

THE FIVE CORRIDORS PROJECT - CORRIDORS 2 AND 3

# Nepal to Kuwait and Qatar: Fair recruitment in review

JULY 2021



## **ABOUT THIS DOCUMENT**

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

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Cover photograph: Visa applicants at a Migration Resource Center in Kathmandu, Nepal, 2015. © ILO



Migrant workers among those on the Corniche in Doha, Qatar @ Jessica Moxham

## 9. Freedom of association

*“Freedom of association in Kuwait exists only on paper ... especially so for migrant workers.”* GULF LABOUR RIGHTS EXPERT.

### Summary

Nepal’s Constitution recognises the fundamental right of workers to associate freely, form and participate in unions, and bargain collectively. The country’s Labour Act and Trade Union Act codify these constitutional rights in law, for workers in both the formal and informal sectors of the economy. The two Acts set out the process of formation of trade unions and collective bargaining committees, and outline a range of occupational rights for both self-employed and salaried workers across a number of industries. The Labour Act also protects workers’ right to strike following the failure of a mandatory 21-day mediation period, although it withdraws this right from employees in certain essential sectors such as healthcare, banking, transportation and security. Despite these gains, it falls short of international labour standards by failing to provide adequate protection

against anti-union discrimination, promotion of collective bargaining and compulsory arbitration. Although politicised, Nepal’s workers’ movement is vibrant and has continued to grow in the past two decades, with unions generally being able to operate and engage publicly on labour reforms without state interference. The General Federation of Nepalese Trade Unions (GEFONT) is active in its efforts to protect the rights of Nepali migrant workers abroad, and has signed an agreement with partners in Kuwait that has succeeded in getting anti-union clauses removed from model employment contracts. Still, the International Trade Union Confederation (ITUC) has placed Nepal for the last two years in the category of countries that regularly violate trade union rights. This is the result of inadequate legal protections and an observed shrinking space for civil society in the country, with rising cases of arrests of trade unionists and other civil society actors.

Whilst the right to unionise is guaranteed under Kuwait's Constitution, the implementing legislation restricts the right to establish trade unions to Kuwaiti nationals working in certain sectors. Although migrant workers are therefore prohibited from forming unions, there is no explicit legal prohibition on them joining unions – and, in comparison to other GCC countries, workers of all types in Kuwait enjoy a relatively greater degree of freedom of association. This is helped by the presence in the country of a small number of non-governmental groups actively campaigning to protect and advance migrant workers' rights. The Kuwait Trade Union Federation, the umbrella organisation for the country's unions, has publicly advocated for migrant worker rights and the abolition of the kafala system, and has actively cooperated with migrant community groups and trade unions in origin countries. Despite that, it has still shied away from public reporting of labour rights violations, or any criticism of the state itself. Indeed, the 2010 Private Sector Labour Law allows the government a great deal of control over the activities of unions, and their ability to campaign freely and independently. Unions face an overly broad prohibition on engaging in political, religious or sectarian issues. They can be dissolved if they are found to have violated public order and morals, and have to obtain governmental consent in order to accept donations. Unions require permission from the Ministry of Interior to strike, and there are no legal protections for strikers against retaliation. Indeed, Kuwait's ratification of the ICESCR was accompanied by a reservation not to apply the covenant's provisions on the right to strike. So great is the cumulative effect of these many restrictions, that some international observers have been led to state that trade union rights exist in Kuwait really only on paper, and the ITUC continues to class Kuwait as a country with "no guarantee of rights" for workers. Still, unauthorised strikes are largely tolerated, and a group of volunteer group of Filipino workers has recently been able to establish, with ILO's support, the first membership-based organisation of migrant domestic workers in the Gulf following a decade of campaigning and organizing during which at least two of its members faced attacks seemingly on account of their activities.

Freedom of association is guaranteed under Qatar's Constitution, but the country's legislation fails to give application to that right. Only Qatari nationals are entitled to form or join associations or workers' committees, meaning that the overwhelming majority of the country's workers – foreign migrants – remain unable to bargain collectively. Qatar's Labour Law envisages the establishment of one trade union, made up of various workers' committees representing different trades, but it has not been established. Signs of positive change began in 2015 with the establishment of Workers' Welfare Forums by the Supreme Committee of Delivery and Legacy and its contractors, in the context of preparations to the FIFA World Cup, followed by the establishment – with the support of ILO – of joint worker-employer committees in 20 companies in which workplace issues can be discussed, including recruitment-related irregularities, since 2019. Both the ITUC and BWI have attested to the genuine engagement of ADLSA in these developments. While the joint committees are not a substitute for trade unions with collective bargaining status, the government has allowed five international unions and federations to operate in Qatar, seemingly without obstruction, although their mandate is limited to the terms set out in the ILO cooperation agreement. 2020 saw Qatar move from the ITUC's category of countries with no guarantee of workers' rights, to one with systematic violations of those rights. Given the starting point, these developments, when taken together, are positive. That said, changes have been limited to a relatively small number of major companies and large public bodies. Smaller companies, where abuse is known to be widespread and protections are weaker, still lack any form of legitimised worker representation. In May 2021 Uniglobal, the global union representing security guards, expressed alarm alongside civil society organisations when Malcolm Bidali, a Kenyan security guards who had blogged about his experiences was detained incommunicado by Qatari security agencies for reasons unknown. At the time of writing in June 2021 he had been released from detention but his legal situation remained unclear.

