

THE PHILIPPINES' LABOR MIGRATION: OFWS IN QATAR AND THE *KAFALA* SYSTEM

by Jeremy Dexter B. Mirasol

The word *kafala* has two distinct meanings in classical Arabic: *to guarantee* and *to take care of*. The *kafala* system is a time-honored tradition of hospitality, which lays down obligations in the treatment and protection of foreign guests. The [customary grant of protection of guests](#) originated from the Bedouins. It is a noble principle, but contemporary practice has been marred by criticisms over the years.

The *kafala* system in the Gulf states commenced in the 1950s when these countries began to import labor to accelerate development due to the discovery of oil. It was one way to ensure that hired foreign workers were only given temporary residency in the receiving countries. It was also meant to address [potential security concerns](#) resulting from migrants outnumbering citizens.

In migration governance, the *kafala* system produced a condition in which the oversight of migrants is delegated to the employer by the state. A prospective migrant worker must be sponsored by the *kafeel* (employer) to enter the country and work, making the worker's status legally bound to his or her sponsor. A migrant worker cannot enter the country, stay, transfer employment, or leave the country for any reason without first obtaining explicit permission from the *kafeel*.

There are cases of *kafeels* taking advantage of the *kafala* system – cases of underpayment, non-payment, excessive workload, forced confinement, and severe psychological, physical and sexual abuse. There are also *kafeels* who confiscate their workers' passports and work permits, and effectively curtail the worker's fundamental right to labor mobility. Because of these practices, migrant workers usually end up absconding from their employers to seek refuge elsewhere. In the Gulf states, absconding is considered a criminal charge which leads to indefinite detention and deportation.

Reforming the kafala system: the case of Qatar

Recently, Qatar has come under greater scrutiny for allegations concerning non-payment of wages, occupational health and safety and other labor issues in connection with its preparations for the hosting of the FIFA World Cup in 2022. Human and labor rights groups alike have expressed their concerns on the labor situation in Qatar, singling out the *kafala* system in particular.

Qatar is heavily dependent on foreign labor and has the highest proportion of migrants to citizens in the world. According to the data from Qatar's Ministry of Development Planning and Statistics (MDPS), 91.6% of the total workforce of the country are migrant workers. The Philippines is one of the top sources of these migrants with around [135,000 OFWs](#) according to the Philippine Statistics Authority (PSA).

The International Labor Organization (ILO) notes that Qatar fails to maintain a legal framework consistent with international law that stipulates protection of the rights of migrant workers. A [resolution from the European Parliament](#) expressed its concern on the situation of migrant workers in Qatar, calling on the Qatari authorities to effectively implement existing legislation, including the enforcement of the ban on passport confiscation. It also urged authorities to stop detaining workers for abscondment. Moreover, it reiterated its call on Qatar to ratify ILO conventions, including those related to the protection of migrant workers.

Likewise, in a [UN report](#) on Qatar's *kafala* system presented at a UN Human Rights Council meeting, the *kafala* system was described as a source of abuse and exploitation of migrants. The report verified cases of migrants often working without pay and living in substandard conditions. In its summary, the report stated that there was no valid justification for maintaining the system and went further recommending the abolition of the *kafala* system.

Cognizant of these criticisms, a new sponsorship law replacing the *kafala* system – The Law No.21 of 2015 – was introduced last December 2016. The Minister of Administrative Development, Labor & Social Affairs (MADLSA), Dr. Issa bin Saad Al-Jafali Al Nuaimi, [said](#), “The new law is the latest step towards improving and protecting the rights of every expatriate worker in Qatar. It replaces the kafala system with a modernized, contract-based system that safeguards workers’ rights and increases job flexibility”.

Effectively repealing the Law No. 4 of 2009, the Law No. 21 of 2015 now regulates the entry and exit of expatriates in Qatar. Other changes under this law include a system to appeal refused exit permits; and expats finished with fixed-term contracts no longer require their sponsor’s approval to take another job. For some human rights organizations, the reform was short of expectations, but it is still considered a big improvement from the old system. It is the beginning of a series of wide- ranging reforms in the job market to guarantee workers’ rights and improve their standard of living and working conditions in Qatar.

Structural improvements

The demands for strategic and concrete actions to replace the sponsorship system (i.e. *kafala* system) of labor-receiving countries such as Qatar manifest the realpolitik of labor migration. As current cases of abuse and exploitation undermine the rule of law in the Gulf states and hamper their relations with countries of origin, it is in the interest of these labor-receiving countries to introduce incremental reforms in the labor sector. While there are already significant steps underway to replace the *kafala* system in Qatar, much remains to be done in the rest of the region to ensure full respect for human and labor rights.

There are several useful frameworks to manage migration while ensuring full respect for the rights of migrants. Among these are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ILO Convention No. 97 (Migrant for Employment); ILO Convention No. 143 (Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers); and ILO Convention No. 189 (Decent Work for Domestic Workers). These international frameworks underscore the rights of every migrant worker and can guide Qatar and other Gulf states in properly forging and enforcing their labor laws.

Protection of OFWs

Recently, the Qatar government reported that it needs at least [77,000 Filipino workers](#), mostly in construction and highly-skilled and technical jobs. With a significant number of OFWs in Qatar and other Gulf states, the Philippine government must continue to push for favorable conditions for its nationals abroad. While the new sponsorship law in Qatar is a welcome development, the Philippine government must continually and vigilantly monitor working conditions, especially where cases of abuses remain.

Since their signing of the labor agreement formalizing procedures for migrant worker deployment in March 1997, the Philippines and Qatar have been discussing bilateral labor issues at the level of the Philippine-Qatar Joint Committee Meeting (JCM) on Labor Matters. Through JCM, the Philippine government is expected to further discuss and explore initiatives that would advance the welfare of OFWs in Qatar.

Greater bilateral cooperation is essential to develop and enforce sound migration policies protecting Filipino migrant workers, particularly in the Gulf states. Emerging initiatives that draw governments together to discuss migration have the potential to serve as important vehicles for addressing migrant domestic workers’ issues. 🌸

Jeremy Dexter B. Mirasol is a Foreign Affairs Research Specialist with the Center for International Relations and Strategic Studies of the Foreign Service Institute.

Mr. Mirasol can be reached at jbmirasol@fsi.gov.ph

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