

Out of Pocket:

A 10 year review of paying Qatar's construction workers



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ABSTRACT

Since the 2010 decision for the men's World Cup to be hosted in Qatar, the Qatari government, with assistance from the International Labour Organisation (ILO), has taken a number of steps to improve the terms and conditions of work for migrant workers and, in particular to address the issue of late and non-payment of construction workers' wages. Although progress has been made, our 10 year review of the evidence indicates that effectiveness of the changes remains problematic and construction workers still struggle to recover their money. Lasting solutions to the problem of wage abuse require that serious attention is given to improving the flow of project funds and/or extending liability for the payment of workers' wages.

1. INTRODUCTION



In 2010, Qatar was awarded the right to host the 2022 FIFA World Cup. The awarding of the World Cup was controversial, bringing significant attention to this small, wealthy country in the Gulf that had gone through a period of tremendous growth and expansion over the previous 40 years. The eyes of the world would now be on Qatar like never before as it looked to deliver an enormous infrastructure programme, including the building of 8 new stadiums (**Box 1**) and where 90% of construction workers are international migrants from low wage economies in South Asia. Sources indicate that at least 30,000 migrant workers have been employed to build the stadiums alone.

BOX 1

The scale of construction involved in the Qatar World Cup

- New Doha Port: US\$ 8 billion
- New Hamand International Airport: US\$ 17 billion
- Expansion on New Doha International Airport: US\$ 11 billion
- New Qatar Rail System: US\$ 40 billion
- New Roads: US\$ 27,5 billion
- 8 New Stadiums: US\$ 16 billion

Source: https://www.ituc-csi.org/IMG/pdf/qatar_en_web.pdf

Migrant workers are attracted to Qatar by the prospect of higher wages that can be transferred to their families, typically from India, Nepal and Sri Lanka. But these workers usually have to pay costs and

fees to recruiting agents for the promise of a job in Qatar, for which they may have to borrow money. Once they have arrived in the country, already in debt, late payment of wages is one of the most serious issues they face. Research by Amnesty International with construction workers in Qatar in 2013 concluded that the impact of non-payment of wages is “*devastating for migrant workers*” who are forced to take on loans and had to pay back their creditors with rates of interest as high as 36% a year¹. A year earlier, Human Rights Watch² had highlighted some of the problems facing construction workers in Qatar which included: poor living and working conditions, low wages and failure to pay wages on time or in full, high fees charged by recruiting agents, false promises to workers and few avenues of redress.

Against this backdrop, in 2013 Engineers Against Poverty (EAP) embarked on a journey to gain a better understanding of the reasons for late and non-payment of wages and the ramifications on the lives and wellbeing of construction workers. EAP has expertise on labour issues in the construction industry and it was suggested that we visited Qatar to research the pressing issue of the treatment of migrant workers from the viewpoint of the industry. Our aim was to propose actionable measures that would improve current practices and end the poverty that thousands of workers face in the sector. Over a period of six months, we conducted in-depth interviews with ten international contractors operating as main contractors on projects in Qatar, as well as with some of their clients and senior government advisers.³ Our research complemented the much larger study by Amnesty International which was addressing the same issues from the viewpoint of the workforce and the small subcontracting companies employing them.⁴ Almost a decade after our work began, we take stock of our findings, assess how the authorities responded and look ahead to what is still needed.

1 Amnesty International, *The Dark Side of Migration: Spotlight on Qatar’s construction sector ahead of the World Cup*, 2013

2 Human Rights Watch, *Building a better World Cup: Protecting Migrant Workers in Qatar Ahead of FIFA 2022*, June 2012

3 The research in Qatar was funded by the International Migration Initiative of the Open Society Foundations. In addition to our interviews with contractors we interviewed five representatives of Project Management Consultants (PMCs) who were responsible for managing major projects on behalf of the Qatar Government. Discussions were also held with public institutions including the Qatar Chamber of Commerce, the Ministry of Interior (Human Rights Division), the Qatar Foundation (QF) and the National Human Rights Committee. Follow-up work was funded by the International Labour Organisation, Regional Office for Arab States in Beirut, leading to the publication of a White Paper, *Exploratory study of good policies in the protection of construction workers in the Middle East*, ILO White Paper, Dr. Jill Wells, 2018

4 See footnote 1

2. WHAT DRIVES LATE AND NON PAYMENT OF WAGES?



In April 2013, the Qatar Foundation (QF) published its *'Mandatory Standards of Migrant Workers Welfare for contractors and subcontractors'*, which formed the starting point for our interviews. The QF standards were based on Qatari law but went further than the law in extending to the countries of origin the prohibition on charging recruitment fees. The standards also required employers to reimburse workers for any fees they had paid in Qatar or abroad. Contractors we interviewed agreed that they should pay all recruitment fees and expenses and require the same of their subcontractors when they need to recruit workers from overseas, but policing the actions of agents and sub-agents in labour sending countries was not within their powers and they would be unable to prevent agents from charging workers fees. There were also practical difficulties to be overcome in reimbursing workers for fees already paid. The QF standards said very little about late payment of wages, which was the main concern of workers as well as a potential source of disruption and delay to projects and therefore a major risk to contractors and their clients.