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## Recommendations to the Government of Nepal:

- Ensure that worker organisations including trade unions are able to participate in the development and review of legislation relating to migrant workers, as well in review and oversight mechanisms related to bilateral agreements
- Ensure that diplomatic missions are tasked to protect any migrant worker in a destination state subject to retaliatory measures as a result of worker organising.

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## Recommendations to the Government of Kuwait:

- Amend the law to prohibit discrimination on the grounds of trade union membership or activities and guarantee the right the collective bargaining, in line with international labour standard.
- Ensure that worker organisations including trade unions are able to participate in the development and review of legislation relating to migrant workers, as well in review and oversight mechanisms related to bilateral agreements
- Remove all legal restrictions on migrant workers' right to strike and prohibit retaliatory actions against anyone exercising that right or any other action to peacefully promote migrant workers' rights.

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## Recommendations to the Government of Qatar:

- Withdraw reservations submitted alongside Qatar's ratification of the ICESCR and amend the 2004 Labour Law to allow migrant workers to join and form trade unions.

- Ensure that worker organisations can participate in the development and review of legislation relating to migrant workers, as well in review and oversight mechanisms related to bilateral agreements.
- Remove all legal restrictions on migrant workers' right to strike and prohibit retaliatory actions against anyone exercising that right or any other action to peacefully promote migrant workers' rights.

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## 9.1 Do workers have the legal right to form and join unions, and can they strike and collectively bargain?

### Nepal

Freedom of association and the right to form unions, participate in them and to organize collective bargaining are recognized as fundamental rights under Nepal's 2015 Constitution.<sup>1033</sup> The 2017 Labour Act guarantees workers in both the formal and informal sectors the right to form, operate, obtain membership and affiliation to a union, or to involve themselves in other activities related to unions.<sup>1034</sup> In addition, freedom of association and trade union rights protections are codified in the 1992 Trade Union Act.<sup>1035</sup> While Nepal has ratified the ILO Convention on the Right to Organise and Collective Bargaining (No. 98), it has not ratified the Freedom of Association and Protection of the Right to Organise Convention, (No.87),<sup>1036</sup> though a ratification is being actively considered by the authorities, according to the ILO.<sup>1037</sup> Nonetheless, in both 2019 and 2020, the International Trade Union Confederation (ITUC) has rated Nepal as a country with "regular violations" of trade union rights in the past two years.<sup>1038</sup>

The 1992 Trade Union Act codifies trade union rights of self-employed workers and workers across various industries, trades, professions and services.<sup>1039</sup> It also sets out the procedures required for the formation and

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1033. 2015 Constitution of Nepal, Articles 17 (2, b), 17 (2,d) and 34

1034. Labour Act, 2017, Section 8

1035. Also see: Contribution Based Social Security Act (SSA) 2018, Social Security Rules 2018, Social Security Schemes Operational Directives 2018, Employment Guarantee Act 2018 (2075 BS), and Right to Employment Act (REA) 2018 (2075 BS).

1036. ILO, Up-to-date Conventions and Protocols not ratified by Nepal

1037. ILO, International labour standards in Nepal

1038. ITUC, "2020 ITUC Global Rights Index, The World's Worst Countries for Workers," (2020): 13

1039. Unofficial English translation of the 1992 Trade Union Act

renewal of trade unions and federations, defines their duties and powers, and protects the right of working committees to present claims for collective bargaining on behalf of workers. However, it bars foreign nationals from being elected as trade union representatives.<sup>1040</sup>

The 2017 Labour Act sets out the procedures for the formation and functioning of collective bargaining committees in a workplace.<sup>1041</sup> At least 10 employees are required to establish a collective bargaining committee, which is then authorized to submit, negotiate and settle collective demands, among other things. It can be formed by an authorized trade union, or in its absence, by the signature of 60 percent of the workforce in the establishment.

The 2017 Labour Act guarantees the right to strike if a workplace dispute is not settled during a 21-day mediation period, which is the preferred dispute settlement mechanism under the law. In the case of a peaceful and lawful strike, carried out in accordance with the 2017 law, workers are to be paid half of their salaries.<sup>1042</sup> Employees providing essential services such as healthcare, banking, transportation and security, and those working in special economic zones, are however, denied the right to strike.<sup>1043</sup> However, workers in these sectors have been able to occasionally go on strike without facing any legal penalties.<sup>1044</sup>

Despite important protections, the ILO Committee of Experts has expressed concern that Nepali legislation fails to conform with international labour standards in relation to the requirement to provide adequate protection against anti-union discrimination, promotion of collective bargaining and compulsory arbitration.<sup>1045</sup> Indeed, neither the Constitution nor the Labour Act explicitly prohibit discrimination against workers, “by

reason of their trade union membership or participation in trade union activities,” and the Labour Act fails to clearly “specify the conditions under which trade unions are authorized to bargain collectively.”<sup>1046</sup>

