



BUILDING A WORLD CUP ON THE BACKS OF OTHERS

EXPLOITATION AND ABUSE OF MIGRANT WORKERS – IS QATAR LIVING UP TO ITS INTERNATIONAL OBLIGATIONS?

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INTRODUCTION AND OVERVIEW

1. Problem statement/introduction

In 2010, the International Trade Union Confederation conducted risk assessments throughout the Middle East focusing specifically on the human rights records and labour practices of the Gulf States. It was found that many of these countries were fundamentally “slave states” and that their human right records and workers’ rights were devastating.¹

Over the past six years many studies have been conducted focussing on the exploitative labour practices in Qatar, especially since Qatar was awarded the bid to host the 2022 World Cup Football Tournament. These studies and investigations portrayed an ugly picture of practices of labour exploitation and forced labour, which at times even resulted in deadly causalities, resulting into a worldwide outcry and numerous attempts to urge the Qatari Government to change their Sponsorship system² and Labour Laws.³ It has even gone as far that certain labour and human right activists has called upon FIFA to withdraw the tournament from Qatar. Despite the magnifying glass on Qatar it has been found that these exploitative labour practices are just getting worse every day.

There are nearly five migrant workers for each Qatari citizen, making up 94 percent of the Qatari workforce⁴. Migrant workers from Nepal, Sri Lanka, Bangladesh and many other countries are being lured to Qatar with false promises by recruitment agencies. They are drawn into a highly exploitative system that some regard as forced labour practices. Some of these practices include enormous recruitment fees, wherefore most of these migrant workers have to take out additional loans in their home country, contract substitution, late or non – payment of wages and passport confiscation. All of these practices are prohibited by Qatar’s Labour Laws.⁵

¹ (Montague, 2013)

² Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

³ Labour Law of the State of Qatar – Law No 14 of 2004

⁴ (Andrew M Gardner, 2013)

⁵ (The Legal Framework of the Sponsorship Systems of Qatar, Saudi Arabia and Kuwait: A Comparative Examination, 2014)

The Qatari Sponsorship Law is of grave concern to the outside world due to its restrictive nature and its facilitation in forced labour practices, it regulates the sponsor – employee relationship which makes it very difficult for a migrant worker to leave an abusive employer.⁶

The main objective of this thesis will be to establish whether Qatar is living up to its international obligations by not acting upon the alleged exploitative labour practices. Qatar being a signatory state to both the International Labour Organization and the Protocol to Prevent, Suppress and Punish Trafficking of Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime, brings forth certain minimum standards and requirements Qatar needs to live up to.

2. Research question

The questions that ultimately needs to be answered is whether Qatar is living up to its international obligations, particularly under the ILO Conventions and the Human Trafficking Protocol, in such a way that it illustrates their commitment to address the (alleged) exploitative practices involving migrant workers and; to what extent FIFA has a responsibility to address these exploitative practices?

3. Thesis outline and research approach

This thesis will focus on the abusive and exploitative labour practices experienced by migrant workers in Qatar and to what extent Qatar has implemented its international obligations into its national laws. The role and responsibility of FIFA, if any, in addressing these issues will also be discussed. The first chapter will focus on Qatar's labour practices with specific focus on the group of individuals referred to as migrant workers, their background and why and how they end up in Qatar. The famous Kafala System, practiced by most Middle Eastern countries, will be discussed briefly, as this system is seen as the basis for the exploitative practices in Qatar. The chapter will be concluded by addressing the various problems and exploitations suffered by these migrant workers.

The second chapter will focus on the international legal obligations Qatar has towards its migrant workers. The focus of this chapter is to see under which circumstances the labour

⁶ International Labour Office - GB.326/INS/8, pg 1.

practices in Qatar amount to forced labour under the International Labour Organisations (ILO) Conventions (Qatar is a signatory state to the following conventions: ILO Convention 29⁷, ILO Convention 105⁸ and ILO Convention 81⁹) and under which circumstances the forced labour practices can be considered so exploitative that they amount to human trafficking under the Human Trafficking Protocol.¹⁰

After the detailed discussion regarding Qatar's international obligations the focus will be placed on the national instruments, more specifically Law No 15 of 2011 Combatting Trafficking in Persons, Qatar's Labour Law¹¹ as well as Qatar's Sponsorship Laws.¹² Chapter three will focus on how Qatar has implemented their international obligations, as discussed in chapter two, into their domestic laws. Various provisions will be referred to and discussed with reference to the actual practices in Qatar. After an international outcry regarding the limitations of Qatar domestic laws in the enjoyment of everyday labour rights for migrant workers, the Qatari Government has made and announced certain amendments that will also be discussed. The chapter will end off with a brief discussion regarding complaints brought against the Government of Qatar for forced labour practices.

The awarding of the 2022 World Cup Football Tournament, to Qatar, has shed the light on the abusive and exploitative labour practices that millions of migrant workers are exposed to. Chapter four will be a brief discussion into the initiatives taken by the Qatar 2022 Supreme Committee for Delivery and Legacy in addressing these practices and also what FIFA has done in addressing them.

The final chapter will conclude the findings discussed in the thesis and list certain recommendations made to Qatar.

⁷ International Labour Organisation – Forced Labour Convention C029 of 1930

⁸ International Labour Organization – Abolition of Forced Labour Convention C105 of 1957

⁹ International Labour Organisation – Labour Inspection Convention C081 of 1947

¹⁰ Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000

¹¹ Labour Law of the State of Qatar – Law No 14 of 2004

¹² Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

4. Limitations of the research

In order to establish if Qatar is living up to its international obligations to address exploitative labour practices, only the relevant international legal instruments will be discussed, namely the Human Trafficking Protocol¹³ and the ILO Conventions, as well as the relevant national instruments relating to the obligations set out in the international instruments and specifically focussing on the labour practices in Qatar, namely Law No 15 of 2011 Combatting Trafficking in Person, Qatar's famous Sponsorship Law¹⁴ as well as Qatar's Labour Law.¹⁵

With regards to the Trafficking Protocol, the focus will only be on labour exploitation as a ground for trafficking and therefore sexual exploitation, slavery and servitude will not form part of the discussion.

5. Methodology of the research

The research is conducted based on a legal analysis of the national and international instruments described in the previous section and is completed by making use of secondary academic writings, various reports by civil society activists, reports from the International Labour Organization as well as relevant websites. This thesis has thus been completed using mainly desk review of primary and secondary sources.

¹³Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000, S, Treaty Doc. No 108 – 16 (2004)

¹⁴ Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

¹⁵ Labour Law of the State of Qatar – Law No 14 of 2004

CHAPTER 1. BACKGROUND ANALYSIS OF THE CONDITIONS IN QATAR

This chapter will focus on the exploitative labour practices, as a background analysis, of the conditions experienced in Qatar? The first point of focus will be the background of the migrant workers and what makes this specific group of individuals vulnerable to abuse/exploitation. The famous Kafala system (sponsorship system) will be discussed in detail as this system is seen as the base stone for the exploitative practices in Qatar. Thereafter the focus will shift to the problems faced by migrant workers, which circumstances they are exposed to and under which conditions they are expected to work.

1.1 Victims backgrounds

Hundreds and thousands of male workers migrate to Qatar, often from impoverished backgrounds. They travel to Qatar with the hope to support their families, gain stable employment and in some cases they try and escape violence or instability at home. The five major labour sending countries to Qatar are Nepal (39%), India (29%), Sri Lanka (9%), Bangladesh (9%) and Philippines (5%).¹⁶

¹⁶ (Andrew M Gardner, 2013, p. 4)

The vast majority of migrant workers recruited for work in Qatar represent a viable threshold between “unskilled” and “low – skilled” labourers and is referred to as low – income workers,¹⁷ reportedly earning an average annual salary of QR1 061 (US\$291).

1.2 The Kafala system

The word Kafala means “sponsorship” in Arabic. In Qatar the Kafala system, regulated under the Sponsorship Law,¹⁸ is known as a migrant labourer monitor system. Kafala governs the recruitment, employment, and residency of migrant workers of all economic class and profession. It requires that all unskilled migrant workers are “attached” to an in-country sponsor who is personally responsible for the migrant workers visas and residency status. As Priyanka Motaparthi, an independent human rights researcher and writer states it “*KAFALA IS A SYSTEM OF CONTROL – In the context of Migration it’s a way for Governments to delegate oversight and responsibility for migrants to private citizens and companies.*”¹⁹

This system gives a sense of control or ownership to the sponsor, leaving migrant workers dependent on their sponsors for legally residing in Qatar. Employer consent is required to change jobs, leave the country, get a driver's license, rent a home or open a checking account. Should the migrant worker refuse to adhere to the sponsors “orders” or discontinue his employment in any way, the sponsor has the ability and power to cancel the migrant workers residency visa turning him into an illegal immigrant, making the position of migrant workers extremely vulnerable. Many migrant workers have been detained for not having legal residency permits without even knowing that their sponsor has cancelled it.²⁰

Despite laws providing for protection mechanisms, most migrant workers have said that there are no adequate monitoring/enforcement systems, checks or safeguards present in Qatar, making it easier for individuals and companies to exploit migrant workers. In 2012, Qatar had only employed 150 labour inspectors to manage the almost 1.2 million workers. The Labour Ministry Officials reported that almost none of these inspectors speak any of the languages spoken by the migrant workers and that labour inspections do not include worker interviews.²¹

¹⁷ Ibid, p.3

¹⁸ Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

¹⁹ (Motaparthi, 2015)

²⁰ Ibid

²¹ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 5)

The lack of enforcement of these protection mechanisms, by the Qatari Government will be discussed in Chapter 3 of the thesis.

The Kafala system stipulates three key restriction areas where permission from a sponsor is absolutely necessary:

1. A migrant is not allowed to change jobs, even when he is finished with a contract, without the permission of the sponsor;
2. Regardless of the exploitative practices a migrant worker is exposed to he/she is not allowed to quit his/her job without the permission of the sponsor and;
3. A migrant worker, regardless of whether it is a low-paid construction worker or a white-collar executive, is not allowed to leave the country, for whatever reason possible, without the permission of the sponsor.²²

These restriction have and will have a direct impact on any other labour rights and practices and also influence the migrant workers access to an effective remedy should any of his/her rights be violated. These restrictions together with other problems faced by these workers will be discussed hereunder.

The fact that workers are linked to their employers makes this system a haven for abuse and exploitation. Complaints regarding violations expose migrant workers to conflict with their employers and this could lead to either a refusal to change jobs or even refusal to leave the country. It could also lead to the cancellation of their residence permits which in itself exposes the migrant workers to criminal charges. The only process available for violated migrant workers wanting to transfer their sponsorship is to file a request with the Ministry of Interior but this process in itself can be seen as inadequate. In 2012, 607 migrant workers filed requests for transfer of their sponsorship, but only 49 were allowed permanent transfers and 211 temporarily. This mean that only 0.02 percent of the Qatari migrant workforce are allowed transfers²³.

²² (Motaparthi, 2015)

²³ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, p. 95)

Qatar's Sponsorship Law,²⁴ the abusive practices connected thereto and the amendments,²⁵ will be discussed in more detail in Chapter 3 of this thesis.

