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THE ABUSE OF MIGRANT WORKERS BY WORLD CUP 2022 HOSTS, QATAR: A CASE TO BE MADE FOR ALTERNATIVE DISPUTE RESOLUTION

Leandro Gomes

The Fédération Internationale de Football Association (“FIFA”) is an international organization that has described itself as a body that exists to develop the game of football¹ for the benefit of the entire world.² One of its visionary goals is to develop and deliver sustainable tournaments around the globe.³ Despite this, more than 6,500 migrant workers from primarily Asian countries—such as India, Pakistan, Nepal, Bangladesh, and Sri Lanka—have died in Qatar since it won the right to host World Cup 2022 ten years ago.⁴ While FIFA is not directly responsible for the numerous deaths in Qatar that have resulted from these new construction programs, the organization is actively betraying its goals and has only sought to include countries that will bribe FIFA officials—ostensibly “paying to play.”⁵ Although these death records are not categorized by occupation or place of work, many workers who have died in this timeframe were employed on World Cup infrastructure projects.⁶ Despite “internal investigations,” FIFA has not found evidence to warrant stripping Qatar of its hosting rights for 2022.⁷

The effects of these labor conditions were publicized in 2013, with an incident involving French football player, and captain of Qatar’s El-Jaish Sports Club (“El-Jaish”), Zahir Belounis.⁸ After becoming captain, Belounis’s contract was terminated, without reason, and he was subsequently not paid for over two years.⁹ Under Qatar’s employer sponsorship system of *kafala*,¹⁰ Belounis could not leave the country without his (former) employer’s consent.¹¹ After pursuing remedies through legal action against his former team for unpaid wages, in retaliation,

¹ “Football,” in this piece, refers to soccer; not American-style football.

² *About FIFA*, FIFA, <https://www.fifa.com/about-fifa> [<https://perma.cc/D93R-A9JN>] (last visited Nov. 3, 2021).

³ *The Year in Review: The Vision 2020–2023*, FIFA, <https://publications.fifa.com/en/vision-report-2021/> [<https://perma.cc/BT58-BAP4>] (last visited Nov. 3, 2021).

⁴ Pete Pattison & Niahm McIntyre, *Revealed: 6,500 Migrant Workers Have Died in Qatar Since World Cup Awarded*, *GUARDIAN* (Feb. 21, 2021), <https://www.theguardian.com/global-development/2021/feb/23/revealed-migrant-worker-deaths-qatar-fifa-world-cup-2022> [<https://perma.cc/23TR-TX25>].

⁵ Tariq Panja & Kevin Draper, *U.S. Says FIFA Officials Were Bribed to Award World Cups to Russia and Qatar*, *N.Y. TIMES* (Oct. 26, 2020), <https://www.nytimes.com/2020/04/06/sports/soccer/qatar-and-russia-bribery-world-cup-fifa.html> [<https://perma.cc/3KEJ-QYJF>].

⁶ *Id.*

⁷ AP News, *Danish Minister: Qatar Getting 2022 World Cup Was ‘Wrong’*, *AP NEWS* (June 30, 2021), <https://apnews.com/article/europe-middle-east-qatar-world-cup-international-soccer-ebbedebab774facb6dfa2a41d98ebd08> [<https://perma.cc/2Q4W-T3EA>].

⁸ Zahir Belounis, *Zahir Belounis: ‘The System in Qatar Is Killing Me. Please Speak Up’*, *GUARDIAN* (Nov. 14, 2013, 11:19 AM), <http://www.theguardian.com/football/2013/nov/14/zahir-belounis-letter-zinedine-zidane-pep-guardiola-qatar> [<https://perma.cc/ZZY2-A6QA>].

⁹ Stefan Simons, *Footballer Escapes Qatar at Heavy Price*, *SPIEGEL ONLINE INT’L* (Nov. 29, 2013), <http://www.spiegel.de/international/europe/trapped-french-footballer-belounis-escapes-qatar-at-heavy-price-a-936330.html> [<https://perma.cc/RNR3-9UAA>].

¹⁰ See Kali Robinson, *What Is the Kafala System?*, *COUNCIL ON FOREIGN REL.* (Mar. 23, 2021, 1:00 PM), <https://www.cfr.org/backgrounder/what-kafala-system> [<https://perma.cc/97FP-D6Y7>] (“The kafala, or sponsorship, system gives private citizens and companies in Jordan, Lebanon, and most Arab Gulf countries almost total control over migrant workers’ employment and immigration status.”).

¹¹ Belounis, *supra* note 8.