## Kuwait

The right to form national unions and associations “by peaceful means” is guaranteed under Kuwait’s constitution, but is undermined by laws that fail to conform with international standards.<sup>1047</sup> Kuwait has ratified ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise and Convention No. 98 (1949) on the Right to Organise and Collective Bargaining (No. 98). However, when it ratified the ICESCR in 1996, it introduced a reservation not to apply the Covenant’s provisions on the right to strike (Article 8, paragraph 1(d)).<sup>1048</sup> The ITUC continues to class Kuwait as a country with “no guarantee of rights” for workers.<sup>1049</sup>

Under the 2010 Private Sector Labour Law, only Kuwaiti workers in the private, government and oil sectors can form trade unions.<sup>1050</sup> Although there is no explicit provision affording the right to migrant workers to join established unions and associations as members, the government has noted in its communications to the ILO Committee that “workers have the prerogative to organize, form and become members of unions”.<sup>1051</sup> However, this provision appears to only apply to workers who have a valid work permit and have resided in Kuwait for a minimum of five years.<sup>1052</sup> Although the law contains some protections against anti-union discrimination prohibiting the dismissal of workers based on their trade union activities or “as a result of claiming for or enjoyment of [their] legitimate rights”,<sup>1053</sup> it does not explicitly prohibit all acts of interference

1040. Article 10 (e), Trade Union Act, 1992

1041. Article 116.1, Labour Act 2017

1042. Section 127, Labour Act, 2017

1043. 2017 Labour Act and 2016 Law on Special Economic Zones; See also US Department of State, “2019 Country Reports on Human Rights Practices: Nepal”,

1044. US Department of State, “2019 Country reports on human practices: Nepal”

1045. ILO, [Observation \(CEACR\) - adopted 2018, published 108th ILC session \(2019\)](#)

1046. ILO, [Observation \(CEACR\) - adopted 2018, published 108th ILC session \(2019\)](#)

1047. [Kuwait Constitution](#), Article 43, 1962,

1048. UN Treaties Collection, [Declarations and Reservations made by states upon ratification, accession and succession to the International Covenant on Economic, Social and Cultural Rights](#)

1049. ITUC, [2020 ITUC Global Rights Index: 12](#)

1050. [Private Sector Labour Law](#) of 2010, Articles 98 and 99

1051. The 2010 Private Sector Labour law does not include an explicit provision allowing migrant workers to join trade unions. However, in its communication to the ILO Committee, Kuwait noted that under Kuwaiti legislation, “workers have the prerogative to organize, form and become members of unions. The Government refers to Ministerial Order No. 1 of 1964, which is based upon article 43 of the Constitution, and provides that no person may be compelled to join any association or union.” See [ILO Committee Observation \(CEACR\) adopted in 2017, published 107th session \(2018\)](#)

1052. [ILO Committee Observation \(CEACR\) adopted in 2017, published 107th session \(2018\)](#)

1053. Article 46, [Private Sector Labour Law](#), 2010

by employers or authorities.<sup>1054</sup> Further, it enables the courts to dissolve any trade union, which has been found to violate “public order and morals” laws, although the decision may be appealed.<sup>1055</sup>

The right to collective bargaining is recognised only for workers in the private (non-domestic sector) sector. It is also heavily restricted, and as a result, workers rarely exercise it. Domestic workers, who are excluded from the provisions of the labour law, and whose work is regulated by the 2015 Domestic Workers Law do not have the explicit right to form unions<sup>1056</sup> and negotiate collective agreements. In the public sector, the government engages in “consultation” with the workers’ federation of government employees on issues raised by civil servants but does not allow collective bargaining.<sup>1057</sup>

In the event of an unresolved collective dispute in the private sector, both union and employer representatives can ask for mediation by the MSAL.<sup>1058</sup> In case mediation fails, MSAL may intervene “without request by one of the dispute parties to settle the dispute amicably”, and refer it either to a reconciliation committee or arbitration board for compulsory arbitration, in violation of international labour standards.<sup>1059</sup> The ILO Committee has repeatedly expressed concern that this provision “could lead to a prohibition of strikes”.<sup>1060</sup> Indeed, industrial action is only possible after a two-month procedure is exhausted, and prior authorisation from the Ministry of Interior is needed before a union can declare a strike, making authorised strikes effectively impossible, according to ITUC.<sup>1061</sup> Importantly, the right to strike is denied to civil servants and migrant workers, including those in the domestic work sector. With no legal protection against retaliation for going on strike, migrant workers are the most vulnerable to dismissal, in addition to facing possible deportation.<sup>1062</sup> In practice however, both public and private sector workers have at times gone on strike in defiance of the ban.<sup>1063</sup>

## Qatar

Freedom of association is significantly restricted in Qatar, with migrant workers denied trade union rights. The right to freedom of association guaranteed under Qatar’s 2003 Constitution is heavily limited by restrictive laws.<sup>1064</sup> Qatar has not ratified the ILO’s Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), or the Right to Organise and Collective Bargaining Convention, 1949 (No.98).<sup>1065</sup>

