history from a single point of view, the one of the Arabian Peninsula. Indeed, despite their own peculiarities, these countries have similar environments, cultures, ethnicity, and their economies rely on the same natural resources. Their shared experience in the modern era is marked also by small native populations, nationalisms, hydrocarbon wealth, authoritarian leadership, and staggering social and infrastructural development caused by oil discovery.

Even now, several clans and tribes continue to maintain relation across borders, and some ruling families are genealogically connected.

Mobility has always characterized these territories, in ancient times inhabited by *bedu* and *hadhar* people. Respectively, pastoral nomadic people being able to survive in the inland deserts, and settled population residing in urban areas, living of seafaring, pearl production, and trade.

The coastal cities of the Peninsula for millennia used to be at crossroads of civilizations, on their shores all sorts of people found their place: merchants, traders, and slaves at first, bureaucrats, technicians and professional in more modern times.

The roots of the contemporary migratory phenomenon are found hundreds of years ago, when, during the XVI<sup>th</sup> century, the Arabian Peninsula was at the center of a flourishing trading network mostly reliant on pearls found in the Indian Ocean. Being less developed than the neighboring India and Persia resulted in an increase of attractiveness for South Asian business men, aiming to establish banks and obtain high margins from interests on loans given to the pearl divers.

This is defined by the anthropologist Andrew M. Gardner<sup>1</sup> as the first wave of migration concerning the Gulf region; its end coincides with the British arrival and this circumstance set in motion the so-called second wave.

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<sup>1</sup> M.A. Gardner, 2010

Indeed, migrant workers started flowing consistently into the Arabian Gulf three centuries later, along with the British establishment and its presence in the Indian subcontinent, and the subsequent creation of protectorates concerning the sheikhdoms found on the eastern coast. In 1820 Abu Dhabi became a protectorate, and then they conquered Aden in 1839. In the following years, Great Britain established protectorates over Oman, Qatar, Kuwait, Bahrain, and Dubai.<sup>2</sup>

All those entities used to be administered by British officials in India, a situation that laid the groundwork for the extensive presence of Indians, Pakistanis, and Bengalese workers in the Gulf, as its port cities experienced the emergence of a permanent community coming from the aforementioned countries, mostly made up of bureaucrats.

The discovery of oil reserves in the peninsula dates back to 1932 in Bahrain, followed by the ones in Saudi Arabia in 1938, Kuwait, Qatar and the UAE, and finally in Oman in 1967.

As a matter of fact, the last wave of migration is strictly intertwined with these findings and the ensuing boom of the oil industry in the 1960s; although the oil industry still used to be at an embryonic stage, the combination of economic growth, along with the small and low-skilled GCC national workforce, made importing labor a necessity, especially in the construction sector, government bureaucracy and consumer markets.

In addition to the low availability of local labor, political elites decided not to educate and train native workforces for economic development as it would have taken a lot of time and resources; they simply decided to employ locals in the public sector, at extremely generous conditions.

Hence, to address the aforementioned situation, the short-term solution has been the recruitment of migrant laborers, while the far-sighted one consisted in the application of a pro-natality policy, and extensive investments in education and training.

However, Gulf royal families have never contemplated the mass naturalization option, fearing that it would destroy their states' socio-political nature based on a mixture of kinship and tribal system; a decision fostered by the shared belief among the population that mass naturalization would cause a progressive loss of their traditional cultural-religious values. In fact, a central feature of the Gulf states is the construction and preservation of nationalisms, and, at the same time, the legitimacy of the dominant families and tribes.<sup>3</sup>

In particular, during the “oil-decade” started in 1973 and lasted until 1982, the figures of the migratory phenomenon were exceptional: the number of foreign laborers in the Gulf countries

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<sup>2</sup> The Diplomat, 2016

<sup>3</sup> M. A. Gardner, 2015

increased, until it reached 4.4 million people in 1985; whereas the total number comprehensive of non-workers was even higher.

This time, though, the country of origin of the ordinary migrant experienced a shift: until the 1990s, the vast majority of workers came from other Arab states, namely Yemen, Egypt, Jordan, Syria and Iraq.

Initially, Gulf governments were very tolerant towards these migrants, due to their linguistic and cultural homogeneity; however, as the Pan-Arabism ideology<sup>4</sup> started spreading in the region, it began to be seen as a threat, from the moment that it would have entailed a redistribution of oil wealth among the Arab community. As a consequence, the welfare benefits in these countries were granted only to their citizens.

GCC governments at the time established their version of the Welfare State, granting considerable benefits to their citizens. Gulf states usually provided (and still provide) housing, health care, education, and a sort of guaranteed income, to the nationals.

A subtle process of discrimination based on the dualisms “nationals versus non-nationals”, “citizens versus non-citizens” began during that period. In fact, a mentality of racism, classism, and superiority, made its way among nationals.

Distinctions started to be made also amongst expatriates, as Western foreigners were (and still are) treated differently from Asian and African migrant laborers, as demonstrated also by wages’ disparities, another way to pass the message “their work is worth less than yours”. This has to be seen as one of the causes, if not the major one, of what is going to be described in the following chapter.

In an environment pervaded by government-funded racism, from the 1990s on, Asians migrants started to be preferred against their Arab neighbors. Concern towards Pan-Arabism, cultural and economic reasons, were the drivers of this precise choice: in particular, Asians often expatriated without their families, they tended to accept lower wages, it was less complicated to segregate them and they were easier to lay off.

Furthermore, with regards to skilled work, local workers lacked the technical know-how, since education had not changed through the years and it was still based on religious doctrines.

Following the end of the “oil-decade”, it was predicted that the migration flow would have slowed down due to the decline of oil revenues and increased indigenous population growth

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<sup>4</sup> Pan-Arabism: nationalist notion of cultural and political unity among Arab countries.

rates; nevertheless, the data collected until the end of the century show how consistently the number of foreign workers rose.

Immigration-friendly policies, soft enforcement of labor regulation concerning quotas and employment conditions were among the causal factors, for which GCC member states should be held accountable, that contributed to the increase of the immigration phenomenon, despite the implementation of labor nationalization policies.

Gulf governments, especially now, need foreign workers to shape their countries' narrative, through huge construction projects, global events (World Cup 2022 held in Qatar), and a rapidly growing heritage industry (Louvre Museum in Abu Dhabi). On one hand, these activities contribute to the creation of a sophisticated, futuristic, and cosmopolitan image of these countries, and assert the leadership of the ruling families on the other.

Migratory fluxes obviously involve both sending and receiving states, thus responsibilities are attributable also to departure countries, such as India and Philippines, since they apply loose emigration policies, which result in the promotion of outward flows of migration. Sending countries rely on remittances coming from their citizens working in the Gulf.

World Bank, in 2016, has collected data on bilateral remittances stemming from migrant laborers in the Arabian Peninsula.<sup>5</sup> India has benefited from this situation the most, receiving from its citizens around \$32 billions in 2016, followed by Pakistan (\$14 billions), Philippines (\$10 billions), and Bangladesh (\$7,5 billions). The magnitude of this phenomenon is manifest, as these four countries account for \$63,5 billions in remittances.

Gross Domestic Product (GDP) in some Indian states such as Kerala and Andhra Pradesh strongly relies on this money, hence emigration policies have been crafted in order to make the process of travelling abroad and remitting money. One of the very first cases was "*The Foreign Exchange Regulation Act of 1973*", whereby the classification of Non-resident Indian (NRI), aimed at extracting economic benefits from migrant workers, was introduced. Nowadays, India is promoting a dual-citizenship model that allows citizens living and working abroad to remain part of India's society. In 1982, Philippines, in order to oversee the migratory process, even created the "*Philippines Overseas Employment Administration*".

These policies clearly benefit the sending countries, since they are able to economically exploit the labor surplus; however, at the same time, they are damaging their citizens on two different levels. First, they indirectly contribute to abuses, and second, through their strategies, migrant workers remain integrated in their home-country society, hence legitimizing social segregation.

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<sup>5</sup> World Bank, 2016

In the following paragraph, figures and statistics related to the migration phenomenon will be at the center of our analysis, making the reader able to perceive the massive impact it had and is having on Gulf societies and labor market.

## **1.2 Demographic trends and statistics**

The migratory waves described above resulted in a, ethnically speaking, heterogeneous population and, subsequently, a unique labor market.

Collecting data of these, on different degrees, authoritarian regimes used to be very difficult in the past; however, thanks to an increase in government transparency, nowadays it is easier to have access to those (not always up-to-date) useful to understand the demographic evolution of the populations in the six GCC countries.

The migratory waves have not always been so consistent throughout the XX<sup>th</sup> century, as demonstrated by the data collected by the Gulf Labor Markets, Migration and Population (GLMM) programme and represented in the graph below.

The first information dates back to 1957, when foreigners in Kuwait accounted for the 45% of the total population, increasing up to 53% by 1965. Before the oil boom, in the first half of 1970s, 800.000 to 1.250.000 million people were estimated to be born outside GCC borders<sup>6</sup>. By 1975, foreign population boomed and reached 2.760.000, and the average labor force growth in the following decade was 7,7% per year, boosted by the same statistic concerning non-nationals (13%)<sup>7</sup>. In 1970s only Kuwait and Saudi Arabia had a relatively large number of foreigners within their borders, while for the other Member States their presence was somehow not significant.

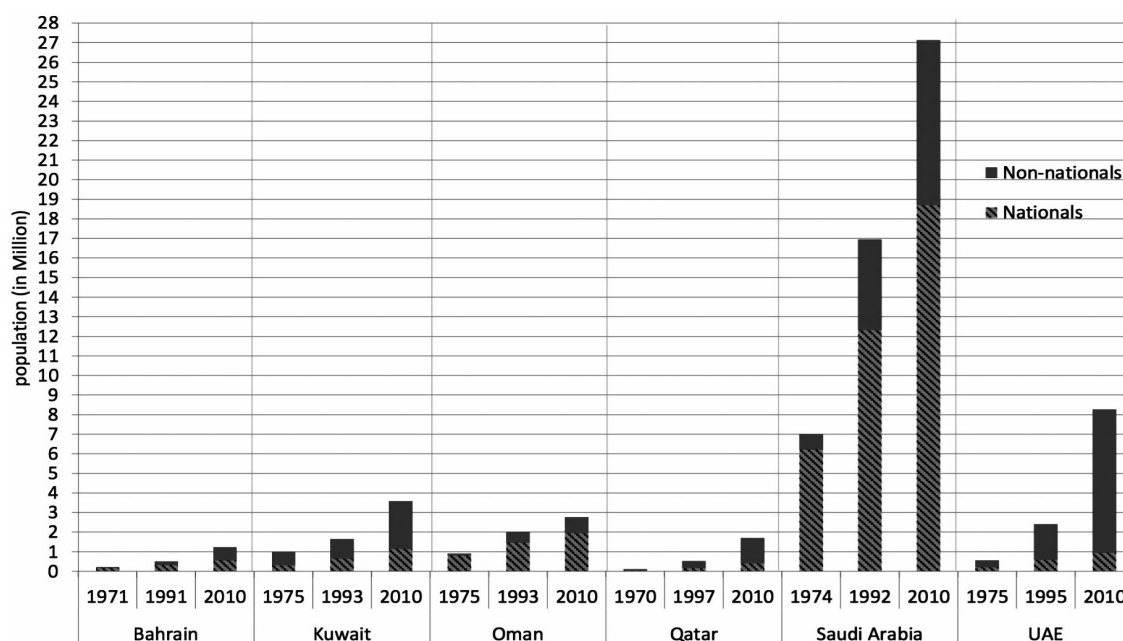
However, throughout the 1980s, declining oil prices slowed down labor demand, until the 1990s' boom, as showed in the graph below.

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<sup>6</sup> Winckler, 1998

<sup>7</sup> Baldwin-Edwards M., 2011

Figure 1: National and Non-National Populations in GCC Countries (1970-2010)



Source: GLMM<sup>8</sup>, 2010

In the 1990s, following in the Kuwaiti and Saudi footsteps, Oman and UAE experienced an increase in the number of foreigners living on their territory, while Bahrain and Qatar have not been affected consistently by this trend until the beginning of the XXI<sup>st</sup> century.

Nowadays, in the GCC States, foreigners' presence permeates society: foreign-born population is the absolute majority of the population in Bahrain, Kuwait, Qatar, and United Arab Emirates, while it constitutes a (large) minority in Oman and Saudi Arabia.

The table below shows the statistics concerning the situation in the six countries, where “*non-nationals*” are defined by the Gulf Research Centre as:

- “Persons bearing nationality of a foreign State other than the GCC State of residence, or bearing no proof on nationality from any given state (stateless persons and holders of refugee status and travel document in a third country)”;
- “Holders of residence permit residing in the given GCC country at date of census, as per definition of residence used in each of the countries”.<sup>9</sup>

<sup>8</sup> The Gulf Labour Markets, Migration and Population (GLMM) programme is a non-profit joint programme of a major Gulf think tank, Gulf Research Center (GRC – Jeddah, Geneva, Cambridge), and a globally renowned academic migration centre, the Migration Policy Centre (MPC – Florence)

<sup>9</sup> GLMM, 2016



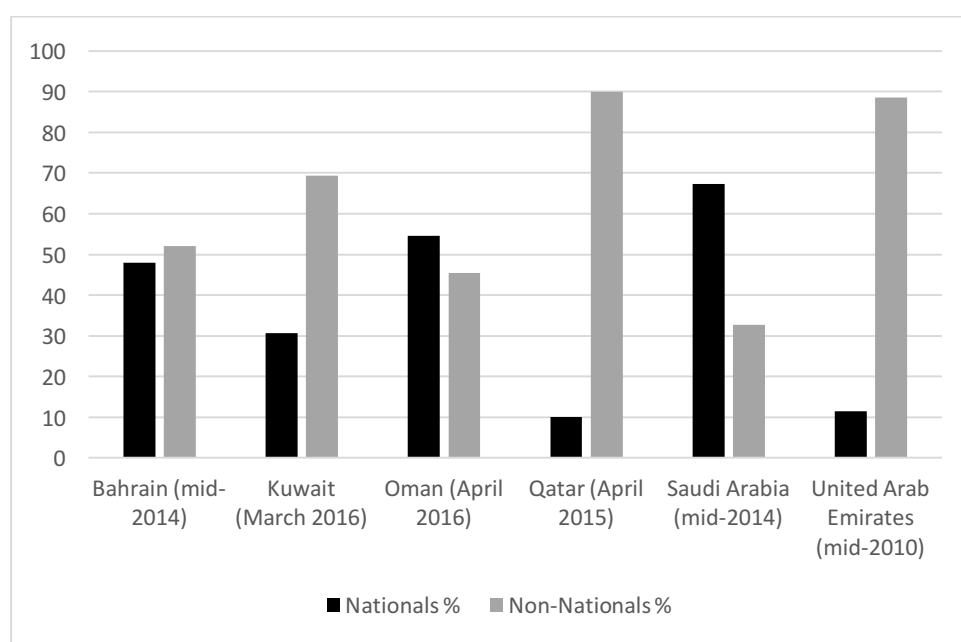
Figure 2: GCC Total Population and Percentage of nationals and non-nationals, latest year available (2010-2016)

Country	Year	Total Population	Nationals	Non-Nationals	Nationals %	Non-Nationals %
Bahrain	Mid-2014	1.314.562	630.990	683.572	48,0%	52,0%
Kuwait	31-Mar-16	4.294.171	1.316.147	2.978.024	30,6%	69,4%
Oman	20-Apr-16	4.149.917	2.265.855	1.884.062	54,6%	45,4%
Qatar	01-Apr-15	2.404.776	243.019	2.161.757	10,1%	89,9%
Saudi Arabia	Mid-2014	30.770.375	20.702.536	10.067.839	67,3%	32,7%
United Arab Emirates	Mid-2010	8.264.070	950.368	7.313.702	11,5%	88,5%
<b>Total</b>		<b>51.197.871</b>	<b>26.108.914</b>	<b>25.088.957</b>	<b>51,0%</b>	<b>49,0%</b>

Source: Author's elaboration of data collected by GLMM

The results of this analysis are quite extraordinary: all six countries of the GCC are characterized by a demographic imbalance between migrants and national; in fact, non-nationals account for the 49% of the GCC's total population.

Figure 3: Share of foreigners in GCC countries, latest year available (2010-2016)



Source: Author's elaboration of data collected by GLMM

Qatar is the most affected, as only 10,1% of the Qatari population is born within its borders, followed by the 11,5% in the United Arab Emirates, 30,6% in Kuwait's, and 48% in Bahrain's. Among these six countries, only Omani and Saudi nationals account for the majority in their home-countries, respectively 54,6% and 67,3%.

More recent estimates, carried out by the Qatar's Statistics Authority, show that the percentage of foreigners within the country's borders may have increased and reached 93%. Despite the lack of available and up-to-date data, it is easy to imagine that the trend could be similar in the other Member States, as a result of a more interconnected world.

Up to this point we addressed to a general "*Non-GCC nationals*"; however, the previous subject of analysis gave us the possibility to indulge on the differences created by the country of origins of these expatriates.

Indeed, foreign populations in the Gulf are geographically and demographically diverse; differences that reflect on their occupation, their place in these societies, and their rights and duties.

As highlighted in the first paragraph, centuries ago South Asian and Persian labor used to be prevalent. Nowadays, the unskilled workforce places its origins in Sub-Saharan Africa, East and Southeast Asia, and other parts of the Middle East, whereas professional and managerial positions are occupied by national citizens or elite foreigners, generally coming from Middle Eastern, European, North American, or South Asian countries.

Even though nationalization is almost impossible to obtain in GCC States, the majority of high-skilled workers, with the exception represented by "elite" foreigners from western countries due to the high turnover, tend to settle in the region, while those working in professions requiring a lower level of skills often remain in the Gulf for shorter periods of time; hence the title of "*Expatriates*", noun that defines "*foreign laborers living and working in a certain country for a certain period of time, and plan to eventually return to their home country*"<sup>10</sup>, the term conveys the transitory nature of the situation as the word expatriate derives from the Latin terms *ex* ("out of") and *patria* ("native country, fatherland").<sup>11</sup>

The data collected show how the vast majority of immigrants originates from India, Pakistan, Bangladesh; as of 2015, Indians accounted for the 25% of the total Qatari and Bahraini population (respectively, 650.000 and 350.000), the 26% in the Sultanate of Oman (456.660), the 27 % in the Emirates and Kuwait (2.600.000), whereas in Saudi Arabia they accounted only for the 4%, even though their number exceeded the million (1.300.000). Furthermore, in the UAE Pakistanis are 1.200.000 and account for 12,53% of the total population, outnumbering the Emirati, and 1.500.000 in Saudi Arabia. Aside from the large South Eastern Asian communities, the biggest foreign populations include Filipinos, around two and a half million

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<sup>10</sup> Online Business Dictionary, Consulted the 29/01/2018

<sup>11</sup> Online Oxford Dictionary, Consulted the 29/01/2018

people throughout the GCC Member States (1.500.000 just within Al Saud's Kingdom<sup>12</sup>, plus 525.530 in the UAE), Iranians (500.000 just in the UAE), Egyptians (800.000 circa), Syrians (in Saudi Arabia, government's statement put the number between 500.000 and 2.500.000), Jordanians (300.000 circa) and Palestinians (120.000 in the Emirates).

From this analysis it is evident that the Khalifa bin Zayed Al Nahyan's<sup>13</sup> Kingdom (UAE) is the most diverse and heterogeneous in terms of communities within its borders, as the country hosts half a million of Iranians, usually very unpopular for geopolitical reasons within GCC countries, and the largest number of Westerners: 120.000 British, 50.000 Americans, 25.000 French and even 10.000 Italians.

On the other extreme, being the less "open", the Al Saud's Kingdom welcomes mostly people from Muslims countries.

### **1.3 Foreigners' labor market features**

The analysis in the previous paragraphs lays the foundation for a specific study concerning foreigners' impact on the GCC Member States' labor market and the latter's features.

In general, other than presenting obvious differences, the six countries share a number of structural similarities<sup>14</sup>:

- low participation and employment rates of nationals;
- segmentation of the market: dualisms public vs private and nationals vs immigrants;
- differences between male and female labor;
- relevance of the *kafala*, or sponsorship system, which will have a dedicated paragraph later on.

As a pillar of the GCC's labor market, and subject of discussions and controversies, *Kafala* will be the object of a specific and in-depth analysis in a separate chapter.

The first element to consider concerns the dualism public/private sector, which is strictly related to the one nationals/immigrants.

In fact, in every country of the GCC, the public sector is dominated by native workers; for instance, data collected between 2010 and 2015 by GLMM, and then re-elaborated, show that only 9,6% of non-GCC nationals was publicly employed throughout the region.

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<sup>12</sup> Saudi Arabia. The etymology Al Saud is an Arabic name formed by adding the word Al, meaning "family of" or "House of" to the personal name of an ancestor. In the case of the Al Saud, this is the father of the dynasty's and royal family, Muhammad bin Saud

<sup>13</sup> President of the Federal Absolute Monarchy of the United Arab Emirates.

<sup>14</sup> Baldwin-Edwards, 2011

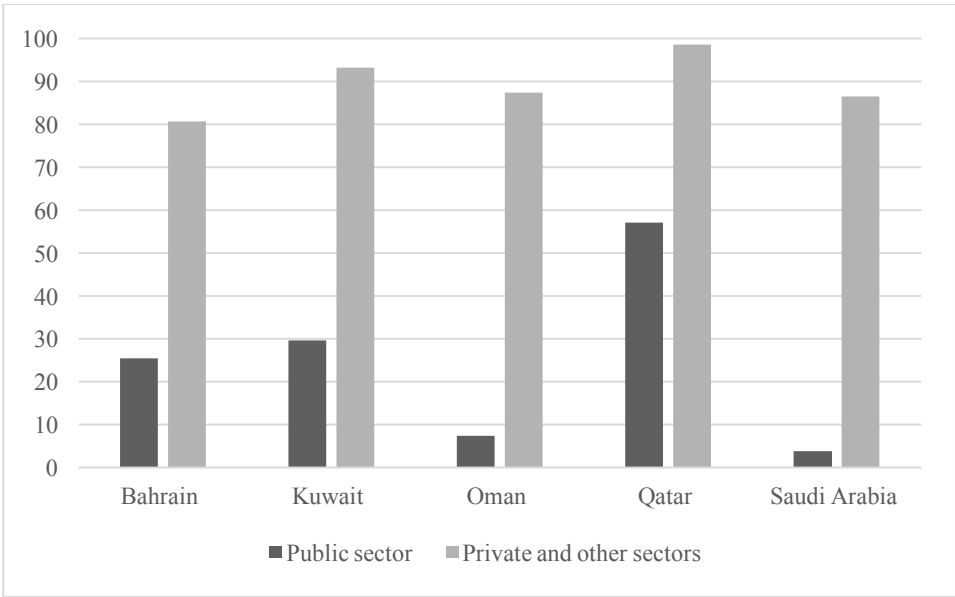
Non-nationals account for only the 3,8% of the workers in the Saudi public sector and the 7,3% of the Omani, with the sole exception of Qatar, whereby foreigners' number exceed the natives'. Modest numbers, especially when given the incidence of foreigners on the total population of the Gulf.

The graph below displays the percentage concerning the single countries, in which the UAE are not included due to missing data.

It becomes evident that foreign workers are the vast majority in the private sector, peaking at 98,7% on the total workers in that industry in Qatar.

As mentioned in the first paragraph, they are preferred over natives because their wages are lower (with the exception of high-skilled workers) and the hiring system guarantees flexibility for the employer. This situation increases the segmentation of the labor market and enhance inequalities between the two categories. Moreover, a seemingly unlimited supplies of un/semi-skilled labor causes a fierce competition among foreigners and a “race to the bottom” for extremely low wages.