1.3 Problems faced by migrant workers

1.3.1 Prior recruitment

Contractors, subcontractors, as well as labour supply companies and placement agencies in Qatar are largely responsible for the recruitment of migrant workers within the framework of visa regulations, Labour Law,²⁶ and Sponsorship Law.²⁷ Before the migrant workers even get to Qatar, they are exposed to exploitative labour practices. It begins with huge recruitment fees, charged by agents in the worker's home countries which ends up in massive amounts of debt. Migrant workers take out loans and mortgages on family property with very high interest rates. Employers are aware that most migrant workers are indebted and they use this to exploit them. Prior recruitment and recruitment fees are illegal under Qatari law yet the Government, being aware of these practices, has not done anything to stop this from happening. Usually the recruitment occurs in the home country of the migrant workers but in many other cases it occurs through the companies in Qatar.²⁸

1.3.2 Deceptive contract provisions

As previously mentioned, most of the migrant workers are lured to Qatar under false pretences and promises and many of them arrive only to find that the terms and conditions of their contracts given to them in their home countries are either not legit or differ completely to the contracts given to them by their employers. The main complaints involve wages. In many cases the wages paid were much less than what was promised by the recruiter, even to the extent that it did not cover all expenses for food and recruitment loan fees. The workers were given the option to either work for the reduced salary or leave Qatar immediately.²⁹

²⁴ Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

²⁵ Law no 21 of 2015 amending Law No 4 of 2009

²⁶ Labour Law of the State of Qatar – Law No 14 of 2004

²⁷ Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

²⁸ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 2)

²⁹ Ibid, p.33 – 34

Another deceptive practice raised referred to the type of work the migrant workers would have to perform. The migrant workers sign an employment contract for a specific position in their home country but once they arrive in Qatar they are given other positions or are only employed as normal labourers despite the fact that they are specialised in other fields. There is no room for negotiations or a legal route to follow, as there is a lack of enforcement of Qatar's Labour and Sponsorship Laws.³⁰

The Kafala system also ensures that migrant workers who leave Qatar, either voluntarily or because a contract has expired are not allowed back into the country for employment purposes for at least two years after their departure date. Another limiting provision as previously discussed is the fact that an employer's permission is necessary to switch jobs or leave the country. Due to the strict nature of this provision, many migrant workers are forced to accept any contract and salary. "Nearly all of the 149 migrants who were interviewed by Amnesty International, stated that they had been deceived on at least one substantive aspect of their employment terms and conditions: salary amount, the type of job offered, work hours, overtime pay or rest days."³¹

1.3.3 Undocumented migrants – residency permits non - issued or renewed

As per the Qatari Sponsorship and Labour Laws, the employer "sponsor" is responsible for the issuing or renewing of residency permits together with the accompanying Identity Card.³² Migrant workers have no option in securing their own documents. In many cases employers neglect to obtain these permits, leaving all migrant workers in their business "undocumented". Being without a residency permit is a criminal offence in Qatar and makes these workers eligible for detention.³³ Should any employment dispute arise, an employer has the power to withdraw the residency permit or advise the authorities that the employee have absconded from his employer resulting in immediate illegal residency.

³⁰ Article 4 of Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

³¹ (False Promises: Exploitation and Forced labour of Nepalese migrant workers, 2011)

³² Under Article 9 of the Sponsorship Law, employers are supposed to complete procedures with the Government to issue workers with residence permits and renew expired residence permits within 90 days

³³ Articles 11 & 51 of Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

“We can’t go anywhere. If we go to the Embassy, the police could catch us. We go to work in a car, we work, and we come back and eat. We watch for the police from the terrace. We walk around on Fridays but have to watch out for the police.”³⁴

1.3.4 Passport confiscation

Qatar’s Sponsorship Law stipulates that “the sponsor shall deliver the passport or travel document to the sponsored person once the procedures for issuing or renewing the residence permit are accomplished.”³⁵ Despite this very specific and strict provision it has come to light that almost all migrant workers in Qatar have their passports confiscated.³⁶ It is said that passport confiscation is a common and widespread practice used by employers to keep the migrant workers in place. At the same time workers are too afraid to quit their jobs or issue complaints because the Qatari Government do not keep their employers accountable for direct violation of the Sponsorship Law.

1.3.5 Refusal to leave the country

As per Qatar’s Sponsorship Law it is required that all migrant workers wanting to leave the country must obtain the permission of his/her employer as well as a No-Objection Certificate (referred to as NOC). An NOC is a note of clearance which confirms that the (previous) employer has no objection against the migrant worker finding other employment. An NOC “frees” the migrant worker from all obligations it might have had to the employer.³⁷ In most instances the employer has confiscated the migrant worker’s passports making it impossible for them to escape his control and more so to leave the country. This practice is probably the most exploitative practice, as Qatari Law enables employers to restrict the freedom of movement of workers. This power of control given to the employers offers a breeding ground for forced labour, labour exploitation and even slavery-like practices, since in some instance workers are forced to work without pay and forced to live in unconditioned environments. The National Human

³⁴ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012); Nepalese construction site “helper” without a residence permit - Amnesty International Interview 9 October 2012

³⁵ Art 9 of Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

³⁶ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 37)

³⁷ (Qatar NOC, 2013)

Rights Committee of Qatar noted in 2010 what it called “negative practices” of sponsors “unjustifiably denying employees their right to obtain exit permits to leave the country.”³⁸

The most common problem faced, is that employers refuse or just “forget” to issue exit permits. As previously mentioned some workers have either never received a residency permit or have never received a renewed residency permit which could amount to financial penalties and fines. There are also cases where the employer refuse to return the workers passports and they also refuse to provide the workers with tickets, for travelling back to their home countries, which they are required to do under Art 57 of the Labour Law, once a workers contract has finished.³⁹

Interviews done by Amnesty International have shown that in situations of financial difficulties, companies would prevent the workers from leaving and place them on new contracts and new projects to raise new funds for the company.⁴⁰ Most employers also keep their workers by promising them that their exit documents have been arranged when in fact this has not been done, keeping the workers for an extended time under false pretences.

Amnesty International has further documented cases where workers – in order to get their passports back and receive airplane tickets to leave the country – agreed to demands by their employers to sign documents falsely confirming that they had received all wages due to them and that they had no further claim against the company.⁴¹

1.3.6 Late payment or non – payment of salaries

The main reason and motivation for most, if not all, of these migrant workers to work in Qatar and dealing with the exploitation they are exposed to, is to make money and to be able to send part of their salaries home to enable their families to have a somewhat decent living and for these families to pay off the enormous amounts of recruitment debt that these workers have incurred to secure employment in Qatar. Qatar’s Labour Law stipulates that employers must pay salaries monthly and in some cases twice a month.⁴² Despite Qatar’s laws and this clear

³⁸ National Human Rights Annual Report 2010

³⁹ (DLA Piper UK LLP, 2014)

⁴⁰ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 38)

⁴¹ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 39)

⁴² Article 66 of the Labour Law of the State of Qatar 2004

provision, there have been cases of late payments, where workers had to wait up to 6 months before receiving their salaries and some cases where they have not received payment at all.⁴³ When this is the case many of these workers cannot take care of their families. This in itself has a massive psychological impact on these workers as they feel they have given up so much to work in Qatar and have burdened their families with massive loans and due to the late or non – payment of salaries they cannot take care of their families.

Employers give false dates to the workers as to when their salaries will be paid, only to prolong this further; as mentioned there have been cases of late payment for up to 6 months. It has been said that many workers must force their employers to pay them by downing their tools and refusing to work. This can be a very dangerous practice as the employer can then notify the authorities that the workers have “absconded” which allows the employer to withdraw their residence permits making them illegal immigrants.⁴⁴

According to an interview conducted by Amnesty International an Indian man working for a cement production company based in Lusail said: *"The company started practicing a 'no salary' policy. We used to do overtime duty, but no payment was received for it. It would go on and the company would announce lockout [work stoppage]. So, we would stay in our room. After one or one and half months, they would again open the company. After sometime, again they would close it. Until yesterday, they played the same games. It is the same till today. When we asked for our salaries, they always promised that they would give it 'tomorrow' or 'day after tomorrow'. We did not get any salary."*⁴⁵

1.3.7 Condition and circumstances exposed to: long hours and dangerous conditions

Qatar's Labour Law has specific provisions when it comes to both the employer's and workers' responsibilities. Specific working hours are stipulated as maximum 60 hours over a six day week, including up to two hours of paid overtime per day.⁴⁶ Despite this provision it has appeared that some migrants are expected to work up to twelve hour days, far in excess of the legal limit. Should they fall ill, the law requires migrant workers to obtain medical letters when they cannot attend work. It has been found that the only “legal” hospital to issue these letters

⁴³ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012)

⁴⁴ Ibid

⁴⁵ Amnesty International interview, Al Khor, 15 March 2013.

⁴⁶ Articles 73 and 74 of the Labour Law of the State of Qatar 2004

are situated 15km away from the industrial sites and many workers do not have the financial or travelling means to reach this hospital. As a result, many workers remain working despite the fact that they are chronically ill. It has also been suggested that should they want to take a sick day, the employer deducts this days' pay off of their salaries.

Qatar's local regulations have strict standards for workers' housing, allowing not more than 4 workers in the same room, not allowing the use of bunk beds and ensuring running water and proper ventilation in all workers' accommodations.⁴⁷ Most migrants reported horrendous living conditions and the majority of workers reported that their accommodation was provided for by the employer, whilst the rest had to arrange their own accommodation.⁴⁸ Most of the labour camps consisted of dormitory styled accommodation with over 10 people per room. There are complaints of not having sufficient water at their camps nor a sufficient supply of electricity.⁴⁹

In a study done by Human Rights Watch some workers reported unhealthy and often dangerous working conditions. With most of the workers working in the construction industry, they are expected to work in roofs or high scaffolding without safety ropes or proper safety gear. There have also been reports that the workers are not properly trained for the tasks expected from them. According to analysis from the Qatar National Health Strategy, a government healthcare initiative, "workplace injuries are the third highest cause of accidental deaths in Qatar."⁵⁰

1.4 Conclusion

In this chapter it becomes clear that abusive labour practices do exist in Qatar, which may amount to exploitation, and even slavery-like practices. It is the Kafala system that makes the migrant workers particularly vulnerable to abuse. Although Qatar has certain labour laws in place guaranteeing minimum labour rights, these rights are not respected by the employers and the Qatari Government does not act upon violations of the labour laws. In the next chapter, the focus will shift to qualifying the international obligations Qatar has in addressing these abuse and exploitative labour practices, particularly under the ILO Conventions and the Human Trafficking Protocol.

⁴⁷ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 3 and 4)

⁴⁸ (Andrew M Gardner, 2013, p. 10)

⁴⁹ Ibid, p.10

⁵⁰ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 4)

CHAPTER 2 - QATARS LEGAL OBLIGATIONS WITH RESPECT TO THEIR MIGRANT WORKERS

This chapter will focus on the international legal obligations Qatar has towards its migrant workers as well as what Qatar needs to do to address these practices under these international documents. After discussing its adherence to the international human rights treaties, this chapter will specifically focus on the International instruments applicable to forced labour practices and human trafficking with specific focus on the Human Trafficking Protocol⁵¹ together with the obligations under ILO Convention 29,⁵² ILO Convention 105⁵³ and ILO Convention 81.⁵⁴ All of these instruments have been ratified by Qatar. This Chapter will also focus on the obligations Qatar has under the ILO Conventions and the Human Trafficking Protocol to address the practices of forced labour and human trafficking.

In identifying which labour practices can be considered forced labour and which human trafficking, it is of importance for this thesis to know that not all bad labour practices amount to forced labour under the ILO Conventions and not all forced labour practices amount to human

⁵¹ Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000, S, Treaty Doc. No 108 – 16 (2004)

⁵² International Labour Organisation – Forced Labour Convention C029 of 1930

⁵³ International Labour Organisation – Abolition of Forced Labour Convention C105 of 1957

⁵⁴ International Labour Organisation – Labour Inspection Convention C081 of 1947

trafficking under the Human Trafficking Protocol. Forced labour and human trafficking are two linked but separate concepts. Forced labour is written into the definition of human trafficking and for a situation to result in forced labour two common features must exist: the exercise of coercion and the denial of freedom.⁵⁵ Human trafficking on the other hand is known as a process in which a person, in our case a migrant worker is brought into a situation of exploitation or numerous abusive practices with the final purpose being a form of exploitation.⁵⁶ The important distinguishing aspect is the intended purpose to exploit.

Under the ILO Declaration and the Human Trafficking Protocol, all Member States have an obligation to “respect, promote and realize” the elimination of all forms of forced labour as part of a package of mutually reinforcing fundamental principles.⁵⁷ It also sets out certain international obligations a signatory State must adhere to, namely to criminalise the deed, to prevent the deed from happening, to prosecute the perpetrator and to protect the victim.

International Instruments

Qatar is not a signatory to most of the core international human rights treaties, including the International Covenant of Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and, most importantly, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The latter Convention was drafted with the intention to ensure minimum protection to all migrant workers, providing freedom from discrimination in all aspects of work.⁵⁸ It is ironic if one takes into account that this Convention has been ratified by only 45 countries, all of them being labour sending countries with none of the signatories States being receiving States. This means that the Convention is not in effect where the majority of migrant workers actually work.

⁵⁵ (Stopping Forced Labour - Global report under the follow - up to the ILO Declaration on Fundamental Principles and Rights at work, 2001, p. 1)

⁵⁶ (Skrivankova, 2010, p. 8)

⁵⁷ The three other categories of principles and rights covered by the ILO Declaration on Fundamental Principles and Rights at Work are: freedom of association and the effective recognition of the right to collective bargaining; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

⁵⁸ (Debates - That all States should immediately ratify the U.N Convention on the Rights of Migrant Workers and their Families, n.d.)

