

BUSINESS' HUMAN RIGHTS RESPONSIBILITY FOR REFUGEES AND MIGRANT WORKERS: TURNING POLICIES INTO PRACTICE IN THE MIDDLE EAST

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I. INTRODUCTION

Global business plays an intrinsic role in the experience of migrants and refugees. It is a generator of migration flows, an employer, and a provider of goods and services. Business also derives benefits from refugees and migrant workers, including entrepreneurship, innovation and their often cheaper labour.¹ While the private sector does not have the same obligations and capacities as States to protect and provide for refugees and asylum seekers, it is increasingly seen as a fundamental actor in addressing the human rights and labour risks posed by growing migration and refugee flows.² The impacts and responsibility of business on human rights are apparent in the United Nations Guiding Principles on Business and Human Rights (UNGPs),³ and in recently enacted legislation on modern slavery that requires companies to set out policies and implement processes to address issues such as forced labour, child labour, human trafficking and other forms of modern slavery in their operations and supply-chains.⁴ These risks are often exacerbated in high migration contexts. This means that, at a minimum, global companies should pay particular attention to their operations and supply-chains in countries with large migration flows given the enhanced vulnerabilities of refugees and migrant workers.

Our focus in this piece is to consider how companies have been implementing their human rights responsibility to address the risks and challenges faced by refugees and migrant workers in the Middle East, a region that is currently experiencing unprecedented population movements. It draws on two case studies from recent research by Business & Human Rights Resource Centre (BHRRC) on: 1/ Migrant construction workers in Qatar and the United Arab Emirates (UAE); and 2/ Syrian refugees in garment supply chains in Turkey.

By adopting a mix methods research approach that includes fieldwork, company surveys, and benchmarking these cases reveal that there is still a long way to go for global

¹ Business and Human Rights Resource Centre (BHRRC), 'Submission to the UN Summit for Refugees and Migrants - The private sector, refugees and migrants: a human rights approach' (2016a) <https://business-humanrights.org/de/node/140560> (accessed 14 March 2017).

² Steven A Zyck and Randolph Kent, 'Humanitarian crises, emergency preparedness and response: the role of business and the private sector - Final report', Overseas Development Institute, 2014 ; Regina Sheyvens., Glenn Banks G., and Emma Hughes, 'The Private Sector and the SDGs: The Need to Move Beyond 'Business as Usual'' (2016) 24:6 *Sustainable Development*, 371.

³ Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011), II A para 14 p.14.

⁴ California Transparency in Supply-chains Act 2010 (SB 657) (US); Modern Slavery Act 2015 (UK); Proposition de Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre 2017 (FR).

businesses to fulfil their potential to help generate economic security and realize the basic rights of migrant workers and refugees to decent and fair work. In both cases we found small clusters of leading companies and larger groups of laggards. The paper concludes with a reflection on combining increased transparency with scrutiny and benchmarking to create a ‘race to the top’, and makes recommendations for human rights due diligence to prevent exploitation and discrimination against refugees and migrant workers.

II. MIGRANT CONSTRUCTION WORKERS IN QATAR AND THE UNITED ARAB EMIRATES

A. Migration context and issues

The six countries of the Gulf are a major destination for migrant workers, accounting for over 10 per cent of all migrants globally. Migration to the Gulf offers migrant workers from less economically developed countries improved employment opportunities and higher earning potential; it is estimated that approximately US\$109 billion was remitted to countries of origin from the Arab States in 2014.⁵ In return, countries of destination receive a steady stream of workers to supplement their large labour shortages, with migrant workers accounting for more than 80 per cent of the population in Qatar and the United Arab Emirates (UAE).

Recent research has documented the risks that migrant construction workers face in Qatar and the UAE. These include: excessive debt incurred through high recruitment fees; unequal, late, or non-payment of wages; or illegal deductions; treacherous working conditions; denial of freedom of movement; denial of freedom of association and assembly; minimal enforcement of the labour law; and limited or no access to legal and judicial remedies. Underpinning many of these risks is a labour system based on “kafala” (sponsorship), which governs the admission, residency, employment and exit of workers. Workers cannot legally seek alternative employment or leave their employer without the employer’s permission, and are therefore unable to leave exploitative situations at the risk of being detained or deported. According to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), responsible for evaluating the state of application of international labour standards, ‘the kafala system may be conducive to the exaction of forced

