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## NOTES

# A CN TOWER OVER QATAR: AN ANALYSIS OF THE USE OF SLAVE LABOR IN PREPARATION FOR THE 2022 FIFA MEN'S WORLD CUP AND HOW THE EUROPEAN COURT OF HUMAN RIGHTS CAN STOP IT

### I. INTRODUCTION

Held every four years, the FIFA World Cup (“World Cup”) is an international soccer tournament sponsored by the Fédération Internationale de Football Association (“FIFA”), which is the governing body for international soccer.<sup>1</sup> Open to all 209 FIFA member associations, the World Cup is “the biggest single-event sporting competition in the world.”<sup>2</sup> Since the inaugural World Cup in 1930, the World Cup has been held every four years, except for cancellations of the 1942 and 1946 editions due to World War II.<sup>3</sup> In the current format of the World Cup, member associations play matches in preliminary competitions over three years, in order to determine which thirty-two associations (including an automatic entry for the hosting association) shall qualify for the final competition, i.e., the World Cup.<sup>4</sup>

The World Cup enables FIFA to raise funds for many soccer-

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1. FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, ALL ABOUT FIFA: DEVELOP THE GAME, TOUCH THE WORLD, BUILD A BETTER FUTURE 15 (FIFA Comm’ns & Pub. Affairs Div. ed., Fédération Internationale de Football Association 2012), *available at* [http://www.fifa.com/mm/document/fifafacts/organisation/02/13/11/06/03072013allaboutfifa\\_neutral.pdf](http://www.fifa.com/mm/document/fifafacts/organisation/02/13/11/06/03072013allaboutfifa_neutral.pdf).

2. *FIFA Associations*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/associations.html> (last visited Oct. 14, 2014); *FIFA World Cup*, FIFA.COM, <http://www.fifa.com/aboutfifa/worldcup/index.html> (last visited Oct. 25, 2013).

3. *FIFA World Cup*, *supra* note 2.

4. *See id.*

centric and otherwise philanthropic, initiatives worldwide. For instance, in conjunction with the 2010 edition of the World Cup, which was held in South Africa, FIFA launched its “20 Centres for 2010” campaign, aiming to promote public health, education, and soccer in disadvantaged communities across Africa.<sup>5</sup> To support financing for the World Cup and FIFA’s consequent social programs, FIFA relies on sponsorships, television rights, ticket sales, and concessions.<sup>6</sup> The 2010 World Cup was broadcast to 204 countries on 245 different television channels, while hosting more than 3.17 million spectators within the South African stadia, as well as an additional six million people who frequented one of sixteen official public viewing sites<sup>7</sup>—of which ten were located in South Africa, along with one each in Rome, Italy; Paris, France; Berlin, Germany; Sydney, Australia; Mexico City, Mexico; and Rio de Janeiro, Brazil.<sup>8</sup> According to FIFA’s own statistics, the 2010 World Cup also sold more than 750,000 liters of beer and 390,600 hot dogs.<sup>9</sup>

By virtue of a secret ballot held in Zurich, Switzerland, on December 2, 2010, it was announced that Qatar would host the 2022 World Cup, prevailing over four rival prospective host associations: the United States, Australia, Japan, and South Korea.<sup>10</sup> As a result, the 2022 World Cup is slated to be “the first global sporting event ever to be hosted in the Middle East.”<sup>11</sup> To date, Qatar has never qualified for a World Cup; in fact, their honors are limited to a runner-up finish in the 1981 FIFA U-20 World Cup Final, third place in the 2011 FIFA Club World Cup, and fourth place in the FIFA U-17 World Cup Final.<sup>12</sup> As

5. *Id.*

6. See Jonathan Watts, *World Cup venues await final safety checks as teams prepare to fly out*, THE GUARDIAN (May 23, 2014), <http://www.theguardian.com/football/2014/may/23/world-cup-venue-brazil-safety-checks>.

7. *FIFA World Cup*, *supra* note 2; see FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, 2014 FIFA WORLD CUP BRAZIL: FIFA REGULATIONS FOR PUBLIC VIEWING EVENTS 1, *available at* <http://www.fifa.com/mm/document/tournament/loc/02/08/63/33/fifaregulationsforpublicviewingevents%5ffwc2014%5fneutral.pdf> (defining “public viewing event” as a place where “broadcast coverage of the Competition is made available for exhibition to, and viewing by, an audience (whether members of the general public or otherwise) in any place other than a private dwelling”).

8. *FIFA World Cup*, *supra* note 2.

9. *Id.*

10. *2022 FIFA World Cup awarded to Qatar*, FIFA.COM (Dec. 2, 2010), <http://www.fifa.com/newscentre/news/newsid=1344500/index.html>.

11. *Bidders for the 2022 FIFA World Cup: Qatar*, <http://www.fifa.com/worldcup/qatar2022/bidders/qatar.html> (last visited Oct. 25, 2013).

12. *Qatar: FIFA/Coca-Cola World Ranking*, FIFA.COM, <http://www.fifa.com/associations/association=qat/ranking/gender=m/index.html> (last visited June 15, 2014).

of June 2014, the Qatari men's soccer association was ranked 100th among FIFA associations.<sup>13</sup> If this ranking were to remain valid in 2022, Qatar would be one of the, if not *the*, lowest-ranked associations to ever host the World Cup.<sup>14</sup> By comparison, South Africa was ranked fifty-first (51st) in 2010, the year in which that association hosted the World Cup.<sup>15</sup> Aside from that automatic World Cup appearance, South Africa qualified, by virtue of merit, for the 1998 and 2002 World Cups.<sup>16</sup> By further comparison, Russia, the designated host association for the 2018 World Cup, is currently ranked nineteenth (19th), with ten previous World Cup qualifications, including its prior history as the Union of Soviet Socialist Republics.<sup>17</sup>

Consistent with FIFA's stated objectives for the World Cup, namely, that it "fulfill[] FIFA's objectives to touch the world, develop the game, and build a better future through a variety of ways,"<sup>18</sup> Qatar pitched a 2022 World Cup hosting as "compact - to the benefit of the fans, FIFA, and the environment."<sup>19</sup> Qatar, in its pitch, pledged to use "[r]enewable technologies and architecturally advanced venues and facilities built to the highest environmental standards [in order to] ensure [that] players and fans alike enjoy each match in a cool environment"<sup>20</sup> . . . [by] using and developing eco-friendly technologies for stadiums that can then be adopted in other countries."<sup>21</sup> As a main feature of this plan, Qatar proposed modular stadia that, in collaboration

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13. *Id.* (showing that associations' rankings within FIFA are updated monthly, but that at the conclusion of each year, the monthly rankings are aggregated to formulate yearly rankings).

14. *See generally*, FIFA Associations, *supra* note 2 (follow the respective hyperlink for any member association, with rankings available from 1993 to the present).

15. *South Africa: FIFA/Coca-Cola World Ranking*, FIFA.COM, <http://www.fifa.com/associations/association=rsa/ranking/gender=m/index.html> (last visited Oct. 25, 2013).

16. *Id.*

17. *2018 FIFA World Cup Russia*, FIFA.COM, <http://www.fifa.com/worldcup/russia2018/destination/hostcountry/index.html> (last visited Oct. 16, 2014); *Russia: FIFA/Coca-Cola World Ranking*, FIFA.COM, <http://www.fifa.com/associations/association=rus/ranking/gender=m/index.html> (last visited June 15, 2014).

18. *FIFA World Cup*, *supra* note 2.

19. *Bidders for the 2022 FIFA World Cup: Qatar*, *supra* note 11.

20. *Id.*; *see also Last Week Tonight with John Oliver: FIFA and the World Cup* (HBO television broadcast June 8, 2014), available at <https://www.youtube.com/watch?v=DIJEI2KU33I>. *See generally*, e.g., *Average Temperature and Rain Fall in Qatar*, USA TODAY, <http://traveltips.usatoday.com/average-temperature-rain-fall-qatar-13455.html> (last visited Dec. 22, 2013) (estimating that a typical summer day in Qatar may see outdoor temperatures as high as 114°F (45.6°C), with nighttime lows of approximately 84°F (28.9°C)).

21. *Bidders for the 2022 FIFA World Cup: Qatar*, *supra* note 11.

with Reach Out To Asia,<sup>22</sup> could be re-erected in part as stand modules in other Asian countries, thus consequently shrinking the World Cup stadia in Qatar to smaller sizes for permanent use.<sup>23</sup>

A significant amount of labor controversy has already resulted from FIFA's selecting Qatar as the host association of the 2022 World Cup.<sup>24</sup> One such controversy implicates the inherent construction industry, as Qatar prepares to erect new infrastructures to accommodate the players and the spectators who will all, necessarily, be present within Qatar's borders.<sup>25</sup> A recent story,<sup>26</sup> as reported by *The Guardian*, suggests that Qatari construction firms, in furtherance of the need to erect stadia, hotels, and even entire cities for the World Cup, are utilizing labor consistent with the International Labour Organization's ("ILO") definition of modern slavery.<sup>27</sup> This market for slave labor exploits large communities of migrant workers, with a significant portion hailing from Nepal and saddled with exorbitant personal debt.<sup>28</sup> This investigation is among the background material that shall be presented in Part II.A of this note.

In order to analyze which causes of action and remedies are available to the aggrieved migrant workers, it must be determined whether internal FIFA law serves as the "default," and whether or not there are any scenarios in which the default can be overridden. Part II.B of this note will then determine if any United Nations ("UN") provision can serve to override current World Cup labor law. With respect to the slave laborers currently working to build the 2022 World Cup in Qatar, this note shall inquire as to whether any human rights violations—as per the United Nations<sup>29</sup>—have occurred and whether or not FIFA's status as a Swiss corporation or Qatar's status as a United Nations member may influence the outcome of this scenario, by treaty, convention, or

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22. See generally *About Us*, REACH OUT TO ASIA, <http://www.reachouttoasia.org/en> (last visited Nov. 10, 2013). Reach Out To Asia is a non-governmental organization, operating within the framework of the non-profit Qatar Foundation, that facilitates access to higher-quality education to the rest of the Middle East and Asia.

23. *Bidders for the 2022 FIFA World Cup: Qatar*, *supra* note 11.

24. See *E:60: Qatar's World Cup* (ESPN television broadcast June 1, 2014), available at <http://espn.go.com/video/clip?id=11019010>.