It was clear from our interviews that the immediate cause of delays in the payment of wages was due to changes in the contractor's business model.⁵ In a search for greater flexibility in the employment of labour in Qatar, as elsewhere in the world, large construction companies that used to employ workers

⁵ Wells J. *Improving employment standards in construction in Qatar*, Engineers Against Poverty, 2014

directly, have devolved significant risk and responsibility for their workforce to networks of smaller businesses, through extensive subcontracting and further outsourcing of labour through intermediaries.

Attaining flexibility in labour supply is difficult in the countries of the Gulf where the sponsorship system does not allow workers to move easily between employers and where employment contracts are generally signed for two years. However, the past few decades had seen the development of manpower companies which specialise in providing temporary labour for the building trade. Acting contractually as the employer, they are able to side-step the restrictions imposed by *kafala* laws (**Box 2**)⁶ and move workers around among contractors as needed.⁷ A survey of the workforce composition of major construction companies in Qatar and UAE conducted by the Business and Human Rights Resource Centre in 2016 found up to 50% of workers to be employed by intermediaries supplying labour to contractors and subcontractors.⁸ The same proportion (50%) was working on projects building stadia for the World Cup in 2022, under the direction of the Supreme Committee for Delivery and Legacy.

The vast majority of intermediaries supplying labour to contractors and subcontractors were very small firms (many with fewer than 10 other employees) from other countries. Some of them were former migrant workers themselves. With few assets and limited liquidity, they are unable to pay wages until they have received payment from the subcontractor to whom they supplied workers, who may also still be waiting for payment from those above in the subcontracting chain.⁹

Despite denials by government advisers, clients do not always pay their main contractors on time which is often due to disputes over quality and/or progress of the work. At the same time, the accepted practice of contractors only paying their subcontractors when they themselves have been paid (widely

BOX 2

The Kafala system

Kafala is the Arabic word for the sponsorship system in which governments transfer responsibility for migrant workers to private citizens and companies. The system locks the foreign worker to a particular job and they cannot legally obtain other employment in Qatar or leave the country without the sponsor's permission.

The *Kafala* exists at the junction between law and custom, reinforced by legal contracts, typically for two years, which are signed by most workers. The *Kafala* sponsorship system (and the labour brokerage system it gave rise to) have been the focal point of a global human rights critique over the past few decades and Qatar has been exploring change in the system in response.

6 See Box 2

7 Buckley, M. *From Kerala to Dubai and back again: Construction migrants and the global economic crisis*, Geo forum 43(2) 250-259, 2012

8 Business and Human Rights Resource Centre, *On shaky Ground: Migrant workers' rights in Qatar and UAE construction*, 2016

9 Wells, J. *Protecting the wages of migrant construction workers, Part Two: Addressing the problem in the Gulf Cooperation Countries*, Engineers Against Poverty 2018

known as 'pay when paid'¹⁰) means that contractors in the upper tiers of subcontracting chains can legitimately hold back payment. This boosts their own cash flow whilst starving the lower tiers of funds. The immediate cause of late payment of wages was therefore traced to slow movement of interim payments for construction work down the subcontracting chain, which was lengthening with sub-subcontracting among labour suppliers.

The lack of funds to pay wages when they are due can also be used as an excuse for late payment. It is also likely that the employers may not be able to find work for their workforce all of the time, which is one of the risks that contractors pass down to the workers themselves, and one of the motivations for outsourcing labour.

It is also likely that the immediate employers can't pay because there is insufficient money in the contract for labour supply, in which case late payment will inevitably turn into non-payment. The predominant form of procurement of construction projects is international competitive bidding with contracts awarded to the lowest priced bidder and competition for contracts in the Gulf construction industry is intense.¹¹ This approach drives the business model especially with Qatari clients having a reputation for driving a hard bargain. The price is the dominant factor in contract awards, leading to prices being negotiated downwards. Competition to participate in projects as subcontractors or as labour suppliers at the bottom of the supply chain is likely to be even more intense, so reducing prices further in order to win contracts becomes a priority. In this context of intense competition, cheating workers of their wages may feel like an inevitability.

