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**How the private sector can protect the labour rights of
migrant workers – a focus on the construction and
service sectors in the gulf states**

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How the private sector can protect the labor rights of migrant workers – a focus on the construction and service sectors in the gulf states

Aakash Jayaprakash[†]

Abstract

This paper shall explore the role of the private sector in addressing human rights risk with a focus on migrant workers. The private sector employs and undertakes the works that involve vulnerable migrant workers who are at risk of exploitation. The influential role of clients, process of selecting contractors and methods of assessments of worker living and working conditions shall be examined. This paper aims to provide insights in how the private sector can be utilized as an effective, powerful player in ensuring the rights of workers. Critically, private sector entities have the ability to seek remediation of violations of worker rights and can play a key role in ensuring access to justice for victims outside of traditional labor courts. The paper focuses on the construction and service industry in the Middle East, especially the Gulf states, and includes workers undertaking low-income and/or physical labor and generally living in group labor accommodation.

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Section 1: Introduction

Migrant workers in the Middle East have been known to experience a heightened risk of exploitation owing to the imbalance of power between employees and employers, largely owing to the *kafala* or sponsorship system¹. Workers' welfare is upheld primarily through local labor laws and supported by independent policies of their employers. The exploitation of workers leads to benefits for their employers, and such exploitation may not necessarily be caused by nefarious reasons. Rather, the regulatory environment has multiple systemic challenges that creates the conditions enabling the employers to subjugate the migrant workers. Systemic challenges range from tying employment to a legal residency status in countries of destination and insufficient oversight of recruitment agencies in countries of origin and destination. Ultimately the beneficiaries of migration are hardly ever the individual migrant, but rather the multiple players involved in the migration and employment cycle ranging from the recruitment agency, the employer, the client and the countries of origin and destination.

Migrant Worker Vulnerabilities and the Private Sector: Examples of worker exploitation in the Middle East have been well-documented by civil society and international organizations. Some commonly reported instances include:

- a. **Non-payment of wages or benefits:** The primary reason a worker migrates is to earn money and alleviate financial pressures of his/her household. Often, a migrant is willing to sacrifice their own comforts for the betterment of their families.² Examples of non-payment of wages range from employers' refusal to pay wages, reduced wages, inaccurately calculated wages, fixed overtime rate rather than legally compliant calculations, and illegal/unexplained/arbitrary wage deductions.³ Arguably, lack of wage payments are the single biggest source of complaints for workers, leading to significant repercussions on migrant workers and their families.⁴ In particular, the number of wages theft cases reported from Gulf countries rose sharply during the coronavirus pandemic.
- b. **Excessive working hours:** Working hours in the Middle East are legally mandated with guidelines issued on what constitutes regular working hours and how much overtime is permissible. In reality however, employers extract far more hours than legal and underpay workers for the work they had undertaken. While normal working hours are limited and mandated to be 48 hours per week, it is common in the construction industry for workers to work 72 hours a week on 12-hour shifts, 6 days a week.⁵ This situation is exacerbated when

¹ Under *kafala*, a migrant worker's immigration and legal residency status is tied to an individual sponsor (*kafeel*) throughout his or her contract period in such a way that the migrant worker cannot typically enter the country, resign from a job, transfer employment, nor leave the country without first obtaining explicit permission from his or her employer. Page 3, *Employer-migrant worker relationships in the Middle East: exploring scope for internal labour market mobility and fair migration* / International Labour Organization, Regional Office for Arab States. - Beirut: ILO, 2017. (White paper; Feb. 2017) https://www.ilo.org/beirut/publications/WCMS_552697/lang--en/index.htm

² *Worker interviews carried out on a major construction program in the Gulf by author (2017)*

³ *Migrant work and employment in the construction sector* / Michelle Buckley, Adam Zendel, Jeff Biggar, Lia Frederiksen and Jill Wells; International Labour Office, Sectoral Policies Department, Conditions of Work and Equality Department. <https://bit.ly/3dYvC8T> Geneva: ILO, 2016. p22-23