25. See *id.*

26. See Pete Pattison, *Revealed: Qatar's World Cup 'slaves'*, THE GUARDIAN (Sept. 25, 2013), <http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves>.

27. *Id.*; See also *Questions and answers on forced labour*, *infra* note 56.

28. See Pattison, *supra* note 26.

29. See generally Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR], available at <http://www.un.org/en/documents/udhr/>.

otherwise.

After addressing the relevant UN angles and determining the relevant jurisdiction, Parts III and IV *et seq.* of this note will analyze whether the relevant labor law can provide remedies to the slave laborers; namely, which legal venue would be available for the slave laborers to bring a cause of action and which parties could be named as defendants. After fully analyzing the legal issues surrounding the World Cup slave labor within Qatar, Part V of this note will address recent responses that FIFA has made in order to address the plight of the slave laborers. Finally, this note will conclude in Part VI with a set of recommendations as how to further FIFA's plans for the 2022 World Cup, while preserving as many substantive rights for the slave laborers as possible.<sup>30</sup>

## II. PLIGHT OF THE SLAVE LABORERS

### A. Initial Investigations

According to Pete Pattison's article in *The Guardian*, dated September 25, 2013, thousands of Nepalese migrant workers employed in Qatar for World Cup preparations have endured appalling labor abuses<sup>31</sup> and many workers have literally been worked to death, from Nepal and other countries.<sup>32</sup> (In order to simplify the analysis of this

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30. It should also be noted that, from the perspective of the players, there is the stifling truth that a summer World Cup in Qatar would have to be played in extreme heat. This would likely result in an unsafe working condition—not just for the soccer players, but also for the coaches and training staff that each soccer federation employs and would be sending to Qatar—by virtue of leaving these actors vulnerable to heat stroke, dehydration, and other injuries that could arise from the desert climate. A “simple” rescheduling in favor of February or November would be rife with its own complications, as such a move would be materially adverse not only to the domestic leagues that normally employ the World Cup participants (the domestic leagues would be coerced into placing their seasons on hiatus, to the detriment of their respective revenue streams), but to every contract that was signed under the assumption that the World Cup would maintain its lifelong status quo. These contracts were undoubtedly secured under the assumption that the 2022 World Cup would be held during the summer of a non-summer Olympic, even-numbered year, which has not only been true for every previous iteration of the World Cup, but seemingly independent of FIFA's eventual decision as to the event's location. This dilemma, though relevant in a labor and employment context, shall not be addressed by this note. Analyses with respect to duties owed to fans and other third parties, on the grounds of having no labor or employment connection to the World Cup, shall be beyond the scope of this note.

31. Pattison, *supra* note 26.

32. See, e.g., *id.*; Agence France-Presse, *2022 FIFA World Cup: RTI reveals more than 450 Indian migrants deaths in Qatar in 2012-13*, NDTV SPORTS (Feb. 19, 2014, 18:00 IST), <http://sports.ndtv.com/football/news/221081-2022-fifa-world-cup-rti-reveals-more-than-450-indian-migrants-deaths-in-qatar-in-2012-13> (reporting that migrant workers in Qatar who hailed from India

note and to avoid needless redundancies, it shall be assumed that similarly situated migrant workers in Qatar, but of national origins other than of Nepal, can and will assert the same causes of action, through the same fora, as the Nepalese.) With respect only to the migrant Nepalese in Qatar, post-Pattison reporting by the BBC counted 185 deaths among migrant workers in Qatar in 2013.<sup>33</sup> Pattison's initial reporting found that from June 4 to August 8, 2013, there were forty-four documented deaths among the workers, according to documentation obtained from the Nepalese embassy located in Doha, Qatar.<sup>34</sup> Another report by ESPN's Jeremy Schaap, corroborated the BBC's findings, while adding that 680 Nepali migrant workers have died in Qatar over the five years preceding his report.<sup>35</sup> Finally, the International Trade Union Confederation's ("ITUC") General Secretary, Sharan Burrow, "conservatively" estimated that more than 4,000 migrant workers will die "before a ball is kicked off in 2022," from Nepal and India alone.<sup>36</sup>

Of these forty-four particular occurrences, half of the workers died of heart attacks, heart failure, or workplace accidents.<sup>37</sup> Mr. Schaap's report asserts that cardiac arrest is the official cause of death most often attributed to migrant workers' deaths in Qatar, while workplace accidents and suicides contributing to these figures.<sup>38</sup> *The Guardian's* investigation also revealed allegations of policies such as withholding months' worth of pay, confiscating workers' passports, failing to provide work-issued identification cards, and even denying drinking water to the workers on duty—despite being in 50°C (122°F) temperature.<sup>39</sup> In the same investigation, *The Guardian* found at least one instance of twelve workers crammed in one room, which facilitated the spread of disease within the supplied "housing accommodations."<sup>40</sup> These deficiencies are inherent to Qatar's *kafala* system, in which companies "sponsor" their workers and are thus able to unilaterally grant or withhold permission for a worker to find alternative employment.<sup>41</sup> In the *kafala* system, employees' every behavior is owned by his employer, who in turn has

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also died).

33. See Richard Conway, *Qatar 2022: Plans to protect World Cup workers unveiled*, BBC (Feb. 11, 2014, 14:47 GMT), <http://www.bbc.com/sport/0/football/26131986>.

34. Pattison, *supra* note 26.

35. *E:60: Qatar's World Cup*, *supra* note 24.

36. *Id.*

37. Pattison, *supra* note 26.

38. *E:60: Qatar's World Cup*, *supra* note 24.

39. Pattison, *supra* note 26.

40. *See id.*

41. *See id.*

the sole power to grant or withhold an exit visa, so that a migrant worker may elect to return to his native country.<sup>42</sup> *The Guardian* also obtained a graphic anecdote from a twenty-seven-year-old Ram Kumar Mahara, who recalled “working on an empty stomach for 24 hours; 12 hours’ work and then no food all night.”<sup>43</sup> When I complained, my manager assaulted me, kicked me out of the labour camp I lived in and refused to pay me anything.<sup>44</sup> I had to beg for food from other workers.”<sup>45</sup>

*The Guardian* explains that most of the Nepalese migrant workers have incurred substantial personal debt (with interest rates as high as thirty-six percent)<sup>46</sup> stemming from having to pay recruitment agents for their services in procuring these very jobs.<sup>47</sup> Since the employers routinely withhold wages, the workers are unable to make payments to satisfy their debts.<sup>48</sup> Furthermore, the fact that the workers possess no form of identification (having had their passports confiscated and being without work-issued identification)<sup>49</sup> means that the workers are not free to leave their places of employment; without identification, the workers would have a similar status as illegal aliens within Qatar, being arrestable, deportable, and unentitled to any legal protection.<sup>50</sup>

One such Nepalese migrant, who, at the time of the *Guardian* article, was employed in the erection of Lusail City—a forty-five billion dollar project to build the Qatari City that is slated to host the 2022 World Cup final, as well as the ninety thousand-seat stadium in which the final is scheduled to be played—lamented that “[w]e’d like to leave, but the company won’t let us. I’m angry about how this company is treating us, but we’re helpless. I regret coming here, but what to do? We were compelled to come just to make a living, but we’ve had no luck.”<sup>51</sup> Another Lusail City laborer, identified only as SBD, disclosed that “[t]he company has kept two months’ salary from each of us to stop us running away,”<sup>52</sup> while a third anonymous worker added that “[i]f we run away, we become illegal and that makes it hard to find another job[,] [t]he police could catch us at any time and send us back home [and] [w]e

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42. E:60: *Qatar’s World Cup*, *supra* note 24.

43. Pattison, *supra* note 26.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *See id.*

49. *See id.*

50. *See id.*

51. *Id.*

52. *Id.*

can't get a resident permit if we leave."<sup>53</sup>

Nepalese ambassador to Qatar, Maya Kumari Sharma, likened the conditions to "an open jail,"<sup>54</sup> from which approximately thirty Nepalese citizens sought refuge by travelling to the Nepalese embassy in Doha.<sup>55</sup> Upon first impression, these qualities do, in fact, appear to be consistent with the ILO's definition of "forced labour," which includes the full spectrum of human trafficking abuses, with the exceptions of (a) trafficking for the purpose of organ removal and (b) cases of forced marriage or adoption that do not subsequently lead to forced labor.<sup>56</sup> The ILO differentiates forced labour from sub-standard or exploitive working conditions by recognizing "[v]arious indicators [that] can be used to ascertain when a situation amounts to forced labour, such as restrictions on workers' freedom of movement, withholding of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debt from which workers cannot escape."<sup>57</sup> The ILO further specifies that "[i]n addition to being a serious violation of fundamental human rights, the exaction of forced labour is a criminal offence."<sup>58</sup>

#### B. *United Nations Provisions at Odds with Nepalese Laborers' Treatment in Qatar*

Assuming that this systemic disparate treatment of the Nepalese migrant workers in Qatar, as recounted by *The Guardian* and other outlets is true,<sup>59</sup> it appears that several provisions of the United Nations' Universal Declaration of Human Rights<sup>60</sup> ("UDHR") may have been violated. The UDHR, in relevant parts, states that

No one shall be held in slavery or servitude; slavery and the slave trade

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53. *Id.*

54. *Id.*; see also *Envoy Sharma in soup*, THE HIMALAYAN TIMES (May 10, 2013, 11:05 PM), <http://www.thehimalayantimes.com/fullNews.php?headline=Envoy+Sharma+in+soup+&NewsID=375975>

55. Pattison, *supra* note 26.

56. See *Questions and answers on forced labour*, INTERNATIONAL LABOUR ORGANIZATION (June 1, 2012), [http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS\\_181922/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_181922/lang-en/index.htm).

57. *Id.*

58. *Id.*

59. See Pattison, *supra* note 26; *E:60: Qatar's World Cup*, *supra* note 24.

60. See UDHR, *supra* note 29, at Art. 4, 8, 13(1), 13(2), 23(1), 23(2), 23(3).

shall be prohibited in all their forms.<sup>61</sup>

....

... Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.<sup>62</sup>

....

... Everyone has the right to freedom of movement and residence within the borders of each state.<sup>63</sup>

Everyone has the right to leave any country, including his own, and to return to his country.<sup>64</sup>

....

... Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.<sup>65</sup>

Everyone, without any discrimination, has the right to equal pay for equal work.<sup>66</sup>

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.<sup>67</sup>

Everyone has the right to form and to join trade unions for the protection of his interests.<sup>68</sup>

Everyone has the right to rest and leisure, including reasonable

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61. *Id.* at Art. 4.

