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The Reform of the Kafala System. A Perspective of Romanian Migrants in GCC Countries

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Abstract: The sponsorship system (kafala) is characteristic of the Gulf Cooperation Council (GCC) countries and of a few other Arab nations with regard to migration. In light of intense criticism from the human rights defenders, the reform of kafala has been on the agenda of governments across the region. The most recent studies provide evidence of incipient steps on the path of reform, doubting, however, the depth of the implemented measures. This paper will provide a comparative analysis regarding the system across the GCC nations and the different types of reform that have been attempted in order to enhance the compliance of migrant workers' rights. It will also describe the impact of the system on Romanian migrants and their perception of the improvements generated by the reforms. The research is based on data provided by the authorities of the six GCC countries and data emerging from the international organizations' reports. I have also conducted a poll among Romanian migrants in the region, to develop a better understanding of the consequences, costs and effects inflicted by system upon their daily lives. The conclusions address the stages of reform in the analyzed countries, underlying the lack of structural reform where the case, future reform opportunities and the perception upon the system of the Romanian migrants in the region.

Keywords: GCC countries; kafala; labourers' rights; sponsorship system; Romanian migrants

1. Introduction

In Arabic, kafala means sponsorship. Kafala, or the sponsorship system, governs the labour force's migration in Gulf Cooperation Council (GCC) countries (the United Arab Emirates, Qatar, Kuwait, Saudi Arabia, Oman and Bahrain), as well as in Lebanon and Jordan. The Gulf region has the highest migration rate in the world, with access to naturalisation being limited or non-existent - around 29 million migrants live in GCC countries, according to the International Organization for Migration for 2017-2018, outnumbering the local population in the majority of these. The system has a rich tradition, with roots in the old Bedouin principle of hospitality, through which inhabitants of the Gulf of Arabia guaranteed for their guests, simultaneously offering them protection. We also encounter it during the British colonial period, where British officials saw migrants both as a necessity and as a problem, thus considering that migration in the region should be regulated and controlled (Longva, 1997).

Kafala aims to meet labour demand with a supply of migrant workers, ensuring at the same time that they keep their temporary resident status in the respective state. Although it is present in multiple states

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in the Middle East, the system has distinctive features from country to country, including on the status of reforms undertaken so far.

What progress have the Gulf States made in the kafala reform process? Are the measures announced by the authorities really being implemented by the sponsors and felt by immigrant employees? What is the perception of the Romanian citizens residing in these countries on the influence that the system exerts on their daily work and life? The article aims to answer these questions, starting from the origin of the system and literature analysis, focusing on the main defining elements and the reform steps taken so far. The next section presents the state of reforms and their shortcomings in each of the six GCC member states, while the last part of the article analyses the perception of Romanian citizens in the region on the phenomenon.

2. Methodology

The research is based on data provided by the authorities of the six GCC countries and data from reports of international organisations.

It was also conducted a survey among Romanian citizens residing in the GCC countries where we find the largest number of communities (presence of Romanian citizens in the analysed countries: United Arab Emirates - 10,000, Qatar - 1,015 and Kuwait - 725) in order to develop a better understanding of the consequences, costs and effects generated by the kafala system on their daily lives. We recorded 256 valid responses, which corresponds to a 90% confidence level, with a margin of error of being 5%. The sample selection was made taking into account the available information on the size and structure of the Romanian communities in the targeted countries (according to data provided by the Romanian diplomatic missions in the United Arab Emirates, Kuwait and Qatar, 60% of the Romanian citizens present in these countries have at least a university degree and 80% are between 25 and 50 years old), including the share of the community in each country in the total community in the three countries. The questionnaire was administered online and the questions focused on how respondents perceive the sponsorship system in their country of residence.

Complementary to the collection of empirical data, a research of local and international media was conducted to capture the flow of information on the reform of the kafala system and abuses in this area.

Note: The most criticised and vulnerable aspect of the kafala system remains that of domestic workers. Given the structure of the Romanian communities in the countries analysed, the article will only tangentially address this aspect.

3. Kafala - Defining Elements and Horizons of Reform

Essentially, kafala is a set of rules, both formal (arising from the relevant legislation) and informal (stemming from the specific cultural traditions and values of these peoples), designed to establish the relationship between sponsors and migrants. As a legal practice, kafala has its origins in sharia, in which the sponsor (called kafeel in Arabic) provides a legal guarantee for another party (makful) while assuming legal responsibilities if the other party is unable to exercise them.