El-Jaish denied his exit visa.¹² FIFA, in turn, rallied international support for Belounis.¹³ However, FIFA's statements with respect to other migrant workers' rights abuses have not been treated with similar regard.¹⁴

A case was petitioned for review against FIFA by the Netherlands Trade Union Confederation, in determining whether the migrant worker human rights violation decision provided sufficient grounds to utilize ADR tactics.¹⁵ However, the court ruled in FIFA's favor after less than a month's consideration.¹⁶ Migrant workers' rights have continually been violated since that early 2017 decision, and their rights warrant further action through arbitration. The aforementioned case's third claim was concerned with obtaining relief for a single individual. The court decided this case based on law, rather than equity.¹⁷ Corporations that are interested in avoiding litigation before foreign courts are often willing to participate in ADR processes, and FIFA is a corporation.¹⁸ The nature of these migrant worker rights' violations is transactional and commercial at heart. Nevertheless, the treatment of migrant workers during the construction of stadiums in Qatar for World Cup 2022 is best construed as a violation of migrant workers' rights, and thus, human rights. "In general, 77% of corporations . . . involved in cross-border transactions have experience in transnational litigation, international arbitration and international mediation and other alternative dispute resolution mechanisms ("ADR")."¹⁹

When compared with transnational litigation, arbitration is more consistently relied upon than litigation as a means of resolving cross-border disputes,²⁰ due to interests in saving time and money.²¹ Traditional means of litigation have already failed this class of migrant workers.²² Pursuing a new claim to be relieved through arbitration may require a more immediate response from FIFA. Basing a claim on equity instead of law would likely warrant a more favorable response than the above-mentioned case, due to the inherent requirement of having at least some

¹² Kim Willsher, *Zahir Belounis: 'I Need a Man Who's Mad Enough to Give Me a Chance'*, GUARDIAN (Dec. 10, 2013), <http://www.theguardian.com/football/2013/dec/10/zahir-belounis-interview-english-club> [<https://perma.cc/L2UH-UTBZ>].

¹³ See Owen Gibson, *Qatar Grants Exit Visa to Stranded French Footballer*, GUARDIAN (Nov. 27, 2013), <http://www.theguardian.com/football/2013/nov/27/zahir-belounis-french-footballer-qatar-exit-visa> [<https://perma.cc/QE5H-QJ8U>]; see generally Azadeh Erfani, *Kicking Away Responsibility: FIFA's Role in Response to Migrant Worker Abuses in Qatar's 2022 World Cup*, 22 JEFFREY S. MOORAD SPORTS L. J. 623, 662 (2015).

¹⁴ Gibson, *supra* note 13.

¹⁵ *FIFA lawsuit (re migrant workers, Qatar)*, BUS. & HUM. RTS. RES. CTR. (Dec. 8, 2016), <https://www.business-humanrights.org/en/latest-news/fifa-lawsuit-re-migrant-workers-qatar/> [<https://perma.cc/HSW4-6LRJ>] (last visited Oct. 4, 2021) ("[T]he plaintiffs requested the court to order FIFA to put an end to the controversial kafala system, thus ensuring that human rights and fundamental freedoms of migrant workers are preserved and putting a stop to the alleged human rights abuses ("Claim 1"). Alternatively, they asked the Court to declare the unlawfulness of the aforementioned violations ("Claim 2"). The Bangladeshi worker Nadim Shariful Alam sought USD 4,000 in damages and a satisfaction amounting to CHF 30,000 (approx. USD 3,170) ("Claim 3").").

¹⁶ *Id.*

¹⁷ *Id.* ("[The court] considered Claims 1 and 2 inadmissible on account of their ambiguity. It found Claim 1 to be vague, because it does not specify the Qatari authorities to which FIFA should turn in order to redress the humanitarian conditions of migrant workers; if Claim 2 were to be admitted, this would essentially make it impossible for FIFA to defend itself. The Court determined that Claim 3 was not under its subject-matter jurisdiction and was therefore precluded from ruling on it. As such, the Court dismissed the plaintiffs' lawsuit in its entirety.").

¹⁸ *Id.*

¹⁹ Loukas Mistelis, *International Arbitration - Corporate Attitudes and Practices - 12 Perceptions Tested: Myths, Data and Analysis Research Report*, 15 AM. REV. INT'L ARB. 525, 537 (2004).

²⁰ *Id.*

²¹ *Id.*

²² *FIFA lawsuit (re migrant workers, Qatar)*, *supra* note 15.

communication with opposing counsel, instead of simply filing a motion to dismiss.²³ A claim for arbitration would require a demand from individual actors to force a conversation between FIFA, Qatar, and the affected class of migrant workers. With enough global pressure, perhaps FIFA may reintroduce that argument with Belounis. In the case of migrant workers' rights violations, there ought to be restitution for incurred damages and protection for future workers.²⁴ In regard to protections, international arbitrators may turn toward statutes in different countries that protect migrant workers, such as the Migrant and Seasonal Agricultural Worker Protection Act ("MSPA") in the United States.²⁵ Regarding restitution, finances do not appear to be an issue for Qatar, as the country is estimated to spend \$500 million per week on World Cup-related projects, with over \$200 billion estimated in total spending.²⁶

²³ *FIFA lawsuit (re migrant workers, Qatar)*, *supra* note 15.

²⁴ Patisson & McIntyre, *supra* note 4.

²⁵ See Claudia G. Catalano, Annotation, *Construction and Application of Migrant and Seasonal Agricultural Worker Protection Act (AWPA)*, 29 U.S.C.A. §§ 1811 *et seq.*, 64 A.L.R. Fed. 2d 149 (2012) ("... enacted in 1983, provides a variety of protections for migrant and seasonal workers. It regulates housing and transportation for workers, among other things, and provides oversight of farm labor contractors through their registration.").

²⁶ See *Qatar Spending \$500m a Week on World Cup Infrastructure Projects*, BBC NEWS (Feb. 8, 2017), <https://www.bbc.com/news/world-middle-east-38905510> [<https://perma.cc/H5HU-FEES>].