62. *Id.* at Art. 8.

63. *Id.* at Art. 13(1).

64. *Id.* at Art. 13(2).

65. *Id.* at Art. 23(1).

66. *Id.* at Art. 23(2).

67. *Id.* at Art. 23(3).

68. *Id.* at Art. 23(4).

limitation of working hours and periodic holidays with pay.<sup>69</sup>

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>70</sup>

It is worth noting that the UDHR is written with the intent to be applicable to all individuals.<sup>71</sup> Assuming *arguendo* that the UDHR should, in fact, only apply to countries who are members of the United Nations, then it would follow that all relevant parties herein were obligated to abide by the UDHR: Switzerland (the country in which FIFA is domiciled as a corporation), Qatar (the country in which these allegations of slave labor have arisen), and Nepal (the country from which these slave laborers claim citizenship) have all been members of the UN since FIFA awarded the 2022 World Cup to Qatar.<sup>72</sup>

With respect to UDHR Article 4 specifically, this note shall draw upon the European Court of Human Rights (“ECHR”) case law to demonstrate how the Nepalese workers’ arrangements match other confirmed instances of slavery and forced labor,<sup>73</sup> which shall, in turn, equate the Nepalese laborers’ lack of a work-issued identification to a factor of forced labor, as well as an Article 13 violation by itself. By demonstrating the presence of these UDHR violations upon the Nepalese who are working in Qatar, it shall then be argued that Article 8 affords them the right to be heard before a “competent national tribunal.”<sup>74</sup>

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69. *Id.* at Art. 24.

70. *Id.* at Art. 25(1).

71. Compare *id.* at Pmb1 (“Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, . . .”), with *id.* at Art. 1 (“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”), and *id.* at Art. 2 (“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, . . .”).

72. See *United Nations Member States*, UNITED NATIONS, <http://www.un.org/en/members/> (last visited Feb. 17, 2014) (noting that the dates of admission for Switzerland, Qatar, and Nepal, respectively, were in the years 2002, 1971, and 1955, and that all of these dates precede Qatar’s accepted bid for the 2022 World Cup).

73. See generally *C.N. v. United Kingdom*, App. No. 4239/08 (2012), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114518>.

74. UDHR, *supra* note 29, at Art. 8.

Ideally, this “competent national tribunal” will be that of Switzerland, due to the fact that the ECHR has a binding effect on the Swiss court system,<sup>75</sup> which would, accordingly, enjoin FIFA from enabling future slave labor violations, no matter where future World Cup construction may take place.

### III. CHOICE OF LAW AND FORUM

#### A. Circumventing FIFA Defaults of Agency Law and Arbitration

As stipulated in Article 1 of the FIFA Statutes, FIFA “is an association registered in the Commercial Register in accordance with art. 60 ff. of the Swiss Civil Code”<sup>76</sup> and it is headquartered in Zurich, Switzerland.<sup>77</sup> Parts VII and VIII of the FIFA Statutes (concerning “Arbitration” and “Submission of Decisions to FIFA,” respectively, while collectively spanning Articles 66 through 70) comprise the judicial process that FIFA makes available.<sup>78</sup> In relevant parts, the FIFA Statutes dictate that the Court of Arbitration for Sport (“CAS”), which is located in Lausanne, Switzerland, shall “resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, and licensed match agents and players’ agents.”<sup>79</sup> CAS, in these cases, is instructed to apply FIFA regulations and Swiss law, while following the provisions of the CAS Code of Sports-related Arbitration.<sup>80</sup> Furthermore, CAS shall only have jurisdiction by appeal within twenty-one days of an internal FIFA decision,<sup>81</sup> if all internal judicial avenues within FIFA have been exhausted beforehand<sup>82</sup> and if the matter is not of a particular delineated exceptions for which CAS is specifically barred from hearing the dispute.<sup>83</sup>

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75. See THE PATHS TO THE SWISS FEDERAL SUPREME COURT: AN OUTLINE OF SWITZERLAND’S JUDICIARY STRUCTURE 23 (Swiss Federal Supreme Court 2013) [hereinafter THE PATHS], available at [http://www.bger.ch/fr/wege\\_zum\\_bundesgericht\\_e.pdf](http://www.bger.ch/fr/wege_zum_bundesgericht_e.pdf).

76. FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, *FIFA Statutes: Regulations Governing the Application of the Statutes Standing Orders of the Congress*, FIFA 6 (July 2013) [hereinafter *FIFA Statutes*], [http://www.fifa.com/mm/document/AFederation/Generic/02/14/97/88/FIFASTatuten2013\\_E\\_Neutral.pdf](http://www.fifa.com/mm/document/AFederation/Generic/02/14/97/88/FIFASTatuten2013_E_Neutral.pdf).

77. *Id.*

78. *See id.* at 47-50.

79. *Id.* at 47.

80. *Id.*

81. *Id.*

82. *Id.*

83. *See id.* at 47-48.

Article 68 of FIFA Statutes specifically appears to limit the potential for legal recourse beyond internal FIFA decisions by proclaiming that “[r]ecourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations,”<sup>84</sup> and by otherwise greatly favoring arbitration in lieu of ordinary courts of law, e.g. by obligating countries’ associations to eschew ordinary courts of law and by reserving the right to move any appeal that was filed in an ordinary court of law to arbitration.<sup>85</sup> Even though “ordinary court of law” is not specifically defined within FIFA Statutes, it can be implied from the context of the statutes, as a whole, that “ordinary court of law” is meant to identify any non-arbitration forum not specifically mentioned in FIFA Statutes.<sup>86</sup> For the purpose of this note, “ordinary court of law” shall be used accordingly.

On the other hand, a reasonable interpretation of FIFA’s pre-approved scheme of internal decisions and arbitration, as delineated by the Statutes, may lead to the conclusion that internal decisions and arbitration only govern questions closely related to soccer. This way, more typical FIFA questions, such as, “Is Player *X*, who was born in Country *A* to two parents of Nationality *B*, eligible to choose which FIFA member association shall receive his services, for the purpose of World Cup qualifying and other international soccer affairs?” or “Is Nation *P*, which is currently holding a referendum for its independence from Country *Q*, eligible to join FIFA as its own Member Association *P*, separate from that of Country *Q*?” may be decided expeditiously by judicial bodies with necessary expertise in the sports-centric matters.

At a minimum, it would appear that FIFA’s network of internal decision making and any subsequent arbitration as a result, would govern outdoor temperatures as they would affect the players and the soccer matches.<sup>87</sup> From the players’ perspective, outdoor temperatures would likely qualify as an example of a game condition and, by natural extension, be considered a more sports-centric matter. If this were to be the limit of FIFA’s jurisdictional reach, then the arbitration mandate would be less likely to restrict the laborers’ avenues for recourse. This is because outdoor temperatures’ effects on laborers, as opposed to players,

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84. *Id.* at 48.

85. *See id.* at 48-9.

86. *See generally* Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997) (“The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”).

87. *FIFA Statutes*, *supra* note 76, at 57 (allowing FIFA to make further provisions for not stated in their by-laws for matches).

would be less likely to be classified as a sports-centric matter. A more limited reading of FIFA's administrative authority would likely be of greater benefit to the laborers because the laborers would, accordingly, be more likely to gain access to the European Court of Human Rights for redress, despite FIFA's reluctance to authorize jurisdiction to an ordinary court of law such as this one.<sup>88</sup>

If severable from FIFA's mandate of arbitration on the grounds of not being a soccer matter, the slave laborers might be able to seek relief through Switzerland's court system,<sup>89</sup> although it would necessarily start with a conciliation authority.<sup>90</sup> Assuming that FIFA would assert that ordinary courts of law lack jurisdiction, as stipulated within the Statutes,<sup>91</sup> it is not likely that a resolution would be achieved through the conciliation authority. Accordingly, the next step within the Swiss judicial system would be the Civil Court of First Instance, where the matter would probably be transferred to the Zurich Canton Labour Court<sup>92</sup> on the grounds of requiring special expertise on labor law from the court system.<sup>93</sup> This initial decision would then be appealable to the Civil Court of Second Instance and then, finally, to the Federal Supreme Court of Switzerland.<sup>94</sup>

The Federal Supreme Court, while tasked with upholding the Constitution of Switzerland, is specifically bound by international law with respect to the law of nations and human rights, by virtue of the ECHR and the International Covenant on Civil and Political Rights.<sup>95</sup> Due to the supremacy of the ECHR, if the slave laborers were to be able to articulate a claim in the Swiss court system, this would represent the best possible scenario to obtain a judgment against FIFA and a remedy. This strategy, if successful, would be more likely to be binding upon FIFA in future World Cups, due to FIFA's headquarters within Switzerland.<sup>96</sup>

If, however, this strategy of binding FIFA to ECHR jurisprudence and the UDHR were to be deemed inapplicable, then the laborers would probably have to resort to Qatari law, in order to pursue monetary

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88. See *id.* at 48 (disallowing recourse to ordinary courts of law).

89. See *generally* Switzerland Law Digest, Courts and Legislatures 1 Martindale-Hubbell DIGEST § 6.01.

90. See THE PATHS, *supra* note 75, at 7, 24.

91. See FIFA Statutes, *supra* note 76, at 47.

92. See THE PATHS, *supra* note 75, at 7, 9, 24.

93. See *id.* at 9.

94. See *id.* at 7-8, 10.

95. See *id.* at 23.

96. FIFA Statutes, *supra* note 76, at 6.

compensation. Standing in a Qatari lawsuit may be relatively easy to establish because Qatari law would undisputedly govern allegations of wrongdoing within Qatar's borders.<sup>97</sup> On the other hand, a verdict based on Qatari law would be less desirable for future oppressed groups of people in similar slave labor plights because Qatari jurisprudence would not have precedential value via the ECHR. Furthermore, given the magnitude of the Nepalese's ordeals in Qatar, they may simply be unwilling to seek justice in Qatar, if they should be concerned that their trials would be biased against them. For these reasons, it shall be assumed that the most desirable verdict for these slave laborers and all similarly situated people in future like scenarios, would arise from the ECHR, if this should be possible.