Qatar has only recently become party to most of the Conventions against discrimination,⁵⁹ the Convention on the Rights of the Child⁶⁰ and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.⁶¹ Qatar is also party to the Human Trafficking Protocol.⁶² This Act will further be discussed in Chapter 3.

Qatar is a member of the ILO and has ratified five out of the eight ILO Conventions.⁶³ The most important Conventions with regards to this thesis and the ones that will be discussed are the Forced Labour Convention,⁶⁴ the Abolition of Forced Labour Convention⁶⁵ and the Labour Inspection Convention.⁶⁶

As a member of the United Nations Human Rights Council and the ILO, Qatar is expected to uphold the highest standards in both the promotion and protection of human rights but also the core international labour standards such as to respect, promote and realize the principles of the elimination of all forms of forced or compulsory labour. These labour standards includes freedom of association and the right to collective bargaining, despite the fact that Qatar has not ratified the ILO Conventions on Freedom of Association or the Right to Organize Collective Bargaining.⁶⁷

2.1 International Labour Organization Conventions

The adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up⁶⁸ signalled a renewed agreement between States in their quest to fight forced labour. Under the ILO Declaration all Member States have an obligation to “respect, promote and realize” the elimination of all forms of forced labour.

⁵⁹ International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women

⁶⁰ General Assembly Resolution 44/25 of 20 November 1989, entry into force 2 September 1990

⁶¹ General Assembly Resolution 39/46 of 10 December 1984, entry into force 26 June 1987

⁶² Law No.15 of 2011 for Combating Trafficking in Persons

⁶³ Forced Labour Convention (Convention No. 29), the Abolition of Forced Labour Convention (Convention No. 105), the Discrimination (Occupation and Employment) Convention (Convention No. 111), the Minimum Wage Convention (Convention No. 138) and the Worst Forms of Child Labour Convention (Convention No. 182). It has also ratified the Labour Inspection Convention (Convention No. 81).

⁶⁴ International Labour Organisation – Forced Labour Convention C029 of 1930

⁶⁵ International Labour Organisation – Abolition of Forced Labour Convention C105 of 1957

⁶⁶ International Labour Organisation – Labour Inspection Convention C081 of 1947

⁶⁷ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 46)

⁶⁸ Adopted in 1998

Article 1⁶⁹ of the Forced Labour Convention requires all State Parties to suppress the use of forced and compulsory labour in all its forms whether it is done by public authorities or private persons. Under this Convention, States have an obligation to abstain from providing or supporting forced labour practices and to act in preventing and protecting victims thereof.

Article 2(1) of the said Convention defines forced labour as:

*“All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”*⁷⁰

As mentioned not all bad labour practices amount to forced labour. Forced labour is clearly a practice that is more serious than just the failure to respect labour regulations and condition. In order to establish when a bad labour practice turns out to be a practice of forced labour under the ILO Conventions, 3 element should be present.⁷¹

1. “All work of service” refers to both legal and illegal employment
2. “Menace of any penalty” when committed intentionally or knowingly by an employer against an employee which includes not only criminal sanctions but also various forms of coercion such as threats, violence, imprisonment or physical confinement, financial penalties such as debt bondage and the withholding of wages, retention of passport or identity documents, denunciation to authorities or deportation and exclusion from future employment.⁷²

The ILO Committee of Experts on the Application of Conventions and Recommendations⁷³ stated “a penalty need not be in the form of a penal sanction, but might take the form also of a loss of rights and privileges.”⁷⁴

⁶⁹ ILO Convention C29 – Forced Labour Convention

⁷⁰ Ibid

⁷¹ (Combating Forced Labour: a Handbook for Employers and Businesses, 2015, p. 4)

⁷² Ibid, p.5

⁷³ International Labour Conference, 1979, General Survey of the Reports relating to the Forced Labour Convention, 130 (NO. 29) and the Abolition of Forced Labour Convention, 1975, (No 105)

⁷⁴ (Report of the Committee of Experts on the Application of Conventions and Recommendations, 65th session, 1979)

It is difficult to distinguish exploitation in terms of violations of labour rights from extreme exploitation resulting in forced labour as there is no clear definition of what exploitation entails. Klara Skrivankova argues that “a causal relationship has been established, linking the existence of forced labour to the impunity⁷⁵ enjoyed by those who commit the crime/violation and to widespread ignorance of labour legislation and workers’ rights.”⁷⁶

3. “Which is not voluntary” An employee shall fall victim to forced labour when his/her consent is no longer given. i.e “workers consent to enter into their freedom and to their freedom to leave the employment at any time, with reasonable notice in accordance with national law”. The freedom of choice provides migrant workers with the ability and power to negotiate terms and condition of employment without being punished by the employer. Once a migrant worker is trapped in a situation of forced labour he/she no longer constitute the ability to negotiate, as the power of the employer to impose rules is absolute.⁷⁷

Psychological compulsion with the threat of a penalty, induced indebtedness with excessive inflation rates, deception or false promises about the type of employment or terms of employment entered into, withholding or non – payment of wages as well as the retention of identity documents all form part of forced labour practices following the lack of consent by the migrant worker.⁷⁸

Art 3 defines a position of vulnerability as “any situation in which the person involved has no real and acceptable alternative to submit to the abuse involved.”⁷⁹ This may result from an act by the authorities, such as a statutory instrument, but also by acts by the employer as mentioned above.

⁷⁵ Impunity is understood as the absence of punishment or accountability for actions by those who impose forced labour or exploit workers.

⁷⁶(Skrivankova, 2010, p. 16)

⁷⁷ Ibid, p.7

⁷⁸ (Combating Forced Labour: a Handbook for Employers and Businesses, 2015, p. 5)

⁷⁹Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000

2.1.1 Interpretation of the elements by the ILO in respect of the circumstances in Qatar

An issue commonly misunderstood is that migrant workers trapped in forced labour is *forced* to work, when in actual fact, numerous migrant workers freely agree to take on certain employments and only realize that they were deceived when they actually started to work and that results in them no longer being free to leave the employment without some form of repercussion⁸⁰. The ILO specifically refers to these false promises as forced labour since: “workers should be free to leave an employment relationship without losing any rights and privileges.”⁸¹ It was also established that should any form of deception or fraud be present, the initial consent of a migrant worker is irrelevant.⁸²

From Chapter 1 it is clear that most migrant workers are experiencing periods of late payment and in some cases non-payment of their wages. Amnesty International reported about a number of migrant workers who found themselves in work for which they have not offered themselves voluntarily.⁸³ These workers face multiple threats from their employers if they are to stop working. It has been found that some employers impose financial penalties or use non-payment as a form of coercion to force workers to keep on working or to work exorbitant hours. There has also been reports of threats to withhold passports or refusal to exit the country. The employers also threaten the migrant workers with the authorities and deportation as most of these workers are not in possession of residence permits resulting in their irregular stay and work in Qatar.⁸⁴

In response to the above allegations, officials from Qatar’s Ministry of Labour, replied to Human Rights Watch, stating that “*the Ministry has received no complaint of forced labour and it is inconceivable that such a thing exists in Qatar, as the worker may break his contract and return to his country whenever he wishes and the employer cannot force him to remain in the country against his*

⁸⁰ (Skrivankova, 2010, p. 7)

⁸¹ (Report of the Committee of Experts on the Application of Conventions and Recommendations, 65th session, 1979)

⁸² Through International law and jurisprudence

⁸³ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, pp. 53 - 57)

⁸⁴ Ibid

will.”⁸⁵ When workers owe thousands in recruiting fees, are not free to find new employers, and do not have custody of their passports, they are, in fact, in conditions of forced labour.

2.1.2 Obligations under the ILO Conventions

Qatar as a signatory party to the ILO, is expected to uphold the highest standards in both the promotion and protection of human rights but also the core international labour standards such as to respect, promote and realize the principles of the elimination of all forms of forced or compulsory labour. ILO Convention 29⁸⁶ also stipulates that States that have ratified the Convention have both an obligation to abstain from and an obligation to act when it comes to the battle against forced labour practices.⁸⁷

Despite the fact that forced labour is a criminal offence it should always be known that forced labour is also the outcome of the imbalance in power between an employer and a migrant worker as well as poor regulation of labour markets and an inadequate enforcement of the labour legislation. Therefore migrant workers should not just be seen as victims of a criminal offence but also as workers whose rights (labour rights included) have been violated and who are entitled to protection under labour laws.

➤ Criminalizing, identifying and prosecution of forced labour practices

Article 25 of the Forced Labour Convention⁸⁸ requires State Parties, in this case Qatar, to ensure that “the illegal exaction of forced or compulsory labour shall be punishable as a penal offence” requiring state parties to criminalize forced labour practices in their Criminal law. Qatar is further expected to identify the problem of forced labour by raising awareness of the practices related thereto and to prevent these practices from occurring by implementing certain policies that companies must adhere to. This provision leaves the specific mechanisms by which the criminalization of forced labour should be done to the discretion of the State.

⁸⁵ Letter from the Qatar Ministry of Labour to Human Rights Watch, November 1, 2011, p. 7.; (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 55)

⁸⁶ Forced Labour Convention

⁸⁷ (Human Trafficking and Forced Labour Exploitation - Guidelines for Legislative and Law Enforcement - Special action programme to combat Forced Labour, 2005, p. 17)

⁸⁸ ILO Convention C29 – Forced Labour Convention

Under these provisions, Qatar is not only obliged to criminalize forced or compulsory labour but to also prosecute the perpetrators thereof. To enable the Qatari Government to adhere to this provision an effective judicial system is required with a strong labour inspectorate that detects cases of forced labour. As will be discussed in the section below, victims of labour trafficking have been identified and it could be seen that labour inspecting in Qatar to some extent is sufficient, the real problem relates to the prosecution of the perpetrators as this is left to the discretion of the Prosecutor.

➤ Protection of victims

The final requirement set out under the ILO Conventions is the protection of victims. Proper policies should be set in place to ensure the rescue of victims, rehabilitation as well as alternative employment plans.⁸⁹ Victims should be able to access labour law remedies.

Various complaints have been brought to the ILO regarding Qatar's labour practices concerning non-observance of both ILO Convention 29 and 81 of which Qatar is a signatory to both.⁹⁰ This will be discussed in more detail in Chapter 3 where Qatar's implementation of its international obligations are central.

2.2 Human Trafficking Protocol

The international fight against trafficking in persons (further referred to as human trafficking) evolved rapidly and the campaign launched by the United Nations General Assembly in 1981 saw the adoption of the Human Trafficking Protocol two years later. The purpose of the Human Trafficking Protocol was to establish an international agreement between states to address the crime of trafficking in persons, at a transnational level. It created global legislation defining trafficking in persons, especially woman and children, assisting those who fell victim to these practices and prevent trafficking in persons from occurring. It further establishes the parameters of judicial cooperation between countries.

As previously mentioned trafficking in persons, as would be seen from the definition, occurs for purposes of, "exploitation of the prostitution of other or other forms of sexual exploitation,

⁸⁹ (Stopping Forced Labour - Global report under the follow - up to the ILO Declaration on Fundamental Principles and Rights at work, 2001, p. 98)

⁹⁰ 103rd Session of the International Labour Organization Conference in June 2014

forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” For purposes of this thesis, exploitation of forced labour practices, also known as labour trafficking will be discussed.

Most victims of labour trafficking, are coerced into employment or practices that they have not chosen freely. It also involves the movement of a victim for labour activities, in most cases to engage in illicit employment that are below the statutory standards⁹¹ and it is often the case that these victims are unable to escape their circumstances, unless they are willing to risk expulsion. These elements of forced and compulsory labour are covered by ILO Convention 29⁹² and ILO Convention 105.⁹³

As per the Human Trafficking Protocol, human trafficking is defined as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁹⁴

This section will discuss whether the forced labour practices as identified in section 2.1 amount to exploitation as required under the Human Trafficking Protocol and as set out in Law No.15 of 2011 for Combating Trafficking in Person.

To establish which situations qualify as human trafficking, the basic definition requires four elements to be present in every case. As mentioned human trafficking has as its purpose the exploitation of another.

