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## Sweat Makes the Green Grass Grow: The Precarious Future of Qatar's Migrant Workers in the Run up to the 2022 FIFA World Cup Under the Kafala System and Recommendations for Effective Reform

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**Sweat Makes the Green Grass Grow: The Precarious Future of Qatar's Migrant Workers in the Run up to the 2022 FIFA World Cup Under the Kafala System and Recommendations for Effective Reform**

# SWEAT MAKES THE GREEN GRASS GROW: THE PRECARIOUS FUTURE OF QATAR'S MIGRANT WORKERS IN THE RUN UP TO THE 2022 FIFA WORLD CUP UNDER THE KAFALA SYSTEM AND RECOMMENDATIONS FOR EFFECTIVE REFORM

PAULA RENKIEWICZ\*

*Migrant labor in Qatar is increasing as Qatar makes preparations to host the 2022 FIFA World Cup. Under the kafala system, Qatar's sponsorship system, migrant workers must seek sponsorship to enter Qatar and be eligible to work. As it stands, the kafala system places tremendous power in the hands of sponsors, giving them control over a migrant's freedom to change employment or leave the country. This imbalance of power subjects migrants to various forms of exploitation and furnishes conditions fit for human trafficking. Human trafficking for the purpose of labor exploitation represents a large proportion of human trafficking cases. The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, is an international convention that requires a comprehensive international approach among state parties to prevent human trafficking, protect victims, and prosecute traffickers. As a party, Qatar is required to uphold the UN Trafficking Protocol's object and purpose. This Comment argues that Qatar's restrictive sponsorship system perpetuates human trafficking by exploiting migrant workers. Qatar is violating its obligations under the UN Trafficking*

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*Protocol and, therefore, must reform its kafala system to comply with the Protocol's mandates. Given Qatar's increasing reliance upon migrant labor for the 2022 World Cup preparations, Qatar must act promptly to protect the rights of migrant workers.*

#### TABLE OF CONTENTS

Introduction.....	723
I. An Overview of Human Trafficking and Qatar's Kafala System ..	728
A. Introduction to the Criminal Enterprise of Human Trafficking .....	728
B. The Extent of Migrant Labor and Human Trafficking in Qatar .....	731
C. What Is the Kafala System?.....	733
D. Relevant Regulation of Migrant Labor and Human Trafficking .....	737
1. The UN Trafficking Protocol.....	737
2. The ILO conventions.....	739
3. Qatar's human trafficking and labor legislation .....	740
II. Qatar Violates the Goals of the UN Protocol Because of its Implementation of the Kafala System .....	742
A. Complicity in Human Trafficking Violates the UN Protocol .....	743
B. Qatar's Implementation of the Kafala System Makes the Qatari Government Complicit in Human Trafficking and Further Perpetuates the Occurrence of Human Trafficking .....	746
1. The implementation of the kafala system makes the Qatari government complicit in human trafficking .....	746
2. Qatar's operation of the kafala system perpetuates human trafficking of migrant workers.....	748
C. Qatar's Kafala System, As It Stands, Violates the UN Trafficking Protocol.....	749
III. Why Qatar's Efforts Fail to Satisfy the UN Protocol and What Must Be Done .....	755
A. Why Qatar's Efforts Are Lacking .....	755
B. Recommendations for Qatar .....	757
Conclusion .....	760

## INTRODUCTION

In the summer of 2022, Qatar will be the first Middle Eastern nation to host the Fédération Internationale de Football Association (FIFA) World Cup.<sup>1</sup> The World Cup is an international football tournament held every four years, and it is one of the largest sporting events worldwide.<sup>2</sup> Unfortunately, this honor comes at a price—approximately one hundred billion in construction costs and the death of an estimated 4000 migrant laborers.<sup>3</sup> With the 2022 World Cup quickly approaching, Qatar is relying on migrant workers to build new infrastructure, including stadiums, hotels, rail projects, and a new airport.<sup>4</sup> The high demand that comes with the honor of hosting a mega-sporting event such as the World Cup often leads to the exploitation of migrant workers involved in preparation for it.<sup>5</sup>

Take for instance Iok, a sixteen-year-old boy from Nepal.<sup>6</sup> Iok sought employment abroad.<sup>7</sup> Because he was too young to do so legally, Iok obtained a fake passport with the help of a labor broker

1. Nigel G. Crocombe, Note, *Building a New Future: The 2022 FIFA World Cup as a Potential Catalyst for Labor Reform in Qatar*, 37 SUFFOLK TRANSNAT'L L. REV. 33, 33 (2014); *Russia and Qatar Awarded 2018 and 2022 FIFA World Cups*, FIFA (Dec. 2, 2010), <http://www.fifa.com/worldcup/news/y=2010/m=12/news=russia-and-qatar-awarded-2018-and-2022-fifa-world-cups-1344698.html>; see also FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, ALL ABOUT FIFA 6, 10, 15, [http://resources.fifa.com/mm/document/fifafacts/organisation/02/13/11/06/03072013allaboutfifa\\_neutral.pdf](http://resources.fifa.com/mm/document/fifafacts/organisation/02/13/11/06/03072013allaboutfifa_neutral.pdf) (indicating that FIFA was established in 1904, and its mission is to protect the game of football and to "develop the game, touch the world and build a better future"). For the purposes of this Comment, the term "football" refers to "soccer" (the term used in the United States).

2. See Kenneth Korosi et al., *Foreword*, 21 SW. J. INT'L L. 1, 3 (2014) ("[T]his opportunity to host the [World Cup] comes with a hopeful economic boom and sense of pride and honor for a host country.").

3. Christopher Ingraham, (*Updated*) *The Toll of Human Casualties in Qatar*, WASH. POST (May 27, 2015), <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/05/27/a-body-count-in-qatar-illustrates-the-consequences-of-fifa-corruption>.

4. AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., SLAVING AWAY: MIGRANT LABOR EXPLOITATION AND HUMAN TRAFFICKING IN THE GULF 29 (2014), [http://adhrb.org/wp-content/uploads/2014/06/ADHRB\\_Slaving-Away-Migrant-Rights-and-Human-Trafficking-the-the-Gulf-Web-Pre-Publication.pdf](http://adhrb.org/wp-content/uploads/2014/06/ADHRB_Slaving-Away-Migrant-Rights-and-Human-Trafficking-the-the-Gulf-Web-Pre-Publication.pdf).

5. See HUMAN RIGHTS WATCH, WORLD REPORT 2015, at 37 (2015) [hereinafter HUMAN RIGHTS WATCH], [https://www.hrw.org/sites/default/files/wr2015\\_web.pdf](https://www.hrw.org/sites/default/files/wr2015_web.pdf) (citing the abuse and exploitation of migrant workers as one of five main abuses that correspond with mega-sporting events).

6. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2015, at 8 (2015) [hereinafter TRAFFICKING IN PERSONS REPORT 2015], <http://www.state.gov/documents/organization/245365.pdf>.

7. *Id.*

so that he could present himself as twenty years of age.<sup>8</sup> The labor broker found Lok a job in Qatar, but charged Lok an illegal recruitment fee for doing so.<sup>9</sup> Even before Lok arrived in Qatar, his debt already started to pile up because the labor broker charged him a thirty-six percent interest rate on the recruitment fee.<sup>10</sup> Two months after arriving in Qatar, Lok died of cardiac arrest while working under harsh conditions.<sup>11</sup> Lok's parents never received money for the two months Lok worked.<sup>12</sup>

Many migrants working in Qatar experience circumstances similar to Lok's.<sup>13</sup> Qatar's rapidly increasing economy has led to a surge in migrant workers.<sup>14</sup> With the 2022 World Cup preparations, migrant worker deaths have become more apparent.<sup>15</sup> However, even before FIFA announced the 2022 World Cup would be held in Qatar, there were increasing reports of migrant worker deaths in the country.<sup>16</sup> Migrants working in areas such as construction are often forced to work long shifts, sometimes between twelve and fourteen hours a day, while facing sweltering temperatures of up to 100 degrees.<sup>17</sup> It is not uncommon for migrant workers to suffer heat strokes or heart attacks, which often lead to death.<sup>18</sup> The working and living conditions of migrant workers in Qatar are so poor that the

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8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. See AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 28 (explaining that many employers confiscate migrant workers' passports, delay or fail to pay wages to their workers, and subject workers to dangerous working conditions).

14. See Crocombe, *supra* note 1, at 35–37, 40–41. See generally BEATE ANDREES ET AL., INT'L LABOUR ORG., REGULATING LABOUR RECRUITMENT TO PREVENT HUMAN TRAFFICKING AND TO FOSTER FAIR MIGRATION: MODELS, CHALLENGES AND OPPORTUNITIES 61 (2015), [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_377813~2.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_377813~2.pdf) (emphasizing the extent of migrant labor in the Middle East and indicating that the Gulf Cooperation Council ("GCC") countries host more than twenty-two million migrants who generate over eighty billion dollars in remittances annually worldwide).

15. See AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 29.

16. See Ingraham, *supra* note 3 (reporting the deaths of over two hundred Indian workers in Qatar in 2010).

17. AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 28.

18. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284; see AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 29–30 (noting the high death rates for construction workers in Qatar and citing overwork as the cause of death for 276 Nepalese workers in 2013).

International Trade Union Confederation's ("ITUC") General Secretary has characterized them as akin to "modern-day slavery."<sup>19</sup>

The abuse and death of migrant workers in Qatar is closely connected to Qatar's implementation of its sponsorship system, known as the kafala system.<sup>20</sup> The kafala system oversees the extent of migrant labor by dictating how migrant workers may enter and leave the country.<sup>21</sup> For a migrant worker to enter Qatar and be eligible to work, the worker must seek sponsorship;<sup>22</sup> the issuance of employment visas is tied directly to the sponsor.<sup>23</sup> Qatar relies on this system to monitor the influx of migrant workers due to its increasing migrant population.<sup>24</sup> Unfortunately, as it stands, Qatar's sponsorship system places a significant amount of power in the hands of the sponsors, leading to an unbalanced bargaining structure between sponsors and employees.<sup>25</sup> Under this imbalance, employees face the risk of exploitation and obstacles such as low wages or no wages at all, substandard housing conditions, and long working hours.<sup>26</sup> This oppressive sponsorship system makes it nearly impossible for migrants to escape abysmal working conditions and

19. HÉLÈNE HARROFF-TAVEL & ALIX NASRI, INT'L LABOUR ORG., TRICKED AND TRAPPED: HUMAN TRAFFICKING IN THE MIDDLE EAST 116 (2013), [http://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/publication/wcms\\_211214.pdf](http://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/publication/wcms_211214.pdf) (quoting *ITUC Confronts Qatari Labour Minister with New Evidence of Abuse of Migrant Workers*, INT'L TRADE UNION CONFEDERATION (June 12, 2012), <http://www.ituc-csi.org/ituc-confronts-qatari-labour?lang=en>).

20. See Ingraham, *supra* note 3 (criticizing the kafala system for "leaving the door wide open for exploitation and abuse"). See generally *infra* Section I.C (explaining what the kafala system is).

21. See MIGRANT FORUM IN ASIA, POLICY BRIEF NO. 2: REFORM OF THE KAFALA (SPONSORSHIP) SYSTEM I, <http://mfasia.org/resources/publications/464-mfa-policy-brief>.

22. *Id.*

23. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 18.

24. Heather E. Murray, Note, *Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries*, 45 CORNELL INT'L L.J. 461, 467 (2012) (explaining that the kafala system, created by the GCC countries in the 1950s, allows the Qatari government to regulate labor flow in and out of Qatar); see also Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. 76, 115 (2012) (stating that countries that adopt systems like the kafala system do so to "limit the entry of migrant workers . . . and to regulate the eligibility of the various labor sectors to employ migrant workers").

25. See MIGRANT FORUM IN ASIA, *supra* note 21, at 1 (finding that the imbalance in power between a sponsor and an employee creates "an environment ripe for human rights violations").

26. HARROFF-TAVEL & NASRI, *supra* note 19, at 15.

abusive employers.<sup>27</sup> Because of the high probability of exploitation under Qatar's kafala system, migrant workers are at risk of becoming victims of human trafficking.<sup>28</sup>

Human trafficking is a growing phenomenon that exists in every country.<sup>29</sup> According to the United Nations (UN), human trafficking is ranked as the third largest profit center for transnational crime.<sup>30</sup> The trafficking of humans for forced labor represents a large proportion of international human trafficking cases.<sup>31</sup> In 2014, the International Labour Organization (ILO) estimated that forced labor in the private economy accumulates \$150 billion in illicit profits annually.<sup>32</sup> The extent of forced labor is so significant that it creates complex supply chains crossing international borders and tainting purchases; as such, consumers of goods and services are closely

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27. See AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 5 (describing how, under the kafala system, it is illegal for an employee to seek alternate employment in the hopes of escaping an abusive employer).

