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Special Section: The FIFA World Cup 2022 and the struggle for human rights in Qatar

Labor Rights and Dispute System Design: Assessing the Legal Legacy of the 2022 Qatar World Cup

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(Received 20 December 2023; accepted 20 December 2023)

Abstract

The aim of this paper is not to relitigate Qatar's human rights record but to assess the effectiveness of its labor reforms: the principal concern is dispute resolution and enforceability. While Qatar instituted a broad suite of labor law reforms in the years preceding the World Cup, questions remain about whether they have improved access to justice for migrant workers. More attention needs to be given to the dispute settlement system established by Law No. 13 of 2017 to assess if new legal norms translate into enforceable rights. It is argued that the labor dispute system has largely failed by not taking into account the circumstances that define the employer-employee relationship in Qatar, especially the stark imbalance in power. While reforms might endure at the level of formal law, the dispute system will fail to deliver genuine justice to workers unless it is refashioned.

Keywords: Labor rights; FIFA; Qatar; dispute resolution

The 2022 FIFA World Cup in Qatar was a defining moment in the maturation of the sports and human rights movement. The tournament transformed the relationship between mega sports events and human rights concerns. One notable aspect of the recent World Cup was the effort to leverage the power and platform of sport to promote domestic legal change in Qatar. A range of actors, including sports entities, commercial parties, media outlets, and international organizations, critiqued Qatar's human rights record and advocated for legal reform. The labor reforms undertaken were not required by the host agreement or any other contractual obligation but were nevertheless indissociable from hosting the event. The reforms were independent of the World Cup, but they would not have happened but for it.

A. Labor Law in Qatar and the Path of Reform

The criticisms of Qatar's labor laws are well known.¹ The critique focuses on the “kafala” or sponsorship system, recruitment fees, unpaid wages, excessive hours, and poor working

¹Mohammed Al Thani, Channelling Soft Power: The Qatar 2022 World Cup, Migrant Workers, and International Image, *The International Journal of the History of Sport* 38 (2021) 1,729–52; Zahra Babar and Neha Vora, “The 2022 World Cup and Migrants' Rights in Qatar: Racialised Labour Hierarchies and the Influence of Racial Capitalism,” *The Political Quarterly* 93 (2022) 98–507; Michael Ewers et al., “Beyond Vulnerability: Contextualizing Migrant Worker Views on Rights and Wellbeing in the Gulf Arab States,” *Comparative Migration Studies* 11 (2023); Sarath K. Ganji, “Leveraging the World Cup: Mega

conditions.² Early attention to these problems prompted Qatar to respond. Soon after that, Qatar was awarded the World Cup in 2010, and policies were adopted by the Supreme Committee on Delivery and Legacy, the entity responsible for creating infrastructure and operations to improve workers' rights. These included the development of a Workers' Charter in 2013 and the Workers' Welfare Standards in 2014.³ The Workers' Welfare Standards imposed health, well-being, and safety requirements on all contracting parties providing goods and services to the World Cup.⁴ The requirements imposed by the Supreme Committee were influential but limited in scope and duration, as they applied only to parties directly engaged with the Supreme Committee. Hassan al-Thawadi, Secretary General of the Supreme Committee, proposed that reforms initiated because of the World Cup would have a ripple effect in Qatar and throughout the region.⁵ Yet these initiatives represent only an indirect and modest legacy. The real legacy of Qatar's World Cup, or at least its potential legacy, lies with the structural reform of its labor laws.

Changes to Qatar's labor laws were extensive and accomplished through legislative initiatives and ministerial decrees.⁶ The work of the International Labour Organization (ILO) significantly aided the process.⁷ In October 2017, after coming under fire from rights groups, Qatar concluded a technical cooperation accord with the ILO in which it agreed to set a minimum wage and abolish the kafala system. An agreement between Qatar and the ILO was formalized in 2017, through which the ILO agreed to assist the country with labor reforms.⁸ In April 2018, the ILO inaugurated a project office in Qatar.⁹

Sporting Events, Human Rights Risk, and Worker Welfare Reform in Qatar," *Journal on Migration and Human Security* 4 (2016) 221–59; P. Millward, "World Cup 2022 and Qatar's Construction Projects: Relational Power in Networks and Relational Responsibilities to Migrant Workers," *Current Sociology* 65 (2016) 756–76; Beryl Ph. Ter Haar, "The FIFA 2022 World Cup and Labour Rights – Seizing the Moment for Labour Law Reforms in Qatar," *Kutafin University Law Review* 4 (2017) 139–64; Mustafa Qadri, "Qatar Labor Reforms Ahead of the FIFA 2022 World Cup," *Business and Human Rights Journal* 7 (2022) 319–25; Raquel Regueiro, "Shared Responsibility and Human Rights Abuse: The 2022 World Cup in Qatar," *Tilburg Law Review* 25 (2020) 27–39.

²Amnesty International, "Reality Check: Migrant Workers Rights with Two Years to Qatar 2022 World Cup", <https://www.amnesty.org/en/latest/campaigns/2019/02/reality-check-migrant-workers-rights-with-two-years-to-qatar-2022-world-cup/>; Ray Jureidini, (Bloomsbury Qatar Foundation Journal, 2014), https://www.migrant-rights.org/wp-content/uploads/2018/01/Migrant_Labour_Recruitment_to_Qatar_Web_Final.pdf.

³See Supreme Committee for Delivery and Legacy, Workers Welfare Standards, Version 1 at https://www.workerswelfare.qa/sites/default/files/documents/SC-Workers_Welfare_Standards_Edition1.pdf.