Figure 4: Percentage of non-nationals in government sector and in private and other sectors in GCC countries



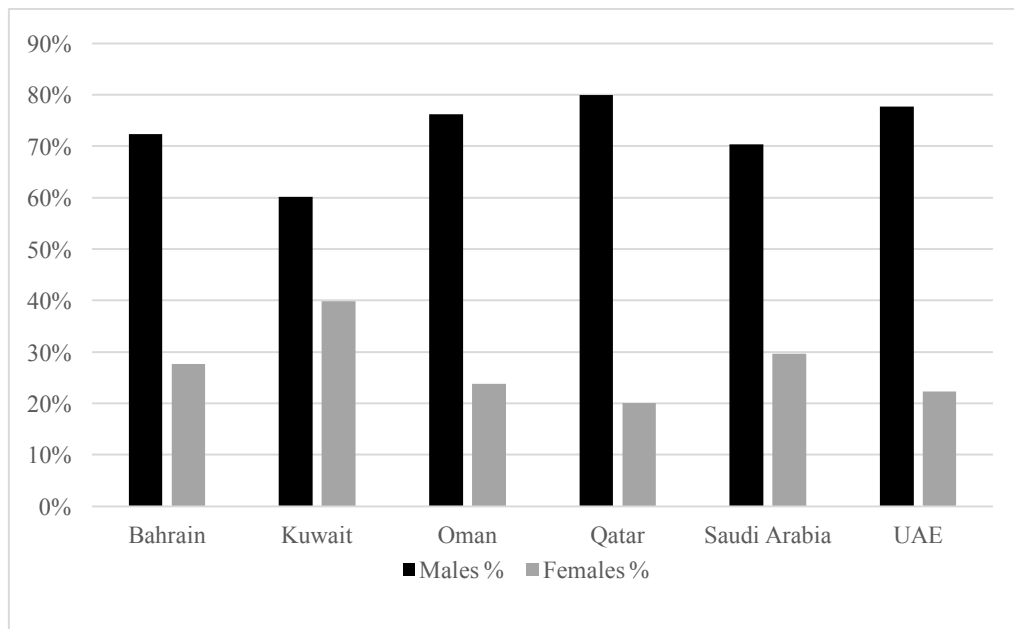
Source: Author's elaboration of GLMM's data

Moreover, the presence of a striking gender bias towards males within the foreign population strengthens the public/private and natives/immigrants dualisms.

Data collected in 2010 from the GLMM show that each country ranges from a minimum of 60,10% of males on the total number of foreign-born workers in Kuwait, to a maximum of 79,93% in Qatar, meaning that, as of 2010, 1.164.003 out of 1.456.416 expatriates in the latter were males.

The other Member States present the same situation, as it is demonstrated by the graph below; in decreasing order: UAE (77,67%), Oman (76,19%), Bahrain (72,34%) and Saudi Arabia (70,38%).

Figure 5: Foreign population by sex (2010)



Source: Author's elaboration of GLMM's data

This imbalance towards males is due to some specific features of the labor market on one hand, as the skills required by the most labor-demanding sectors, and cultural reasons on the other; because of the latter consideration, for instance, female migration from Middle Eastern and North African countries is consistently more difficult. The principal employment sector for women is household work, which is widespread throughout the region, and in particular in Saudi Arabia.

Indeed, what the market requires the most are construction workers, truck drivers, taxi drivers, custodians, public employees, sale workers and domestic servants.

The data collected extensively by the GLMM show the distribution of non-nationals, within the private sector, with regard to their occupations.

In particular, from my personal elaboration of the aforementioned statistics, it is possible to notice that the most part of foreigners are employed in the service industry and as sales workers, as their percentage reaches 38,5% on average<sup>15</sup> on the total employed migrants in the GCC

<sup>15</sup> Estimates may vary due to denomination differences; the categories chosen for this analysis are "Service workers and shop and market sales", "Craft and related trades workers", concerning Kuwait and Qatar; whereas "Sales Occupations", "Services Occupations", concerning Bahrain, UAE, Oman, Saudi Arabia.

countries, with small differences among the six Kingdoms.

Another relevant feature concerning expatriates' labor market is the significant number of workers employed in the engineering sector, especially in oil-related industries, and covering blue-collar positions.

Furthermore, concerning white-collar occupations<sup>16</sup>, the results show that, on average, only the 16,2% of foreigners cover those positions; this trend is especially significant in the UAE, 26%, while only 12% of Non-Kuwaitis and Non-Omanis.

These figures are an approximation, since it resulted difficult to acquire precise and coherent data on one hand, and make the various categories correspond.

The same consideration applies to Baldwin-Edwards research, in which the author tried to give a complete overview on foreign employment in GCC by economic sector.

As of 2009, the industries strongly affected by the migrant work are “construction”, whereby the percentage of foreigners ranges from 89,8% in Bahrain to 99,8% in Qatar, “hotels and restaurants” (99% in Qatar), and “households with employed persons” (again, 100% in Qatar). The latter category, in particular, accounts for more than 2.000.000 people throughout the Gulf, according to data provided by the organization called Migrant-Rights.org.<sup>17</sup>

Saudi Arabia is the major employer of foreign domestic workers, whose estimates, as of 2008<sup>18</sup> varies between 1.5 million and 876.596 people, mostly originating from Indonesia, Sri Lanka, and the Philippines. More recent projection could be even higher, as statistics provided by the Saudi General Authority for Statistics shows that, during the first quarter of 2017, 155.640 visas were issued for the recruitment of domestic workers. Furthermore, more than 750.000 and 620.000 migrant laborers are employed within Emirati and Kuwaiti households, whereas Bahrain and Qatar together employ in this sector a little more than 210.000 migrants<sup>19</sup>. Until today, Oman has not provided any useful data for this category of workers.

As a result of this analysis, it is possible to laid down two profiles, differentiated by sex, of the typical foreign worker in the Arabian Peninsula. The first laborer is male, aged between 18 and 40, born and raised in South-East Asia, working in the private sector, and in particular in the construction industry. The second profile, which represents a minority in the Gulf labor market, is female, aged somewhere around 35, domestic worker.

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<sup>16</sup> The categories taken into account are “Legislators, Administration Directors and Managers, Working Proprietors”, “Scientific, Technical and Human Matters” and “Scientific, Technical and Human Subjects”.

<sup>17</sup> <https://www.migrant-rights.org/statistic/domesticworkers/>

<sup>18</sup> A.H.M Belayeth Hussain, 2011

<sup>19</sup> Incomplete or partial data, due to lack of sources

Obviously this is an approximation, and a simplification, which is useful in order to orient oneself through all these numbers and different categories.

#### **1.4 Non-nationals in labor legislations: a comparative analysis**

During the last decade, the media extensively covered issues concerning migrant workers, and generally foreign labor, within GCC Member States borders. Indeed, a never-ending series of human rights violations and abuses towards foreign workforce were reported, making people conscious about the deficiencies of Gulf kingdoms' labor legislations.

In particular, this paragraph, through the comparative analysis of those norms, included in the six labor legislations, directly addressing to non-nationals in the Gulf<sup>20</sup>, focus on those structural weaknesses that enable the resilience of such injustices, and it aims to outline the contact point, and differences, between them.

##### **1.4.1 Bahrain**

As of 2014, the 52% of the small constitutional monarchy's population was constituted by non-nationals, and, despite being probably outdated, the Labor Law for the Private Sector promulgated in 1976 still gives some interesting guidelines for the employment of foreign workforce.

At the end of this analysis, it will be possible to affirm that the legislation presents a number of similarities when compared with other GCC countries' ones, as the employment of non-Bahraini relies on a system of work permits granted by the Ministry of Labor and Social Affairs. Those permits are issued following certain conditions, such as good reputation and behavior of the non-national, the obtainment of the residence permit, and a good medical status.<sup>21</sup> In addition, Article 5 establish that the renewable work card will be valid just for one year, and it must not exceed the period of the residence permit.

As set up in Article 6, the Minister for Labor and Social Affairs may cancel a work card when the non-Bahraini fails to comply with the conditions in Article 4, the "*employment in Bahrain of the bearer competes in the labor market with national workers, provided that a Bahraini*

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<sup>20</sup> At this stage, the analysis included only those sections in which the words "*foreign workforce*", "*expatriates*" and "*non-nationals*" were mentioned. Norms regulating specific issues and abuses linked to the sponsorship system, please refer to Chapter 3.

<sup>21</sup> Article 4, Bahrain Labour Law for the Private Sector (1976)

*worker able and willing to perform the same work is available and provided*”, and whenever the holder is unemployed or changes employer.

The dualism between national and non-nationals is settled through Article 13 that reads as follow: *“Every employer shall afford priority of employment to citizens; thereafter to other Arab nationals whenever both are available and possess the capacity and competence as required by the nature of employment.*

*Further, whenever a labor force is surplus to requirements, employers shall release non-Arab nationals before Arab nationals and citizens, and shall release Arab nationals before citizens provided always that citizens or Arab nationals possess the competence required for employment”*, thus giving priority to Bahrainis over non-nationals, a common pattern throughout the six countries analyzed in this work.

Recruiters of foreign workforce must obtain a special permit issued by the Ministry of Labor and Social Affairs, and it is also forbidden to collect any money from a worker looking for a job.

#### **1.4.2 Kuwait**

Through the National Assembly of Kuwait, The Ministry of Social Affairs and Labor has promulgated the current labor legislation regulating the private sector on the 21<sup>st</sup> of February 2010.

Normally, several norms concerning foreign workers should be expected; however, just one Article out of 150, the Article 10, has the word “foreign” paired with manpower.

This Article prohibits the employer from hiring *“foreign manpower unless the competent authority has granted them a permit to work for him”*, and the procedures regarding the recruitment should be laid out by the Ministry. Furthermore, employers should not encourage migration through unnecessary hires, they *“should bear the expenses of the worker’s return to his country”*, and, in the case of a worker stops working for his employer and the absence has been ascertained, the new one must take care of the expenses of the worker’s return to his country. <sup>22</sup>

Kuwaiti labor law does not go any further when dealing with foreign workforce, leaving room for broad interpretations, and, hence, abuses.

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<sup>22</sup> Article 9, The law of labor in the private sector No. 6 (2010)



### 1.4.3 Oman

The country founded on the southeastern coast of the Arabian Peninsula, ruled through a sort of enlightened (and very tolerant) despotism by Sultan Qaboos bin Said Al Said, has one of the most extensive labor legislation concerning foreigners.

In fact, Omani labor law provides three Articles, from 18 to 20, regulating non-national employment. Employers must obtain a permit from the Ministry of Manpower in order to bring on the Sultanate's soil and recruit non-Omani. This permit can be granted only at certain conditions: namely, *"there must not be enough Omani employees for the required job"* and the employer must take into account the Omanization rules, and it must pay a fee. At the opposite side of the coin, non-nationals *"are not allowed to join any work in the Sultanate before obtaining Labor cards"*, which can be granted only when the worker meets certain conditions, such as professional qualifications or skills, medical fitness, payment of the necessary fees, the employer has the required license and it is in compliance with all the labor regulations. Article 19 gives general guidelines concerning license fees, and labor card duration, that are not outlined in detail. The last one prohibits *"to practice the business of supplying foreign employees" unless it has been granted a license by the Ministry, and, most important, it reads "The employer or whoever is permitted to bring foreign employees in, is not allowed to charge such employees any amount in consideration"*.

Interesting enough, there is one more article dealing with the recruitment of non-Omani, Article 114.

The latter regulates a system of sanctions for the employers that violates Article 20, making the offenders pay a fine of 10 to 100 Omani Ryals, multiplied by the number of the employees recruited, and the cost of worker's repatriation. Moreover, the offenders will not be able to employ foreign manpower up to a year, and, if non-nationals, they could be punished by imprisonment, and their license cancelled.

The same article provides that *"any recruiter of foreign employees who contravenes the provisions of Article 20 and the decisions which organize labor permits and their conditions, will be punished by imprisonment for a period not exceeding one month and a fine not exceeding RO 200 or by one of these two penalties both in addition to the cancellation of the labor permit or its suspension for a period not exceeding one year"*.

Despite regulating the qualifications and conditions in order to grant licenses to non-nationals, there is no mention of labor standards nor decent work. In fact, it seems that Omani labor law outlines compliance rules and bureaucratic procedures concerning employers, with almost no regard towards foreign workforce.

#### 1.4.4 Qatar

In 2004, The Ministry of Civil Service Affairs and Housing implemented the latest Qatari labor law. The country has one of the highest non-nationals versus nationals ratio, hence, one should expect a labor legislation that includes several regulatory aspects concerning foreigners. Indeed, non-nationals are mentioned in the chapter “Regulation of Employment of Workers”, whereby the legislator gives priority to the employment of Qatari nationals. Expatriates may be employed just in case of needs, and they must comply with various rules. Once again, they must obtain permits of work, which are issued only to the following conditions:

- The non-availability of a qualified Qatari worker registered in the registers of the Department and to carry out the work in respect of which the work permit is applied for.
- The non-Qatari applying for the work permit shall be in possession of a residence permit.
- The non-Qatari national shall be medically fit.

Moreover, the validity period for the work permit shall be limited to the permitted residence period so that it may not exceed five years unless the approval of the Department is obtained.

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Article 25 focus on the situations in which the Minister may cancel the work permit, it has the authority to proceed with the cancellation in case the workers’ residence permit is expired or he/she is not medically fit anymore. Furthermore, it could happen if the worker “*discontinues the employment for a cause related to him without acceptable excuse for more than three months*”, if the non-national is working for a different employer than the one for which the permit has been granted, or for general disciplinary reasons.

The bill regulates also the recruitment of non-Qatari manpower, stating that “*The employer may not recruit workers from abroad except through a person authorized to do so*”<sup>24</sup>, and “*A natural or juristic person may not recruit workers from abroad for others unless he has obtained a license to do so*”<sup>25</sup>.

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<sup>23</sup> Article 23, Qatar Labor Law No 14 (2004)

<sup>24</sup> Article 28, Qatar Labor Law No 14 (2004)

<sup>25</sup> Article 29, Qatar Labor Law No 14 (2004)

If the license is granted, the licensed person must not, in any case, receive from the worker any sums in the form of recruitment fees, which is a controversial point with regards to the *kafala* system and the resulting abuses.<sup>26</sup>

As the contract expires, the employer of a non-national should “*return him to the place from where he has recruited him at the commencement of the engagement or to any place agreed upon between the parties*”, and “*The employer shall complete the proceedings of returning the non-Qatari worker within a period not exceeding two weeks from the expiry date of the contract. If the worker joins another employer before his departure from the State, the obligation to return him to his country or other place shifts to the latter employer.*”<sup>27</sup>

In part three, following nationalization policies of the workforce, the law provides that the proportion of non-nationals should be determined by the Minister, which in case could also prohibit the employment of non-Qataris.<sup>28</sup> In addition, through Article 27, if the employer relies on foreign experts or technicians, it should train an appropriate number of Qataris or, for the same reason, it should appoint as assistants some nationals to the aforementioned non-national professionals.

As expected, Qatari labor law includes several aspects, and regulations, concerning non-nationals manpower, and it gives less room to personal interpretation; nevertheless, this has not stopped human rights violations towards non-Qataris by their employers.

#### **1.4.5 Saudi Arabia**

Gender segregation, (the lack of) women rights, western expatriates living in special compounds are just some of the reasons that have contributed at the creation of Saudi Arabia’s bad reputation among foreigners’ communities in the Gulf.

At this stage of analysis, whether the shared negative feeling described above has some justifications does not matter to us. On the other hand, it is necessary to assess whether the labor legislation concurs in creating such a fame.

What emerges from the Saudi labor law is a framework similar to the others that were examined in the previous paragraphs of this work.

In order to engage in the recruitment of non-Saudi workforce, an employer must obtain a license issued by the competent Ministry. The same rule applies to non-national workers, who need a

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<sup>26</sup> Article 33, Qatar Labor Law No 14 (2004)

<sup>27</sup> Article 57, Qatar Labor Law No 14 (2004)

<sup>28</sup> Article 26, Qatar Labor Law No 14 (2004)

work permit granted to those conditions that we have come to know in this chapter: the non-Saudi has lawfully entered the country and has the authorization to work, he or she has the professional and academic qualifications needed and which Saudi citizens do not possess, and, finally, he or she has signed a regular contract with the employer (held responsible for the worker).<sup>29</sup>

Furthermore, prior to renewing the aforementioned permit, the employer has to be certain that there are no Saudi applicants in possess of the required qualifications and that are willing to undertake the same job.<sup>30</sup>

Similar to the other countries' labor legislations, the duration of work contract and the work permit are linked. Moreover, the worker must not engage in a profession different from the one expressed on the work permit, he or she must not work for another employer and an employer must not hire workforce of other employers.<sup>31</sup>

The Article 40 provides that the employer must incur the fees pertaining to recruitment of the non-national, then the residence permit, the work permit, the visa, the return plane tickets, and, finally, potential fines. Workers, for their part, incur the costs of returning home in case they are unfit to work or wishes to leave the country with no legitimate reasons.

With regard to those initial considerations, the causes of such a reputation must be sought within different domains, as the Saudi labor law does not show, on paper, big differences from the ones of the other Gulf Countries.

#### **1.4.6 United Arab Emirates**

Described above as the most heterogeneous in terms of expatriates' communities among the Gulf states, one should expect a looser labor law, if compared to the one of Saudi Arabia for instance.

Nevertheless, the labor law now in force dates back to 1980, and, similarly to the others reads "*Non-nationals may not engage in any work within the State except in accordance with the conditions stipulated in this Law and its executive orders.*"<sup>32</sup> Also, when national workforce is not available, preference should be given to workers of other Arab states, and, only then, to other nationalities.

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<sup>29</sup> Article 33, Saudi Arabia Labor Law (2005)

<sup>30</sup> Article 35, Saudi Arabia Labor Law (2005)

<sup>31</sup> Article 39, Saudi Arabia Labor Law (2005)

<sup>32</sup> Article 9, Federal Law No 8, For 1980, On Regulation of Labour Relations

Once again, employment is linked to the compliance of the conditions necessary in order to apply for the employment permit, namely, legal entrance into the country and the possess of professional competences or qualifications needed in the labor market, granted by the Ministry of Labor and Social Affairs.

The Ministry might proceed with the cancellation of the work permit in three cases: *“if the worker remains unemployed for more than three consecutive months, if the worker no longer meets one or more of the conditions on the basis of which the permit was granted, and finally if it is satisfied that a particular national is qualified to replace the non-national worker, in which case the latter shall remain in his job until the expiry date of his employment contract or of his employment permit, whichever is earlier.”*<sup>33</sup>

The Articles 16 and 17 establish that the recruitment of non-nationals is regulated by a system of licenses issued just to nationals by the Ministry; in addition, those people able to recruit should not demand nor accept any commission or material reward in order to facilitate the recruitment.

In another section of the text, the Articles 128 and 129 deals with a situation in which the non-national worker abandons his work before the expiry of the contract. With the first, it is prohibited to take up another employment for a year when the worker abandons his job without a valid reason. The same punishment is laid down in Article 129, whereby *“A non-National, who notifies the employer of his desire to terminate his indefinite term contract but abandons his work before the expiry of the statutory period of notice”*.

Finally, repatriation is at the workers' expenses only when the termination of the contract is attributable to him; in every other case, the employer is charged with those costs.<sup>34</sup>

#### **1.4.7 Overview**

The previous analysis was conducted in order to shed light on those legislative aspects that might concur in the creation of a working environment which systematically produces stories of violence, suspects of facing modern day slavery, and human rights violations.

First of all, the investigation outlines the tendency towards giving priority to the employment of national manpower when available; then, and only then, an employer might decide to hire non-nationals, first evaluating expatriates from Arab countries and finally, if there is no one able or willing to work, people from non-Arab states.

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<sup>33</sup> Article 15, Federal Law No 8, For 1980, On Regulation of Labour Relations

<sup>34</sup> Article 131, Federal Law No 8, For 1980, On Regulation of Labour Relations

This is a partial, and inefficient, solution to the immigration problems described above, as the vast majority of GCC-nationals are employed in the public sector, hence leaving millions of jobs at foreign manpower's disposal.

In each of the six countries, the state has a huge influence when dealing with foreign-labor market regulation; indeed, in order to work, non-national workforce must obtain a permit, which is issued by the competent authority, i.e. the Ministry of Labor, at certain conditions, such as lawful immigration and good medical status. Moreover, the Ministry issuing the permit has the possibility to revoke it and, as a consequence, to impose the repatriation of the worker, if he or she fails to comply with the conditions described above. Unless the non-national is judged directly responsible for the termination of the contract, repatriation is at employer's expenses.

In every country, the residence permit is strictly linked to the work permit, thus, unemployment equals departure in most cases.

Another domain which is mentioned in five out of six labor legislations, with the Kuwaiti exception, is the practice of recruiting from abroad, which appears to be regulated through a system of licenses, once again granted by the Ministry, with no references regarding the conditions to obtain the aforementioned permit. In addition, it is prohibited for the recruiter to receive any sum from the non-nationals willing to immigrate looking for better working opportunities.

Nevertheless, later on, through the analysis of the sponsorship system's criticisms, the reader will notice that those provisions above do not stop employers from imposing recruitment fees on the immigrants; that being said, it might be an implication stemming from the peculiarity of power structures in the countries subject of discussion, in which the economic power is in the hands of few families, and those very families might have ties with the royals, a situation that allows them to pursue unlawful behaviors.

It is now possible to summarize and list the most important common features of labor legislations concerning non-national workforce:

- Priority in recruitment must be given to national workforce;
- Recruitment from abroad is regulated through a system of licenses;
- An employment contract is necessary to obtain a residence permit, which is in turn necessary in order to obtain a work permit;
- Work permits are issued by the competent Ministry in compliance with certain requirements for the non-national;

- Cancellation of the work permit is a consequence of worker's behavior, availability of national manpower.

Interesting enough, throughout the labor legislations taken into account, the words “decent work”, “workers’ rights”, “unions”, “safety”, and “health” associated to “non-nationals” are not mentioned, not even once.

Indeed, for all these reasons, it is safe to say that the states tend to define few bureaucratic standards that have to be followed; from another point of view, as a result of this politics of little intervention by the states in matters concerning labor, the balance of power lean towards the employers, whose freedom clashes with the non-national workforce's one.

The next chapter is going to deal with the situation that stems from the governments' liberalism when dealing with labor issues, namely the sponsorship system, better known as *kafala*, and how workers' immigration is being treated as an issue related to security rather than labor, thus being under the supervision and enforcement by each Gulf country's Ministry of Interior.

## 2. The *kafala*: a system prone to abuses

### 2.1 Sponsorship system overview

*Figure 6: Migrant Workers in Muscat, Oman*



*Source: Author's personal archive*

In light of the conclusions drawn in the previous chapter, namely that labor laws do not regulate by any mean foreign labor issues and that workers' immigration is regarded as a security issue by GCC member states, this section aims at outlining the sponsorship system put in place to counter the lack of interest of the governments and legislators of the Gulf countries towards non-GCC laborers.

Before we start, the reader must keep in mind that the presence of the vast majority of foreign workers within GCC borders is considered to be temporary. In fact, a permanent residency status or citizenship, generally, will not be granted to them under any circumstances. This is related to the benefits accorded to GCC nationals by their governments, constituting a way to create a bond between citizens and their country, in a region where tribal sense of belonging is stronger than the one towards the state; if citizenship would have been easily granted, the benefits attached to it would have been greatly diluted. Moreover, working visa are issued until



the age of 60 years, and they require a renewal every two years, hence, creating uncertainty and insecurity in expatriates' minds.

As a result, the vast majority of the policies focus on the management of entry and stay of contract workers, thus regulating the inflow of migrant workers.

