**COMBATING MODERN SLAVERY: AN EXAMINATION OF LEGAL FRAMEWORKS AND ENFORCEMENT MECHANISMS ON NON-STATE ACTORS**

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It is of particular concern that despite slavery being abolished in international law with a clear international legal framework existing (ILO Conventions, Slavery Convention, Supplementary Convention and Palermo Protocols) which criminalises slave labour and human trafficking and imposes duties on state actors, these practices are condoned by both state and non-state actors. The world of sports for instance, is a lucrative industry generating a significant level of income, which sometimes exceeds states’ GDP. The FIFA world cup is the biggest sporting event that oversees countries bidding to host. The benefits to a host country include tourism, creation of jobs, accommodation and transport infrastructure. Qatar will be hosting the next world cup in 2022 and have come under intense scrutiny and criticism for abusive labour practices. Recording 185 Nepalese deaths in Qatar in 2013 while building world cup infrastructure, an estimation of the death of 4000 migrant workers before the launch of the word cup. FIFA’s mission to build a better future for all through football has been questioned while Qatar officials echoed the outrage stirred by media reports expressing shock at the deplorable conditions migrant workers have been subjected to. In collaboration with the International Labour Organisation (ILO), Qatar has agreed to oversee reform with enforcement mechanisms in place to ensure maximum protection for over 2 million migrant workers, with the ultimate aim of scrapping this exploitative system of sponsored labour.

Although Qatar has duties under international law and has to report to the United Nations and the ILO, the question is whether oversight can be exercised over international sports organisations where main actors/stakeholders such as FIFA are captured under this framework. FIFA was prompted to take action on particular issues and to take an active stance against certain abusive labour practices, which prevail in Qatar. This paper is contributing to the ever-increasing debate that in a globalised society, we need to move away from the state-centred focus of international law and move towards creating legal frameworks that capture non-state actors, creating binding obligations on them. This paper provides an insight into practices condoned by states, which create avenues for the perpetration of this transnational crime.

With a growing discourse on the emergence of modern slavery and human trafficking on the political and legislative agenda, and with human trafficking estimated to generate billions in illicit proceeds, this discussion re-ignites the debate that activities of state and non-state actors need to fall within the sphere of international law in combatting modern slavery and human trafficking.

**Introduction**

**“Slavery is not a horror consigned safely consigned to the past”[[2]](#footnote-2)**

The formal abolition of slavery as the legal ownership of people was abolished in the 19th century.[[3]](#footnote-3) In spite of the great efforts by emancipators and their successors and the plethora (300) of international agreements for the suppression of slavery is still as problematic as it was in the 18th century, but now presents itself in a different form. It is evident that the only form of slavery, that has been eradicated, is the ‘legal formal ownership of people.[[4]](#footnote-4) According to Bales, the challenges campaigners confront today in addressing and eradicating modern slavery is different from those faced at the origin of the abolition in 1787.[[5]](#footnote-5)

It is now established that constituents of modern slavery include human trafficking, prostitution, child labour, female circumcision and relevant to this discussion - slave/forced labour. A clear definition of the forms of exploitative labour relations, which can be referred to as, is currently lacking. The Modern Slavery Act [2015] makes provision for slavery, servitude, forced/compulsory labour and human trafficking – including provisions for the protection of victims. These terms have distinct definitions and codifications as crimes under international and domestic law and are viewed as proxy categories for modern slavery.[[6]](#footnote-6) A number of instruments which have contributed to widespread prohibitions of slavery, forced labour and human trafficking practices are in force and have been ratified by several countries. [[7]](#footnote-7)

A number of international Conventions which criminalise slave labour and imposes duties on state actors are in force in several states. These include International Labour Organisation Conventions, Slavery Convention (1926), The Supplementary Convention on the Abolition of Slavery (1956); and The Palermo Protocols (2000) - three Protocols adopted by the UN to supplement the 2000 Convention against Transnational Organised Crime (the Palermo Convention). With regard to the accurate terminology and nomenclature, the following words have been used synonymously with slavery – serfdom, debt, bondage, peonage, servitude, indentured servitude and primarily forced labour. According to the International Labour Organisation (ILO) “slavery is one form of forced labour”, it noted that some national laws treat the two as different instances and work on the assumption that forced labour is the least serious of these offences. The ILO estimates that about 21 million men, women and children are in forced labour around the world – trafficked, held in debt bondage or working in slavery-like conditions. Ninety per cent of these are exploited in the private economy, and almost half of all victims have migrated internally or across borders. Forced labour generates an estimated US$150 billion in illicit profits, causing industries and businesses to face unfair competition and States to lose billions in tax income and social security contributions.[[8]](#footnote-8)