⁴ Buhejji, Hana. "Slavery Entrenched by Law: Immigrant Workers in the Gulf Story." Al Bawaba, 16 Jan. 2022, <https://www.albawaba.com/opinion/slavery-entrenched-law-immigrant-workers-gulf-story-1462676>

⁵ Sevil Sönmez, Yorghos Apostopoulos, Diane Tran, and Shantiana Rentrop. "Human Rights and Health Disparities for Migrant Workers in the UAE." HHR Archived, 20 Aug. 2013, sites.sph.harvard.edu/hhrjournal/2013/08/human-rights-and-health-disparities-for-migrant-workers-in-the-uae/ p5

wages are not paid accurately, and workers are shortchanged when overtime rates are paid at fixed rates or the same rate as opposed to 1.25-2.00 times the rate of regular working hours as legally mandated.⁶

- c. **Passport confiscation:** A key indicator of forced labor is whether workers are in possession of their personal documents such as passports, government issued ID cards or ATM cards.⁷ However, in the Middle East, it is common for employers to hold on to passports of their workers, especially in the construction, service and domestic work categories. The reason often cited is that of “safekeeping” so that workers’ passports are not stolen, damaged or go missing. Employers claim to be providing a service to workers, when in reality, the possession of an individual’s passport prevents their movement out of the country or to secure alternative employment.

Contract substitution: For an aspiring migrant from South Asia to the Middle East, there are usually three key documents that formalize their relationship with their potential employer – the initial job offer, job agreement and employment contract:

- a. *Initial job offer:* This document is usually issued by the recruitment agency tasked to hire workers and informs the employee they have been offered a job by the employer, and outlines details such as job description wages, working hours and general conditions of work. The recruitment agency likely charges a fee post-issuance of the initial job offer making claims of the lucrative pay a migrant can earn and the only next step is to pay the agency a charge to lock in this job.
- b. *Formal job offer:* This document is the agreement letter issued by the employer signed by the migrant that asks for their consent to be employed, and serves as an initiator to access necessary services such as passport insurance, insurance, medical testing, etc. in the country of origin. Even if the formal job offer from the employer has terms that differ from the initial offer, the worker is already committed to going overseas, as they have paid the solicited charge to the agency by this point and is unlikely to back out.
- c. *Employment contract:* The rights, duties and obligations of employer and employee are outlined within the formal employment contract, in line with legal requirements. and is issued in country of destination. Generally, two copies are made – one for the employee and one for the employer.⁸ This is the primary document that is legally binding and received at the final stage, once the migrant arrives in the country of destination.

While having multiple documents to formalize the employer-employee relationship may seem to offer more protections to workers on the surface, the reality is more complex. It has been documented that workers are highly unlikely to receive the same terms across all three documents,

⁶ Overtime calculation reference- “Working Hours and Overtime.” Working Hours and Overtime - the Official Portal of the UAE Government, <https://u.ae/en/information-and-services/jobs/working-hours>.

⁷ ILO. “Passport Retention of Workers- Q&As on Business and Forced Labour.” www.ilo.org, 1 Feb. 2012, www.ilo.org/beijing/areas-of-work/international-labour-standards/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang-en/index.htm#Q5

⁸ Article 8 (1), Federal Decree No. 33 of 2021, Regarding the Regulation of Employment Relationship, MOHRE, UAE <https://u.ae/-/media/Documents-2022/Federal-DecreeLaw-No-33-of-2021.ashx>

with the most unfavorable terms in the formal employment contract – largely the final stage of the migration process when they are already in-country. A survey carried out in 2019, indicates that only about 6% of migrants receive the same terms of employment in the contracts as promised prior to departure to the Middle East.⁹ Each of the three documents serves as a layer of obfuscation between reality and the initial promise made to the aspiring migrant.