Generally speaking, in Bahrein, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates (plus Jordan, and Lebanon) the whole immigration process revolves around work permits and the *Kafala* (نظام الكفالة *nizām al-kafāla*), translated as "sponsorship system". The term *kafala* is infrequently used in legislation, but it is commonly applied in everyday life, and on the media.

The origins of the sponsorship system are uncertain: one theory, proposed by the social anthropologist Anh Nga Longva, places its birth during the period in which the Gulf countries still relied upon pearl fishing. Basically, boat owners would sponsor pearl divers each season, paying for their room and other expenses, and, once the diving season has ended, they would subtract those expenses from the divers' wages, often resulting in workers to be in serious debts. Another theory suggests that *kafala* stems from a noble Bedouin tradition of hospitality that made incumbent upon nationals to grant protection and temporary affiliation to strangers.

Interestingly enough, the term *kafala* refers also to the practice of (not) adopting a child in the Islamic law. Indeed, according to Islamic jurisprudence, an orphan cannot be adopted legally, whereas it allows the "adoptive" parents to "sponsor", meaning they can guarantee the welfare and assume the responsibility for the child's well-being.

According to the ILO<sup>35</sup>, the present-day idea of *kafala* emerged around fifty years ago, as a mean to regulate the flux of migrant workers towards the Arabian Peninsula<sup>36</sup>.

In the very early stages of the *kafala* system, foreigners used to work for the governments during the kingdom's modernization phase occurred between the 1970s and 1990s.<sup>37</sup> However, a change in the property systems, and project privatizations, increased the role of the private sector, resulting in the current situation, in which the state outsources, or delegates, the responsibility to oversee a migrant worker's immigration, and employment, status to private citizens or companies.

*Kafala* provides a massive flow of manpower beyond the Persian Gulf border to work on large construction projects (as the World Cup in Qatar in 2022) and as domestic laborers, it also enables the employers to pay low wages, thus cutting the expenses. The unstoppable migration

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<sup>35</sup> The International Labour Organization (ILO) is a United Nations agency dealing with labor issues, in particular international labour standards, social protection, and work opportunities for all.

<sup>36</sup> ILO, 2017

<sup>37</sup> Al-Ghanim K., 2015

wave of the last decades has led to the calcification of the practices linked to the sponsorship systems, as business communities around the Arabian Peninsula have expressed concern for a possible decrease in economic competitiveness in case the controversial praxis would have been abandoned.<sup>38</sup>

It all starts with the recruitment process. However, while other features concerning *kafala* could be valid also for high-skilled workers working for multinational companies, for the recruitment process described below it is necessary to make a distinction; indeed, it is a specific component of the transnational migration system rooted in Asia and Africa.

Typically, during this recruitment process there are two main actors: labor brokerages and manpower companies. The first notion refers to agencies in the sending countries that offer to potential migrants a connection with employers in the Gulf states, asking money for the service; manpower companies, on the other hand, receive labor in the GCC territory and serve as labor supply companies.

Labor brokerages usually employ agents in order to search for potential labor migrants in minor villages and towns. As explained by Babar and Gardner<sup>39</sup>, these agencies, alongside with Gulf-based employers and sponsors, profit from the migration process. Generally, they charge low-skilled migrants with a service fee comprised between 500\$ and 5000\$, in exchange they provide a two-year work contract in a Gulf state. Recruiters' tasks include the arrangement of employment contracts, the application for worker visas in the Gulf, and the purchase of plane tickets.

Frequently, workers and their families contract towards the agencies significant debts, loans and mortgages, in order to embark on such a journey, often encompassing fundamental productive resources and household savings.

The recruitment process as described above, whose principal feature is the commodification of the right to work, emerged only few years ago, during the 1990s.

Now that the migrant worker has arrived in the Gulf, the odyssey continues and it revolves around *kafala*.

First of all, the sponsorship system implies that a foreign worker's immigration and residency status is tied to an individual sponsor, called *kafeel*, for the duration, usually two years, of his/her contract; indeed, the *kafeel*'s name is typically written inside the entry visa of the newcomer, and the decision of the latter to quit or change his/her job might result in the

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<sup>38</sup> Babar Z., Gardner M. A., 2016

<sup>39</sup> Ibidem

cancellation of the residence visa, making him/her an irregular resident. If we reverse the perspective, the sponsorship system gives to every GCC state's citizen the possibility, and right, to sponsor a certain number of people willing to work, as private employees or domestic workers, in their country.

Whether the laborer is low-skilled and from Pakistan, or a businessman/investor from the US planning to work there, at this point it makes no difference: everyone needs a local citizen as a sponsor.

Clearly, especially in the first case, this system generates a substantial asymmetry in the employer-employee relationship, making labor market a fertile ground for abuses and human rights violations. Workers find themselves in a vulnerable position, having almost no leverage when negotiating with their superiors.

Obviously, linking residence to work permits puts the employees in an uncomfortable situation, in which their permanence into the country is inextricably bound to the endurance of their work relationship: no employment relationship equals to no legal basis for the worker to stay in the country. In fact, if the employer fails to renew the visa, the worker suddenly becomes irregular, thus, possibly being subject to detention and deportation. This turns out to be a frequent occurrence, especially when the employment contract lasts longer than the residence visa. In such cases, upon the expiry, the employer has a certain amount of time available (usually 90 days) to have the worker's document renewed; while they are waiting for their residency papers, foreigners are transformed into irregular migrants, making them unable to leave the country.

That being said, it should not be forgotten there are many sponsors who strive to provide decent working conditions.

Another controversial aspect of the *kafala* concerns resignation or termination of employment: usually, migrant workers are unable to resign or terminate their employment without written consent of their employer. Any time before work contract's expiration date, if foreign employees make the decision to quit the job, they will automatically become irregular/illegal, and, as a result, the employer is forced by national legislations to report the "bad behavior" to the local police. Soon after having received the notification, the police proceeds to the cancellation of the migrant worker's residency permit and it files an order for detention. Vice versa, employers can cancel residency permit and employment contract at their own discretion, even without notice.

The procedure involving the transfer of a worker from one employer to another is not less complicated. Law requires migrant workers to produce a "no objection certificate" signed by the former employer in order to transfer sponsorship, furthermore, the same procedure applies

when a contract expires. Some countries, such as Oman, do not allow the foreigner to remain within their borders while looking for another sponsor, forcing him/her to return to their home country for a certain amount of time, thus restricting freedom of movement, and, also, undermining labor market efficiency. Nevertheless, in Bahrein and UAE, the issue concerning job transfer is less dramatic. The first allows changes without employer's permission after working for a year for their initial sponsor; in the Emirates, the precondition is a special permission from the Ministry of Labor after it was established that the employer has violated the term of their contract, or proving that it unilaterally ended the relationship.

In Saudi Arabia and Qatar, a foreign worker must procure an exit permit from the employer in order to depart from the country, whether you are a Pakistani construction worker or a white-collar executive from United States makes no difference. In the remaining four kingdoms, it is given to the sponsors the possibility to file a complaint to immigration authorities, who then may block the employee from leaving the territory.

ILO's position towards *kafala* is expressed by The International Labor Organization's independent Committee of Experts on the Application of Conventions<sup>40</sup> and Recommendations<sup>41</sup> (CEACR); the organism has stated that the sponsorship system ties migrant workers to their employers, limiting their options and freedom. Moreover, it has been said that it could be "*conducive to the exaction of forced labor*" and it encouraged governments to "*adopt legislative provisions specially tailored to the difficult circumstances faced by this category of workers and to protect them from abusive practices*" and to "*take the necessary measures in law and practice, to ensure that migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labor*"<sup>42</sup>.

Now that we have dealt with the main subject of this chapter, in the next paragraph it is going to be carried out a comprehensive analysis of the law violations and abuses towards migrant workers within the sponsorship system's framework.

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<sup>40</sup> Legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out basic principles and rights at work. They are legally binding international treaties that may be ratified by member states

<sup>41</sup> Legal instruments drawn up by the ILO's constituents which serve as non-binding guidelines, which provides more detailed guidelines on how a Convention could be applied

<sup>42</sup> Committee of Experts on the Application of Conventions and Recommendations, 2016

## **2.2 *Kafala* and rights violations**

Over the past decades, Gulf countries have exhibited a considerable lack of interest towards migrants' rights and protections. Governments, through *kafala*, have preferred to outsource the responsibility of managing migrant labor force to the private sector, hence creating an ungoverned space where it is not possible for them to enjoy the basic labor rights, nor, at times, human rights.

Every step described in the paragraph above, from the recruitment to the work relationship with the sponsor, due to weak regulatory policies concerning migrant workers and authorities' indifference, gives room to abuses and rights' violations.

We are now going to examine in detail the most common injustices involving foreign workforce, especially workers from south Asia.

### **2.2.1 Recruitment fees**

Recruitment is the first step of migrant workers' trajectory in the Gulf, it can therefore determine whether the experience will be positive, with the opportunity to develop skills and send remittances, or exploitative, where debt and abuses are the rule. Generally, as anticipated in the previous paragraph, high-skilled laborers represent the first category, while women and men performing manual activities are the most vulnerable.

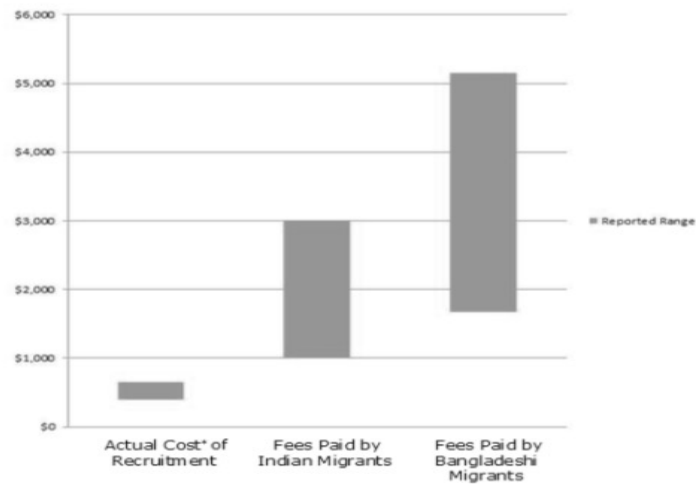
The whole recruitment process begins in the Gulf, whereby contractors and subcontractors outsource recruitment costs to private agencies, in order to circumvent labor laws that should prohibit the payment of the aforementioned recruitment fees. In this way local companies can avoid those expenses and increase their competitiveness, while the agencies bribe departure-countries' placement personnel. As explained in the introductory paragraph about *kafala*, the quasi-totality of this process' costs are on future migrant workers' shoulders. Usually, these people cannot afford the expenses, thus they resort to money lenders or the very same recruitment agencies, which apply interest rates up to 60%, they might sell their houses or goods, and they might even lose all their savings.

At this point, intermediaries gather laborers and, in agreement with employers in the Gulf, they offer them a work contract. Despite being charged with a considerable service fee, migrants still expect success and large earnings in the destination country. However, indebtedness eases further forms of exploitation, such as the ones described in the following paragraphs.

According to the work that focus on construction workers by Segall and Labowitz, low-wage workers pay for their own recruitment, despite laws and corporate policies, often bearing also the cost of higher-skilled workers' recruitment. Moreover, through interviews with agents

responsible for the gathering of workforce in India and Bangladesh, they found out that the cost of recruitment is esteemed between 400\$ and 650\$, not including travel expenses and fees for residence permits and other documents.

*Figure 7: Actual Cost of Recruitment vs. Fees Paid by Workers, in US Dollars*



*Source: Segall D., Labowitz S. (2017)*

If compared to the prices previously mentioned, it is obvious that workers pay more than the real cost of recruitment. Findings, illustrated in the graph above, by the two authors placed the average fee paid in Bangladesh in a range between 1.700\$ and 5.200\$, while the one in India between US\$1,000 and \$3,000. Those prices depend on the number of layers of agents involved in recruitment, visa selling schemes, corruption, and other expenses.

Furthermore, so-called “demand letters” containing the visas for the workers are sold by corporate representatives to South-Asia-based recruiters. The practice provides huge mark-ups to Gulf-based agents, since visas are issued to multinationals or local companies at a nominal cost, or for free, by governments; apparently, the practice might involve only intermediaries while employers could be unaware of the whole trafficking. Bangladeshi recruiters estimate the cost of each visa requested in a demand letter at between US\$1,250 and \$1,850, basically, representing between one-third and one-half of the average migrant’s fee. Selling visa for profit is prohibited and illegal in all GCC countries, nevertheless, prosecution is rare, and it usually targets migrants.

In addition, employers often change contracts’ terms upon arrival to the destination country, lowering salaries and living conditions. This practice is called contract substitution, and it takes place because workers are not in the position to complain or refuse a contract.

In general, recruitment agents find many ways to charge the migrant workers, exploiting the asymmetry of information between them; in fact, laborers bear expenses such as “hospitality”, increase in the price of airline ticket, medical bills, skills testing, and document processing.

To sum up, in a talk at the Center for International and Regional Studies, Georgetown University in Qatar<sup>43</sup>, Segall declared that *“clients are not actually paying their suppliers for the services that are rendered... or they are getting paid. So it flips the entire chain, such that at the end of the line it is the migrant worker who essentially foots the bill for all of the costs of migration, plus some.”*

Besides governmental efforts, in the last decade a parallel “ethical recruitment” industry, in which agents try to persuade employers to pay for their services, so they do not have to charge low-wage workers the recruitment fee. Nevertheless, they are struggling to secure orders, insomuch as any cost is more than what employers currently incur, thus countering the spread of a fee-for-service model across the Gulf.

However, as mentioned in the previous chapter of this work, national labor legislations prohibit charging workers of their own recruitment fees, and the same is provided by international law. For instance, Qatar labor law, in its art. 33, provides that *“The person who is licensed to recruit workers from abroad for others shall be prohibited... To receive from the worker any sums representing recruitment fees or expenses or any other costs.”* Moreover, in the UAE, legislators included a provisions whereby *“No licensed employment agent or labor supplier shall demand or accept from any worker, whether before or after the latter’s admission to employment, any commission or material reward in return for employment, or charge him for any expenses thereby incurred, except as may be prescribed or approved by the Ministry of Labor and Social Affairs.”* (art. 18).

Employers generally interpret such provisions as prohibition, only within destination country’s borders, of deducting the recruitment fees from wages.

Regulations protecting out-going laborers were also carried out by departure states, nonetheless, some of them, such as India and Bangladesh, seems to fail to comply with rules at the expenses of their fellow citizens.

Taking into account a worldwide perspective, the International Labor Organization has produced several documents concerning migrant workers’ rights. The first of this kind is the *Protection of Wages Convention* of 1949 (No. 95), that in Article 9 reads as follow: *“Any*

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<sup>43</sup> Georgetown University in Qatar, 2017

*deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labor contractor or recruiter), is prohibited*"; the *Private Employment Agencies Convention* of 1997 (No. 181), through art 7 comma 1, provides that "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers."; finally, through the *Convention on Domestic Workers* of 2011 (No. 189), the ILO affirms that it will commit in order to "take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers." (Art. 15, comma 1(e)). The previous extracts mean that ILO undoubtedly prohibits charging migrants and workers for their own recruitment fees.

Despite having created those instruments in order to regulate the phenomenon, as of today, not even a single GCC member state nor South-Asian departure countries, except the Philippines, has ratified these Conventions. The same happened to United Nations' "*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*", which includes a combination of rights contained in the aforementioned documents. The feeling spread throughout the international community, and shared by this analysis, is that both sending and receiving countries lack institutional capabilities and, in some cases, the will, to enforce their own legal provisions.

Once having laid out economic and legislative aspect of the recruitment process, the psychological factor must be taken into account, as it plays a huge role in the perpetuating of this situation.

Migrants leave their countries full of hope and plans for the future, but when in the Gulf reality finally kicks in. First of all, as reported by Human Rights Watch<sup>44</sup>, it usually takes two years for workers to extinguish the debts contracted with agents and their own families and friends. When the workers become conscious of their mistakes and naivety, they feel embarrassed and, since their relatives made sacrifices to send them in the Arabian Peninsula, they do not want them to be disappointment or worried. Therefore, they give them a distorted image of their living conditions and what it means to work in the Gulf, making other people in their country willing to improve their economic situation and become workforce in one of the six countries. In a report carried out by the ILO, the author assumes that each worker pays an average of \$1.000 more than the actual recruitment cost, resulting in \$10 billions of unauthorized cash transactions.

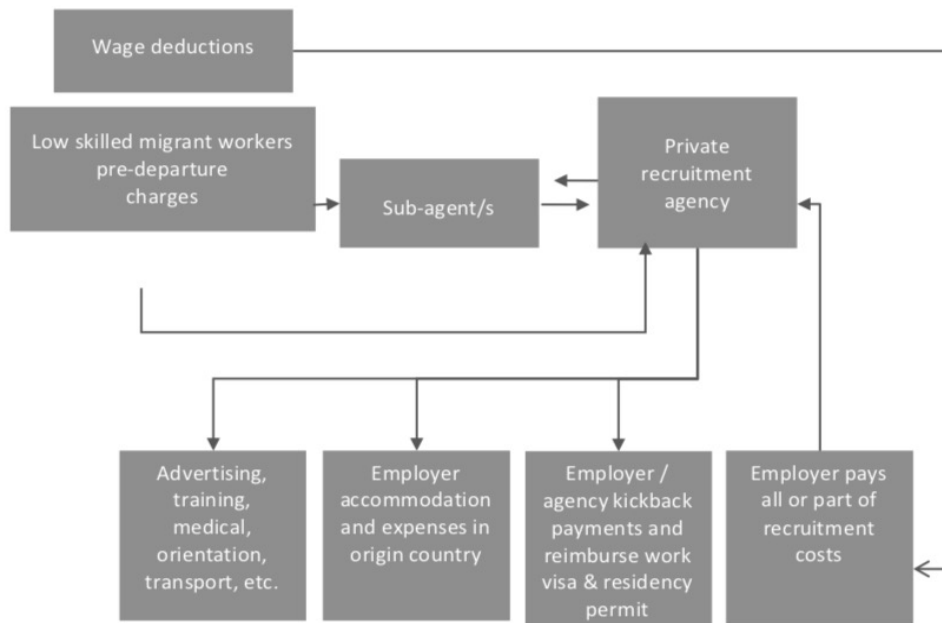
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<sup>44</sup> Human Rights Watch, 2006



This process could be seen as a form of discrimination, based on the level of skills of the worker, his or her education and training, and it also illustrates how, from the beginning, the balance of power leans towards agencies and employers, leaving migrants in a weak position, ideal for taking advantage of them.

Figure 8: Recruitment process' exploitation mechanism



Source: ILO, 2016

### 2.2.2 Passport confiscation and travel bans

Once arrived in the Gulf, the typical migrant worker sees his or her passport confiscated by the employer. There are thousands of reported cases, such as the ones involving Nepalese construction workers in Qatar<sup>45</sup> or those in the UAE. This employers' behavior prevents laborers from absconding or breaking their contract, automatically changing their status to illegal migrants and, basically, hindering their efforts to break free or even to make any legal claims against their sponsor.

The term “absconding” refers to an administrative offence for which the migrant workers, especially domestic laborers, leave their employer/sponsor without permission. These workers become irregulars and are subject to arrest, detention and deportation. This applies to every worker, even if he or she ran away from an exploitative or abusive situation. An employer might claim that a worker has absconded, and, in this case, we use the term “fake absconding”

<sup>45</sup> The Guardian, 2013

There is another reason for documents confiscation, namely that employers are able to sell workers to another sponsor at will, without asking the permission or even informing the laborer. It is necessary just a change on the visa, and *les jeux sont faits*.

Confiscating workers' passport places a travel ban on them, and a report by Amnesty International dealing with violations concerning domestic worker in Qatar<sup>46</sup> says that, sometimes, the passport is confiscated upon landing by the immigration officials in the airport, and then handed to the recruitment agencies. The same organization mentions two research surveys that showed how the passports retained are around 90% of the total.

This is contextual to the framework laid out in the first chapter, whereby the comparative analysis concerning labor legislations has shown a dramatic asymmetry in the balance of power, this is one of the cases exacerbating this situation. These workers are unable to escape from the dehumanizing living and working conditions. Indeed, they have just one option: they could buy back their passports. But let's just analyze the situation described by the previous paragraph; migrant workers are hugely in debt, it is extremely unlikely that they have the money to do so and flee the country.

National legislations should be in place in order to prohibit the practice, nevertheless, among GCC member states, only Bahrain and Qatar have implemented some specific measures concerning freedom of movement and passports' confiscation. Article 19 of the Bahraini Constitution reads *"No person shall be arrested, detained, imprisoned, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the law and under the supervision of the judicial authorities."* Qatar, through Law No. 4 of 2009, regulates expatriates' entry, departure, residence and sponsorship, according to which, *"the sponsor shall deliver to the sponsored person his passport or travel document after finalizing the residence formalities or after applying for the renewal thereof."*

Interesting enough, in Qatar and Saudi Arabia, both migrant low-skilled workers and professionals must acquire exit visas in the form of employer's consent in order to leave the country for whatever reason, as regulated for instance by Art. 18 of Qatari Law No. 4 of 2009, stating that *"other than women sponsored by the father and the minors and visitors visiting the state for no longer than 30 days, expatriates may not leave the state temporarily or permanently unless they provide an exit permit issued by the Residence Sponsor."* In case of denial, Qatari

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<sup>46</sup> Amnesty International, 2014

residence sponsor do not have the obligation to justify their decision, whereas the expatriate must find another exit sponsor, or provide a certificate demonstrating that there are no pending legal charges against the person trying to leave 15 days after publishing a notice in two daily newspapers.

An infamous accident involved a French football player Zahir Belounis, and his Qatari team Al-Jaish Sport Club. In 2011, Belounis spoke out against his former team, accused for more than two years over unpaid wages. As a result, the team tried to trade him to another squad without his consent, and, even after having given up his claim to the salary, his employer did not allow him nor his family to leave the country. It was not possible for him to find another job, so they could rely only on the money sent from relatives in France and donations from the French community in Qatar. This situation lasted for 18 months, and it was solved only by diplomatic intervention by the French Government, and international pressures.

The story above shows how even expatriates from western countries are not exempted from abuses and violations linked to the sponsorship system.

Despite steps towards reforms are being made in every other GCC member state, and we are going to see which ones in the next chapter, it seems like laws are simply paper tigers, created just with the scope of helping soothe international outrage.

As a result, the ones paying for this situation are those migrant workers still stranded in the stretch of desert and futuristic skylines called Arabian Peninsula, unable to leave these countries.

### **2.2.3 Broken promises and salary-related issues**

The focus of this analysis shift on another feature affecting migrant workers' life in the Gulf, namely, insufficient or sometimes even withheld wages. Indeed, it is one of the most diffused form of control over workforce within the *kafala* framework; it is a consequence stemming from the debt situation faced by migrant workers, forcing them to accept lower wages and different conditions than the ones promised during the recruitment process. Employers use wage delays in order to ensure that the employees do not leave or run, along with inadequate salaries so the workers will not be able to repay their debts.

A study carried out by Human Rights Watch in 2006 pointed out that construction workers in the UAE make \$175 per month, which, despite seeming outdated, it may be still representative as Qatar has just introduced, in November 2017, a minimum wage of \$200 for migrant

workers<sup>47</sup>.

A group of artists and activists called the Gulf Labor Coalition was founded, in 2011, in order to bring awareness to issues concerning the living and working conditions of migrant laborers hired for projects in UAE such as the Guggenheim Abu Dhabi, Louvre Abu Dhabi, Sheikh Zayed Palace Museum, and Saadiyat Island. Through interviews with workers involved in those construction activities, the group recorded their average monthly salaries; in particular, carpenters working on Saadiyat Villas earned around \$177, Louvre workers \$205, Louvre infrastructure worker \$218, and three-years veterans \$231. The situation improved a bit when mandatory (not on a voluntary basis) overtime was included, as the average wage ranged between \$300 and \$320.