#### *B. Applicability of Forums for Slave Laborers, Assuming They May Sue in Court*

If the laborers can establish their case as applicable under Swiss law, the workers would be able to take advantage of the ECHR, due to the Swiss Supreme Court's deference to it.<sup>98</sup> This would be an extraordinary outcome, seeing that these laborers have not worked in a European Union member country. Because Switzerland is a jurisdiction with civil law jurisprudence, arguments to extend precedents to new classes of individuals would likely be rendered moot, despite the fact that such a pleading could be plausible in a common law country like the United States.<sup>99</sup> Accordingly, civil law cases must be read to extract applicable law that the slave laborers in Qatar might be able to utilize to their advantage.

### IV. ECHR AS THE SLAVE LABORERS' PREFERRED FORUM

#### *A. Case Law*

##### *1. Forced Labor, as Seen via the Facts Within CN v. United Kingdom*

*C.N. v. United Kingdom*<sup>100</sup> is an ECHR decision that addresses

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97. See CODE CIVIL Art. 10, 12 (Qatar).

98. See THE PATHS, *supra* note 75, at 23.

99. See *Civil Law vs. Common Law*, DIFFEN, [http://www.diffen.com/difference/Civil\\_Law\\_vs\\_Common\\_Law](http://www.diffen.com/difference/Civil_Law_vs_Common_Law) (last visited Oct. 14, 2014).

100. See *C.N. v. United Kingdom*, App. No. 4239/08 (2012), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114518>.

forced labor, which, as previously mentioned in this note, is an adverse condition recognized by the ILO.<sup>101</sup> In this case, C.N.<sup>102</sup> was a refugee from Uganda, who had moved to the United Kingdom (“UK”) on September 2, 2002.<sup>103</sup> She sought refuge from sexual and physical violence inflicted upon her in Uganda (including, but not limited to, “several” episodes of rape) and she desired to work to support herself while in the UK.<sup>104</sup> C.N. was assisted in her relocation from Uganda to the UK by her relative named S., as well as an unrelated Mr. A., who conspired to produce a false passport and a visa that enabled C.N. to enter the UK.<sup>105</sup> According to C.N., S. seized these documents upon C.N.’s arrival in the UK and never returned them to her.<sup>106</sup> For the rest of the 2002 calendar year, C.N. lived in various houses in London that S. owned, albeit under consistent warnings “not [to] talk to people [because] she could easily be arrested or otherwise come to harm in London.”<sup>107</sup>

C.N.’s first job within the UK came to fruition in January 2003, upon C.N.’s introduction to a man called M., which S. facilitated.<sup>108</sup> M. owned a for-profit business providing caregivers and security personnel to his clientele.<sup>109</sup> After attending a short training course, C.N. worked some overnight shifts as a caregiver and as a security guard in a number of locations.<sup>110</sup> According to C.N., each time a client paid M. for services that she rendered for his company, M. transferred a share of the money to S.’s bank account.<sup>111</sup> It was assumed that S. would give her this money, but C.N. claims never to have received any money for the work performed for M..<sup>112</sup>

In early 2003, C.N. commenced her work as a live-in caregiver for an elderly Iraqi couple, herein named Mr. and Mrs. K..<sup>113</sup> C.N. felt that she was permanently on-call to Mr. K.; as he suffered from Parkinson’s disease, C.N. was required to change his clothing, feed him, clean him,

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101. See *Questions and answers on forced labour*, *supra* note 56.

102. See *C.N.*, App. No. 4239/08, at 1 (stating that Applicant’s request for anonymity was granted, invoking Rule § 47(3) of the Rules of Court).

103. *Id.* at 1.

104. *Id.*

105. *Id.* at 2.

106. *Id.*

107. *Id.* at 2.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

and lift him as necessary.<sup>114</sup> C.N. was afforded a couple hours of leave on one Sunday each month, but during her time off, she would usually be collected by M. and driven to S.'s house for that afternoon.<sup>115</sup> Over time, C.N. would eventually be granted permission to take public transportation, but she was warned that "it was not safe" and that "she should not speak with anyone."<sup>116</sup> In a payment scheme similar to that which was in effect in 2002, Mr. and Mrs. K. paid M. £1,600 (approximately \$2,600 USD)<sup>117</sup> by check every month for the services that C.N. provided to the couple, of which S. received a portion.<sup>118</sup> C.N. claimed that even though, on occasion, she would be gifted presents or second-hand clothes directly from Mr. and Mrs. K., and that, from time to time, S. would give C.N. £20 or £40 (\$33 or \$66 USD)<sup>119</sup> when she went to his home on her monthly time off on a Sunday, she never received "significant payment" for her labor.<sup>120</sup>

C.N.'s tales of de facto slavery continued in August 2006, when Mr. and Mrs. K. went on a family trip to Egypt.<sup>121</sup> C.N.'s passport still lay with S.; therefore, she was unable to accompany her clients on their travels.<sup>122</sup> To pass the time during which C.N. could not render her services to Mr. and Mrs. K., C.N. was boarded in a house that S. owned.<sup>123</sup> During that time, S. left for a business trip to Uganda, so S.'s partner, H., stayed in the house with C.N., effectively preventing C.N. from leaving the house, and echoed all previous warnings to C.N. that she should not speak with anyone.<sup>124</sup>

On August 18, C.N. finally left the house and entered a local bank, where she asked someone to call the police.<sup>125</sup> Before the police arrived, C.N. collapsed and was taken to a hospital, where she was diagnosed as HIV-positive and where it was determined that she was suffering from psychosis, including auditory hallucinations.<sup>126</sup> C.N. remained in the hospital for one month thereafter, during which H. visited her and

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114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*; see *Currency Converter*, <http://www.oanda.com/currency/converter/> (last visited Jan. 21, 2014).

118. See *C.N.*, App. No. 4239/08, at 2.

119. *Id.*; see *Currency Converter*, *supra* note 117.

120. See *C.N.*, App. No. 4239/08, at 2.

121. *Id.* at 2.

122. *Id.*

123. See *id.*

124. *Id.*

125. *Id.* at 3.

126. *Id.*

attempted to persuade her to return to S.'s house, including by threatening C.N. that she would have to pay for anti-retroviral medications upon her discharge and that her failure to return to the house would result in her being "on the streets."<sup>127</sup>

Following her discharge, C.N. was housed by the local authority.<sup>128</sup> On September 21, 2006, C.N. made an application for asylum to the United Kingdom, on the basis of sexually motivated attacks in her native country of Uganda.<sup>129</sup> This application was denied on January 16, 2007;<sup>130</sup> an immigration judge heard her subsequent appeal and dismissed it, i.e., affirmed the Home Department's decision in refusing C.N.'s asylum, on November 20, 2007.<sup>131</sup> Meanwhile, C.N.'s solicitor wrote a letter to the UK police, asking the police to launch an investigation as to whether C.N. was a victim of a criminal offense,<sup>132</sup> namely of a human trafficking enterprise.<sup>133</sup> At this time, Section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 ("Section 4 (2004)") was the legislation that represented C.N.'s most likely avenue for redress in the courts.<sup>134</sup> Even though a police investigation<sup>135</sup> and a consultation with the United Kingdom Human Trafficking Centre in Sheffield<sup>136</sup> yielded "insufficient evidence to substantiate the allegation of trafficking" and a resultant termination,<sup>137</sup> this did not necessarily foreclose the possibility of prosecutions for other offenses, including a *jus cogens* offense of slavery or forced labor.<sup>138</sup>

On December 18, 2008, C.N. was assessed by the POPPY Project, which is a UK government-funded project providing housing and support for victims of trafficking.<sup>139</sup> The POPPY Project concluded that C.N. had been "subjected to five of the six indicators of forced labour' (as identified by the ILO)."<sup>140</sup> In reaching the above conclusion in C.N.'s specific case, the POPPY Project found that her movement was

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127. *Id.*

128. *Id.*

129. *See id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *See id.*

134. *See Id.* at 6-7.

135. *Id.* at 2.

136. *Id.*

137. *Id.* at 4.

138. *Id.*

139. *Id.*

140. *Id.*

restricted to the workplace,<sup>141</sup> her wages were withheld to pay a debt that was unknown to her,<sup>142</sup> her salary was withheld for four years,<sup>143</sup> her passport was retained,<sup>144</sup> and she was subjected to threats of denunciation to the authorities.<sup>145</sup>

The police accepted the POPPY Project's findings and began to conduct further investigations, effective January 5, 2009.<sup>146</sup> On the fourteenth, the police found that a statement had been obtained from an employment agent, whom the court presumed to be M., in which the agent stated that "he had been introduced to [C.N.] by a person he believed to be her relative,"<sup>147</sup> which would not be inconsistent with C.N.'s relationship with S. According to the statement that the agent produced, C.N. initially agreed that her wages should be paid to S.; in fact, she only complained about this arrangement in or around June 2006.<sup>148</sup> The agent added that he feared "the relative, who was a wealthy and powerful man well-connected to the Ugandan government."<sup>149</sup>

On February 25, 2009, the police once again confirmed that the evidence still did not establish an offense of trafficking,<sup>150</sup> but they further noted that "at this stage there is no evidence that would support exploitation of any kind."<sup>151</sup> A meeting among C.N., her solicitor, and the police, which took place on March 11, 2009, yielded a provisional opinion—given expressly without formal authority of the Metropolitan Police—that even though C.N.'s case was previously handled cursorily and that her account was credible, there was no offense in English criminal law which applied to the facts of the case.<sup>152</sup> In this meeting, the solicitor specifically mentioned the fact that C.N.'s identity documents, which were used to gain entry into the United Kingdom, were being withheld by S. and opined that this was grounds to prove possible forced labor.<sup>153</sup> In response to this suggestion, the police

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141. *Id.* at 4, 9 (quoting the relevant ILO indicator directly in the text of the opinion).

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* at 4.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* at 5.

informed the solicitor that the documents were forgeries.<sup>154</sup>

The police later communicated to C.N.'s solicitor that even though, regrettably, some enquiries were unable to be carried out, such as production orders relating to relevant bank accounts, the Human Trafficking Team had limited resources that were, in fact, used to best effect and that they could not carry out any further investigation into C.N.'s complaints.<sup>155</sup> Despite a clinical psychologist's report that C.N. was "suffering to a severe degree from a complex form of chronic Post-Traumatic Stress Disorder (PTSD), in conjunction with a Major Depressive Disorder"<sup>156</sup> while presenting a moderate risk of suicide "in ways consistent with a victim of trafficking and forced labour, in the context of a history of sexual assaults,"<sup>157</sup> the police wrote<sup>158</sup> to C.N.'s solicitor to confirm that "this particular case does not fulfil [sic] the requirements of human trafficking as per UK legislation and that legislation does not exist in relation to sole and specific allegations of domestic servitude where trafficking is not a factor."<sup>159</sup>

While all of the previous investigations were centered around, and doomed to fail under, Section 4 (2004),<sup>160</sup> C.N.'s fortunes changed with the passing of Section 71 of the Coroners and Justice Act 2009 ("Section 71 (2009)").<sup>161</sup> Section 71 (2009) received Royal Assent on November 12, 2009, and went into effect April 6 of the following year, even though it did not have retrospective effect.<sup>162</sup> With respect to slavery, servitude, or forced or compulsory labor, Section 71 (2009) holds as follows:

(1) A person (D) commits an offence if-

(a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or

(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.