⁴See Workers' Welfare Standards at <https://www.workerswelfare.qa/en/our-legacy/our-standards>. For a discussion of the Standards and their application, see Kamilla Swart, Ray Jureidini, and Simon Jones, "Migrant Workers Sports Tournaments – Al Khor," Josoor Institute Research Papers, <https://knowledgehub.josoorinstitute.qa/wp-content/uploads/2021/06/MIGRANT-WORKERS-SPORT-TOURNAMENTS---AL-KHOR.pdf>.

⁵Patrick Wintour, "Qatar World Cup chief insists progress being made on migrant rights," *The Guardian* (17 December 2019), <https://www.theguardian.com/world/2019/dec/17/qatar-says-world-cup-labour-reforms-will-ripple-across-region#:~:text=The%20Qatari%20official%20in%20charge,will%20improve%20regional%20labour%20standards>.

⁶For a summary of these legal changes, see Noha Aboueldahab, "Social Protection, Not Just Legal Protection: Migrant Laborers in the Gulf," Brookings Doha Center Policy Note (August 2021), <https://www.brookings.edu/wp-content/uploads/2021/08/Migrant-laborers-in-the-gulf-English.pdf>. For a further summary of legislative changes, see "Qatar Labour Reforms Ahead of the FIFA 2022 World Cup," *Business and Human Rights Journal* 7 (June 2022) 319–25.

⁷Nicola Piper, "The International Labour Organisation as a nodal player on the pitch of networked governance: Shifting the goalposts for migrant workers in Qatar," *Global Social Policy* 22 (2022) 323–40; Abdulhadi Rashid Alkhayareen, "Evaluation of the International Labor Organization project in Qatar," *QScience Connect* 1 (2023).

⁸Technical Cooperation Programme between Qatar and the ILO (29 January 2018–29 January 2021), https://www.ilo.org/beirut/projects/WCMS_620621/lang-en/index.htm. The Technical Cooperation Agreement was extended in November 2022.

⁹The key instigating event in prompting a legal change in Qatar was inviting the International Labour Organization into the country to support domestic reform initiatives. In 2013, the International Trade Union Confederation (ITUC) and the International Federation of Building and Wood Workers (BWW) lodged a complaint with the ILO, alleging that Qatar was not in compliance with its obligations under the Forced Labour Convention. An ILO committee found substantial credibility to the charges and issued a report. After that, in June 2014, a formal complaint was lodged against Qatar under Article 26 of the ILO Convention. This pressure prompted Qatar to begin engaging in certain reforms of its labor laws with the cooperation of the ILO to address issues raised in the complaints, <https://www.ilo.org/infostories/en-GB/Stories/Country-Focus/world-cup-qatar#intro/timeline>.

Between 2015 and 2020, Qatar amended existing laws and issued new ones, significantly transforming the country's labor and employment regime. The first changes came with the issuance of Law No. 21 of 2015, which came into effect in December 2016. The law provides, among other things, greater freedom to change jobs (Section 21), protections against passport confiscation (Section 8), and the right to depart the country without an employer's permission (Section 34). These changes dismantled many features of the kafala sponsorship system, primarily by eliminating the need to seek an employer's consent to change jobs at the end of a contract. Employees were no longer under the exclusive control of an employer.¹⁰ Law No. 10 of 2020 further amended Law No. 21 of 2015 by eliminating the need for a No Objection Certificate to change jobs. More than 348,500 applications to change jobs were subsequently approved by the Ministry of Labor between November 2020 and August 2022.¹¹

In addition to reforming structural features of the employer-employee relationship, Qatar enacted several laws that provided greater protections for workers. Laws No. 17 of 2020 and No. 18 of 2020 established a non-discriminatory minimum wage, an allowance for food and accommodation, a limit to the number of non-compete clauses, a right to terminate employment contracts, and set guarantees for the condition of the living accommodation provided by the employer. Law No. 13 of 2018 eliminated the exit permit policy, which, hitherto, provided that employees could only depart the country with their employer's permission. Law No. 15 of 2017 provided new legal protections for domestic workers, while the Council of Ministers Decision No. 6 of 2018 provided for the formation of worker committees and representative joint committees that would give a collective voice to workers (unions remain prohibited). Law No. 1 of 2015 established a wage support system by requiring salaries to be paid monthly or fortnightly to a bank account in Qatar. Finally, Law No 17 of 2018 established the Workers' Support and Insurance Fund by levying a fee for granting work permits and their renewal. The Fund is designed to compensate workers for unpaid wages as determined by the Labor Disputes Settlement Committee. Qatar also ratified two international human rights conventions: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.¹²

As significant as these reforms have been, migrant workers continue to face difficulties with enforcement. Problems in finding legal redress for unpaid wages, unsafe working conditions, denial of rest days, and other abuses have been noted.¹³ Amnesty International, for instance, has expressed concern about "weak implementation and enforcement" of new labor laws.¹⁴ Commenting on the same, Noha Aboueldahab remarks, "[T]he lack of enforcement is pervasive and impunity remains endemic."¹⁵ There is a gap between reform and reality; many of the new rights exist only on paper.¹⁶ This reflects problems with the dispute resolution system accompanying Qatar's labor reforms, to which the Article now turns.