Furthermore, it exists to a certain extent wage disparity based on nationality and ethnicity, since throughout the Gulf the activities performed by certain nationalities, such as South and East Asians, are significantly undervalued; on the other hand, the work of Arab migrants and Western expatriates is valued much higher, but still less than the nationals' one. In the specific case study of UAE, as of 2009, the mean monthly income for an Emirati-national was 5.597,69\$, while non-nationals earned 1.582,87\$ but the median of 680,74\$ demonstrates that foreigners' income is inflated by Western expatriates and Arab laborers wages.

Breaking down economic activities by sector, it is striking to notice that almost one third of construction workers earn less than 353,98\$ per month, and 23.8% less than 816,61\$.<sup>48</sup>

The nationality-based labor value creates a multi-tier labor market, which applies different laws, salaries, and benefits to each socially insulated category. Indeed, this is the result of a subtle culture of racism and classism spread throughout the Gulf, whereby huge differences among the expatriates communities also exist; for example, even though they are not allowed to receive any benefits related to citizenship, expatriates from Western countries have more social mobility (compared to zero social mobility in most cases) and access to white-collar jobs. Another widespread practice towards which migrant workers are exposed is the so-called "*Contract Substitution*". The name is self-explanatory, as a new contract substitutes the original one, and it usually presents very different conditions in the job performed, working hours, and lower salaries.

Despite these changes, workers do not have enough bargaining (nor economic) power to refuse, and they are not free to leave the country or move onto another job/employer. As a result,

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<sup>47</sup> BBC, 2017

<sup>48</sup> Hamza S., 2014

laborers find themselves trapped in a job, or working conditions, for which they did not have signed at the beginning of their journey.

In addition to these issues, the practice of withholding wages is widespread. Employers systematically withhold wages for months, even though labor laws in the UAE prohibits this practice (and the laws ignored as usual).

We have seen it in the paragraph above, even Western footballers do not receive wages for months or years. The situation concerning South Asian or African workers is worse, as the case of Belounis is an exception, while for other nationalities is almost the rule.

For instance, according to a report by Pulitzer Center, as of July 2017, Filipino and Nepalese employees of Mega Tec, a Doha-based company subcontracting mechanical and engineering work to construction companies, did not receive their salary in 7 months. One of the reasons could be that, in Qatar, it is normal practice for principal contractors to pay sub-contractors only after their clients proceeded with the payment.

This practice can be compared to passport confiscation, as it is a mean to prevent laborers from absconding. In fact, workers in this situation often borrow money with high interest rates just to survive, and this plunges them into the known mechanism of debt: it is less probable that a worker decides to flee the country if he or she has to sacrifice months of pay, and maybe he or she is already in debt to the recruitment agencies at home. Those aforementioned practices are distressing for migrants, in consideration of the fact that the majority of workers are in the Gulf in order to support their families; however, once they realize that they will not be able to do it, along with sentiments of isolation and alienation, they often end up committing suicide.

Non-payment of employees is considered as amoral by the Islamic ethical principles, as Mohammed in a Sunna stated “*You should pay the laborer his wages before his sweat dries*”<sup>49</sup>, which represents an encouragement to pay workers in a timely manner.

Apart from religious recommendations, local labor legislations are in place and they are supposed to regulate these issues concerning salaries.

For instance, Bahraini labor law, in Art. 68 says “*Wages shall be paid on a working day at the place of employment in legal tender with due regard to the following:*

1. *workers paid at monthly rates shall be paid at least once a month;*
2. *workers paid on an hourly, daily, weekly, piece rate or production basis shall be paid wages at least once in every two weeks;*
3. *an employer shall not transfer a worker employed on monthly terms of employment to*

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<sup>49</sup> Sunan Ibn Mâjah, 2443, Hadith

*daily, weekly, piece-work or production terms of employment, without the consent of the worker concerned and without prejudice to his rights acquired before such transfer.”*

The same applies to UAE in Art. 56, whereby it is provided that “*Workers employed on yearly or monthly wage basis shall be paid at least once a month; all other workers shall be paid at least once every two weeks*”, Kuwait (Art. 56), Qatar (Art. 66), Oman (Art. 51), and Saudi Arabia (Art. 90). Furthermore, the totality of GCC member states’ labor laws prohibit the unjustified deduction of the worker’s remuneration. For Bahrain<sup>50</sup> and Kuwait<sup>51</sup>, it is possible for no more than 10% for the payment of loans or debts due to the employer, without interest’s imposition, and for no more than 25% for debts regarding alimony or clothes. KSA<sup>52</sup> and UAE<sup>53</sup> apply the same principle but they outline more precise rules, as both their labor laws state that no amount of money should be deducted except in the following cases:

1. Repayment of loans due to the employer, thus it must not exceed 10% of the worker’s wage;
2. Deductions required by law, as social security and insurances;
3. Contributions towards provident funds;
4. Contributions towards welfare schemes or any privileges or services provided by the employer with the approval of the labor department;
5. Fines imposed on the worker in case of offence;
6. Finally, any debt collected through a court ruling, but it must not exceed the 25% of the wage due to the worker.

Qatari legislation (Art. 70) require a judicial decision in order to attach workers’ wage or to withhold the payment. It is somehow less “employee-friendly” concerning this issue, because, in specific cases, such as in the settlement of the deductibles and debts due from the worker, the employee can deduct up to 50% of a salary.

Finally, Omani labor law states that the employer cannot deduct more than 15% of the employee’s salary in repayment of debt, and he should not charge any interest.

Despite the practice of deducting or even withholding wages is thoroughly regulated by GCC member states’ labor legislations, we should ask about rules’ effectiveness to Ujjwal Thapa, a Nepalese worker in Qatar, not being paid for several months, or to Marilyn Sabanag, a Filipino maid, whose salary deductions amounted to five years’ worth of unpaid salaries.

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<sup>50</sup> Article 74, Bahrain Labor Law, (1976)

<sup>51</sup> Article 74, Kuwait Labor Law, (2009)

<sup>52</sup> Article 92, Saudi Arabia Labor Law, (2005)

<sup>53</sup> Article 60, UAE Labor Law, (1980)

The magnitude of this issues is easily imagined, however, unfortunately, it is not possible to have a complete picture of the phenomenon, since comprehensive reports are still a rare occurrence, and Gulf governments do not provide precise and up-to-date data.

#### **2.2.4 Labor Camps and spatial segregation**

Following the furious economic and infrastructural development of the GCC member states, the central areas of Gulf's metropolis experienced an unprecedented gentrification, and massive tourists' fluxes, leading to increased rents and more defined boundaries between nationals and non-nationals.

Labor camps are one of the most shocking, and less discussed, consequence of insufficient labor legislation and the sponsorship system in the Gulf.

Workers are crammed into a variety of buildings found in cities' outskirts, segregated and far from the prying eyes of nationals, western expatriates, and tourists. The distance from the futuristic skylines allows employers and government to ignore the unhealthy and horrendous living conditions of migrant workers.

Under the *kafala* system, workers have no control over the selection of their residence, whereas their employers choose the place on the basis of the availability of buildings or area they own or rent.

There are different varieties of labor accommodation, though the most easily recognized is the large and organized camp, in which a laborer can find air conditioning, a cafeteria, clean water sources, electricity, and other facilities. This situation is considered by unskilled workers as the best potential accommodations.

However, reality kicks in and provides us with three other different examples of "camps". Some of them are unstaffed apartment building which contains one-room accommodations, separate kitchens and bathroom for communal use; some others are old villas, rented out for labor housing and containing up to 50 or more workers. Finally, ad hoc structures are set up throughout the cities, such as garages, plywood structures, shipping containers, or shelters built from construction debris.

Men (and, less frequently, women) normally live six-to-eight individuals per room, and they are able, at least, to choose the room composition, usually according language and nationality. These labor camps are not evenly distributed in the Gulf cities, instead, they pervade specific neighborhoods or peripheral part of the urban agglomerate, as oftentimes they are relegated to industrial zones. For instance, in the industrial area of Doha, Qatar, light-to-heavy industry is intermixed with a myriad of labor camps. Estimates, stemming from the Qatar Ministry of

Development Planning and Statistics, place the percentage of Qatar population living in labor camps at 58%, as of April 2015.

The largest construction firm in the UAE, Arabtec, has been in the eye of the storm when, in 2009, the BBC's Panorama program uncovered the living conditions of its employees. The authors found out that workers were accommodated in obscene and overcrowded labor camps. 7,500 laborers were distributed in 1,248 rooms with poor ventilation, sewage was all over the camp, and one toilet block had no water supply. In response to the reportage, Dubai authorities charged around \$2.7 million the company for "allowing sewage to overflow into workers' accommodation." A ridiculous amount of money compared to the size of the company.<sup>54</sup>

Another example is provided by the investigation carried out by Human Rights Watch in 2009, in which two Dubai's labor camps were at the center of the inquiry, Al Quoz and Sonapor. In both of them, the living conditions were incredibly poor, as 8 workers had to sleep in 12 m<sup>2</sup> rooms. Moreover, the compounds have poor drainage and sanitation, and sewage created pools throughout the area.

In other cases, the electricity was cut off because the company decided it was not necessary to pay the bills.

*Figure 9: Qadisiya labor camp, Saudi Arabia*



*Source: Faisal Al Nasser, REUTERS*

In 2014, the aforementioned Gulf Labor Coalition group visited workers' accommodations on Saadiyat Island, and the Louvre and the Guggenheim sites. First of all, on the island, instead of

<sup>54</sup> <http://www.bbc.com/news/world-middle-east-26482775>



“camp”, the place was called “village”, invoking a sense of community. There were some benefits, such as proximity to worksites, modern and clean facilities in which minimum international standards were respected. A big difference from the previously listed labor camps was the presence of TV rooms, a cricket pitch, a library, and a gym.

It shares a lot of features with other “more traditional” camps, as it is temporary and tied to a construction project, onsite supervisors are still addressed as “camp bosses”, and indebted migrant laborers are accommodated there. Furthermore, it is isolated from the city and from the island, hence creating psychological, economic, legal, and gendered seclusion. In this case, Pakistani and Bangladeshi workers were kept divided, as animosity might arise between the two national groups.

The sense of isolation might correspond to a precise strategy by the Emirati government, tacitly promoting segregation of migrant workers through legal codes and the implementation of the so-called “Workers Cities”.

The rise of the Workers Cities could be seen also as a way, by government and companies, to counter international pressure concerning migrant workers’ living conditions, although this is not the rule in the Gulf, as proper cities for migrants are not found in the other five countries. From my experience in Muscat, Oman, it is safe to say that certain neighborhoods embody more or less the same concept. In both cases, the population was essentially composed of male workers from India, Pakistan, Bangladesh, and Nepal, and it is also segregated from the center of the city and natives’/western expatriates’ blocks; there are supermarkets, cafés and restaurants, mosques, and other facilities nearby where migrants can socialize and aggregate; however, those Workers Cities in the UAE are fenced and, as a consequence, freedom of movement is limited to the block, while in Muscat, for instance, workers could move around the city, which, of course, makes a huge difference.

In 2006, Dubai’s authorities prohibited bachelors from living in villas in family designated neighborhoods. Being migrant workers mostly men, especially in the construction sector, and these neighborhoods the center of the city, they are excluded from the latter. If a company chooses to house its employees in one of those areas, officials from the municipality might evict workers and make them move in a labor camp. For instance, in Dubai, it is possible to find neighborhoods of Emirati families and other areas whereby Western and Arab expatriates are the majority, which they are also off limits to laborers. Asian or African workers can be seen only if they are working in malls, driving taxis, or doing landscaping by the road.

Feelings of exclusion are boosted by physical marginalization, preventing the interaction with the rest of society, and unspoken barriers concerning where laborers can and cannot go.

In many cases migrant workers live so far from the city that taxi fares are too high for them, or some areas are precluded because they are too expensive, or again they avoid certain areas of the cities fearing the security guards would harass them.

Furthermore, language and religious barriers play an important role hindering social inclusion. Free Trade Zones are another mean to pursue social segregation based on nationality, as they are areas in which businesses do not have to comply with the same rules applied to the rest of the country. In FTZ, companies could be owned by non-national, hence attracting especially expatriate labor; as a result, an ecosystem enhancing exclusion feeling is then created. While those areas offer Western expatriates a certain degree of economic inclusion, those in the service sector are generally left on the periphery of the city geographically, economically, and socially.

To sum up, labor camps serve as a further mechanism of control over workers, whose rights to a decent housing and appropriate living conditions has been taken away by their employer, with the connivance of the authorities. Furthermore, this practice allows the removal from Gulf citizenry's and visitors' view of migrant laborers, faking that they do not exist outside the construction site or the labor camp.

This, and all the other subtle instruments of discrimination described above, summarized as social and spatial segregation, they could be defined as institutionalized social exclusion.

### **2.2.5 Labor Unions, Strikes, and Organizations**

Labor legislations throughout the Gulf countries create a legislative framework that aims at regulating collective labor disputes, through a system of rules that should lead to a settlement or to the evaluation of a conciliation committee. Five out of six local labor legislation do not mention labor unions, nor strikes; they only allow the constitution of workers' organizations and committees.

The notable exception seems to be Kuwait, whose Labor Law, in Art. 98, gives to the workforce the right to establish unions for employers and the right to syndicate organizations. It outlines also what a syndicate cannot do, namely *“engage in political, religious and sectarian matters, invest money in financial, real-estate speculations, or other forms of speculations, and accepts gifts and donations without the approval of the Ministry.”*<sup>55</sup>

Nevertheless, Bahrain, Kuwait, and Oman do permit unions or, at least, they grant some kind of union protection to migrant workers, allowed by the work of the Kuwait Trade Union

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<sup>55</sup> Article 104, Kuwait Labor Law, (2010)

Federation and the General Federation of Bahrain Trade Unions.

Being treated as temporary guests in the Arabian Peninsula, joining labor unions, organizing, and striking is prohibited to migrant workers by the *kafala* system. There is virtually little chance that laborers' voice will be heard, since there are no totally independent organizations build up to advocate migrant workers' human rights, and a mechanism to report abuses and violation is not in place either.

Nevertheless,

As members of the ILO, the six GCC member states should be obliged to permit workers to organize for the purpose of collective bargaining, since the organization consider the freedom of association and the right to collective bargaining as one of its fundamental principles. Further observations concerning ILO Conventions and Recommendations are going to be discussed in the last chapter. At this stage, it is only necessary to point out that those Conventions, such as the No. 87 on *Freedom of Association and Protection of the Right to Organize* and the No. 98 on the *Right to Organise and Collective Bargaining* have not been ratified yet by the five GCC member states, with the only virtuous exception of Kuwait that has ratified both of them.

Despite the legislative system and the governments should forbid strikes among workers, they have been quite common in recent years, especially the ones carried out by laborers in the construction sector.

*Figure 10: Burnt BinLadin's buses in Mecca, Saudi Arabia*



*Source: Arab News, 01/05/2016*

One of the most recent took place in Mecca, Saudi Arabia, where foreign workers of the Binladin Group, one of the biggest company in the Arab world, set fire to some of the firm's buses. Protests arose when 50.000 laborers found out they had been laid off, with four reported

months of unpaid wages and an exit visa ready for them.<sup>56</sup>

In 2014, in Bahrain 2.000 garments factory workers went on strike in order to demand better working conditions, including better food and medical care, and salaries; this protest resulted in the arrest and deportation of the 12 Bangladeshis that had organized it. Despite this drawback, employers have given back to the workers their confiscated passports, and they increased monthly wages from \$198,91 to \$220,13.<sup>57</sup>

Bahrain's cumbersome neighbor, Saudi Arabia had similar experiences concerning expatriates' protests. For instance, in 2013, the country witnessed a relevant strike that involved 6.000 cleaners, mostly South Asian workers, whose demands were the payment of delayed wages and renewal of their residence permits. A year later, a group of Indian women working at a hospital in Riyadh demanded once again the payment of salaries and more labor rights, but also the right to go on vacation or return home permanently upon contract's expiry.

In the UAE strikes usually end up being repressed, especially after the New York University case, covered even by the New York Times. 3.000 workers went on strike demanding a rise in monthly wages from \$198 to \$265. At least 300 were arrested, tortured, and deported.

The Louvre branch project in Abu Dhabi was another example of the repressive climate involving strikes in the Emiratis. A single worker decided to protest after his wage had been retained for 9 months; he was forced to work for three months without payment and then deported to Pakistan (accompanied by 19 fellow citizens).

In Kuwait strikes are somehow more frequent than in the other countries, with several cases reported; however, if compared to the extremely strict Emirati policy towards protests, the one applied by the small monarchy seems looser, and do not involve systematic deportation of protesters.

In each Gulf country, the causes of the protests follow more or less the same pattern: workers demand higher salaries and in general better living conditions. The combination strike-deportation is not the rule, as demonstrated by Kuwaiti government, but it is widespread, and deportation generally seems to be followed by some concessions given to protesters.

### **2.2.6 Deaths on the workplace**

The unsanitary conditions of the labor camps, and the hazardous working conditions pose a

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<sup>56</sup> "Arab News, 2016

<sup>57</sup> Migrant-Rights.org, 2014

threat to the health of migrant workers.

Construction laborers in the Gulf are particularly exposed to this kind of problems, experiencing extremely high injury and death rates.

In Qatar, for instance, there are thousands of migrant workers employed in projects related to the 2022 World Cup, and, according to recent reports, the vast majority of them are subject to potentially life-threatening working conditions. Human Rights Watch has declared through a statement that hundreds of people dies every year, and the Qatari government refused to make information available.

An article by The Guardian reported that, as of 2012, country's authorities have neither explained nor investigated the causes of death of 385 out of 520 people from Bangladesh, India and Nepal.

In 2016, Qatari government even declared to HRW that at least 35 laborers died "*mostly from falls, presumably at construction sites*", while, on the other hand, those died from heart attacks and other "natural causes" were not taken into account.

The ILO<sup>58</sup> carried out a report on the deaths of Nepali migrant workers, in which the organization analyzed death rates and causes of death of this specific population. Within GCC's borders, between 2008 and 2015, 2,649 Nepali laborers died. In the Gulf, Bahrain has the highest death rate per 1,000 of estimated population, 2,60, followed by Oman (2,40) and Saudi Arabia (2,26).

Taking into account also data related to Malaysia, cardiac arrest was the major cause of deaths for migrants (21.8%), following by natural causes (19.6%), other/unidentified causes (18.4%), traffic accident (13.2%), suicide (10.4%), and workplace accidents (8.6%).

Even though it is not possible to directly link strokes and other illnesses to workplace conditions, it is at least suspicious that cardiac arrest is among the major causes, since labor and immigration laws of the GCC countries provides stringent medical exams for migrant workers. Indeed, having passed these medical tests and being in the age group 15-34, they should be healthier than the population average.

During my stay in Oman, in 2016, I was personally witness of confirming rather than disconfirming evidence of the previous assumption. Back then, I have met a European manager working there, who used to tell me stories about migrant laborers employed by his French-Swiss company. He told me that one day, while he was on the site managed by his company, a

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<sup>58</sup> ILO, 2016

worker from India had a stroke and died in front of his own eyes because of the extreme heat. In fact, during the summer in Muscat and throughout the Gulf, temperatures can easily reach 50°C, however, migrant laborers work under the burning sun as landscaper or construction workers. It may happen, as in 2016, that the holy month of Ramadan is between May and August. During Ramadan, Muslims fast from sunset to sunrise, and, in the Gulf and other Arab countries, foreigners should not eat nor drink in public as a form of respect towards locals and their traditions.

As an obvious consequence, expatriates working outdoor are exposed to the most hazardous conditions, since they are not supposed to ingest food or liquids during the day, especially Pakistanis. Extreme heat could cause strokes and dehydration among other health issues.

This happens even though in every labor legislation of the GCC member states there are provisions concerning safety and workplace inspection. For instance, in Art. 100 of the Qatari labor law, the employer *“shall take all precautionary measures for protecting the workers during the work from any injury or disease that may result from the work performed in his establishment or from any accident, defect or breakdown in the machinery and equipment therein or from fire.”* More or less the same is laid down in the chapter concerning *“Industrial Safety”* of the Omani labor law, establishing that the necessary precautions should be undertaken in order to *“protect the employees during the work from injury to their health and dangers of work and machinery by: providing adequate safety and hygienic conditions in places of work or the tools he delivers to the employees for carrying out their duties; making sure that places of work are always clean and comply with the conditions of health, safety and occupational health; making sure that machineries, pieces of equipment and equipment are installed and kept in safe condition.”*<sup>59</sup> Bahraini, Kuwaiti, Saudi, and Emirati labor legislations make no exception, as they all include similar provisions concerning safety on the work place.<sup>60,61,62,63</sup>

These laws include several rules aimed at promoting a mechanism of control based on labor inspections, and alongside with the Labor Inspection Convention (No. 81) adopted by the ILO in 1947, correlated Recommendations and other relevant labor standard, give a common

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<sup>59</sup> Article 87, Oman Labor Law, (2003)

<sup>60</sup> Article 90, Bahrain Labor Law, (1976)

<sup>61</sup> Article 83, Kuwait Labor Law, (2010)

<sup>62</sup> Article 122, Saudi Arabia Labor Law, (2005)

<sup>63</sup> Article 91, UAE Labor Law, (1980)

framework, in which soft-law and hard-law principles coexist, to GCC member states.<sup>64</sup>

These provisions address issues related to physical integrity and safety on the workplace. However, the consequences of poor and hazardous working conditions could also lead to psychological suffering. Indeed, another major cause of death among migrant workers is suicide, as it is possible to notice from the data above. An organization called Migrant-Rights.org<sup>65</sup> has collected some statistics with regards to suicides among expatriates in the Middle East. In particular, 56% of all suicides in Kuwait in 2013 were committed by domestic workers, and 81% of all these suicide cases involved South Asian migrant, and the other 19% were African migrants. Moreover, as of 2013, only the 34% of suicides in Saudi Arabia were committed by nationals, and once again this phenomenon largely involved domestic workers, especially from female from Ethiopia. Between 2007 and 2013, it is reported that around 700 Indians have taken their own lives within UAE borders. The other three countries show more or less the same pattern, though data are less precise.

Local media often explain suicides as a result of "family problems" at home. The noteworthy number of suicides amongst the Gulf's low-income migrant workers, and amongst domestic workers in particular, indicates that aside from abuse and over-work that affects many categories migrant workers, domestic workers in particular are vulnerable to depression due to their isolation.

It is clear from this analysis that, despite the existence of a body of law constituted by soft and hard law addressed to counter poor safety conditions on the workplace, this made no big difference over the last years. Furthermore, psychological sufferance and mental illnesses are not subject of legislative discussions, as sometimes they are being ignored or attributed to problems not related to working conditions.

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<sup>64</sup> Oman has not ratified the ILO Convention No. 81 yet

<sup>65</sup> <https://www.migrant-rights.org/statistic/suicide/>

### 3. Kafala reforms: the GCC perspective

#### 3.1 The Gulf Cooperation Council

*The Cooperation Council for the Arab States of the Gulf*, better known as Gulf Cooperation Council (GCC), is a regional intergovernmental political and economic union including six Arab states of the Persian Gulf, with the exception of Iraq.

On 25 May 1981, The State of Bahrain, The State of Kuwait, The Sultanate of Oman, The State of Qatar, The Kingdom of Saudi Arabia, and the United Arab Emirates signed the Charter of the Gulf Cooperation Council, thus creating the Institution and establishing its headquarters in Riyadh, Saudi Arabia.

Concerning its governance and structure, GCC is composed of several organisms; the Supreme Council, which is the highest authority of the organization and it is composed of the heads of Member States, sets the visions and the goals.