10 The practice of only paying subcontractors after payment has been received from the contractor in the tier above is known in the region as 'back to back'. It has grown in significance with the increase in subcontracting and the length of subcontracting chains. The practice has been outlawed in the UK and several other countries although it is still included as a legitimate practice in FIDIC subcontracting contract

11 DLA Piper/Meed, *Time for Change: Construction in the GCC reaches a tipping point*, 2018

3. OUR RECOMMENDATIONS



When workers have not been paid, the first step to recover their money is to have proof. A few of the contractors we interviewed in Qatar in 2013 were paying wages through electronic bank transfer directly into workers' bank accounts. This established a record of payment, and the workers could see what had been paid when they took their bank card to the ATM. However, most of the contractors we interviewed paid in cash, maintaining that workers were paid too little to be able to open a bank account. This led to our first recommendation:

1. The payment of wages through electronic bank transfer should be mandatory as this would provide workers with a record of payment and the evidence needed to prove when they have not been paid.

Recommendations 2, 3 and 4 were based on the main contractors revealing complaints about the poor quality¹² of subcontractors, recruitment agencies and labour supply companies. Contractors were also concerned about the extent of non-payment of wages and that they were not always aware when workers on their projects had not been paid. One contractor interviewed reported they intervened to pay the wages of workers who had not been paid by the subcontractor. Another said they would do so

¹² Poor quality was understood to include lack of integrity, reliability as well as poor employment standards

it if it was affecting the progress of the work. In light of the evidence, recommendations 2, 3 and 4 were as follows:

2. All public clients of the industry should follow the approach adopted by the QF in setting up a Workers Welfare Department to undertake regular welfare audits of contractors and subcontractors and aim to work only with contractors who comply with the standards.
3. Public sector clients should investigate measures to improve the flow of funds down the subcontracting chain and consider contract clauses requiring main contractors to pay workers employed by subcontractors if they have not been paid.
4. A hotline should be set up to raise the alert when wages have not been paid and this should be directed to both the main contractors and the client.

We also felt strongly that policing the activities of contractors, subcontractors and labour agencies could not be left entirely to the business sector and that the government should take a greater lead. Our final three recommendations were directed at the Qatari government as follows:

5. The Labour Department should be strengthened so that government can play a bigger role in enforcing its own laws and regulations and clamping down on companies that flout the law and abuse the workers.
6. The Government of Qatar should also consider measures aimed at guaranteeing the issue (by employers) of Non-Objection Certificates (NOCs) to workers who wish to change their employment as this could provide a powerful incentive to contractors and subcontractors to improve their standards or risk losing workers to better employers.
7. The Government of Qatar should leverage its position with countries from where the labour originates and, whose economies are heavily dependent on remittances from migrant workers to pressure the governments to address corruption and exploitation in the recruitment business.

4. SUPPORT FOR THE RECOMMENDATIONS



Following publication of our research, we convened a Roundtable in Doha in January 2014 with contractors, clients and other key stakeholders in the construction industry. The participants noted that two key problems need to be addressed to resolve late payment of wages:

- a. slow payment from the client to the main contractor and
- b. the issue of *'pay when paid'*.

Both are common practice in Qatar. The meeting endorsed our seven recommendations, adding that public sector clients should make clear that *'pay when paid'* is not acceptable practice.

Further support for the recommendations came from an independent review by a leading international law firm, DLA Piper, of the legislative and enforcement framework of Qatar's labour laws.¹³ Published in April 2014, the review had been commissioned by the State of Qatar in October 2013, in the context of numerous allegations made regarding the conditions for migrant workers in the construction sector. In drafting the review, the authors considered a number of official and legal documents as well as the reports by Amnesty International, Human Rights Watch and EAP whose report was attached as an annex.

¹³ DLA Piper *Migrant Labour in the Construction Sector in the State of Qatar*, Qatar, April 2014.

The DLA Piper review endorsed our recommendation to pay wages through bank transfer and went further in calling for the monitoring of electronic wage payments to facilitate and expedite the detection of non-payment.

Concern was also expressed about the process of paying project funds which *“needs re-visiting to ensure that there is no undue delay that would impact on the payment of wages to migrant workers through subcontracting entities or be used as an excuse for delay in payment.”* A reduction of the payment period in contracts from 90 to 60 days was recommended with sanctions on late payment throughout the chain of contracting. The proposed sanctions included suspension of contracts by subcontractors (the right to stop work/withdraw labour) plus financial penalties for late payment in the contract of the lead contractor. Sanctions were also called for on all immediate employers/sponsors for failure to pay wages.¹⁴

¹⁴ The review also recommended the proposed Workers Welfare Standards (WWS) that had been developed by the Qatar Foundation (QF) but queried what contractual enforcement mechanisms were planned to ensure implementation and compliance through the contractual chain. It called for an “appropriate contractual enforcement mechanism” but didn’t make any suggestions as to what that might be.