The soccer governing body FIFA (The Fédération Internationale de Football Association) is a lucrative organisation with its income exceeding states GDP. The FIFA world cup is the biggest sporting event that oversees countries bidding to host. The benefits to a host country include tourism, creation of jobs, accommodation and transport infrastructure. Amidst a somewhat controversial and contentious win,[[9]](#footnote-9) Qatar will be hosting the next world cup in 2022 and it plans to build a brand new city in its desert, ultra-modern stadium with unparalleled solar technology to cool stadiums and up to 86,000 fans.[[10]](#footnote-10) With a population of less than 2 million people, it will have to rely on about 1 million foreign labourers to build the stadium. While Qatari nationals are encouraged to increase their contribution to the work force, the labour laws in the country give Qatari employers substantial control over foreign employees known as *kafeel*.[[11]](#footnote-11) Under this system, a worker cannot change jobs, leave the country, get a drivers licence rent a home, or open a back account without the permission of the employer sponsor. The employees are under the employer sponsorship system of *kafala* that binds a foreign worker to their employer.[[12]](#footnote-12) They cannot leave the country without the employers consent and can be left without pay for over 2 years.

Qatar is a party to the Convention on the Elimination of All Forms of Racial Discrimination and the ILO Discrimination (Employment and Occupation) Convention. Under both treaties, Qatar is under an obligation to eliminate discrimination, defined under the ILO as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality or treatment in employment or occupation.”[[13]](#footnote-13) Qatar also has domestic laws in place, which protect the fundamental rights of workers.[[14]](#footnote-14) The Labour Law, and a set of related decrees, sets out workers’ rights in Qatari law, including limits on working hours, mandated annual leave, living conditions, health and safety and the requirement for salaries to be paid on time. The Ministry of Labour is responsible for overseeing the Labour Law’s implementation and under the nations Labour laws, migrant workers are prohibited from joining and forming trade unions, which is a universal human right.

The central theme of this paper is around the subject of modern slavery and human trafficking. States have obligations under international law, which are in place to combat and eradicate this ill. The international community have measures in place to ensure adherence to international human rights norms but these measures do not extend fully to conditions, which involve non-state actors. The inaction and passive stance of these new actors is exacerbating. In this paper, I discuss the conditions migrant workers are exposed to in Qatar, using FIFA and as focal point in addressing the possibility of creating binding obligations as participants in the combat against modern slavery and human trafficking.

**LITERATURE REVIEW**

**QATAR 2022**

***“How can we play in a stadium that is built with blood” [Abdeslam Ouaddou][[15]](#footnote-15)***

Human trafficking has been estimated to generate more than 150 billion in illicit proceeds each year.[[16]](#footnote-16) Human Trafficking is ranked among the top three most lucrative businesses after drug trafficking and counterfeiting by the United Nations Office on Drugs and Crime. (UNODC). The term ‘modern slavery’ has been linked to discussions ranging from prostitution, child labour, illegal prostitution, female circumcision and organ trading, human trafficking, and now with employment rights and employment relations. Siller (2016) identifies the need for clarification of these terms as crimes under international law. It is now established that the constituents of modern slavery include ownership of people, exploitation of the vulnerable, terms and conditions of employment, denial of rights outside the work relationship. There is lacking a clear definition of what forms of exploitative labour relations can be regarded as slavery. Recent reports of slave labour reveal the inhuman and degrading treatment experienced by workers. A 2016 report by Associated Press revealed workers in Asia in the seafood industry were forced to work 20-22 hours a day. They were locked up in a room, ate few spoonful’s of rice and drank little water. They had no contact with their families. This report led to rescue of 2000 slaves.[[17]](#footnote-17) In 2017, the Markowski brothers were convicted for arranging the travel for labour exploitation of men from Poland. They were recruited to work for Sports Direct warehouse in the UK. The brothers employed someone from Poland to employ vulnerable people they could exercise control over. When they arrived the UK their passports were taken off them, they were isolated and kept in appalling living conditions. They were convicted and sentenced to six years in prison for modern slavery offences. The presiding judge, Judge Coupland stated “this was a planned and systematic instance of human trafficking.”[[18]](#footnote-18)