In 2014, the ILO Committee expressed concern that Qatar’s 2004 Labour Law does not include clear provisions “referring to the rapid and effective protection against acts of anti-union discrimination and interference in trade union activities” and urged the Qatari authorities to amend it to “give effect to the fundamental principles of freedom of association and collective bargaining.”<sup>1066</sup> Noting that migrant workers comprised 93% of the economically active population at the time, it also urged Qatar to remove any restrictions placed on their freedom of association.<sup>1067</sup> Since then, Qatar has made some progress with regards to advancing freedom of association rights. However, in 2018, when it ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), it entered reservations confirming that it would not be changing its policy of allowing only Qatari nationals to form associations and trade unions, thereby continuing to deny migrant workers their rights to freedom of association, and preventing them from acting and bargaining collectively.<sup>1068</sup>

The ITUC classes Qatar as a country with “systematic violations of [workers’] rights” but has determined that between 2018 – 2020, it made sufficient progress (under the ILO technical cooperation programme) to no longer be considered a country with “no guarantee of rights”.<sup>1069</sup>

1054. ILO Committee, *Direct Request (CEACR) - adopted 2010, published 100th ILC session* (2011),

1055. Article 108, *Private Sector Labour Law*

1056. Human Rights Watch, “*Kuwait: New Law a Breakthrough for Domestic Workers*,” (30 June 2015),

1057. ITUC, “*Internationally recognised core labour standards in Kuwait, Report for the WTO General Council Review of the trade policies of Kuwait*,” (February 2011),

1058. Article 125, *Private Sector Labour Law, 2010*

1059. Article 131, *Private Sector Labour Law, 2010*

1060. ILO Committee, *Observation (CEACR) - adopted 2017, published 107th ILC session* (2018),

1061. ITUC, “*Internationally recognised core labour standards in Kuwait, Report for the WTO General Council Review of the trade policies of Kuwait*,” (February 2011),

1062. Freedom House, “*Freedom in the World 2020, Kuwait*”

1063. See for example, AFP / Arab News, *Workers strike at Kuwait airport for better working conditions*, (11 November 2019)

1064. Qatar’s 2003 *Constitution*, Article 45

1065. ILO, *Up-to-date Conventions and Protocols not ratified by Qatar*

1066. ILO Governing Body, “*Reports of the Committee on Freedom of Association: 371st Report of the Committee on Freedom of Association*” (March 2014): 237

1067. ILO Governing Body, “*Reports of the Committee on Freedom of Association: 371st Report of the Committee on Freedom of Association*” (March 2014): 238

1068. Amnesty International, “*Qatar finally joins two key human rights treaties - but what does it really mean for migrant workers?*,” (13 June 2018)

1069. ITUC, *2020 ITUC Global Rights Index*: 11

Only Qatari workers have the right to form a “workers’ committee” in a workplace where there are at least 100 Qatari employees.<sup>1070</sup> Such committees representing various trades may then form a single trade union called the General Union of Workers of Qatar, in violation of freedom of association principles, as noted by the ILO Committee.<sup>1071</sup> Only upon approval from ADLSA, can the general union join any regional or international workers’ organisations.<sup>1072</sup> Migrants, casual workers and public sector employees are denied the right to join either workers’ committees or the trade union,<sup>1073</sup> whose activities are severely restricted. Both workers’ committees and the general union are prohibited from carrying out any political or religious activity, printing or distributing any materials deemed to offend the state or the government, and accepting gifts without ADLSA’s approval.<sup>1074</sup> The Minister of Labour has the authority to dissolve any workers’ organisation that engages in such activities.<sup>1075</sup>

In smaller enterprises, which employ at least 30 workers, the Labour Law allows employers and workers to form joint committees<sup>1076</sup> with a view to addressing work-related matters limited to the regulation of work, staff productivity, culture and training, occupational health and safety, provision of social services and the settling of individual and collective disputes.<sup>1077</sup> Employers and workers are granted the right to “conduct collective negotiation[s] and conclude joint agreements” however, the law fails to define the rules and procedures for such negotiations.<sup>1078</sup> It also provides a mechanism to file collective disputes, and enables ADLSA’s mediation, if disputes cannot be settled between workers and employers.<sup>1079</sup> Unresolved disputes may then be referred to a conciliation committee, and finally to an arbitration panel for compulsory arbitration.<sup>1080</sup>

Joint committees must include an equal number of worker and employer representatives with four to eight

members depending on the size of the institution.<sup>1081</sup> While there is no restriction on non-Qatari workers joining these committees, domestic and some other workers are denied this right, as they are excluded from the terms of Qatar’s 2004 Labour Law. Employers are able to nominate their representatives under Article 125 of the 2004 Labour Law. Workers’ representatives, however, must be nominated from amongst the members of a workers’ committee in workplaces where such committees have been established, or through direct elections in enterprises where they have not. Regulations setting out election procedures to joint committees were finally outlined in 2019 through a ministerial decision, adopted as part of a series of reforms under the ILO/Qatar cooperation programme, and a sustained dialogue between ADLSA and international unions and federations.<sup>1082</sup> Until then, there was effectively no mechanism allowing migrant workers to join such committees.