5. ACTIONS TO IMPROVE THE CONDITIONS FOR MIGRANT WORKERS



5.1 AN ELECTRONIC WAGE PROTECTION SYSTEM

The endorsement of DLA Piper gave real impetus to our recommendation for the introduction of an electronic Wage Protection System (WPS) albeit with mixed results. In June 2014, the Governor of the Qatar Central Bank (QCB)¹⁵ issued a circular which required all banks to accept employee WPS accounts, regardless of their income. Some 17 banks were subsequently approved for participating in the WPS. Testing of the system began in early 2015 and all companies governed by the Labour Law (Qatar's body of laws and regulations on employers and employees) had to be registered by November. The legal framework for the WPS came into effect in February 2015 with the passing of a law amending Article 66 of the Labour Law (14) of 2004. The requirements of the WPS are as follows:

- Workers are entitled to wages either monthly or fortnightly, depending on their contract
- Wages are paid in Qatari Riyals
- Employers are required to transfer wages within 7 days of their due date, through the WPS
- Employers are not deemed to have paid their workers unless this is done through the WPS

¹⁵ The Qatar Central Bank (QCB) is often thought to be the initiator of the WPS but according to the Assessment of the WPS by the ILO in 2019, the directive actually came from the Ministry of Administrative Development, Labour and Social Affairs (MADLSA) after study of the systems in place in other Gulf countries

Three years after the WPS had been proposed, a major assessment was undertaken by Professor Ray Jureidini on behalf of the ILO Project Office in Qatar¹⁶ which provided evidence of a sophisticated system of wage payments. Employers are central to the operation of the system based on the steps in **Box 3**.

BOX 3

Steps that provide evidence of wage payments

- Each month the employer is required to submit a Salary Information File (SIF) to their bank, which is an excel spreadsheet with the details of remuneration for each employee.
- Various checks are carried out on the data and if accepted, it undergoes a financial audit to verify the employer's bank account and whether there are sufficient funds in the account to cover the payment of salaries.
- If passed, the system automatically distributes salaries from the employer's bank to the bank accounts of the employees who are notified by SMS of the amounts paid, but not the details as banks were not yet issuing pay slips.
- The same information is automatically and simultaneously transmitted to the QCB and the WPS unit (WPSU) under the Labour Inspection Department (LID) at the Ministry of Administrative Development, Labour and Social Affairs (MADLSA) for monitoring and follow-up on payment discrepancies and any non-payment of wages.

At the heart of the WPSU monitoring system are the '*checkers*' and '*blockers*', key personnel at the forefront of detection of WPS non-compliance and subsequent action. The checkers respond to possible violations by seeking additional information from employers, while the blockers are labour inspectors with authority to impose sanctions on the recommendations of checkers. There is also a data reporting team that prepares a monthly report for MADLSA on the number of blocks and the reasons for them.

At the time of the assessment by Professor Jureidini, 50,000 enterprises were registered with the WPS covering 1.3 million workers. Almost three quarters of these enterprises - 39,000 enterprises - were being penalised by limitations placed on new and existing work permits. This showed a very high rate of non-compliance at a time when a substantial population of workers was still not covered by the WPS, particularly those employed by enterprises with fewer than 10 workers, which were most likely to default. Furthermore, the system was only detecting non-payment of wages and was failing to pick up other important types of abuse. Non-payment and under-payment of overtime remained invisible to the system.

On a more positive note, the assessment concluded that that the WPS had led to a quicker payment of wages and reduced some wage abuses. The WPSU makes data available for the Labour Relations Department and the Dispute Settlement Committees and had enabled a fairer and more transparent

¹⁶ International Labour Organisation, *Assessment of the Wage Protection System in Qatar*, ILO Project Office for the State of Qatar, Doha, June 2019

resolution of wage disputes. Nonetheless, the report set out 14 recommendations to improve the system. They included extending coverage of the WPS, stronger penalties for non-compliance to be imposed more swiftly, more detail on payment and underpayment and the automatic issue of payslips by the banks.

According to the author, all recommendations were accepted by the government and the ILO and subsequent developments suggest that most were eventually acted upon. The annual progress report from the ILO Project Office in 2020¹⁷ showed considerable strengthening of the WPS. From 2019 to 2020, coverage increased from 75% to 96% of eligible workers and from 74% to 94% of eligible enterprises. The labour law for wage-related violations has been amended to increase the maximum prison sentence from one month to twelve months, while maximum fines have been increased from 6,000 to 10,000 riyals. In addition, blocks on government services are now imposed automatically when violations are detected among companies that are deemed as 'high risk', while inter-ministerial cooperation is being enhanced to allow for improved tracking of serious violations that the WPS unit refers to the police.

5.2 DISMANTLING KAFALA RESTRICTIONS

It has been difficult to establish clear links between improvements in the employment conditions of migrant workers and the remaining recommendations. However, in 2020 the most problematic and restrictive elements of the *kafala* sponsorship system were dismantled, including removing the requirements for workers to obtain exit permits to leave the country, and no-objection certificates (NOCs) to change employers, as per recommendation 6 of our report.