⁵ Hans de Glind, ‘Labour Migration in the Arab States’, (ILO: 2014) http://www.ilo.org/beirut/areasofwork/labour-migration/WCMS_514910/lang--en/index.htm (accessed 14 March 2017); ‘Migration in the Gulf Open doors but different laws’, *The Economist* (8 September 2016) <http://www.economist.com/news/middle-east-and-africa/21706524-because-migrants-gulf-have-few-rights-locals-let-more-them-open> (accessed 14 March 2017).

labour and has requested that the governments concerned protect migrant workers from abusive practices'.⁶

B. Research approach

Considering these restrictions and risks to migrant labour and the current construction boom in Qatar for the 2022 FIFA World Cup and World Expo 2020 in Dubai, BHRRC surveyed 100 construction companies operating in Qatar and the UAE on the measures they are taking to prevent the types of abuse listed above. The company responses were published on a searchable, online database and formed the basis of an analysis of action (or lack thereof) from companies to address risks to migrant workers' rights in their operations.⁷

C. Findings

The results of our outreach revealed an appalling lack of transparency from the construction sector: the overwhelming majority (78 per cent) of the global multinationals and local subsidiaries we surveyed did not respond. Only 39 per cent had a publicly available commitment to human rights, which reveals an alarming lack of commitment to human rights that goes beyond non-participation in the survey.

In terms of policy and practice, our research revealed a vast gap between a small group of leading companies and a long trail of laggards. We identified examples of meaningful action taken by companies including measures that address exploitative subcontracting and recruitment practices and restrictions on freedom of association. For example, Interserve (UK) and Multiplex (UK) have developed systems to manage and monitor the employee welfare practices of their subcontractors. Vinci (France) has introduced numerous safeguards in its recruitment chain to prevent workers from paying recruitment fees, and to reimburse them in cases where they have been charged. Salini Impregilo (Italy) has signed an agreement with Building and Woodworkers International (BWI) and Italian construction unions to promote and respect the fundamental human rights of its workers worldwide, and has allowed BWI to visit its worker accommodations in Qatar where trade union activities are highly restricted.

On the flipside, and despite increasing public pressure, companies involved in the construction of the World Cup stadiums failed to respond, such as Al Balagh Trading & Contracting, Larsen & Toubro, HBK Contracting, J&P Avax SA, Joannou & Paraskevaides (Overseas), Midmac and Porr.

⁶ de Glind, *ibid.*

⁷ BHRRC, *Migrant workers in Gulf construction sector platform* (2016b) <https://business-humanrights.org/migrant-workers-in-gulf-construction> (accessed 14 March 2017).

Following publication of the survey, several non-responding companies decided to participate including Bam International (Netherlands), OHL (Spain) and Al Jaber (UAE). In parallel, numerous initiatives around construction and labour rights have emerged including the launch of BRE's Ethical Labour Sourcing Standard,⁸ a joint programme between Stronger Together and the Chartered Institute of Building aimed at supporting UK construction companies with guidance and resources on modern slavery,⁹ and a global initiative to promote human rights and welfare of workers called "Building Responsibly".¹⁰

III. SYRIAN REFUGEES IN THE GARMENT SECTOR IN TURKEY

A. Migration context and issues

As Western countries scrambled to stop 'the flood of Syrian refugees to Europe' in an attempt to frustrate the rise of anti-immigration and populist political currents, Turkey, Jordan and Lebanon have become host of most of the Syrian refugees fleeing the protracted war.¹¹ Among the 3.5 million refugees living in Turkey, 3.2 million Syrian refugees are now building their lives and futures.¹² Syrian refugees should be simultaneously considered as 'both refugees fleeing their countries due to civil war, as well as active economic agents looking for opportunities to work or invest.'¹³ The World Bank 2015 New Financing Initiative and the international assistance pledges made at the 2016 London Conference 'Supporting Syria and the Region' reflect this perspective. These initiatives seek to create incentives for investment and job creation to allow Syrian refugees to join the labour market in Turkey, Jordan and Lebanon.¹⁴ The challenge, however, is for governments, international donors, civil society and

⁸ BRE, *Sustainability and Environmental Standards*, BES 6002 Issue 1 (2017) <http://www.greenbooklive.com/filelibrary/ELS/BES-6002-Ethical-Labour-Sourcing-Standard.pdf> (accessed 14 March 2017).

⁹ Stronger Together and Chartered Institute of Buildings, *Tackling Modern Slavery in the Construction Sector*, (2017) <http://stronger2gether.org/construction/> (accessed 14 March 2017).

¹⁰ For an archive of articles see BHRRC 'New business coalition, "Building Responsibly", forms to protect workers' rights in construction industry' (27 February 2017) <https://business-humanrights.org/en/new-business-coalition-building-responsibly-forms-to-protect-workers-rights-in-construction-industry> (accessed 14 March 2017).