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154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* at 6.

159. *Id.* at 5.

160. *See id.* at 3-4, 6.

161. *See id.* at 7.

162. *Id.* at 6.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention<sup>163</sup> (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

(3) A person guilty of an offence under this section is liable-

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.

(4) 'Human Rights Convention' means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950; 'the relevant period' means-

(a) in relation to England and Wales, 12 months;

(b) in relation to Northern Ireland, 6 months.<sup>164</sup>

The Convention provides further obligations upon participating countries. Article 1<sup>165</sup> states that each member of the ILO that ratifies the Convention shall suppress the use of forced or compulsory labor in all forms, as soon as possible.<sup>166</sup> As a transitional exception, forced labour is permitted "for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided,"<sup>167</sup> with the transitional period not lasting longer than five years.<sup>168</sup> Article 2<sup>169</sup> serves to define "forced or compulsory labor"

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163. See *id.* at 7 (reprinting the Article 4 definition of "trafficking in human beings," specifying such means in subparagraph (a), and stipulating in subparagraph (b) that the victim's consent "shall be irrelevant where any of the means set forth in subparagraph (a) have been used").

164. *Id.* at 7-8.

165. *Id.* at 8.

166. *Id.* (quoting ILO Convention Concerning Forced or Compulsory Labour, art. 1, cl. 1, adopted June 28, 1930, 39 L.N.T.S. 55 (entered into force May 1, 1932) [hereinafter Forced Labour Convention]).

167. *Id.* (quoting Forced Labour Convention, *supra* note 166, art. 1, cl. 2).

168. *Id.* (quoting Forced Labour Convention, *supra* note 166, art. 1, cl. 3).

169. *Id.* at 8.

which, for the purposes of the Convention, “shall mean 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,”<sup>170</sup> with a narrow list of exceptions.<sup>171</sup>

The United Kingdom ratified the Convention on December 17, 2008, and it came into force on April 1, 2009.<sup>172</sup> Accordingly, the country, which had even ratified Article 5 of the Convention in 1927,<sup>173</sup> was placed on notice to:

consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph (a) of this Convention, with the knowledge that the person is a victim of trafficking in human beings.<sup>174</sup>

C.N. complained that “at the time of her ill-treatment the Government were in breach of their positive obligations under Article 4 of the Convention to have in place criminal laws penalising forced labour and servitude.”<sup>175</sup> This article provides that:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term ‘forced or compulsory labour’ shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - (c) any service exacted in case of an emergency or calamity

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170. *Id.* (quoting Forced Labour Convention, *supra* note 166, art. 2, cl. 1).

171. *Id.* (quoting Forced Labour Convention, *supra* note 166, art. 2, cl. 2 (a)-(e)).

172. *Id.* at 9.

173. *Id.* at 10.

174. *Id.* at 9 (quoting Forced Labour Convention, *supra* note 166, art. 19).

175. *Id.* at 12-13.

threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.<sup>176</sup>

Contesting C.N.'s argument,<sup>177</sup> the Government submitted that the application was manifestly ill founded, and therefore inadmissible, due to "insufficient evidence to conclude that the applicant had been subjected to the kind of treatment prohibited by Article 4 and because the protection afforded by English law against conduct prohibited by Article 4 was sufficient to discharge the positive obligation on the State."<sup>178</sup> The Court accepted this threshold question as a matter to be determined on the merits,<sup>179</sup> and accordingly ruled in favor of C.N., i.e., to admit the argument.<sup>180</sup>

## 2. Application of CN v. United Kingdom by ECHR Through *Siliadin v. France*

Leading to a verdict in her favor, C.N. submitted that the Government did not enact domestic law provisions to criminalize Article 4 conduct, as per its positive obligation, until 2009.<sup>181</sup> Seeing that she had made a credible allegation of ill treatment that offended Article 4 in 2006,<sup>182</sup> the Government's delay necessarily foreclosed the possibility of an effective investigation into her complaints of Article 4 violations, let alone a prosecution on Article 4 grounds.<sup>183</sup> Furthermore, the Government confirmed to the applicant in writing that, at that time, there was no offense known to them that encapsulated her situation.<sup>184</sup>

C.N. also correctly noted that the ECHR, via *Siliadin v. France*, yielded useful precedents, in the form of judicial definitions by the Court.<sup>185</sup> The Court used *Siliadin* to define servitude as "a 'particularly serious form of denial of freedom', which included 'in addition to the obligation to perform certain services for others . . . the obligation for the 'serf' to live on another person's property and the impossibility of

176. *Id.* (quoting Forced Labour Convention, *supra* note 166, art. 4).

177. *Id.* at 13.

178. *Id.* at 13.

179. *Id.* at 13.

180. *Id.* at 13(citing Human Rights Convention, Article 35(3)(a)).

181. *Id.* at 13.

182. *Id.*

183. *Id.* at 14.

184. *Id.*

185. *Siliadin v. France*, 2005-VII Eur. Ct. H.R. 335, 359.

altering his condition.”<sup>186</sup> *Siliadin* also referred to the ILO Forced Labour Convention in its definition of forced or compulsory labor, which “included ‘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.’”<sup>187</sup> *Siliadin* articulated a duty to pass legislation “specifically criminalising conduct falling within the scope of Article 4 [... because a]ncillary offences which might also be committed during the course of forced labour or servitude did not provide sufficient protection under the Convention.”<sup>188</sup> Finally, C.N. successfully reasoned that Section 71 (2009) proved the Government’s awareness that “there was a ‘lacuna in the law’ that needed to be filled.”<sup>189</sup>

Having successfully pleaded her case before the Court, C.N. was awarded a non-pecuniary judgment of eight thousand Euros<sup>190</sup> (approximately equal to \$10,175 USD on the date of judgment),<sup>191</sup> an extra payment of twenty thousand Euros for court expenses<sup>192</sup> (approximately equal to \$25,435 USD on the date of judgment),<sup>193</sup> any applicable taxes that would arise from these awards,<sup>194</sup> and interest.<sup>195</sup> This monetary award was in recognition of the fact that the United Kingdom Government violated C.N.’s rights pursuant to Article 4 of the Human Rights Convention<sup>196</sup> (“HRC”) via deficient investigation<sup>197</sup> despite a credible suspicion of domestic servitude,<sup>198</sup> as well as defective legislation<sup>199</sup> that unduly narrowed the conditions for applicants to seek

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186. C.N., No. 4239/08, at 13-14 (citing *Siliadin v. France*, 2005-VII Eur. Ct. H.R. 335, 369).

187. *Id.* at 14.

188. *Id.*

189. *Id.* at 14-15.

190. *Id.* at 23 (balancing the gravity of C.N.’s allegations, judgments from similar cases, and the Government’s genuine concerns about the petitioner’s credibility). See also *M.C. v. Bulgaria*, 2003-XII Eur. Ct. H.R. 1, 38; *K.U. v. Finland*, App. No. 2872/02, at 14 (2008) available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89964>.

191. *Currency Converter*, *supra* note 117.

192. C.N., No. 4239/08, at 23-24.

193. *Currency Converter*, *supra* note 117.

194. C.N., No. 4239/08, at 1, 24 (stating “plus any tax that may be chargeable, in respect of non-pecuniary damage” and “plus any tax that may be chargeable to the applicant, in respect of costs and expenses”).

195. *Id.* (considering it “appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points”).

196. *Id.* at 22.

197. *Id.* at 18-19.

198. See *id.* at 19.

199. *Id.* at 18-19.

redress through national criminal codes.<sup>200</sup> The Court also noted that by successfully proving a claim with respect to Article 4, C.N. also was able to bring forth claims under Articles 8 and 13 of the HRC.<sup>201</sup> However, the Court failed to find any issues that were separate from Article 4 of the HRC.<sup>202</sup>

### 3. Comparing C.N. to Siliadin

In awarding relief to C.N., the ECHR highlighted two factual differences between C.N. and *Siliadin*.<sup>203</sup> The first difference is with respect to the applicant's age: the applicant in C.N. was older than the applicant in *Siliadin*.<sup>204</sup> The second difference is that while *Siliadin* implicated the conduct of a direct employer, C.N. claimed that "it was an agent - and not her 'employers' - who she claimed were responsible for the treatment contrary to Article 4 of the [HRC]."<sup>205</sup> A common law jurist might be compelled to conclude that C.N. "extends" *Siliadin*, by noting that (1) C.N.'s older age, relative to the petitioner in *Siliadin*, raises the maximum age of a forced laborer to thirty-three (33) years of age,<sup>206</sup> if the applicant's age should even be relevant at all, and (2) a mere agent of an employer is not too remote from an employer to be immune from HRC Article 4 scrutiny. The more correct conclusion to draw is consistent with civil law: (1) The statutes' silence on age suggests that HRC Article 4 protections<sup>207</sup> are guaranteed to all applicants who allege forced labor, thereby rendering age irrelevant as a factor, while (2) C.N. affirmatively states that agents of employers are mandated to abide by HRC Article 4 as if the agent of the employers were the direct employer himself or herself.<sup>208</sup>

In fact, HRC Article 4 protections are of paramount importance to the ECHR, which stressed:

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200. *Id.* at 20 (noting similar inadequacies in the United Kingdom criminal code's ability to protect Article 4 rights that the Court found in *Siliadin v. France*, namely that "authorities were limited to investigating and penalising criminal offences which often - but do not necessarily - accompany the offences of slavery, servitude and forced or compulsory labour," leaving "[v]ictims of such treatment who were not also victims of one of these related offences . . . without remedy.").

201. *Id.* at 22.

202. *Id.*

203. *Id.* at 19.

204. *Id.*

205. *Id.*

206. *See id.* at 1, 19 (noting that the C.N. decision was rendered in 2012, and the applicant was born in 1979).

