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## ITUC<sup>1</sup> UPR Submission on Qatar

### I INTRODUCTION

Today, migrant workers comprise roughly 94% of the workforce of Qatar – or 1.2 million workers.<sup>2</sup> That number continues to rise as substantial numbers of workers continue to be recruited, largely from South Asia, to build the infrastructure and stadia for the 2022 World Cup. However, from the moment they begin the process of seeking work in Qatar, migrant workers are drawn into a highly exploitative system that facilitates the exaction of forced labour by their employers. Further, as migrant workers are prohibited by law from associating and forming unions to defend their rights, they have no effective means to combat forced labour or to otherwise bargain over the terms and conditions of their work. The country's labour inspection and justice system have proven highly inadequate to enforce the few rights that migrant workers do have under Qatari law.

Qatar has ratified surprisingly few international human rights instruments. Nevertheless, it has ratified ILO Convention 29 on Forced or Compulsory Labour and is bound as a member of the International Labour Organization (ILO) to respect the principles of freedom of association under the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Of course, the right to freedom of association and the prohibition on forced labour are guaranteed under the Universal Declaration of Human Rights (Art 20 and Arts 4 and 23 respectively).

### II. FORCED LABOUR

Many migrant workers are deceived by recruiters and sponsors who lure workers to Qatar on false promises as to the nature of the work, the wages and the working conditions; indeed, contracts entered into prior to departure are infrequently respected upon arrival. Workers are also often deeply indebted to recruiters or moneylenders who extract exorbitant recruitment and travel fees. Upon arrival, most workers frequently have their passports withheld by their employers.<sup>3</sup>

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<sup>1</sup> The ITUC represents 175 million workers in 156 countries and territories and has 315 national affiliates.

<sup>2</sup> Human Rights Watch, Building A Better World Cup: Protecting Migrant Workers in Qatar Ahead of FIFA 2022, June 12, 2012, (hereinafter "A Better World Cup"), p. 1.

<sup>3</sup> See generally, A Better World Cup, supra; See also, U.S. Department of State, Trafficking In Persons (TIP) Report 2012 (hereinafter "TIP Report"), p. 307, available online at <http://www.state.gov/j/tip/rls/tiprpt/2013/210551.htm>. "Qatar is a destination country for men and women subjected to forced labor and, to a lesser extent, forced prostitution. Men and women from Nepal, India,

The government of Qatar (GoQ) both fails to maintain a legal framework sufficient to protect the rights of migrant workers consistent with international law and to enforce the legal protections that currently do exist. The employment of migrant workers in Qatar is governed largely by three laws - Law 14 of 2004 (Labour Law); Law 4 of 2009 (Sponsorship Law); and, Law 15 of 2011 (Trafficking in Persons Law). Of particular concern, the sponsorship law, among the most restrictive in the Gulf region, facilitates the exaction of forced labour by, among other things, making it very difficult for a migrant worker to leave an abusive employer. The new Trafficking in Persons law does provide some important tools to combat forced labour in Qatar. However, as the US State Department noted, “The Government of Qatar made limited law enforcement efforts to combat its human trafficking problem over the year... During the reporting period, the government reported two prosecutions for forced labour under Article 322 of the penal code, which addresses forced and bonded labour; both cases were pending at the end of the reporting period.”<sup>4</sup>

## **Forced Labour in Qatar**

### **A. Contracts and Recruitment Fees**

In many cases, migrant workers arrive in Qatar without a written contract of employment. In others, workers have written contracts signed by the recruitment agency in their home country and approved by the Qatari Embassy. On the basis of these contracts or other representations made by recruiters as to wages and working conditions, workers will decide to make the voyage to Qatar to work. However, workers are typically offered a new contract upon arrival in Qatar that bears little resemblance to what was promised or contracted in the country of origin. These contracts may be for a completely different job than described and often at wages that are lower than promised.<sup>5</sup> Once workers are in Qatar, however, they have no truly effective options to seek redress and thus most simply accept the new, inferior conditions. Human Rights Watch has reported that in many cases, workers are forced to sign new contracts on the spot or at odd hours without any chance to review the terms; moreover, the contracts are usually written in English or Arabic, which most workers are unable to read.<sup>6</sup> The new contract terms often make it difficult for the