¹¹ Alexander Betts and Paul Collier, 'Help refugees help themselves: Let's displaced Syrian join the labour market', *Foreign Affairs* (2015).

¹² Emre Eren Korkmaz, 'How do Syrian refugee workers challenge supply chain management in the Turkish garment industry?', IMI Working Papers Series 133/2017 <https://www.imi.ox.ac.uk/publications/how-do-syrian-refugee-workers-challenge-supply-chain-management-in-the-turkish-garment-industry>; 'Türkiye'de kaç milyon mülteci var? Bakan Soylu açıkladı', *Sozcu* 15 February 2017, available at: <http://www.sozcu.com.tr/2017/gundem/turkiyede-kac-milyon-multeci-var-bakan-soylu-acikladi-1680764/> (accessed 14 March 2017).

¹³ Korkmaz, *ibid*; Betts and Colliers, note 11.

¹⁴ Andrej Mahecic, 'London Syria Conference: World leaders urged to help Syrians', (2016) <http://www.unhcr.org/uk/news/latest/2016/2/56b1fc4f6/london-syria-conference-world-leaders-urged-help-syrians.html>; World Bank, 'International Community Endorses New Initiative to Support Refugees, Host

companies to ensure that these initiatives result in equal, fair and decent employment for refugees, migrant workers and host communities.

The Turkish clothing industry has been the sixth largest world exporter and third largest exporter to the European Union since 2013.¹⁵ From late 2015, an increasing number of worrying reports of abuse and exploitation of Syrian refugees in Turkish garment factories emerged.¹⁶ Conditions for exploitation stem from a combination of a desperate, vulnerable workforce with little access to legal work, negative perceptions of Syrian refugees among employers, an industry that drives prices down, and a reliance on subcontracting in Turkey has led to exploitation of refugees.¹⁷ After concerted lobbying by global brands, the Turkish Government published legislation in January 2016 that allows refugees to gain work permits. This is a first step in improving refugees' formal labour participation and protection, although significant obstacles remain, such as those described above.

B. Research approach

In light of this context, BHRRC conducted two outreach surveys with garment companies that produce clothes for Europe's high street shops and source from Turkey. The first survey, in February 2016, covered 28 companies. We expanded the survey to 38 companies in the follow-up, in September 2016. The surveys covered questions on policy, audits, subcontracting, action to protect refugees, and capacity building.¹⁸ We also conducted a short field visit to Istanbul and interviewed Syrian refugees working in garment workshops in July 2016. The company responses were published on a searchable, online database and formed the basis of two briefings tracking the progress of the garment sector in tackling exploitation of refugees in garment supply-chains in Turkey.¹⁹

Communities, Recovery and Reconstruction in the Middle-East and North Africa' (15 April 2016) <http://www.worldbank.org/en/news/press-release/2016/04/15/international-community-endorses-new-initiative-to-support-refugees-host-communities-and-recovery-in-mena> (accessed 14 March 2017).

¹⁵ Fibre2Fashion, Turkey textile industry overview, (2017) <http://www.fibre2fashion.com/market-intelligence/countryprofile/turkey-textile-industry-overview/> (accessed 14 March 2017).

¹⁶ For an archive of reports on the issue see <https://business-humanrights.org/en/modern-slavery/syrian-refugees-abuse-exploitation-in-turkish-garment-factories>.

¹⁷ Korkmaz, note 12.

¹⁸ For details of the survey see BHRRC, *What's changed for Syrian refugees in the Turkish garment industry?* (2016c) <https://business-humanrights.org/en/syrian-refugees-in-turkish-garment-industry/the-survey> (accessed 14 March 2017).

¹⁹ The survey was developed with input from the Ethical Trading Initiative, ITUC, and Fair Labour Association. In the second survey we received responses from 26 out of 38 brands (per cent) to our questionnaire compared with 10 out of 28 (36 per cent) in the first survey. For more details see, BHRRC 2016c, *ibid*, p.1.

C. Findings

The second round of outreach to garment brands returned more detailed responses and revealed a positive shift in action, likely due to the increased scrutiny. For example, half of the garment brands contacted have taken some targeted action to address the risks refugees face. ASOS, C&A, Esprit, GAP, Inditex, KiK, LC Waikiki, Mothercare, New Look, NEXT, Otto Group, Primark, Tesco, Tchibo and White Stuff said they expect suppliers to support unregistered refugees to get work permits. This is a positive shift given many brands previously cited a zero-tolerance policy towards unregistered refugees working in factories, leading to their dismissal – the worst outcome for their welfare. NEXT, New Look and Mothercare have gone further, with detailed plans triggered when a refugee is found working in a factory to ensure they are protected and treated fairly. They also pay the Gross Minimum Wage while Syrians are employed and do not yet have a work permit. This is an important step because it recognises that unregistered Syrian workers are unable to access social security.