In addition to setting out criteria that candidates must meet to be able to stand in elections to the joint committees, the 2019 ministerial decision outlines the procedure for employers to notify the competent authority of their establishment.<sup>1083</sup> It also limits membership to a two-year term and establishes that joint committee meetings must take place once a month.<sup>1084</sup>

According to the ILO’s October 2020 update, between July 2019 and August 2020 joint committees were established in 20 enterprises, representing more than 17,000 employees - with more organisations expected to hold elections in the following months. The ILO also said that “a draft ministerial decision governing the rules and procedures of collective negotiation and joint agreements was prepared for discussion with the ADLSA”, without specifying further.<sup>1085</sup>

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1070. 2004 Labour Law, Article 116

1071. ILO Governing Body, “Reports of the Committee on Freedom of Association 371st Report of the Committee on Freedom of Association”, (March 2014): 233

1072. 2004 Labour Law, Article 123

1073. Ibidem, Article 3

1074. Ibidem, Article 119

1075. Ibidem, Article 119

1076. Ibidem, Article 124

1077. Ibidem, Article 126

1078. Ibidem, Article 127

1079. Ibidem, Article 129

1080. Ibidem, Article 130

1081. Ibidem, Article 124

1082. Government of Qatar, “Decision No. (21) Of 2019 by the Minister of Administrative Development, Labour, and Social Affairs Regulating the conditions and procedures of the election of workers’ representatives to joint committees”, (21 April 2019)

1083. Ibidem, Sections 2, 3, 4

1084. Ibidem, Sections 6 and 7

1085. ILO, Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO, GB.334/INS/8, (October 2019): 9



Although the right to strike is recognised under Article 120 of Qatar’s Labour Law, it is severely restricted and does not apply to workers in specified industries including petrol, oil and gas, electricity, water, ports, airports, transportation, hospitals and domestic work. Workers are only permitted to strike if they fail to reach a mediated solution with their employer and there is no other means of solving the dispute, and if 75% of the industry’s general committee has approved the strike - an excessive threshold effectively making strikes effectively impossible. At least two weeks’ notice must be given to the employer and the location and time of the strike must also be approved by ADLSA in coordination with the Ministry of Interior – an excessive and undue requirement.

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## 9.2 Can trade unions operate effectively in practice, are their activities free from disruption and harassment?

### Nepal

Despite some legal restrictions that are inconsistent with international standards, in general, the Nepali authorities allow trade unions to operate effectively in practice, largely without interfering in their activities or threatening its leaders, although violations of trade union rights do occur.<sup>1086</sup> Nepal has a vibrant trade union movement, the majority of which are affiliated with political parties, and operate in coordination with them. The major bodies representing workers include the All Nepal Federations of Trade Unions (ANTUF), General Federations of Trade Unions (GEFONT) and its Home Workers Trade Union of Nepal affiliate, and Nepal Trade Union Congress (NTUC), which are all affiliated with the ITUC and operate under the Joint Trade Union Coordination Centre (JTUCC), an umbrella coordination body.<sup>1087</sup> Between 2000 and 2016, Nepali trade unions have seen their membership steadily grow including

in the informal sector,<sup>1088</sup> and the movement today includes hundreds of thousands of workers.<sup>1089</sup>

However, in recent years human rights groups have increasingly raised concern about a “shrinking space” for civil society in Nepal with rising cases of arrests and short-term detentions of trade unionists, journalists and human rights activists.<sup>1090</sup> In one example, leaders from the Nepal Press Union (NPU) and the Federation of Nepali Journalists (FNJ) were among nine journalists arrested on 16 September 2019 as they were protesting against job losses in Kathmandu, although they were released hours later.<sup>1091</sup> In January of that same year, the police arrested workers as they were holding a meeting to discuss the formation of a trade union at Global Hydropower Associate, following a call from the company’s management requesting an intervention.<sup>1092</sup>

In April 2015, Nepal’s Supreme Court barred trade unions from involvement in political activities, and restricted trade unions’ activities to collective bargaining. The ruling was issued in response to a petition requesting that all trade unions affiliated to political parties be declared illegal – on the basis that they had tarnished the government’s image - and a single authoritative trade union be formed.<sup>1093</sup>

The Secretary General of GEFONT, which holds close ties with the current ruling party and is particularly active on labour migration issues, told us that the union is able to operate without restrictions.<sup>1094</sup> Indeed, the trade union movement has been actively engaging on recent labour reforms, including those related to foreign employment, without any apparent disruptions or harassment. According to GEFONT between 2018 and 2019, advocacy by trade unions contributed to a review of the minimum wage, a cancellation by DOFE of the licenses of 197 recruitment agencies, the adoption of the 2018 Labour Rules and the Foreign Employment Integrated Management System (FEIMS), and the launch of a hotline by MOLESS to receive grievances by migrant workers (see section 7).<sup>1095</sup> However, GEFONT’s

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1086. US Department of State, “2019 Country Reports on Human Rights Practices: Nepal”

1087. ILO, *Workers and Employers Organisations in Nepal*

1088. Jelle Visser, “Trade unions in the balance”, ILO Actrav Working Paper, (2019): 15 and 41.

1089. According to its website, the NTUC has 35 affiliated unions, is represented in 75 districts across the country and includes more than 400,000 members.; GEFONT has 20 trade union affiliates and nearly 400,000 members, and is a founding member of the ITUC. See here: ANTUF has 30 affiliates, according to Wikipedia.