The UAE however, has taken commendable steps to mitigate the risk of contract substitution by requiring a formal employment offer to be issued to the worker before they arrive in country. The subsequent employment contract must include terms that match the job offer, before the residence visa and work permit can be processed.¹⁰

Sponsorship or kafala system: A further risk to workers is the linking of their employment to their legal residency status. This system is in use in some Middle Eastern and all the Gulf states. A worker can only legally reside in the country through an employment visa sponsored by their employer; and they would be at risk of losing not just employment but also their legal residency status if they were to upset the relationship with their employer. This framework that ties a worker to their employer creates an imbalance of power that is heavily skewed in favor of the employer.

The barriers for workers are much higher to seek justice as they have to weigh the resource cost of justice, inclusive of time and finances, especially in cases where they have subsisted on their own without wages or legal residency in country of operation.

Example 1: 43-year-old Bangladeshi construction worker Abdulkarim was not paid his wages for over 5 months working in a manpower supply company based in Qatar. The company was subcontracting his labor to various construction projects across Doha, but owing to delayed payments from their clients, they were not able to pay their workers. Abdulkarim had paid a recruitment agent over 2000 US dollars to secure employment as a mechanic in Doha, but upon arrival, was given a contract as a construction worker. Abdulkarim had to borrow money from loan sharks back home to pay this amount, while also pawning his land. He was promised a wage of 600 US dollars, but this was changed to 400 US dollars in his labor contract. Being unpaid for 5 months had put his family under dire financial pressure with his inability to pay school fees for his children, or secure medical treatment for his ill mother. Abdulkarim is now faced with the choice of filing a labor case that may take months to resolve, knowing that the loan sharks are pressuring his family to reimburse the borrowed amount. If he files a case, he also has to figure out how to financially survive and support his family back home. He may be better off not complaining and finding an alternate job that pays him.

1.B Who profits from migrant labor?

Construction or service workers are employed across various projects in a complex web of contractors, sub-contractors and clients, with the location of work changing multiple times across a worker's employment. Under the governing labor sponsorship system, employers are able to benefit from using employees who have limited agency and are legally restricted to work only with them

⁹ Dargues, Philipe, et al. *Working and Living Conditions of Low-Income Migrant Workers in the Hospitality and Construction Sectors in the United Arab Emirates: A Survey among Migrant Workers through Focus Group Discussions*. 2019, cadmus.eui.eu/bitstream/handle/1814/65986/Report_GLMM02.pdf

¹⁰ Tabrez, Huda. "What Is the MOHRE Offer Letter and When Do You Need One?" *Gulfnews.com*, 11 Oct. 2021, gulfnews.com/living-in-uae/ask-us/what-is-the-mohre-offer-letter-and-when-do-you-need-one-1.1633022579205

and cannot freely change their employment. Workers are able to change employment only in limited circumstances such as upon completion of their contract, proven labor exploitation or with permission from their current employer. This creates a situation where workers have to continue working with their current employer, potentially as bonded or forced labor owing to the recruitment fee debt incurred.

Multiple contracting entities are involved in a worker's employment journey who all can (and have been documented to) profit from the labor of workers. The list below is an indicator of the key players impacting a worker's employment:

1. **Employers** make a profit from the projects they are involved with. Employers are usually contractors (construction and service providers such as cleaning, security, and associated services). Legally, the role of employer is defined to be the entity that sponsors the employment visa for a worker. In some circumstances, it may be complicated to identify the primary employer especially where multiple tiers of subcontracting have been used to outsource work in order to cut costs.
2. **Clients** benefit when their ambitions are realized. In particular, for major projects, the country of destination benefits from increased visibility, development of national economy, hosting global events and increased tourism and FDIs based on marketing of the state. They also benefit from lower costs where they are largely focused on the timely delivery of a project as opposed to paying attention to "details" such as welfare of workers. Clients can be *any* entity and include:
 - a. *Individuals*: Private individuals may contract work for construction or services (cleaning, security, maintenance) for an office building or private homes.
 - b. *Businesses*: Private businesses that may contract out construction or services (cleaning, security, maintenance) work to others.
 - c. *Government*: Government agencies, ministries and similarly set-up organizations can contract out major infrastructure projects such as roads, sewage treatment, bridges, railways, stadiums etc. They also contract work out to services.
3. **Recruitment agencies in countries of origin**—Agencies benefit from the significant profits they make in charging aspiring migrants. These monies are often unaccounted for (having little to no explanation on what these charges are for) and sometimes make their way into offering bribes to overseas businesses to secure visas in countries of destination. It has been well-documented that there are conflicts of interest between certain countries of origin (Nepal for instance) where government officials involved in regulating the recruitment industry are themselves (or their families)¹¹ involved in the recruitment sector. Importantly, charging of recruitment fees to the worker is prohibited as per ILO guidelines and national legislations of Qatar and the UAE amongst others. In some instances, it had been documented that employer may cover the upfront costs of recruitment fees, but this is later deducted from workers' wages.