207. *Id.* at 37

208. *See id.* at 19, 22.

... together with Articles 2 and 3, Article 4 enshrines one of the basic values of the democratic societies making up the Council of Europe. Unlike most of the substantive clauses of the Convention, Article 4 § 1 makes no provision for exceptions and no degradation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of a nation.<sup>209</sup>

In its *Siliadin* judgment the Court confirmed that Article 4 entailed a specific positive obligation on member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour.<sup>210</sup>

The ECHR's refusal to grant any exceptions towards HRC Article 4 protection frames freedoms from slavery, servitude, and forced or compulsory labor as fundamental rights.<sup>211</sup> On the condition that the Nepalese migrant workers, who are currently working in Qatar in World Cup-related construction, find a way to gain access to the ECHR as plaintiffs, they would appear likely to be granted similar protection.

### B. *Procedural Burdens*

#### 1. Assuming Availability of Access to ECHR as Plaintiffs, Can the Nepalese Migrant Workers in Qatar Sustain the *C.N./Siliadin* Burden of Proof?

As a component of C.N.'s solicitor's investigation into allegations of forced labor, which was accepted as evidence by the ECHR in her winning case against the UK government, the solicitor consulted with the POPPY Project on December 18, 2008.<sup>212</sup> It was found that C.N. had been "subjected to five of the six indicators of forced labour' (as identified by the ILO)."<sup>213</sup> These six indicators are:

1. Threats or actual physical harm to the worker.<sup>214</sup>
2. Restriction of movement and confinement to the work place or to a

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209. *Id.* at 17.

210. *Id.* at 17-18.

211. *See id.* at 17.

212. *Id.* at 4.

213. *Id.*

214. *Id.* at 9 (quoting the respective ILO indicator directly in the text of the opinion).

limited area.<sup>215</sup>

3. Debt bondage: where the worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt.<sup>216</sup>

4. Withholding of wages or excessive wage reductions, that violate previously made agreements.<sup>217</sup>

5. Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status.<sup>218</sup>

6. Threat of denunciation to the authorities, where the worker is in an irregular immigration status.<sup>219</sup>

Respectively,(1) Pete Pattisson's September 25, 2013 article,<sup>220</sup> as published in *The Guardian*, reports allegations that workers were on duty in 50°C (122°F) conditions and were not granted access to drinking water.<sup>221</sup> Among forty-four documented deaths among the workers between the dates of June 4 and August 8, 2013, heart attacks, heart failure, and workplace accidents were responsible for half of these.<sup>222</sup> Barring the workers from drinking water in such oppressively hot temperatures while officially on work duty, with or without the presence of colleagues' deaths, should likely be seen as, at the very least, a threat of physical harm to the workers.

(2) Maya Kumari Sharma, the ambassador from Qatar to Nepal, equated the working conditions as "an open jail,"<sup>223</sup> from which about thirty Nepalese citizens sought refuge.<sup>224</sup> One particular Lusail City-based worker reported being unable to search for alternative employment, because the company refused to grant him permission to leave.<sup>225</sup> The fact that one ambassador cited tens of examples of citizens

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215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. See Pattisson, *supra* note 26.

221. *Id.*

222. *Id.*

223. *Envoy Sharma in soup, supra* note 54.

224. Pattisson, *supra* note 26.

225. *Id.*

abroad who claimed to be restricted to a limited area, such as an “open jail,” should likely give credence to this ILO indicator.

(3) Pattisson’s *Guardian* article states that most of the Nepalese workers obtained their jobs in Qatar through recruitment agents.<sup>226</sup> As a result, they are personally indebted to them, owing interest rates as high as thirty-six percent.<sup>227</sup> Instead of providing food and accommodations at prohibitively inflated prices, Pattisson reports that employers are more likely to withhold wages.<sup>228</sup> This should be seen as a facially obvious case in which workers work to pay off their debts, but are not paid for their services, echoing the respective ILO indicator.<sup>229</sup>

(4) Some Nepalese workers have had their pay withheld for as long as two months at a time.<sup>230</sup> One particular worker, Ram Kumar Mahara, worked a twenty-four hour shift without being provided food.<sup>231</sup> When Ram complained about this disparate working condition, the manager terminated Ram’s employment without paying the wages that were earned.<sup>232</sup> According to Pattisson’s article, withholding of wages and violations of previously made agreements, and, by extension, flauntings of this respective ILO indicator, appear to be systemic.<sup>233</sup>

(5) Pattisson also reveals that employers routinely confiscate the construction workers’ passports while in Qatar and fail to issue domestic identification that would identify the workers as such.<sup>234</sup> Consequently, the workers are unable to leave their places of employment, for without any form of identification (which would probably be in the hands of the respective employer), the otherwise lawfully-present workers would be akin to illegal aliens.<sup>235</sup> They would be arrestable, deportable, and unentitled to any legal protection.<sup>236</sup> Given this information, it seems likely that the respective ILO indicator is triggered here, thus strengthening the case that systemic forced labor is in effect for the 2022 World Cup in Qatar.

(6) The Pattisson article does not appear to disclose any recorded instance of an employer threatening to denounce a worker, as an

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226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

irregular immigrant, to authorities; however, the consequences are appreciated and feared by the workers.<sup>237</sup> One anonymous worker was clearly on notice, as he reasoned that “[i]f we run away, we become illegal and that makes it hard to find a job. The police could catch us at any time and send us back home. We can’t get a resident permit if we leave.”<sup>238</sup> Though less blatant than the other five, it nonetheless can be reasonably argued that this ILO indicator, along with the previous five, as mentioned above, has been implicated by the construction employers.

## 2. Analyzing the Nepalese Workers’ Likelihood of Gaining Access to ECHR as Plaintiffs

Since all six ILO indicators seem to be present, according to Patisson’s fact finding for *The Guardian*,<sup>239</sup> this note shall, from this point forward, assume that the migrant workers in Qatar can articulate a *prima facie* claim of forced labor. *CN v. United Kingdom* shows that it is possible for an alien to assert rights under HRC Article 4 merely by being present and working in an ECHR country;<sup>240</sup> accordingly, similar ECHR standing is not yet an impossibility for the Nepalese workforce in Qatar. The next steps of this analysis are (a) to investigate whether FIFA, as a corporation headquartered in Geneva, Switzerland (which, in turn, is a country whose courts yield to binding opinions from the ECHR), shall be obligated to uphold the Human Rights Convention when doing business in a foreign country that is *not* under jurisdiction of the ECHR, and (b) to determine whether or not the construction employers can be considered agents of FIFA, since these construction projects have arisen from Qatar’s secured bid for the 2022 World Cup.

If it should be deemed that the Qatar superintendents who employed these migrant workers from Nepal have, in fact, served as agents of FIFA, then it would appear to be plainly obvious that FIFA would be subject to an ECHR opinion. As a general rule, “. . . national courts in the European Union appear to have jurisdiction over any defendant corporation that is ‘domiciled’ in the European Union,

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237. *See id.*

238. *Id.*

239. *See generally id.*

240. *See C.N. v. United Kingdom*, App. No. 4239/08, at 1-2 (2012), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114518> (recalling that C.N. last lived in Uganda before seeking a new life in the United Kingdom, and noting that C.N. entered the United Kingdom, from Uganda, with the aid of a false passport and visa, thus logically holding that C.N.’s lack of documented immigrant status, let alone citizenship, was not a prohibitive obstacle that would have denied C.N. from seeking HRC Article 4 protections and redress from the ECHR).

*irrespective of where the harm occurred or the nationality of the plaintiffs.*"<sup>241</sup> As stated previously, it has already been reasoned that the claimants' immigration status in the *lex loci* country is irrelevant,<sup>242</sup> the Brussels Regulation serves to further concede this point.<sup>243</sup> Because FIFA's headquarters are located in Switzerland, any human rights violations that should arise from FIFA business anywhere in the world would be of interest to the ECHR.<sup>244</sup> The final obstacle, before being able to surmise that the Nepalese workers would have ECHR standing, is whether or not the Qatar employers were agents of FIFA.

With respect to this point, namely, whether the Qatar construction employers acted as agents of FIFA, it should be fairly logical to assume that this should be the case. After all, the Qatari soccer federation had to place a bid and submit a formal presentation in order to be awarded the 2022 World Cup by FIFA.<sup>245</sup> In Qatar's lobbying for the right to host the 2022 World Cup, the nation proposed the construction of state-of-the-art facilities for World Cup use, including stadia employing cutting-edge technologies with renewable and sustainable technology.<sup>246</sup> This goal, along with Qatar's proposal of "modular" stadia<sup>247</sup> to be partially deconstructed and reformed, in part, as a new permanent stadium elsewhere on the Asian continent,<sup>248</sup> was one of several points in Qatar's bid<sup>249</sup> that were directly catered to FIFA's stated objectives for the World Cup.<sup>250</sup>

For these reasons, it should be held that these very projects, along with the Lusail City construction (which is the source of many instances of slave labor at work that *The Guardian* documented), were most likely carried out because FIFA awarded Qatar the 2022 World Cup. In other words, this construction would probably not have begun without the promise of a World Cup, and, by extension, this construction is likely taking place by FIFA's appointment. Beyond the initial catalysts for this construction in Qatar, if it should be necessary to further this argument

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241. Jan Wouters & Cedric Ryngaert, *Litigation for Overseas Corporate Human Rights Abuses in the European Union: The Challenge of Jurisdiction*, 40 THE GEO. WASH. INT'L L. REV. 939, 941 (2009); See Council Regulation 44/2001, art 2., 2001 O.J. (L12) 3 (EC) [hereinafter Brussels Regulation].

242. *C.N.*, App. No. 4239/08, at 1-2.

243. Brussels Regulation, *supra* note 241.

244. See *FIFA Statutes*, *supra* note 76.

245. *Bidders for the 2022 FIFA World Cup*, *supra* note 11.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *FIFA Associations*, *supra* note 2.