28. See *id.* (explaining that many migrant workers are forced into labor camps or are sold into sex slavery).

29. STEPHANIE HEPBURN & RITA J. SIMON, HUMAN TRAFFICKING AROUND THE WORLD: HIDDEN IN PLAIN SIGHT 1 (2013).

30. See Kevin Bales, *International Labor Standards: Quality of Information and Measures of Progress in Combating Forced Labor*, 24 COMP. LAB. L. & POL'Y J. 321, 324 (2003) (stating that drugs and weapons trafficking rank first and second as the largest profit centers for transnational crime); see also HARROFF-TAVEL & NASRI, *supra* note 19, at 24 (referencing the International Labour Organization's estimate that the "opportunity cost" of forced labor trafficking amounts to over twenty billion dollars annually); HEPBURN & SIMON, *supra* note 29, at 1 (indicating that as of 2005, the human trafficking industry made a worldwide profit of 44.3 billion dollars). See generally INT'L LABOUR OFFICE, INT'L LABOUR ORG., PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOUR 10, 12 (2014), [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-declaration/documents/publication/wcms\\_243391.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/publication/wcms_243391.pdf) (attributing the high profits of forced labor trafficking to underpaid wages, wage retention, debt repayments, and illegal recruitment fees).

31. See HEPBURN & SIMON, *supra* note 29, at 1 ("The International Labour Organization (ILO) estimated that [in 2005,] [forty-three] percent of victims were trafficked for commercial sexual exploitation, [thirty-two] percent were trafficked for forced labor, and the remaining [twenty-five] percent were trafficked for a mixture of both or for undetermined reasons.").

32. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 13 (asserting that the profits acquired through forced labor fall into a complex supply chain that crosses international borders and corrupts the global economy); see also UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2014 33 (2014) [hereinafter GLOBAL REPORT], [https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP\\_2014\\_full\\_report.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf) (noting that forced labor includes manufacturing, cleaning, construction, textile production, domestic servitude, and other forms of labor).



connected to human trafficking.<sup>33</sup> In many instances, victims of forced labor are subject to abuse and exploitation that is just as horrific as the abuse victims of sex trafficking experience.<sup>34</sup> Female victims of forced labor, especially those in domestic servitude, are often victims of sexual exploitation as well as labor exploitation.<sup>35</sup> Deplorable working conditions endanger the lives of many forced laborers.<sup>36</sup> This is especially true in Qatar.<sup>37</sup> Unless Qatar's government takes action to reform its sponsorship system and remedy the mistreatment and exploitation of its migrant workers, the death toll of migrant workers building the World Cup infrastructure will be greater than the number of players participating in the tournament.<sup>38</sup>

This Comment will argue that Qatar's implementation of its kafala system leads to the exploitation and trafficking of migrant workers. Qatar's traditional sponsorship system reflects the Qatari government's complicity in human trafficking, which violates the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children ("UN Trafficking Protocol"). Qatar must reform its kafala system to comply with the UN Trafficking Protocol and to combat the human trafficking of migrant workers.

Part I will provide an overview of the criminal enterprise of human trafficking, focusing on the trafficking of humans for forced labor. It will examine migrant labor and human trafficking in Qatar, as well as Qatar's sponsorship system, the kafala system. Part I will also explore

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33. See *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 13 (pointing out that human trafficking is tied to the extractive stages of a good (such as mining), the manufacturing stage (where separate pieces are combined), and the production stage (where a good is assembled and packaged)).

34. May Li, Note, *Did Indiana Deliver in Its Fight Against Human Trafficking?: A Comparative Analysis Between Indiana's Human Trafficking Laws and the International Legal Framework*, 23 *IND. INT'L. & COMP. L. REV.* 277, 288–92 (2013) (describing sexual exploitation and labor exploitation, which entail similar forms of abuse); see *INTERNATIONAL LABOUR ORGANIZATION, Forced Labour, Human Trafficking and Slavery*, <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> (stating that out of nineteen million forced labor victims exploited by private individuals or enterprises, 4.5 million are victims of forced sexual exploitation).

35. *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 8.

36. See *INT'L TRADE UNION CONFEDERATION, SPECIAL REPORT: THE CASE AGAINST QATAR 16, 18* (2014) [hereinafter *THE CASE AGAINST QATAR*], [http://www.ituc-csi.org/IMG/pdf/the\\_case\\_against\\_qatar\\_en\\_web170314.pdf](http://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf) (observing that deaths attributed to poor working conditions include work accidents, heart attacks, or diseases from squalid living conditions).

37. *Id.*

38. Crocombe, *supra* note 1, at 34–35.

relevant legal instruments, such as international treaties and Qatari laws, and their approach to tackling human trafficking and forced labor.

Part II will argue that because the implementation of Qatar's kafala system leads to complicity in human trafficking, the kafala system as it stands violates the UN Trafficking Protocol. Part II will first analyze the UN Trafficking Protocol and find that complicity in human trafficking violates states' responsibilities under the Protocol. Part II will then explore Qatar's kafala system and find that, because of the implementation of the kafala system, the Qatari government fails to satisfy the requirements of the UN Trafficking Protocol.

Part III will argue that Qatar's current efforts to combat human trafficking are insufficient. Despite the various efforts in place, Qatar's sponsorship system remains, and so do its consequences. Qatar will be unable to address its human trafficking problem and comply with the UN Trafficking Protocol if the kafala system remains unchanged. Accordingly, Part III will provide recommendations on how Qatar can reform its kafala system and prevent human trafficking.

This Comment concludes that Qatar must reform its kafala system to combat human trafficking and comply with the UN Trafficking Protocol. Given the increase in migrant labor in preparation for the 2022 World Cup, the Qatari government must act promptly to save hundreds—and maybe thousands—of migrant workers from exploitation.

## I. AN OVERVIEW OF HUMAN TRAFFICKING AND QATAR'S KAFALA SYSTEM

### A. *Introduction to the Criminal Enterprise of Human Trafficking*

There are numerous definitions of human trafficking, but the worldwide standard, as established by the UN, sets forth three essential elements: (1) an action element; (2) a means element; and (3) a purpose element.<sup>39</sup> The “action” element refers to the act of trafficking, such as the recruitment, transportation, harboring, or receipt of persons; the “means” element refers to the use of threats, force, or other forms of coercion, abduction, and deception, among others; and the “purpose” element refers to exploitation.<sup>40</sup> All three

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39. HEPBURN & SIMON, *supra* note 29, at 3.

40. *Id.* See generally UNITED NATIONS OFFICE ON DRUGS AND CRIME, THE CONCEPT OF “EXPLOITATION” IN THE TRAFFICKING IN PERSONS PROTOCOL 23–24 (2015) [hereinafter THE CONCEPT OF “EXPLOITATION”], [https://www.unodc.org/documents/human-trafficking/2015/UNODC\\_IP\\_Exploitation\\_2015.pdf](https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf) (viewing the “action” and “means” elements as the *actus reus* of trafficking and the “purpose” element as the *mens rea* of trafficking).

elements must be present to establish the offense of human trafficking; however, the consent of a victim is irrelevant when any forms of “means” are established.<sup>41</sup> Article 3 of the UN Trafficking Protocol defines human trafficking as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>42</sup>

While the UN Trafficking Protocol provides a helpful definition of human trafficking, it fails to further define “exploitation.”<sup>43</sup> However, the “exploitation” or “purpose” factor is the main impetus for human trafficking.<sup>44</sup>

Human trafficking causes can be attributed to numerous “push and pull factors.”<sup>45</sup> “Push factors” are the factors that push individuals from their home countries to destination countries, thereby supplying traffickers with potential victims.<sup>46</sup> “Pull factors” are the factors that draw individuals into a specific destination country.<sup>47</sup> These “push and pull factors” perpetuate the cycle of human

41. GLOBAL REPORT, *supra* note 32, at 15; *see* THE CONCEPT OF “EXPLOITATION”, *supra* note 40, at 14 (noting that the “means” element is not required when trafficking of children is involved).

42. U.N. Convention Against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art. 3(a), Nov. 15, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 304 [hereinafter UN Trafficking Protocol].

43. *See id.* (defining “exploitation” as including “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour . . . or practices similar to slavery”); Jean Allain, *No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol*, 7 ALB. GOV'T L. REV. 111, 120 (2014) (suggesting that the UN Trafficking Protocol intentionally left the definition of “exploitation” open-ended to let each state party determine what specific types of exploitation they would seek to prohibit); *see also* THE CONCEPT OF “EXPLOITATION”, *supra* note 40, at 8 (arguing that the UN Trafficking Protocol’s definition of “exploitation” is non-exhaustive and that states are permitted to expand upon the definition so long as the integrity of the Protocol is retained).

44. *See* GLOBAL REPORT, *supra* note 32, at 46 (arguing that obtaining economic benefits from the exploited labor and services of victims is one of the main goals of trafficking).

45. Li, *supra* note 34, at 287.

46. *See id.* (citing examples of “push factors” such as lack of employment or educational opportunities, and economic or political instability in an individual’s home country).

47. *See id.* (listing examples of “pull factors” including the demand for cheap labor and the possibility of a higher standard of living).

trafficking.<sup>48</sup> In countries such as Qatar, the high demand for cheap labor, combined with weak labor laws and the high rate of unemployment in developing countries, promotes forced labor trafficking.<sup>49</sup>

The trafficking of humans for the purposes of forced labor is significant within the various types of human trafficking.<sup>50</sup> In 2012, the ILO estimated that 20.9 million people were victims of forced labor across the world.<sup>51</sup> The ILO defines forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>52</sup> Victims of forced labor are forced to work in areas such as construction, domestic work, sweatshops, agriculture, forced begging, and other sectors.<sup>53</sup> Low-skilled migrant workers are the most vulnerable to forced labor due to their limited financial resources and lack of education.<sup>54</sup> In addition, workers are more likely to become victims of forced labor in industries with short turn-around for production, such as the construction of infrastructure for the 2022 World Cup.<sup>55</sup> According to the UN Office on Drugs and Crime (UNODC), the problem of human trafficking for forced labor is underestimated because there is a common misperception among law enforcement and the public that human trafficking only encompasses sex trafficking.<sup>56</sup>

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48. *Id.*

49. See *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 18.

50. See Li, *supra* note 34, at 288, 290 (identifying labor and sex trafficking as the two most common forms of human trafficking, representing eighteen and seventy-nine percent of all cases respectively). *But see* *GLOBAL REPORT*, *supra* note 32, at 9 (recognizing other forms of human trafficking, such as the trafficking of children for armed combat or forced begging, as significant problems).

51. See *HARROFF-TAVEL & NASRI*, *supra* note 19, at 13, 27 (estimating that in 2012, there were 600,000 victims of forced labor in the Middle East).

52. See *id.* at 21 (suggesting the inherent notion of exploitation under the definition of “forced labour” indicates that human trafficking for the purpose of exploitation is encompassed by this definition of “forced labour”).

53. Li, *supra* note 34, at 290.

54. *HARROFF-TAVEL & NASRI*, *supra* note 19, at 14 (explaining how migrant workers who wish to provide for themselves and their families are attracted to the idea of working abroad and are often unaware of the risks of exploitation). Some migrant workers are aware of the future risks of exploitation, but they continue to seek work abroad because of their poor financial situations and the pressing needs of their families. *Id.*

55. *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 14.

56. *HARROFF-TAVEL & NASRI*, *supra* note 19, at 24.

*B. The Extent of Migrant Labor and Human Trafficking in Qatar*

Qatar is rapidly developing into a thriving Middle Eastern nation due to its lucrative oil and gas industry.<sup>57</sup> Because of Qatar's growing economy, the need for labor has increased and, like other Gulf Cooperation Council ("GCC") countries,<sup>58</sup> Qatar has become an attractive destination for migrant workers.<sup>59</sup> Migrants voluntarily seek work in countries abroad in hopes of fleeing poverty, unemployment, violence, and natural disasters.<sup>60</sup> Approximately 1.2 million men and women migrate to Qatar to seek employment, making up ninety-four percent of Qatar's population.<sup>61</sup> Construction and domestic servitude are the most common fields of work, but other areas include oil and gas and transportation industries.<sup>62</sup> Despite the

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57. Crocombe, *supra* note 1, at 35–36. See generally AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 26 (indicating that the oil and gas industry accounts for over fifty percent of Qatar's total gross domestic product); Cent. Intelligence Agency, *World Fact Book 2013-14: Qatar*, <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/qa.html> (last updated Oct. 28, 2015) (citing Qatar as the country with the highest per-capita income and the lowest unemployment rate).

58. See generally INT'L TRADE UNION CONFEDERATION, FACILITATING EXPLOITATION: A REVIEW OF LABOUR LAWS FOR MIGRANT DOMESTIC WORKERS IN GULF COOPERATION COUNCIL COUNTRIES 4 (2014), [http://www.ituc-csi.org/IMG/pdf/gcc\\_legal\\_and\\_policy\\_brief\\_domestic\\_workers\\_final\\_text\\_clean\\_282\\_29.pdf](http://www.ituc-csi.org/IMG/pdf/gcc_legal_and_policy_brief_domestic_workers_final_text_clean_282_29.pdf) (indicating that the GCC is made up of the following countries: Saudi Arabia, Qatar, Kuwait, Bahrain, United Arab Emirates, and Oman).

59. See Crocombe, *supra* note 1, at 36 (explaining how Qatar's booming economy has allowed its citizens to enjoy "near-universal employment," but make up only fifteen percent of the country's population); see also HARROFF-TAVEL & NASRI, *supra* note 19, at 25 (attributing the "capital-rich economies" of GCC countries to the rise in construction and infrastructure fields that rely on the use of short-term labor).

60. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 17 (examining the willingness of migrants to work abroad, and in some situations, their willingness to pay a smuggler to help them enter and obtain work in another country).