⁹¹ (Stopping Forced Labour - Global report under the follow - up to the ILO Declaration on Fundamental Principles and Rights at work, 2001, p. 48)

⁹² ILO Convention C29 – Forced Labour Convention

⁹³ ILO Convention C105 – Abolition of Forced Labour Convention

⁹⁴ Art 3 of the Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000 (Combating Forced Labour: a Handbook for Employers and Businesses, 2015)

1. Act – this refers to the phases of trafficking. It begins with the recruitment of the migrant workers and then evolves to the transportation, transferring, harbouring or receipt of a person. The “activities” of human trafficking includes those activities in the country of origin, in transit and in the destination country.⁹⁵
2. Means – the means refers to the way in which the trafficked person is lured into and kept in the trafficked circumstances and includes, threat or the use of force, deception, abduction, coercion, fraud, abuse of power, abuse of a position of vulnerability or giving or receiving payment to achieve consent from a person holding power over another person⁹⁶
3. Purpose – refers to the reasons why individuals are being trafficked, be it for exploitation, forced labour, slavery or servitude⁹⁷

Of importance is the discussion of forced labour as one of the main purposes of trafficking with the intent of exploitation. In order to identify if a person is in fact working under a practice of forced labour one should establish whether the forced labour practices qualifies under ILO Convention 29, as discussed in the previous section.

4. Consent of the victim – It is stated that whether the victim gave consent or not would be irrelevant if the trafficker used any of the means listed in the Protocol with the objective of exploiting the victim for forced labour purposes.⁹⁸ The interpretative notes for the *travaux préparatoires* states “the provisions on consent should not be interpreted as imposing any restrictions on the right of the accused person to a full defence and to the presumption of innocence. It should also not be interpreted as placing the burden of proof on the victim”⁹⁹

⁹⁵ (Human Trafficking and Forced Labour Exploitation - Guidelines for Legislative and Law Enforcement - Special action programme to combat Forced Labour, 2005, p. 10)

⁹⁶ (Guide to the new UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime)

⁹⁷ (Human Trafficking and Forced Labour Exploitation - Guidelines for Legislative and Law Enforcement - Special action programme to combat Forced Labour, 2005, p. 5)

⁹⁸ Ibid, p. 5

⁹⁹ (A/55/383/Add.1)

2.2.1 Interpretation of the elements of the Human Trafficking Protocol

The nature of the trafficking activity is the “recruitment, transportation, transfer, harbouring or receipt of a person” yet an act of human trafficking does not require all phases to occur. A person will be guilty of human trafficking if he/she assisted in any of these phases with the ultimate intend of exploiting the victim. In most cases the trafficking cycle begins with the recruitment of a migrant worker by means of “deception, coercion or persuasion”. Even if this recruiter/ actor in the chain of human trafficking is not directly involved in the actual trafficking (exploitation), this recruiter/actor plays a role in making the migrant worker vulnerable to practices of forced labour should he have the necessary intend to do so.¹⁰⁰

In chapter 1 it is discussed that most migrant workers can only obtain employment in Qatar through the assistance of a recruiter and paying exorbitant recruitment fees. Under these circumstances the worker is caught in debt bondage even though the debt is not directly owed to the employer. Many employers being aware of the debt incurred by the workers are exploiting these situations and profiting from it.¹⁰¹

Migrant workers are lured into employment in Qatar by deceitful contracts, where in most cases the recruiters in the country of origin had migrant workers sign contracts only to have those contracts torn up by the employers in Qatar and providing new contracts with new employment conditions and salaries far less than what was promised. Under Qatari law employers are required to send “demand letters” to the Ministry of Labour requesting visa approval for each position the employer wants filled, specifically stating the employment specs. Qatar works with nationality quotas and in many instances where the quota has been reached employers take out visas for other positions and nationalities counter to what the contract specified resulting in the worker being employed in a different position than agreed.¹⁰²

It is further discussed that migrant workers are not just physically threatened and in some cases physically assaulted but that they are being psychologically manipulated with threats of non-payment of wages, withholding of residency permits required for lawful residence in Qatar and

¹⁰⁰ (Combating Forced Labour: a Handbook for Employers and Businesses, 2015)

¹⁰¹ (Arab Gulf States: Recruitment of Asian Workers, p. 6)

¹⁰² Ibid, p.5

employers, withholding of passport and identity documents and threats of reporting the migrant workers to the authorities should they refuse to work.¹⁰³ The pinnacle of these threats and abuse of power is employers refusing permission for migrant workers to change their jobs and in the most severe cases refusing permission for migrant workers to leave the country.

Almost all of the migrant workers recruited for work in Qatar have done so voluntarily by signing specific employment contracts in their country of origin. It is only once they reach Qatar and are presented with new contracts stating different terms than agreed upon, that their consent is no longer given wilfully. Lack of consent in this regard refers to the exploitative practices and not the actual work itself. There have also been cases where migrant workers have stopped working due to non – payment of wages where the employer either make false promises that their salaries will be paid in due course or they are being threatened with reports to the authorities. Also in these cases the migrant workers are no longer working voluntarily and by their free will.¹⁰⁴

2.2.2 Obligation under Human Trafficking Protocol

The purpose of the Human Trafficking Protocol¹⁰⁵ is to prevent and combat trafficking in persons by protecting and assisting the victims thereof and to promote the cooperation amongst State Parties.¹⁰⁶

The main objective of the Human Trafficking Protocol is that it obliges/compels States to actively participate in the fight against trafficking, by adapting their domestic laws and enforcement procedures. It further requires State to adopt specific laws criminalising the participation and practices of human trafficking and punishing the perpetrators thereof. It also provides for specific prevention mechanisms¹⁰⁷ as well as specific protection to victims¹⁰⁸ of

¹⁰³ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, pp. 53 - 57)

¹⁰⁴ (Human Trafficking and Forced Labour Exploitation - Guidelines for Legislative and Law Enforcement - Special action programme to combat Forced Labour, 2005)

¹⁰⁵ Art. 2, Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000

¹⁰⁶ (Human Trafficking and Forced Labour Exploitation - Guidelines for Legislative and Law Enforcement - Special action programme to combat Forced Labour, 2005, p. 7)

¹⁰⁷ Section III of the Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000

¹⁰⁸ Ibid

human trafficking. In this regard the importance of immigration and labour laws should be emphasized. It should also be kept in mind that these objectives are not a one tiered system but includes a broad spectrum of sanctions, criminal, administrative and civil all of which are relevant to combating human trafficking.

➤ Criminalizing the offence and associate offences

Art 5 of the Human Trafficking Protocol requires State Parties to criminalize not just human trafficking but also “the attempt to commit the offence of human trafficking in persons, participation as an accomplice in the offence and organizing or directing other persons to commit the offence.”¹⁰⁹ Under this objective, States are also obliged to prosecute the perpetrators of human trafficking and punish them accordingly. The sentences awarded must reflect the severity of the crime and must be of such a nature as to deter the perpetrators from committing the crime again. The measure to be taken in this regard is left to the discretion of the State.

➤ The prevention of human trafficking

Even though the Protocol provides for several articles related to the prevention of human trafficking, article 9 states that all State Parties are obliged to adopt preventive measures which includes, but is not limited to, research, cooperation between the State and civil society, the conclusion of labour agreements and educational measures for victims.

The Human Trafficking Protocol also provides for the prevention of human trafficking by addressing and establishing border measures to ensure that human trafficking do not occur by way of commercial carriers as well as provision requiring the State to ensure the security and control of valid travel documents.¹¹⁰

¹⁰⁹ (Human Trafficking and Forced Labour Exploitation - Guidelines for Legislative and Law Enforcement - Special action programme to combat Forced Labour, 2005, p. 11)

¹¹⁰ Article 9 and 11 of the Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000

➤ Protection of victims

The Human Trafficking Protocol contains explicit provisions setting out measures that must be considered with regards to the victims of trafficking. These articles¹¹¹ sets out procedural requirements and certain safeguards for the protection and rehabilitation of victims, specifically the protection of the victim's identity and safety, participation in judicial proceedings and the possibility of obtaining compensation as well as the status and reparations of victims. These requirements and safeguards are obligatory under the Human Trafficking Protocol whereas other requirements in respect of assistance and support to victims may include some discretion to the State party.¹¹²

➤ State cooperation

One of the main ideas in drafting the Human Trafficking Protocol was for State cooperation in the fight against human trafficking. Various provisions in the Protocol specifically address this obligation and require legislative changes to incorporate such cooperation within their domestic laws.¹¹³

Qatar has made certain reservations to the Human Trafficking Protocol.¹¹⁴ These reservations related to the employment, education and training opportunities of victims of trafficking as well as adopting laws allowing victims of trafficking to remain in the territory, temporarily or permanently of Qatar. These reservations will not be discussed in detail as it is not of importance to the objective of this thesis.

¹¹¹ Article 6, 7 and 8 of the Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000

¹¹² (Human Trafficking and Forced Labour Exploitation - Guidelines for Legislative and Law Enforcement - Special action programme to combat Forced Labour, 2005, p. 13)

¹¹³ Article 13 of the Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000

¹¹⁴ Firstly, 1. Paragraph 3(d) of Article 6, which reads: "Employment, educational and training opportunities" 2. Paragraph 1 of Article 7, which states that: "each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, inappropriate cases". Second - The State of Qatar declares that it does not consider itself bound by the provisions of Paragraph 2 of Article 15 which deals with the issue of settlement of disputes concerning the interpretation or application of this Protocol.¹¹⁴

2.3 Conclusion

In this chapter it is clear that Qatar, as a signatory state to the Human Trafficking Protocol and the ILO Conventions, is expected to uphold the highest standards in both the promotion and protection of human rights and the core international labour principles. The ILO Convention defines forced labour as: “*All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*”¹¹⁵ From the definition it is clear that a migrant worker will be trapped in a situation of forced labour when the three elements, listed, are present. From the discussion in section 2.1.1, it is clear that many migrant workers find themselves in situations of forced labour, in that they have been deceived regarding the terms of their contracts, the late or non – payment of their wages as well as the retention of their identity document or passports. As a signatory state to the ILO, Qatar is expected to take certain measures against practices of forced labour, such as criminalizing and identifying the said practices and the prosecution of the perpetrators thereof. Qatar is also expected to take certain measures regarding the protection of victims of these forced labour practices.

Forced labour and human trafficking are two linked but separate concepts. Human trafficking is known as a process in which a person, in our case a migrant worker is brought into a situation of exploitation or numerous abusive practices with the final purpose being a form of exploitation.¹¹⁶ Thus, a migrant worker trapped in a situation of forced labour will become a victim of human trafficking when the four elements, discussed in section 2.2, are present: act, means, purpose and consent of the victim. From the discussion in section 2.2.1 it is clear that from the moment of entering Qatar, most migrant workers are exposed to an abusive and exploitative system. In most cases the trafficking cycle begins with the recruitment of a migrant worker by means of “deception, coercion or persuasion”. Migrant workers are dependent on recruiters to enter the country and recruiters exploit these workers by charging exorbitant fees which is strictly forbidden under Qatari law. Under these circumstances the workers are caught in situations of debt bondage and employers exploit these situations by forcing the workers into deceptive contracts or prolonged working hours. It is also discussed that migrant workers are not just physically threatened and in some cases physically assaulted but that they are being psychologically manipulated with; threats of non-payment of wages, withholding of residency

¹¹⁵ Art 2(1) of ILO Convention C29 – Forced Labour Convention

¹¹⁶ (Skrivankova, 2010, p. 8)

permits required for lawful residence in Qatar and employment, he withholding of passport and identity documents and threats of reporting the migrant workers to the authorities should they refuse to work.¹¹⁷ All of these practices used by employers with the intention to exploit the migrant worker may amount to human trafficking.

The purpose of the Human Trafficking Protocol as mentioned, is to prevent and combat trafficking in persons by protecting and assisting the victims thereof and to promote the cooperation amongst State Parties.¹¹⁸ Qatar as a signatory state is expected to take certain measures against practices of human trafficking, such as criminalizing the offence of trafficking in persons but also associate offences as listed in Art 5 of the Trafficking Protocol. All State Parties are also obliged to adopt preventive measure to prevent trafficking from occurring and to adopt explicit measures regarding the victims of trafficking.

The next chapter will focus on how Qatar has implemented their international obligations into their domestic laws. The chapter will focus on Qatar's national legislation more specifically, Law No.15 of 2011 for Combating Trafficking in Persons, Qatar's Labour Law¹¹⁹ and Qatar's Sponsorship Law¹²⁰.