The literature highlights both the power conferred by legislation on sponsors of migrant workers (Pessoa et al., 2014; Murray, 2012; Khan & Harroff-Tavel, 2011) and the informal powers granted by this sponsorship mechanism (Khan & Harroff-Tavel, 2011; HRW, 2012). While many scholars agree that the sponsorship system leads to abuses (Murray, 2012), others argue for its role in controlling

immigration and ensuring that the flow of migrants occurs only if they are needed in the society concerned (Diop, 2015).

The main defining elements of the system, according to “Employer-Migrant Worker Relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration” report issued by the International Labour Organization in May 2017, are:

- *Making entry into the country of destination conditional on obtaining a residence/work visa through a sponsor*

In most cases, the migrant worker remains linked to the same sponsor for the duration of their stay in that country, with their name being written on the entry visa and work permit. The sponsor also has a number of obligations in relation to the sponsored person, including ensuring that they leave the country when the visa expires.

- *Visa renewal is the responsibility of the sponsor*

This creates a dependency of the workers on the sponsors because if the sponsors do not fulfil their obligations, the immigrants end up staying illegally in that country.

- *Termination of employment requires the employer's consent*

In most cases, the unreformed version of the system did not provide for the possibility for the employee to terminate the employment contract without the sponsor's consent except in very few cases, most of which were serious cases of abuse. Also, there were not infrequent cases where sponsors unilaterally terminated the employment contract, leading to the annulment of the visa. As will be seen in the course of the article, many steps have been taken in this respect to balance the power relationship between employee and employer by giving the former the possibility to terminate the employment contract and change the employer.

- *Transfer to another employer requires the agreement of the previous employer*

In order to change employers, it is usually necessary for the employee to obtain a No Objection Certificate (NOC) from the original employer. As in the case of employee-initiated termination, progress has been made towards reforming or even abolishing the NOC.

- *Employer's consent required to leave the country*

In the past, migrant workers were required to obtain an exit permit from their employer in order to leave the country. This has been abolished by most countries, except Saudi Arabia, which maintains the requirement to inform the employer via an online form.

In recent years, reform of the system has been increasingly called for by human rights activists, international organisations, researchers, etc. The need for reform stems from the limitations, costs and challenges that the kafala system, which “rests on a shaky foundation” (Diop et al, 2018, p. 37), has faced in practice. Many Gulf leaders recognise the need and the challenge of reform, but few have implemented decisive policies aimed at increasing respect for migrant workers' rights.

The public expects actors to act against their self-interest. The system has been designed to prevent the creation of a bottom layer of semi-permanent migrants by ensuring a permanent rotation of migrant workers. It would therefore be expected that employers, having spent considerable resources on bringing in and training workers, would regularly spend such resources to replace them, and that workers would be willing to return to their countries of origin where they would earn lower wages. Another drawback of the system (Soto and Alvarez, 2011) relates to the economic costs of low productivity of workers who have no incentive to increase their efforts due to the “combination of short contracts, flat wages and lack

of internal mobility” (Soto and Alvarez, 2011, p. 38). The third cost of the kafala system, and the most difficult to estimate, is that of the international reputation of the countries concerned.

Evidence of the victims of the kafala system has been brought to public attention by international organisations, the media and civil society since the early 2000s, when a report by the Office of the UN High Commissioner for Human Rights stated that more than 250 women in Qatar were detained in “unhealthy conditions” (Murray, 2012, p. 27) and the 2008 Human Rights Watch (HRW) report “As if I were not human” referred to abuses in Saudi Arabia. But the kafala system came under the spotlight in 2010 when Qatar won the bid to host the 2022 World Cup, which intensified the need for reform under public pressure. We note, however, a dispute between researchers on the one hand and HRW and Amnesty International on the other, over whether the situation of migrant workers in the Gulf should be classified as systemic human trafficking (Khan & Harroff-Tavel, 2010).

In the literature on kafala reforms, there is a consensus on the directions that should be followed, mainly domestically. It is considered that the regulation of migrant workers should be transferred from the Ministry of the Interior to the Ministry of Labour, thus extending labour law to them as well (Khan & Harroff-Tavel, 2012; Murray, 2012; HRW, 2012) and paving the way for other necessary reforms, such as freedom to change their place of work and to travel during their contract and access to existing labour courts (Khan & Harroff-Tavel, 2012).