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Pakistan, Bangladesh, the Philippines, Indonesia, Vietnam, Sri Lanka, Ethiopia, Sudan, Thailand, Egypt, Syria, Jordan, Morocco, Tunisia, Kenya, Burma, Nigeria, and China voluntarily migrate to Qatar as low-skilled laborers and domestic servants, but many subsequently face involuntary servitude. According to Qatar University’s Social and Economic Survey Research Institute, a November 2012 study found that 86 per cent of expatriate workers surrendered their passports to employers. There are also reports of widespread non-payment of wages. Female domestic workers are particularly vulnerable to trafficking due to their isolation in private residences and lack of protection under Qatari labor laws. Many migrant workers arriving for work in Qatar have paid exorbitant fees to recruiters in their home countries—a practice that makes workers highly vulnerable to forced labor once in Qatar. Moreover, Qatar’s sponsorship system binds foreign workers to their designated employers, placing a significant amount of power in the hands of employers; because of this, when workers face abuse, they often avoid legal action because of the lengthy recourse process, fear of reprisal, or lack of knowledge of their legal rights.”

<sup>4</sup> TIP Report, p. 307.

<sup>5</sup> See, e.g., A Better World Cup, p. 57, “Of the 73 workers interviewed by Human Rights Watch, only 19 said they had signed contracts in their home countries, and only six said those contracts accurately reflected the job and salary they had in Qatar. Most workers interviewed for this report said that they either did not sign contracts before migrating, or signed one contract before departure and a new contract upon arrival in Qatar.”

<sup>6</sup> A Better World Cup, at p. 59.

worker to honour financial obligations to recruiters or lenders that fronted the money for the trip to Qatar – much less save money or send money home to family as was planned.

The majority of workers in Qatar had to take out loans in order to pay the recruitment fees. The extraction of recruitment fees from workers leaves many taking on debts that leave them desperate to keep their jobs in Qatar regardless of the conditions. In a survey conducted by Human Rights Watch, 69 of 73 workers interviewed reported that they had paid recruitment fees to obtain their job in Qatar. These payments ranged from \$726 to \$3,651. The fees were paid for by loans from private moneylenders, often at exorbitant rates of interest.<sup>7</sup> In some cases where the sponsor paid the fees, the sponsor then recouped the fees through illegal deductions or withholdings of workers' wages. This debt serves to trap workers in Qatar who cannot afford to lose their jobs or return home.

While Qatari law prohibits recruitment agencies based and registered in Qatar from charging workers fees or costs for their recruitment,<sup>8</sup> it does not address or seek to prohibit recruitment firms using affiliated organizations abroad that can, and do, charge these fees. The law also fails to place an affirmative duty on the employers to pay recruitment-related expenses. A recent World Bank study of transfers between Qatar and Nepal found that Qatari recruiting agencies received a considerable portion of those recruiting fees from agencies in the country of origin through hidden money transfers that were meant to evade the prohibition in the sponsorship law.<sup>9</sup> In November 2011, the government claimed in a letter to Human Rights Watch that it had not received a single complaint from a worker regarding the charging of illegal fees.<sup>10</sup> Even if true, this in no way signifies that the practice does not exist but rather underscores that it simply goes unreported out of fear of retaliation.

## **B. The Sponsorship System**

Law 4 of 2009 establishes Qatar's draconian sponsorship system. Under that law, employers enjoy near total control over the movement of workers in their employ, including over their ability to reside in Qatar, to change jobs or even to leave the country.<sup>11</sup> Workers under such control are often afraid to report abuses or assert their rights for fear of retaliation, which further contributes to their situation in forced labour.

Migrant workers have reported finding themselves in exploitative situations, such as being paid far lower than promised wages, experiencing numerous unspecified deductions from wages, not being paid at all for months and/or living in abysmal living conditions with dozens of co-workers crammed into small unventilated shelters without proper plumbing,

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<sup>7</sup> A Better World Cup, at p.52.