¹¹⁷ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, pp. 53 - 57)

¹¹⁸ (Human Trafficking and Forced Labour Exploitation - Guidelines for Legislative and Law Enforcement - Special action programme to combat Forced Labour, 2005, p. 7)

¹¹⁹ Labour Law of the State of Qatar 2004

¹²⁰ Law no.4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

CHAPTER 3. WHAT HAS QATAR DONE TO IMPLEMENT THEIR INTERNATIONAL OBLIGATIONS?

Both the ILO Conventions and the Human Trafficking Protocol requires States Parties to actively participate in the fight against forced labour practices as well as human trafficking. Whilst both these documents give wide discretion to States in the implementation of the standards in their domestic laws, specific requirements are made for the criminalization of these practices under the State's criminal law as well as the adjustment of the States administrative and labour laws.

This Chapter will focus on Qatar's national instruments with specific focus on Law No 15 of 2011 Combatting Trafficking in Person, Qatar's famous Sponsorship Law as well as Qatar's Labour Law to see how far the Government of Qatar has gone in adjusting their domestic laws to prevent forced labour practices and ultimately human trafficking.

National instruments

3.1 Combating Trafficking in Persons - Law No.15 of 2011

In October 2011 Qatar has passed its very first anti trafficking Act¹²¹. This Act uses the internationally accepted definition of human trafficking as set out in the Human Trafficking Protocol.¹²² Law No 15 of 2011 focusses on forced labour, forcing woman into prostitution, sexual exploitation, child abuse and child pornography, kidnapping and taking someone from a foreign country into Qatar and promising money for exploitation and enslaving.¹²³

➤ Criminalizing human trafficking

From article 2 which contains the definition¹²⁴ it is seen that this Act does not just criminalize human trafficking but also forced labour and all other acts associated thereto. The Act further states that any person implicated in human trafficking, despite the persons contribution thereto, will be sentenced to a maximum time of 7 years imprisonment and QR250 000.00 (\$68 675.66) fine¹²⁵ and in aggravated circumstances to a maximum time of 15 years imprisonment and QR300 000.00 (\$82 410.79) fine.¹²⁶

➤ Conviction of guilty parties

Articles 16 – 22 of the Act provides for the conviction of public or private employers and/or companies. Where a head/manager of a company is found guilty of any involvement of human trafficking will be sentenced to a maximum of 5 years imprisonment and QR 200 000.00 and the licence of that firm will be cancelled for up to 2 years. The Act also provides for the permanent cancellation of a firms license should aggravated circumstances allow it.¹²⁷

¹²¹ Law No 15 of 2011 Combatting Trafficking in Persons

¹²² Protocol to prevent, suppress and punish Trafficking in Persons, especially Woman and Children, supplementing the United Nations Convention against Transnational Organized Crime Nov 15, 2000

¹²³ (Toumi, 2011)

¹²⁴ Art 2 of Law No 15 of 2011 Combatting Trafficking in Persons

¹²⁵ Art 14 of Law No 15 of 2011 Combatting Trafficking in Persons

¹²⁶ Art 15 (1) – (7) of Law No 15 of 2011 Combatting Trafficking in Persons.

¹²⁷ (Toumi, 2011)

➤ Victim protection

With regards to the victims of human trafficking the Act specifically provide in Art 25 that victims shall be exempted from penalties prescribed for violating Law No 4 of year 2009, the Sponsorship Law. It also provides for shelter during the legal process together with financial compensation.

In the Trafficking in Persons Report of July 2015 the US State Department found that in the 2014/2015 year, the Qatari Government identified 422 trafficking victims, 228 were victims of forced labour. It was also found that the Qatari Government initiated investigations against eleven people accused of these practices compared to only four the previous year.¹²⁸ Despite the investigations, Qatar has never prosecuted any exploitative employer or recruiter in their personal capacity under this Act¹²⁹.

3.2 Qatar's Sponsorship Law

The famous Sponsorship Law¹³⁰ also known as the Kafala system, has been briefly discussed in Chapter 1. This system is constructed around the idea of employer sponsorship over foreign/migrant workers.¹³¹ The system creates an unequal power balance between the employer and the migrant workers as the migrant workers have limited options when they are being exploited.

This section will be a detailed discussion of the Sponsorship system with regards to the migrant workers in Qatar and the specific provisions applicable to them. The Amendments introduced by Law No 21 of 2015 will also be discussed. In order to establish if Qatar's national laws adheres to its international obligations, a reflection of the Sponsorship Law with specific reference to the ILO Conventions and the Human Trafficking Protocol will be discussed.

¹²⁸ (Trafficking in Persons Report, July 2015, p. 285)

¹²⁹ (Trafficking in Persons Report, July 2015, p. 285)

¹³⁰ Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

¹³¹ Art 26 of Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

➤ Entry into Qatar

In Qatar, the Sponsorship Law requires each migrant worker who wants to enter the country for employment to have a sponsor, who assumes legal responsibility for his/her stay in Qatar.¹³² As per Article 5, this rule also applies to individuals entering Qatar on a temporary visit visa.¹³³

Under this Law, it is the Sponsors responsibility for the workers legal entry into and exit from Qatar. This law further stipulate that a worker cannot change jobs or leave the country without the prior permission of the employer as the employer must provide the worker with his exit visa or certificate. Once a migrant worker exists Qatar, the worker cannot enter Qatar under a new sponsor for at least 2 years.

➤ Return of passport

By law, Qatari sponsors or their delegates are allowed to retain the passports of the workers they sponsor only for the period of time required to complete residency or renewal processes.¹³⁴ The new provisions makes it illegal for employers to permanently confiscate the migrant workers' passports.

Regardless of the migrant perspective on this issue, the high proportion of migrant workers who lack possession of their passport is a testament to the poor enforcement of this law.¹³⁵ The illegal confiscation of passports by employers is an issues that has been brought to the attention of the Qatari Government by numerous NGO's, including the ILO.¹³⁶

¹³² Art 18 of Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

¹³³ (The Legal Framework of the Sponsorship Systems of Qatar, Saudi Arabia and Kuwait: A Comparative Examination, 2014, p. 4)

¹³⁴ Art 9 of Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

¹³⁵ (Andrew M Gardner, 2013, p. 9)

¹³⁶ (DLA Piper UK LLP, 2014, p. 49)

➤ Exit permits

A migrant worker is only allowed to leave the country with the permission of his employer and with the issuing of an exit permit or “no objection” certificate. The amended Sponsorship Law also allows for the Ministry of Interior to provide migrant workers with exit permit if their sponsor refuses to do so and the sponsor do not have a case against the migrant worker before the courts.¹³⁷

➤ Transfer of Sponsorship

Under the Sponsorship Law, migrant workers have no right to transfer sponsorship without their sponsoring employer’s consent. The law allows for a migrant to be temporarily transferred when there is a lawsuit pending between the employer and the migrant worker.¹³⁸ The Ministry of Interior can also grant workers permanent transfer of sponsorship “in the event of abuse by the employer or as required by the public interest.”¹³⁹

However, both Amnesty International and Human Rights Watch, in two different studies, found that workers have only a remote chance of taking advantage of these provisions, making it virtually impossible for workers to change employers, and leaving employers with nearly unchecked control over workers in their employ. Data provided for by the Ministry of Interior’s Human Rights Department showed that in 2012 alone 607 migrant workers requested transfers but only 49 were allowed permanent transfers and 211 temporarily.¹⁴⁰

➤ Ban on Return

In order to regulate the number of foreigners living in Qatar for employment purposes and to protect the interests of employers, Qatar’s Sponsorship Law requires migrant workers to spend

¹³⁷ (McClaud, n.d.)

¹³⁸ Art 12 of Law No 4 of 2009 – ““The Minister or his nominees shall transfer the sponsorship of any expatriate worker on a temporary basis if there is any suits filed between the sponsor and the Expatriate worker

¹³⁹ Art 12 of Law No 4 of 2009 – ““The Minister or his nominees shall transfer the sponsorship of any expatriate worker on a temporary basis if there is any suits filed between the sponsor and the Expatriate worker

¹⁴⁰ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, p. 95)

a certain amount of time outside of the country when their work contracts have come to an end.¹⁴¹

It is stated that migrant workers who has been employed and resided in Qatar may not be issued another entry visa/workers permit until two years have lapsed. However, this period may be waived by the Ministry of Interior subject to a written approval by the previous employer.

Art 61 of the Sponsorship Law also states that should a migrant worker be dismissed from work, as a punitive measure as per the Labour Law, the said migrant will be denied re – entry into Qatar for four years.¹⁴²

➤ The claim of absconding (Reparation and Absconding)

Migrant workers are not allowed to leave the employment of their sponsor/employer without their permission or a “no objection” certificate. Migrant workers who leave their employment without the said certificate are charged with absconding and labelled “runaways” which is illegal. Employers are forced by law to report migrant workers and faces heavy fines should they not do it. They also remain legally responsible for the migrant worker, if they don’t report him/her, and will be held legally responsible for all actions taken by the migrant worker.¹⁴³ When an employer reports a migrant worker to the Ministry of Interior, the migrant worker loses his residency permit and faces not only fines but also deportation and detention.¹⁴⁴

This situation leaves many migrant workers in a very vulnerable situation as they try and escape exploitative and in most cases forced labour practices only to become illegal residents of a country, despite the fact that they are not the ones in the wrong.

Art 36 of the Qatari Constitution¹⁴⁵ states "personal freedom shall be guaranteed and no person may be arrested, detained, searched, neither may his freedom of residence and mobility be restricted save under the provisions of the law; and no person may be subjected to torture, or

¹⁴¹ (The Legal Framework of the Sponsorship Systems of Qatar, Saudi Arabia and Kuwait: A Comparative Examination, 2014)

¹⁴² (The Legal Framework of the Sponsorship Systems of the Gulf Cooperation Council Countries, 2015, p. 9)

¹⁴³ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 75)

¹⁴⁴ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, p. 94)

¹⁴⁵ Permanent Constitution of the State of Qatar 2005

any degrading treatment; and torture shall be considered a crime punishable by law". As per the report by DLA Piper it was found that "the criminalisation of "absconders" (and their detention) arising out of a contractual breach, is inconsistent with this article."¹⁴⁶

3.2.1 Amendments to the Sponsorship Law

Qatar adopted a new law¹⁴⁷ in 2015 amending some provisions in the 2009 Sponsorship Law. This law will enter into force in October 2016. Despite an international outcry regarding the power of employers it seems that under this new law employers will continue to play a significant role in the Sponsorship system.

The main reform under the new law is the establishment of a new system to appeal refused exit permits before the Ministry of Interior. This law provides for migrant workers to inform the Ministry of Interior of their intentions to leave the country within 72 hours after they apply to do so instead of having to directly request permission from the sponsor.¹⁴⁸ The Ministry of Interior will then inform the sponsor of the migrant workers intention and will await the sponsors approval or objection.¹⁴⁹

The new Sponsorship Law also provides for the abolition of the ban period of two years as was required under the old law. Migrant workers may now stay on in Qatar once they have completed a fixed term contract and will also no longer require the permission of their sponsors should they want to take up another job.¹⁵⁰ However, migrant workers with permanent contracts will only be able to change employers after five years in continuous employment and subject to the approval of the sponsor and the Ministry of Interior.

The Amendment Act also stipulate that if a foreign worker is fired from his employment as a punitive measure and he did not lodge an appeal to his dismissal or his plea was rejected by a

¹⁴⁶ (DLA Piper UK LLP, 2014, p. 51)

¹⁴⁷ Law No. 21 of 2015 on the Regulation of the Entry and Exit of Expatriates amending Law No 4 of 2009

¹⁴⁸ (Promising Little, Delivering Less: Qatar and Migrant Labour abuse ahead of the 2022 Football World Cup, 2015, p. 4)

¹⁴⁹ Articles 2 - 7 of Law No 21 of 2015 on the Regulation of the Entry and Exit of Expatriates amending Law No 4 of 2009

¹⁵⁰ Articles 21 – 23 of Law No 21 of 2015 on the Regulation of the Entry and Exit of Expatriates amending Law No 4 of 2009

court, the migrant worker shall not be permitted to come back to Qatar before the passage of four years.¹⁵¹

According to Brigadier Mohamed Ahmed al-Atiq, assistant-director general of the Department of Border, Passport and Expatriates Affairs; under the new Amendment Act the employment contract will be the only document regulating the employer – employee relationship. The contract will be the basis for any legal claim as well as the rights and obligations between the employer and employee. The employment contract must be signed by both parties and has to be approved by the authorities.¹⁵²

3.2.2 Reflections on the Sponsorship Law

Under the Sponsorship Law, migrant workers cannot enter Qatar without a sponsor. The Sponsorship system gives a sense of control and ownership to the sponsor, leaving migrant workers dependant on their sponsors for legal entry and residence in Qatar. This systems creates an imbalance of power between an employer and worker leaving migrant workers extremely vulnerable to abuse and exploitative labour practices The ILO Conventions does not specifically address the requirements of sponsorship and entering into a country. By allowing this imbalance of power the Qatari Government is violating their obligations under the ILO Conventions in that it is expected to respect and protect human rights.