61. Alyssa Antoniskis, Column, *2022 World Cup and the Exploitation of Migrant Workers in Qatar*, 20 HUM. RTS. BRIEF 55, 55 (2013). See generally AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 27 ("The majority of migrant workers [in Qatar] come from India, Nepal, Pakistan, Sri Lanka, Bangladesh, and the Philippines."). The high proportion of migrant labor is attributed to the increased open market of jobs in the private sector. *Id.* Qatari nationals are attracted to jobs in the public sector, which has increased available jobs in the private sector that now rely upon the labor of migrant workers. *Id.*

62. See AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 26 (estimating about 506,000 migrants working in the construction field and 84,000 female migrants in the domestic field).

promise of good pay and adequate living conditions, migrant workers face forced labor upon arrival to their worksites.<sup>63</sup>

The upcoming FIFA World Cup 2022 has increased demand for domestic labor in Qatar.<sup>64</sup> Migrants working in the field of domestic servitude are vulnerable to various types of abuse and exploitation.<sup>65</sup> In many instances, the domestic worker, usually female, is prohibited from leaving her employment, underpaid or not paid at all, and forced to work seven days a week.<sup>66</sup> Often, the abuse of domestic workers goes unnoticed because authorities cannot inspect private homes as easily as they can inspect formal workplaces.<sup>67</sup> Female domestic workers are also more at risk of gender-based violence.<sup>68</sup> If women try to report instances of abuse and rape, authorities may charge them with “illicit relations.”<sup>69</sup>

The announcement of Qatar’s 2022 World Cup bid has also increased the number of migrant laborers in the construction field.<sup>70</sup> Migrants working in construction suffer an array of abuses, including long hours and workplace injuries.<sup>71</sup> About ten percent of injuries that occur on construction sites result in permanent disability.<sup>72</sup> Since FIFA awarded the 2022 World Cup bid to Qatar, more than a thousand migrant workers have died during the construction of new infrastructure.<sup>73</sup> Over the next few years, Qatar may admit an

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63. Mohammad A. Auwal, *Ending the Exploitation of Migrant Workers in the Gulf*, 34 FLETCHER F. WORLD AFF. 87, 90–91 (2010).

64. See INT’L TRADE UNION CONFEDERATION, *supra* note 58, at 6–7 (estimating that the number of workers drafted into domestic servitude is likely to increase due to the increase in wealth and living standards in Qatar). See generally *id.* at 9 (referring to the ILO Domestic Workers Convention No. 189, which defines “domestic work” as “work performed in or for a household or households”).

65. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 8.

66. *Id.*

67. *Id.*

68. *Id.*

69. AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 31.

70. See *Qatar: No Labourers Killed on World Cup Stadiums But Migrant Rules to Change*, THE GUARDIAN (May 4, 2015, 10:08 PM), <http://www.theguardian.com/world/2015/may/05/qatar-no-labourers-killed-on-world-cup-stadiums-but-migrant-rules-to-change> (estimating that so far, over 2500 migrant workers have worked for about 4.8 million hours towards the preparation of the 2022 World Cup).

71. AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 28.

72. *Id.* at 28; see also *id.* at 29 (indicating that in 2013, twenty percent of all migrant worker deaths in Qatar occurred on construction sites).

73. See *id.* at 30 (citing the deaths of 382 Nepalese workers since 2012 and 717 Indian workers since 2010, and an additional 1000 workers who were admitted to the trauma unit as a result of injuries sustained from work).

additional one million migrant workers into its labor force to work in construction in preparation for the 2022 World Cup.<sup>74</sup>

According to the U.S. Department of State's 2015 Trafficking in Persons Report, Qatar is mostly a destination country for forced labor trafficking; however, it also serves as a destination country for forced prostitution.<sup>75</sup> Because Qatar is a popular destination for low-skilled migrant labor, it is the largest population at risk of human trafficking in Qatar.<sup>76</sup> Further, migrant women in the domestic sector are at increased risk of human trafficking because of their isolation, and sex traffickers may force women who escape domestic work into prostitution.<sup>77</sup>

### C. *What Is the Kafala System?*

The kafala system is a sponsorship system used to monitor migrant workers.<sup>78</sup> In the 1950s, the GCC countries established the modern-day kafala system, under which in-country sponsorship is the only means of eligibility for a migrant to work in a GCC country.<sup>79</sup> The kafala system is embedded in the historical roots of Arab culture,<sup>80</sup> stemming from a custom of Bedouin tribes whereby tribe members

74. Crocombe, *supra* note 1, at 41 (citing INT'L TRADE UNION CONFEDERATION, UNION VIEW #21: HIDDEN FACES OF THE GULF MIRACLE 3–4 (2011), [http://www.ituc-csi.org/IMG/pdf/VS\\_QatarEN\\_final.pdf](http://www.ituc-csi.org/IMG/pdf/VS_QatarEN_final.pdf)).

75. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284 (placing Qatar on the Department of State's Tier 2 Watch List). The Department of State's Trafficking in Persons Report uses four tiers to rank a government's compliance with the standards established under the Trafficking Victims Protection Act (TVPA): Tier 1 encompasses countries whose governments fully comply but human trafficking still exists; Tier 2 encompasses countries whose governments do not fully comply, but are making significant efforts to do so; Tier 2 Watch List encompasses the Tier 2 qualifications plus three additional circumstances—in Qatar's case, failure to provide evidence of increased efforts from the previous year to come into compliance; and Tier 3 encompasses countries whose governments do not fully comply and are not making significant efforts to do so. *Id.* at 53, 284–85. See generally Trafficking Victims Protection Act, 22 U.S.C. §§ 7101–7112 (2012). The minimum standards for eliminating human trafficking under the TVPA are consistent with the standards used by the UN Trafficking Protocol. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 45.

76. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284.

77. *Id.*

78. Murray, *supra* note 24, at 467.

79. *Id.* See generally MIGRANT FORUM IN ASIA, *supra* note 21, at 1 (explaining that one of the original economic goals of the kafala system was to provide temporary labor that could be quickly provided when needed and removed when unneeded).

80. AMANUEL AJAWIN, ET AL., FAIRLEIGH DICK. U., HISTORY OF THE MIDDLE EAST 119 (2012), <https://www.un.int/kamal/sites/www.un.int/files/The%20Ambassador's%20Club%20at%20the%20United%20Nations/publications/ufdu2011ahme.pdf>.

would afford traveling strangers safe passage or, in some cases, limited affiliation with the tribe.<sup>81</sup> The kafala system mandates that for the duration of a migrant worker's employment, his legal immigration status is tied to his employer or sponsor (*kafeel*).<sup>82</sup> The sponsor (usually an employer) controls a worker's entrance into Qatar, his ability to transfer employment, and his exit from Qatar.<sup>83</sup>

Law No. 4 of 2009, Regulating the Entry and Exit of Expatriates, their Residence and Sponsorship, is Qatar's sponsorship law based on the kafala system.<sup>84</sup> Under Article 2 of this law, each migrant worker must hold a valid passport, or some form of travel document, and an entry visa to enter or leave Qatar.<sup>85</sup> To be granted an entry visa, the worker must have a sponsor who is a Qatari national or "expatriate resident" under the law, either of whom must be qualified to fulfill the responsibilities of sponsorship, which include employing and supervising the migrant worker.<sup>86</sup> Thus, businesses or Qatari nationals are required to sponsor every migrant worker who wishes to live and work in Qatar.<sup>87</sup> The law also requires employers or sponsors to secure residence cards for their employees within seven days of employment.<sup>88</sup>

Many migrant workers experience abuse and exploitation under Qatar's current kafala system.<sup>89</sup> Before migrants arrive to work in Qatar, they are often exploited during their search to secure sponsorship.<sup>90</sup> This is because migrant workers rely on recruitment

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81. *Id.*

82. MIGRANT FORUM IN ASIA, *supra* note 21, at 1.

83. *Id.*

84. HUMAN RIGHTS WATCH, BUILDING A BETTER WORLD CUP: PROTECTING MIGRANT WORKERS IN QATAR AHEAD OF FIFA 2022, at 43, 69 (2012), [http://www.hrw.org/sites/default/files/reports/qatar0612webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/qatar0612webwcover_0.pdf); Crocombe, *supra* note 1, at 57.

85. Law No. 4 of 2009, Regarding Regulation of the Expatriates' Entry, Departure, Residence and Sponsorship, art. 2 (2009) [hereinafter Law No. 4 of 2009].

86. *See id.* art. 18 ("[A]ll Expatriates may only leave the country temporarily or permanently on submission of an exit permit granted by the residence sponsor."); *id.* art. 19 (outlining the requirements of a residence sponsor).

87. *See Murray, supra* note 24, at 467 (noting that sponsors are legally and financially responsible for their sponsored migrant workers during the contract period).

88. *See* Law No. 4 of 2009, *supra* note 85, arts. 5, 9; TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 286 (observing that a migrant worker's presence is illegal unless he has a residence card).

89. *See HARROFF-TAVEL & NASRI, supra* note 19, at 16; Auwal, *supra* note 63, at 89–90 (addressing the inadequate pay, squalid housing conditions, physical abuse, sexual exploitation, and the denial of the freedom to travel that many migrant workers experience upon arrival to their destination countries).

90. *See Auwal, supra* note 63, at 92, 94 (identifying considerable evidence of dishonest recruiting efforts such as promises of higher wages and better working conditions).



agencies and labor brokers to handle their job placements.<sup>91</sup> These recruitment agencies may charge migrants outrageous recruitment fees to secure work abroad.<sup>92</sup> Deception regarding job conditions, living conditions, and wages occurs frequently in the recruitment process.<sup>93</sup> For instance, contract fraud—wherein a worker enters into an agreement with a labor broker and upon arrival to the destination country, finds that the terms of the employment have changed—is a common form of abuse that occurs during the recruitment process.<sup>94</sup> The kafala system also enables the practice of “visa trading,”<sup>95</sup> which occurs when Qatari nationals with business licenses receive permission to secure work visas for a certain number of foreign workers.<sup>96</sup> When this occurs, sponsors recruit foreign workers for non-existent jobs.<sup>97</sup> Sponsors gain profits by auctioning off the visas of these foreign workers, while the workers are left stranded in their destination country with no job and mounting debt,<sup>98</sup> increasing their susceptibility to suicide.<sup>99</sup>

Once migrant workers finally secure employment and travel to Qatar, the exploitation continues because the sponsorship system places great power in the hands of employers and sponsors.<sup>100</sup> Workers are subject to forced labor, debt bondage, physical or financial harm, hazardous working conditions, delayed or

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91. UNITED NATIONS OFFICE ON DRUGS AND CRIME, THE ROLE OF RECRUITMENT FEES AND ABUSIVE AND FRAUDULENT RECRUITMENT PRACTICES OF RECRUITMENT AGENCIES IN TRAFFICKING IN PERSONS 6 (2015), [https://www.unodc.org/documents/human-trafficking/2015/Recruitment\\_Fees\\_Report-Final-22\\_June\\_2015\\_AG\\_Final.pdf](https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf) (citing complex visa procedures and lack of familiarity with the destination country as reasons why migrants rely on recruitment agencies).

92. *Id.* at 7.

93. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 15; see AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 27 (indicating that recruitment fees can range from \$700 to \$3500). For a detailed definition of “recruitment fees,” see UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 91, at 7.

94. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 15 (noting that the originally proposed job may have never existed and the new job may include longer hours, lower wages and, in some instances, a different destination country).

95. MIGRANT FORUM IN ASIA, *supra* note 21, at 6.

96. *Id.*

97. HARROFF-TAVEL & NASRI, *supra* note 19, at 16.

98. *Id.*

99. *Id.* at 104; see *infra* notes 181–85.

100. *E.g.*, MIGRANT FORUM IN ASIA, *supra* note 21, at 1 (explaining the temporary nature of migrants’ presence in the country, leaving them in the vulnerable position of employment-by-contract and with few rights).

nonpayment of salaries, and squalid living conditions.<sup>101</sup> Frequently, workers are housed in “worker camps,” where dozens of workers may be confined to cramped rooms that lack necessary amenities such as water and electricity.<sup>102</sup> Employers also fail to provide migrant workers with safety training, resulting in the deaths of hundreds of migrant workers a year due to dangerous working conditions.<sup>103</sup> Migrant workers face difficulty trying to change employment or leave the country because under the kafala system, an employee cannot terminate his employment without the consent of his sponsor.<sup>104</sup>

The kafala system is important to Qatari nationals; although migrants make up the majority of Qatar’s workforce, the kafala system acts as a tool to help Qatar protect its native population.<sup>105</sup> Qatar strives to control the entry of migrant workers, and it seeks to regulate the eligibility of its labor sectors to employ the migrant worker population.<sup>106</sup> Thus, the kafala system assists in regulating the flow of migrant labor in Qatar.<sup>107</sup> The system also limits the extent to which workers become citizens, which is important because granting citizenship to all migrants would greatly diminish Qatar’s native population.<sup>108</sup> The kafala system also serves Qatar’s interest in cheap foreign labor.<sup>109</sup> Unlike in many countries where cheap foreign labor raises concerns about job competition, such labor is no threat to Qatar’s work force because, as a GCC member, its citizens are

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101. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 2014* 320 (2014), <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>; see Crocombe, *supra* note 1, at 44 (recognizing that about one-third of employers fail to pay migrant workers on time, if at all).