<sup>8</sup> See Law 14, Art, 33, "The person who is licensed to recruit workers from abroad for others shall be prohibited from doing the following: 1. To receive from the worker any sums representing recruitment fees or expenses or any other costs. 2. To carry out in the office any other business other than the recruitment of workers from abroad for others."

<sup>9</sup> A Better World Cup, p. 54, citing The World Bank, *The Qatar-Nepal Remittance Corridor : Enhancing the impact and integrity and of remittance flows by reducing inefficiencies in the migration process* (Washington DC : World Bank 2011), p. 9.

<sup>10</sup> A Better World Cup, p. 39.

<sup>11</sup> A Better World Cup, p.70; TIP Report 2012, p. 292.

water and electricity.<sup>12</sup> In 2011, the Qatar Human Rights Committee surveyed over 1,000 workers, finding that 33.9 per cent of them reported not being paid on a regular basis.<sup>13</sup>

However, migrant workers cannot freely seek better conditions elsewhere, as they are unable to transfer employment without the consent of the exploitative employer.<sup>14</sup> Of course, such consent is rarely granted. Those who nevertheless quit their job without permission must be reported to the authorities as having absconded.<sup>15</sup> For the fleeing worker, it is no defence under the sponsorship law that the employer has engaged in abuse or failed to pay wages for example.<sup>16</sup> While workers suffering such abuse are supposed to have their sponsorship transferred if a legal action has commenced, this rarely happens in practice.<sup>17</sup>

Typically, once such workers are reported as having absconded they will be arrested, detained and deported to their country of origin. While in theory the employer should pay these costs, in practice, they are borne by the individual and at times by the government or foreign embassy.

A final element of the abusive sponsorship system is the fact that migrant workers are forbidden to leave the country without the consent of the employer. Thus, even if the worker has the means to leave the country, they cannot freely do so without permission, making it difficult to leave abusive employment.<sup>18</sup> In other cases, employers will extort the workers for money in order to grant them permission to leave.

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<sup>12</sup> See, e.g., A Better World Cup, pp 62-9.

<sup>13</sup> See A Better World Cup, p. 63, citing, Qatar National Human Rights Committee, Study on the Conditions of Unskilled Labor Force in the Construction Sector in Qatar, “Executive Summary” (Doha: National Human Rights Committee, 2011), p.13.

<sup>14</sup> See Law 4, Art. 22, “The competent authority shall transfer the sponsorship of the expatriate worker to another employer under a written agreement between the new employer and the former employer, subject to the consent of the competent authority at the Ministry of Labour in connection with such categories governed by the provisions of the Labour Law. Upon the transfer of the sponsorship, the new sponsor shall bear all the obligations of the former employer, the sponsorship of the former sponsor shall terminate and the relevant obligations of the former sponsor shall be discharged.”

<sup>15</sup> See Law 4, Art. 11, “Any expatriate permitted to enter or reside in the state for a particular purpose or for business with any particular entity shall not act in breach of the relevant purpose and shall leave the state upon the depletion of such purpose, the completion of such business or the cancellation of the residence for any reason whatsoever.”

<sup>16</sup> The Law Combatting Human Trafficking does provide that a victim of human trafficking is exempt from the punishments of the sponsorship law. However, there is little evidence to suggest that this protection has been or can be practically applied. Further, the Minister of Interior has the discretion to transfer the sponsorship to another employer in the case of abuse at any time. However, a small percentage of transfers are ever authorized on this basis. See, A Better World Cup, p. 84.

<sup>17</sup> See Law 4, Art. 12. “The Minister or his nominee shall transfer the sponsorship of any expatriate worker on a temporary basis if there are any suits filed between the sponsor and the Expatriate worker. The Minister or his nominee may approve the transfer the sponsorship of any Expatriate worker not governed by the Labour Law to any other employer in the event of abuse by the employer or as required by the public interest. For the same reasons, with the consent of the Minister or his nominee and on demand by the worker and the approval of the Ministry of Labour, the sponsorship of a worker governed by the Labour Law may be transferred to any other employer.”

<sup>18</sup> A worker may get an exit permit directly from the Ministry of Interior if their sponsors refuse to allow them to leave, but the process is obscure and difficult to access for most migrant workers.