¹⁰Section 21 of Law No. 21 of 2015 provides that: "Upon the approval of the competent authority, and the Ministry of Labor and Social Affairs, an expatriate worker may transfer to another employer immediately after the end of the labor contract of a limited duration, or after the lapse of five years of work with the employer if the contract is of unspecified duration."

¹¹International Labour Organization, "Overview of Qatar's labour reforms", https://www.ilo.org/beirut/countries/qatar/WCMS_760466/lang-en/index.htm.

¹²Andrew Spalding, *A New Megasport Legacy: Host-Country Human Rights and Anti-Corruption Reforms* (Oxford University Press, 2022) 169.

¹³Spalding, *supra* note 12, 168; Faras Ghani, "Labour law changes: Are Qatar's migrant workers better off?" *Al Jazeera* (15 March 2021); "Has the World Cup really improved workers' rights in Qatar? Five experts give their verdict," *The Guardian* (23 October 2022); Zahra Khan, "Still Struggling: Migrant Construction Workers in Qatar During the Pandemic," *NYU Stern Center for Business and Human Rights* (March 2022).

¹⁴Amnesty International, "Reality Check: Migrant Workers Rights with Two Years to Qatar 2022 World Cup."

¹⁵Aboueldahab, "Social Protection, Not Just Legal Protection: Migrant Laborers in the Gulf," *Brookings Doha Center*.

¹⁶Amnesty International, "Reality Check: Migrant Workers Rights with Two Years to Qatar 2022 World Cup", <https://www.amnesty.org/en/latest/campaigns/2019/02/reality-check-migrant-workers-rights-with-two-years-to-qatar-2022-world-cup/>.

B. The Structure of Qatar's Labor Dispute System

While problems with enforcement have been widely noted, there has been little analysis of the structure and operation of Qatar's labor enforcement mechanisms.¹⁷ These challenges do not arise from the lack of a dispute system; new dispute resolution procedures and institutions were an important part of Qatar's labor reforms. The challenges arise from the structure of this system and its suitability for the needs of the target community.

The main features of Qatar's dispute system are set forth in Law No. 13 of 2017 and the Council of Ministers' Decision No. 6 of 2018.¹⁸ These laws established a bipartite dispute resolution process for labor disputes. First, in the event that a dispute related to labor law arises between a worker and an employer, the dispute shall be referred to the Labor Relations Department of the Ministry of Labor in order "to settle the dispute amicably."¹⁹ Although the particulars of this "amicable" dispute resolution process are not detailed in Law No. 13 or subsequent regulations, it refers to engaging in mandatory mediation. Under this process, the employer and employee engage in mediation facilitated by a neutral person from the Ministry of Labor to seek a negotiated solution to the dispute. If an agreement between the parties is reached, the complaint shall be considered settled, and the resulting agreement shall have "executory force" and be legally binding on the parties.

If the dispute is not settled through mediation within the defined period, it can proceed to a more formal legal process. For this purpose, Qatar established three Labor Dispute Settlement Committees (LDSCs) with jurisdiction to resolve all individual disputes arising from labor law and labor contracts.²⁰

The LDSCs, which began operation in 2018, have jurisdiction to hear disputes related to issues such as recruitment, terms and conditions of employment, working hours, job duties, wage discrepancies, unpaid wages, and overtime pay. The Council of Ministers Decision No. 6 of 2018 provides for the establishment of the LDSCs, which are to meet in public thrice weekly. It also establishes procedural rules, such as the authority of an LDSC to hear or request evidence, consolidate cases of a similar subject matter, and dismiss cases when a party is not present. Each LDSC is chaired by a judge appointed by the Supreme Judicial Council and members of the Ministry of Administrative Development, Labor and Social Affairs. To facilitate accessibility, LDSCs have been set up at several locations in Qatar, including in the industrial area where the vast majority of migrant workers reside.²¹

Although the Ministry of Labor has begun to publish monthly reports, data on the operation of the labor dispute system is difficult to come by. Nevertheless, based on reported numbers, there is

¹⁷For a brief discussion of certain aspects of dispute settlement options, see "How Can We Work Without Wages? Salary Abuses Facing Migrant Workers Ahead of Qatar's FIFA World Cup 2022," *Human Rights Watch* (2020), 65–70, <https://respect.international/wp-content/uploads/2021/01/How-can-we-work-without-wages.pdf>. See also, International Labour Organization, "Assessment of the Wage Protection System in Qatar" (2020), https://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/publication/wcms_726174.pdf.

¹⁸Council of Ministers' Decision No. 6 (2018) announced rules and procedures for the Labor Dispute Settlement Committees, <https://ilo.org/dyn/natlex/docs/MONOGRAPH/106430/130566/F1146461217/Decision%20No%206%20of%202018.pdf>. The Rules established in Cabinet Decision No. 6 of 2018 were amended by Cabinet Decision 17 of 2022, <https://hukoomi.gov.qa/en/news/5-committees-for-settling-labour-disputes-at-the-ministry-of-labour>.

¹⁹Law No. 13 of 2017, Article 3. "The competent department shall take the necessary measures to settle the dispute amicably within a maximum period of seven days as of the day on which it was referred. The outcome of the settlement shall be referred to both parties within seven consecutive days. If both parties accept it, this agreement shall be drafted in a report signed by both and certified by the competent department. It shall have executory force."