102. See Crocombe, *supra* note 1, at 39–40 (estimating that “worker camps” house over 1.2 million migrant workers in Qatar).

103. *Id.* at 44.

104. See *id.* at 58 (observing a sponsor’s duty to notify the Ministry of the Interior if a worker leaves his job without his sponsor’s express consent); see also *MIGRANT FORUM IN ASIA*, *supra* note 21, at 1 (analyzing how domestic workers are left with few options to terminate their employment and that in most scenarios, the only option they have is to leave without their employer’s consent, which often amounts to the crime of “absconding”).

105. See Murray, *supra* note 24, at 468–69 (recognizing that migrant workers outnumber Qataris in most economic sectors).

106. Shamir, *supra* note 24, at 115.

107. See *MIGRANT FORUM IN ASIA*, *supra* note 21, at 1 (explaining that the kafala system’s contract arrangements limit how long migrant workers can legally stay in the country).

108. See Murray, *supra* note 24, at 469 (positing that granting migrants citizenship would have the effect of diminishing Qatar’s “Arab-Islamic identity”).

109. *Id.*

generally guaranteed employment in the public sector.<sup>110</sup> Cheap foreign labor has also helped to create a high standard of living for Qatar's citizens by allowing the middle class to employ foreign workers in their homes and in private businesses.<sup>111</sup> Qatari citizens can further benefit from the sponsorship system simply by taking on the role of a sponsor, without having to employ a migrant worker.<sup>112</sup>

#### D. *Relevant Regulation of Migrant Labor and Human Trafficking*

##### 1. *The UN Trafficking Protocol*

This year marks the sixteenth anniversary of the UN Trafficking Protocol.<sup>113</sup> The UN Trafficking Protocol—which supplements the UN Convention Against Transnational Organized Crime (“UN Organized Crime Convention”)—is an international tool to combat human trafficking.<sup>114</sup> The UN Trafficking Protocol is applauded for being the first international instrument to recognize multiple forms of human trafficking and is credited with creating the first internationally agreed-upon definition of human trafficking.<sup>115</sup> It “requires a comprehensive international approach in the countries of origin, transit and destination” to prevent and combat human trafficking.<sup>116</sup> To further its mission, the UN Trafficking Protocol encourages states to follow the “Three Ps” paradigm: (1) prevention of trafficking; (2) protection of victims; and (3) prosecution of traffickers.<sup>117</sup>

110. *Id.*

111. *See id.* (acknowledging that many Qatari citizens employ cheap migrant workers in their homes and that even housing projects for lower-income citizens are commonly built with servant quarters).

112. *Id.* (stating that by just sponsoring migrant workers and providing them with visas, citizens can earn up to \$1360).

113. *See* TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 11.

114. Mohamed Y. Mattar, *Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 FORDHAM INT'L L.J. 721, 721–22 (2003); *see* Roza Pati, *States' Positive Obligations with Respect to Human Trafficking: The European Court of Human Rights Breaks New Ground in Rantsev v. Cyprus and Russia*, 29 B.U. INT'L L.J. 79, 115 (2011) (declaring the UN Trafficking Protocol to be “the most important modern-day instrument” addressing the issue of human trafficking).

115. Li, *supra* note 34, at 308; Laura L. Shoaps, Comment, *Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act*, 17 LEWIS & CLARK L. REV. 931, 933 (2013).

116. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxviii, 2237 U.N.T.S. at 343.

117. Shamir, *supra* note 24, at 89; *see also* UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxix, 2237 U.N.T.S. at 344.

The UN Trafficking Protocol mandates that state parties take necessary measures to criminalize the offense of human trafficking and adopt anti-trafficking measures.<sup>118</sup> It also requires state parties to provide or strengthen the training of their law enforcement officers and other relevant officials to further the goals of the “Three Ps.”<sup>119</sup> To ensure that state parties comply with the UN Trafficking Protocol, the UN Convention on Organized Crime established a Conference of Parties responsible for conducting periodic reviews and examinations to monitor state parties’ implementation of the UN Organized Crime Convention and the UN Trafficking Protocol.<sup>120</sup> The Conference of Parties acts as a tool to pressure state parties into complying with their obligations under the UN Organized Crime Convention and the UN Trafficking Protocol.<sup>121</sup> While the UN Trafficking Protocol is a valuable tool in the fight against human trafficking, it lacks effective enforcement measures.<sup>122</sup>

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118. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxix–xl, 2237 U.N.T.S. at 344–45; Shoaps, *supra* note 115, at 947; *see* Pati, *supra* note 114, at 118 (indicating that a state party must ratify the UN Organized Crime Convention to be a party to the UN Trafficking Protocol since the two treaties are interpreted together).

119. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xlii–xliii, 2237 U.N.T.S. at 347; Shoaps, *supra* note 115, at 939.

120. UN Convention Against Transnational Organized Crime, art. 32(1), Nov. 15, 2000, T.I.A.S. No. 13127, 2225 U.N.T.S. 209 [hereinafter UN Organized Crime Convention]; *see* Li, *supra* note 34, at 308 (noting that the Conference of Parties requires each state party to provide information regarding the measures that it is taking to implement the UN Organized Crime Convention and the UN Trafficking Protocol).

121. Pati, *supra* note 114, at 120–21. The United Nations (UN) has also established human rights mechanisms, such as a Special Rapporteur on Trafficking in Persons, Especially Women and Children, to target the human rights violations resulting from human trafficking. *See* Mohamed Y. Mattar, *Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings*, 41 VAND. J. TRANSNAT’L L. 1355, 1358–59 (2008) (recognizing the Special Rapporteur’s duties to investigate the scope of human trafficking among state parties, report on government actions, and recommend policy changes).

122. Shoaps, *supra* note 115, at 950. Although the UN Organized Crime Convention establishes a Conference of the Parties to the Convention, it establishes no mechanism to hear complaints. *See* UN Convention Against Organized Crime, *supra* note 120, T.I.A.S. No. 13127 at xxxi, 2225 U.N.T.S. at 298; *cf.* PHILIP ALSTON & RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS: THE SUCCESSOR TO INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS AND MORALS* 762 (2013) (explaining the role of UN human rights treaty bodies, which are created to monitor, implement, and further develop the treaty in which the body was created). One such body is the International Covenant on Civil and Political Rights Committee, whose functions consist of considering states’ reports, adopting general comments, examining complaints brought by victims, and implementing an interstate complaints procedure. ALSTON & GOODMAN, *supra*, at 763.

Currently, there are 166 state parties to the UN Trafficking Protocol.<sup>123</sup> Treaties such as the UN Trafficking Protocol are legally binding, and under the Vienna Convention, state parties are “obliged to refrain from acts that would defeat the object and purpose of a treaty [if they have] signed the treaty or [have] exchanged instruments [such as accession] constituting the treaty subject to ratification, acceptance or approval.”<sup>124</sup> Qatar acceded to the UN Trafficking Protocol in 2009; thus, Qatar has demonstrated its consent to be bound by the treaty and its specific provisions.<sup>125</sup>

## 2. *The ILO Conventions*

Where the UN Trafficking Protocol has struggled to address human trafficking for forced labor, the ILO conventions arguably aim to resolve this shortcoming.<sup>126</sup> The ILO is a specialized agency of the UN whose mission is to enhance the labor conditions for workers worldwide.<sup>127</sup> The ILO has enacted eight fundamental labor conventions governing workers' rights.<sup>128</sup> Two, the Forced Labour

123. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 11.

124. Vienna Convention on the Law of Treaties, art. 18(a), May 23, 1969, 1155 U.N.T.S. 331; *see id.*, art. 11, 1155 U.N.T.S. at 335 (noting that accession demonstrates a state party's consent to be bound by a treaty); *see also* JEFFREY L. DUNOFF ET AL., INTERNATIONAL LAW: NORMS, ACTORS, PROCESS 40 (3d ed. 2010) (emphasizing the binding authority of treaty law and arguing that state parties enter into treaties to obtain binding commitments from other state parties). *See generally* Vincy Fon & Francesco Parisi, *The Economics of Treaty Ratification*, 5 J.L. ECON. & POL'Y 209, 210 (2009) (explaining that the purpose of the Vienna Convention was to set guidelines for treaty-making by establishing key treaty law principles).

125. *See Status of Treaties: Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280051ba9> (last updated Nov. 20, 2015) (indicating Qatar's accession to the UN Trafficking Protocol on May 5, 2009).

126. *See* Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT'L L. 1, 23–26 (2004) (asserting that the International Labour Organization (ILO) has been underutilized in its efforts for addressing human trafficking, but that because of the ILO's focus on child trafficking and more recent attention to human trafficking in general, its frameworks could potentially be used to combat more types of trafficking); *see also* sources cited *infra* notes 129–33 (describing several ILO conventions aimed specifically at combating forced labor).

127. Azadeh Erfani, Comment, *Kicking Away Responsibility: FIFA's Role in Response to Migrant Worker Abuses in Qatar's 2022 World Cup*, 22 JEFFREY S. MOORAD SPORTS L.J. 623, 639 (2015); *see* Crocombe, *supra* note 1, at 48 (noting that as an agency of the UN, the ILO “facilitates cooperation between governments, employers, and workers' organizations”).

128. Crocombe, *supra* note 1, at 49.

Convention<sup>129</sup> and the Abolition of Forced Labour Convention,<sup>130</sup> are especially relevant to the matter of forced labor in Qatar.

The ILO recognizes that trafficking in persons for the purpose of forced labor is a growing international concern that requires urgent action.<sup>131</sup> In its Protocol of 2014 to the Forced Labour Convention, the ILO recognized various international instruments such as the UN Trafficking Protocol, but argued that the adoption of certain labor proposals is necessary to address gaps in the implementation of these international instruments.<sup>132</sup> Additionally, the ILO offered supplementary recommendations to the Forced Labour Convention to reaffirm that prevention, protection, and remedies are necessary to sustain the suppression of forced labor.<sup>133</sup> Thus, the ILO conventions supplement the UN Trafficking Protocol where it struggles to address all the issues of human trafficking for forced labor.<sup>134</sup>

### 3. Qatar's human trafficking and labor legislation

Qatar's anti-trafficking law, Law No. 15 of 2011, prohibits all forms of sex and labor trafficking and requires "all [competent authorities to] implement the provisions of this law and . . . publish it in the Official Gazette."<sup>135</sup> Qatar's definition of trafficking under Law No. 15 is in accordance with the three-part definition used by the UN Trafficking Protocol,<sup>136</sup> outlining "exploitation" to include "forced

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129. Convention Concerning Forced or Compulsory Labour, art. 1(1), May 1, 1932, 39 U.N.T.S. 55 (requiring members to "suppress the use of forced or compulsory labour in all its forms within the shortest possible period").

130. Convention Concerning the Abolition of Forced Labour, art. 2, *adopted* June 25, 1957, S. TREATY DOC. NO. 102-3, 320 U.N.T.S. 291 (requiring members to "secure the immediate and complete abolition of forced or compulsory labour").

131. Protocol of 2014 to the Forced Labour Convention, 1930, June 11, 2014, 53 I.L.M. 1232, 1232.

132. *See id.* at 1233 ("[T]he measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour.").

133. Int'l Labour Conference, Recommendation on Supplementary Measures for the Effective Suppression of Forced Labour 2 (June 11, 2014).

134. *See* HARROFF-TAVEL & NASRI, *supra* note 19, at 21 (arguing that the UN Trafficking Protocol and the ILO Forced Labour Conventions are clearly linked because the Protocol's definition of "exploitation" is encompassed by the definition of "forced labour" used in the ILO Forced Labour Convention No. 29).

135. Law No. 15 of 2011 Combating Trafficking in Human Beings, arts. 2, 28 Qatar Official Gazette Issue 11, <http://www.almeezan.qa/LawView.aspx?opt&LawID=2512&language=en> [hereinafter Law No. 15 of 2011].

136. THE CONCEPT OF "EXPLOITATION", *supra* note 40, at 65; *see supra* notes 39-42 and accompanying text (discussing the "action," "means," and "purpose" elements of human trafficking). Under Qatar's definition of human trafficking, the "action"

labor or the forced rendering of services, [and] slavery or practices similar to slavery.”<sup>137</sup> The law requires authorities to ensure the protection of victims of human trafficking, and it prevents the prosecution of victims for offenses committed as a result of being trafficked.<sup>138</sup> Additionally, the law provides for penalties of up to seven years imprisonment, up to \$82,000 in fines, and penalties of up to fifteen years in prison when there are aggravating circumstances.<sup>139</sup>

Law No. 14 of 2004, Qatar's labor law, regulates labor in the private sector and seeks to protect workers who are at risk of exploitation.<sup>140</sup> The law mandates certain protections for workers, and it requires limits on working hours, as well as rest days and rest periods.<sup>141</sup> The law prohibits employers from retaining wages, and it requires employers to take necessary precautionary measures to ensure employees' safety.<sup>142</sup> Unfortunately, this law does not apply to domestic workers, and it denies migrants the right to form a union.<sup>143</sup>

Qatar is making significant efforts to combat human trafficking.<sup>144</sup> Qatar's 2022 Supreme Committee for Delivery and Legacy (“2022 Supreme Committee”), which was established to organize the 2022

element refers to whoever “deals in a coercive or transactional way with a natural person, including the use, transport, delivery, harbouring, reception or receipt”; the “means” element includes the “means of force, violence or threat[,] . . . abduction, fraud, deception, abuse of power, or exploitation”; and the “purpose” element refers to the exploitation of victims. Law No. 15 of 2011, *supra* note 135, art. 2.

