

FNV & NADIM SHARIFUL ALAM *VERSUS* FIFA

Case summary

1. INTRODUCTION

This case is brought against the FIFA for its responsibility for the treatment of migrant workers in Qatar employed in the construction of the infrastructure for the 2022 FIFA World Cup.

The case is brought by the Netherlands Trade Union Confederation (FNV) the largest trade union of the Netherlands representing 1.1 million members. This case is also brought by Nadim Shariful Alam a citizen of Bangladesh and a former migrant worker in Qatar.

FNV brings this claim with regard to thousands of migrant workers in Qatar who are currently employed under dire circumstances as construction workers in connection with the World Cup in Qatar. They are subject to a sponsorship system, also called *kafala* system, which creates a profound power imbalance between employers and workers and allows for a whole range of abuses of workers, which amount to forced labour. Nadim Alam, who worked in Qatar as an unskilled worker subjected to the Kafala system, himself suffered such abuses.

In 2010, the world's governing body for football FIFA awarded the 2022 World Cup to the State of Qatar. The country subsequently embarked on massive construction projects to build stadiums and other infrastructure necessary to host the tournament.

FIFA is the owner of the World Cup, which generates more than 90% of its revenue. It has full control over the tournament: it determines which countries can participate in the bidding process, which country is eventually chosen as World Cup host, and under what conditions the country will host the tournament. However, FIFA has failed – and is still failing – to take responsibility for its election of Qatar as host of the World Cup 2022 and for the harm caused by that decision.

By selecting Qatar for the World Cup 2022 and thereafter by failing to ensure the rights of migrant workers and prevent that harm is caused to them as a result of the preparation for the World Cup – FIFA has violated applicable legal standards under Swiss law protecting migrant workers from forced labour and other forms of exploitation.

Plaintiffs bring this case in Swiss court. They request the court to rule that FIFA acted wrongfully by selecting Qatar for the World Cup 2022 without demanding the assurance that

Qatar observes fundamental human and labour rights of migrant construction workers, including the abolition of the *Kafala* system. Plaintiffs furthermore request Swiss court to rule that, in the run-up to the 2022 World Cup, FIFA uses its power to ensure that the rights of migrant construction workers are safeguarded, by insisting on adequate and effective labour reforms in Qatar, that are actually implemented.

2. FIFA'S CONTROL OVER THE WORLD CUP AND ITS HOST STATE QATAR

In order to host the World Cup, Qatar had to take part in a bidding procedure. FIFA defines the terms for participation in the bidding procedure and is able to create legally binding obligations of the host state *vis-à-vis* FIFA. Organizing Association Agreements are signed with the national football association of a potential host state to ensure compliance with FIFA's requirements would it be selected as the host state. The agreement, which also contains the 'List of Requirements', is a compulsory requirement for continued participation in the bidding procedure. FIFA has the power to unilaterally decide what is included in the List of Requirements and whether the bidding state meets those requirements. If the requirements are not met, FIFA can decide to bar a state from admission into the bidding procedure.

FIFA even has (and uses) the power to demand law reforms, setting aside domestic law, from (potential) host states in order to bring them in accordance with FIFA's requirements. These law reforms may also pertain to visas and work permits.

Also after the selection as the host state, FIFA maintains supervision and absolute authority over the Organising Association of the host state.

After its selection for the World Cup 2022, Qatar established a Local Organising Committee and the 'Supreme Committee for Delivery & Legacy' to prepare Qatar for the 2022 World Cup. These bodies are responsible for all duties related to the tournament including the infrastructural developments. The prospective hosting of the World Cup has vastly accelerated Qatar's construction development efforts. There are currently five stadiums being built specifically for the World Cup. A system of four metro lines is being built in Doha for the purpose of connecting Doha's centre with its suburbs. The subway lines will have stations at all the planned World Cup stadiums in Doha. An additional construction development project is the city of Lusail, which is set to be completed by 2020. The city will include a new World Cup stadium and an 180,000 m² area called *Entertainment City Qatar*. Furthermore, a

highway network is currently being built in Qatar, among which is the *Doha Expressway System*. Another prestigious Qatari building enterprise is the \$5 billion Sharq Crossing project, previously known as the Doha Bay Crossing- and Expressway Project. The project will navigate Doha Bay and consist of bridge sections interconnected by an immersed tube tunnel to create a new passageway beneath the waters of Doha Bay. The World Cup 2022 is the motivating force behind all these vast infrastructural projects, all scheduled to be completed before the tournament, on time for the influx of tourists expected.