¹¹ *Turning People Into Profits: Abusive Recruitment, Trafficking And Forced Labour Of Nepali Migrant Workers*, Amnesty International 2017, <https://www.amnesty.org/en/documents/asa31/6206/2017/en/> pages 34, 59, 61.

4. **Recruitment agencies in countries of destination**—Agencies overseas also sometimes receive a cut from the recruitment charges paid by the aspiring migrant. These monies often change hands between employers and agencies, largely in the outsourcing and manpower supply sectors. For instance, even after a labor rights violation is detected, they may have moved onwards to other projects. Owing to the contracting chain risks, workers are at risks of wage theft and other forms of exploitation. Where recruitment agencies and manpower suppliers overlap, monies secured from recruitment charges may change hands to secure additional work, and therefore bring in additional manpower.
5. **Associated services**- A critical and less documented sector that heavily uses migrant workers in their operations are those businesses that are associated with construction and service businesses but do not play a central role. These include suppliers of goods and services to the construction industry ranging from raw material providers such as cement, scaffolding companies, worker accommodation (“labor camp”) operators, catering services and others.
6. **Countries of origin**- The economic impact of migrant workers sending remittances back home should not be understated. Even in circumstance where workers are low-wage earning and may be exploited, they prioritize ways to send money back home and support their families. Countries of origin of migrants such as India, Nepal, Sri Lanka, Philippines, Bangladesh and Pakistan rely heavily on migrant remittances for their economic growth and development.
7. **Countries of destination**- The countries of the Middle East that rely heavily on a migrant workforce benefit from the economic growth generated by migrants as they have insufficient human resources necessary to meet their ambitions. For instance, Qatar is a major country of destination for migrant workers and the state is also heavily reliant on their labor – about 90% of the total population are non-citizens – and it would be near impossible for the state to grow the economy and develop the state without relying on foreign workers.

It is important to clarify that businesses that provide poor living or employment conditions are not necessarily acting maliciously, but are simply put in circumstances where cutting costs is key to securing business. In such situations, businesses must often compete with multiple other players in offering a competitive price for their services. If multiple bidders offer their services for a client during a proposal, the client almost always prioritizes the price factor over other criteria prior to awarding a contract. This puts at a disadvantage those companies that may charge a higher price for their services, as they are less willing to compromise on the living and working conditions of their employees. In this manner, unless companies are big enough to absorb the additional costs of providing superior living and employment conditions, the smaller companies that form the majority of the contracting and service sectors will not be able to compete. Thus, it simply makes financial sense for smaller companies to cut costs to compete in the marketplace with others, and costs associated with workers’ well-being (salaries, working hours, benefits, accommodation standards etc.) are often the first place where these deductions are made.

Section 2: The Construction Contracting Chain

Within the construction space, there are usually multiple entities involved in the delivery of a project. Construction contractors are not monoliths and there are usually multiple businesses playing different roles within the same project. One is likely to see a mix of contractors, consultants, subcontractors and clients involved in projects. There are two reasons why. For efficiency, it is easier to rely on specialists for a specific task (a waterproofing company or fire safety consultant for a building under construction, for example). For maximizing profit, it is easier to hire workers at a cheaper rate from a manpower supplier rather than using one's own limited workers who may already be earmarked for other projects.