The Sponsorship Law, sets out certain provisions making it illegal, for sponsors to permanently confiscate workers passports. Art 9¹⁵³ allows for the temporary retention of passports only for the period of time required to complete residency or renewal processes. Both the ILO Convention C29 and the Human Trafficking Protocol refers to the retention of passports or identity documents as a “menace of penalty” used to exact a situation of forced labour or a “means of exploitation for purposes of human trafficking.” Should these documents be retained without the consent of the migrant worker or for the purpose of further exploitation, the retention will amount to forced labour or even human trafficking. Despite the fact that Qatar is obliged under

¹⁵¹ Art 26 of Law No 21 of 2015 on the Regulation of the Entry and Exit of Expatriates amending Law No 4 of 2009; (New law lifts two - year ban on expats re - entry, 2015)

¹⁵² (New law lifts two - year ban on expats re - entry, 2015)

¹⁵³ Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

the ILO Conventions and the Human Trafficking Protocol to abstain from providing and supporting such practices, art 9 of the Sponsorship Law¹⁵⁴ allows the temporary retention thereof. Most employers however permanently confiscate their workers passport without their consent, leaving these workers vulnerable to these exploitative practices. Therefore indirectly the Qatari system is facilitating forced labour and human trafficking, rather than addressing it.

The most restrictive provisions set out under the Sponsorship Law, are that migrant workers are not allowed to leave Qatar or change jobs without the consent of their sponsor/employer. The new amended provision allow that should the employer refuse to grant permission to leave the country the Ministry of Interior can provide same. The ILO Convention specifically states that a migrant worker shall become a victim of forced labour when he/she no longer have the freedom to leave the employment at any time. This rule is a direct violation of Art 13 of the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination which provides every person with the right to free movement.

Another horrifying condition under the Sponsorship Law is the fact that innocent migrant workers, when trying to escape their abusive and exploitative conditions, may be charged with absconding, resulting in criminal charges and in some cases deportation. This unfair burden contributes to the vulnerability of the migrant workers in Qatar. As found by DLA Piper, “the criminalisation of “absconders” (and their detention) arising out of a contractual breach, is inconsistent with Art 36 of the Permanent Constitution of the State of Qatar 2005,”¹⁵⁵ as well as the ILO Conventions. The fact that even though the Constitution of Qatar prohibits a practice from occurring, the lack of enforcement of these provision by the Qatari Government facilitates and contributes towards the vulnerability of migrant workers end their exposure to forced labour practices.

Many Qatari officials have claimed that the sponsorship system is necessary, especially due to the high percentage of migrant workers¹⁵⁶, but this cannot justify maintaining legislation that contributes to the vulnerability, abuse and exploitation of these workers.

¹⁵⁴ Ibid

¹⁵⁵ (DLA Piper UK LLP, 2014, p. 51)

¹⁵⁶ (Report of the Special Rapporteur on the human rights of migrants, Francois Crepeau, on his mission to Qatar, 2014, p. 8)

Despite the amendments proposed, the Amendment Sponsorship Law still leaves a considerable amount of power to the employers as employers are still able to reject the migrant workers application to leave Qatar.

3.3 Qatar's Labour Law

Qatar's Labour Law sets out the basic standards and entitlement of workers employed in the private sector and places specific obligations on employers. Key protections in the Labour Law applicable to this thesis will be discussed as well as key protection not provided for in the Labour Law. This section will also discuss the Amendments introduced by Law No 1 of 2015. In order to establish if Qatar's national laws adheres to its international obligations, a reflection of the Labour Law with specific reference to the ILO Conventions and the Human Trafficking Protocol will be discussed.

From this section it becomes even clearer that certain provisions in the Act, such as the prohibition of the migrant workers right to freely choose a job or legally end their employment as well as the prohibition of the right to unionize and strike leaves these workers in a vulnerable position without the proper means to protect themselves.¹⁵⁷

➤ Working hours & payment of wages

The Labour Law provides strict provisions regarding working hours and provide for a maximum of 48hours of work per week and any additional hours should be compensated through overtime payments. Its further requires employers to provide workers with one month's annual paid leave and provides for set end of service pay-outs.¹⁵⁸ With regards to the payment of wages, it is stated that "the wages of the workers employed on an annual or monthly basis shall be paid at least once a month. The wages for all other workers shall be paid once at least every two weeks."¹⁵⁹

¹⁵⁷ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 37)

¹⁵⁸ Art 23 of the Labour Law of the State of Qatar, Law No 14 of 2004

¹⁵⁹ Art 66 of the Labour Law of the State of Qatar, Law No 14 of 2004

➤ Valid work permits & cancellation thereof

The same article provide conditions that both the worker and the employer must fulfil to obtain valid work permits. It states firstly that all non – Qatari nationals must be in possession of a valid work permit for a maximum time of 5 years, issued by the Department of Labour and that all workers must pass a Government – administered medical examination and obtain a security clearance from the Ministry of Interior.¹⁶⁰

As per Article 25 the Ministry of Labour is authorise to at any time cancel a migrant workers residency permit should the worker take up employment other than that specified in his visa or with another employer and should the worker quit his job for any other reason than that allowed for in the Act.

➤ The recruitment of migrant workers

The Labour Law has very strict provisions when it comes to the recruitment of workers.¹⁶¹ This article forces all employers in Qatar to recruit migrant workers by means of a licensed recruitment agency and strictly prohibits the charging of any fees or costs associated to the recruitment of the migrant worker.¹⁶²

Qatar's Labour Law explicitly prohibits the charge of a recruitment fee and requires employers to pay for visas and residency permits.¹⁶³ The law also forbids any employer or placement agency to deduct an amount of the workers' wages for visa or placement fees. Despite these laws the placement agencies in the country of origin have found ways to circumvent the law by using the informal hawala system of monetary exchange to remit money to the agencies or employers in Qatar resulting in most workers entering Qatar indebting themselves in order to find employment within the Gulf state.

As mentioned on numerous occasions in this paper the recruitment phase is, for most migrant workers, the beginning of a very exploitative process and the law does little, almost nothing to

¹⁶⁰ Art 23 of the Labour Law of the State of Qatar, Law No 14 of 2004

¹⁶¹ Art 33 of the Labour Law of the State of Qatar, Law No 14 of 2004

¹⁶² (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 39)

¹⁶³ Labour Law of the State of Qatar 2004

protect migrant workers from falling victim to these practices as well as the exorbitant recruitment fees charged by both the recruitment agents in the country of origin as well as the recruitment agent/ employers in Qatar.

In an interview conducted by Human Rights Watch, when asked why almost all migrant workers interviewed in their study was forced to pay massive amounts of recruitment fees despite this provision and lack of enforcement from the authorities the Ministry of Labour responded by saying “The Labour Law and ministerial decrees issued pursuant to it strictly prohibit any employer or labour recruitment office from receiving any fee or commission for recruiting labour for Qatar. The Ministry of Labour strictly enforces these provisions, as these acts are considered human trafficking, which is prohibited by laws. The administration has received no complaint from any worker that his employer has asked him to cover recruitment costs and fees.”¹⁶⁴ The Qatari Government have an obligation under the International Labour standards to regulate the charging of recruitment fees and must prohibit these practices as this result in thousands of workers being trapped in, jobs they may not have agreed to before migrating, abusive conditions or forced labour.¹⁶⁵

➤ Employment contracts

Article 45, bans employers from expecting workers to do work which differs from what they had agreed, with limited exceptions "if it is temporary or if the work does not basically differ from the original work and if the request to perform that work does not entail an insult on the worker provided that the wage of the worker shall not be reduced."¹⁶⁶

Qatar’s Labour Law further requires that “all contracts and other documents and written instruments provided for in this law shall be in Arabic” and further stipulates that while “the employer may accompany any contract, document or written instruments with translation into other languages” it does not require translation into a language that would allow the workers to understand its contents.¹⁶⁷ In light of the above provision and given the fact that almost none of the migrant workers speak or understand Arabic, it has been found that many workers sign

¹⁶⁴ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 39)

¹⁶⁵ Ibid, p.53

¹⁶⁶ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, p. 106)

¹⁶⁷ Art 9 of the Labour Law of the State of Qatar, Law No 14 of 2004

contracts in Qatar under coercive circumstances.¹⁶⁸ There have been reports of employers demanding signing of contracts without explaining the content thereof and in some cases employers sign the contracts themselves.

➤ Health and safety measures

In respect of Health and Safety measures the Law requires employers to provide all workers under their employ with adequate safety equipment, the necessary training, education regarding occupational hazards and proper medical assistance in the form of a clinic and nurses to attend to the migrant workers should something happen.¹⁶⁹ It is also expected from the employers to report all work related injuries and deaths to the Police and the Department of Labour.¹⁷⁰ As Qatar does not make public any records regarding workplace injuries or death it is very difficult to conclude the severity thereof. The Ministry of Labour reported¹⁷¹ that “over the last three years, there have been no more than 6 cases of worker deaths. The causes are falls.” According to Human Rights Watch this number of fatalities fall way below the number reported by just one labour – sending country.¹⁷²

Additional articles make provision for access to medical care, end of service payments and annual leave.¹⁷³

3.3.1 Key protection not provided for in the Labour Law

Despite the various provision and standards set out in Qatar’s Labour Law, this Act lacks key protection provisions to migrant workers. The first and one of the utmost important aspects not mentioned in the Labour Law is minimum wage.¹⁷⁴ As there is no provision stating an amount for minimum wage, most employers pay their workers the amount they see fit. Most of the complaints mentioned by migrant workers have been about the payment of inadequate wages.

¹⁶⁸ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 59)

¹⁶⁹ Art 104 of Labour Law of the State of Qatar, Law No 14 of 2004

¹⁷⁰ Art 108 the Labour Law of the State of Qatar, Law No 14 of 2004

¹⁷¹ In an email send to Human Rights Watch, December 1, 2011; (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012)

¹⁷² (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 41)

¹⁷³ Art 54, 60 & 78 of the Labour Law of the State of Qatar, Law No 14 of 2004

¹⁷⁴ United States Department of State, Human Rights Report 2010,

Should this Act have a set provision regarding minimum wage, it would provide workers with a clear idea about payment expectations.

Core international labour standards¹⁷⁵ such as freedom of association and the right to collective bargaining is strictly forbidden for non – Qatari nationals under the Labour Law. Part 12 strictly bans migrant workers from joining workers committees or the national union.¹⁷⁶ It also prohibits migrant workers from participating in strikes.¹⁷⁷ This ban prevents migrant workers in responding to exploitative practices or other abuses by their employers.

These provisions are in stark contrast to numerous international instruments such as Art 20(1) and Art 23(4) of the Universal Declaration of Human Rights which provides that “everyone has the right to freedom of peaceful assembly and association” and “everyone has the right to form and to join trade unions for the protection of his interest.” These provision are also in direct contracts to Art 5(e)(i) of the International Convention of the Elimination of Racial Discrimination¹⁷⁸ to which Convention Qatar is a signatory States. This Convention reads “States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of the right to form and join trade unions.”

The Committee on the Elimination of Racial Discrimination is also of the view that despite the fact that State parties may refuse jobs without work permits to non – citizens, “all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.”¹⁷⁹

Serious amendments needs to be made in this regards as the Labour Law as it stands now, places severe limitations on migrant workers right to freedom of association and their right to form or join trade unions.