These mega infrastructural projects have resulted in a sweeping increase of migrant workers in the country. The workers predominantly come from Bangladesh, India, Nepal, Sri Lanka and the Philippines. The number of male migrant workers in Qatar has more than doubled since 2010, the year in which Qatar was elected as 2022 World Cup-host (to 1,700,000 at present). For expatriates, the construction sector stands out by far as the main employer.

One of these migrant workers is **Nadim Alam** from Bangladesh, and plaintiff in this case. During his time in Qatar, from August 2014 till January 2016, Nadim Alam lived in *Ezdan Labour Camp* a facility constructed especially to accommodate the 2022 World Cup migrant workers. He was put to work in the Sea Port for HBK. His work consisted of unloading materials that arrived in Qatar by sea and mixing materials such as sand and cement. HBK is involved in several World Cup-related mega-projects, such as Al Wakrah stadium and the Green Line (north-south through the city of Doha) as part of the Doha Rail Project. As such, the work that Nadim Alam conducted for HBK served to facilitate the construction of those mega-projects.

Nadim Alam, like all migrant workers in Qatar, was caught up in the *kafala* system, a system that amounts to forced labour.

3. QATAR'S *KAFALA* SYSTEM

The *kafala* system emerged in the 1950's to regulate the relationship between employers and migrant workers in many countries in West Asia. It is a sponsorship system that functions as a form of guarantee for a broad variety of migrant worker obligations. It regulates the framework of migrant workers' activities whilst in Qatar. The economic objective of the *kafala*-system is to provide temporary, rotating labour that can be brought into the country rapidly during periods of economic boom and easily expelled during less affluent periods.

Kafala requires that foreigners who want to reside and work in Qatar be sponsored by a local citizen or employer, known as a *kafeel*. The *kafeel* grants permission for foreigners to enter the country, monitors their stay and approves their exit. Because the *kafeel* is responsible for all aspects of the foreigner's stay, the foreigner has no legal right to stay in the country if the *kafeel* withdraws his sponsorship. If the *kafeel* decides not to allow the migrant worker to exit Qatar, that worker will effectively remain trapped inside the country. Disputes over wages, accommodations, working conditions or other work-related issues can prompt a *kafeel* to withdraw sponsorship. After signing with a *kafeel*, the migrant worker is only allowed to work for that person and is therefore bound to a single employer. The *kafeel* assumes the legal and financial responsibility for the migrant worker during a certain period, ordinarily around two years.

Nadim Alam was recruited in Dhaka, Bangladesh to work as an unskilled laborer on construction projects for HBK in Qatar, which company was his sponsor. Nadim Alam had to pay his recruitment agency in Bangladesh BDT 350,000. (approximately 4,400 CHF, €3,976.50).

Nadim Alam's employer (*kafeel*), HBK, confiscated his passport upon arrival in Qatar in August 2014. It was only returned to him when he had to leave Qatar again in January 2016 as a result of being fired by HBK. He was unable to change employers whilst he was in Qatar. Even after he was fired by HBK, he was unable to seek employment elsewhere. Instead, he was forced to return to Bangladesh.

Upon his premature return to Bangladesh, HBK reimbursed less than 10% of the total recruitment fee. Alam had taken out a loan and mortgaged his land in order to pay the fee, and has not been able to pay back the loan or pay his mortgage to date. As such, he is still dealing with the financial aftermath of his employment in Qatar today.

The *kafala* system leads to a violation of multiple elementary rights of migrant workers in Qatar, in particular the prohibition of forced labour and the right to freedom of movement. Qatar facilitates forced labour by allowing near total control of sponsors over employees; abusive and deceptive labour contracts; the charging of recruitment fees; and passport retention by employers. Migrant workers are also dependent on their employer regarding their legal residence in Qatar. They are not free to depart Qatar or to change an abusive employer. Migrant workers are furthermore not allowed to form unions, which constitutes a violation of their right to freedom of association. They are also subjected to discrimination. Furthermore,

the migrant workers do not have effective and accessible (legal) remedies to address their situation of compulsory labour and other violations of their rights.