1090. See for example, Amnesty International, “Amnesty International staff detained in Nepal”, (27 January 2020),

1091. ITUC, “Nepal - Union officials arrested for protesting job losses”, September 2019. See also: The Himalayan Times, “Shrinking democratic space raises AI’s concern”, (31 January 2020).

1092. ITUC, “Nepal - Workers’ arrested at Global Hydropower Associate”, (undated).

1093. ITUC, “Global Rights Index”, (2016): 70.

1094. Advocate Nisha Baniya, General Secretary of General Federation of Nepalese Trade Unions (GEFONT), 15 January 2020

1095. GEFONT, “The Beginning of a new era”, (2019): 14.

representative told us that some pre-departure trainings discourage migrants from joining trade unions abroad, warning them: “do not get involved in trade union, it is against the law”.<sup>1096</sup>

## Kuwait

In comparison with other GCC countries, there is a relatively vibrant civil society in Kuwait, and workers, including migrants, are able to exercise their right to freedom of association to a greater degree, while non-governmental groups actively campaign to protect and advance migrant workers’ rights.<sup>1097</sup> Still, trade unions must obtain the government’s permission to be able to operate legally, and although pluralism is allowed at a grassroots level, only one union per trade and one general union are authorised.<sup>1098</sup> Further, Kuwait’s Private Sector Labour Law includes provisions that place excessive restrictions and allow the state to maintain a considerable amount of control over unions’ activities, strategy and ability to freely advocate on any social justice or rights’ issues that may be considered contentious. Firstly, it prohibits trade unions from engaging in political, religious or sectarian issues and accepting donations without MSAL’s consent.<sup>1099</sup> Secondly, although it allows them to join Arab and international unions and federations by sending a notification to MSAL, it requires that such accession does “not violate the public order” or the state’s “public interest”.<sup>1100</sup>

As a result, one expert with knowledge of trade unions in the GCC described freedom of association in Kuwait as “existing only on paper [...], especially so for migrant workers”.<sup>1101</sup> The ITUC’s 2020 Global Rights Index continues to regard Kuwait as a country with “no guarantee of rights”, the lowest ranking possible for countries not affected by conflict. In 2019 the US State Department highlighted that the government uses its power to register associations as a means of political

influence, and that dozens of unofficial civil society groups had no legal status, in part owing to bureaucratic inconvenience frustrating their ability to reasonably meet required thresholds.<sup>1102</sup>

Although Kuwait’s Private Sector Law imposes a single trade union system under the umbrella of the Kuwait Trade Union Federation (KTUF), in practice, some unions operate outside of it.<sup>1103</sup> KTUF acts as a social partner for PAM and intergovernmental organisations in Kuwait such as the ILO and IOM. It is a member of the Arab Regional Network for Migrant Workers’ Rights and has publicly advocated for migrant workers’ rights and the abolition of the kafala (sponsorship) system.<sup>1104</sup> It is also able to openly cooperate with migrant community groups as well as trade unions in origin countries. In 2011, it signed an MOU with GEFONT in order to provide a basis for information-sharing and the formation of Nepali worker support groups in Kuwait.<sup>1105</sup> GEFONT’s Secretary General told us that the signing of the MoU has made it easier for GEFONT representatives to visit Kuwait and meet with Nepali workers in a safe environment, and has also resulted in the removal of anti-union clauses in template employment contracts in Kuwait, which stated that workers were not allowed to join or establish trade unions in destination countries.<sup>1106</sup> In 2019, KTUF provided an informal space in its offices for GEFONT as well as the unofficial local branch of the Non Resident Nepali Association (NRNA), a Nepali community group.<sup>1107</sup>

However, according to trade unionists with knowledge of KTUF, the organisation is very cautious to publicly report any labour or human rights abuses or to criticize the state. Whereas in the past, it was more active on migrant issues, the “leadership is now very politicised” and the union is run by individuals “close to the government”.<sup>1108</sup> KTUF is dominated by public sector unions, making it even more difficult for migrant workers to join them and start organising.<sup>1109</sup>

1096. Advocate Nisha Baniya, General Secretary of General Federation of Nepalese Trade Unions (GEFONT), 15 January 2020

1097. Vani Saraswathi, Director of Projects, Migrants-Rights.Org, remote interview, 23 July 2020.

1098. ITUC, *Internationally recognised core labour standards in Kuwait*, Report for the WTO General Council Review of the trade policies of Kuwait, (February 2011): 2

1099. Article 104, *Private Sector Labour Law*, 2010

1100. Article 107, *Private Sector Labour Law*, 2010

1101. Labour expert, remote interview, July 2020.

1102. US State Department, “2019 Country Reports on Human Rights Practices: Kuwait”

1103. Examples include the Bank Workers’ Union and the Kuwait Airways Workers’ Union. See ITUC, “2012 Annual survey of violations of trade union rights – Kuwait”, (2012).