²⁰Law No. 13 of 2017, Article 3: "If the dispute is not settled within the period mentioned in the previous paragraph, or if either party to the dispute refuses the settlement of the competent department, or that the period has expired, without either party having expressed its view on acceptance or rejection, the competent department shall be required to refer the dispute within three consecutive days to the workers' dispute settlement committee. A memorandum that includes a summary of the dispute, the arguments of both parties, pertinent documents, and the observations of the competent department shall be attached to this referral. The secretariat of the workers' dispute settlement committee shall fix a session for the examination of the dispute within a maximum of seven days as of the date of referral. Both the worker and the employer shall be notified of the date of the session at least three days before its convening."

²¹"Headquarters of Dispute Settlement Committees Opened in Industrial Area," *Qatar Peninsula* (27 October 2022).

reason to believe the new system is having some positive effects. For instance, it is reported that 67% of complaints filed at the Ministry of Labor between October 2021 and October 2022 were settled before or during the mediation stage. The remaining disputes, if not dismissed, were referred to an LDSC. In 84% of these cases, the labor courts ruled in favor of workers.²² The most recently available data for August 2023 indicates that 2,720 labor complaints were filed, of which 863 were settled and 23 were referred to the labor courts.²³

The Ministry of Labor's online platform for submission of worker complaints received 34,425 filings between October 2021 and October 2022. This would seem to indicate that the system is addressing previously unmet needs among migrant workers.²⁴ Moreover, based on this limited statistical information, the dispute system is settling a high rate of cases through mediation while providing an adjudicative process for claims that are not settled. However, these numbers fail to tell the whole story. While the dispute settlement system instituted by Law No. 13 of 2017 has brought about some improvements, it continues to suffer from foundational defects that limit its ability to enforce workers' legal and contractual rights. These problems are both operational and structural in origin.

Many of the challenges that Qatar is confronting are mirrored elsewhere. An extensive body of scholarship details the "barriers migrant workers face in accessing justice," including difficulties in making legal claims and enforcing legal remedies.²⁵ Access to justice for migrant workers is a global problem that can be just as prevalent in liberal democracies as in Gulf monarchies. For instance, Bethany Hastie analyzed "the gap between rights on paper and in practice for migrant workers" in Canada.²⁶ Catherine Barnard and Sarah Fraser Butlin have analyzed the "enforcement gap" confronting migrant workers in the EU, for whom "access to justice remains a rather thin, formalist concept."²⁷ Other studies have documented the issue in Australia.²⁸

The root causes are similar: lack of knowledge about rights and remedies, lack of legal and financial assistance, language barriers, power dynamics in the workplace that discourage workers from initiating claims, the belief that success before courts and tribunals is unlikely, insecurity arising from fear of job loss and visa sponsorship, and employment in the informal sector. Qatar is not unique in these respects, although the depth, expanse, and visibility of the problems are endemic to its labor system in a way not found in other countries. This makes the challenge even greater in some ways, particularly given the entrenched interests at stake. But the reality is unavoidable: migrant workers are not hidden from view as in other contexts; they have been the public face of Qatar's labor reform initiatives for a decade.

²²International Labour Organization, "Overview of Qatar's Labour Reforms", https://www.ilo.org/beirut/countries/qatar/WCMS_760466/lang-en/index.htm.

²³"Ministry of Labour Issues August Statistical Bulletin", <https://www.mol.gov.qa/En/MediaCenter/Pages/NewsDetails.aspx?itemid=299>. Similar data was reported for July 2023, "Ministry of labour receives around 7,294 applications for new recruitment in July," *Qatar Peninsula* (7 August 2023), <https://thepeninsulaqatar.com/article/07/08/2023/ministry-of-labour-receives-around-7294-applications-for-new-recruitment-in-july>.

²⁴International Labour Organization, "Overview of Qatar's Labour Reforms", https://www.ilo.org/beirut/countries/qatar/WCMS_760466/lang-en/index.htm.

²⁵Bethany Hastie, "The Inaccessibility of Justice for Migrant Workers: A Capabilities-Based Perspective," *Windsor Yearbook of Access to Justice* 34 (2017): 21. On Canada, see Judge Fudge, "Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers," *Comparative Labor Law and Policy Journal* 34 (Fall 2021) 95–132.

²⁶Ibid.

²⁷Catherin Barnard and Sarah Fraser Butlin, "The Rule of Law and Access to the Courts for EU Migrants," *Journal of Common Market Studies* 58 (2020) 1,622.

²⁸Laurie Berg and Bassina Farbenblum, "Remedies for Migrant Worker Exploitation in Australia: Lessons from the 7-Eleven Wage Repayment Program," *Melbourne University Law Review* 41 (2018) 1035–84; Anna Boucher, "Measuring Migrant Worker Rights Violations in Practice: The Example of Temporary Skilled Visas in Australia," *Journal of Industrial Relations* 61 (2019) 277–301; Iain Campbell et al., "Precarious Work and the Reluctance to Complain: Italian Temporary Migrant Workers in Australia," *Labour and Industry* 29 (2019) 98–117; Bassina Farbenblum and Laurie Berg, "Migrant Workers' Access to Remedy for Exploitation in Australia: The Role of the National Fair Work Ombudsman," *Australian Journal of Human Rights* 23 (2017) 310–31.