### **C. Passport Confiscation**

Although illegal, it is a near universal practice for employers to confiscate workers passports upon arrival in Qatar.<sup>19</sup> In 2011, Qatar University's Social and Economic Survey Research Institute found that 91 percent of foreign migrant workers surrendered their passports to their employers.<sup>20</sup> The reason employers withhold passports is to maintain control over workers, as they would easily be able to send the passport to the Ministry of Interior and report the worker as having absconded in case the worker were to complain or escape an abusive situation. When workers are asked why they do not change employers or return home to escape the abuse, the most common response is that they cannot do so without their passport and permission from their current employer. To date, labour inspectors do not regularly monitor this issue.<sup>21</sup> Indeed, the US State Department found that "The government did not ... systematically investigate companies to prevent passport withholding, exacerbating migrants' vulnerability to trafficking; employers often made their employees sign waivers allowing them to hold passports."<sup>22</sup>

Another serious problem is that employers fail to provide residence visas (ID cards) for their workers, despite being required to do so by law.<sup>23</sup> This is often done to cut costs. However, without this visa they are unable to obtain an ID card that allows them to obtain access to basic services, such as medical or banking (which is needed to send money home to family). Furthermore it restricts their freedom of movement as it leaves workers under constant fear of arrest and deportation.<sup>24</sup>

### **D. No Effective Redress**

When confronted with the problems described above, the government either denies the scope of the problem or claims that the practices described are illegal and that workers have access to an effective complaints mechanism to deal with issues. The latter is simply not true. Moreover, the government does little to protect the rights of workers by proactively undertaking competent investigations that would uncover these (well-known) problems, remedy the abuses and sanction the perpetrators.

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<sup>19</sup> See Law 4, Art 9. "Any expatriate entering the state for residence shall first obtain the relevant visa from the competent authority. The sponsor shall accomplish the residence procedures and its renewal, provided that such renewal shall be done within 90 (ninety) days from the expiry date of the Visa. The sponsor shall deliver the passport or travel document to the sponsored person once the procedures for issuing or renewing the residence permit are accomplished."

<sup>20</sup> TIP Report, p. 308.

<sup>21</sup> See A Better World Cup, p. 73, explaining that "Labor Ministry officials told Human Rights Watch that labor inspectors do not monitor passport confiscation, and showed little concern for curbing this widespread practice...In a November 2011 response to follow-up queries from Human Rights Watch, Ministry of Labor officials stressed that while 'employers previously held the passport of migrant workers ... this phenomenon has ended after the issuance of the law on the entry, exit, sponsorship, and residence of foreigners (Law 4/2009), which requires the sponsor to return the passport to the worker after the conclusion of all necessary measures."

<sup>22</sup> TIP Report, p. 293.

<sup>23</sup> See Law 4, Art. 9, *supra*.

<sup>24</sup> TIP Report p. 293, finding that, "Although the sponsorship law requires an employer to secure a residence card for laborers within seven days, reports indicated that this sometimes does not happen; this restricts migrant workers' mobility and impedes their ability to access health care or lodge complaints at the labor department."

The first obstacle to accessing the complaints mechanisms is language. Most services are available only in Arabic and English, which foreclose access to help to the vast majority of migrant workers who speak neither language. This is particularly true of the hotline that has been established to receive workers' complaints. Further, there is a mere 150 labour inspectors in the country, and few of them speak languages other than Arabic and some English.<sup>25</sup> Thus, inspectors are unable to communicate with the vast majority of the workforce in the country, which are by far the most vulnerable to exploitation. It is no surprise then that the vast majority of labour violations go undetected. Rather, the government consistently takes the view that if there is a problem, the workers would have reported them to the proper authorities.