The impact of these changes was immediate with over 300,000 workers (including 7,000 domestic workers) changing jobs between September 2020 and March 2022. However, the ILO itself notes that many workers still face challenges in leaving their employer. This is partly due to misinformation on the procedures and regulations around labour mobility, but also many cases of employers retaliating against workers wishing to leave. There is strong opposition to removing the NOC from small companies represented by the Chamber of Commerce because they fear that this gives too much power to the workers who may decide to leave, and the employers would lose the benefits of having invested in their training. There is clearly a need to communicate how the *kafala* reforms can be beneficial for enterprises and the economy. Contactors we interviewed in 2013 believed that abolishing the NOC could create a powerful incentive for improved employment practices, while freeing up the labour market would also benefit the industry in the longer term.

5.3 A NEW MINIMUM WAGE

In March 2021, Law No. 17 of 2020 came into force establishing a basic non-discriminatory minimum wage of 1,000 riyals per month with minimum allowances for food and accommodation of 300 and

17 International Labour Organisation, Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO, ILO Governing Body, October 2020

500 riyals respectively. The annual progress report from the ILO Project Office for 2021¹⁸ revealed that a new version of the Salary Information File (SIF) that employers must submit includes a more detailed breakdown of the wage, including specific fields for allowances and deductions, so it is better able to detect a broader range of wage-related violations, notably on overtime.

5.4 ESTABLISHING A COMPLAINTS SYSTEM

In 2021, the government established an online platform for workers to submit complaints anonymously including complaints on behalf of multiple workers. Between October 2020 and October 2021, MADLSA received 24,650 complaints both online and in person. The top three causes of complaint concerned non-paid wages, end of service benefits, and/or annual leave not being granted or paid.

5.5 A WAGE GUARANTEE FUND

The promised 'wage guarantee fund' to be known as the '*workers support and insurance fund*' became operational in 2020. It had been established by law No. 17 in November 2018 and was to be funded by 60% of the fees from work permits and renewals. The fund aims to support, ensure and provide care for workers, guarantee their rights and provide a healthy and safe working environment for them. It was tasked with '*paying the workers' benefits, which are settled by the labour dispute settlement committees, and subsequently reclaiming those amounts from the employer*' (Law number 17 of 2018, Article 2).

By March 2022, the Fund had disbursed a total sum of QAR 358 million (almost US\$ 100 million) to 35,000 workers (equivalent to US\$ 10,230 per worker).¹⁹ However, there is evidence that not all workers whose case was approved by the dispute settlement committee have received payment. It is also not known how much of the money paid out has been collected from employers.

18 International Labour Organisation, Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO, Governing Body: Pillar Two, Enforcement of Labour Law and access to justice, 2021

19 https://www.ilo.org/beirut/countries/qatar/WCMS_760466/lang--en/index.htm

6. ASSESSING THE EFFECTIVENESS OF THE CHANGES



Despite progress, the effectiveness of the changes has been questioned with considerable problems in their implementation. A critical report by Amnesty International²⁰ acknowledged that the Qatar Government had addressed the issue of wages by strengthening the WPS, operating the '*workers support and insurance fund*' and introducing stricter penalties for employers who breach the labour law. But these actions had not resulted in an end to wage theft in Qatar, citing instances of construction workers not having been paid and still waiting for payment.

What is staggering is the scale of the abuse. Amnesty International was informed that since they were established in March 2018, the committees for the settlement of labour disputes (known as Labour Committees) had issued 10,237 rulings on cases of workers not having been

paid the wages owing to them. Almost 9,000 more penalties for non-compliance were issued in 2020 and the high number of cases was continuing to lead to long delays. However, this was the year of the pandemic when the committees did not meet for a significant time.²¹ The 2021 ILO progress report acknowledged that a large backlog of cases had been built up but was gradually being cleared.

20 Amnesty International, *Reality Check 2021: A Year to the 2022 World Cup: the state of workers' rights in Qatar 2020*

21 The treatment of construction workers during the pandemic is not the central theme of this report, but a study by New York University/Stern published in March 2022 and written by Zahra Khan noted that workers cited COVID-19 as a key factor in many cases of labour abuse and non-payment of wages in 2020. Some workers were terminated when construction work stopped or companies closed down, often without wages having been settled, while others stayed in Qatar but without work or pay. The report criticises the Qatar government for its ineffective and contradictory response. For example, in May 2020 the government allowed companies to change employees' contracts to allow unpaid leave, lower salaries or premature contract termination and the following month it instructed all state funded organisations to reduce spending on non-Qatar employees by 30% by means of lay-offs or paycuts. On the other hand, it did also offer loans so that companies could pay salaries owing to dismissed workers, although many companies chose not to take up the loans, preferring to deny workers' wages than to go into debt. The NYU/Stern report praises the government's excellent public health campaign which provided migrants with free and adequate health care during the pandemic, including vaccinations, but regrets its apparent indifference to workers' economic problems which rubs off on the practice of businesses. However, the report does not mention the commitment of the government to protecting wages through the development of the WPS and the role it plays in providing proof of non-payment so that lost wages might be recovered at a later date (NYU Stern Center for Business and Human Rights, *Still Struggling: Migrant Construction Workers in Qatar During the Pandemic*, March 2022).