C. The Effectiveness of Qatar's Labor Dispute System

The effectiveness of a dispute resolution system can be measured along several axes. Effectiveness concerns a system's ability to enforce legal and contractual rights. Obstacles might come from corruption, insufficient investigatory resources, or poorly drafted or interpreted laws. They can also arise from problems with the accessibility, affordability, and efficiency of dispute mechanisms. Effectiveness also concerns the system's effect on the overall dispute resolution environment, the ability of a dispute system to prompt deeper changes in established workplace practices, or the legitimacy of the system among stakeholders.²⁹

Some aspects of Qatar's dispute system aim to be flexible and forward-looking. Most importantly, the system adopts processes that go beyond reliance on litigation in civil courts. Qatar's dispute system adopts practices other systems have successfully employed by utilizing a two-step dispute process that begins with mandatory mediation and then moves to specialized labor tribunals. Yet, innovation in design has not meant effectiveness in operation.

Data provided by the Ministry of Labor indicates that the use of mediation has increased the resolution of labor disputes. However, closer examination reveals a number of problems. For one, despite the high reported settlement rate, there is little understanding of the mediation process. There are no published guidelines or procedures. Workers are likely unfamiliar with formal mediation and might not understand their rights when entering the process. No code of ethics addresses confidentiality, conflicts of interest, and neutrality, which are established principles for mediation. This is particularly concerning in light of questions about whether labor mediators are acting as third-party neutrals facilitating a consensual resolution or more like judges who assume a role in shaping outcomes.³⁰ Under such conditions, a high settlement rate does not mean the system produces consensual outcomes that are just.

These issues are all the more significant given the manifest imbalance of power that defines mediation between employers and migrant workers. The imbalance of power often native to labor and employment mediations is magnified in Qatar by the circumstances confronting workers. Easily overlooked considerations, such as transportation costs to the mediation or the ability to obtain leave from work, present immense difficulties. Workers might not have the time or resources to engage in an extended or multi-stage dispute resolution process; problems with timeliness and enforcement are also rife. The mediation is supposed to take place within seven days of the filing of a complaint, though the wait is often much longer. This is no mere bureaucratic inconvenience; it can leave workers who are owed back wages unable to remain in Qatar long enough to see the process through to its conclusion. Moreover, getting the employer to pay is difficult, even if a settlement is reached. A settlement agreement arising from mediation at the Ministry of Labor is defined as having executory force, yet no mechanism exists to compel an employer to fulfill their legal obligations short of pursuing an action for breach of contract. Navigating the labyrinthine domestic court system is beyond the reach, resources, and capacity of many laborers, who, typically, are in no position to hire local counsel and bring an enforcement action. As such, employers can wait out employees with little consequence if they choose to do so.

Mediation has been widely adopted in dealing with labor and employment disputes across a range of contexts.³¹ Its appeal is obvious. Mediation is fast, low-cost, easy to use, and effective at

²⁹Tom R. Tyler, "The Quality of Dispute Resolution Procedures and Outcomes: Measurement Problems and Possibilities," *Denver University Law Review* 66 (1989) 419–36; Stephanie Smith and Janet Martinez, "An Analytic Framework for Dispute Systems Design," *Harvard Negotiation Law Review* 14 (2009) 123–69.

³⁰The ILO and the International Training Centre have organized capacity-building workshops in dispute resolution. "Progress Report on the Technical Cooperation Programme Between the Government of Qatar and the ILO," (November 2022), https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/publication/wcms_859839.pdf.

³¹For instance, the voluntary mediation program utilized by the United States Equal Opportunity Employment Commission (EEOC) has been highly successful in satisfactorily resolving disputes. "EEOC's Pivot to Virtual Mediation Highly Successful, New Studies Find," Press Release (1 June 2022), <https://www.eeoc.gov/newsroom/eeocs-pivot-virtual->

producing settlements.³² At the same time, there are critiques of using mediation in labor disputes. These include concerns about the mediator engaging in arm-twisting to generate a settlement and the unequal negotiating power between the employee and the employer.³³ There are also concerns that mediation interferes with employees pursuing rights through adjudication, who may receive less compensation from mediation than litigation. Along these lines, it has been argued that the use of mediation in Turkey has disenfranchised workers and that its use in China marks a retreat from the rule of law.³⁴

These are important considerations, but there is also substantial evidence that mediation of employment disputes can generate high settlement rates, leaving both parties satisfied with the process and the outcome.³⁵ A study of mandatory employment mediation within the United States Postal Service, a large unionized employer, found that the system “furthers goals of justice at the workplace while preserving worker access to traditional remedies and producing substantial benefits in efficiency of dispute processing for employer and employee alike.”³⁶ A review of Canada’s Federal Mediation and Conciliation Service found that it “plays a significant role in helping employer and union organizations resolve collective bargaining disputes.”³⁷ Of course, the potential utility of mediation depends to a large extent on its design, its context, and its place within a larger dispute resolution framework.³⁸ It is difficult to generalize about its benefits and limitations without considering a range of other factors. Do workers feel they are being treated fairly and maintaining a sense of self-determination? Is mediation mandatory or voluntary? Does a court supervise mediation? Is it part of a collective bargaining agreement or government program? What remedies exist when mediation fails to produce an agreement? Does the worker have legal representation (and does the employer)? These are among the many issues that shape the role and success of mediation, which might make it more or less suitable.

Qatar’s use of labor mediation is potentially transformative and accords with its recent turn to mediation, issuing its first mediation law in 2021.³⁹ Mediation may be well-suited to the needs of

mediation-highly-successful-new-studies-find. See generally, Lisa B. Bingham, “Employment Dispute Resolution: The Case for Mediation,” *Conflict Resolution Quarterly* 22 (2004) 145–74.