1104. ILO, “Cooperating out of isolation, the case of migrant domestic workers in Kuwait, Lebanon and Jordan”, (2015): 26

1105. ILO country office for Bangladesh, “Good practices and provisions in multilateral and bilateral labour agreements and memoranda of understanding”, (2018): 54

1106. Advocate Nisha Baniya, General Secretary of General Federation of Nepalese Trade Unions (GEFONT), 15 January 2020

1107. Solidarity Center, “Kuwait union opens doors to all migrant workers”, (26 March 2019),

1108. Interview with trade unionists with experience of Kuwait trade unions, October 2020.

1109. Francesca Ricciardone, independent expert on labour migration, remote interview, 12 July 2020.

Despite the challenges, and the legal prohibition on migrant workers' right to form trade unions, since 2015, Sandigan Kuwait, an organisation of Filipino migrant volunteers providing legal counselling and other services, was able to make significant progress with regards to workers' organizing and representation. With ILO's and IDWF's capacity-building support, it established Sandigan Kuwait Domestic Workers Association (SKDWA), the first membership-based organisation of migrant domestic workers in the Gulf, which held its first congress in 2019. In late 2020 SKDWA had a membership base of some 1,000 Filipino domestic workers, of which at least 100 domestic workers were active members. SKDWA became an IDWF affiliate in July 2020.<sup>1110</sup> It trains domestic workers on leadership skills and collective bargaining techniques, and aims to empower them by encouraging them to pursue vocational training.<sup>1111</sup>

## Qatar

Both the Qatari authorities and private sector companies have in recent years started allowing greater worker representation following international pressure in the context of preparations to the men's FIFA World Cup and as part of the ILO technical cooperation programme. Nonetheless, independent trade unions are still not allowed to operate in practice. While migrant workers can be elected to the newly set up joint committees and Workers' Welfare Forums, in practice, their mandate is limited, and by virtue of representing both workers and employers, their activities are subjected to high levels of control.

In 2014, the Supreme Committee for the Delivery and Legacy (Supreme Committee), which is responsible for the staging of the 2022 World Cup, adopted Workers' Welfare Standards, and required that contractors working on its projects ensure full compliance with these standards by their subcontractors.<sup>1112</sup> Soon after, it

started establishing Workers' Welfare Forums to provide a "safe environment" for workers to raise concerns "such as accommodation, food, transport, and health and safety".<sup>1113</sup> It also sought BWI's engagement of BWI to conduct joint labour inspections and provide advice on the new forums.<sup>1114</sup>

Whilst members to Workers' Welfare Forums were initially appointed, following a sustained engagement with BWI, the Supreme Committee started organizing elections.<sup>1115</sup> Each elected worker now represents up to 200 colleagues and meets with Workers' Welfare Officers every month to raise any grievances, which officers (but not workers) are empowered to raise with management in case they remain unresolved.<sup>1116</sup> By October 2020, the Supreme Committee had organized 62 Workers' Welfare Forum elections in 32 worker accommodation sites, including 16,000 workers or some 57% of the Supreme Committee's total workforce.<sup>1117</sup> In parallel, it allowed ILO and ADLSA officials to observe elections and meetings as they prepared to start introducing joint worker-employer committees, provided under Qatar's 2004 Labour Law, in some companies.<sup>1118</sup>

Indeed, since elections of worker representatives to joint committees became possible following the issuance of a ADLSA decision in 2019 (No. 21 of 2019),<sup>1119</sup> the ministry and the ILO have supported the establishment of joint committees in 18 private companies and two public bodies. Some 107 workers' representatives were elected between July 2019 and August 2020 to represent almost 17,000 workers,<sup>1120</sup> in elections that were observed by ILO and ADLSA officials as well as representatives from global unions. Separately, the ILO/Qatar technical cooperation programme established five working groups for joint committees to discuss issues in the following sectors: maintenance and construction; hospitality, catering and cleaning; landscaping and agriculture; manufacturing; and transport.<sup>1121</sup> In parallel, private sector companies such as QDVC took their own initiatives to organize elections to Workers'

1110. Sandigan Kuwait Domestic Workers Association page on IDWF website

1111. Michele Scala, Smita Premchander, "ILO Evaluation: Regional Fair Migration Project in the Middle East", (30 June 2019); See also, ILO, "Fairway collaboration with the International Domestic Workers' Federation leads to strengthened domestic workers' association in Kuwait", (26 February 2020)

1112. Business and Human Rights Centre, "Qatar: Supreme Committee for Delivery & Legacy launches Workers' Welfare Standards, initiates internal and external monitoring for 2022 World Cup contracts", (6 March 2017).

1113. Supreme Committee for Delivery and Legacy, "Semi-annual Workers' Welfare Compliance Report", (September 2019): 32,

1114. Supreme Committee for the Delivery and Legacy, "SC shares Workers' Welfare Forum experiences with MoADLSA and ILO", (11 July 2019).

1115. BWI representative, 18 October 2020, Remote interview

1116. Supreme Committee for Delivery and Legacy, "Workers' Voice",

1117. ILO Governing Body, "Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 8.

1118. Supreme Committee, "SC shares Workers' Welfare Forum experiences with MoADLSA and ILO", (11 July 2019).

1119. Decision No. (21) Of 2019 by the Minister of Administrative Development, Labour, and Social Affairs Regulating the conditions and procedures of the election of workers' representatives to joint committees" (unofficial translation), (21 April 2019).