In a 2013 publication by *The Guardian* newspaper, the treatment of the migrant workers exposed to exploitation and abuses, which amount to modern day slavery, was exposed.[[19]](#footnote-19) The investigative report revealed Nepalese workers died at a rate of one a day in Qatar, most of them were young men who had died from sudden heart attacks.[[20]](#footnote-20) According to documents obtained from the Nepalese embassy in Doha, around 44 workers who had died within a three-month period, died from heart attacks or workplace accidents. Their investigation further revealed evidence of forced labour, workers’ passports routinely confiscated, refusal to issue ID cards thereby reducing them to illegal immigrants, failure to pay wages for months to prevent workers from leaving, workers made to work long hours in temperatures of up to 50C and access to free drinking water in the desert heat denied.[[21]](#footnote-21)

Some of these workers were indeed trafficked from Nepal, Indonesia and Bangladesh on a false pretext that a lucrative job awaits them when they arrive Doha. They arrive Qatar to find these promises to be contrary. These workers are paid less than half of what they were promised as income and instead of clerical jobs[[22]](#footnote-22), they are introduced to work on a construction site in the desert heat.[[23]](#footnote-23) They also discover that they are indebted to their employers through a recruitment fee, a part of the contract of employment, which is the equivalent of 2 years’ worth of wages. These workers become enslaved even before commencing their jobs.[[24]](#footnote-24) One hundred and eighty five Nepalese deaths were recorded in Qatar in 2013 while building World Cup infrastructure. The International Trade Union Confederation estimates that an additional 4,000 workers could die before launch of World Cup in 2022 if the workforce grows as expected.[[25]](#footnote-25) This is considerably high compared to the preparation of the 2014 World Cup in Brazil where a death toll of eight workers was recorded weeks before the opening March.[[26]](#footnote-26) The Nepalese ambassador to Qatar, Maya Kumari Sharma described the emirate as an “open jail”. Human Rights Watch in 2017 issues a report where it highlighted the poor living and working conditions of workers in Qatar. Regulations which were meant to protect workers from heat and humidity were still inadequate with hundreds of migrant workers dropping dead on construction projects each year.[[27]](#footnote-27) A UN delegation who visited Qatar to investigate the working conditions in place were informed by a Nepalese worker that conditions had not improved. The worker was summarily dismissed, sent back to Nepal and imprisoned for not having a sponsor, due to his summary dismissal.[[28]](#footnote-28) Qatar have come under intense scrutiny and criticism for these abusive labour practices. This system applies to all foreign employers from professional employers to low income earners. While the highly skilled can afford the services of legal practitioners, others cannot. Abdeslam Ouaddou’s exit visa was withheld from him and he was told he would receive his permission to leave Qatar only if he withdrew his complaint. To FIFA. He expresses his displeasure at the prospect of Qatar hosting the World Cup, a country he believes “does not respect Human Rights” and does not respect the rights of workers.”[[29]](#footnote-29) A French footballer, Zahir Belounis suffered a similar fate when his contract was terminated after he was appointed captain of a Qatari team El Jaish. Belounis brought legal action against the club for leaving him without pay, the club responded by denying his exit visa, which means he cannot leave the country unless his ex-employer permits him to and he was left without income for two years.[[30]](#footnote-30) In his letter to the Guardian, Belounis spoke about feeling ‘trapped’ as a result of the kafala system, which he appealed needed to be scrapped for the sake of migrant workers in the country.[[31]](#footnote-31)