The Qatari domestic law prescribes the *kafala* system and therefore entails intrusion of basic rights of migrant workers. At the same time, it should be noted that treatment of migrant workers also often violates Qatar domestic law. However, in practice Qatar tolerates these violations.

In response to international criticism on the *kafala* system, the Qatari government recently introduced new labour laws. In October 2015 the Emir of Qatar approved Law No. 21 of 2015 'On the Entry, Exit and Residency of Foreign Nationals' which - when coming into effect in December 2016 - will replace the 2009 Sponsorship Law.

The new law refers to 'recruiters' instead of 'sponsors' but this new word signifies the same concept: namely the *kafeel*. The purpose of the labour reforms is to make it easier for migrant workers to both leave the country and change their jobs in Qatar. Among other things, the new law creates a system for migrant workers to appeal a *kafeel*'s decision to refuse them a permit to leave the country and increases the State's oversight of the process by which workers seek to change jobs or leave Qatar.

It is unlikely however that these reforms will have any real impact on the nature of the *kafala* system. As the ILO Committee of Experts on the Application of Conventions concluded that the changes are too insignificant. The ILO Committee of Experts observed that under the new law, it is still the employer (*kafeel*) who is responsible for completing the procedures relating to the residence permit and for returning the passport or travel document to the expatriate worker, except upon the written request of the worker.

In addition to violating Qatar law, the treatment of migrant workers in Qatar violates Swiss law, international labour law and general human rights law.

4. WRONGFUL ACTS COMMITTED BY FIFA

FIFA acknowledges that it has "a duty that goes beyond the game". In its Statutes, FIFA openly commits to international human rights law. FIFA's duty to respect human rights is however not merely based on its own belief that it has such a duty, nor does it only follow from its own Statutes. Swiss law, but also Qatari law and international law oblige FIFA to respect fundamental human rights and refrain from wrongdoing.

FIFA's legal responsibility arose at two distinctive moments in time:

- (1) when it allowed Qatar to participate in the bidding contest for the World Cup 2022 and subsequently selected Qatar as host of the 2022 World Cup; and
- (2) when it failed and still is failing to take responsibility for the present fate of the migrant workers by not demanding Qatar to reform its labour system.

4.1 During the bidding procedure

It is public knowledge that Qatar's economy is built on the *kafala* system. FIFA not only knew that the Qatari infrastructure would have to undergo significant changes in preparation for the World Cup, but that building the required infrastructure would subject many migrant workers to the *kafala* system and its inherent human rights violations.

However, (former) FIFA President Sepp Blatter declared that the welfare of Qatar's World Cup migrant workers is not FIFA's responsibility. As far as plaintiffs are aware, the compulsory List of Requirements that is part of Agreement between FIFA and Qatar does not include the obligation to comply with human rights. In fact, the main concerns for FIFA during the bidding process were the heat in the summer and the modest size of the country. In the Evaluation Report of the Qatari bid no reference is made to the *kafala* system, the situation of migrant workers which constitute 90% of the population of Qatar, or even human rights in general.

FIFA's omission to demand any labour reforms from Qatar is unlawful, since FIFA has the power to impose binding requirements on the country organizing the World Cup. FIFA is fully in charge of the World Cup, including its bidding procedure and its preparation. The host state can only organize the tournament if it meets the requirements set by FIFA. The World Cup is a package-, 'take-it-or-leave-it' deal. There is little to no room for states to negotiate about the demands made by FIFA and in order to meet these demands they can be forced to set aside national laws. FIFA thus decides on what terms the World Cup is organized .

Given the complete control that FIFA has over the World Cup, it is also incumbent on FIFA to do everything within its control to ensure that the organization of the World Cup does not violate fundamental rights and does not cause harm to others. With great power comes great responsibility. It is upon FIFA to use its power to make sure that fundamental human rights are protected by the host state during the preparation of the tournament.

Alternatively FIFA should have ruled out Qatar's candidacy from the outset. The FIFA has the authority to exclude certain states from the bidding contest for the World Cup. An autonomous bid for the 2022 World Cup by the Football Association of Indonesia was rejected by the FIFA on account of the fact that the Indonesian government did not support the bid out of concern for its citizens. Another example was the state of Libya who was excluded from the bid for the World Cup 2010 (that eventually went to South Africa).