137. See Law No. 15 of 2011, *supra* note 135, art. 2.

138. *Id.* arts. 4–5.

139. TRAFFICKING IN PERSONS REPORT 2014, *supra* note 101, at 321. For a full definition of human trafficking under Qatar's law, see Law No. 15 of 2011, *supra* note 135, art. 2.

140. Law No. 14 of 2004 on the Promulgation of Labour Law, art. 4, Qatar Official Gazette Issue 9, See HUMAN RIGHTS WATCH, *supra* note 5, at 440 (citing the abuse and exploitation of migrant workers as one of five main abuses that correspond with mega-sporting events).

141. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 285; see Law No. 14 of 2004, *supra* note 140, art. 73 (indicating that the maximum working hours shall be forty-eight hours per week); *id.*, art. 74 (indicating that the maximum working hours per day shall not exceed ten hours); *id.*, art. 75 (requiring a paid weekly rest of at least twenty-four consecutive hours).

142. Law No. 14 of 2004, *supra* note 140, art. 70; see *id.* art. 100 (requiring an employer to take all precautionary measures to protect workers from any occupational injuries or diseases that may arise from the work performed).

143. *Id.* art. 3; see *id.* art. 116 (noting that membership in a union is limited to Qatari workers).

144. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 47, 284 (recognizing that as a Tier 2 Watch List country, the Qatari government is making significant efforts to comply with the provisions under the TVPA).

World Cup, issued mandatory labor standards for all construction and service delivery contracts in connection with the 2022 World Cup.<sup>145</sup> The standards include policies that prohibit recruitment fees, a hotline for workers' complaints, and independent auditing to ensure compliance with the standards.<sup>146</sup> Other efforts include government labor inspections to monitor work conditions and the establishment of the Qatar Foundation for Protection and Social Rehabilitation ("QFPSR"), which aims to identify victims of human trafficking and respond to their needs.<sup>147</sup>

## II. QATAR VIOLATES THE GOALS OF THE UN PROTOCOL BECAUSE OF ITS IMPLEMENTATION OF THE KAFALA SYSTEM

Because Qatar's implementation of the kafala system makes the Qatari government complicit in human trafficking, the kafala system, as it stands, violates the UN Trafficking Protocol. Qatar fails to satisfy the requirements of the UN Trafficking Protocol because its kafala system leads to the exploitation and human trafficking of migrant workers.<sup>148</sup> Thus, the Qatari government is complicit in human trafficking.<sup>149</sup> Complicity in human trafficking violates a state's obligations under the UN Trafficking Protocol.<sup>150</sup> Given the increase in the demand for labor in preparation for the 2022 World Cup, the Qatari government must take action to save the lives of these migrant workers and to come into compliance with the UN Trafficking Protocol.<sup>151</sup>

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145. *Id.* at 286 (stating that these standards are stricter than Qatar's current labor law).

146. *Id.*

147. *See id.* at 285–86 (acknowledging the efforts of the QFPSR, including the operation of shelters for victims and the implementation of awareness campaigns).

148. *See* HUMAN RIGHTS WATCH, *supra* note 5, at 440–41 (stating that migrant workers in Qatar suffer abuse and exploitation from human trafficking and forced labor violations committed through Qatar's kafala system); *see also* UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxviii, 2237 U.N.T.S. at 343 (declaring that states have a responsibility to prevent trafficking, punish traffickers, and protect victims).

149. *See* TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284–85 (discussing the Qatari government's inadequate enforcement efforts, and concluding that Qatar does not comply with the "minimum standards for the elimination of trafficking").

150. *See* UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxix, 2237 U.N.T.S. at 344 (stating that the Protocol purports to "prevent and combat trafficking in persons").

151. *See* HUMAN RIGHTS WATCH, *supra* note 5, at 440 (stating that after Qatar's successful bid to host the 2022 FIFA World Cup, the country has attracted international criticism of its mistreatment of low-wage migrant workers).



A. *Complicity in Human Trafficking Violates the UN Protocol*

The UN Trafficking Protocol declares that an international approach and cooperation between state parties is required to combat the offense of human trafficking.<sup>152</sup> As mentioned, the UN Trafficking Protocol focuses on the prevention of human trafficking, protection of victims, and prosecution of traffickers.<sup>153</sup> As established by the Vienna Convention, state parties are required to uphold the object and purpose of the UN Trafficking Protocol if they have exchanged instruments of ratification and expressed consent to be bound.<sup>154</sup> Therefore, these state parties are required to comply with the articles laid out in the UN Trafficking Protocol to the best of their abilities.<sup>155</sup> State parties may be seen as complicit in human trafficking if they fail to honor the “Three Ps” goals of the UN Trafficking Protocol.

State parties who fail to prevent human trafficking are complicit in human trafficking. Under its goal of “prevention,” Article 9 of the UN Trafficking Protocol directs states to establish comprehensive measures to prevent human trafficking.<sup>156</sup> Such comprehensive measures include promoting cooperation between state parties to alleviate factors that make persons vulnerable to human trafficking.<sup>157</sup> Additionally, states should adopt measures to discourage the demand for human trafficking.<sup>158</sup> Established state systems and regulations

152. See UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxviii, 2237 U.N.T.S. at 343.

153. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxix, 2237 U.N.T.S. at 344; see *supra* note 117 and accompanying text (highlighting the “Three Ps” paradigm of human trafficking as goals that are encouraged under the UN Trafficking Protocol).

154. Vienna Convention, *supra* note 124, 25 I.L.M. at 556, 1155 U.N.T.S. at 336; see Kelly E. Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 HUM. RTS. BRIEF 30, 31 (2001) (noting that the UN Trafficking Protocol chose to forgo mandatory protection and assistance provisions due to the high costs these mandatory requirements would impose on developing countries, but also that the language places greater responsibility on developed countries to provide assistance).

155. See Vienna Convention, *supra* note 124, 25 I.L.M. at 556, 1155 U.N.T.S. at 336.

156. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xlii, 2237 U.N.T.S. at 346–47.

157. See *id.*, T.I.A.S. No. 13127 at xlii, 2237 U.N.T.S. at 347 (citing poverty, underdevelopment, and lack of equal opportunity as factors that make persons vulnerable to human trafficking).

158. *Id.*, T.I.A.S. No. 13127 at xlii, 2237 U.N.T.S. at 347; see UNITED NATIONS OFFICE ON DRUGS AND CRIME, UNITED NATIONS, INTERNATIONAL FRAMEWORK FOR ACTION TO

that create unequal bargaining power between certain populations, creating vulnerability, would feed the demand of human trafficking.<sup>159</sup> These state systems violate Article 9 of the UN Trafficking Protocol,<sup>160</sup> causing a state party to be complicit in human trafficking.

Article 10 of the UN Trafficking Protocol requires state parties to strengthen law enforcement training to focus on methods that seek to prevent human trafficking.<sup>161</sup> One substantial obstacle that interferes with this goal is the misperceived notion among governments and law enforcement that human trafficking encompasses only sex trafficking.<sup>162</sup> Law enforcement officers who refuse to recognize labor trafficking as a form of human trafficking will be unable to prevent human trafficking as required under Article 10 of the UN Trafficking Protocol. Failing to recognize certain forms of trafficking leads to complicity in human trafficking.<sup>163</sup>

State parties who fail to protect victims of human trafficking are also complicit in human trafficking.<sup>164</sup> Under its goal of “protection,” Article 6 of the UN Trafficking Protocol directs state parties to offer victims of human trafficking protection and assistance.<sup>165</sup> State parties are required to assist victims throughout the stages of the

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IMPLEMENT THE TRAFFICKING IN PERSONS PROTOCOL 11 (2009) [hereinafter INTERNATIONAL FRAMEWORK], [https://www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](https://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf) (urging states to “[d]evelop or strengthen measures to reduce vulnerability to trafficking by addressing its root causes including the demand that fosters all forms of trafficking in persons”).

159. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284 (explaining that the kafala system gives employers significant power over migrant workers, and also that abused or misled workers often avoid legal action due to fear or lack of knowledge, making them vulnerable to forced labor).

160. See UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xlii, 2237 U.N.T.S. at 347.

161. *Id.*, T.I.A.S. No. 13127 at xlii–xliii, 2237 U.N.T.S. at 347.

162. See HARROFF-TAVEL & NASRI, *supra* note 19, at 23–24 (stating that debates over whether prostitution is a violation of rights, and particularly the issue of consent, has led to an overemphasis on sex trafficking and failure to focus on forced labor trafficking).

163. See Hyland, *supra* note 154, at 31 (stating that countries who ratified early agreements, which failed to define trafficking and were aimed primarily at combating prostitution abroad, incorporated a narrow idea of trafficking not broad enough to encompass forced labor).

164. See UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxix, xl–xli, 2237 U.N.T.S. at 344–45 (establishing a state’s duty to “protect and assist the victims of such trafficking”).

165. *Id.*, T.I.A.S. No. 13127 at xl–xli, 2237 U.N.T.S. at 345; see HARROFF-TAVEL & NASRI, *supra* note 19, at 152, 157–58 (urging state parties to maintain the privacy of victims and provide victims with information relating to court and administrative proceedings, recovery, safety, and compensation for damages).

criminal proceedings brought against their traffickers.<sup>166</sup> If state parties fail to provide victims with relevant information or the opportunity to charge their traffickers, state parties will be complicit in human trafficking.

The UN Trafficking Protocol also seeks to ensure that victims remain protected from further exploitation.<sup>167</sup> Article 6 of the UN Trafficking Protocol encourages states to implement measures to provide for the recovery of victims.<sup>168</sup> Such measures include providing victims with housing, counseling, medical and psychological assistance, and employment and educational opportunities.<sup>169</sup> The UN Trafficking Protocol also urges state parties to permit victims of human trafficking to remain in their states.<sup>170</sup> Additionally, the UN Trafficking Protocol requires states to refrain from applying the measures set forth in the protocol in a manner that is discriminatory towards victims of trafficking.<sup>171</sup> This may include recognizing a victim's status as a victim of crime, not a criminal.<sup>172</sup> Therefore, requiring the protection of victims includes the prohibition against the prosecution and detention of victims. State parties who prosecute victims for the crimes committed during their victimization are therefore complicit in human trafficking and violate the UN Trafficking Protocol.

Failure to prosecute traffickers makes a state party complicit in human trafficking. Under its goal of "prosecution," Article 5 of the UN Trafficking Protocol requires state parties to adopt legislation and other measures to criminalize human trafficking as well as attempting trafficking, participating as an accomplice, or organizing trafficking.<sup>173</sup> State parties who fail to take the necessary measures to criminalize these aspects of human trafficking violate the UN Trafficking Protocol.<sup>174</sup> Similar to the goal of "prevention," state

166. *Id.*, T.I.A.S. No. 13127 at xl, 2237 U.N.T.S. at 345.

167. *See id.*, T.I.A.S. No. 13127 at xl-xli, 2237 U.N.T.S. at 345 (requiring state parties to provide legal assistance as well as measures to aid physical, psychological, and social recovery of trafficked persons).

168. *Id.*; *see* INTERNATIONAL FRAMEWORK, *supra* note 158, at 11 (recommending that states provide trafficking victims with temporary or permanent residency, access to assistance services, and access to compensation).

169. *Id.*

170. *Id.*, T.I.A.S. No. 13127 at xli, 2237 U.N.T.S. at 346.

171. *Id.*, T.I.A.S. No. 13127 at 2, 2237 U.N.T.S. at 349.

172. INTERNATIONAL FRAMEWORK, *supra* note 158, at 8, 20, 22.

173. *Id.*, T.I.A.S. No. 13127 at xxxix-xl, 2237 U.N.T.S. at 344-45.

174. *See* Shoaps, *supra* note 115, at 947-48 (2013) (pointing out that the language used in Article 5, requiring state parties to criminalize the offense of human

parties who fail to recognize multiple forms of human trafficking will be unable to prosecute traffickers for various forms of trafficking.<sup>175</sup> In addition, state parties must prosecute all individuals involved in the offense of human trafficking,<sup>176</sup> including recruiters and labor brokers.<sup>177</sup> Failure to criminalize all forms of human trafficking and failure to prosecute all who are involved leads to a state party's complicity in human trafficking.

*B. Qatar's Implementation of the Kafala System Makes the Qatari Government Complicit in Human Trafficking and Further Perpetuates the Occurrence of Human Trafficking*

*1. The implementation of the kafala system makes the Qatari government complicit in human trafficking*

The kafala system, as it stands, exploits migrant workers due to its stringent recruitment and employment stipulations. The modern-day kafala system often leads to the forced labor of migrant workers, contrary to the goals of the custom of granting strangers protection, from which the system originates.<sup>178</sup> Workers wishing to migrate to Qatar for work must be recruited under the kafala system, which frequently occurs through labor brokers or recruitment agencies that operate in the workers' home countries.<sup>179</sup> Labor brokers play an important role in connecting available laborers to employers in need of workers.<sup>180</sup> Unfortunately, evidence suggests that labor brokers charge outrageous recruitment fees in exchange for the opportunity to work abroad. In addition, they also promise higher wages and

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trafficking, is the only mandatory statement in the UN Protocol without a qualifier, thereby highlighting the importance of this requirement).