The Ministerial Council, made-up of the Foreign Ministers, formulates policies and makes recommendations to be approved by the Supreme Council. Then, the Secretariat General, devoted to the implementation of the previously defined policies, a Monetary Council, a Patent Office, a common military defense mechanism called Peninsula Shield Force, a Standardization Organization, and, finally the Gulf Organization for Industrial Consulting.

The aforementioned Charter outlines the objectives of such a union, grouped in four macro-areas<sup>66</sup>:

- Co-ordination, integration and inter-connection between member states in all fields in order to achieve unity between them;
- Deepen and strengthen relations, links and areas of cooperation now prevailing between their peoples in various fields;
- Formulate similar regulations in various fields including: economic and financial affairs, commerce and customs, education and culture, social and health affairs, tourism, legislative and administrative affairs;
- Stimulate scientific and technological progress in the fields of industry, mining, agriculture, water and animal resources; establish scientific research, joint ventures and encourage cooperation by the private sector.

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<sup>66</sup> The Charter of the Gulf Cooperation Council, 1981



From the moment of its creation, the new-born institution focused especially on economic issues and goals as a mean to reach the broader defined objectives of the Charter.

Adopted in 1981, the *Unified Economic Agreement* constituted the epitome of the programs and policies developed over the first twenty years of the GCC.

This Agreement aimed to achieve economic integration among Member States through several steps: starting with the establishment of a Free Trade Area, followed by a Custom Union, then a Common Market and, finally, the Monetary and Economic Union.

Furthermore, it suggested the convergence and unification of laws, regulations and strategies in economic, financial and trade matters, and it encourages increased interconnection between Member States' infrastructures<sup>67</sup>.

In the evolving and fast-paced economy of the beginning of the XXI<sup>st</sup> century, the document signed in 1981 had become obsolete, requiring a modernization and a further step towards the integration process, hence the necessary *Economic Agreement* of December 2001.

This document addressed different economic-related topics such as the implementation of a GCC Customs Union and a GCC Common Market, economic relations with third countries, industrial and infrastructural integration across Member States, and foster scientific and technical research.

Finally, twenty years after its creation and no mention of labor-related provisions, the Economic Agreement defines as fundamental matter of issue the following: "*development of human resources, including education, eradication of illiteracy, compulsion of basic education, activation of the population strategy, nationalizing and training of Labor Force and increasing their contribution to the labor market.*"<sup>68</sup>.

Despite not being relevant for this dissertation, and, as such, not object of further inquiries and evaluations, the Gulf Cooperation Council has reached throughout their 37 years of history several achievements.

First of all, a Free Trade Area was established as of March 1983, granting the movement of national goods across Member States without tariff or non-tariff barriers. Followed by, in 2003, the Custom Union, introducing a common external tariff.

Furthermore, the GCC Common Market (CM) was officially launched in 2008; other than facilitating the movement of goods and services, it aimed at increasing production efficiency, and it has placed the institution in a better position when involved in international negotiations;

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<sup>67</sup> The Unified Economic Agreement between the Countries of the Gulf Cooperation Council, 1981

<sup>68</sup> The Economic Agreement Between the GCC States, 2001

moreover, it offered to GCC citizens equal opportunities to work in private institution and government in any Member State, and it granted the right to receive education and health benefits.

In December 2008, during the 29<sup>th</sup> session, the Supreme Council adopted the Monetary Union Agreement and the Statute of Monetary Council targeting the introduction of a single currency. Despite steps have been made in that direction, as of 2018 GCC is still far from the implementation, as a result of political instability and the financial crisis.

Even though a Custom Union and a Common Market have been implemented, and the creation of a Single Currency is on the agenda, the GCC, generally speaking, presents a fairly low overall degree of integration.

In fact, with the aforementioned exceptions, each Member State is independent with regards to laws and regulations, including labor and immigration law, even though civil law provides common sources.

When reading the Charter of the GCC, and the Unified Economic Agreement, it is striking to notice that labor issues are not mentioned, not even once. Only in 2001, with the Economic Agreement, the Institution push towards the implementation of the “General Framework of Population Strategy of the GCC States”<sup>69</sup>. Member States are invited to *“adopt the policies necessary for the development of human resources and their optimal utilization, provision of health care and social services, enhancement of the role of women in development, and the achievement of balance in the demographic structure and labor force to ensure social harmony in Member States, emphasize their Arab and Islamic identity, and maintain their stability and solidarity”*. In the same chapter, the article fourteen suggests the adoption of programs in order to eradicate illiteracy along with the enactment of a timetable for the implementation of compulsory basic education.

Article fifteen goes hand-in-hand with the previous one, as it recommends the Member States to improve cooperation between their universities, to develop programs aimed at forging high-skilled workforce able to meet labor market’s need and boost economic development. According to this document, the countries should engage in policies aimed at increasing labor participation rates and training of nationals, especially in high-skilled jobs; furthermore, aid should be granted to the private sector when nationals are employed and well-trained. Finally, Member States shall adopt the policies necessary for rationalizing the employment of foreign workers.

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<sup>69</sup> The Economic Agreement Between the GCC States, 2001

This articles were put in place as a mean to fix the situation ensuing the boom of the oil industry, as described in the first chapter of this work; from 1960s to 1990s, migrant labor used to be highly tolerated, representing a short-term, and cheap, solution to a diffused workforce shortage, opposed to the expensive possibility of training and educating natives.

As it is possible to notice from this analysis, GCC does not regulate, on a legislative point of view, issues concerning foreign workers in the Gulf; the organism does so only changing the perspective from expatriates to national workforce.

Clearly, this perspective goes hand in hand with workforce nationalization policies promoted by the member states, from quotas to subsidies, that are going to be the subject of discussion in the following paragraph.

### 3.2 Gulf governments intervention: nationalization policies and subsidies systems

GCC countries struggled with the social, economic and political consequence of the massive reliance on expatriate workforce, as showed in the first chapter of this work.

The extremely large gap between national and non-national workforce, along with a continuously increasing unemployment rate among nationals, an underdeveloped educational system and low levels of participation in the private sector, has led Gulf governments towards the implementation of the so-called “nationalization policies”. This solution aimed at reducing countries dependence on foreign workers, hence creating a friendly legislative environment for indigenous laborers; it addresses also the problem of long-term fiscal sustainability, and it recognizes that long-term development cannot be seconded to foreign expatriates.

Policies can be called “Omanization” or “Emiratization”, but, in essence, they represent a nationally adaptation of a solution addressing exactly the same issue in a different context: “Gulfization”.

These quotes below show how national labor legislations have been pushing towards progressive workforce nationalization:

*“Every employer shall afford priority of employment to citizens; thereafter to other Arab nationals whenever both are available and possess the capacity and competence as required by the nature of employment.”<sup>70</sup>*

*“The employer shall employ the Omani workers to the maximum possible extent.”<sup>71</sup>*

*“Priority in the employment shall be given to the Qatari workers. Non-Qatari workers may be employed in case of need.”<sup>72</sup>*

*“All firms in all fields, and regardless of number of workers, shall work to attract and employ Saudis, provide conditions to keep them on the job and avail them of an adequate opportunity to prove their suitability for the job by guiding, training and qualifying them for their assigned jobs”<sup>73</sup>*

*“The Labour Department may not give its approval to the employment of non-Nationals until it is satisfied that there are no unemployed Nationals registered with the employment section who are capable of performing the work required.”<sup>74</sup>*

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<sup>70</sup> Article 13, Bahrain Labor Law (1976)

<sup>71</sup> Article 11, Oman Labor Law (2003)

<sup>72</sup> Article 18, Qatar Labor Law (2004)

<sup>73</sup> Article 26, Saudi Labor Law (2005)

<sup>74</sup> Article 14, UAE Labor Law (1980)

Nationalization has taken many forms and led to regulations aimed at reducing the supply of regular migrant workers by a reinforcement of the barriers at entry and stay; policies outlining mandatory employment quotas for nationals; making specific sector of the labor market inaccessible to foreign workers and implementing taxation against employers who hire non-nationals.

Furthermore, economic and political outlooks become fundamental in forecasting future labor demands and subsequent reliance on foreign workforce. For instance, countries such as Bahrain and Oman have limited oil and gas reserves that are expected to run out in the near future, making these states unable to finance public sector employment for future labor market entrants. Oman has another peculiarity, namely the lowest education level of the GCC member states, meaning that its nationals could replace migrant labor in low skilled positions.

In the first place, interventionist nationalization policies consisted in the imposition of quotas and prohibitions, which, however, have had limited success. Through this mechanism, the government requires private employers to hire a minimum percentage of nationals and implement incentives and penalties instrumental to reach the quota.

Binding percentages of local workers and the limitation of specific jobs to Gulf nationals have created a labor environment whereby costs were unevenly distributed across industries, resulting in tax evasion and cases of corruption. Furthermore, sometimes nationals are only formally employed, and they do not actually work, while quotas increased informal employment of foreign laborers who might not even appear on their employers' payroll.

It seems like, in one way or another, cheap foreign labor will always outcompete nationals formally or informally.

In order to carry out the analysis concerning nationalization policies, a first distinction within the GCC member states has to be made: on one side, Bahrain, Oman, and Saudi Arabia, three countries relatively similar in terms of oil rents, GDP per capita, wages, and the demographic ratio of citizens to foreign nationals; on the other, the three high-rent countries like Kuwait, Qatar, and United Arab Emirates, where the nationalization debate is less urgent, since there is an higher rent-to-citizen ratio and employment in the public sector is seen as a satisfying short term solution.

This analysis starts from those three countries that have placed nationalization policies as a priority on their agenda.

First generation regulations fostered a debate, which resulted in looking for more refined market-based mechanisms. In this sense, Bahrein has been the forerunner, proposing a solution aimed at reducing the wage gap between nationals and non-nationals and allowing foreigners

mobility within the local market.

In the late '90s, Bahrain imposed that 50% of nationals must have been employed by each company in the Bahraini private sector; however, quotas were often unmet and this situation gave room to illegal behaviors. Following this unsuccessful campaign, it has been carried out a policy which provides for an integration of the nationals and non-nationals labor market, hence narrowing the wage gap between locals and foreigners while allowing a higher degree of internal mobility to foreigners. In 2008, the Labor Market Regulatory Authority was created, and it promoted a reform based on two core ingredients: first, foreign labor taxation through biannual and monthly fees, in order to increase its price relatively to local work; second, a loosening of the sponsorship system, making possible for foreign workers to change employer. Taxation came in the form of fees for work visas, which have been reduced following protests against the increase in labor cost. These labor levies are mostly used for training, which is expected to increase the productivity of Bahraini nationals.

On the other hand, despite declarations promising to abolish the quotas, the government decided only to reduce them; nowadays, quotas are still in place, even though diminished. For instance, the oil and gas industry has a 40% Bahrainization quota, food & beverage 25%, in the hospitality sector the 15% of a company's total employees should be nationals, and only the 8% in restaurants and bars.<sup>75</sup>

These reforms were made of public domain in order to foster a debate among Bahrain society, and they have been introduced smoothly. As a result, private employment of nationals increased considerably between 2008 and 2009, accompanied by an increase in salaries. In order to sustain training courses for Bahraini unemployed university graduates, the government implemented a 1% income tax; moreover, nationals losing their job, after having paid at least 12 months of contributions, are eligible to receive a monthly wage consisting in the 60% of their previous salary.

As of 2011, reforms in Bahrain appeared quite successful at providing fair incomes and fair private employment levels for Bahrainis. Nevertheless, labor market transformation has failed to a certain extent. The wage gap between nationals and non-nationals still exists, the fees paid by the employers have not rose, and, it is unknown whether the fee comes in form of lower wages for foreigners. Also the reform of the sponsorship system, through the abolishment of the "no objection certificate", thus giving to foreign laborers the opportunity to change employer, had a limited effect as the analysis that is going to be carried out in the following paragraph shows.

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<sup>75</sup> Bahrain Labour Market Regulatory Authority, 2016

Furthermore, since 2011 the government shifted its focus on the public sector, creating thousands of new jobs for Bahrainis and increasing salaries, hence reorienting the expectation of the young Bahraini graduates toward the public sector.

Geographically moving to the south, since 1994, Oman has pursued a nationalization policy, called “Omanization”, based on quotas for different sectors of business and reserved job categories for nationals.

The table below displays the different percentages of nationals in 6 sectors of the Omani economy, according to the very first quota scheme.

The most affected industry is the so-called “Communication, Transport and Storage”, whereby the quota should be the 60% of the number of employees, followed by “Finance, Insurance and Real Estate” at 45%, “Industrial” 35%, “Hospitality and Food & Beverage” 30%, “Trading” a 20%, and finally “Contracting” 15%.

*Figure 11: Former Omanization quotas per sector*

<b>Sector</b>	<b>Omanization %</b>
Communication, Transport and Storage	60%
Finance, Insurance and Real Estate	45%
Industrial	35%
Hospitality and Food & Beverage	30%
Trading (Wholesale or Retail)	20%
Contracting	15%

*Source: Author's elaboration of Omani government data*

Furthermore, Oman has reserved to its citizens some highly specialized occupations, such as lawyer, Civil Engineer, Accountant, Legal Adviser, Department Manager, Primary School Teacher, Nurse, Architectural Draftsman, and TV Cameraman.

Being a failure for the first few years, Omani government has introduced measures other than quotas. In particular, a 7% levy on wages of foreign workers<sup>76</sup> has been converted in a way to finance the training of nationals, whereby the subsidy coming from the levy is tied to the subsequent employment of the trained worker.

Furthermore, a number of labor fees and higher expatriate mobility have been relevant factors for the remarkable increase in Omani employment in the private sector at the end of the last

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<sup>76</sup> K. C., 2010

decade; between 2003 and 2007, indeed, the number of Omani nationals in the private sector rose by 138%<sup>77</sup>.

Following the Arab Spring season in 2011, Omanization experienced a slowdown, even though the government raised the minimum wage for nationals up to 200 Omani Riyal (\$520,156) and up to 325OR (\$845,254) in 2013. Furthermore, authorities have put in place a monthly unemployment benefit for nationals of 150OR (\$390,117). The high minimum wage has reduced employer demand for Omanis, whereas the benefit has reduced the labor supply.

Nevertheless, in the last five years, workforce nationalization policy has changed and started to be fruitful. In fact, the newspaper Times of Oman<sup>78</sup> has reported interviews with Omani HR professionals stating that, nowadays, the 80-90% of the jobs posted by them are for nationals, thanks to quotas and an improved educational system.

The regulation was extended to the engineering sector, whose general target was defined at 50%, while for specific jobs, such as technicians or skilled workers it reached a peak, respectively of 70% and 80% of Omanis.

The oil and gas industry has been even more affected, as the nationalization level has been set at 90% for production and operation companies and 82% for direct service companies.

Banking, finance, and insurance have experienced an increase in their respective quotas, as for the first it has been defined at 90%, while for the latter at 45%. Finally, for clerical positions the Omanization level is 100%.

At the end of the day, Omani government managed to achieve employment increases for its nationals in the private market and stable salaries at the same time.

Among the first six GCC countries, Saudi Arabia was probably the first one experimenting with national employment policies. During the late '40s, Saudization quotas were designed, but actually never implemented. Only the Decree no. 50 of 1995 formalized quotas, aiming at a 5% increase in the share of employed Saudis in companies employing more than 20 people. Nevertheless, the Ministry of Labor used to impose ad hoc percentages on a variety of sectors, in practice, negotiating quotas on a discretionary basis between companies and local labor offices, for instance it consented lower Saudization percentage in low-wage contracting sector and imposed higher quotas in banking. As a result, the quotas mechanism turned out to be impossible to implement, until 2011. Saudi government, through the new labor law in 2005, tried to impose a more clearly defined quota, a global 75% of Saudization, without outlining the mechanism to implement it.

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<sup>77</sup> K. C., 2010

<sup>78</sup> Times of Oman, 2017



At the same time, it was reduced the number of work visas granted to foreigners, an initiative totally unfruitful since it faced the opposition of business lobbies, especially from the construction sector.

In 2011, another season of reforms began, King Abdullah imposed a minimum wage to the public sector, corresponding to \$533, and introduced an unemployment subsidy comparable to the 65% of an average private sector salary; the following year, Saudi government created 300.000 public jobs.

In the meantime, the Ministry of Labor set up a new quota system called “*Nitaqat*”, providing for differentiated quotas for each of the 41 sectors and of the 4 company size category identified. As showed in the table below, quotas depend on the number of employees, and respective classification of the company. In the case of a small enterprise, quotas vary between 5% and 24%; as companies get bigger, the percentage of national workforce is required to increase accordingly: from 6% to 27% for medium size firms, 7% to 30% for the large ones, and, finally, 8% to 30% for the ones accounting more than 3000 employees.

*Figure 12: Nitaqat Quotas*

<b>No. Of Employees</b>	<b>Classification</b>	<b>Required Nationalization</b>
1-10	None	Exempted
10-49	Small	5-24%
50-499	Medium	6-27%
500-2999	Large	7-30%
3000 or more	Big	8-30%

*Source: Author's elaboration of KSA Government data*

Different levels of compliance result in different combinations of sanctions and incentives for companies. This reform led to a smooth relaxation of the sponsorship system as well, granting to foreign workers the possibility to move more easily from a company to another.

Between 2011 and 2013, the *Nitaqat* program resulted in a 70% increase of Saudis joining the private sector. Furthermore, non-nationals working for a company different from their official sponsor were forced to register with the actual employer or to leave the country; it is esteemed that more than a million expatriates has left Saudi Arabia by the end of 2013.

The possibility to earn a meaty unemployment subsidy and lower cost of labor has made people greedy, and, as a consequence, several cases of illegal behaviors have been registered since

reforms implementation; in particular, companies might formally hire Saudis and then tell them to stay at home, especially in the construction sector. The latter experienced a 100% increase in Saudi employees within a year from *Nitaqat* beginning. Saudi females are also involved in this changes, as thousands of them used to be involved in the epidemic “phantom employment”, a practice now mostly discarded.

Another issue stemming from the reform is that an incentive is given to the firms for moving to the lower boundary of the quota band, as Saudi workers cost more than foreigners; for this reason, the imposition of the policy seems to have doubled the rate of market exit of Saudi firms<sup>79</sup>.

In the medium-long term, policies taking into account wages and employment numbers could be designed in order to foster Saudi employers interest in providing higher quality jobs and training. Indeed, some steps in this direction have been made as demonstrated by some sort of a wage protection system, which monitors, in practice, that payments to employees are timely and congruent, boosting at the same time the monitoring and sanctioning capacity of the Ministry of Labor. This reform granted an increased compliance to regulations and it has been useful when the implementation of market- and price-oriented were taken into consideration.

For instance, when subsidies have been provided for Saudis training and first-time recruitment in order to counter the lack of job positions, held by expatriates, which paid the minimum (SR 3.000 monthly) for national job-seekers. Anyways, it seems difficult for the private sector to absorb completely the enormous number of those reaching the working age every year, making difficult to not strangle the national economy and to maintain socio-economic stability.

Since the early 2000s, the governmental Human Resources Development Fund has helped in bridging the gap between what national job-seekers consider an acceptable wage and what the private sector is offering; it did so by supporting on-the-job training and the early employment phase.

Although subsidies cannot transform immediately Saudis in competitive employees (it takes more or less two years from their roll out), they are useful instruments aimed at dealing with labor cost gap between expatriates and nationals.

However, this regulation has been slightly unsuccessful and its adoption has not found fertile ground among the private sector, since businesses are required to increase wages at the end of the subsidy period, thus compensating for the loss of government support. This situation created difficulties to the Human Resource Development Fund, making it unable to disburse its funds. Recently, two categories were involved in the process of expansions of wage subsidies: teachers

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<sup>79</sup> Willis Towers Watson, 2013

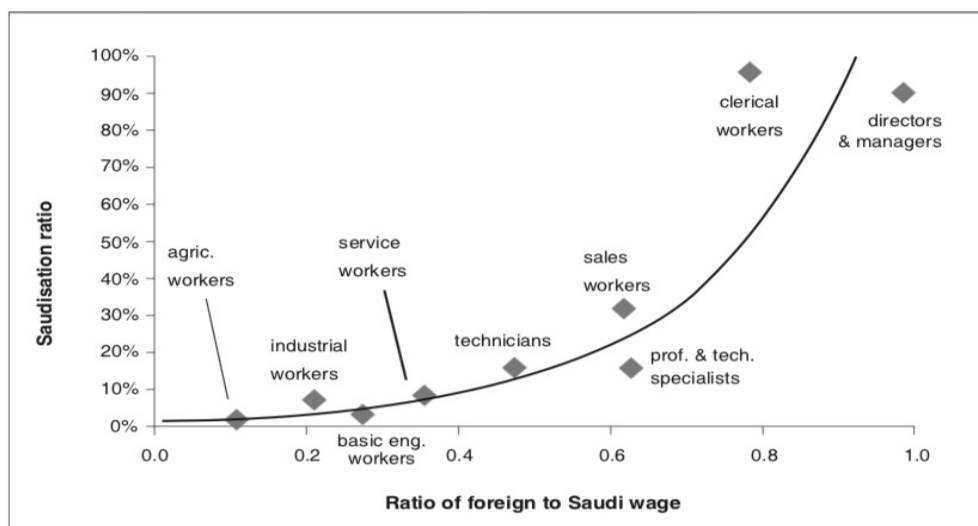
in private schools and sales-women in lingerie shops. The government defined a salary target of SR3.000 (\$800) for the firsts, and SR5.000 (\$1.333,33) for the latter; meanwhile, subsidies were also aligned to the Nitaqat system, whereby virtuous companies received larger ones, namely up to SR4.000 (\$1.066,67) per month for a span of four years per each new Saudi employee. This instrument should be a huge incentive for businesses, nevertheless, many companies do not claim subsidies as they perceive that administrative difficulties could arise throughout the bureaucratic process.

Another measure created to narrow labor cost gap and encourage businesses to hire Saudi nationals is a fee of SR200 (\$53,33) per month for each foreigner exceeding a 1:1 quota of Saudis to non-Saudis. However, being the salary gap usually around SR3.000 (\$800), the effectiveness of this regulation will probably be really subdued. On the other hand, it is useful in creating a precedent, as it has been established against businesses complaints and against a common tendency among GCC, whereby taxation is an extremely delicate issue.

The mechanism described above could allow the collection of a significant amount of money, reinvested by the Human Resource Development Fund onto subsidies and training of Saudi workers.

In Saudi Arabia, despite positive steps have been made in the right direction, the *Nitaqat* system could not stop labor migration, especially for those companies in the higher band of the system, meaning that expatriates wages are still influenced by their home country reservation wage.

Figure 13: Saudisation ratios vs. wage ratios of different professions (2010)



Source: Hertog S., *Arab Gulf States: An Assessment of Nationalization Policies*

The figure above shows how the gap is still extremely relevant for low-skilled positions (e.g.: agriculture, industrial, and service workers), and it defines a general rule: the higher the

Saudization ratio, the narrower are the wage gaps, implying that several positions are going to remain hard to nationalize without government intervention on labor prices or immigration regulations.

As previously highlighted, labor markets of Bahrain, Oman, and Saudi Arabia present peculiar features and characteristics that make them not comparable to the ones of the three high-rent member states of the GCC. In fact, Kuwait, UAE, and Qatar face peculiar labor market dynamics.

First of all, as emerges in the first chapter, the percentage of non-nationals on the total population varies from the 69,4% of Kuwait, the 88,5% of UAE, and, finally, to the 89,9% of Qatar; clearly, other than having extremely small indigenous populations in absolute terms, the national workforce is outnumbered by non-nationals. Moreover, studies show that the wage gaps between nationals and foreigners, and the sources of non-work income, are way larger in the three rentier states.

In Kuwait, Qatar, and UAE labor reforms are commonly considered to be not as comprehensive as the ones carried out by the other half of the GCC Member States, nevertheless, some low intensity initiatives concerning sponsorship systems and labor prices have been executed.