However, the kafala system cannot be analysed only from a pragmatic perspective, without taking into account the cultural implications in the region. In the case of Saudi Arabia, for example, legal obligations arising from international treaties are considered void if they conflict with Sharia law (Khan & Harroff-Tavel, 2012). In this regard, many scholars do not believe that a drastic change would be necessary, and the most important steps would be to extend the coverage of labour law to workers in the kafala system (Khan & Harroff-Tavel, 2012; Murray, 2012; Pessoa et al., 2014). However, there is a consensus among analysts and the international community on the complex and rapid evolution of kafala reform over the past decade.

4. Measures Taken to Reform the Kafala System

The system is now globally denounced as an abusive system whose reform, in the light of intense criticism over the last decade from human rights defenders, has been on the agenda of governments across the region. The most recent studies provide evidence of incipient steps towards reform, while questioning the depth of the measures implemented.

Qatar: Since October 2010, all private companies have been obliged to provide monthly details of wages paid, a move that allows the authorities to ensure that workers are paid on time and that employers have not improperly deducted amounts from wages paid. This was followed in 2020 by the approval of another law setting a non-discriminatory minimum wage of 1,000 rials (\$275).

Announced in 2009, the Qatar Council of Ministers’ approval of measures allowing workers to change employers freely was transformed in August 2010 into the law that abolished the No Objection Certificates. Previously, Qatari workers needed such a certificate from their employers. At the same time, the Interior Minister’s decree removed the need to obtain an exit permit for all workers, except military personnel, who can terminate their employment contract to leave the country.

United Arab Emirates: The Wage Protection System (WPS) has been introduced to monitor payments to migrant workers, with employers required to make payments through the WPS at least once a month or in accordance with the terms set out in the employment contract.

From January 2016, changes were made to the UAE legislation, according to “Employer-Migrant Worker Relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration” report issued by the International Labour Organization, to the effect that migrant workers could request termination of their employment contract after a period of at least 2 years. Another change was made from 2017 when Federal Law No. 10 regulated the number of working hours, the right to paid leave, and established the right of workers to keep personal documents, a provision with significant impact on home-based workers.

The steps taken so far to facilitate job change for migrant workers in the UAE are very limited. Thus, job change is only allowed at any time with the permission of the employer, and less skilled migrant workers must have served at least 6 months on contract to avoid a ban on working in the Emirates. The possibilities to change jobs without the employer's permission are very restrictive. Workers who have a fixed-term employment contract (the initial contract, which has not been renewed) do not have the legal right to terminate it before the end of the contract period as they otherwise risk a 12-month work ban in the UAE. Workers with indefinite contracts or fixed-term contracts that have been renewed at least once can terminate their contract with notice.

Kuwait: Has instituted similar reforms in the system to facilitate job changes by passing a decree in 2016 that allows employees to change employers without their prior consent after a 3-year period of compliance and with 3 months' notice. The transfer is allowed after one year with the employer's approval in most cases, except for workers in free trade zones and in sectors such as agriculture, fisheries, etc., who can change jobs at any time. Also, migrants employed in the private sector but working in government contracted projects are allowed to transfer to other government contracted projects implemented by the same sponsor, according to “Kuwait: Regulatory framework governing migrant workers” report, published in 2021 by the International Labour Organization.

5. The Kafala System through the Eyes of Romanian Migrants from GCC Countries

Policy makers in the Gulf region have tried to implement measures in the area of regulating the situation of migrant workers that would lead to real results, but not all their efforts have had a significant impact. Although the majority of respondents believe that progress has been made in reforming the system, at the same time they feel that not all regulations are being implemented by their sponsors.

The original purpose of the system, to provide protection for guest (Motaparthi, 2015), seems not to have completely disappeared in the face of the abuses allowed by the system. Thus, 52% of respondents believe that the system ensures a rapid integration of highly skilled migrants into the regional labour market (Hvidt, 2019), with the majority of those who believe this being residents of the United Arab Emirates. As the kafala system often requires highly skilled migrants to have a job on entry as well as accommodation provided, their integration into the labour market is easy and quick, which is considered an advantage, given the cultural differences and language barrier that may arise. In addition, the majority of subjects considered that the system's regulations reduce the risk of trafficking among migrants.