175. See Hyland, *supra* note 154, at 31 (describing that many nations have incorporated a narrow definition of trafficking into their domestic laws, making them unable to properly combat all forms of trafficking).

176. See UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xl, 2237 U.N.T.S. at 345 (encouraging states to criminalize those who attempt to engage in human trafficking and all parties participating as an accomplice, including parties who organize or direct others into committing the offense of human trafficking).

177. See UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxix, 2237 U.N.T.S. at 344–45 (providing a definition of trafficking that includes “the recruitment, transportation, transfer, harbouring or receipt of persons,” and stating that each state shall adopt measures to criminalize “trafficking in persons”).

178. Ajawin, et al., *supra* note 80, at 30–31.

179. See Crocombe, *supra* note 1, at 42 (pointing out that the majority of recruitment agencies operate in Southeast Asia); TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 15.

180. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 15.

better working conditions than what the migrant workers will actually receive upon arrival to their working locations.<sup>181</sup>

Migrant workers who rely on recruitment agencies or labor brokers are usually forced into piling debt.<sup>182</sup> Migrants often borrow money to cover the costs of recruitment fees, and when the debt is combined with exorbitant interest rates, migrants may spend years working to repay what they owe.<sup>183</sup> In one instance, a migrant from Nepal took a loan with a thirty-six percent interest rate and paid a \$1500 recruitment fee by leveraging his family's land.<sup>184</sup> After fourteen months, the man was still unable to repay the loan.<sup>185</sup>

The effects of Qatar's kafala system lead to the continued exploitation of migrant workers at their job locations. Once workers arrive at their job locations, they may face significant abuse from their sponsors or employers.<sup>186</sup> One common practice is "contract substitution," whereupon arrival to their destination, migrants sign new contracts with different stipulations than the original contracts they signed in their home countries.<sup>187</sup> Migrants sign new contracts out of fear of deportation, or they are already bonded in debt.<sup>188</sup>

The kafala system gives sponsors the unilateral power to cancel an employee's residence permit, deny the employee's ability to change

181. *Id.*; see HARROFF-TAVEL & NASRI, *supra* note 19, at 46, 48, 52–53 (indicating how Private Employment Agencies ("PEAs") realize the potential profits involved in recruiting migrant workers by charging fees for both selection and acceleration of the process, relying on these recruiting practices even in countries whose governments have banned the deployment of migrant workers, and deceiving workers about the nature of the job, working and living conditions, and the destination to make workers more willing to migrate); see also Crocombe, *supra* note 1, at 42 (noting that sponsorship contracts are often written in Arabic, and because few migrant workers understand Arabic, they are forced to rely on recruitment agencies to interpret the contracts).

182. See HARROFF-TAVEL & NASRI, *supra* note 19, at 104 (examining how migrant workers incur enormous debt as a result of PEAs charging high fees and interest, creating a high rate of suicide among migrant workers who are ashamed of being unable to provide for their families back home).

183. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 15 (indicating that workers may borrow money from family members or friends, or, in some instances, workers may mortgage their homes to cover recruitment fees).

184. *Id.* at 15, 17.

185. *Id.* at 17.

186. See *id.* at 15, 17–18 (describing the many abuses migrant workers face when relocating, such as forced labor and sex trafficking).

187. HARROFF-TAVEL & NASRI, *supra* note 19, at 106 (providing that being subcontracted to several companies is a new stipulation in the substituted contract that a migrant would be unaware of until arriving in his or her destination country).

188. *Id.*

employment, and deny the employee permission to leave Qatar.<sup>189</sup> Some employers or sponsors abuse the system by refusing to return a worker's passport or visa, enabling them to force workers to continue working beyond the end of the agreed-upon contract.<sup>190</sup> Approximately eighty-six to ninety percent of migrant workers' passports are kept in the possession of their sponsors, which has dangerous implications for trafficking.<sup>191</sup> Without identification documentation, workers risk deportation or monetary penalties if they attempt to leave their sponsors.<sup>192</sup> Sponsors are at liberty to continue exploiting migrant workers without ramification because migrant workers avoid taking legal action out of fear of retaliation, and the migrants oftentimes are unaware of their legal rights.<sup>193</sup> For instance, employers may accuse migrant workers of theft or fraud if the workers complain to authorities about working conditions.<sup>194</sup> Domestic workers are especially at risk of exploitation because they are not covered under Qatar's labor laws.<sup>195</sup> These forms of abuse are likely to continue during preparations for the 2022 World Cup, as Qatar relies on its sponsorship system to employ additional migrant workers.

2. *Qatar's operation of the kafala system perpetuates human trafficking of migrant workers*

Qatar's kafala system is covered by the UN Trafficking Protocol's definition of human trafficking because it uses (1) the action of recruitment, (2) the means of coercion, and (3) has the purpose of forced labor.<sup>196</sup> Under the "action" element, migrant workers are recruited in their countries of origin, and they frequently rely on false promises of increased wages and comfortable living quarters.<sup>197</sup>

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189. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284.

190. See Katherine Scully, Note, *Blocking Exit, Stopping Voice: How Exclusion from Labor Law Protection Puts Domestic Workers at Risk in Saudi Arabia and Around the World*, 41 COLUM. HUM. RTS. L. REV. 825, 854 (2010) (discussing the implementation and consequences of the kafala system in Saudi Arabia); see also Murray, *supra* note 24, at 467 (explaining that an employer or sponsor in GCC states will confiscate passports and identification documents for the purpose of preventing the worker from changing employment).

191. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284.

192. *Id.*

193. *Id.*

194. INT'L TRADE UNION CONFEDERATION, *supra* note 58, at 16.

195. TRAFFICKING IN PERSONS REPORT 2014, *supra* note 101, at 320.

196. See *supra* note 39 and accompanying text.

197. HARROFF-TAVEL & NASRI, *supra* note 19, at 15, 66.

Under the “means” element, because of the strict sponsorship system, migrant workers are recruited through practices of deception and fraud.<sup>198</sup> Upon arrival to their work sites, migrants face threats such as deportation, which require workers to remain under their employers’ or sponsors’ control.<sup>199</sup> Migrant workers are also rendered immobile because sponsors confiscate their passports and deny them the ability to receive exit visas.<sup>200</sup> This increases a worker’s sense of isolation and dependence on the sponsor.<sup>201</sup> In the case of domestic workers, sponsors may place workers in physical restraints to prevent their escape.<sup>202</sup> One of the most common forms of coercion is debt bondage.<sup>203</sup> Because of the endless debt that results from high recruitment fees and low wages, migrant workers feel obligated to continue supplying forced labor until they can pay back their debt.<sup>204</sup>

Finally, under the “purpose” element, migrant workers are exploited to provide cheap, and sometimes free, labor to the employers and sponsors in Qatar.<sup>205</sup> Under these elements, once a migrant worker’s labor is exploited, that person becomes a victim of human trafficking regardless of whether he or she may have consented to the work in the first place.<sup>206</sup> Additionally, a worker’s participation in a crime as a result of being subject to trafficking does not change his status as a victim.<sup>207</sup> So long as Qatar’s kafala system continues as it is, the human trafficking of migrant workers will continue.

### C. Qatar’s Kafala System, As It Stands, Violates the UN Trafficking Protocol

Qatar is obliged to satisfy the “Three Ps” paradigm under the UN Trafficking Protocol because it acceded to the Protocol, thereby

198. *Id.*

199. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 18 (noting that “fear of arrest or deportation” prevents migrant workers from “leaving an exploitative situation or reporting abuse to authorities”).

200. AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 26.

201. *Id.*

202. Anne T. Gallagher, *Exploitation in Migration: Unacceptable but Inevitable*, 68 J. INT’L AFF. 55, 61 (2015).

203. *Id.* at 62.

204. See *id.* (noting that debt usually increases due to “real or imaginary expenses,” keeping victims trapped in a vicious cycle).

205. See Murray, *supra* note 24, at 469, 473 (explaining how sponsors and employers of domestic workers in Qatar benefit from the cheap labor that migrant workers provide).

206. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 8.

207. *Id.* at 7.

expressing its consent to be bound.<sup>208</sup> State parties who ratify or accede to the UN Trafficking Protocol are obliged to refrain from acts that would defeat the object and purpose of the Protocol, as well as uphold the Protocol's specific provisions.<sup>209</sup> For instance, it would defeat the object and purpose of the UN Trafficking Protocol if a state party failed to take appropriate measures to combat human trafficking and comply with its goals.<sup>210</sup>

Because of Qatar's implementation of the kafala system, it has failed to respond appropriately to combat human trafficking and to comply with the UN Trafficking Protocol.<sup>211</sup> Qatar's kafala system, as it stands, inhibits Qatar from satisfying the goals of the "Three Ps" paradigm established under the UN Trafficking Protocol.<sup>212</sup> Qatar struggles to "prevent" human trafficking because its efforts in law enforcement are lacking, which violates Article 10 of the UN Trafficking Protocol.<sup>213</sup> Under the culture that stems from the kafala system, greater emphasis is placed on enforcing and preventing immigration violations than labor violations.<sup>214</sup> Thus, Qatar's law enforcement is ill-equipped to prevent and combat human trafficking, especially for forced labor.<sup>215</sup> This results from the failure to train law enforcement and the misperception that human trafficking occurs only in the sex industry.<sup>216</sup> Qatar's government

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208. *Supra* note 125 and accompanying text.

209. *See* sources cited *supra* note 124 and accompanying text (noting the binding authority of treaty law and a state party's obligations under a treaty).

210. *See* UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxviii, 2237 U.N.T.S. at 343 (stating that the absence of a Protocol requiring a "comprehensive international approach" to prevent human trafficking does not afford vulnerable persons sufficient protection).

211. *Id.*, T.I.A.S. No. 13127 at xlii-xliii, 2237 U.N.T.S. at 346-47; *see* TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284-85 (discussing the failed government efforts to combat human trafficking and to implement sponsorship reform in Qatar, concluding that "[t]he Government of Qatar does not fully comply with the minimum standards for the elimination of trafficking").

212. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xlii-xliii, 2237 U.N.T.S. at 346-47; *see supra* Section I.D.1 (discussing the formulation and implementation of the "Three Ps" paradigm).

213. *See* UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xlii-xliii, 2237 U.N.T.S. at 347; TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 284-85.

214. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 286.

215. *See id.* at 285-86 (recommending that Qatar either abolish or significantly amend its sponsorship system and increase efforts to deter trafficking because of its failure to prevent labor violations).

216. *See id.* at 286 (noting that law enforcement sometimes fails to identify labor abuses as amounting to human trafficking); *see also* HARROFF-TAVEL & NASRI, *supra* note 19, at 24 (explaining how this misperception is prevalent worldwide).



fails to recognize the extent of its human trafficking problem because it fails to acknowledge that labor abuse of migrant workers can amount to human trafficking.<sup>217</sup> Because of the reliance on the kafala system to regulate migrant labor, law enforcement turns a blind eye to recognizing labor trafficking as a crime.<sup>218</sup> Thus, migrant workers who fall victim to labor trafficking go unnoticed by law enforcement.<sup>219</sup> Without support from law enforcement, Qatar is not suited to prevent the human trafficking of migrant laborers.<sup>220</sup>

Qatar also fails to prevent the human trafficking of migrant workers because the kafala system gives sponsors unequal bargaining power over its employees, thereby perpetuating the occurrence of human trafficking.<sup>221</sup> Because Qatar's kafala system creates unequal bargaining power between sponsors and employees, the system fails to alleviate factors that make persons vulnerable to human trafficking, as listed in Article 9 of the UN Trafficking Protocol.<sup>222</sup> Qatar also failed to abolish or reform its sponsorship system as it pledged to do in May of 2014.<sup>223</sup> This directly contributes to the continuance of forced labor in Qatar.<sup>224</sup>

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217. See *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 286 (explaining how Qatar's government fails to identify victims of forced labor). According to the UN's framework for implementing the UN Trafficking Protocol, to strengthen efforts to fight human trafficking, a better understanding of the scope and nature of the crime is necessary. *INTERNATIONAL FRAMEWORK*, *supra* note 158, at 5. This includes acknowledging the different forms of exploitation and different categories of victims and criminals associated with the crime of human trafficking. *Id.*

218. *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 285–86 (stating that while the government made visits to work sites throughout Qatar, it failed to do anything about its sponsorship system, which would have helped address forced labor practices).

219. *Id.*

220. See *id.* (indicating that a lack of adequately trained law enforcement has contributed to human trafficking, and that the government should "significantly increase efforts to investigate and prosecute trafficking offenses"); cf. *INTERNATIONAL FRAMEWORK*, *supra* note 158, at 42–43 (asserting that states may prevent human trafficking by, among taking other measures, increasing the number of law enforcement officers trained to identify potential victims of trafficking).

221. See *id.* at 284 (stating that the amount of power employers have over migrant workers due to Qatar's kafala system is a factor leading to their high risk of trafficking); see also Scully, *supra* note 190, at 854 (recognizing the employer's power over a migrant worker, which is granted by the kafala system).

222. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xlii, 2237 U.N.T.S. at 347.