Perhaps the more important obstacle however is fear, as employers who learn of complaints can and do terminate the employment relationship. This renders their status in the country illegal and subject to arrest and/or deportation. Thus, many workers suffer exploitation for fear of retaliation. Indeed, Qatar's National Human Rights Committee issued a report in June 2011 which found that "in most cases, if not all, the workers usually do not submit any complaints to the concerned authorities (police, the Department of Labor, the National Commission for Human Rights...etc.) for fear of losing their jobs or expulsion or deportation from the Country."<sup>26</sup>

Those workers who are brave enough to take complaints to the Labour Department face the additional hurdle of supporting oneself through the process. Workers often have no income or legal accommodation through this process, making the pursuit of a remedy (with the Labour Department or the courts if the former is unable resolve the dispute) daunting at best. While the Minister of Interior is supposed to temporarily transfer the sponsorship during the pendency of a legal dispute, Human Rights Watch reported that this happened only 100 times between 2009 and 2011 according to data from the Ministry of Labour.<sup>27</sup> Finally, not only is there no effective redress but the victims of forced labour trafficking are sometimes further victimized by the state. As the State Department recently explained,

Victims of trafficking were often punished for unlawful acts they committed as a direct result of being subjected to human trafficking; specifically, Qatari authorities regularly arrested, detained, and deported potential trafficking victims for immigration violations and running away from their employers or sponsors. Ministry of Interior officials interviewed all detainees in the deportation center and were required to determine whether the workers were victims of trafficking and offer them protection. However, some victims occasionally languished in detention centers for up to six

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<sup>25</sup> A Better World Cup, p. 79

<sup>26</sup> A Better World Cup, p. 78, citing, Qatar National Human Rights Committee, Study on the Conditions of Unskilled Labor Force in the Construction Sector in Qatar, "Executive Summary" (Doha: National Human Rights Committee, 2011), p.17.

<sup>27</sup> A Better World Cup, p. 6, "[W]hile their complaints department referred 1,279 cases to Qatari courts in the last three years, only 100 cases, less than eight percent of the total, received sponsorship transfer, though Qatar's Sponsorship Law requires it whenever a legal case is pending between an employer and a worker. This means that in 92% of cases, workers who had filed complaints had no choice but to continue working for their employer during the course of the proceedings against their employer, or to forfeit their rights and leave the country."

months because of debts owed or, more rarely, employers filed false charges of theft against them.<sup>28</sup>

### **E. Representative Cases**

Worker #1 is a Filipino national who arrived in Qatar in February 2012 and is working for the government owned bus company “Mowasalat”. He signed an employment contract with a recruitment agency in the Philippines, authenticated by the Filipino authorities (Philippines Overseas Employment Administration) stipulating a payment of 1,800 QR per month. When he arrived in Qatar his contract was deemed to be invalid and he was requested to sign a subsequent contract with a payment of 1,370 QR per month. While he and other workers who are in the same situation refused to sign the contract, they are unsure how to advance their grievances given that workers who had previously instigated strikes over conditions of work were deported within 12 hours. They are reluctant to turn to public authorities as that has led to blacklisting or deportation or physical threats. His passport is currently withheld by his employer. He has 21,000 pesos of debts which he owes to his relatives. Since November they are not allowed to drive faster than 80km/h so that they cannot have lunch break.

Worker #2 is from Kenya and also works for Mowasalat. He has been working there for 1 year and 7 months as a licensed driver. He said they only get paid for the hours they actually drive and not for other tasks they must perform (cleaning buses etc.). He is paid 2000 QR a month and deductions are made for laundry and gym. The employer is keeping his passport and licence. He has a contract for 2 years. Even though the HR department has promised pay raises, these have never materialised.

Worker #3 is a Filipino national who signed an employment contract with the recruitment agency “vital recruitment” in the Philippines stipulating that she would work for the bus company “Trilogistics” with a salary of 1,460 QR and would be provided with an additional part-time job. She made a payment of about 3,000 QR to the recruitment agency. When she arrived in Qatar she was only paid 900 QR and was not offered a part-time job. She found a part-time job herself in a sales and marketing company. Trilogistics had to agree to her part-time job and is entitled to 40 per cent of her salary from that job. She lived in poor accommodation sharing a room with 12 other persons. She resigned from both companies and returned to the Philippines for family reasons and returned recently. In order to take a new job she needed her previous employer to provide a Notice of Consent. She does not want to complain to the Labour Ministry because she is worried that she will be blacklisted. People who have complained to the Labour Ministry have been deported.