The Kafala (sponsorship) system is commonly practiced in all six Middle Eastern countries of the Gulf Cooperation Council (GCC).[[32]](#footnote-32) Fifty percent of the total population of Gulf Cooperation Council (GCC) are classified as migrants, the UAE being the “most extreme” with foreigners constituting 80% of the total population.[[33]](#footnote-33) Under this system, every migrant worker must have a sponsor who must also be his/her employer. An employer could be a company registered in Qatar and in the case of domestic staff, an individual. Migrant workers cannot change jobs without the permission of their sponsor. This permission is sometimes called an "NOC" (no objection certificate). If workers leave their sponsor without permission, they are considered to have “absconded” - a criminal offence - and their sponsors are required to report them to the Search and Follow-up Department (sometimes called "CID" by migrant workers) of the Ministry of Interior, which polices the Sponsorship Law. Workers who "abscond" are likely to face detention and deportation. Migrant workers are forbidden to leave the country without their employer’s permission; they must obtain an exit permit with the approval of their employer before being cleared by immigration to leave the country. The employers (sponsors) are required by law to return the workers passport at the end of their employment. They also have the responsibility to arrange with the authorities for workers to be issued residence permits to demonstrate their right to work in Qatar which also grants the access to basic services. Workers are fined for not having these permits and these fines must be paid before leaving the country. Employers are responsible for providing accommodation for migrant workers in accordance with local regulations but this is done without close monitoring by the states to ensure adherence to these standards.[[34]](#footnote-34)

Qatar is unique in that it hosts more migrants than the rest of the world. Qatar’s labour force has been described as largely dominated by migrant workers, making Qatar the world’s highest ratio of immigrants to citizens.[[35]](#footnote-35) The sponsorship system is policed by the Ministry of the Interior and set out in Law No. 4 of 2009 (the “Sponsorship Law"). A 2013 report by Amnesty International on Qatar’s Construction Sector deeply criticised the nation’s use of this sponsorship system.[[36]](#footnote-36) This system has been criticised as a recipe for “exploitation and forced labour.” The increased dependency of the migrant workers on their sponsors renders them vulnerable and exposes them to various forms of exploitation and abuses.

**Qatar’s Response**

Qatar’s response was immediate. It expressed shock at the deplorable conditions migrant workers were exposed to. Qatar officials echoed the outrage stirred by media report and promised a thorough investigation and improvements.[[37]](#footnote-37) In addition, Qatar acknowledged its obligation under the ILO Convention to play a central role in the analysis of enforcement mechanisms available to increase protections for migrant workers. The Qatar 2022 Supreme Committee, the organisation responsible for organising the World Cup expressed “deep concerns” about the allegations levelled against the contractors on site and declared that the government are carrying out their own investigations about the matter.[[38]](#footnote-38) The Supreme Committee allocated resources to alleviate the condition of workers by making available a hotline where migrant workers could report abuses.[[39]](#footnote-39) The Committee gave assurances that decent labour standards will be in place for the World Cup in 2022. Furthermore, the Doha government responded positively with a commitment to scrap this exploitative system of sponsored labour, which effectively means getting rid of the *kafala* system, which affects 23 million migrant workers across Middle East, some of whom are trapped in slave like conditions. Following an inquiry by the ILO in 2014, Qatar agreed to introduce labour reforms such as minimum wage, lodging of contracts with government so that they cannot be changed upon arrival and employers are no longer able to prevent staff from leaving if they choose to. Qatar also pledged to build accommodation units for 340,000 workers and to commence elimination of exit visas. In collaboration with the ILO, the Qatar government agreed that these reforms will be overseen by the ILO office in Doha and for the Labour Tribunal to oversee disputes within three weeks.

**FIFA’s Role Reviewed**

The International Trade Union Confederation were expressive about these concerns, and they were adamant that a demand for change from FIFA - abolishment of the *kafala* system and respect fundamental human rights – would lead to extensive reform. FIFA has been prompted to take action on local labour issues in the past. They took an active stance against child labour in the production of soccer balls in the past.[[40]](#footnote-40) Similar to the labour issues in Qatar, media outlets acted as a catalyst for reform and awareness. FIFA worked in collaboration with ILO, trade unions and NGO’s in the “Elimination of Child Labour in the Soccer Ball Industry,” reinforcing its mission to “build better future for all through football,” FIFA stated that it will closely monitor the working conditions in Qatar. Another prompt on FIFA to reflect on its own vulnerability may push the organisation to take stronger measures against abusive labour practices in Qatar and in future World Cup host countries. FIFA can play an active role in reinforcing labour protections for workers by setting clear expectations from the start that it will collaborate with local and international unions.