(namely, that the Qatari employers are acting as agents of FIFA) by identifying intervening episodes of FIFA directives or oversight over this construction, it should be noted that FIFA has reserved its rights to monitor this very situation in Qatar.<sup>251</sup> On at least one occasion, FIFA has demanded written reports from Qatar in advance of a European Parliament hearing in the matter of the slave labor force,<sup>252</sup> and FIFA has been attempting to create more favorable conditions for the slave workforce.<sup>253</sup>

#### V. FIFA'S RESPONSE TO IMPROVE WORKING CONDITIONS

After Mr. Patisson's *The Guardian* article, FIFA demanded that Qatar submit a report as to how workplace conditions would improve, and set a deadline at February 12, 2014 for this notice.<sup>254</sup> Though the resulting fifty-page document,<sup>255</sup> entitled "Workers' Welfare Standards,"<sup>256</sup> ("WWS") appears to be largely confidential and inaccessible to the public (which is arguably consistent with FIFA's *modus operandi*), various news outlets have been able to report about what is included, and what is not, in Qatar's most recent pledge to improve the slave laborers' welfare.

The WWS purports that going forward, employers will be mandated to

install a telephone hotline for workers to raise grievances and report concerns, grant workers a minimum of three weeks' paid annual holiday based on a 48-hour week that cannot exceed eight hours per day, guarantee workers a rest day or compensate them; and create welfare officer posts as well as a forum for grievances to be resolved.<sup>257</sup>

In addition, the WWS "[requires] contractors to set up bank accounts for their workers, which will help facilitate payment, creating an auditable transaction system that will help the Supreme Committee verify that all workers are being paid in full and on time."<sup>258</sup>

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251. Les Murray, *FIFA's Qatar Test*, SBS (Feb. 5, 2014), <http://theworldgame.sbs.com.au/news/1180630/FIFAs-Qatar-test>.

252. *See id.*

253. *Id.*

254. Conway, *supra* note 33.

255. *Id.*

256. *Id.*

257. *Id.*

258. *New welfare standards for Qatar workers*, GULF TIMES (Feb. 12, 2014, 1:59 AM),

Even though the WWS was formulated in conjunction with the International Labour Organisation, additional concerns still remain. James Lynch, of Amnesty International, expressed disappointment, that “[w]hile this may be a good starting point, the [WWS] will only address the concerns of a relatively small proportion of migrant workers in Qatar; those involved in the construction of stadiums and training grounds,”<sup>259</sup> and that the scope of the WWS should be widened, in order “to cover all the migrant workers in Qatar including those who will build the wider infrastructure to support the hosting of the World Cup.”<sup>260</sup> The ITUC remained unimpressed with the efforts and skeptical that the workers’ conditions would actually improve, dismissing the WWS as “discredited self-monitoring . . . which has failed in the past in Bangladesh and other countries where thousands of workers have died.”<sup>261</sup>

In terms of protecting the workers’ rights, special attention should be paid to the mandate that employers provide the workers with bank accounts. Even though it might be convenient for construction companies to be able to point to a bank statement and show that the workers are being paid, there is nothing to suggest that the workers will be able to access their money. Unless construction sites erect ATM’s on site, without any form of identification, the workers will be unable to retrieve their wages. In practice, this would undermine the promise that workers will be able to get paid. Furthermore, supposing that ATM’s are established—so that migrant workers do not have to leave campus without ID, effectively risking their own deportation in order to verify that they are being paid a fair wage—what if the ATM’s were to be deemed usurious? This has been a subject of recent controversy in the U.S.

In July of 2013, twenty-seven-year-old Natalie Gunshannon filed a lawsuit against her employer, a Pennsylvania-based McDonald’s franchise, for undermining federal wage laws by forcing her and her co-workers to accept payments through a debit card.<sup>262</sup> This particular JPMorgan Chase payroll card has a \$1.50 charge for ATM withdrawals, a \$10 inactivity fee if unused during a ninety day period, and a seventy-

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<http://www.gulf-times.com/qatar/178/details/380896/new-welfare-standards-for-qatar-workers>.

259. *Id.*

260. *Id.*

261. Conway, *supra* note 33.

262. Agnes Bedard, *McDonald’s fined for illegal labor practices*, EXAMINER.COM (Feb. 19, 2014), <http://www.examiner.com/article/mcdonalds-fined-for-illegal-labor-practices>.

five cent online payment fee per transaction, among other fees.<sup>263</sup> In general, the U.S. Department of Labor states that a pre-paid card is a valid form of currency (instead of cash, check, or direct deposit); however, these particular restrictions appear to unduly prevent these employees from earning a minimum-wage “take-home pay.”<sup>264</sup> Accordingly, the DOL is studying this case, as well as a similar case in New York, to determine if these lawsuits are meritorious.<sup>265</sup> Accordingly, it is reasonable to be skeptical of the WWS, and to assume that it may be ineffective in its purported objective to improve the working conditions of the migrant workers.

## VI. PROPOSAL AND CONCLUSION

The Nepalese migrant workers (and, for that matter, all migrant workers from all countries who have worked in Qatar on World Cup-related construction projects) represent a unique opportunity for international human rights litigation. These workers do not appear to be protected, empowered, or even acknowledged by internal FIFA law because no provisions appear to be applicable to them.<sup>266</sup> Through this unique situation that appears to implicate a lacuna in FIFA law, these same workers appear to have a relatively straightforward path in pursuit of justice.

The countries that lost their bids (in favor of Qatar’s) to host the 2022 World Cup would, themselves, likely be unable to effectuate any positive changes for the migrant workers. Efforts that incensed soccer federations might undertake would likely include attempts to force a relocation of the 2022 World Cup, or to hold a new vote to determine an alternate host country, but would most likely necessarily involve filing a lawsuit against FIFA.<sup>267</sup> As noted by Samuel Morris, FIFA member countries appear to understand that they are foreclosed from stating causes of action in “ordinary courts of law” other than the CAS.<sup>268</sup> Indeed, World Cup eligibility appears to resemble a contract of adhesion: soccer federations that are not members of FIFA are ineligible

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263. *Id.*

264. *Id.*

265. *See id.*

266. *See Generally FIFA Statutes, supra* note 76.

267. *See generally* Samuel Morris, Comment, *FIFA World Cup 2022: Why the United States Cannot Successfully Challenge FIFA Awarding the Cup to Qatar and How the Qatar Controversy Shows FIFA Needs Large-Scale Changes*, 42 CAL. W. INT’L L.J. 541 (2012).

268. *See id.* at 556.

to compete in the World Cup, and soccer federations that refuse to accept the CAS as the exclusive “non-ordinary” court of law” for all legal matters (i.e., soccer federations that wish to reserve the right to commence legal action in other courts) would not be recognized by FIFA.<sup>269</sup>

The migrant workers do not appear to be bound by FIFA law, because they are neither members nor representatives of a soccer federation.<sup>270</sup> They, accordingly, should be free to pursue their cause of action by filing in the ECHR. As Mr. Morris reasons, “[n]o party should be subject to the jurisdiction of a court unless he or she willfully agrees to it.”<sup>271</sup> Not only have the migrant workers *not* willfully agreed to appear in front of the CAS, no less at the exclusion of other “ordinary courts of law,” but FIFA, pursuant to its legal procedure agreement with the CAS, allows the CAS to apply Swiss law in the event that FIFA law should fail to address a legal issue that may arise.<sup>272</sup> Perhaps more importantly, Switzerland, Qatar, and Nepal, by virtue of their membership within the United Nations, have willfully agreed to the UDHR, which in turn is written so that every person may seek its protections.<sup>273</sup>

In finding for C.N. in *CN v. United Kingdom*, C.N. was awarded the equivalent of \$35,610 (paid in Euros) for her non-pecuniary damages and legal fees, and the ECHR further declared that she should be entitled to extra money to cover all resultant taxes and for interest that would have accrued from the adverse events until the date of judgment.<sup>274</sup> (In *CN*, the ECHR specifically noted on the record that the UK questioned the credibility of the applicant.<sup>275</sup> Since the ECHR deemed the government’s suspicions worthy of credence, these reservations were properly factored into the judgment.<sup>276</sup>). If that number were simply to be multiplied by forty-four, for the deaths that were counted in Mr. Pattisson’s article,<sup>277</sup> then FIFA would have to pay a total judgment of \$1,566,840, plus taxes and interest. If, instead, that number were to be

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269. See *id.* (noting that “FIFA members, including the United States, may not have much of a choice.”).

270. See *id.*

271. See *id.* at 557.

272. *Id.* at 554-5; *FIFA Statutes*, *supra* note 76, at 47.

273. UDHR, *supra* note 29.

274. C.N. v. United Kingdom, App. No. 4239/08 (2012), 23 available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114518>

275. *Id.*

276. See *id.*

277. Pattisson, *supra* note 26.

multiplied by 185, to cover each Nepalese worker that the BBC counted in 2014,<sup>278</sup> then FIFA would have to pay a total judgment of \$6,587,850, plus taxes and interest. Furthermore, if C.N.'s judgment were multiplied by 4000, to reflect Ms. Burrow's "conservative" estimate of the total death toll for Nepal and India alone<sup>279</sup>, then FIFA should anticipate forfeiting more than \$142,000,000.

Given the facts that hundreds or thousands of claimants would have the same cause of action against the same defendant for the same injuries (ranging from involuntary servitude to death), while alleging similar—if not identical—UDHR violations, and that countless news outlets and human rights organizations have been aware of these episodes in Qatar, there should be fewer questions as to the applicants' credibility. This would allow the ECHR to award each claimant's estate more money. Considering that (1) C.N. was, arguably, treated better by her captors than these migrant workers were treated (including, but not limited to, the facts that C.N. did not have to deal with Qatari desert heat, and that C.N. was not subjected to a level of hard labor comparable to that of the migrant workers in Qatar); (2) there is evidence that the migrant workers' conditions of servitude resemble systemic disparate treatment; (3) the mistreatment of the migrant workers, by being inextricably linked to an international event such as the World Cup, has more global implications than S.'s relatively small-scale slave enterprise; and (4) the ECHR might deem it necessary to impose an additional penalty on FIFA in the form of punitive damages, due to the significant revenue that World Cups raise for FIFA. It is easy to see that the ECHR could hold FIFA liable for, on a per-person basis, an amount of money incalculably larger than C.N.'s award. Presuming that a lawsuit should be filed in the ECHR on behalf of all aggrieved migrant workers and the estates of all deceased migrant workers who engaged in construction in Qatar for the 2022 World Cup, I propose that FIFA and the plaintiffs strive to reach a settlement. Failing this, I propose that the ECHR establish jurisdiction over this case and rule against FIFA, in order to protect the migrant workers' interests and to uphold the UDHR.

It is my opinion that a settlement could not possibly be palatable to the deceased workers' survivors, to the respective national governments, and to human rights activists, unless the World Cup were to be moved to an alternative host-country. International sporting tournaments have

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278. Conway, *supra* note 33.