The most significant issue raised by Amnesty International was not just that migrant workers have a right to be paid what they are owed on time, but that swift remedial action has to be taken when this does not happen. Both Amnesty International²² and Human Rights Watch²³ have provided case studies of workers who have won their cases at the committees but have still struggled to recover their money when companies would not or could not pay the amounts ordered. It was unclear under what circumstances workers are eligible to collect money from the Fund and Amnesty International called for more transparency as some workers were receiving their dues from the Fund whilst others were not.

In response to a question from EAP on this issue in March 2022, Max Tunon, the head of the ILO project office in Qatar, replied that *“the Fund is not yet functioning systematically, and so workers are not yet being paid based just on the decisions of the Dispute Settlement Committee”*. It was not until August 2022 that we learned more about the procedures for disbursing entitlements from the Fund. An unofficial translation of the document entitled *Decision of the Chairman of the Board of Directors of the Workers’ Support and Insurance Fund No. (2) of 2022 on the Provisions and Procedures for Disbursing Workers’ Entitlements* reveals that to obtain disbursements from the Fund, workers must apply in writing with the relevant documentation showing the final decision of the dispute settlement committee as well as the final judgement issued by a competent court. Swift payment will not be possible if workers have first to go to court which may entail months of delay. The maximum reimbursement is also being limited to three months’ pay, up to ceiling of 20,000 riyals.

The above document also reveals that there are very real difficulties in getting immediate employers to pay-up when the dispute settlement committees have shown that workers are entitled to wages that have not been paid. This may be because the immediate employers will not pay but given that there are now stiff penalties for not paying, it is more likely that they cannot pay because they do not have the funds, which could be because they have not themselves received payment for their work. The document makes clear that the Fund will work with the labour inspectorate to pressure the employer to reach an amicable settlement with the worker and will undertake continuous follow-up regarding the ability of business owners to fulfil their obligations to pay labour entitlements. However, once an amicable settlement has been reached, even if not yet implemented, the application filed by a worker to receive payment of entitlements shall be dismissed and workers will be unable to receive any money from the Fund.

22 Amnesty International, *Reality Check 2021: A Year to the 2022 World Cup: the state of workers’ rights in Qatar 2020*

23 Human Rights Watch, *Qatar: Wage abuse action shortchanges workers*, 22 December 2020

7. CAN JOINT LIABILITY SOLVE THE PROBLEM?



In the Assessment report²⁴ on the WPS Professor Jureidini recommends “a ban on the practice known as ‘pay when paid’; and the introduction of a joint liability scheme to ensure that all workers on a project are paid on time, in full and through the WPS”. This recommendation was specifically to address unscrupulous practices in the construction industry where the slow movement of project funds down the subcontracting chain (due to the common acceptance of ‘pay when paid’) means that lower tier subcontractors (and suppliers of labour) may not have money to pay when wages are due, even if they are identified and penalized by the WPS.

Extending liability up the subcontracting chain and making the contractor (the user of the labour) and eventually the main contractor jointly liable with the immediate employer for the payment of wages would provide an additional company to call upon when wages have not been paid and a further source of funds to re-stock the workers support and insurance fund. Moreover, the threat of potentially having to pay wages can make contractors much more careful in their choice of subcontractors and labour suppliers, as well as more willing to undertake checks to ensure that the wages of all workers on a project are being paid on time.

²⁴ International Labour Organisation, *Assessment of the Wage Protection System in Qatar*, ILO Project Office for the state of Qatar 2019, Recommendation No. 4

Extending liability for the payment of wages beyond the immediate employer in subcontracting chains in the construction industry dates back to the twentieth century in Brazil and several countries in Europe. This is also the direction in which policy has been moving in many other parts of the world, including China and the US. It was a major recommendation of the EAP follow-up work published as an ILO White Paper *“Exploratory study of good policies in the protection of construction workers in the Middle East”*, ILO Regional Office for Arab States, 2018.

All recommendations in the Assessment report were said to have been accepted by the ILO and the Qatar Government. But in response to a question about this recommendation the ILO replied: *“at present, there is limited movement on the recommendation on joint liability. The Fund is still being replenished through contributions from the cost of the visa, as per the Law.”* There is also no evidence of steps to ban ‘pay when paid’ or other measures that would improve the flow of project funds, such as a reduction in the payment period in contracts from 90 to 60 to 30 days, accompanied by sanctions on late payment, as recommended by the DLA Piper (2014) report that had been commissioned by the Qatar Government.²⁵

One major client that appears to have accepted responsibility and, in a few cases has actually paid wages to workers on its construction projects is the Supreme Committee for Delivery and Legacy (SC), responsible for the construction of stadia and other infrastructure for the World Cup in 2022. In the next section we assess some of the key lessons from the SC work.