Players within the contracting chain

The relationships between various entities in the contracting chain are determined by contracts signed between parties, with money changing hands at each interface. The contracting chain within a construction project can include numerous players as outlined below:

- a. **Client:** The client is the entity that appoints a main contractor to execute a project. The client can be as varied as a government agency, private conglomerate or an individual. The projects can range from large-scale infrastructure projects such as highways, dams, power stations, to building complexes, apartments, and houses. The client may require additional protections from the contractor to meet legal and regulatory requirements. The client is the ultimate authority and provides the financial backing for the execution of a project. The client, being the final recipient and beneficiary, is often held accountable for any issues that may affect workers within their supply chains by international media and civil society, as seen by criticism of Qatar's Supreme Committee for Delivery and Legacy for the labor conditions of the workers involved in the construction of stadiums for the 2022 World Cup¹². Other major businesses may also be criticized owing to their size and reputation such as Nike¹³, GAP¹⁴ and other major retail brands who have been called out for relying on garment factories that exploit workers in Asia. The well-being of workers in supply chains is usually proportional to the level of due diligence undertaken by the client within their operations, in the absence of a robust government managed labor inspections regime, worker unions or active civil society.
- b. **Consultant:** A consultant may be appointed by the client to provide specialized services to the client such as managing the project and ensuring that the project execution is on time and within budget. The involvement of a specialized consultant ultimately saves costs for the client instead of them having to learn how to manage and execute a project. The consultant may sometimes be responsible to appoint, manage and supervise the works of the main contractor. For many major infrastructure or high-profile projects, clients often appoint internationally known consultants to provide additional expertise and to raise standards of

¹² Qatar: Labour reform unfinished and compensation still owed as World Cup looms. Amnesty International. (n.d.). Retrieved from <https://www.amnesty.org/en/latest/news/2022/10/qatar-labour-reform-unfinished-and-compensation-still-owed-as-world-cup-looms/>

¹³ Kish, M. (2016, December 13). Reports find wage theft, verbal abuse, forced overtime at Nike contract factory. Bizjournals.com. Retrieved October 24, 2022, from <https://www.bizjournals.com/portland/news/2016/12/13/reports-find-wage-theft-verbal-abuse-forced.html>

¹⁴ Hodal, K. (2018, June 5). Abuse is daily reality for female garment workers for GAP and H&M, says report. The Guardian. Retrieved October 24, 2022, from <https://www.theguardian.com/global-development/2018/jun/05/female-garment-workers-gap-hm-south-asia>

execution of the project. This also helps educate the clients on latest international developments within specialized fields and provides them with global experience and qualifications at a local level. Clients will sometimes require international consultants to hire and train local staff to improve local talent. An example would be appointment of US-based AECOM for the Saudi megacity NEOM project to undertake Project Management Consultancy (PMC)¹⁵.

- c. **Main contractor:** The main contractor is the primary entity appointed to execute the project and develop the client's vision to reality. The main contractor is responsible for the timely project execution and ensuring that project milestones are met. They usually undertake the bulk of the construction work and may also be the majority employer of construction workers on site. Main contractors ensure that the project's quality and standards are in line with expectations and are held accountable for any issues by their client. In most scenarios, even if any appointed subcontractors are responsible for a work-related defect, the main contractor would be held liable as the client expects these kinks to have been detected and dealt with prior to handing over a project. The main contractors are also likely to hold multiple additional subcontracts with other smaller companies that provide specialized services to develop additional requirements for the execution of a project, as explained below.
- d. **Subcontractors:** A subcontractor is appointed by the main contractor to manage specialized aspects of the construction execution. These can range from HVAC (heating, ventilation, air-conditioning), electrical, piping duct work specialists, to geotechnical services. They may also include heavy equipment, cement and other raw material suppliers. Subcontractors are often smaller companies who rely on a high volume of work in order to generate profits. In such instances, they may outsource the same workers to multiple different sites in the same month, with workers undertaking various tasks ranging from construction, debris clearance, painting, electrical installations, etc. Subcontracts are also awarded to reduce the risk for the main contractor to deliver a project as they can hold the subcontractor liable for certain aspects of a project. This is also cost-effective as main contractors do not have to hire and pay additional workers and invest in securing residency visas or associated insurances for labor and finally terminate workers upon completion of a contract.
- e. **Manpower suppliers:** Manpower supply companies are those that solely provide labor to projects for a fixed duration, which can range from a day to several months or years. Manpower supplier employees may work on multiple projects and are often more vulnerable owing to the frequency of change in their employment period.