FIFA also has the power to suspend members. A FIFA suspension means that the team in question is barred from international competitions, including the World Cup. In the past, FIFA has suspended teams and countries from all international football for reasons varying from government interference in football to wars and political or human rights concerns. As recently as 2014, Nigeria was suspended from all international football by FIFA amid allegations of government interference in its football federation. FIFA has suspended members in the past for human rights related reasons, including South Africa during the apartheid era. During the Yugoslav wars, FIFA also suspended Yugoslavia from 1992 to 1994 for political reasons as part of United Nations Security Council economic sanctions.

Plaintiffs assert that, considering the generally strong desire and motivation of countries to join FIFA, the threat of suspension from all international football, can be an effective tool to persuade individuals, entities and indeed countries, including Qatar, to abide by human rights standards.

4.2 Failure to take action after 2010

FIFA's legal responsibility was also triggered after 2010 in the run-up to the World Cup 2022 when it failed, and continues to fail, to take action to ameliorate the present predicament of the migrant workers by not requiring Qatar to reform its labour system. In response to Amnesty International's concerns about forced labour, FIFA merely noted that:

“We are fully aware that the greatest risks of human rights violations tend to occur at the lowest end levels of the supply chain beneath multiple layers of sub-sub-contractors. This decentralization and fragmentation is a challenge faced by the global construction industry and we believe it can only be tackled through a multi-stakeholder approach from various angles.”

FIFA can indeed be assumed to be very familiar with these branches of industry given that the construction of stadiums is a core element of most World Cup bids. More importantly, the labour abuses in Qatar clearly show that the *kafala* system is a central element of the problem. This is not a “global industry” problem but is directly connected to Qatar and in this case is aggravated by the 2022 World Cup and the enormous amount of construction efforts this tournament requires.

Incomprehensible is FIFA’s reference to companies “beneath multiple layers of sub-sub-contractors” as “decentralization and fragmentation”. Sub-contracting is commonplace on major construction projects. The Supreme Committee’s Workers’ Welfare Standards clearly stipulate that identifying sub-contractors, including labour supply companies, is the responsibility of the main contractor. While FIFA is itself not a main contractor, it cannot have been difficult for FIFA to distinguish the sub-contracting companies.

FIFA is in a position to demand labour reforms. The National Association tasked with the organization of the FIFA World Cup remains subordinate to FIFA throughout the course of the tournament’s organization. The Organising Association Agreement stipulates:

“The [national] Organising Association is subject to the control of FIFA, represented by the Organising Committee for the Championship. FIFA has the last and final decision power on all matters relevant to the hosting of the Championship.”

Nevertheless, even after widespread violations of the human rights of migrant workers were published, FIFA has not taken any concrete action to lessen the consequences of its tournament for migrant workers in Qatar. To the contrary: FIFA President Blatter has consistently stated that the labour circumstances in Qatar are not FIFA’s responsibility.

5. CLAIM

FNV and BWI ask that the Swiss court rules that:

- FIFA has acted wrongfully by selecting Qatar for the World Cup 2022 without demanding the assurance that Qatar observes fundamental human and labour rights of migrant construction workers whose work is related to the 2022 World Cup, including the abolition of the *Kafala* system and the guarantee of migrant workers’ right to

change jobs and freedom to leave Qatar; alternatively it should not have selected Qatar for the World Cup 2022;

- FIFA ensures that, in the run-up to the 2022 World Cup, the rights of migrant construction workers in Qatar whose work is related to the 2022 World Cup are safeguarded, by insisting on adequate and effective labour reforms in Qatar, including the abolition of the *Kafala* system, and the guarantee of migrant workers' right to change jobs and freedom to leave Qatar, and that these reforms and guarantees are actually implemented.
- To establish that FIFA violated the rights of Nadim Alam and to order FIFA to pay damages in the amount of CHF 5,390.54 as well as a satisfaction for the hardship suffered in the amount of CHF 5,000.

FNV and Mr. Alam are represented by lawyers Liesbeth Zegveld (Prakken d'Oliveira *Human Rights Lawyers*) in Amsterdam, the Netherlands and David Husmann (Schadenanwaelte AG) in Zürich, Switzerland.

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