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25 A second report by DLA Piper, together with MEED, strongly endorsed a ban on *pay when paid* but considered it would take time for such a measure to be accepted in the region. DLA Piper/Meed, *Time for change: Construction in the GCC countries reaches a tipping point*, 2018

8. LESSONS FROM THE SUPREME COMMITTEE FOR DELIVERY AND LEGACY



Since Qatar won the bid to host the 2022 World Cup, the SC has developed a series of principles and standards for workers welfare that were incorporated into all contracts between the SC and its contractors. The standards are in line with Qatari law and international best practice and set clear guidelines for the rights of workers throughout the entire chain of contracting. The contractors are required to pay wages and ensure that their subcontractors and Other Contracting Parties (OCPs)²⁶ pay wages according to the WPS. But the standards go well beyond Qatari Law in also requiring contractors to take out insurance premiums for non-work related illness, provide annual air travel for workers to their home country, as well as reimbursing workers for recruitment fees if they cannot prove that they have paid all costs of recruitment themselves, under the Supreme Committee Universal Reimbursement Scheme, SCURS.²⁷

²⁶ OCP is defined as Other Contracting Party to a contractor or subcontractor, but it understood to refer to a company supplying labour

²⁷ The government prohibits charging migrants' recruitment fees but has been much criticised by international commentators for its failure to specify that employers are legally obliged to cover these costs.

These standards were incorporated into the tendering process and the SC established a four tier auditing system to ensure that they are adhered to. This meant that companies bidding for contracts were well aware of the standards expected and of the auditing system when bidding.

The SC has issued annual reports from 2015 setting out the findings of the audits, achievements and failures and lessons learned in implementing the standards. These reports reveal a long, hard struggle to enforce compliance as summarised below.

ANNUAL REPORT	KEY FINDINGS
2015	The SC recognized that the Qatari market relies extensively on the use of labour supply companies in a highly decentralised business model with extensive subcontracting. Audits were set up to oversee procurement processes and one third of the companies failed the audits and self-assessment during pre-tender. ²⁸
2016	Between January 2016 and February 2017, 35 out of 126 OCPs failed at pre-tender inspection, 28 were demobilised, 67 put on a watch list and 30 brought to the attention of MOADLSA. ²⁹
2017	SC expressed its aim to ensure that 65% to 70% of workers are mobilised by contractors and Tier-1 OCPs only, thus eliminating issues faced with tiers lower down the supply chain. ³⁰
2018	The SC reported difficulties in OCPs meeting standards which was further compounded by short contracts, typically less than six months, limiting the time in which the SC can help. SC external auditor, Impactt, agreed that the instances of non-compliance increase at the lower levels of the subcontracting chain and confirmed also that the SC had worked to eliminate Tier 3 OCPs. ³¹
2019	Challenges continue to be identified, including resistance among some contractors and OCPs against complying with the additional remuneration requirements (annual flights home, allowances for air travel, insurance costs for non work-related illness, SCURS). ³² The SC noted on-going challenges in the timely payment of wages. In some circumstances the SC used its influence to encourage the main contractors to take ownership to help resolve issues with subcontractors by providing direct salary payment to workers. ³³
2020	More examples were identified where the SC intervened to persuade main contractors to pay overdue wages to workers employed by subcontractors. In one case workers had close to seven months of outstanding salaries due to cash flow issues faced by the contractor. ³⁴

28 https://www.workerswelfare.qa/sites/default/files/reports_item/field_document/first-annual-workers-welfare-progress-report-en-2015.pdf

29 https://www.workerswelfare.qa/sites/default/files/reports_item/field_document/second-annual-workers-welfare-progress-report-en-2017.pdf

30 https://www.workerswelfare.qa/sites/default/files/reports_item/field_document/third-annual-workers-welfare-progress-report-en-2018.pdf

31 https://www.workerswelfare.qa/sites/default/files/reports_item/field_document/impactt-ltd-compliance-report-en-2019.pdf

32 https://www.workerswelfare.qa/sites/default/files/reports_item/field_document/fifth-annual-workers-welfare-progress-report-en-2019.pdf

33 https://www.workerswelfare.qa/sites/default/files/reports_item/field_document/impactt-ltd-compliance-report-en-2020.pdf

34 https://www.workerswelfare.qa/sites/default/files/reports_item/field_document/sixth-annual-workers-welfare-progress-report-december-2020-en.pdf

We may conclude that in 2014 the SC followed pretty closely some of the recommendations for public sector clients put forward in our initial report. They adopted the approach of the QF in setting standards for the recruitment and employment of workers in the construction industry and setting up a Worker Welfare department (WWD) to undertake regular welfare audits of contractors and subcontractors with the aim of only working with those companies that were capable of complying with the standards. In order to ensure that its standards were adhered to throughout the chain of subcontracting the SC systematically reduced the tiers of subcontractors, and thereby the size and spread of the subcontracting chain. These actions were, in effect, changing the business model back to more direct employment.