Amnesty International called on FIFA to address the issue of migrant workers’ abuse in Qatar, expressing outrage after FIFA’s Secretary General at the time, Jerome Valcke replied to Amnesty’s call by saying that “FIFA is not a United Nations. FIFA is about sport.”[[41]](#footnote-41)Amnesty reiterated the fact that FIFA assumed responsibility for the human rights violations, which have resulted from its decision to allow Qatar host the event. FIFA’s past President Sepp Blatter, agreed that the organisation did bear “some responsibility” for the deplorable working conditions but it could not interfere in the rights of workers. A position which I strongly disagree with and will address below in my discussion in this paper. Blatter’s position that the responsibility of the violation of fundamental rights lies first with Qatar and the companies employing the workers is inaccurate. FIFA could be proactive rather than reactive by being a catalyst to enforce existing ILO conventions/promote labour law reform when the image of labour is at stake. The disregard for workers’ rights goes beyond the preparation for the World Cup and extends to other labour in general in the country.

**DISCUSSION**

**Capturing “Non-state actors” in International Law**

New actors other than states are emerging on the international scene, which means structurally, we are witnessing an ongoing and gradual ‘verticalization’ of power. FIFA was established in 1904 under Swiss Law, as an organisation is endowed with powers to govern and regulate world football. This governance extends to authority over social and economic dimensions of the industry. With its headquarters in Switzerland, FIFA oversees over 209 national football associations, which all belong to one of six regional confederations. FIFA’s administration is made up of FIFA Congress (representatives of all national member associations, who are in charge of its governing statutes and method of implementation), the Executive and Standing Committees. Garrett (2018) suggests that FIFA’s governance structure encourages its illegal behaviour arising from the difficulty of legal categorisation and clarity of conduct standards. This absence of a form of legal categorisation makes it difficult to regulate FIFA. In effect how do we legally categorize FIFA and how do we define its conduct standards.[[42]](#footnote-42) It is difficult to contend with the opinion and statement of fact that FIFA’s unique governance structure makes it vulnerable to criticism and encourages its illegal behaviour. In the last 25 years FIFA has been criticised for bribery, racketeering, money laundering and wire fraud, spanning through the 1998 world cup, Presidential election, the 2020 World Cup, and alleged vote buying regarding the location of the 2018 and 2022 World Cup respectively. There has also been criticisms that the lack of financial integrity in the form of corruption and bribery poses a risk of human rights abuse and a diversion of funds intended for social gain.[[43]](#footnote-43)

FIFA was criticised for awarding the 2022 World Cup to Qatar, a country with unfavourable human rights record and little national soccer history/ and infrastructure brought about workers’ rights abuses, leading to modern slavery and death. Qatar, on the other hand, has a poor record of workers’ rights and safety. As noted earlier, these reports revealed poor working conditions, forced labour in unhealthy temperatures and non-payment or delay of wages. These issues have raised awareness and a demand for accountability. FIFA has been criticised for its suppression of national power in its legal interventions by imposing its rules on countries within its associations, giving it a certain degree of immunity from any potential source of accountability. There has been positive responses and reaction on the part of FIFA - in 2016, FIFA enacted reforms to its governance structure and enshrined new commitment to human rights, which was lacking prior to 2016. FIFA can be conceptualised as a private corporation – a potent corporate entity – a big business or a public governance regime due to its role as Head of international soccer regime. The reality is that FIFA sees itself as a government more than a private corporation, especially as it describes itself as “truly democratic,” which is apparent from its structure with its executive, legislative and judicial bodies. This leads us to the question of accountability where their main business partners are corporate sponsors and television companies whose interests are primarily economic. Garret suggests a combination of private and public sector regulatory measures since they are an organisation of public interest.