³²United States Equal Opportunity Commission (EEOC), “Ten Reasons to Mediate”, <https://www.eeoc.gov/10-reasons-mediate#:~:text=Mediation%20provides%20a%20neutral%20and,real%20issues%20in%20your%20workplace>. See also, Jacqueline Nolan-Haley, “Mediation: The ‘New Arbitration,’” *Harvard Negotiation Law Review* 17 (Spring 2012) 61–95.

³³Anthony Bennett, “The Role of Workplace Mediation: A Critical Assessment,” *Personnel Review* 43 (2014) 764–79; Linda Dickens, “Legal Regulation, Institutions and Industrial Relations,” *Warwick Industrial Relations*, No. 89 (2008); Loreleigh Keashly, Honey Minkowitz, and Brenda Nowell, “Conflict, Conflict Resolution and Workplace Bullying,” in Stale Valvatne Einarsen et al., eds., *Bullying in the Workplace: Theory, Research and Practice* (CRC Press, 2020) 1–22.

³⁴Doga Erlep, “The Case of Turkish Labor Mediation: Disenfranchising the Workers,” Elliott School of International Affairs, The George Washington University, POMEPS Blog (January 2022), [³⁵Peter Urwin, et al., “Evaluating the Use of Judicial Mediation in Employment Tribunals,” United Kingdom Ministry of Justice Research Series 7/10 \(March 2010\), <https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/evaluating-judicial-mediation-march10.pdf>; Kristina Potocnik, Sara Chaudhry, and Martel Bernal-Valencia, “Mediation and Conciliation in Collective Labor Conflicts in the United Kingdom,” in Martin C. Euwema et al., eds., *Mediation in Collective Labor Conflicts* \(Springer, 2019\) 209–25.](https://pomeps.org/the-case-of-turkish-labor-mediation-disenfranchising-the-workers#:~:text=This%20law%20builds%20on%20the,the%20management%27s%20lawyers%20and%20give;Knut B. Pissler, “Mediation in China: Threat to the Rule of Law,” in Hopt and Steffek, eds., <i>Mediation: Principles and Regulation in Comparative Perspective</i> (Oxford University Press, 2012) 959–1010.</p>
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³⁶Lisa Blomgren Amsler (formerly Bingham), Alexander Avtgis, and Michael Scott Jackman, “Dispute System Design in Employment Dispute Resolution: Mediation at the Workplace,” *Harvard Negotiation Law Review* 14:1 (2009): 1–2; See also, Lisa B. Bingham (formerly Amsler) and Tina Nabatchi, Transformative mediation in the USPS REDRESS Program: Observations of ADR Specialists,” *Hofstra Labor and Employment Law Journal* 18 (2001) 399–427.

³⁷Government of Canada, “Evaluation of the Federal Mediation and Conciliation Service – Phase II”, <https://www.canada.ca/en/employment-social-development/corporate/reports/evaluations/federal-mediation-conciliation-service-phase-2.html>

³⁸See Lisa Blomgren Bingham et al., “Mediation in Employment and Creeping Legalism: Implications for Dispute System Design,” *Journal of Dispute Resolution* 1 (2010) 129–50.

³⁹Zachary R. Calo, “Commercial Mediation in the Gulf Cooperation Council: The Development of ADR in the Middle East,” *Giustizia consuale* 1 (2023) 317–35.

migrant workers in that it offers an informal, low-cost, and expeditious process that does not require legal representation. It could go a long way toward providing an accessible means for workers to resolve disputes. However, the system does not currently ensure that workers experience a fair and neutral process that produces consensual outcomes. Some of these problems can be remedied through better operation of the system, but, more importantly, there are deep structural problems concerning imbalances of power and the way mediation is conducted. If mediation is to be employed ethically and appropriately as part of Qatar's dispute system, these foundational issues need to be addressed. Mediation cannot be used as a means to dispose of complaints while leaving workers with less than what is due to them.

Many of the points raised about mediation could equally be said about the LDSCs, where workers must pursue a remedy in the event that mediation fails. Human Rights Watch and Amnesty International interviewed workers in Qatar and found a host of problems with the LDSC system.⁴⁰ The same timeliness issues that afflict the mediation process arise at the labor courts. Although LDSCs are required to hold a hearing within three to seven days of the matter being transferred, workers typically wait months.⁴¹ There are also problems with enforcing judgments. Many workers receive judgments in their favor that they can never collect. It is not uncommon for employers to avoid payment obligations by shutting down a company and opening up their business under a new name. There is also the problem of retributive actions, including filing absconding claims. There are no protections in Qatar's law for retaliation; workers even fear filing complaints. Other observed problems include understaffing, travel costs, lack of pro bono legal assistance, and the failure of employers to participate in the process. In the end, some workers have opted not to pursue redress through the dispute system because they fear they do not have sufficient documentation to make a case, losing salary and benefits, or even being deported. Others abandoned their claims and left the country.

A range of operational improvements could make LDSCs more effective. These include increasing the number of committees to resolve cases more quickly; providing expedited compensation through the Workers' Support and Insurance Fund when a company does not pay a judgment; establishing a pro bono legal aid system; providing relief funds and transport costs to help workers who do not receive salaries during the dispute process; and penalizing companies that fail to participate in proceedings or respect judgments.⁴² Incremental improvements such as these typically receive the most attention among commentators.⁴³ The larger question is whether specialized labor tribunals of this sort, which have been utilized effectively worldwide for decades, are suited to the particular dynamics facing workers in Qatar.⁴⁴

Extensive literature examines different labor dispute mechanisms, especially their relative advantages of arbitration and litigation. It is difficult to draw general conclusions about the benefits of these different options, given variations among legal systems and the social and economic circumstances that bear on their functionality. Nevertheless, it is possible to derive some insights to inform the evaluation of Qatar's dispute system.