### **III. FREEDOM OF ASSOCIATION**

The lack of freedom of association in Qatar is ultimately responsible for the deaths of numerous migrant workers, who face punishing working conditions on the job, including long hours of intensely physical work in extreme heat, construction work without proper safety equipment or safe and appropriate building methods and squalid living conditions in which workers are packed into sweltering barracks with little if any ventilation. Some employers also cheat workers of their promised wages by paying a much lower wage, by

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<sup>28</sup> TIP Report, p. 308.

making numerous illegal deductions, or by simply not paying the wages at all. As a result of the lack of a collective voice on the job, which would empower workers to remove themselves from dangerous situations and to bargain with their employer over such conditions, migrant workers face injury or death.

As explained below, the current labour laws of Qatar (to the best of our knowledge) violate the principles of freedom of association in numerous ways.

### **Restrictions on the Right to Form and Join a Union**

Numerous workers are precluded from forming or joining a union due to categorical exclusions in law. The labour code contains two kinds of exclusions. First, the code states that none of its provisions apply to workers in the following categories:

- a. Government/Public workers
- b. Armed Forces, Police, and workers employed “at sea”
- c. Casual Work (defined as less than four weeks)
- d. Domestic Worker (including drivers, nurses, cooks, gardeners, and similar workers)
- e. Family members of an employer
- f. Agriculture and Grazing workers<sup>29</sup>

Secondly, the law forbids non-Qatari workers from membership in a labour organisation, thus excluding more than 90% of the total workforce in the country.<sup>30</sup>

Article 2 of Convention No. 87 guarantees the rights of workers to establish and join organisations of their choosing “without distinction”.<sup>31</sup> The 2006 ILO Digest provides additional guidance, explaining that this means “freedom of association...without discrimination of any kind based on occupation... [or] nationality...not only to workers in the private sector of the economy, but also to civil servants and public service employees in general.”<sup>32</sup> Many of the excluded categories in the Qatari labour code have been previously addressed by the CFA, confirming their right to form a union.<sup>33</sup>

In addition to the categories of workers excluded from the law, §12 of the Act (which outlines the rights of employees to join unions) does not apply to enterprises with less than 100 Qatari workers employed.<sup>34</sup> The ILO has held on numerous occasions that minimum worker/member requirements must be reduced when such a rule hinders workers ability to

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<sup>29</sup> Qatari Labour Law, Law 14 of 2004, §1 Art. 3.

<sup>30</sup> Labour law at §12, Art. 116, ¶4 (named “workers committee” in the law).

<sup>31</sup> Freedom of Association and Protection of the Right to Organize Convention, C. 87, Art. 2 (1948), available at: <http://www.ilo.org/ilotex/english/convdisp1.htm>

<sup>32</sup> Committee on Freedom of Association (CFA) Digest of Decisions (2006 Digest) ¶209; See also the 1996 Digest, ¶205; and 308th Report, Case No. 1900, ¶182.

<sup>33</sup> 2006 Digest ¶219-220 (Public servants and employees “without distinction whatsoever” have the right to establish and join organisations of their choice to defend their interests); *Id.* at ¶899 (Seafarers should not be denied the right to engage in collective bargaining); *Id.* at ¶255 (All workers regardless of the length of employment, enjoy the rights under C087); *Id.* at ¶267 (“Domestic workers are not excluded from...” C087); *Id.* at ¶241, 243 (Agricultural and plantation workers should enjoy the right to organise); *Id.* at ¶210, 215 (Laws prohibiting unionization based on nationality or alienage violate C087).

<sup>34</sup> Qatari Labour Law 14 (2004), §12, Art. 116, ¶1



exercise their rights.<sup>35</sup> Obviously, such a minimum prohibits any worker employed by a small or medium enterprise from joining a union.