223. *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 206, at 285; see also *HUMAN RIGHTS WATCH*, *supra* note 5, at 441 (indicating that in May 2014, Qatar announced that its "kafala system [would] be replaced by a system based on employment contracts"); Peter Kovessy, *Qatar Officials Propose Changes to kafala System*, *DOHA NEWS* (May 14, 2014), <http://dohanews.co/qatar-officials-propose-changes-kafala-system>

In addition, Qatar fails to prevent human trafficking because it fails to adhere to its obligations under the core ILO conventions as a result of its implementation of the kafala system. Article 9 of the UN Trafficking Protocol calls for a state party's cooperation with non-governmental or relevant organizations to assist in the prevention of human trafficking.<sup>225</sup> Despite Qatar's status as a member country to the ILO, and despite its ratification of two core conventions, Qatar fails to cooperate with the ILO because it has not abolished the use of forced labor.<sup>226</sup> Since the enforcement of Qatar's kafala system directly leads to the occurrence of forced labor, Qatar fails to suppress and abolish forced and compulsory labor as required under the Forced Labour Convention and the Abolition of Forced Labour Convention.<sup>227</sup>

Qatar's kafala system fails to "protect" victims of human trafficking, thereby violating Articles 6 through 8 of the UN Trafficking Protocol.<sup>228</sup> Because of the strict immigration rules set up under Qatar's kafala system, migrant workers are criminalized and suffer penalties rather than protection if they attempt to leave their sponsors.<sup>229</sup> Victims who try to leave their sponsors are arrested, detained, and deported for immigration violations.<sup>230</sup> In some instances, employers will bring false charges, such as theft, against their employees.<sup>231</sup> Consequently, the

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(announcing proposed changes to the kafala system, including new regulations for changing jobs and leaving the country).

224. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 206, at 286.

225. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xliii, 2237 U.N.T.S. at 347.

226. Crocombe, *supra* note 1, at 33–34, 48–49 (recognizing 185 member countries to the ILO and indicating that while Qatar became a member in 1972 and has ratified six of the eight fundamental labor conventions, it has failed to adhere to ILO conventions due to its allowance of abuse and exploitation of workers"); *see also* Convention (No. 29) Concerning Forced or Compulsory Labour, *adopted* June 28, 1930, 2030 U.N.T.S. 10 (indicating Qatar's ratification of Convention No. 29 on March 12, 1998); Convention (No. 105) Concerning the Abolition of Forced Labour, June 25, 1957, 2422 U.N.T.S. 17 (indicating Qatar's ratification of Convention No. 105 on February 2, 2007).

227. Convention (No. 29) Concerning Forced or Compulsory Labour art. 1(1), *adopted* June 28, 1930, 39 U.N.T.S. 55; Convention (No. 105) Concerning the Abolition of Forced Labour art. 2, *adopted* June 25, 1957, S. TREATY DOC. NO. 102-3, 320 U.N.T.S. 291.

228. *See* UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xl–xli, 2237 U.N.T.S. at 345–46 (listing various measures to protect victims of trafficking).

229. *See* HARROFF-TAVEL & NASRI, *supra* note 19, at 60, 119 (noting that leaving without the consent of one's sponsor amounts to absconding, which is a criminal offense under Qatar's immigration legislation).

230. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 286.

231. *Id.*

kafala system leads to the prosecution, rather than protection, of victims, which violates the UN Trafficking Protocol.

Due to the imbalance of bargaining power arising from the kafala system, migrant workers are unaware of their legal rights.<sup>232</sup> Migrants do not always have access to information on relevant court and administrative proceedings, which violates Article 6 of the UN Trafficking Protocol.<sup>233</sup> For instance, because domestic workers are excluded from Qatar's labor laws, they are unauthorized to bring claims against their employers in Labor Court.<sup>234</sup> Thus, migrant domestic workers who experience abuse and exploitation in the course of their employment lack sufficient avenues to seek redress.<sup>235</sup> By failing to offer victims avenues to seek redress, Qatar's kafala system fails to protect victims of trafficking.<sup>236</sup>

Qatar also fails to enforce legislation designed to protect migrant workers. Under the kafala system, migrant workers are unaware of their legal protections. Therefore, authorities fail to enforce the labor protections guaranteed to workers under Law No. 14 of 2004.<sup>237</sup> Since Qatar's labor laws do not apply to domestic workers and exclude migrant worker unionization, these groups are inadequately protected from abuse and exploitation.<sup>238</sup> Further, because of the kafala system, victims of

232. See *MIGRANT FORUM IN ASIA*, *supra* note 21, at 4 (discussing the imbalance of power between the sponsor and worker under the kafala system, which sponsors can use to their advantage by limiting communication and withholding wages of migrant workers); *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 284 (suggesting that migrant workers "often avoid [taking] legal action . . . [due to a] lack of knowledge of their legal rights, making them vulnerable to forced labor").

233. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xl, 2237 U.N.T.S. at 345; see *INT'L TRADE UNION CONFEDERATION*, *supra* note 58, at 26 (stating that Qatari law does not provide domestic workers sufficient access to "courts, tribunals, [or] other dispute resolution mechanisms" when working under unfavorable conditions).

234. *INT'L TRADE UNION CONFEDERATION*, *supra* note 58, at 26.

235. *Id.* at 20. As a result of "slavery-like" conditions and lack of legal recourse, for example, five to ten domestic workers from Indonesia seek refuge in the Indonesian Embassy in Doha, Qatar every day. *Id.* at 22.

236. See *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 285 (recommending that, despite previous attempts, Qatar "extend labor law protection to domestic workers and ensure any changes to the sponsorship system apply to all workers" and "provide victims with adequate protection services").

237. *HUMAN RIGHTS WATCH*, *supra* note 5, at 440.

238. *Id.* at 440–41; Law No. 14 of 2004, *supra* note 140, art. 116; see *HUMAN RIGHTS WATCH*, *supra* note 5, at 442 (indicating that Qatari labor law does not require employers to provide migrant domestic worker employees rest days or rest periods, or to limit their working hours).

forced labor are punished more frequently than they are protected, which violates the UN Trafficking Protocol's goal of protection.<sup>239</sup>

Finally, Qatar fails to "prosecute" traffickers because the Qatari government does not enforce its current labor laws and, through the kafala system, sponsors are exploiting the imbalance of power by preventing workers from bringing successful claims against them. Because Qatar favors protecting the status of its native population, including sponsors, it fails to enforce its own human trafficking legislation and to prosecute traffickers, thereby violating Article 5 of the UN Trafficking Protocol.<sup>240</sup> Qatar's operation of the kafala system is an example of how a country's customary practice may prevail over law.<sup>241</sup> According to the U.S. State Department's 2015 Trafficking in Persons Report, while Qatar's government reported investigating eleven human trafficking cases, there were no prosecutions or convictions under Qatar's 2011 anti-trafficking law.<sup>242</sup> In addition, there were no prosecutions for recruitment agencies under Qatar's anti-trafficking law.<sup>243</sup> By failing to criminalize and prosecute all who are involved in the trafficking of migrant workers, such as recruitment agencies, Qatar violates Article 5 of the UN Trafficking Protocol.<sup>244</sup> Under its 2009 Sponsorship law, Qatar prohibits employers or sponsors from withholding employees' passports.<sup>245</sup> However, this law has been rarely enforced; no fines or

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239. See MIGRANT FORUM IN ASIA, *supra* note 21, at 4 (explaining that migrant workers are at risk of punishment when they speak out against abuse); UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxix, 2237 U.N.T.S. at 344 (declaring that one of the purposes of the UN Trafficking Protocol is to protect victims of human trafficking).

240. See TRAFFICKING IN PERSONS REPORT 2014, *supra* note 101, at 320–21 (explaining that the government's primary solution for resolving labor violations was to transfer a worker's sponsorship to a new employer with little, if any, investigation into whether the violations amounted to forced labor; in addition, the government did not prosecute or convict any trafficking offenders under its anti-trafficking law during the reporting period).

241. See HEPBURN & SIMON, *supra* note 29, at 7 (examining how culture and customs play an important role in determining how a country will enforce certain legislation).

242. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 285.

243. *Id.*

244. The UN Protocol mandates that signatories adopt legislation and other measures to establish human trafficking violations as criminal offenses. UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xl, 2237 U.N.T.S. at 345. Qatar enacted its own anti-trafficking law in 2011, but since its enactment, Qatar has failed to meaningfully prosecute and convict offenders. It has instead favored the protection of its own citizens over migrant workers, in violation of the UN Trafficking Protocol. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 285.

245. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 285.

penalties were imposed in 2014 for withholding passports despite evidence that most workers' identification documents are still confiscated.<sup>246</sup> Sponsors also routinely violate the sponsorship law's requirement that employees secure a residence card for their employees.<sup>247</sup> Without a residence card, workers do not have access to health care and are unable to lodge complaints.<sup>248</sup> Qatar routinely fails to prosecute sponsors for the violations that occur as a result of their power under the kafala system. Because of the kafala system's effects, the Qatari government fails to satisfy the UN Trafficking Protocol's "prosecution" goal because it fails to prosecute traffickers and enforce its legislation.<sup>249</sup>

### III. WHY QATAR'S EFFORTS FAIL TO SATISFY THE UN PROTOCOL AND WHAT MUST BE DONE

#### A. *Why Qatar's Efforts Are Lacking*

As the above discussion demonstrates, Qatar's efforts to combat human trafficking have been insufficient. This Section analyzes the reasons for these shortcomings and offers recommendations for their resolution. While committees, such as the 2022 Supreme Committee, implement additional labor standards, these standards lack sufficient enforcement measures.<sup>250</sup> Frequently, committees rely on self-auditing and monitoring techniques to effectively implement new labor standards.<sup>251</sup> Unfortunately, self-auditing techniques prove to

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246. *Id.*; see AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 28 (estimating that ninety percent of migrant workers' passports are confiscated by their employers).

247. TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 286.

248. *Id.*

249. *Id.* at 285; UN Trafficking Protocol, *supra* note 42, T.I.A.S. No. 13127 at xxxix, 2237 U.N.T.S. at 344.

250. See TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 286 (noting that while Qatar's government sought to punish companies who fail to comport with the 2022 Supreme Committee labor standards, it is unknown whether the government achieved any prosecutions or convictions for these violations); *cf.* THE CASE AGAINST QATAR, *supra* note 36, at 16, 18 (indicating that similar committees with goals to improve labor standards, such as the Supreme Committee's Workers' Welfare Standards ("SCWWS") and the Qatar Foundation Mandatory Standards ("QFMS"), lack credible enforcement mechanisms).

251. See THE CASE AGAINST QATAR, *supra* note 36, at 18 (noting that "the SCWWS has a very weak compliance machinery, which relies largely on self-audits"); see also TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 286 (recognizing the 2022 Supreme Committee audits of employment contracts).

be unreliable and often fail to detect violations of labor standards.<sup>252</sup> Even if violations are discovered, there are few remedy options available to victims.<sup>253</sup> Most notably, under the Supreme Committee's Workers' Welfare Standards, workers are not provided with a means to change employment.<sup>254</sup> Additionally, standards implemented under such committees are limited in scope.<sup>255</sup> For instance, the 2022 Supreme Committee standards were intended to apply only to employer contracts arising out of the 2022 World Cup preparations.<sup>256</sup> Therefore, migrants working in other fields, such as domestic servitude, are not protected under these additional labor standards.<sup>257</sup> Concerns relating to the implementation of hotline services for workers' complaints are also present.<sup>258</sup> Although workers may have access to a hotline, many workers are unaware of the hotline's existence.<sup>259</sup> Furthermore, committee standards lack details regarding who will answer the phone and how complaints will be handled once received.<sup>260</sup>

Qatar's other efforts, such as government labor inspections, also fail to eliminate human trafficking. Qatar's government is ill-

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252. See *THE CASE AGAINST QATAR*, *supra* note 36, at 16, 18–19 (arguing that self-audits, like those done under the QFMS, are unreliable unless performed by an independent third party).

253. See *id.* at 19 (explaining how the SCWWS prefers self-remedy measures rather than punishing contractors, stating that “[i]f the contractor does not comply, the workers’ welfare committee may at its discretion recommend that contractual measures be taken,” but that self-remedy measures are not actually being implemented).

254. *Id.* at 18.

255. *Id.* The SCWWS applies to construction services of the 2022 Supreme Committee and their other activities associated with hosting the World Cup, but they exclude the construction of essential infrastructure needed for the World Cup and projects to be carried out under stakeholder agreements. *Id.*

256. *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 286.

257. See Murray, *supra* note 24, at 480 (noting that domestic workers will face a “myriad of abuses” as long as they are “restricted in their freedom of movement, not protected against sexual harassment and domestic violence, not recognized as equals before courts, and paid less for work of equal value”); see also *AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR.*, *supra* note 4, at 26–27 (explaining that female migrant workers face physical, psychological, and sexual abuse in their work places, and they often run away from their employers; however, without their passports and visas, they have no recourse or means of escape).

258. See *TRAFFICKING IN PERSONS REPORT 2015*, *supra* note 6, at 286 (suggesting that hotlines are unreliable in identifying victims of human trafficking).

259. *HARROFF-TAVEL & NASRI*, *supra* note 19, at 144–45.