⁴⁰Amnesty International, "All work, no pay: The struggle of Qatar's migrant workers for justice," (19 September 2019), <https://www.amnesty.org/en/documents/mde22/0793/2019/en/>; Human Rights Watch, "How Can We Work Without Wages? Salary Abuses Facing Migrant Workers Ahead of Qatar's FIFA World Cup 2022" (2020), <https://respect.international/wp-content/uploads/2021/01/How-can-we-work-without-wages.pdf>.

⁴¹International Labour Organization, "Overview of Qatar's labour reforms", https://www.ilo.org/beirut/countries/qatar/WCMS_760466/lang-en/index.htm.

⁴²Amnesty International, "All work, no pay," 7.

⁴³See generally, International Labour Organization, "Fair Recruitment and Access to Justice for Migrant Workers," Discussion Paper (2022), https://www.ilo.org/global/publications/working-papers/WCMS_850615/lang-en/index.htm.

⁴⁴See, for example, B.W. Napier, "The French Labour Courts: An Institution in Transition," *The Modern Law Review* 42 (1979) 270–84; Erhard Blankenburg and Ralf Rogowski, "German Labour Courts and the British Industrial Tribunal System: A Socio-Legal Comparison of Degrees of Judicialisation," *Journal of Law and Society* 13 (1986) 67–92; Eusebi Colàs-Neila and Estela Yélamos-Bayarri, "Access to Justice: A Literature Review on Labour Courts in Europe and Latin America", <https://www.ilo.org/static/english/intserv/working-papers/wp006/index.html>. Such tribunals have a long history extending to the early twentieth century.

Arbitration of labor disputes can be more efficient, accessible, and less expensive than litigation, but these benefits might come at the expense of worker's rights. Referring to labor arbitration in the United States, one study observes, "[C]ritics see an employee unfriendly forum characterized by inadequate due process and inferior employee remedies."⁴⁵ Studies have also found that workers might win less frequently, receive lower payouts from arbitral tribunals than traditional courts, and have more difficulty obtaining legal representation.⁴⁶ Moreover, when employers mandatorily impose arbitration, it changes the bargaining power between workers and employers by disrupting "existing mechanisms for enforcement of individual employment rights."⁴⁷ There is no indication that arbitral mechanisms were considered for use in Qatar's labor dispute system, but it would not have been the optimal option to build a system around. Although less structured than traditional litigation and bringing certain efficiencies, arbitration is still a formal process that challenges workers.

There is another reason to favor court-based adjudication that might be particularly apt in Qatar. Unlike arbitration, courts can enforce labor rights as a matter of public justice. Courts can, in the words of Guy Davidov and Edo Eshett, "send a message" in a way that arbitral tribunals cannot.⁴⁸ Such messaging would improve compliance by giving expression, both in substance and symbol, to the normative force of law. Whether courts can have this effect depends on a range of factors, including whether the law is predictably and consistently applied, opinions are published, and the judicial system follows precedent.⁴⁹ Even if courts in Qatar are ill-situated to serve such a role at this time, it is important to preserve the connection between labor rights and shared public goods. Justice encompasses not only backward-looking remedies for past harm but forward-looking deterrence.

The use of litigation in labor disputes is subject to many challenges. A recent ILO report cites, among others, cost concerns, case delays, a lack of independence and impartiality, complicated and formalistic procedures, limited access, and ineffective remedies.⁵⁰ All of these problems are endemic to Qatar's domestic courts, which conduct proceedings in Arabic, do not provide consistent translation services, do not publish many decisions, have opaque and difficult-to-navigate procedures, and have generated concerns about judicial independence and impartiality, given that most judges are foreigners who lack job and residency security.⁵¹ By establishing specialized labor tribunals, Qatar has preserved access to a public adjudicative remedy while potentially bypassing some of the problems that plague the country's ordinary domestic courts. Viewed from this perspective, the LDSC system is an initiative worth preserving and reforming

⁴⁵Mark Gough, "A Tale of Two Forums: Employment Discrimination Outcomes in Arbitration and Litigation," *ILR Review* 7 (2021) 865.

⁴⁶Alexander Colvin, "An Empirical Study of Employment Arbitration: Case Outcomes and Processes," *Journal of Empirical Legal Studies*, 8 (2011) 1–23; Alexander J.S. Colvin, "Mandatory Arbitration and Inequality of Justice in Employment," *Berkeley Journal of Employment and Labor Law* 35 (2014) 71–90; Other studies have found less differential in outcomes between arbitration and litigation. See Lewis L. Maltby, "Employment Arbitration and Workplace Justice," *University of San Francisco Law Review* 38 (2003) 105–118.

⁴⁷*Ibid.*

⁴⁸Guy Davidov and Edo Eshett, "Improving Compliance with Labor Laws: The Role of Courts," *Comparative Labor Law and Policy Journal* 43 (2022) 82.

⁴⁹In a study of France, Sylvaine Laulom argues that courts in a non-precedential civil law system can also improve compliance with labor laws. "Improving Compliance with Labor Laws: The Role of the French Courts," *Comparative Labor Law and Policy Journal* 43 (2022) 129–43.

⁵⁰Minawa Ebisui et al., "Resolving Individual Labour Disputes: A Comparative Overview," *International Labour Organization* (2016) 1–32.