1120. ILO Governing Body, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 9

1121. ILO Governing Body, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 9

Welfare Committees in collaboration with BWI, whose representatives noted that they were “free from company interference” and that “the comments from elected worker representatives show[ed] that they are speaking freely.”<sup>1122</sup>

Although the mandate of joint committees and welfare forums is largely limited to discussing issues of workers’ welfare, in practice, according to a BWI representative who has attended committee meetings, any issue of interest to workers can be raised: “The law does not specify that they can negotiate their salaries but in practice they do. It’s pretty much open to discuss anything and everything that is of interest to the workers. Even issues from recruitment up to [contract] termination, they can bring it up.”<sup>1123</sup> The BWI representative also noted that over time, workers’ representatives have become more assertive and confident to raise grievances, although in the absence of strong legal protections, many, especially low-wage workers, still experience fear of retaliation when conducting their duties.

According to an ITUC representative, there has been a genuine engagement from the government and proactive outreach with regards to the establishment of joint committees.<sup>1124</sup> Both the ITUC and BWI representatives nevertheless agreed that, whilst a positive step forward, these committees are not a replacement for trade unions. These initiatives are currently also limited to large public and private companies, mainly involved in the delivery of major infrastructure projects, while small and medium enterprises, including those providing cleaning services and labour supply – where abuses are known to be most widespread – do not have any worker representation to date.

Whilst the Qatari authorities have officially allowed five global unions, including ITUC, BWI, ITF, UNI Global Union and IDWF, to operate in Qatar, their operations and

activities are limited to the terms outlined in the ILO/ADLSA cooperation agreement. As a result, they cannot organize trade unions and engage with workers on such issues, although they do deliver information sessions and leadership trainings.

Given legal restrictions on the right to strike, it was previously not uncommon for migrant workers who suspend their work or engage in protests to be arrested, detained and deported.<sup>1125</sup> In recent years, the authorities have in some cases taken a more consultative approach, with Qatari officials engaging directly with striking workers to discuss their demands.<sup>1126</sup>

All of this activity takes place against a backdrop where the rights to freedom of expression, association and assembly are severely restricted and where there is effectively no independent civil society.<sup>1127</sup> In 2015, BBC journalists reporting on issues related to migrant workers were arrested and detained.<sup>1128</sup> In 2016, the Qatari authorities ordered internet service providers to block Doha News, Qatar’s only independent news website at the time.<sup>1129</sup> In 2018, Qatari police interrupted a meeting of the Federation of Nepali journalists on press freedom and arrested two journalists and deported them following interrogation.<sup>1130</sup> A year later, the Doha Centre for Media Freedom was closed.<sup>1131</sup> In May 2021 civil society organisations and Uniglobal, the global union representing security guards, expressed alarm when Kenyan security guard Malcolm Bidali was detained by security agencies, in circumstances that civil society groups called said amounted to forced disappearance. Bidali had blogged about his experiences as a migrant worker, and a week before his arrest, gave a presentation to a large group of international civil society organisations and trade unions.<sup>1132</sup> At the time of writing in June 2021 he had been released from detention but his legal situation remained unclear.<sup>1133</sup>

1122. Institute for Human Rights and Business, “Realising workers’ rights in Qatar – a Conversation”, (21 October 2019)

1123. BWI representative, 18 October 2020, Remote interview

1124. ITUC representative, 14 October 2020, Remote interview

1125. See for example, ITUC, “Labour Rights in Qatar: An ITUC briefing for trade union delegates to the UN Climate Changes talks in Durban”, (undated). See also: ITUC, “Qatar arrests 100 striking workers for deportation”, (26 November 2014)

1126. Human Rights Watch, “Qatar: Migrant workers strike over work conditions”, (8 August 2019)

1127. Freedom House ranked Qatar as “not free” in its “Freedom in the World 2020 report”.

1128. BBC, “Arrested for reporting on Qatar’s World Cup labourers”, (18 May 2015)

1129. Human Rights Watch, “Qatar: Independent news website blocked”, (7 December 2016). A successor version of the site, under different management, was restarted in 2020.

1130. Amnesty International, “Qatar: Promises yet to be fulfilled, Amnesty International’s submission for the UN Universal Periodic Review, 33rd session of the UPR working group May 2019”, (February 2019): 6,

1131. Gulf Centre for Human Rights, “Qatar: authorities arbitrarily close Doha centre for Media Freedom”, (6 May 2019)

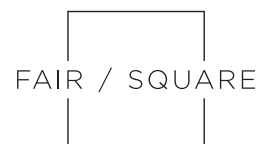
1132. See: UNI Global Union, “In Qatar, UNI demands the immediate and unconditional release of Kenyan security guard Malcolm Bidali”, (21 May 2021). See also: Amnesty International, Business and Human Rights Resource Centre, FairSquare, Human Rights Watch, Migrant-Rights.org, “Qatar: Kenyan Labour Rights Activist In Solitary Confinement”, (28 May 2021)

1133. Migrant-Rights.org, [Twitter post](#), (2 June 2021)

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