Kuwait, in particular, is worth a deepening of our analysis, as the government promoted systematic long-term wage subsidy policies for the indigenous population. Furthermore, pressure from international and local human rights groups has led to the evaluation of a *kafala* reform, which is going to be the focus of the next paragraph.

Kuwait, not differently from the other countries analyzed up to this point, has been imposing sector-specific nationalization quotas.

*Figure 14: Kuwaitization Quotas*

<b>Economic activity</b>	<b>Kuwaitization %</b>
Banks	64%
Finance and investment	40%
Financial Exchange	13%
Real estate	20%
Insurance	18%
Business services	5%
Telephone services providers	60%
Petrochemical and refining	30%
Manufacturing industry	3%
Agriculture, fishing and grazing	3%
Arab private schools	10%
Foreign private schools	5%
Training	30%

*Source: EY, 2015*

As it is possible to notice from the table above, the most affected sector is banking, with a 64% of nationals required; also telecommunications companies have to comply with a restrictive rule, as at least the 60% of their employees has to be of Kuwaiti origins. Those industries least affected are the ones which require the most foreign low-cost workforce, as the agriculture sector, and the manufacturing industry.

Several scandal came to light as a result of the inadequate, on two levels, regulatory capability of the Kuwaiti administration: authorities have been unable to implement Kuwaitization quotas and to control effectively foreign workforce. In particular, in 2013 and 2014, senior officials of the Ministries of Labor and Interior were part of a scandal whereby they acted as large-scale brokers for hundreds of thousands of work visas for expatriates.

In addition to reforms concerning kafala, Kuwaiti government promoted in 2001 a wage subsidy system called *da'm al-'amala*, progressively adopted across private sector industries. This regulation provides different levels of allowances based on family status and education. As of 2013, allowances increased up to “790 KD (\$2.800) per month for an unmarried holder of a bachelor's degree and 1248 KD (\$4.400) for a married man with a degree”<sup>80</sup>, whereby a high school graduate has granted 557KD (\$2.000). Even though higher education equals higher subsidy, differences among private sector salary levels according to education are larger, thus creating the conditions in which subsidies are the most beneficial to less educated nationals, giving to less educated incentives to join the private sector. The scheme works through a mechanism of levies for private companies (0,5% of their profits), but the latter cannot bear the whole expenses of the subsidies, thus covered by government's general budget. It is reported that the system in 2011 has supported 50.000 out of 70.000 nationals employed in the private sector.

The consequences and the benefits arising from the *da'm al-'amala* scheme are hard to insulate from other factors, such as the Kuwaitization policy; nevertheless, in a decade, the number of Kuwaitis in the private sectors has grown by 500%, and comparing it to the other high-rent GCC countries, namely Qatar and UAE, Kuwait shows the largest figure of nationals.

UAE and Qatar have still to implement systematic subsidies schemes, while promoting only quota rules, thus corroborating the hypothesis of a significantly positive effect of the *da'm al-'amala*.

Nonetheless, steps must be made in order to fine-tune the mechanism, as it leaves room to phantom employment, especially by female Kuwaiti housekeepers, and, without an integrated

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<sup>80</sup> Ernst Young, 2015

labor market policy considering labor prices from both public and private sectors. Unfortunately, an in-depth analysis of the impact of the *da'm al-'amala* on the labor market is yet to be undertaken.

Unlike Kuwait, whereby a system promoting quotas adoption and a subsidy mechanism to favor national job-seekers do coexist, the United Arab Emirates promoted a massive quotas policy, even though limited to certain sectors as insurance, banking, commerce, and exchange, thus not tackling the issues concerning foreigners in those sectors in which they are the vast majority (such as construction industry). Emiratization policy does not impose fixed quotas for businesses, however, they are classified following their compliance; their compliance with nationalization rules would grant them benefits, which might include lower Ministry and immigration authority fees, being exempted from providing financial guarantees for employees and visas might be easier to obtain.

Moreover, a list of jobs reserved to nationals has been laid down, as HR manager, government relations officer and secretarial positions, but it did not have the expected results.

Alongside with the loosening of the sponsorship system, focus of the following paragraph, UAE government promoted regulations similar to the Saudi *Nitaqat* in order to boost Emiratization.

Businesses are classified according to certain parameters:

- Share of dominant nationalities among the employees;
- Skill levels;
- Compliance with Emiratization quotas.

This evaluation mechanism results in five categories and a range of work permits fees, from Dh300 (\$81,69) to Dh5.000 (\$1.361,47).

When compared to the Saudi system, it is clear that the latter has more purposes than nationalization, and it does not entail administrative incentives.

According to researchers<sup>81</sup>, even though the outcomes of this policies have yet to be evaluated, the impact of the Emiratization policy will probably be moderate or even low as a result of small variation between fees imposed on companies and ineffectiveness of the classification system.

In fact, the figures concerning employment of Emiratis are still very low, as estimates place the number around 20.000 nationals, while the public sector is the largest employer in the country; in Abu Dhabi, nationals working in the public sector receive a bonus up to the 600% of their wage, just because they are Emiratis.

As the salary gap between Emiratis and foreigners remain considerable, authorities are

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<sup>81</sup> Wills Tower Watson, 2013

evaluating the possibility to implement a price-oriented initiative, which would grant to national graduates a government funded 30% of their first private sector wage (up to Dh5.000 per month).

In the UAE, nationalization in the private sector has not been a major issue yet, as the public sector is still able to absorb and “spoil” national workforce.

Up to this point, nationalization policies and subsidies mechanisms carried out by five out of six member states of the GCC have been subject of analysis. Labor market features of the last member of the Council, Qatar, are peculiar, leading to a less methodical pursuit of Qatarization regulations. Indeed, its indigenous population is extremely small (243.019 people), hence the public sector provides them an occupation.

Authorities have nonetheless implemented quota policies in the private sector, but lacking mechanism of enforcement and monitoring, leaving room for the “phantom employment” phenomenon. On the other hand, fees on work and residency permits for foreigner are extremely low, and there seems to be no intention to implement any regulation providing subsidies for the private sector.

To sum up, the analysis of nationalization and labor market policies implemented by the six member states of the GCC has been divided in two phases for groups of country chosen on the basis of their economical, labor market and demographic characteristics: a first one, comprehensive of Bahrain, Oman, and Saudi Arabia; then, a second one, including Kuwait, Qatar and UAE.

Each of the six member states labor legislation has been written, and emended, in order to give priority to the employment of nationals in both the private and public sector; in fact, following these provisions, Gulf governments have implemented some sort of nationalization policy in the form of quotas, with different degrees of enforcement and monitoring, whereby the Saudi *Nitaqat* has been the most effective and Qatari policies the weakest.

Alongside quotas, provisions aimed at reducing the salary gap between nationals and foreigners, and in general, at abating the cost of employing a Gulf worker for businesses, were carried out and results were achieved in Kuwait, Oman, and Saudi Arabia.

Generally speaking, it is safe to say that the Al Saud’s Kingdom has risen as the most virtuous actor in terms of labor market reforms in the Arabian Peninsula. Saudi authorities have implemented an effective combination of tailored quota rules and more refined price-oriented mechanisms (such as subsidies and taxes). Overall, quotas grant increased flexibility for firms, but they are accompanied by a relevant growth of administrative expenses and efficiency losses among affected companies, leading to evasion and phantom employment.

Quotas by themselves appear to be more like a placebo or a declaration of intent by Gulf governments, in order to help soothe the mood of those citizens that blame foreigners or the authorities for their unemployment condition, in fact these policies clearly reduce productivity, and make the firms less efficient than their eventual competitors, thus increasing the chances of relocation by affected businesses.

Enforcement is fundamental for these regulations, otherwise, if firms find a way to bypass them, they would not be effective and there would be less reduction in the expatriate labor force and lower nationals' employment; in addition, GCC business-friendly reputation could be damaged. On the other hand, price-oriented tools seem to provide more appealing incentives for nationalization, creating the preconditions for massive employment of nationals.

From this analysis clearly emerges that quota policies must be accompanied by a strong intervention on the labor market by the government, thus reducing GCC countries' reliance on foreign workforce and promote, as a consequence, a healthy labor market in which foreign workers can be safeguarded and have rights comparable to the nationals' ones.

Moreover, nationalization mechanisms should go hand in hand with improved education systems, enabling nationals to expand their technical knowledge, their skill-set and productivity.

However, as further investigation related to these mechanisms go on, it is important to bear in mind that these experimentations could go wrong depending on whether employer or employee capture the majority of the subsidies and to which extent fees are merely "passed on" to expatriate workforce in the shape of lower salaries, thus defeating their purpose and potentially raise labor rights issues.

### **3.3 Gulf governments intervention: *kafala* reforms**

Sponsorship system, also known as *kafala*, has been at the center of this work, in particular in chapter two, and, following the in-depth analysis of rights violations occurring to foreign workers under the umbrella of this mechanism, it is now time to study how GCC member states are facing international pressures and allegations. In fact, reforms of the sponsorship system are made in order to tackle bad reputation and the negative image of the Gulf countries.

However, *Kafala* should not be reformed just for GCC member states "branding" purposes, but an improvement of the mechanism would bring several positive consequences.

One of the major benefits may be the increase support to nationalization policies, through increased internal market mobility, as we have seen in the previous paragraph, that would lead to a reduced wage and rights gap between nationals and migrant workers.



Furthermore, economic benefits are another aspect that should not be underestimated; indeed, labor market would become increasingly attractive for businesses willing to work in the Arabian Peninsula, skilled workers, while low-skilled ones would have incentives for increasing their skill set, thus expand economies' productivity. Reforms leading to enhanced internal labor market mobility could also reduce the visa trading and labor hoarding phenomena.

If we look at the bigger picture, changes in the sponsorship system in line with international labor standards may foster an improved global reputation and an investment-friendly climate. In this new scenario, workers' complaints would decrease, as well as dispute resolution cases, thus resulting in lower costs for law enforcement, and less and less migrant workers would need government-funded support, resulting in cost reduction for welfare.

Sponsorship system's reform would subsequently create a virtuous circle, whereby the improved match between laborers' skills and companies would soon turn out as higher wages and better working conditions enabling the attraction of talents. Finally, labor governance would progress since it would reduce the number of employers seeking to sponsor dozens of workers without employing them, and it would benefit the political climate within the Gulf countries, as employers would not be able to recur to the well-known abusive practices (absconding, passports confiscation, limited freedom of movement, withhold wages...) towards foreign workers.

Finally, also employers could benefit from this renewed labor market climate, as they should be able to hire foreign workers in the destination country (e.g.: those who terminated their previous employment contract), thus saving on time, cost and administration. Indeed, according to ILO research<sup>82</sup>, compliance with *kafala* rules has become a burden for most employers, and the 65% of them would support its reform at certain conditions (*"alternative employment-based visa and various options for reimbursement of recruitment fees in cases of early termination of the contract would be offered"*)

On the other hand, sending countries, such as India, Pakistan, Philippines, have been refusing to send workers until some reforms will be carried out to protect their citizens.

The burden of human rights violations due to the *kafala* in the Gulf, and the related delay in the implementation of reforms, should be shared between both destination and sending countries, as they are tangled up in economic interests. In fact, sending countries might not be so interested in demanding reforms of the sponsorship systems, as they rely on the remittances coming from their citizens and strive to relieve themselves from the pressure of domestic unemployment.

Moreover, reforms are hindered by diffuse discrimination against migrant workers in Gulf

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<sup>82</sup> ILO, 2017

societies, where they are considered second-class citizens, and thus it is difficult to find Gulf nationals speaking out for them.

Workers cannot invoke reforms for themselves due to the series of abuses listed in the previous chapter and their protest would lead to immediate deportation.

Finally, changes are prevented by businesses powerful lobbies, sponsors and recruitment agencies, that could limit governments' areas of intervention.

Each of the six countries has its peculiarity in dealing with reforms of the *kafala*, so, in order to be able to compare their efforts, they should be treated as separate subject of deepening.

### **3.3.1 Bahrain**

The small Kingdom of the Arabian Peninsula has promoted throughout the years a series of reforms aimed at reshaping its sponsorship system regulating the immigration and employment of foreign workers. Steps have been taken forward a progressive improvement of work conditions for expatriates, and one of the very firsts was the Decision No. 79 of 2009, also known as Mobility Law. It regulates mobility of foreign employees from one employer to another, allowing migrants workers to change employers without their current sponsor's permission, while, prior to the measure, the *kafala* would have prevented any expatriate from switching employment, besides at the end of his or her contract or with the permission of the sponsor. The worker is required to inform, within a span of three months for the notification, through an email his or her sponsor and the Labor Market Regulatory Authority, as reported in the Article No.3 of the Decision No.79 stating that *"In the event a worker wishes to transfer prior to the expiry date or cancellation of his work permit, he shall inform the first employer, by a registered mail with confirmed delivery advice, during the specified notice period for termination of service according to the provisions of the Law or the contract of employment concluded between the two parties; provided that it should not exceed three months from the specified date of transfer."*

Moreover, laborers have one month to consolidate their new employment after having left their previous sponsor: during this period, they can legally reside on the Bahraini soil. This reform supposedly allowed migrant workers to leave behind unfair salaries, rights violations, and inhuman working environments, while, at the same time, granting them a bargaining chip to request better pay and benefits.

Majeed al Alawi, Bahrain's former Minister of Labor, released an interview stating that *"The end of the sponsor system is the most important aspect of this law because in my opinion that phenomenon does not differ much from the system of slavery and it is not something suitable*

*for a modernized country like Bahrain”.*

However, investigations carried out by Human Rights Watch at the time demonstrate that only 2 out of the 62 workers interviewed, as of 2012, were aware of the new regulation.<sup>83</sup>

Despite being a significant positive step for foreign workers, Mobility Law was amended in 2011, after raging pressures by Bahraini businesses requiring that the worker in the process of switching employment remains with the current employer for one full year.

Data provided by the Human Rights Watch report indicates that in a period comprised between October 1, 2009 and March 31, 2011, “job changes invoking the 2009 Mobility Law comprised only 1.3% of all employment transfers, benefiting around 241 migrant workers out of 17,979 who changed jobs during that period.”<sup>84</sup>

Further evidences show that, in the second half of 2011, only the 0.3% of the 11.636 job changes by foreigners happened without their former sponsors’ acquiescence. Switching perspective does not correspond to an improvement of workers’ conditions arising from the Mobility Law; in fact, the Labor Market Regulatory Authority has rejected the 98% of all the applications concerning the same matter, compared to the 28% of the requests whereby the employer was consenting.

As of 2011, it has been calculated the total annualized turnover of foreign workforce, which resulted in a distressing 3,8%, while turnover without sponsor’s consent was 0.08% of the total expatriate workers.

According to unions and advocates, the three-month term was too short, thus deterring low-income workers, scared also by the possibility of harassments, and only suitable for high-level professional expatriates. Furthermore, lower-skilled employees lack the legal knowledge, determination, resources, and information about the labor market necessary to move to a new job. Low mobility impacts also Bahraini nationals, as it forms incentives for the creation of more low-skilled position to the detriment of high-skilled ones, culminating in a smaller amount of high-quality and higher-wage jobs to be given to national job-seekers.

In order to be effective, this measure should be accompanied by a system or institution providing education to expatriates, explaining them what are their rights, and supporting them throughout the temporary unemployment period, while protecting workers from employers’ harassments, such as the retention of wages and benefits.

In 2016, Bahraini government has announced a new solution that will transform migrant workers in their very own sponsor, a new flexible work permit. This permit should allow around

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<sup>83</sup> Human Rights Watch, (2012)

<sup>84</sup> Ibidem

10.000 expatriates, the ones that have become illegals in the country as a consequence of overstaying, to seek multiple temporary jobs for a time span of two years. The workers must, however, pay \$80 a month plus a *una-tantum* of \$530.

Furthermore, the new permit has several limitations concerning sectors of employment, excluding the expatriates from industries where it is required a professional license, such as nursing or engineering, and it does not apply to the domestic workers' category, one of the most vulnerable across the country (and the Gulf).

The new regulation has been applied starting from the second half of 2017, and according to human rights organizations it has had a slow start with *“only 130 workers adjusted their legal status through a flexible work permit, instead of 500 per week that authorities anticipated”*<sup>85</sup>.

### **3.3.2 Kuwait**

The first articles talking about the Kuwait government's intention to reform the sponsorship system date back to 2009, after announcements by the Labor Ministry. Indeed, some changes were carried out, even if they were of small magnitude; foreigners were finally allowed to change sponsors without the latter's consent or through a “no objection certificate”, although at certain conditions, such as the completion of the initial employment contract or at the end of three consecutive years of employment. Unfortunately, domestic workers have not been included in this change, and any mechanism of protection for those workers trapped in abusive employment conditions within the first three years.

Nowadays, government's announcements persist but do not lead to significant reforms; as reported by an article on Gulf Business<sup>86</sup>, there are rumors concerning a committee considering the abandonment of the *kafala* system. It appears that this governmental organism is evaluating a proposal whereby the state of Kuwait would become the sponsor of the entirety of private sector employees. Through this government agency, the state could directly import workers for its own contracting and construction projects in order to prevent free visa deals.

Furthermore, contracts signed by employer and employee with the Kuwaiti manpower authority as sponsor would regulate parties' relations.

The aforementioned contract would include provisions created to impede employers from holding on to their employees' documents and passports, and to prevent them from transferring them to work for other companies, unless they cancel their residency visas and leave the country.

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<sup>85</sup> Migrant-Rights.org, (2017)

<sup>86</sup> Gulf Business, (14/02/2017)

Discriminatory practices would be carried out, as, in the case described above, high-skilled workers such as doctors, engineers, managers, and graduates will still be able to switch companies.

This reform, as it is possible to notice from the following paragraph, is similar to the one implemented by Qatar, even though the one supposedly discussed among Kuwaiti authorities still remains a mirage.

Another improvement stemming from the new form of contract concerns salary payment, which has to be done through a local bank, hence guaranteeing to a certain extent transparency.

Another proposed solution is a private joint stock company that would handle the whole recruitment process of foreign workers, similar to the ones created in Saudi Arabia. In this way, individual companies importing labor, and prone to abuses, or recruitment agency acting as intermediaries would be replaced in full. The newly constituted company would then be in charge of monitoring, permanently, foreign laborers.

In addition, it is important to notice that in this way workers would have a certain degree of mobility and their recruitment would be part of a national human resources strategy that would fulfill the needs of the country's economy.

The authorities have also taken into consideration the idea of a self-sponsorship system for higher-income, and higher-qualified expatriates, and another alternative plan would be to put all workers under Ministry of Labor sponsorship after a year.

All these solutions have not been implemented, although a new and independent labor market regulator has been announced in 2013, which has to be seen yet.

Despite this lack of follow ups in terms of reforms, domestic workers could experience an improvement of their condition thanks to the adoption on June 24 of 2015 of the Law No. 68 of 2015 on Employment of Domestic Workers, which increased their labor rights. Domestic workers will be allowed to a weekly day off, 30 days of annual paid leave, a 12 hours of rest per day, and a month of wage as end-of-service benefit.

Nevertheless, there are some gaps that needs to be filled, as the new law does not lay out any enforcement measure, such as labor inspection, and, even though it prohibits employers from withholding laborers' passports and documents, it fails to specify penalties.

As of 2018, Kuwait has still a lot of work to do in order to reach the objective of eliminating its reliance on *kafala*.

### 3.3.3 Oman

The Sultanate of Oman did not undergo through major changes in its sponsorship system due to pressures from business lobbies and less international attention, completely drawn by its fellow neighbours Qatar, Saudi Arabia or UAE.

However, some signals of openness seem to have given a new hope to foreign workers in the country, especially domestic workers.

In 2015, Sharan Burrow, the secretary general of the International Trade Union Confederation visited the country and commented on possible new labor laws promulgated by Omani authorities. In particular, she dug out the necessity to set up labour courts to settle worker-employer disputes exclusively, as *“law without compliance will fail to generate a productive culture for both businesses and labour”*<sup>87</sup>.

The national newspaper “Times of Oman” reported in April 2016 an interview with the advisor to the Minister of Manpower, Salem Al Saadi,<sup>88</sup> in which he declared: *“Either in the new labour law or as a separate chapter, we have plans to legalise their rights and provide better protection to domestic workers”*. Indeed, it seems that authorities are planning to legalize the rights of migrant domestic workers and grant them greater protection. No mention has been made concerning the type of legal provisions, with the exclusion of the possibility to create an instrument separated from the common labor law. From the analysis carried out in this chapter, Oman would be the last GCC member states to implement some sort of provisions to protect the rights of migrant domestic workers, usually excluded from labor legislations across the Gulf.

### 3.3.4 Qatar

The government of Qatar ended up under the spotlight of the media and public opinion from the day when, in Zurich, it was decided that the next football World Cup of 2022 will be played, for the first time, on Middle Eastern soil. From that moment on, hundreds of articles and reports denouncing human rights violations on the building sites of the World Cup have been written. Indeed, unlike other GCC member states, which appear to be isolated and their issues swept like dirt under the carpet, there is plenty of documents, interviews, ILO declarations.

In 2015, Qatar has promulgated the new labour legislation, the no. 21 of 2015, regulating the entry, exit and residency of expatriates. It was supposed to replace the sponsorship system with a contract-based mechanism, making it easier for workers to change jobs and eventually leave

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<sup>87</sup> Times of Oman, (20/09/2015)

<sup>88</sup> Times of Oman, (27/04/2016)

the country.

Foreign laborers are allowed to leave their jobs for another only if they meet certain conditions: they have to respect the contract expiration, if their contract is a fixed-term one, and have the seal of approval from the Ministry of Labor, or, if the contract is open ended, after five years and have the seal of approval from the Ministry of Labor and the Ministry of Interior.

The new law removed the two-year ban required for a foreign laborer to return to Qatar to start a new job after his departure on completion of his contract; furthermore, the contract signed by employer and employee became binding for both sides. The exit permit from the sponsor will not be required anymore for an expatriate worker to leave the country, but he or she only needs to inform the employer three days in advance, and the employer cannot stop him or her; if controversies arise, the parties can require the intervention of a newly constituted grievances committee.

The law also affirms that in some cases of emergency, the laborer can leave immediately after notifying the employer and by approval of the authorities concerned.

In addition, a new disposition raised the fine on employees for upholding the passports from 10,000 (\$2.747,25) to 25,000 (\$6.868,13) Qatari Riyals.

Under this enormous political pressure, Qatar announced a number of important human rights reforms during 2017, that, if effectively implemented, would elevate the country as an example for the other countries in the Gulf.

These changes could drastically improve labor standards for migrant workers, including also domestic workers, and a draft law approved by the Cabinet to grant permanent residency to children born to Qatari mothers and foreign fathers and to some foreign residents living in the country.

In particular, the Emir of Qatar, Sheikh Tamim Bin Hamad Al Thani, ratified Law No.15 on service workers in the home on August 22.

The law finally grants a certain degree of protection to Qatar's 173.742 domestic workers<sup>89</sup>.

The law provides as follows: *"The maximum hours of work shall not exceed ten hours a day, unless there is an agreement to the contrary, interrupted by periods for worship, rest and food. Such periods shall not be included in the calculation of the hours of work."*<sup>90</sup>; furthermore, it grants a weekly rest day in Section 13, where it is written that *"A domestic worker shall be entitled to a paid weekly rest holiday, which is not less than twenty-four consecutive hours"*, a

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<sup>89</sup> Qatar Labor Force Sample Survey, 2016

<sup>90</sup> Section 12, Qatar Law No. 15 of 22 August 2017

three weeks' annual leave<sup>91</sup>, a payment for the end of service<sup>92</sup>, and some sort of healthcare benefits.

Despite having created a precedent, this law is weaker than the Qatari labor legislation, and it does not conform fully to the Domestic Workers Convention (No. 189) of the International Labour Organization, not even ratified by the Gulf country.