279. E:60: *Qatar's World Cup*, *supra* note 24.

occasionally been moved to new countries on relatively short notice.<sup>280</sup> Samuel Morris notes that in response to gun violence in 2009, which took place in Pakistan against the Sri Lankan cricket team, the International Cricket Council (“ICC”), albeit without an adjudicated mandate, decommissioned Pakistan as a co-host of the 2011 Cricket World Cup.<sup>281</sup> The ICC re-assigned fourteen games, which were originally scheduled to be played in Pakistan, to the three other host countries: India, Sri Lanka, and Bangladesh.<sup>282</sup>

As an additional example, the 2003 FIFA Women’s World Cup was originally slated to be held in China.<sup>283</sup> Unfortunately, due to an outbreak of severe acute respiratory syndrome (“SARS”), it became necessary to find a new host country.<sup>284</sup> On May 26, 2003, FIFA accepted the United States’ bid (over Sweden’s) to relieve China of its hosting duties, due in part to, the U.S.’s successful hosting of the previous iteration of the Women’s World Cup in 1999.<sup>285</sup> Had the World Cup been played in China, the schedule would have lasted from September 23 to October 11, 2003;<sup>286</sup> the U.S. substantively maintained the schedule despite the sudden circumstances, starting on September 20, and ending on October 12.<sup>287</sup> To compensate China, FIFA reimbursed China with a one-and-a-half million dollar payment,<sup>288</sup> upheld China’s automatic berth into the 2003 World Cup<sup>289</sup> (as is customary for host countries), and awarded China the next Women’s World Cup—the 2007 edition.<sup>290</sup>

With these anecdotes, it is plainly obvious that given adequate notice, the 2022 World Cup can be relocated, though such a move would become increasingly complicated the longer FIFA should wait. In these aforementioned scenarios, respective action was taken *sua sponte* by the

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280. Morris, *supra* note 267, at 559.

281. *Id.*

282. *Id.*

283. Jere Longman, *SOCCER; U.S. Replaces China As Host of Soccer’s Women’s World Cup*, N.Y. TIMES (May 27, 2003), <http://www.nytimes.com/2003/05/27/sports/soccer-us-replaces-china-as-host-of-soccer-s-women-s-world-cup.html>.

284. *Id.*

285. *Id.*

286. *Id.*

287. 2003 FIFA Women’s World Cup, WIKIPEDIA, [http://en.wikipedia.org/wiki/2003\\_FIFA\\_Women%27s\\_World\\_Cup](http://en.wikipedia.org/wiki/2003_FIFA_Women%27s_World_Cup) (last visited Feb. 25, 2014).

288. *China paid \$1.5m for losing women’s world cup*, SYDNEY MORNING HERALD (Sept. 20, 2003), <http://www.smh.com.au/articles/2003/09/20/1063625250200.html>.

289. 2003 FIFA Women’s World Cup, *supra* note 287.

290. *China Paid \$1.5m for losing women’s world cup*, *supra* note 288.

tournament organizers.<sup>291</sup> As of this writing, FIFA has been markedly dogmatic, stating that while Qatar should improve the workers' labor conditions, the Middle Eastern microstate will, regardless, host the 2022 World Cup, calling the decision to hold the tournament in Qatar "irreversible."<sup>292</sup> Samuel Morris is similarly fatalistic about a judiciary's likelihood to vacate Qatar's bid, surmising that

although the CAS may apply Swiss law additionally to FIFA law, it is clear from the FIFA Statutes that FIFA law will be the primary basis for a CAS decision (internal citation omitted). This makes it impossible for the CAS to rescind a bid award, because FIFA rules do not discuss rescinding bids. [. . .] There is no statute within FIFA that calls for a revote on a World Cup bid or forcibly moving it from one country to another.<sup>293</sup>

Though I concede that this would be an unprecedented action, I disagree with Mr. Morris's point of view. The fact that FIFA does not have a provision for rescinding an awarded bid should not preclude relevant Swiss law from guiding such a decision, if necessary. FIFA, as an organization headquartered in Switzerland,<sup>294</sup> should not be immune from the ECHR, nor should any entity under the jurisdiction of a Council of Europe member nation, which includes Switzerland. Accordingly, I think the ECHR could, hypothetically, enjoin FIFA from holding the 2022 World Cup if it ruled that FIFA, through agents such as Qatari construction managers, violated the UDHR. However, a mere judgment barring the 2022 World Cup from taking place in Qatar would be insufficient and potentially counterproductive, as would an order to move it to a judicially-designated alternate country.

It can be reasonably opined that judges would rather not have to directly oversee the operation of a sporting tournament. It is also important to note that FIFA, of late, has consciously avowed to adopt policies somewhat analogous to affirmative action, by attempting to become less exclusive to Europe. In 2000, FIFA adopted a "rotation policy," meaning that the men's World Cups were to be rotated among the world's continents.<sup>295</sup> 2002's World Cup was in Asia (shared

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291. See *infra* notes 280-290.

292. See Ian Traynor, *Fifa says there is little it can do about labour conditions in Qatar*, THE GUARDIAN (Feb. 13, 2014, 11:33 AM), <http://www.theguardian.com/world/2014/feb/13/fifa-labour-conditions-qatar-world-cup>.

293. Morris, *supra* note 267, at 559.

294. *FIFA Statutes*, *supra* note 76, at 6.

295. *Rotation ends in 2018*, FIFA.COM (Oct. 29, 2007), <http://www.fifa.com/worldcup/russia2018/organisation/media/newsid=625122/>.

between South Korea and Japan), 2006's was in Germany, and 2010 was in South Africa.<sup>296</sup> 2014's was reserved for South America, and thus when Colombia withdrew its bid, Brazil was awarded the 2014 World Cup by default.<sup>297</sup> Stating that default bids were undesirable, and being satisfied with the rotation policy's results, FIFA declared, in 2007, that 2018's would be available for bidding by any country not in Africa or South America, and that 2022 would have no geographic restrictions upon eligible bidding countries,<sup>298</sup> despite the fact that CONCACAF (the region containing North America, Central America, and the Caribbean) would thus be robbed of its exclusive window in the rotation policy.<sup>299</sup>

In my opinion, these atrocious and systemic violations of the UDHR—especially the *kafala* system's requirement of an exit visa in order for a migrant worker to assert his nationality by returning to his home country—are amplified both by FIFA's failure to address such a scenario in its internal statutes, as well as its insistence that "ordinary courts of law" never be allowed to have jurisdiction over FIFA affairs. FIFA's desire to have its affairs handled internally at all costs, and by the CAS if necessary, is understandable, bearing in mind the purposes of competency, efficiency, and consistency, with respect to legal issues closely related to soccer governance, players' or nations' eligibility, etc. Qatar's use of slave labor in preparation for the 2022 World Cup—which FIFA steadfastly maintains cannot and will not be relocated, despite FIFA's insistence that migrant workers' labor conditions improve—is an entirely different matter. This is an instance whereby FIFA, despite its headquarters in Switzerland and its quoted mission that the World Cup "touch the world, develop the game, and build a better future through a variety of ways,"<sup>300</sup> has purposefully attempted to establish immunity from the ECHR. This is unacceptable. With these numerous factors in mind, I think the ECHR should order FIFA to establish an escrow fund, to be administered by a neutral third party, from which survivors of the slave labor scheme in Qatar and survivors of deceased workers can claim damages and legal fees.

Accordingly, I propose that FIFA be mandated to place fifteen million dollars into escrow for each confirmed deceased migrant worker who was victimized by slave labor in Qatar, and ten million dollars into

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296. *FIFA ends World Cup rotation policy*, CNN.COM (Oct. 29, 2007, 10:03 PM), <http://edition.cnn.com/2007/SPORT/football/10/29/switzerland.cup/>.

297. *Id.*

298. *See Rotation ends in 2018*, *supra* note 295.

299. *FIFA ends World Cup rotation policy*, *supra* note 297.

300. *FIFA Associations*, *supra* note 2.

escrow for every confirmed migrant worker who was denied a company-issued ID card, and who was therefore left without documentation and liable for deportation without due process. However, for the sake of proposing a condition that FIFA might find palatable, I would offer that if FIFA were to relocate the 2022 World Cup on or before July 31, 2016, the ECHR might give FIFA a partial refund as it may deem appropriate. Assuming a relocation for 2022, I would encourage that Qatar retain its automatic bid in the 2022 World Cup, no matter where the tournament should eventually be played, to be consistent with FIFA policy in 2003 for the Chinese women's team.

If FIFA were to insist on keeping the 2022 World Cup in Qatar, I would suggest that the ECHR mandate that at the conclusion of the games, some removable seats from the "modular stadia" be sold at auction to private memorabilia collectors, with proceeds to further benefit the victims and their families. Subsequently or alternatively, I would propose that the modular stadia be rebuilt in countries that saw its citizens perish in the Qatari slave labor regime, especially Nepal. Of course, should FIFA refuse to relocate the 2022 tournament, further violations in Qatar could also be judiciable, and damages would likely be even greater, as a pattern of purposefully adverse conduct would have been established from an initial ECHR judgment. It is assumed that FIFA would eventually decide against collecting additional liability and negative publicity.

Soccer is nicknamed, among worldwide fans, "The Beautiful Game."<sup>301</sup> The carnage that has been rotting in Qatar is surely a black eye for FIFA, and the fact that slave labor has persisted as long as it has, in preparation for the 2022 World Cup, should have raised many red flags, and quicker than has actually occurred. The conduct of these Qatari employers-as-slave masters, as well as FIFA's willful ignorance to the conduct it arguably endorses, is squarely out of bounds. Accordingly, the Qatar bid should finally be given the red card. Whether or not such action shall take place, the ECHR should serve as the referee, despite FIFA's inevitable insistence that its "rulebook" only calls for the services of the CAS and its interpretation of FIFA statutes. Swift and sensible action must be taken as soon as possible, in order for FIFA to net a salvaging of the 2022 World Cup, to honor the memory of the deceased migrant workers, and to preserve the basic fundamental human rights of survivors of the Qatari desert, as securing them for

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301. Peter Bella, *Soccer the Beautiful Game*, INTERESTING CHICAGO (June 22, 2014, 9:35 P.M.), <http://www.chicagonow.com/interesting-chicago/2014/06/soccer-the-beautiful-game/>.

everyone is the UDHR's ultimate goal.

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