⁵¹A United Nations Special Rapporteur identified several of these issues. See "Preliminary observations on the official visit to the State of Qatar by the Special Rapporteur on the independence of judges and lawyers (19–26 January 2014)," <https://www.ohchr.org/en/statements/2014/01/preliminary-observations-official-visit-state-qatar-special-rapporteur?LangID=E&NewsID=14202>.

rather than jettisoning.⁵² Significant changes are needed, but the same might be said of all facets of Qatar's dispute resolution system.

D. Dispute System Design and the Path Forward

Qatar's dispute settlement system has the potential to be effective. Although workers struggle with enforcement, the bipartite system encompassing mediation and labor courts provides the foundations for an effective dispute settlement regime. Nothing about the circumstances in Qatar renders mediation and labor courts inapt. Indeed, there are reasons to believe these mechanisms are well-suited to the country's workers' circumstances. The challenge facing Qatar is not to recreate the dispute system established in 2017 but to reform and refashion it.

The deficits in Qatar's dispute system reflect its lack of attention to the unique power imbalances that define the employer-employee relationship. The vulnerable status of migrant workers is hardly unique to Qatar. Studies of diverse legal systems have documented the challenges of enforcing labor rights among this population. The difference is that migrant workers are not a discrete and insular minority in Qatar; they are the preponderant labor force, and the dispute system was explicitly designed to further their legal interests. Yet, in so doing, the needs of the key interest holder were not adequately considered—Qatar's dispute system is not fashioned in a way that meets the needs of workers and addresses their vulnerabilities.

In their Article, "An Analytic Framework for Dispute System Design," Stephanie Smith and Janet Martinez argue that an effective dispute system must, among other features, identify the stakeholders and their relative power in designing the system.⁵³ "[D]ysfunction" in dispute systems, they propose, "can often be attributed to failure to adequately involve and acknowledge the interests of key stakeholder groups."⁵⁴ The problem in Qatar is not that mediation cannot work. It is that the mediation process is structured in a way that leaves workers potentially subject to manipulation and unfair outcomes. A worker denied lawful payment of wages should not be pressured into accepting less than what is owed because of exigent financial circumstances, fear of employer retaliation, or lack of confidence in pursuing an alternative adjudicative remedy. Likewise, labor courts cannot undermine their intended purposes through undue delays in holding hearings, lack of access to legal support and translation services, and problems enforcing judgments. Workers should not be forced to drop claims because circumstances compel them to leave the country. These problems can be addressed, but it is a matter of political will and system design creativity more than anything else.

For a country with deeply embedded labor practices, the scope and rapidity of reform have been notable.⁵⁵ Qatar represents a rare success story in leveraging a mega sports event to promote human rights and domestic policy change. The reforms Qatar enacted between 2015 and 2020 were almost certainly greater than those of any other host country. Legislative gaps remain, but, as Andy Spalding observes, the fact that more work needs to be done is a good problem so long as Qatar remains committed to ongoing work in this area.⁵⁶ However, the fear is that Qatar will lose its commitment to continued reform now that it is out of the international spotlight.

⁵²See "Revitalizing an Existing Labour Dispute System," in International Labour Organization, *Labor Dispute Systems: Guidelines for Improved Performance* (2013) 59–76.

⁵³Stephanie Smith and Janet Martinez, "An Analytic Framework for Dispute Systems Design," *Harvard Negotiation Law Review* 14 (2009) 128.

⁵⁴Smith and Martinez, "An Analytic Framework for Dispute Systems Design," 131.

⁵⁵The ILO welcomed the adoption of Laws No. 17 and 18 of 2020 on August 30, 2020 as a "historic move" by the State of Qatar. "ILO lauds Qatar decision to adopt non-discriminatory minimum wage; first in the region," *Qatar Peninsula* (30 August 2020); Charlie Campbell, "It's Rare To See Change Happen at This Pace: A Global Backlash Is Forcing Qatar to Treat Migrant Workers Better," *Time* (16 December 2022).

⁵⁶*Ibid.*

One year after the World Cup, the same enforcement problems remain, while political energy around the labor issue has faded. An Amnesty International report (November 2023) states that “huge problems persist and navigating the [dispute settlement] system remains a lengthy and challenging process for migrant workers who continue to find employers maintaining the upper hand.” Cases before LDSCs can drag on for up to a year. The Ministry of Labor continues to release data indicating that a large percentage of complaints are “settled in mediation” but does not detail what this means nor how settlement terms compare to original claims. Many workers are still compelled to accept less than what is due or to forego remedies altogether.⁵⁷

Qatar’s dispute settlement system has brought about some improvements for workers, but justice is still commonly delayed and denied. The system could offer the foundation for an effective enforcement regime, but this will only happen if Qatar pushes forward with designing a regime suited to the needs and circumstances of its migrant workers. Mediation can be an important part of such a system, but it must facilitate rather than frustrate outcomes that are just. Labor courts can likewise be an important part, but they must provide rights-based remedies that are accessible, timely, and enforceable. These mechanisms have operated effectively in other legal systems, and there is no reason why they cannot operate effectively in Qatar if there is appropriate determination.

Competing Interests. The author declares none.

Funding Statement. The authors declare no specific funding exists.

⁵⁷Amnesty International, “A Legacy in Jeopardy: Continuing Abuses of Migrant Workers in Qatar One Year After the World Cup,” (2023) 17–21, <https://www.amnesty.org/en/documents/mde22/7384/2023/en/>.