In 2017 the government has promised to end the sponsorship system as it is known, replacing it with a system of government-sponsored employment, instituting a minimum wage, improve salary payments, end passport upholding, increase labor inspections and promote safety and health (also through a heat mitigation strategy), and make recruitment process more fair and transparent<sup>93</sup>.

In particular, a series of guidelines have been identified for implementation by Qatar's government for the future dismantling of the *kafala*:

- Employment contracts will be lodged with a government authority to prevent contract substitution, drawing a line under the practice of laborers arriving in the country only to have their contract torn up and replaced with a different job, often on a lower wage;
- Employers will no longer be able to stop their employees from leaving the country;
- End the current discriminatory system of wages, through the establishment of a minimum wage in the form of a base rate covering all workers;
- The State of Qatar will be the sole authority allowed to issue identification papers, and workers will no longer rely on their employer to provide their ID card;
- Committees of workers will be created in each workplace, and workers will be able to elect their own representatives;
- A special disputes resolution committee with a timeframe for dealing with injustices will be designed for ensuring rapid remedy of complaints.<sup>94</sup>

These initiatives have been supported by the International Trade Union Confederation, which, through its Secretary General, Sharan Burrow, defines them as a huge success which will “*bring to an end the use of modern slavery*”<sup>95</sup>.

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<sup>91</sup> Section 14, Qatar Law No. 15 of 22 August 2017

<sup>92</sup> Section 15, Qatar Law No. 15 of 22 August 2017

<sup>93</sup> Human Rights Watch, 2018

<sup>94</sup> The Committee assumed its duties on the 18/03/2018

<sup>95</sup> ITUC, 2017



### 3.3.5 Saudi Arabia

Starting from 2015, prior to the advent of Prince Mohammed Bin Salman, Saudi Arabia has started a period of reform concerning Labor Law, in the form of a package of 38 amendments to the legislation. These changes aimed at helping abuses towards expatriate workers, although domestic workers, women and migrant laborers having a short fixed-term (less than two months) contract have been excluded from the discussion.

One of the major changes has been the introduction or the raise of fines for those employers caught violating regulations, such as the prohibition of confiscating workers' passports, failing to pay salaries in a timely manner, or failing to provide copies of contracts to the employees.

In general, these reforms would have been effective only if the authorities would have had the willingness to ensure their enforcement.

The Labor Law amendments regulated also the increase of the paid-leave and the compensation period for job-related injuries, and they require employers to provide a day a week with full pay to employees to seek other employment if they terminate workers' contracts.

Inspection and enforcement powers of the Ministry of Labor were increased: the ministry can issue fines of up to 100,000 Saudi Riyals (\$26.666,67), and, in case of labor code violations, he can shut down companies permanently or for limited periods. Although many of the practices in the labor code were prohibited before the law was amended, the new or increased penalties may lead to an increased effectiveness of the enforcement mechanism. Fines of SR2.000 (\$533) will be issued against employers confiscating passports, not paying salaries in a timely manner would cost up to SR3.000 (\$800), and not paying the employee at all SR5.000(\$1.333). In addition, other penalties laid down for those not handing over the contract copy to the workers (\$1.333,33), those forcing workers to perform a different job from the one specified in the contract (SR15.000, \$4.000). Violating health and safety standard would cost SR25.000 (\$6.666), and employing children under 15 SR20.000 (\$5.333).

According to Arab News, *"The Ministry of Labour (MoL) has shut down 1,441 firms due to their failure to safeguard workers' wages"*, it was also reported that authorities shut down the IT systems of 89 companies for failing to respond to employee complaints; and had withdrawn the licenses of a recruitment firm and seven recruitment offices for failing to comply with regulations, thus showing signs of serious willingness to enforce the new amendments to the labor legislation.<sup>96</sup>

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<sup>96</sup> Human Rights Watch, 2015

It is funny to notice that, while increased fines were announced, reports unveiled a series of delayed payments by the Saudi government itself, which failed to pay contractors within six months (and trying to cut government contract prices).

Despite having implemented some serious reforms, as the ones described above, these amendments do not cover all the issues related to the *kafala*; in fact, exit visas requirements are still impeding foreign workers from leaving the Al Saud kingdom without their employers' agreement, and laborers changing job without their sponsors' approval are still at risk of being stripped off their documents, thus becoming illegals and being at risk of deportation. This issue became reality starting from 2013, when a program of mass deportation of undocumented workers has silently started. Humanitarian organizations have made throughout the years strong accusations towards Saudi government, it was esteemed that hundreds of thousands of people were detained, abused, beaten, and finally deported. In order to completely understand the magnitude of this awful situation, it is necessary to read the declarations by interior ministry officials confirmed that 427.000 undocumented foreigners were deported in the six months preceding April 2014, or the ones regarding the first quarter of 2015, when it has been calculated that 300.000 people have been extradited.

Despite promoting on one hand *kafala* reforms and a more effective enforcement mechanism, Saudi Arabia has still to work on a series of issues before it will be considered as a virtuous country, even for Gulf's standards. Taking into account the other part of amendments (the ones not covering sponsorship matters), it is safe to say that some discriminatory aspects have remained untouched by the reform, if not worsened; these provisions include strict sex-segregation policies in the workplace and a restrictive dress code that applies only to women. Authorities established fines of up to SR10,000 (\$2,667) for employers who fail to provide separate areas for women; SR5,000 (\$1,333) for the ones failing to provide written instructions on the required dress code for women; and SR\$5,000 (\$1,333) for keeping women working after sunset also discourage employers from hiring women workers. It goes without saying that women who don't respect the dress code can be fined SR1,000 (\$267).

In amendments' same year, a new regulation aimed at improving domestic workers' conditions was issued, establishing that they have the right to nine hours of rest every day (even if this does not prevent them to be forced working for the remaining fifteen hours), to a day off per week, and one month of paid holidays every two years.

Last year, rumors had it that Saudi Arabia was planning to discard the sponsorship system, however, the Ministry of Labor and Social Development denied these leaks writing on his twitter account that no decision concerning this issue was taken.

With the appointment of Mohammad bin Salman as the new Crown Prince and the country racing towards modernization and reforms, *kafala* abolition should be one of the necessary steps to make. In this sense, the Saudi Vision 2030 is the manifesto of the kingdom's future path, and the words "*kafala*" and "sponsorship" do not appear in the document not even once. Whether it is not a priority for the young prince or he will not be concerned for expatriate workers within its country's borders, foreigners should stay vigilant, and the same should be recommended to academics, labor activists and international organization.

### 3.3.6 UAE

In the Emirates a debate on labor reforms started just few years ago, and most initiatives are still in their embryonic stage.

2011 has been a turning point for the UAE-backed sponsorship system, as the Ministry of Labor issued new regulations aimed at changing how an expatriate can switch to a new job and, subsequently, employer.

In order for a migrant worker to be able to exert his or her right for mobility, some conditions were outlined by the authorities:

- The employment contract has expired;
- The worker spent at least two years working with his or her sponsor;
- The employer has disregarded all his duties toward the employee, and, eventually, has been capable of abuses;
- High-skilled job must await for the employee, and its salary have to be above a pre-established level (three bands were identified by the wage protection system: Dh5.000 (\$1.361,47), Dh7.000 (\$1.906,06), Dh12.000 (\$3.267,53)).

The results of this new set of rules have been significant, as, in the month of March 2011 alone, around 28.000 foreign workers changed their jobs, against a monthly average of 4.000 in the period pre-rules. Moreover, researches show that this labor mobility reform has reduced the exit rate of foreigner from the country, while increasing salaries by 10%, and both educated workers and less educated one have benefited from the imposition of the new legislation.<sup>97</sup>

Nevertheless, the conditions mentioned above, especially the last one, contain a certain intrinsic degree of discrimination, since they set a limit of free mobility to employees with minimum skills and wages, thus creating a relative disadvantage for lower-skilled laborers.

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<sup>97</sup> Hertog S., 2014

From the previous analysis, it is safe to say that the new regulations could help to attract high-skilled expatriates, while they make lower-skilled ones more attractive for employers, as their freedom is still bounded.

In 2015 the Emirates announced that it would have been made a further step towards the protection of the rights of expatriates; the announcement was given during a press conference by the Emirati Minister of Labor of the time, Saqr Ghobash, who affirmed “*We want to close the door on those who trick the simple worker*”<sup>98</sup>.

These new rules are expected to put the word end on the *kafala* system when effectively implemented, and they aimed at allowing workers to terminate their contract and eventually switch to a new employer, and, in order to prevent practices as “involuntary labor” the latter would have been stored by the Ministry of Labor.

Another reform has been defined to tackle the issue of contract substitution, in the form of the Ministerial Decree 764 of 2015, stating in Article 1 that “*Tentative approval to admit a foreign worker for the purpose of employment in the UAE cannot be granted until an employment offer that conforms with the Standard Employment Contract is presented to and duly signed by the worker*”; in addition, as a way to reinforce the previous statement, Article 4 says: “*The employer must retrieve from the Ministry system a standard contract that captures exactly the terms of the employment offer and obtain the worker’s signature on the contract prior to presenting the contract for registration with the Ministry. No alteration or substitution of terms may be entered unless such alteration or substitution benefits the worker and after the alteration or substitution is approved by both the worker and the Ministry*”.

This Decree aimed at shaping employers’ behavior in terms of employment contracts, preventing them to proceed with alteration or substitution of terms by relying on standardize documents, which contain information on pay, date and duration of the contract, and the nature of the work to be performed.

To grant law’s effectiveness, implementation and enforcement still play a pivotal role; indeed, workers must be able to retain copies of their contracts even in their countries of origin, contracts must be written in a language comprehensible for them, and the creation of a mechanism enabling the solution of disputes between employer and employee, issuing penalties when necessary, should be taken into account.

In January 2016, the Minister of Labour’s decree No. 765 of 2015 on “Rules and Conditions for the Termination of Employment Relations”, and the Ministerial Decree No. 766 of 2015 on

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<sup>98</sup> Al Jazeera, 2015

“Rules and Conditions for granting a permit to a worker for employment by a new employer.” have taken effect.

Article No. 1 of the Decree No. 765 regulate the termination of the employment relation between employer and worker; in particular there are two possible contractual scenarios: the first, involving a fixed-term contract, and a second in case of unlimited (not term-bound) contract.

Fixed-term contract are terminated if some specific, and defined by the Decree, conditions occur:

- Contract expires and it is not renewed;
- The parties mutually consent to end their work relationship during the course of the contract’s term;
- Unilateral termination is possible, but the party terminating the contract must be compliant with the legal steps defined within the Decree (notification rules, honoring contractual obligations, indemnify the other party to an agreed extent not exceeding 3 months of gross wages), and the party must also bear legal consequences of his or her decision;
- Finally, the employer can terminate the contract of a worker, if the latter violates any of the rules defined in Article No. 120 of the Emirati labor law.

On the other hand, for what concerns the so-called “unlimited (not term-bound)” contracts, termination might occur if:

- There is mutually consent;
- The terminating party must notify the other one and continue to honor contractual obligations for the duration of the notice period, which cannot be less than one month and cannot exceed three months;
- The terminating party will bear all the legal consequences when proceeding with unilateral termination without complying with the rules above;
- The employer can terminate the contract of a worker, if the latter violates any of the rules defined in Article No. 120 of the Emirati labor law.

Concerning the compensation mentioned in Article No.1, it does not seem to apply to laborers on their first contract in the country.

Moreover, in Article No. 2 it is stated that the employment relationship will be de facto terminated if “*employer has failed to meet contractual or legal obligations to the worker (as in, but not limited to, the non-payment of wages for a period exceeding 60 days)*”, a business has been shut down for at least two months; furthermore, in clause no. 3 the legislator define a

work relationship terminated if *“labour complaint is referred to the court by the Ministry and a final ruling is obtained in favor of the worker stating that the worker is entitled to no less than two-month wages or to indemnification for arbitrary firing or early termination of a fixed-term contract, or any other benefits denied to him by the employer for no lawful reason or the including the end-of-service benefit.”*

Alongside with the Decree No. 765, the No. 766 was promulgated with the purpose of regulating permits’ concessions for those workers willing to be employed by a different employer.

These changes are extremely important from the moment that prior to these Decrees, workers had no real legal authority to switch towards new employers before the end of their contracts; despite having a significant symbolic power and international resonance, UAE’s authorities have not released any data to demonstrated the positive outcomes of the measures.

Until 2017, one could have notice how, once again (being a common pattern throughout GCC countries), no action has been taken in order to protect foreign domestic workers.

On May 31 of 2017, the Federal National Council of the UAE adopted a revised version of a previously designed draft law aimed at protecting domestic workers from widespread abuses, the “Federal Law no. (10) of 2017 On Domestic Workers”.

Human Rights Watch expressed its contempt through the words of Rothna Begum, a Middle East women’s rights researcher, who said that *“once this bill is ratified, the rights of hundreds of thousands of domestic workers will finally be protected by law in the UAE”*, meanwhile she called for strong enforcement mechanisms, otherwise the new law will be ineffective.<sup>99</sup>

New obligations for recruitment agencies have been carried out in Article No. 3 of the law prohibiting *“discrimination among workers on the basis of race, color, gender, religion, political opinion, national or social origin, the worker’s verbal or physical sexual harassment, and finally forced labor or human trafficking as defined in national laws and ratified international conventions”*.

Doubts about these provisions’ effectiveness are raised considering the fact that oftentimes salaries vary on the basis of workers’ country of origin.

According to the Article No. 32 of this bill, recruitment agencies now have the possibility to hire workers on a temporary basis.

Concerning paid leaves, the law provides as follows through Article No. 13: *“The worker shall be entitled to thirty-days paid leave per year”*; it also guarantees 15 days of paid sick leave

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<sup>99</sup> Human Rights Watch, 2017

(plus 15 days unpaid), and compensation in case of work-related injuries or illnesses. Daily rest are set at 12 hours, including eight consecutive hours, and it sets a weekly rest day.

Provisions regulating workers' mobility are not included in the bill, so it is not clear whether they are free to leave the workplace during their non-working hours.

Another flaw of this new law is the fact that in legal terms is weaker than the UAE labor law, which stipulates an 8-hour workday or 48-hour workweek, and 15 days of paid sick leave, 15 days at half pay, and unpaid sick leave thereafter.

The enforcement of these provisions is fundamental in order to ensure decent working conditions and preventing all sorts of abuses; nevertheless, there is no evidence that mechanism such inspections or penalties will be defined, thus ensuring employers compliance with these rules would be a utopia: for instance, they define the right for the worker to retain his or her documents, but do not outline any kind of penalty for employers who confiscate their passports. Finally, the bill might reinforce *kafala* as it requires employers to report laborers absent from the workplace with no legitimate reason to the Human Resources and Emiratization Ministry, leaving them exposed to fines, jail-time, and deportation.

## 4. External-to-the-Gulf efforts in tackling *kafala*

### 4.1 The International Labor Organization role: effective actor of change?

In this paragraph the analysis revolves around the International Labor Organization (ILO), since it is the most visible and comprehensive international actor in the labor market context. It defines norms and practices around international labor standards. However, ILO has been strongly criticized for its approach, too soft, and for its weak enforcement mechanisms.

Especially in recent years, the International Labour Organization has put a great effort in trying to shape the labor policies of the Gulf country.

ILO did so through means such as Conventions, Recommendations, and even through its independent Committee of Experts on the Application of Conventions and Recommendations (CEACR). As seen in the second chapter of this work, the CEACR has expressed a strong position against *kafala* taking into consideration the Forced Labor Convention (No. 29) of 1930, the organism believes that the sponsorship system could, in certain cases, lead towards forced labor, since it ties workers to employers, and it limits their freedom. That's why it urged governments in taking the necessary legislative and enforcement measures in order to counter *kafala*.

In the previous chapter, an in-depth analysis concerning abuses, labor and human rights violations was carried out, and one of the outcomes has been the definition of those ILO's Conventions aimed at tackling the issues arising from the application of *kafala*; in particular, among many documents created by the ILO, six have already been identified and their effectiveness partially analyzed:

- Labour Inspection Convention (No. 81);
- Freedom of Association and Protection of the Right to Organize Convention (No. 87);
- Right to Organise and Collective Bargaining Convention (No. 98);
- Protection of Wages Convention (No. 95);
- Private Employment Agencies Convention (No. 181);
- Convention on Domestic Workers (No. 189).

One way to understand whether the ILO Conventions are working effectively for GCC member states, or at least they have led to some sort of debate within the political establishment and society of these countries, is to check if the aforementioned Conventions, tackling extremely important problems of the sponsorship system, are ratified by Gulf states, being ratification a formal procedure whereby a state accepts the convention as a legally binding instrument. Once



it has ratified a convention, a country is subject to the ILO's regular supervisory system responsible for ensuring that the convention is applied.

For instance, the Convention No. 81 on Labor Inspection is ratified and currently in force for five out of six countries, with the exclusion of Oman; even though the labor legislation of each Gulf state contains provisions regarding labor inspection and a process of modernization of inspection system has started, there is no evidence that they are applied massively by authorities. A characteristic that these countries share is the low attention paid to gender equality and non-discrimination, plus the disregard towards foreign workers' conditions.

However, some steps have been made towards the right direction: in Bahrain for instance, following a summer work ban active from 12.00 to 16.00 to protect workers from the heat, it was reported that in July 2014 "more than 6,000 establishments were inspected to ensure adherence to the work ban and 107 violations involving approximately 400 employees were recorded"<sup>100</sup>, and fines were issued against employers (also the ones employing domestic workers). Another virtuous case comes from Kuwaiti authorities that increased the number of labor inspections for concerning outdoor summer work ban, and with the creation of a hotline for residents to report violations.

The Freedom of Association and Protection of the Right to Organize Convention (No. 87) can be the second case study, even though its ratio is completely different from the No. 81. In fact, one must consider that GCC member states are monarchies, or sultanates, or emirates, an illiberal form of government which, for its intrinsic features and, most importantly, for its survival, requires to take away freedom of association and the right to organize from its citizens, both nationals and non-nationals. For all these reasons, it is obviously expected that this Convention would not have appeal on Gulf monarchies, since granting these rights would somehow jeopardize their power. Indeed, with the exception of Kuwait, none of the other five states has ratified the document.

Kuwait, despite being a supposedly virtuous example, from the ratification of the Convention in 1961 has been exposed to criticisms by the CEACR. For instance, in 1989, the organism outlined a number of inconsistencies between the Kuwaiti Labour Code (Law No. 38 of 1964) and Convention no. 87, such as, among other things, the restriction on the free exercise of the right to strike (Article No. 88 of the Labour Code), which is in infringement of the Convention, and added that the right to strike is "*one of the essential means available to workers' organization for the promotion and protection of the interests of their members*".<sup>101</sup>

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<sup>100</sup> ILO Regional Office for Arab States, 2014

<sup>101</sup> Al-Ajmi and Almutari, 2016

Moreover, in 1994, the CEACR affirmed that *"the restriction on the free exercise of the right to strike (Article No. 88 of the Labour Code) is contrary to the principle that workers and their organizations should be able to organize their activities and formulate their programs in defense of their economic, social and occupational interest, which may include calling a strike, without interference by the public authorities"*<sup>102</sup>. With the new labor legislation of 2010, according to CEACR, Kuwait has resolved some of the issues identified in the previous document, but still the Committee requested to amend Article No. 132 prohibiting the parties to the dispute to stop work during negotiation; this article has not been amended yet.

A similar fate was reserved to the Convention No. 98 on Right to Organize and Collective Bargaining: only Kuwait has ratified it in 2007. This is a critical issue, as these rights, namely to organize and collective bargaining, are fundamental for a healthy labor market, as demonstrated by the fact that this is one of the ILO's core Conventions.

Kuwaiti citizens are allowed by the authorities to form and join unions, even though under a series of conditions. On the other hand, migrant workers are not allowed to form unions or participate in their establishment. Non-Kuwaiti workers are permitted only to join the union, on two conditions: they should have a work permit and have spent five years in the country prior to the issuance of the Labor Law. In Kuwait, only the 5% of the unionists are non-nationals and Kuwaitis consider that with such high number of expatriates (excluding domestic workers) would increase the risk for them to take over the representation of "Kuwait trade unions" if they will be allowed to be elected as board members, as a consequence the Kuwait Trade Unions Federation excludes foreigners from voting and standing for the elections.<sup>103</sup>

As it is possible to notice from the Kuwaiti case, even if ratified, the Convention gives room to discriminations at the expenses of the workers, especially expatriates.

The situation concerning the Convention No. 95 on Protection of Wages is even more worrisome, as none of the GCC countries has ratified it yet.

It should be easy to understand why such a document has not been successful among monarchies of the Arabian Peninsula; indeed, the Conventions affirms in its Article No. 9 that *"Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited"*, which is a widespread practice in their labor markets. Another example is constituted by Article 12, regulating the timely payment of salaries.

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<sup>102</sup> Ibidem

<sup>103</sup> International Federation for Human Rights, 2009

No differences are registered for the Convention No. 181 on Private Employment Agencies; it has not been ratified by any member state, and the analysis of the previous chapter confirms the fact that it is not adhered. Indeed, the Convention affirms in Article No. 7 as follows: *“Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers”*, a circumstance that actually happens under the *kafala* in Gulf states; or again, the Article No. 10 of the same Convention reads that *“The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies”*, whereas it is known that no such mechanisms has ever existed, until similar measures were laid down by the Gulf legislators in the last wave of reforms.

And what to expect from country that exclude domestic workers from their labor legislations in terms of compliance with international standards regarding domestic workers?

At least, no ratification of those documents outlining the infamous standards; indeed, the Convention No. 189 of 2011 on Domestic Workers has not been ratified by any of the GCC member states, despite Kuwait, Qatar, Saudi Arabia, and UAE have finally made legal steps aimed at guaranteeing some sort of labor rights to this incredibly neglected (by the laws) workers' category.

When comparing ratifications of ILO's documents by the six countries, it has been discovered that Kuwait could be considered as the most virtuous of the whole group, having ratified 19 Conventions: 7 out of 8 of the fundamentals ones (the Equal Remuneration Convention, 1951 (No. 100) is the one missing), 2 out of 4 of the governance category, and 10 out of 177 of the technical. At the bottom of the ranking the Sultanate of Oman has ratified only 4 Conventions: No. 29 on Forced Labor, the No. 105 on the Abolition of Forced Labor, the one on the Minimum Age (No. 138), and lastly on the Worst Forms of Child Labor (No. 182). In order to understand the existing gap with the rest of the world and the extreme different perspective from which we Europeans look at labor issues, Spain has ratified 133 Conventions and 1 Protocol, France 127 and 2, and Italy 113, even though it must be taken into account that some subjects could be extremely specific and national laws directly regulate those aspects.

Another aspect that might push countries towards the adherence to international labor standards is the political and media-driven pressure. Indeed, starting from the second decade of XXI<sup>st</sup> century, a huge number of articles, declarations, recommendations, interviews, reports, research papers, have been made in order to induce changes in the Gulf, and to convince GCC member states that, in 2018, there is no space for *kafala* anymore.

Among the other elements, one of these documents is particularly relevant for this work: the so-called Fair Migration Agenda, proposed at the International Labour Conference in June 2014 by ILO's Director-General, Guy Ryder. In particular, the document required to construct "*an agenda for fair migration which not only respects the fundamental rights of migrant workers but also offers them real opportunities for decent work*".

The Fair Migration Agenda had several objectives that definitely collide with issues related to GCC's labor markets.

For instance, ILO aims at transforming migration from a necessity to a choice, through the creation of decent work opportunities in the countries of origin of migrant workers; in addition, it set up a series of instruments able to shape countries' legislations in order to make them respect human and labor rights of all migrants.