About half of the participants in the study reported that they had changed employers, both after and during their contract period. It is interesting to point out that the majority of subjects who reported that they changed sponsor during the contract period are UAE residents. Currently, in the Emirates, the possibility to change jobs without the sponsor's consent is limited and therefore the results of the study lead us to conclude that in practice the system proves to be less limiting than it does in theory.

Even though 55% of the subjects stated that they had not encountered abusive situations in their

relationship with their sponsor, almost the same number felt that the system allowed for abuse and was proven to create structural dependency between migrant workers and employers. Thus, it creates the context for abusive behaviour by sponsors, the occurrence or non-occurrence of which often depends on personal or ethnic factors. 64% of respondents felt that their status as Romanian/European citizens placed them in a favoured category in relation to employers.

The most frequent complaints expressed by the subjects concerned the financial aspect of employment contracts, be it delays in the payment of salaries or even non-payment of these rights. It is important to point out that most of the abuses reported were recorded in Qatar, even though this country is considered to have made the most significant progress towards reforming the system. Although it is prohibited for employers to confiscate the passports of migrant workers, such an abusive practice was reported by residents in all the countries surveyed. This phenomenon usually occurs because employers fear losing recruitment costs if the migrant worker does not complete the full duration of the contract.

Restricting freedom of movement and communication was also recorded as a form of abuse among respondents in 28% of cases in Kuwait and 25% in Qatar, compared to only 10% in the UAE. At the same time, the same results were recorded when it came to non-compliance with contractual terms and conditions previously agreed between the employer and the migrant worker. As immigration status depends on a contractual relationship, the migrant worker may be asked to accept terms and conditions of employment that differ from those promised before leaving the country of origin.

A sponsor has the option of dismissing an employee, which is common in most capitalist economies. However, the kafala system adds a new element to this: dismissal implies that the immigrant must find a new sponsor or leave the country, usually within 30 days. This is considered one of the most restrictive regulations among Romanians residing in GCC countries, along with limitations on changing employers and the possibility of having a second job.

Half of the respondents who believe that abolishing the system would be the most appropriate measure are residents of Qatar and perceive the system as facilitating abuses of migrant workers. This is in stark contrast to the reforms welcomed by the Doha authorities. The majority of respondents agree that the sponsorship system should be improved by reducing the dependence of migrant workers on their sponsors rather than abolished, given its usefulness in overcoming cultural and language barriers.

6. Conclusions

The robustness of the system is surprising, as is the fact that, despite a variety of reform initiatives, the Member States do not essentially aim to abolish it. The downward trend in complaints to sponsors about non-compliance with contractual terms, and an increase in job changes in almost all the countries surveyed, are signs of progress towards reforming the system. However, ignoring structural problems, the measures taken often have the disadvantage of generating additional administration costs without addressing the underlying shortcomings. In this context, it is also necessary to reiterate the image and economic costs of the sponsorship system, given the dependence of these countries' economies on immigrant workers. Maintaining the temporary status of employees, without any real possibility of naturalisation, results in a lack of interest on their part, which translates into lower labour productivity. A study by Soto and Alvarez (2011) on the labour productivity of migrant workers in Dubai shows a lower level for those under the kafala system than for those working in the free zone.

The lack of protection afforded by trade union structures, as well as the reluctance of employees to complain about abuses by employers, makes the authorities responsible for ensuring that the rights of

migrant employees are respected, by taking effective measures to check those responsible. Although most reports and press articles reflect abuses committed against less qualified people, the system also targets the highly qualified. The survey of Romanian communities reflects this, given their professional structure.

One aspect that many researchers have found surprising is the influence of public opinion in the countries under study to maintain kafala. For most of the indigenous citizens, reforming or eliminating the system raises questions of a personal nature, how it will affect their routine, as it is the only system they know and perceive as providing security and preventing the alteration of cultural values.

It thus remains to be seen to what extent the leaders of these states will use the broad support they enjoy to maintain a set of rules and values perpetuated over time, or to steer them down the path of reform. While international bodies campaign to protect the rights of migrants, we must not lose sight of the fact that the role of governments is to ensure the economic and social well-being of their own citizens.

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