260. *Cf. THE CASE AGAINST QATAR*, *supra* note 36, at 19 (analyzing the hotline implemented under the SCWWS, and noting that no one answered the hotline when the International Trade Union Confederation placed calls).

equipped to adequately inspect all labor camps and work sites for labor violations.<sup>261</sup> Few inspectors speak the same language as employees, which limits the inspectors' capacity to effectively inspect work sites and consider workers' complaints.<sup>262</sup> Even when inspections are effectively implemented, inspectors lack the authority to meaningfully address their findings.<sup>263</sup>

Qatar's efforts to combat human trafficking fail to satisfy its obligations under the UN Trafficking Protocol because the kafala system, the crux of Qatar's human trafficking problem, remains in place. Despite efforts to implement additional labor standards, such as the creation of the 2022 Supreme Committee, Qatar will continue to violate the "Three Ps" goal of the UN Trafficking Protocol as long as the kafala system remains as is.<sup>264</sup> Workers will remain unable to change employment, which restricts their freedom of movement.<sup>265</sup> Because workers remain tied to their employers, the unequal bargaining power continues to exist.<sup>266</sup> Qatar has failed to remedy the issues resulting from its implementation of the kafala system; thus, human trafficking remains, and Qatar continues to violate the UN Trafficking Protocol.

### B. Recommendations for Qatar

The implementation of Qatar's kafala system leads to the human trafficking of migrant workers, making the Qatari government complicit in human trafficking, which violates the UN Trafficking Protocol. Qatar must reform its kafala system to comply with the UN Trafficking Protocol and to reinforce the objectives established under its current system—Qatar's interest in cheap foreign labor and its interest in protecting its native population.<sup>267</sup> Nevertheless, while Qatar has an interest in cheap labor and in protecting the native

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261. See *id.* at 25 (identifying only 150 labor inspectors employed under the Labour Ministry in 2013).

262. *Id.* at 22.

263. *Id.*

264. See *supra* Part I (analyzing how the kafala system violates the UN Trafficking Protocol).

265. THE CASE AGAINST QATAR, *supra* note 36, at 18.

266. See MIGRANT FORUM IN ASIA, *supra* note 21, at 4 (claiming that unequal bargaining power exists because the kafeel has the power to alter the terms of migrant workers' employment contracts, subject migrant workers to poor and unfair working conditions, and force migrant workers into confinement by confiscating their passports, withholding wages, and limiting channels of communication).

267. See MIGRANT FORUM IN ASIA, *supra* note 21, at 7–8 (stating that the kafala system should be abolished to reflect a "rights-based approach" to labor migration, and making several recommendations on potentially effective reform).

population, its government should set in place certain regulations and minimum wages to protect migrant workers and ensure they are afforded the same rights and protections as Qatari nationals.<sup>268</sup> One way of doing this is for Qatar to establish unified standard employment contracts or bilateral agreements, such as those used between Indonesia and Jordan, or Sri Lanka and United Arab Emirates (UAE), to protect migrant workers.<sup>269</sup> Under these contracts, governments would agree to certain provisions regarding the treatment of migrant workers and guarantees to migrant workers, such as established working hours and wages.<sup>270</sup> These sorts of contracts would help to equal the bargaining power between sponsors and workers.

Another possible option for Qatar is to follow Bahrain's approach.<sup>271</sup> Under Bahrain's plan for reformation, it established the Labour Market Regulatory Authority ("LMRA") in accordance with Act No. 19 of 2006.<sup>272</sup> Under Act No. 19, the Minister in charge of the LMRA monitors the LMRA's adherence to the act, and the LMRA is responsible for submitting regular reports of its activities and progress to the minister.<sup>273</sup> The LMRA is charged with sponsoring migrant workers, rather than leaving sponsorship up to an employer or private sponsor.<sup>274</sup> The LMRA is responsible for regulating recruitment and work placement.<sup>275</sup> Under this system, workers would no longer depend on employers for entry and exit, giving

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268. See generally MIGRANT FORUM IN ASIA, *supra* note 21, at 4–5 (describing the rights, including the right to freedom of association and movement and the right to legal redress, denied to migrant workers in Qatar).

269. Murray, *supra* note 24, at 479 (emphasizing that the protections under these contracts vary, but governments must make efforts to enforce them to protect migrant workers).

270. AMS. FOR DEMOCRACY & HUMAN RIGHTS IN BAHR., *supra* note 4, at 28 (explaining the abuses, including subjection to harsh working conditions, non-payment, and over-time without compensation, that occur in the absence of express agreements detailing the terms of the migrant workers' employment).

271. See MIGRANT FORUM IN ASIA, *supra* note 21, at 3 (indicating Bahrain's plans to abolish its kafala system in 2009).

272. Act No. 19 of 2006, with Regard to the Regulation of the Labour Market, art. 3, [http://www.ilo.org/wcmsp5/groups/public/-ed\\_protect/-protrav/-ilo\\_aids/documents/legaldocument/wcms\\_232971.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-ilo_aids/documents/legaldocument/wcms_232971.pdf).

273. *Id.* art. 16.

274. *Id.* art. 4 ("The Authority will carry out the necessary activities to regulate the Labour market in the Kingdom, regulate work permits and licensing recruitment agencies and employment offices and expat sponsors/professionals working in the kingdom within the limits of this law . . ."); MIGRANT FORUM IN ASIA, *supra* note 21, at 3.

275. MIGRANT FORUM IN ASIA, *supra* note 21, at 3.



migrants the freedom of mobility.<sup>276</sup> Qatar should establish a centralized system similar to the LMRA that would fulfill a private sponsor's responsibilities, as well as regulate the recruitment and work placement of migrants. In doing so, Qatar could eliminate the unequal bargaining power that exists under its current kafala system.<sup>277</sup> Migrant workers would have the freedom of mobility, as they would no longer depend on employers for entry and exit.<sup>278</sup>

Qatar must also afford migrant workers the protections guaranteed to Qatari nationals.<sup>279</sup> This includes allowing migrants the option of forming a labor union and extending the labor law to migrants in the field of domestic servitude.<sup>280</sup> These measures are necessary to comply with international standards on freedom of association and collective bargaining.<sup>281</sup> Additionally, migrants should be afforded

276. *Id.*

277. *See id.* at 4 (explaining that unequal bargaining power exists because the kafeel has the power to alter terms of the migrant worker's employment agreement leaving the migrant worker compelled to accept poorer living and working conditions; the kafeel also has the power to confiscate the migrant worker's passport and withhold the migrant worker's wages).

278. *See id.* at 4-5 (explaining that one of the major obstacles facing migrant workers is the restriction on their freedom of movement under the kafala system and that under the sponsorship system, the employer controls the mobility of the migrant worker and their ability to change employment). By implementing an initiative, such as the one undertaken in Bahrain to shift power from private employers to a public authority in sponsoring migrant workers, migrant workers' dependence on employers would decrease considerably, and they would enjoy a higher degree of mobility. *See id.* at 3.

279. *See* THE CASE AGAINST QATAR, *supra* note 36, at 20 (stating that migrant workers are excluded from Qatari labor law and, therefore, have no rights).

280. *See* Law No. 14 of 2004, *supra* note 140, art. 116 (stating that only Qatari citizens may form unions); THE CASE AGAINST QATAR, *supra* note 36, at 20 (noting that current Qatari labor law does not extend to domestic workers); *cf.* Murray, *supra* note 24, at 470, 472 (discussing countries such as Jordan, who amended its labor laws to provide protection to domestic workers; Singapore, who passed new labor provisions to ensure migrants are paid on time; and Bahrain, who passed the Workers' Trade Union Law of 2002, which established the right to belong to a union for some migrant workers).

281. *See* ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, INTERNATIONAL LABOUR ORGANIZATION, <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm> (last visited Mar. 27, 2016) (listing "freedom of association and the effective recognition of the right to collective bargaining" as one of the four core fundamental labor rights); *International Labour Standards on Freedom of Association*, INTERNATIONAL LABOUR ORGANIZATION, [www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang-en/index.htm](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang-en/index.htm) (explaining that the Freedom of Association and Protection of the Right to Organize Convention of 1948 establishes the right for workers to join and create unions, and the Right to Organise

certain legal protections in regard to their immigration status.<sup>282</sup> If a sponsor illegally confiscates a migrant's passport, the migrant should not be left to suffer the legal consequences.<sup>283</sup> Qatar's law enforcement must focus on investigating claims brought by migrant workers to ensure their protection and to prevent the occurrence of human trafficking.<sup>284</sup> Once Qatar reforms its kafala system, Qatar will be able to protect migrants from exploitation and human trafficking.<sup>285</sup>

#### CONCLUSION

Qatar's sponsorship system, as it stands, directly contributes to the occurrence of human trafficking for forced labor. Because of Qatar's

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and Collective Bargaining Convention of 1949 establishes their rights to protection against acts of anti-union discrimination). *See generally* THE CASE AGAINST QATAR, *supra* note 36, at 6 (recommending several measures to improve the plight of migrant workers in Qatar, including establishing legislation that allows for freedom of association and collective bargaining for all workers in Qatar).

282. *See* MIGRANT REFORM IN ASIA, *supra* note 21, at 5 (explaining that one of the problems of the kafala system is that migrant workers are largely ineligible for permanent residency status or citizenship; therefore, a migrant workers' immigration status is determined by sponsors). For a list of scenarios that could lead to a migrant worker becoming undocumented, *see id.*

283. *See id.* (noting several scenarios that may impact a migrant worker's legal status if his passport is confiscated by his employer); *see also* INTERNATIONAL FRAMEWORK, *supra* note 158, at 11 (emphasizing the need for a human rights-based approach to the protection of victims, including allowing victims temporary or permanent residency and non-liability for their involvement in unlawful activity resulting from their trafficking).

284. UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, 007 WORKSHOP: FROM PROTECTION TO PROSECUTION—A STRATEGIC APPROACH 6 (2008), <https://www.unodc.org/documents/human-trafficking/2008/BP007FromProtectionToProsecution.pdf> (urging law enforcement to take a proactive approach to investigating human trafficking violations, including being knowledgeable of the law on human trafficking and identifying trafficked victims); *see* TRAFFICKING IN PERSONS REPORT 2015, *supra* note 6, at 285 (describing Qatar's anti-trafficking law and the government's minimal effort to investigate forced labor violations and prosecute human trafficking offenders); *see also* MIGRANT FORUM IN ASIA, *supra* note 21, at 4 (explaining that as the kafala system stands now, migrant workers have little means of redress for violations of their rights because migrant workers cannot afford legal fees for representation, and they face punishment, including non-renewal of their contract, abuse, false accusations, deportation, and lower wages should they report abuse, protest, or question the terms of their employment).

285. Several GCC countries have attempted to reform the kafala system to mitigate the plight of migrant workers. *See* MIGRANT FORUM IN ASIA, *supra* note 21, at 2–3. Specifically, Bahrain has made great strides to reform the kafala system by implementing a public authority to be responsible for sponsoring migrant workers instead of employers. *See id.* at 3. Bahrain's initiatives have afforded migrant workers some degree of mobility and flexibility once their employment contract expires. *See id.*

reliance on the kafala system, Qatar fails to prevent human trafficking, protect victims, and prosecute traffickers. Thus, the implementation of the kafala system leads to the Qatari government's complicity in human trafficking, which violates the UN Trafficking Protocol. Although Qatar has attempted to remedy the exploitation of migrant workers through its enactment of the 2022 Supreme Committee and the QFPSR, Qatar is not doing enough.<sup>286</sup> Qatar must significantly reform its sponsorship system to comply with the UN Trafficking Protocol and to eliminate the human trafficking of migrant workers. Reforming the system is an effective way to protect the rights of migrant workers, while also maintaining control over the influx of migrant workers.

Qatar will rely on the labor of approximately one million migrant workers to complete its projects for the 2022 World Cup.<sup>287</sup> The ITUC already estimates that 1200 migrant workers have died since FIFA awarded Qatar the World Cup bid in 2010.<sup>288</sup> Unfortunately, it is difficult to assess how accurate this number is because diplomatic sources suggest that the Qatari government conceals the actual number of deaths to continue the flow of migrant labor.<sup>289</sup> The 2022 World Cup should act as a catalyst for social change and labor reform in Qatar.<sup>290</sup> Because of Qatar's vast wealth, Qatar has the financial means to implement reforms and improve the status of migrant workers.<sup>291</sup> With the 2022 World Cup quickly approaching, Qatar must act soon to protect the rights of migrant workers and possibly save lives.

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286. See *supra* notes 144–47 and accompanying text (explaining Qatar's efforts to combat human trafficking).

287. Crocombe, *supra* note 1, at 41 (citing INT'L TRADE UNION CONFEDERATION, UNION VIEW #21: HIDDEN FACES OF THE GULF MIRACLE 3–4 (2011), [http://www.ituc-csi.org/IMG/pdf/VS\\_QatarEN\\_final.pdf](http://www.ituc-csi.org/IMG/pdf/VS_QatarEN_final.pdf)).

288. THE CASE AGAINST QATAR, *supra* note 36, at 15.

289. *Id.* at 14; see Wesley Stephenson, *Have 1,200 World Cup Workers Really Died in Qatar?*, BBC NEWS (June 6, 2015), <http://www.bbc.com/news/magazine-33019838> (noting that a BBC team was arrested in Qatar in May 2015 for trying to uncover stories of workers' suffering).

290. THE CASE AGAINST QATAR, *supra* note 36, at 6.

291. *Id.*

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