**The Current Position under International Law**

Public International law is now considering the rights and obligations of non-state actors moving away from the status quo in which the system of international law is based on nation states. For decades, the international legal system has been dominated by states. While this position is descriptively accurate, taking note of the history and development of International Law and the fundamental role played by states, it is in itself has been described as “normatively problematic”.[[44]](#footnote-44) Especially where states have proved unable to assume the roles of protection of individuals under their formal jurisdiction. One of the chief aims of international law is to protect individuals from the arbitrary interference by the state as well as facilitating the action of citizens calling the state to account for breaches of human rights. Since individuals are always in a territorial space their interests and needs are best represented by the sovereign state where they abide.

International law defines a state as possessing territory and having sovereignty over it[[45]](#footnote-45) but it should not preclude a critical inquiry as to why territorial states have come to be considered as the main containers of political authority. Political authority is usually confined to the physical territorial presence of individuals – which is political authority in a space called the state. It is possible to conceive political authority in a space beyond the state.

Recent events such as the one highlighted in Qatar, shows that the states are not the only relevant actors that can have a legitimate representative function. States are not the only containers of political authority. Some examples of this new category of actors (non-state actors) in international law include International Governmental Organisations, Multinational Organisations, Investors and armed opposition groups. Some multinationals have resisted the imposition of direct human rights obligations in the past on the grounds that human rights have been conceived for vertical relationships of authority between government and an individual rather than for horizontal relationships between non-state actors. Evidently, it is pertinent that an examination of the roles and participation of non-state actors in international law must be conducted. Non-state actors should have concrete rights and obligations under international law to direct the legal interaction and relationships between state and non-state actors, and between non-state actors themselves. My position is that corporations like FIFA should be encumbered with direct human rights obligations and tier participatory rights should be legitimately enhanced.

How the can international law impose on FIFA as a non-state actor, a legislative space since it has influence within states to the degree that individual rights can be exploited as long as their relational status is based on FIFA’s own rules? How do we create binding obligations on non-state actors?

**CONCLUSION**

**Creating a Legislative Space for Non-state Actors**

Ryngeart (2017) opines that, “the non-democratic, autocratic states may serve as proof thereof, but more fundamentally, from a historical perspective, the very rise of the territorial state in the early modern period points to the existence of prior, alternative forms of regulation that could be non-territorial or non-state based.” Political authority is normally confined to the physical territorial presence of individuals – which is political authority in a space called the state.

By Ryngeart’s assertion is possible to conceive political authority in a space beyond the state. This is relevant to organisations like FIFA who pledge to “build a better world through football.” The recurring violations cannot be overlooked because it emanates from a state with sovereign power. Considering the sphere it controls, FIFA can take a stronger stand against such practices by enforcing regulations and rules for nations hosting World Cups. A modern slavery statement from these countries pledging to protect the rights of migrant workers in their countries ought to be in place and enforced by FIFA; and endorsed by international law. Modern slavery is an ill which cannot be ignored by states and organisations alike. A strong statement forbidden such practices should be proclaimed and non-state actors should be imposed with binding obligations for the preservation of human dignity.

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1. \*Lecturer in Law, School of Law, Birmingham City University, England. I am thankful to Chipo Mwale for her insightful comments. [↑](#footnote-ref-1)
2. Bales, K. (2012). Disposable people: New slavery in the global economy. University of California Press. [↑](#footnote-ref-2)
3. Slavery was made illegal in the UK in 1807 and across the British Empire in 1837 under The Slave Act of 1807 – An act for the Abolition of Slave Trade, which abolished slave trade in the British Empire. Prior to this legislation was the Act Against Slavery 1785 which abolished slave trade in British North America. In the United States, the Act Prohibiting Importation of Slaves was adopted on 2 March, 1807. Other legislation, which abolished slave trade such as the International Agreement for the Suppression of the White Slave Trade became the first multilateral treaties to address issues of slavery and human trafficking. [↑](#footnote-ref-3)
4. Paz-Fuchs, A. (2016). Badges of modern slavery. *The Modern Law Review*, 79, pp. 5. [↑](#footnote-ref-4)
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