¹⁷⁵ As set out in ILO Conventions

¹⁷⁶ Art 116 of the Labour Law of the State of Qatar, Law No 14 of 2004

¹⁷⁷ Art 120 of the Labour Law of the State of Qatar, Law No 14 of 2004

¹⁷⁸ General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981

¹⁷⁹ General Recommendation No.30: Discrimination Against Non-Citizens: 10/01/2004. Gen. Rec. No. 30. (General Comments). Para 35

3.3.2 Inadequate enforcement of Qatar's Labour Law and Access to Justice

ILO Convention No 81,¹⁸⁰ to which Qatar is a signatory parties specifically states “*the number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate.*” It was found that the Ministry of Labour only employed roughly 260 labour and health and safety inspectors to regulate and inspect labour complaints/circumstances for almost 1.5 million migrant workers. According to the Ministry of Labour, all inspectors are required to conduct at least two inspections a day which is very worrisome as most companies based in Qatar are multi complex with hundreds of migrant workers employed at multiple sites¹⁸¹. It seems that this requirement prohibits the inspectors to do their jobs properly.

Labour Inspectors are also required to conduct interviews with migrant workers¹⁸² but concerns have been raised that most of these inspectors only speak English or Arabic with almost none of the migrant workers speaking the same language, leaving a massive language gap between the workers with the complaints and the Government officials appointed in assisting them. These concerns raise the question whether the inspectors are capable of thoroughly investigating labour abuses.

Under the Labour Law migrant workers have a few complaints mechanisms at their disposal which could be accessed through the Ministry of Labour, Ministry of Interior, and the National Human Rights Committee or directly to the Labour Court. Workers are expected to lodge their complaints with the Labour Relations Department of the Ministry of Labour who accepts these complaints at their offices. They then start the mediation process with the employers. If these complaints cannot be resolved directly between the Department and the employer the case is referred to the Labour Court. This is also an alternative procedure whereby the migrant workers lodge complaints directly with the Labour Court.

Despite the existence of these mechanisms, indebted migrant workers who face abuse normally avoid the legal discourse as the process is difficult to access and out of fear for retaliation from

¹⁸⁰ ILO - Labour Inspection Convention No 81

¹⁸¹ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, p. 110)

¹⁸² Article 16 of Minister of Civil Service and Housing Affairs Decree 13 of 2005

their employers. These legal procedures are also very lengthy and the expenses that the migrant workers will have to incur, make them even more vulnerable to forced labour practices and debt bondage.¹⁸³ It has been found that despite the Labour Law explicitly stating that migrant workers will be exempted from any judicial fees,¹⁸⁴ most migrant workers wanting to file a claim must pay up to QR600 (\$164.82).

The excessive length of the Court procedure is another barrier for migrant workers. There have been reports that workers can expect to wait anything between six and twelve months for their complaints to be heard by the Court, during which time the migrant workers is expected to remain under the employ of his employer.¹⁸⁵

3.3.3 Amendments to the Labour Law

Qatar adopted a new law¹⁸⁶ in 2015, to enter into force in December 2016, amending some provision in the 2004 Labour Act. The most important and practical amendment is made to Art 66 of Law No 14 of 2004 with regards to the constant complaints of non or late payment of wages. To address the issue of non-payment or late payment of wages, under a new provision in the Amendment Act, companies will be required to pay their migrant workers through direct bank transfers. The main goal for having payments made by direct bank transfer is for both the migrant worker and the Government to govern whether payment is being made on time. This amendment is only applicable to migrant workers receiving a salary and it is not clear how this amendment will affect workers being paid in wages.¹⁸⁷

This Amendment has also brought forward penalties for employers who fail to comply with the new payment structure. The penalty may constitute, either imprisonment for up to one month or a financial penalty for QR2 000.00 – QR6 000.00 (\$549.41 - \$1 648.22) per employee.¹⁸⁸

¹⁸³ (Trafficking in Persons Report, July 2015, p. 284)

¹⁸⁴ Art 10 of the Labour Law of the State of Qatar, Law No 14 of 2004

¹⁸⁵ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, p. 118)

¹⁸⁶ Law No 1 of 2015 amending the Labour Law of 2004

¹⁸⁷ (Promising Little, Delivering Less: Qatar and Migrant Labour abuse ahead of the 2022 Football World Cup, 2015, p. 5)

¹⁸⁸ (Gulf Times - Clyde & Co, 2015)

Since the Amendment Act will only enter into force in December 2016 there have been no penalties under this new law thus far.

3.3.4 Reflection on the Labour law

Qatar's Labour Law consists of strong protection mechanisms and provisions for workers in the private sector and at face value looks to be a safe haven for any violated worker where in actual fact it is a system with gaps and weaknesses and is ineffectively enforced.

From the various studies and interviews done by Civil Society Activists¹⁸⁹ (as referred to during this thesis) it was found that from the moment migrant workers apply for work in Qatar they suffer abuse and exploitation at the hands of recruiters. Despite the fact that it is forbidden by law to charge recruitment fees, this practice regularly occurs and most often leads to migrant workers indebting themselves, resulting in debt bondage that equates to forced labour practices under the ILO Conventions.

Strong provisions also exist in terms of employment contracts and that employers are, under law, compelled to take out visas for specific types of employment. Cases have been discussed where migrant workers were deceived regarding the terms of employment and figures of wages. These deceitful practices could amount to human trafficking, under the Human Trafficking Protocol. In most cases these deceptive practices are used to further exploit the migrant workers.

Another common practice resulting in forced labour, under the ILO Conventions, which can also amount to human trafficking, under the Human Trafficking Protocol, is the withholding or threat to withhold payment of wages, despite strict provisions as to when payment should occur. Many migrant workers have also been found living for months without payment and stripped from their passports. Workers accommodation in a condition way below the minimum standards as set out in the Labour Law and ILO Conventions have also been reported.

The most concerning restrictions within Qatar's Labour Law, which is specifically guaranteed under the ILO Conventions, are the all-out prohibition for migrant workers to form unions and

¹⁸⁹ Amnesty International and Human Rights Watch

to actively take part in collective bargaining and their right to partake in strikes. These rights are also enshrined in various international documents which Qatar has ratified and it is against Qatar's obligations under the ILO's Constitution.

All of the mentioned practices are strictly forbidden by Qatar's Labour law as well as other international instruments ratified by Qatar, yet the legal framework set out to protect these workers is not sufficiently enforced. There have been numerous complaints of the lack of access to the judicial systems as well as the huge amounts of legal fees associated therewith.

By not addressing the blatant violations of the national laws, and the inadequate enforcement of these laws, Qatar is facilitating and actively taking part in the creation of forced labour practices as well as practices of human trafficking.

3.4 Complaints brought against Qatar

Various complaints have been brought to the International Labour Organization regarding Qatar's labour practices concerning non-observance of both ILO Convention 29 and 81 of which Qatar is a signatory to both.¹⁹⁰

These complaints include:

1. "Problems of forced labour affecting migrant workers
2. From the moment migrant workers begin the process of seeking employment in Qatar, drawn into a highly exploitative system that facilitates the exaction of forced labour i.e contract substitution, recruitment fees and passport confiscation
3. The Government of Qatar fails to maintain a legal framework sufficient to protect the rights of migrant workers consistent with International Law and to enforce legal protection to migrant workers
4. The Sponsorship Law¹⁹¹) facilitates the exaction of forced labour by making it very difficult and in some cases impossible for migrant workers to leave the country."¹⁹²

¹⁹⁰ 103rd Session of the International Labour Organization Conference in June 2014

¹⁹¹ Law No 4 of 2009 Regarding the Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

¹⁹² 103rd Session of the International Labour Organization Conference in June 2014

After consideration of the complaints brought, the Committee found that there was in fact a number of migrant workers who might find themselves in situations of forced labour on a number of factors they have identified. The Committee made certain recommendation to the Government of Qatar in that it urgently needed to: 1) review the Sponsorship system; 2) to provide affected migrant workers easier access to justice, in providing them with monitoring mechanisms for the infringement of any labour legislation and 3) that it should adopt a stronger penalty system¹⁹³.

In response to these complaints, the Qatari Government listed measures that have been taken to address the Kafala system in referring to the Amendment Act¹⁹⁴ that has been announced. With regards to access of justice the Government indicated that it had set up “workers’ departments specialized in examining workers’ lawsuits in order to expedite the procedures.” An office at the States tribunals has been set up to help migrant workers with their claims at no costs.¹⁹⁵ The Government has also indicated that a draft bill which amends several provisions relating to penalties for labour violations, have been approved. “It includes several sections which ensure increased protection of workers’ rights including stricter penalties imposed on anyone found in violation of the law while imposing a criminal penalty on any employer who violates the provisions relating to the timely payment of wages”¹⁹⁶

From the complaints lodged, the recommendations made by the Committee and the subsequent response by the Qatari Government, it is clear that the Government of Qatar is failing to maintain a legal framework sufficient to protect the right and freedom of migrant workers and to enforce the required legal protection. The widespread and systemic violations of the standards set out in ILO Convention 29 results in human trafficking for forced labour exploitation.

¹⁹³ International Labour Organization Conferences

¹⁹⁴ Law No 21 of 2015 on the Regulation of the Entry and Exit of Expatriates amending Law No 4 of 2009

¹⁹⁵ (International, Labour Office, 2015, p. 10)

¹⁹⁶ Ibid, p.11

3.5 Conclusion

From this chapter it is clear that the Sponsorship system creates an unequal power balance between an employer and his migrant workers, leaving the migrant workers extremely vulnerable to abuse and exploitative labour practices. Under this system an employer is responsible for the entry into and exit from Qatar. Migrant workers are not allowed to leave the country or change employment without the consent of their employers. These provision are a direct violation to a migrant workers right to freedom of movement as specifically guaranteed under the ILO Conventions and Art 13 of the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination which provides every person with the right to free movement.

Should the workers try and escape practices of abuse and exploitation, the system enables an employer to report the workers to the authorities and a charge of absconding can be laid against them. This charge could result in financial penalties or even deportation. The Sponsorship Law also provides strict provisions prohibiting the permanent retention of workers identity documents or passports yet this practice commonly occur and most migrant workers interviewed by Civil Society Activists confirmed that they were not in possession of their documents. Should these documents be retained without the consent of the migrant workers and used as a form of exploitation, this practice could amount to or facilitate forced labour and in some cases even lead to human trafficking. Despite the amendments proposed, the Amendment Sponsorship Law¹⁹⁷ still leaves a considerable amount of power to the employers as employers are still able to reject the migrant workers application to leave Qatar.

As discussed, Qatar's Labour Law consists of strong protection mechanisms for migrant workers and at face value looks to be a safe haven for any violated worker where in actual fact it is a system with gaps and weaknesses and is ineffectively enforced. Qatar's Labour Law provides very strict provisions regarding the recruitment of migrant workers, employment contracts, working hours and payment of wages, valid work permits and the cancellation thereof as well as health and safety measures. Despite these strict provisions, various studies by Civil Society

¹⁹⁷ Law No 21 of 2015 on the Regulation of the Entry and Exit of Expatriates amending Law No 4 of 2009

Activists¹⁹⁸ found that almost none of these provisions are adhered to and that numerous violations have been reported by migrant workers. Complaints of, late or non – payment of wages, the absence of valid residency permits or renewed residency permits, deceptive employment contracts, unbearable working conditions without proper safety gear as well as squatter like living conditions way below the minimum standard of Qatar’s Labour Law and the ILO Conventions have been a common occurrence in Qatar.

Core international labour standards¹⁹⁹ such as freedom of association and the right to collective bargaining is strictly forbidden for non – Qatari nationals under the Labour Law. Part 12 of the Labour Law strictly bans migrant workers from joining workers committees or the national union.²⁰⁰ It also prohibits migrant workers from participating in strikes²⁰¹. This ban prevents migrant workers in responding to exploitative practices or other abuses by their employers.

It is clear from the above practices that both the Sponsorship system and the Labour Law facilitates and contributes to practices of forced labour, under the ILO Convention and in some cases human trafficking, under the Human Trafficking Protocol. The inadequate enforcement of these laws also contributes to the vulnerability of the migrant workers as there is a sense of impunity amongst the employers. Qatar needs to drastically address these two laws and urgently need to enforce an effective enforcement mechanism.

While normally the Qatari Government and the employers/recruiters are looked upon to address the treatment of migrant workers, another actor is now also in play due to the fact that the World Cup will be organised in Qatar, namely FIFA. Does FIFA, as an international organisation, have a responsibility to take action in cases of abusive and exploitative practices in relation to the organisation of the World Cup? What action, if any, should they be taking?