### **Qatari Workers Cannot Form and Join an Organisation of their Choosing**

Workers in an establishment can form only a single “workers organization”; multiple organizations in an establishment are expressly forbidden.<sup>36</sup> The CFA has held that legislation requiring a single union or preventing the formation of additional unions, “fails to comply with Article 2.”<sup>37</sup> This of course has serious consequences for purposes of collective bargaining. Additionally, all worker organizations must affiliate to the “General Union of the Workers of Qatar”.<sup>38</sup> The ILO has stated that the “unification of the trade union movement imposed through state intervention by legislative means runs counter to the principle embodied in Articles 2 and 11 of Convention No. 87”.<sup>39</sup>

### **Absence of Protections for Union Activity**

The labour code is not only problematic in what it contains, but also in what it does not. Section 5 of the law deals extensively with the disciplinary power of employers, yet nothing in the subsequent articles mentions any form of protection for workers engaging in union activity. The ILO has encouraged “adopting clear and precise provisions”,<sup>40</sup> and has stated that without “efficient procedures to ensure their implementation”, such provisions would be “insufficient” in securing the rights of workers.<sup>41</sup> Qatar fails to have any specific provisions, let alone a procedure.

### **The Right to Strike is Effectively Non-Existent**

The right to strike is technically established in §12, Art. 120. However, the small segment of the workforce that could potentially strike (Qatari nationals), face restrictive conditions and a procedural framework make exercising that right nearly impossible.<sup>42</sup> For example, workers in “vital public utilities”, defined as “petroleum and gas related industries, electricity, water, seaports, airports, hospitals and transportation” are barred from striking.<sup>43</sup> Also troubling is the requirement of the approval by three-fourths of the General Committee of the trade or industry to authorize a strike<sup>44</sup> and the requirement of prior government approval as to time and place.<sup>45</sup>

The question as to which sectors of an economy should be considered essential services

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<sup>35</sup> 2006 *Digest* ¶283-287 (Finding that even 30 workers may be too high a threshold, as the analysis must “take into account” the number of small businesses operating in the country).

<sup>36</sup> Labour law §12, Art. 116, ¶1

<sup>37</sup> 2006 *Digest* at ¶315-317, see also ¶324

<sup>38</sup> Labour law §12, Art. 116, ¶3

<sup>39</sup> 2006 *Digest* ¶319

<sup>40</sup> *Id.* at ¶860

<sup>41</sup> *Id.* at ¶861

<sup>42</sup> U.S. Dept. of State, “Human Rights Report: Qatar (Apr 2011), available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154471.htm>

<sup>43</sup> Labour law §12, Art. 120, ¶4

<sup>44</sup> *Id.* at ¶1

<sup>45</sup> *Id.* at ¶2

has been addressed by the CFA numerous times. Through prior cases, general standards have emerged regarding certain sectors. Some of the areas listed in the Qatari labour code have indeed been recognized as essential services. However, many have been found not to be (such as the petroleum sector, ports and transportation).<sup>46</sup> Furthermore, even in sectors deemed to be essential, the ILO has recognized that such a prohibition should not apply indiscriminately across job categories (within a given sector of essential services, such as the hospital sector, “labourers and gardeners should not be deprived of the right to strike”).<sup>47</sup> On occasions where the ILO has recognized the right to strike being restricted or prohibited, it has stated that workers subjected to such restrictions should receive compensatory guarantees to safeguard their interests.<sup>48</sup> By recognizing the unique nature of their employment, essential service workers must have corresponding benefits (such as a guarantee of not being locked out). No such provisions exist under Qatari labour law.

Other provisions of Article 120 are also problematic. In referring to a strike vote being held at the level of trade or industry, it calls into question whether strikes at the enterprise level are even permissible (or permissible only following a vote of the industrial level union).<sup>49</sup> A complete bar on strikes by enterprise level unions obviously violates Convention 87. For strikes at the industrial level, a  $\frac{3}{4}$  majority of the General Committee is excessive, likely impeding most strike activity.<sup>50</sup>

The requirement of prior government approval with regard to the time and place of the strike clearly threatens the right to strike; the government appears empowered to determine when and where such strikes may be carried out. Requiring a strike be carried out far from the company struck, or during limited hours or limited duration makes the use of the strike limited if not useless.

Strikes are limited only to industrial disputes. The ILO CFA has determined that the right to strike should not be so limited but include the right of workers and their organizations should [to] be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members’ interests.<sup>51</sup>

Lastly, the law is unclear as to whether the award of arbitration (which is mandatory if the parties do not agree to binding conciliation) is binding on the parties and thus finally settling the dispute between an employer and their workers.<sup>52</sup> If so, then one can imagine no scenario in which a strike would be legal. If the arbitration award is not binding, it needs to be clarified.