The reduction in the sub-subcontracting among labour suppliers would have cut out from their supply chain the smaller companies that were finding it hard to meet SC standards, as well as shortening the distance that project payments had to travel to reach the immediate employers of the workforce. On both counts it would have reduced the risk of wages not being paid because immediate employers had no cash. But late payment of wages still occurred due to late payment of invoices from the main contractor to tier one and tier two subcontractors. This indicates that the SC had failed to take action to ensure swift payment of project funds. As a major client they could have done this by setting and enforcing the schedule for payment of project funds throughout the subcontracting chain.

That the SC seemed to be surprised when workers employed by a subcontractor in direct contract with the main contractor had not been paid for seven months, also suggests neglect of our third recommendation of a hotline to the main contractor and the client to raise the alert when wages had not been paid. This is something that should have been provided by the WPS. However, while there was no law making the SC liable for the payment of workers' wages, they had to intervene swiftly to pay the workers through the main contractor when the problem was brought to their attention.

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9. CONCLUSIONS: WHAT HAS BEEN ACHIEVED?



The Qatar Government, with assistance from the ILO, has taken four key steps to improve the terms and conditions of work for migrant workers and, in particular to address the issue of late and non-payment of workers' wages.

- a. As recommended in our initial report, the Labour Department has been strengthened and the government is playing a major role in attempting to enforce its own laws and regulations, rather than leaving it to the business community.
- b. The WPS protection system has been steadily expanded and improved, with the introduction of minimum wages and benefits. The WPS provides a record of the hours that workers have worked and the wages that are due to them. If there is insufficient money in the account of the immediate employer of the workers, checks are made, and stiff penalties are imposed. Penalties for failure to pay wages include the withdrawal of visas (or failure to renew visas) which give foreign workers the right to work in Qatar. In effect, this is restricting or denying employers the right to sponsor foreign labour if they do not have sufficient funds to pay wages to their workers when they are due. These penalties are rational and should be strictly enforced.

- c. Another significant achievement on the part of the government has been action to dismantle the *kafala* sponsorship system by withdrawing the right of sponsors to refuse the issue of a No Objection Certificate to workers who wish to leave their current employer. Workers are now more able to change jobs, leave a bad employer or leave the country if they are not paid the wages owing to them. While not yet working smoothly, this is clearly the key to freeing up the labour market and improving employment practices and the prospects for migrant workers.
- d. The government has also taken serious steps to see that workers are reimbursed when they have not been paid the wages due to them by establishing the 'workers support and insurance fund' which was set up and is replenished from the money paid for visas. There has been strong pressure from human rights organisations that workers should be paid swiftly from the Fund, as soon as the dispute settlement committee publishes its findings and confirms the amount of money that is owing, even before chasing the employer for payment. However, recent decisions on the procedure for disbursing entitlements from the Fund mean that swift and automatic reimbursement will not be possible as workers have first to prove their claim in a court of law before seeking reimbursement.

This was a correct decision. Paying workers their wages directly from the Insurance Fund would be denying the functioning of the market, with serious implications for allowing employers to get away with not paying. Instead of paying workers directly from the Fund, the WPS will work with employers to agree a settlement and follow up with them to ensure it is implemented.

This brings us to the key question of where the money is to come from?

While '*pay when paid*' may be the custom in Qatar, to ensure that employers have the funds to pay when wages are due requires that the flow of project funds down the subcontracting chain can and should be regulated by government, or by its major clients, which is something that the government would seem so far to have failed to do. There are two options the Government of Qatar should consider either of which would help to address the problem.

- a. Reduce the payment period from 90 to 60 days as the bare minimum with a preference for 30 and even 15 days to help improve the flow of funds, with sanctions on late payment throughout the chain of contracting. Sanctions should include, in addition to stiff financial penalties, the right of contractors to stop work and workers to withdraw their labour when they have not been paid.
- b. Place liability for the payment of wages upon those who still have the funds to pay, namely the contractors and subcontractors who have benefitted from the labour but have not yet paid their suppliers.

While it may currently seem unlikely that either course of action will be taken voluntarily in Qatar in the immediate future, steps in this direction may still be taken by the WPS. The WPS has committed to working with employers who have failed to pay wages in order to agree a settlement with the workers

and ensure that it is implemented. If the WPS ‘checkers’ find that employers have been unable to pay wages because they have not received payment from the companies to which they supplied labour, then the obvious (in fact the only) way forward would be to require that they be paid, not by the insurance Fund, but by the users of the labour.

Come January 2023, the World Cup in Qatar will be over but the ILO project office in Qatar will continue its important work until the end of 2023. It is critical that it finds lasting solutions to the problem of wage abuse, not just in construction but in other sectors of the economy.



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