¹⁹⁸ Reports done by Amnesty International, Human Rights Watch, news blogs such as The Guardian

¹⁹⁹ As set out in ILO Conventions

²⁰⁰ Art 116 of the Labour Law of the State of Qatar, Law No 14 of 2004

²⁰¹ Art 120 of the Labour Law of the State of Qatar, Law No 14 of 2004

CHAPTER 4. FIFA AND THE 2022 FOOTBALL WORLD CUP

The 2022 FIFA Football World Cup has dominated global media, focusing on Qatar's construction rise since it has been awarded the bid to host the World Cup. One of the major issues that have dominated media and global interest is the exploitation of thousands of migrant workers working on the massive construction projects in Qatar.

The Qatar 2022 Supreme Committee for Delivery and Legacy (further referred to as Q22) is the responsible body for all infrastructure projects related to the World Cup stadiums. This body together with the Qatar Foundation have worked very closely in adopting a set of principles and standards for the welfare of migrant workers. In 2014, the Q22 have finalized their "workers charter" setting out 10 principles that all contractors and subcontractors working on their projects will have to comply with.²⁰² The charter covers most of the labour issues reported in the past and includes specifically a complete prohibition of forced labour. Most of these issues are also addressed in Qatar's laws.²⁰³

²⁰² (Report of the Special Rapporteur on the human rights of migrants, Francois Crepeau, on his mission to Qatar, 2014, p. 16)

²⁰³ (The ugly side of the beautiful game - Exploitation of migrant workers on a Qatar 2022 World Cup site, 2016, p. 5)

Despite the good initiatives taken by the Q22 there are problems with the committee's monitoring and enforcement of the charter. It is only applicable to projects related directly to the World Cup stadiums and certain hotels.²⁰⁴ It does not include further projects such as the expansion of roads and other hotels which leaves a great portion of the migrant workers not covered by the protection this charter offers.²⁰⁵

Qatar's bid to host the World Cup, stated that major construction work was needed in preparation for the tournament. FIFA has thus (indirectly) ordered the construction projects that have resulted in abusive and exploitative practices. Even though the main duty to protect human rights and prevent labour abuses lies with the Government of Qatar,²⁰⁶ FIFA as a Multi – National Corporation has a responsibility to respect the human rights of all individuals within the corporation and under the employ of all contractors and sub-contractors.²⁰⁷ In realizing this responsibility to respect, FIFA is expected to: adopt certain company policies, to perform due diligence in identifying actual and potential human rights violations and to address and prevent these violations from occurring²⁰⁸. It is thus argued that FIFA had to bear some knowledge about the migrant situation in Qatar and also the restrictive labour laws, yet FIFA did not put in place any measures protecting the migrant workers, responsible for the construction, from labour exploitation or forced labour practices.²⁰⁹

As early as 2011, allegations of labour abuses on World Cup construction sites surfaced. In a meeting with the Trade Union Confederation, FIFA agreed that it had a responsibility to investigate and address the allegations of violations of workers' rights in relation to the World Cup in Qatar²¹⁰, but in reports published by The Guardian in 2013, FIFA's then President Sepp Blatter, despite again acknowledging the fact that FIFA could not "turn a blind eye", stated

²⁰⁴ Ibid, p.9

²⁰⁵ (Report of the Special Rapporteur on the human rights of migrants, Francois Crepeau, on his mission to Qatar, 2014, p. 16)

²⁰⁶ Pillar I of the United Nations Guiding Principles on Business and Human Rights, also referred to as the Ruggie Principles

²⁰⁷ Pillar II of the United Nations Guiding Principles on Business and Human Rights, also referred to as the Ruggie Principles

²⁰⁸ Principle 15 – United Nations Guiding Principles on Business and Human Rights

²⁰⁹ (The ugly side of the beautiful game - Exploitation of migrant workers on a Qatar 2022 World Cup site, 2016, p. 10)

²¹⁰ Statement from Jerome Valcke on labour rights in Qatar, *FIFA web-site*, 17 November 2011 - (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, p. 91)

that FIFA was not ultimately responsible for the labour practices in Qatar and would/could not intervene in the country to deliver change.²¹¹

Now five years later, Amnesty International again presented evidence of grave human rights abuses and abusive labour practices on World Cup construction sites, to FIFA. FIFA did not address these allegations directly but referred to measures taken by Q22. It was also learned that FIFA had set up a 2022 FIFA World Cup Sustainability Working Group to perform due diligence in identifying the actual human rights abuses, but that this was only done in 2015, five years after the initial awarding of the tournament to Qatar.²¹² The continued failure by FIFA to take meaningful action on issues of forced labour and labour exploitations leaves thousands of migrant workers vulnerable and exposed to abuse. There have been numerous calls on FIFA to react to these abusive practices by urging the Qatari Government to take control and prosecute the wrongdoers or that FIFA should withdraw the tournament from Qatar. To date there have been no active intervention or attempt at reform from FIFA.

4.1 Reflection on the role of FIFA

FIFA as the governing body of the World Cup Tournament must become actively involved in the fight against these abusive and exploitative labour practices as it has (indirectly) ordered the construction that has resulted in these practices. FIFA should exert more pressure on all contractors and sub – contractors employed on World Cup projects to respect and adhere to the “workers charter” drafted by the Q22. FIFA must also raise its concerns and intention with the Emir of Qatar and exert pressure on the Government of Qatar to take measures in enforcing its laws and holding people to account. FIFA can no longer just be a silent bystander whilst these abusive and exploitative practices persist and should send a strong message that human rights must be protected and respected.

²¹¹ (World Cup 2022:football cannot ignore Qatar workers deaths, says Sepp Blatter, 2013)

²¹² (The ugly side of the beautiful game - Exploitation of migrant workers on a Qatar 2022 World Cup site, 2016, p. 10)

4.2 Conclusion

From this chapter it is clear that the 2022 FIFA Football World Cup has been under the spotlight for the abusive and exploitative labour practices experienced by the millions of migrant workers employed on World Cup construction projects. Initiatives taken by the Q22 have led to the finalization of the “workers charter” setting out 10 principles that all contractors and subcontractors working on the World Cup projects will have to comply with. The charter covers most of the labour issues reported in the past and includes specifically a complete prohibition of forced labour.

Even though the main duty to protect human rights and prevent labour abuses lies with the Government of Qatar,²¹³ FIFA as a Multi – National Corporation has a responsibility to respect the human rights of all individuals within the corporation and under the employ of all contractors and sub-contractors²¹⁴. FIFA must take certain measures in identifying and addressing grave human rights abuses and must act to prevent these abuses from occurring. The first step taken by FIFA was the set up a 2022 FIFA World Cup Sustainability Working Group in 2015, five years after Qatar won the bid to host the World Cup. To date there have been no further active intervention or attempt at reform from FIFAs side.

²¹³ Pillar I of the United Nations Guiding Principles on Business and Human Rights, also referred to as the Ruggie Principles

²¹⁴ Pillar II of the United Nations Guiding Principles on Business and Human Rights, also referred to as the Ruggie Principles

5. CONCLUSION & RECOMMENDATIONS

With the award to host the 2022 Football World Cup, Qatar launched into the spotlight, but for all the wrong reasons. The winning bid spelled a massive growth in the countries already busy construction sector, existing of more than 1.5million migrant workers, making up 94 percent of the Qatari workforce.

Various allegations have been made describing the conditions these migrant workers are exposed to including a recruitment process used to lure workers to Qatar under deceitful worker contracts together with the payment of huge recruitment fees. Migrant workers have also confessed to cases where employers would confiscate their passports as a measure of forcing the workers to remain in their employ. Confiscation of passports is also used as a ground of refusing permission to change employers or leave the country, both which the migrant workers cannot do without the employers consent. The refusal of permission by some employers result in the restriction of movement of these migrant workers directly infringing on their rights as set out in the Universal Declaration of Human Rights as well as the Convention on the Elimination of All Forms of Racial Discrimination. Horrendous living conditions way below Qatar's minimum standard as well as prolonged working hours have also been reported. All of these practices are strongly forbidden by Qatar's Labour Law.

The human rights and labour rights abuses documented in this thesis are the result of many failures and key protection gaps. Qatar's failure to enforce and take adequate steps to ensure that workers' rights are properly protected seems to be the major problem faced by migrant workers. Of grave concern is Qatar's obvious failure in enforcing bans on the mentioned unlawful practices such as passport confiscation, the payment of recruitment fees by the migrant workers themselves, no minimum wage provision and the ban of migrant workers forming unions and participating in strikes and collective bargaining. The Sponsorship Law, connecting migrant workers to their employers, requiring their permission to change employment or leave the country has often been described as enforcing practices of "modern – day slavery".

As seen in chapter 3, due to Qatar's strict Sponsorship and Labour Laws, many of the issues reported by migrant workers amounts to forced labour practices under the ILO Conventions, and in some cases even labour exploitation under the Human Trafficking Protocol. Allegations of forced labour practices and exploitation have been confirmed by the ILO as seen by the various complaints brought against Qatar. Ultimately it is the Qatari authorities who are responsible for the failure to protect migrant workers and even though Qatar has made some amendments to both the Sponsorship and Labour Laws, these promised changes have failed to deliver meaningful reform for migrant workers as they remain in situations of vulnerability and practices of forced labour and labour trafficking.

FIFA has come under severe scrutiny relating to the forced and exploitative labour practices the millions of migrant workers have been exposed to since starting to work on the World Cup construction projects. Many civil society activists and other Governments have called upon FIFA to take measures against the restrictive labour laws of Qatar relating to the abuse of their migrant workers as well as some calls for the withdrawal of the tournament from Qatar. It has been found that whilst FIFA has not publicly declared it is responsible to deal with these matters, it has publically stated that FIFA cannot "turn a blind eye" to the abuses suffered. Yet it has been almost six years since Qatar was awarded the bid to host the World Cup and only as recently as 2015 has FIFA taken active steps by setting up the 2022 FIFA World Cup Sustainability Working Group to perform due diligence in identifying the actual human rights abuses.

Recommendations to Qatar:

- Amend Law No 21 of 2015²¹⁵, to remove the requirement of migrant workers having to obtain consent from their employers to change employment unless they have reached the end of their term or completed five years of work as well as permission to leave the country²¹⁶;
- Amend the provision which enables employers to confiscate any identity documents with the consent of the migrant worker and²¹⁷;
- Establish a mechanism in which migrant workers can obtain their identity documents at any time²¹⁸;
- Amend the Labour Law to guarantee migrant workers the right to free association and collective bargaining, the right to form trade unions and the right to strike²¹⁹;
- Draft a new law prohibiting companies from making use of recruiters in foreign countries that charge recruitment fees²²⁰;
- Improve the amount of labour inspectors and their authority to investigate claims of labour law violations and health and safety regulations²²¹;
- Ensure that worker interviews forms a part of the inspectors job description and ensure that these inspectors can communicate to the migrant workers in their native languages;
- Provide more information about judicial measures that can be taken against labour law violations;
- Establish a pre court grievance mechanism allowing migrant workers suffering severe violations to obtain intermediate redress²²².

²¹⁵ Law No. 21 of 2015 on the Regulation of the Entry and Exit of Expatriates amending Law No 4 of 2009

²¹⁶ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 88)

²¹⁷ (The ugly side of the beautiful game - Exploitation of migrant workers on a Qatar 2022 World Cup site, 2016, p. 74)

²¹⁸ Ibid, p.74

²¹⁹ Ibid. p.88

²²⁰ (Building a Better World Cup: Protecting Migrant Workers in Qatar ahead of FIFA 2022, 2012, p. 87)

²²¹ Ibid, p.89

²²² (The ugly side of the beautiful game - Exploitation of migrant workers on a Qatar 2022 World Cup site, 2016, p. 74)

Recommendations to FIFA:

- Ensure that all developers, partners, contractors, sub-contractors and affiliates involved in the construction of World Cup projects engage in responsible and lawful recruitment and employment practices;
- To engage in a close working relationship with the Supreme Committee for Qatar 2022 in guaranteeing respect for the workers charter Q22 have drafted²²³;
- Formally raise key workers issues and abuses with the Qatari Government and urge the Government to take all necessary steps available in enforcing labour rights and prosecuting the perpetrators thereof;
- Inform all workers employed on World Cup construction sites of their rights under Qatari law²²⁴;
- Make public statements in which FIFA addresses the abuses incurred by these workers and publicly pledge to respect human rights.

²²³ (The Dark Side of Migration - Spotlight on Qatar's Construction sector ahead of the World Cup, 2013, p. 129)

²²⁴ (The ugly side of the beautiful game - Exploitation of migrant workers on a Qatar 2022 World Cup site, 2016)

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