### **No Collective Bargaining**

Article 127 of the Labour Code empowers the government to regulate the rules and procedures of collective negotiation, the method of representation of the parties, and the

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<sup>46</sup> 2006 Digest ¶ 587.

<sup>47</sup> *Id.* at ¶593

<sup>48</sup> *Id.* at ¶600; See also ¶596

<sup>49</sup> While ¶562 suggests that in some cases a strike vote may be held at a higher level, it appears to be for limited circumstances. In any case, the  $\frac{3}{4}$  majority requirement remains a problem.

<sup>50</sup> *Id.* at ¶556-62.

<sup>51</sup> *Id.* at ¶531.

<sup>52</sup> Labour Law §14, Art. 128-130

rules regulating the content, scope, duration and means of reaching a collective agreement. These questions are appropriately left to the parties. As such, there cannot be said to exist a legitimate collective bargaining process. As the US State Department explained, “Employees could not freely practice collective bargaining, and there were no workers under collective bargaining contracts.”<sup>53</sup>

#### **Illegal & Inappropriate Controls on Unions’ Freedom as a Political Actor**

Section 12, Art. 119, prohibits unions from engaging in a variety of activities, the most extreme of which seek to limit workers’ ability to engage in the political sphere. The law directly prohibits worker organisations from engaging in “the exercise of any political or religious activities.”<sup>54</sup> The law forbids “preparing, printing or distributing any materials insulting to the State” or the status quo. It is generally held that such provisions are contrary to the principles of freedom of association.<sup>55</sup> The defence and promotion of the interest of workers is inextricably tied to political freedom. Specifically in terms of economic and social policy, the right to criticize the government should be guaranteed.<sup>56</sup> The ILO has even gone so far as to highlight the protection of this right in terms of publications of a political character.<sup>57</sup> The Ministry is empowered to dissolve any organisation in violation of these provisions.

#### **IV. Recommendations**

##### 1. Immediately ratify as priorities:

- a. ILO Convention 87 (Freedom of Association)
- b. ILO Convention 98 (Collective Bargaining)
- c. ILO Convention 97 (Migrant Workers)
- d. ILO Convention 189 (Domestic Workers)
- e. The International Covenant on Civil and Political Rights,
- f. The International Covenant on Economic, Social and Cultural Rights
- g. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

##### 2. Amend the Labour Law consistent with the fundamental ILO Conventions, and in particular ensure that migrant workers are free to form or join trade unions of their own choosing and to bargain collectively.

##### 3. Significantly improve the enforcement of the Labour Law by: increasing the number of labour inspectors; ensuring that inspectors are adequately trained and employ a credible inspection methodology; ensuring that labour inspectors are able to speak the languages used by migrant workers (or are accompanied by translators); and ensuring that sufficiently dissuasive fines and sanctions are applied if violations are detected and

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<sup>53</sup> See, fn 15, supra.

<sup>54</sup> Labour Law §12, Art. 119

<sup>55</sup> 2006 *Digest* ¶500

<sup>56</sup> 2006 *Digest* ¶157

<sup>57</sup> *Id.* at ¶169-171 (Stating generally that the right to publish political material is essentially tied to political issues, including economic and social questions. The principle is not without limitation, as ¶170 appeals to unions to refrain from extravagance of language.)

that workers are made whole.

4. Reform the Sponsorship Law to, inter alia, eliminate the requirement to obtain the permission of their current employer before changing jobs or to leave the country.
5. Effectively enforce the Trafficking in Persons Law as well as the Sponsorship Law's prohibition on the withholding of passports.
6. Improve access to justice for migrant workers by improve access to the labour complaints system by providing relevant information in a range of languages, opening the Labour Relations Departments outside core working hours to allow workers easier access to the office; ensuring translation between workers and Labour Relations Department officials is available on request; reducing the time to resolve labour court cases; eliminating fees; providing funds to workers to allow them to pursue their case if they are no longer employed; and provide access to pro-bono lawyers.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A. B. J.', written in a cursive style.

General Secretary