Recruitment issues should be tackled through a global "Fair Recruitment Initiative" that would "*help to prevent human trafficking and forced labor, protect the rights of workers, including migrant workers, from abusive and fraudulent practices during the recruitment and placement process (including pre-selection, selection, transportation, placement and safe return)*", and also "*reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination*", which is a hot topic in the Arabian Peninsula context as seen through the lenses of the previous chapter. This specific initiative relies on four courses of action:

- *“Enhancing global knowledge on national and international recruitment practices;*
- *Improving laws, policies and enforcement mechanisms to promote fair recruitment practices;*
- *Promoting fair business practices;*
- *Empowering and protecting workers.”*

The Agenda aims at formulating fair migration schemes incorporated into regional integration processes, and expanding knowledge in order to identify programs or design policies able to reach its objectives.

Furthermore, it is designed to counter abuses and human rights violations following the ILO Declaration on Fundamental Principles and Rights at Work of 1998, and, as affirmed during the Tripartite Technical Meeting on Labour Migration held in Geneva in November 2013, to promote "*social dialogue at local, national, bilateral, sub-regional, regional and international levels*" in order to define and develop "*rights-based, transparent and coherent labour migration legislation and policies*".

The Fair Migration Agenda, supported by other documents developed by different international

organisms such as the Sustainable Development Goals of the United Nations<sup>104</sup>, aims at creating a debate and dialogue regarding policies and the actions to be undertaken in order that every stakeholder involved could benefit.

Another actor involved in the fight against *kafala* is the International Labour Organization's independent Committee of Experts on the Application of Conventions and Recommendations (CEACR).

This organism was created in 1926 to examine the increasing number of reports concerning ratified Conventions, and today it is composed of 20 jurists appointed by the ILO's Governing Body every three years.

The CEACR has a fundamental role within the international labor law context: it provides impartial and technical evaluation of the state-of-the-art of the application of international labor standards in ILO members. Upon ratification of an ILO Convention, every three years a country has to produce a report highlighting the steps taken towards the application of any of the eight fundamental and four governance Conventions they may have ratified (term is extended to five years in case of any other Convention).

The Committee can make two types of comments, which will be communicated directly to the governments involved: observations, which "*contain comments on fundamental questions raised by the application of a particular Convention by a state*", and direct requests related to technical issues or aimed at asking for further information.

For these reasons, the actions promoted by the CEACR are fundamental for the correct application of ILO's Conventions, and the Gulf countries are often a target of the Committee's comments. For instance, in 2015, the organism expressed its contrariety towards the sponsorship system, as it might result in forced labor, and it urged governments to "*adopt legislative provisions specially tailored to the difficult circumstances faced by this category of workers and to protect them from abusive practices*". Furthermore, in 2016, CEACR conveyed the necessity to take legal measures to ensure that "*migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour*". Although its comments cannot directly shape labor policies, their effectiveness is measured by the fact that the majority of governments in the Gulf have released public statements affirming that their sponsorship system has to change, and that some GCC member states have already designed legal solutions to counter practice defined unacceptable by the ILO and CEACR.

ILO's weakness was mentioned in the first lines of this paragraph, and the analysis that

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<sup>104</sup>SDG promotes, among other topics, Decent Work and Economic Growth, Gender Equality, and Reduced Inequalities

followed has somehow confirmed those statements.

Many critics of ILO's work find contradictory effects arising from the ratification of Conventions. Evidences demonstrate positive outcomes in terms of regional peer effects, as countries ratifying labor Conventions positively influence their neighbors. However, a worsening of labor practices is found as a result of expressive benefits coming from the ratifications of ILO Conventions.

This means that many countries ratify conventions to gain international reputations and trade benefits, while they neglect standards within national borders; following this work, it is safe to say that the apparently virtuous GCC members are among these countries.

Peksen and Blanton (2016) call this contradictory and paradoxical effect "radical decoupling". Generally speaking, labor standards have lot of support among private and public international stakeholders, as a consequence, states have an incentive to ratify ILO Conventions, as it should demonstrate their support to the standards. However, ILO has no mechanism able to enforce labor standards; for instance, CEACR produces the aforementioned reports, which are part of a sophisticated monitoring system, but no penalties have never been issued in case of abuses or Conventions violations.

By ratifying Conventions, states divert external and internal pressures requesting an improvement of human and labor rights conditions, and gives them power to worsen internal behavior while everyone is "distracted".

In addition to Conventions and legal instruments, ILO proposes measures to tackle effectively the sponsorship system in the Gulf through the "White Paper" research series.

Concerning this specific case, it outlines five main policies that has to be considered in order to increase labor market mobility and address abuses:

- Untie a migrant worker's entry, residence and work permit to a specific employer;
- Workers should be responsible for renewing his or her own visas, work and residence permits;
- Workers should have the possibility to resign and terminate their employment contract at will, without losing valid immigration status;
- Workers should have the possibility to change employer without the explicit consent of their current one, without losing valid immigration status;
- Workers should be able to leave the country without previous approval by their employer.

With the first policy, the employer could not control any longer the terms and conditions of a migrant worker's immigration and employment status; the objective could be achieved through

an “employment-based visa”, whereby the expatriate could apply for and renews visas by him/herself, bypassing the concept of sponsor, although the process would still be “employer-led”. The employment-based visas would protect workers from the fraudulent routine of visa trading. Another measure proposed for this situation is the introduction of sector-specific visas allowing workers to change employers only within the sector written on their permit. This case could be a win-win situation, because it enables workers to leave abusive employers, while ensuring adequate labor supply to businesses.

The second policy aims at preventing employers’ acts of negligence whereby the worker finds him/herself undocumented and, consequently irregular. The expatriate would be responsible for the renewal of his or her visa; these visas should be long enough to cover the whole duration of the employment contract, and the possibility of renewing the visas online or in mobile/drop-in center should be evaluated.

ILO proposes to follow the virtuous example of the United Arab Emirates, the pioneer in the Arabian Peninsula: it suggests to all the GCC countries to give to the employees the possibility to end a contract for any reason by giving reasonable notice (outlined in the employment contract), and without the written approval (“no-objection certificate”) of the current employer, consenting to the expatriates to terminate the work relationship immediately in case of abuses. Moreover, workers should be able to return to their home country without facing fines, detention, immigration sanctions, or being returned to the same employer. Employers should be safeguarded from the occurrence of the potential loss of workforce and financial investment when the laborer terminates the contract. Another measure proposed for this purpose is that losing employment does not necessarily mean the loss of the residence permit, as written in Article 8 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) that states as follow *“on condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit.”* Lastly, a period in which the workers do not occur in the risk of becoming illegal migrants, and eventually find a new employment, should be granted.

The fourth major policy proposed would allow migrant workers to choose independently their employers, thus preventing the situation in which they are inextricably linked. Accordingly, the right to change employers plays a crucial role in facilitating an expatriates’ access to justices. Finally, “workers should be able to leave the country without previous approval by their employer” means that exit permits requirement should be abolished, as they threaten people’s

freedom of movement. The same should happen with exit bans imposed by authorities following official complaint by employers that prevents the departure of the worker.

According to ILO, reforms of the sponsorship system should go hand in hand with complementary policies, legislative and enforcement measures. Among the several proposed, the most relevant are:

- Employer-migrant worker relations should be governed by the labor law and a standard contract (as already happen in the UAE);
- The establishment of a national coordination body;
- The introduction of mechanisms aimed at decreasing the number of forced irregular workers;
- Ensuring that dispute settlement and compensation mechanisms should be efficient and well-functioning;
- Counter violations occurring to domestic worker.

As the most neglected category among the ones composing the diverse foreign workers' community in the Gulf, it is necessary to spend time on the measures proposed by the ILO on Domestic Workers.

Throughout the Gulf, employers oftentimes refuse to give to their domestic workers a day off, to leave the house unaccompanied, or confiscate their documents. One of the reason for this behavior is the threat of a financial loss for the employer, in the form of recruitment fee already paid, and the common believe that the category is vulnerable, easily corrupted and untrustworthy. In this case, ILO proposes additional measures aimed at pushing towards a behavioral change by the employers, decreasing the cost of recruitment fees, and, finally, a mechanism providing financial remedies could be successful in improving their situation.

ILO identifies the need to balance the employer's right to privacy with the authorities' obligation to prevent labor or criminal violations that might occur against domestic workers in the household; the GCC governments should consider to promote regulations which establish the conduction of regular, confidential interviews with the worker and the employer, and encourage inspectors to conduct visits of households as soon as possible when complaints are received.

Another possible measure could be increasing domestic workers' skill set, for instance care of infants and elderlies, in order enable them to negotiate a better employment contract and an higher wage.

ILO reports the necessity to balance employers' need for 24/7 service and the workers' right to rest, thus suggesting to improve (or implement) regulations imposing standards that have to be



respected by the employers as the ones existent in Kuwait or UAE.

Finally, the set-up of a mechanism targeting the legal disputes is believed to be necessary in the Gulf.

Interestingly enough, ILO considers the implementations of innovative (for the Gulf) kinds of domestic work including live-out models, such as freelancing and on demand services.

Overall, it is necessary to consider, from the perspective of the GCC member states, the suggestions reported in this paragraph, as mere suggestions. At last, they can exert some political pressure towards the Gulf governments and, as they slowly adapt to new international standards and requirements, push the debate a little further, thus forcing GCC member states to accelerate their reform process.

#### **4.2 Cooperation and labor-sending countries**

In this work, some evidences that workers-sending countries (e.g.: India, Pakistan, Nepal, Philippines, etc.) play a role in pushing their citizens into the arms of the *kafala* has been found. These countries pursue three main objectives with their emigration policies: they aim at maximizing employment abroad according to domestic needs, while protecting their citizens against recruitment abuses and exploitive conditions of employment, and maximizing the potential contribution of migration to development, especially in the form of remittances and the knowledge and skills gained by migrants abroad.

Asian governments are trying to regulate a sector which is mostly in the hand of recruitment companies, that are prone to abuses as explained in the previous chapter.

In order to protect their citizens, and, at the same time, their economic interests, the sending countries authorities are working on two fronts: an external one, based on diplomatic ties, bilateral labor agreements, and developing information resources on labor market opportunities, and an internal one, based on policies regulating the emigration flows.

Indeed, during the past decades, GCC member states have launched regional cooperative efforts at migration policy reform.

As a first step, in 2005, five out of six countries have attended as observers to the annual meeting held under the Colombo Process, which brings together several migrant-sending countries of Asia. The Colombo Process is described as “*a Regional Consultative Process on the management of overseas employment and contractual labor for countries of origins in Asia. It is a member state-driven, non-binding and informal forum to facilitate dialogue and*

*cooperation on issues of common interest and concern relating to labor mobility*”<sup>105</sup>; its current members are: Afghanistan, Bangladesh, Cambodia, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam.

From its foundation in 2003, the Colombo Process has achieved a lot in the form of protection of overseas workers through internal to the sending countries reforms and bilateral agreements. Within the Process framework, member states provide a huge amount of workforce to Gulf countries, and it is interesting to see how it shaped migration policies and how it tried to regulate workforce migration concerning the major labor-sending countries.

Being one of the largest provider of workers of the Gulf, India is a good example. Through the Colombo Process framework, India has been able to sign bilateral agreements on labor migration with Qatar (1985; 2007), Jordan (1988), UAE (2006; 2011; 2014), Kuwait (2007), Oman (2008), Malaysia (2009), Bahrain (2009), and Saudi Arabia (2014). Furthermore, the Indian government has concluded the “Memorandums of understanding on labour migration” with the UAE<sup>106</sup>.

On the internal front, India has taken several policy measures since 2007 for the protection and welfare of Indian female domestic workers immigrated to GCC countries for employment, including the requirement of the provision of bank guarantee of \$2,500 from a foreign employer to the Indian Embassy. It has also set up an “Overseas Workers Resource Centre (OWRC)” which operates 24/7. OWRC provides information on recruitment agencies, and responds and monitors complaints from migrant workers.

Furthermore, the authorities provide an insurance policy designed for overseas workers, the so-called “*Pravasi Bharatiya Bima Yojana (PBBY)*”, which pays a significant sum to the nominee/legal heir in the event of death or permanent disability of any Indian emigrant who goes abroad for employment purposes. Another measure is the Indian Community Welfare Fund (ICWF), which provides ‘on site’ welfare services on a means tested basis in the most deserving cases including: *“boarding and lodging for distressed overseas Indian workers in household/domestic sectors and unskilled labourers, extending emergency medical care to the overseas Indians in need, providing air passage to stranded overseas Indians in need, Providing initial legal assistance to the overseas Indians in deserving cases, expenditure on incidentals and for airlifting the mortal remains to India or local cremation/burial of the deceased overseas Indian in such cases where a sponsor is unable or unwilling to do so as per*

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<sup>105</sup> <https://www.colomboprocess.org/about-the-colombo-process>

<sup>106</sup> Memorandum of Understanding between Ministry of Skills and Entrepreneurship, Government of India and National Qualifications Authority of United Arab Emirates (UAE) on cooperation for Skill development and mutual recognition of qualifications, 2016

*the contract and the family is unable to meet the cost.*<sup>107</sup>

Nowadays, India is studying a dual-citizenship model that would allow Indians overseas to remain a part of India's society. This psychologically promotes feelings of inclusion and instills an attachment to the home country, which in turn encourages economic participation in society. Another country largely represented in the Gulf is Pakistan, which under the Colombo process umbrella has signed a "Memorandums of understanding on labour migration" with Qatar (1978, 2008), Kuwait (1995), Jordan (2006), Malaysia (2006), UAE (2006), Rep. of Korea (2008), and lastly Bahrain (2014).

Pakistani authorities have promoted also an internal regulation in 2013, the National Policy for Overseas Pakistanis, which focuses on maximizing welfare and empowerment of Pakistani diaspora working abroad. The Bureau of Emigration and Overseas Employment (BE&OE) instituted also a sort of group insurance for overseas workers.

Moving on, Philippines has signed "Memorandums of understanding on labour migration" with, among many others, Kuwait (1997; 2012), Qatar (1997; 2008), Bahrain (2003; 2007), UAE (2007), and Saudi Arabia (2013). Filipino authorities have produced a law (Republic Act No. 10022) mandating that Filipino workers can only be deployed to countries with which the Philippines "*has concluded bilateral labour agreements or arrangements*" and "*guarantee to protect the rights of Filipino migrant workers,*" as well as "*observe and/or comply with the international laws and standards for migrant workers*". Furthermore, they implemented a system aimed at ensuring ethical recruitment by means of strict requirements in order to obtain the license, and an effective enforcement mechanism (monitoring and sanctions).

In protecting its overseas citizens within (and outside) the Colombo Process framework, Bangladesh has been extremely proactive. The Ministry of Expatriates' Welfare and Overseas Employment (MEWOE) was created aimed at managing overseas employment and promoting migrant workers' welfare through policies, plans, laws, rules and regulations. One of these laws is the "Overseas Employment Act" of 2013, which is the first law on labor migration, granting basic labor rights and access to labor courts. Bangladesh signed bilateral agreements on labor migration with Qatar (1988; 2008) and UAE (2007). A good practice promoted by the government of the Asian state concerns pre-departure orientation & empowerment initiatives which prepares workers for the departure by means of classes on service conditions, working environment, culture, salary, remittance system, as well as basic language training.

During the last decade, the Colombo Process has improved coordination with the 2008-launched Abu Dhabi Dialogue (ADD).

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<sup>107</sup> <https://www.colomboprocess.org/>

The ADD is an interregional forum on migration that launched a collaborative approach to address development in temporary labour mobility in Asia; it aimed at creating a broader common understanding of issues and at influencing practices and policies in the area of contractual labour for the region. It has 18 member states, 11 from the Colombo Process and the totality of the Arabian Peninsula countries (GCC plus Yemen). Furthermore, three international organizations are observers, in particular the International Organization for Migration (IOM), the International Labour Organization (ILO), and UN Women.

The Abu Dhabi Dialogue, evolved primarily as a response to increasing international sounds of alarm around migration management in the Gulf, as opposed to out of strictly GCC-based concerns.

The current focus of the Abu Dhabi Dialogue is the development of four key, action-oriented partnerships between countries of origin and destination for development around *“the subject of temporary contractual labour, based on a notion of partnership and shared responsibility:*

- *Developing and sharing knowledge on labour market trends, skills profiles, workers and remittances policies and flows, and the relationship to development;*
- *Building capacity for more effective matching of labour supply and demand;*
- *Preventing irregular recruitment and promoting welfare and protection measures for contractual workers;*
- *Developing a framework for a comprehensive approach to managing the entire cycle of temporary contractual work that fosters the mutual interest of countries of origin and destination.”<sup>108</sup>*

For instance, the latest focus was on domestic workers, and during the Senior Officials’ Meeting held in Colombo, Sri Lanka, on the 8-9 of May 2018 different solutions were proposed, such as linking wages increase to the complexity of the task performed, developing a common regional framework for competence standards and tying it to a “skills passport” for domestic workers. Finally, the authors of the research, Tayah and Assaf, expressed the necessity to expand *“the discussion on RCS (and corresponding wage levels) to organizations representing relevant interest groups”* in order to *“garner support for these standards and to revise and adjust them in light of local economic factors and the needs of migrant domestic workers and their families.”*

Other than the one mentioned above, the Abu Dhabi Dialogue promotes several pilot projects concerning foreigners and their labor issues. Joint efforts between UAE and Philippines have launched “An Alternative Model of Labour Recruitment” that aims at providing government

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<sup>108</sup> <https://www.iom.int/abu-dhabi-dialogue>

oversight and monitoring of the recruitment process between the two countries. It is the first program promoting fair and ethical recruitment among the countries adhering to the ADD.

These international organisms and forums are incredibly important for the protection of migrant workers' rights, especially when they are capable of influencing the internal policies of GCC member states. Up to a certain extent it is possible to notice the positive consequences in the bilateral agreements between Gulf and sending countries, in the policies and regulations implemented by the latter, in the increased debate around expatriates' issues, and in the cooperation efforts by all the stakeholders involved.



## Conclusion

*“Why there are so many expatriates in the Gulf region? What is this sponsorship system that I always hear of? Why everyone knows that it exists, but it seems like no one aims at dismantling it? How much has the legislative framework contributed to the creation of such a hostile environment for foreign workforce? Is there, at least, one actor able to improve these workers’ conditions?”*

These have been the questions which accompanied me throughout this work, and for which I have been looking for answers.

This final thesis has allowed me to find those answers, but the conclusions drawn are bittersweet. The current impact and strength of the sponsorship system in the Gulf resulted to be higher than expected, as it still permeates and it shapes the GCC member states’ labor markets; however, the actors involved are channeling their efforts in order to change this system.

The work started with an investigation aimed at defining the causes of the migratory phenomenon towards the Gulf. The large presence of foreign workers in the region is a consequence of demographic deficiencies of Gulf societies, as their incredible development could not have been pursued if handed to the small national populations; furthermore, the authoritarian governments have absorbed, at extremely generous conditions, all the indigenous workforce within the public sector in order to enhance the “obedience” of their people.

However, this strong reliance on foreign workforce did not result throughout the years into a legislative system able to protect their rights. Labor laws were shaped in order to enable employers to exploit workers, to line their pockets, and to enhance their countries’ narrative, through huge construction projects, global events, and a rapidly growing heritage industry.

This means that GCC member states’ labor legislations laid the foundations for the exploitative situation consequent to the application of the sponsorship system called *kafala*.

The conditions of foreign workers in the Gulf, especially the low-skilled ones coming from other Asian countries, are extremely desperate.

The *kafala* reduces their freedom, transforming people into equipment, and, because of that, they almost have no rights. This system exploits them from the start: recruitment agencies ask for recruitment fees that leave workers’ family in debt; when expatriates are finally settled in destination country, they often see their passports confiscated and a travel ban is imposed on them, thus stripping them off of their freedom of movement. Usually, their salaries are extremely low and, in many cases, they are not paid in a timely manner. If lucky enough to be paid, however, they might have to perform a different job (possibly at a lower salary) from the

one indicated by the recruitment contract signed back in their home country. Under the *kafala* system, workers have no control over the selection of their residence, and against them, authorities and employers apply a spatial segregation policy, creating labor camps or even “Workers Cities” in the outskirts of the futuristic metropolis of the Gulf.

These compounds usually have poor sanitation, sometimes the electricity is cut off, and often workers sleep in rooms designed for 1/8 of the people that have been currently sleeping in there. They do not even have the possibility to strike or join labor unions, otherwise they would be deported by the Gulf authorities. But most of all they die, as they are required to work in health-threatening conditions, such as the construction workers I met in Oman working outside in June with a temperature of 50 degrees.

Media, activists, NGOs, and international organizations have showed to the world that the situation of foreign workers in the Gulf is still dramatic; the same stakeholders have been able to put the parties involved in the perpetration of this exploitative system under pressure, creating the preconditions required for a change.

The analysis lead to the identification of several actors of change. The first subject of analysis is the symbol of the regional integration process, namely the Gulf Cooperation Council, that is expression of the individual member states. On these subjects the GCC itself is a paper tiger, since it does not regulate issues concerning foreign workers in the Gulf.

However, as one might expect, countries by themselves have much more decisional power and, following international stakeholders’ pressure, they have been acting on two fronts: on one hand, they implemented policies aimed at nationalizing the workforce in the private sector, through a system of quotas and subsidies to companies; on the other, they reformed their national labor legislations, with different intensity among the six countries object of analysis, to assure more compliance with the international standards in terms of human and labor rights of the expatriates.

The other actors involved in the process of reforming the sponsorship systems in the Gulf were identified in the International Labor Organization, by means of Conventions and Recommendations, in the labor-sending countries (such as India, Pakistan, Bangladesh, Philippines), and in multilateral mechanisms promoted by these countries and with the Gulf member states’ participation.

The issues related to foreign/migrant workers are extremely complex, and, by reading this work, it is quite clear that the problem cannot be solved by a single actor.

In my opinion, especially in the case of Gulf countries, ILO has been particularly ineffective, since Conventions, when ratified, did not lead to changes of any sort and they were not even



respected by the governments. ILO instruments are weak by themselves until an enforcement mechanism, and a system of sanctions, will not be in place; however, even if they cannot be compared to hard law, ILO Conventions and Recommendations are necessary in order to define common labor standards recognized by every country, designing a sort of virtuous path to be followed by GCC countries.

In addition, ILO and other international stakeholders, such as the International Trade Union Confederation or the International Organization for Migration, NGOs, such as Human Rights Watch, must continue to require to these countries their compliance with international standards and to stop violating workers' human and labor rights.

This pressure has led throughout the years to increasingly significant reforms by some GCC member states, especially Qatar, Saudi Arabia, and the United Arab Emirates, whose efforts included also some sort of protection for domestic workers.

Although they are essential, measures to protect workers should not be promoted only by destination countries; indeed, from this research emerges that labor-sending countries play a huge role on two different levels: firstly, by looking after their overseas citizens through the implementation of internal laws and the creation of ad hoc institutions within their borders; then, by the foundation of international and multilateral organisms aimed at reuniting under a common umbrella destination and sending countries, such as the Colombo Process.

Probably the role of sending countries is as important as the one of the GCC individual member states, since they both can take effective steps in protecting workers, and the institution of international forums and organisms could give a fundamental contribution in coordinating the efforts of both parties.

From this work emerges clearly the weakness of the ILO's enforcement of its international labor standards without the cooperation of every actor involved in the process of change.

Indeed, the two most important actors identified in this thesis are labor-sending countries and Gulf governments. They both have to find a way to balance economic benefits and overseas workers' protection. Cooperation is what they should pursue, as in the Colombo Process context, whereby the countries involved can discuss, negotiate, and find an agreement that could be satisfying for all the stakeholders involved.

These efforts should lean towards the application of ILO's labor standards, Conventions and Recommendations, thanks to the pressure applied by workers' unions, NGOs, Media, and activists on Gulf governments, and labor-sending countries.

Ultimately, this work demonstrates how cooperation and synergies between the totality of the actors will be the key success factors for a healthy Gulf labor market.



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