Disappointingly, six brands did not respond to the questions - Gerry Weber, Lidl, Mexx, New Yorker, River Island and Sainsbury's. A number of other brands provided limited information: Arcadia, Burberry, S. Oliver, SuperGroup, VF Corp and Walmart only provided short statements.

Our interviews with Syrian refugees confirmed reports of child labour and generally poor working conditions, including discrimination and payments below the minimum wage. They also echo Korkmaz's findings regarding the reluctance of Syrian refugees to apply for permits to gain formal employment, and the prejudices of employers against them. These attitudes among employers and workers help entrench informal work and reinforce situations of exploitation in the garment industry. It was also highlighted to us several times that there is a risk that brands would leave if reputational risks and security concerns undermined the advantages of sourcing quality, low-costs and fast garments from Turkey.²⁰

Our company outreach and field visit reveal that while exploitation of refugees remains endemic there have been positive shifts in the attitude of European high street garment brands. These include increased monitoring programmes in reaction to the issues faced by refugees; shifts from zero tolerance of employment of undocumented workers to a pragmatic approach to support refugee workers; detailed plans to address exploitation and collaborative action to stop exploitation. Ten brands have also reported finding Syrian refugees in their supply-chains demonstrating a new openness about this issue and the challenges they face.

²⁰ For findings of the second survey and field visit see BHRRC 2016c note 18.

IV. REFLECTIONS & CONCLUSION

The two case studies presented here are part of ongoing and expanding research projects at BHRRC.²¹ In both cases, outreach to companies, benchmarking of their policies and reported practices, and exposure of their responses to our specific questions on a public platform have raised awareness of salient risks in the supply chains of the garment and construction sectors and increased the responsibility and accountability of business for the conditions of migrant workers and refugees in their supply chains. The adoption of this approach and reported changes in practice have occurred in a context of increased scrutiny brought about by new legislation on modern slavery in a number of countries, which requires enhanced transparency and due diligence processes from companies. This combination of transparency, increased scrutiny and benchmarking can drive companies to make changes in their business policies and practices, and provides, in the leaders, practices that can be emulated rapidly by laggard companies.

The results of our outreach in the construction industry in the Gulf States and the emergence of initiatives to improve labour rights and the welfare of migrant workers reveal small-scale progress on human rights from a handful of construction companies. The risks inherent in common business models and complex supply-chains, however, cannot be resolved by companies acting in isolation: collective industry-wide efforts are needed. As it stands, the current lack of industry transparency limits the ability of companies to tackle shared challenges and progress together based on agreed-upon standards and good practice. Investors, business partners and civil society actors should press for increased transparency from companies, rewarding those that take a responsible approach to the recruitment and employment of migrant workers and drawing attention to company inaction.

In the case of the Turkish garment sector, the great majority of European fashion brands must act faster and more decisively to eliminate abusive exploitation of refugees from their supply-chains. Their standard compliance methods of announced audits of their first-tier suppliers are inadequate and discredited. Far more rigorous approaches should be adopted. Furthermore, companies should not cease to source from Turkey; they should stay and develop a sustained, long-term view to ensure decent work opportunities. Systemic change to

²¹ Besides our work on migrant workers in the construction industry in the Gulf and Syrian refugees in the Turkish garment industry, BHRRC is also developing a similar project on access to fair and decent work for Syrian refugees, migrant workers and host communities in Jordan and Lebanon <https://business-humanrights.org/en/access-to-work-in-jordan-and-lebanon-for-syrian-refugees-migrant-workers-and-host-populations>.

purchasing practices and monitoring processes will be necessary, however, if initiatives to protect Syrian refugees by individual brands are to succeed. Companies need to pay decent prices and ensure greater certainty and predictability for suppliers to avoid undeclared sub-contracting to informal factories where the risks are highest.

As a first step, companies sourcing from countries with high numbers of refugees and migrant workers should conduct robust human rights due diligence throughout their supply-chains to prevent exploitation and discrimination. This involves four steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed. Throughout the process, close consultation with local organizations that have deep expertise on the specific challenges and dynamics on the ground is essential, as is an awareness of the enhanced vulnerabilities of refugees and migrant workers in terms of barriers in accessing fair and decent employment, basic services and judicial remedies.²²

²² BHRRC (2016a), note 1.