Example 2: An Indian worker, Rahul 35, is working with a manpower supply company based in Kuwait. He works on a construction site for a mall on 4 days of the week, and 2 days at an under-construction office building. On his day off (Friday), he sometimes is asked to work at another site, and he does not have an option to say "no" as he desperately needs the money to pay off his recruitment debt. He also would rather work than not, as he can earn more money by working every day as opposed to taking a day off. He had not been paid 2 months wages last year, but his employer

¹⁵ Pitcher, G. (2022, August 3). Saudi megacity lures contractors and consultants. *New Civil Engineer*. Retrieved October 24, 2022, from <https://www.newcivilengineer.com/innovative-thinking/saudi-megacity-lures-contractors-and-consultants-03-08-2022/?tkn=1>

has promised him that he would receive his wages soon, as they are awaiting payment from a previous project. He had since received a smaller salary in the past month, but is willing to take this over nothing so that he can continue to support his young family back in Bihar, India, especially during the Covid pandemic which has caused many of his friends to be sent back home.

Associated services to the contracting chain

To support this vast ecosystem of construction-related enterprises, an entire associated service industry is required to meet the requirements of the workforce. Workers need to be provided with accommodation, meals, health services, recreation and transportation to and from their work locations. Unfortunately, the smaller the company, the less likely it is that some of these elements are adequately provided to workers during their employment. For instance, a large construction contractor will be able to provide housing, catered meals, monthly cleaning and pest control, along with air-conditioned transportation to and from work locations. Details of these associated service industries are outlined below:

- a. **Meal services:** To feed a large workforce, the employer may outsource catering services to a food provider that caters to the workforce. The food service provider usually prepares the meals in their own industrial-sized kitchens and provide food to workers on-site and in their accommodation. Some of the bigger employers manage this on their own and are able to scale up and down as required if there are additional staff requirements. This is also an area where employers can cut costs, and the quality of food provided to workers is directly proportional to how much employers are willing to pay. If employers have a diverse workforce from various parts of Asia and Africa, the meals have to be tailored for various palates. However, this is often not the case and employers often simply provide either a North/ South Indian, East Asian or Arab meal options for workers, with African workers least likely to receive food catered to their tastes. Complicating this further, the vast diversity of the Indian subcontinent leads to an equally diverse meal preference, and complaints about food from workers are usually the most reported issue to employers.

Example 3: During a planned worker welfare audit, a third-party social auditor inspected the worker accommodation facilities for a major construction project in Qatar. During the audit, they inspected the kitchens, meal preparation areas, food storage facilities and assessed the quality of equipment and safety protocols being followed by the catering staff. The auditor then sat down at the canteen to taste the lunch meals himself and found it satisfactory. However, while conversing with other workers at the dining area, they asked him to come visit every day or to show up unannounced so the quality of food will always remain high. They stated to him that the food is often extremely poor and with limited options and they sometimes experience stomach upsets. It was later detected that the company provided improved quality of food only during the audit, and this was not standard practice. Following the workers' advice, the auditor showed up unannounced on a later date to assess the food quality and confirmed these anecdotes.

- b. **Transportation services:** Owing to the large mix of workforce from different employers providing various types of services on a project, the workforce is largely reliant on transportation on buses to commute from accommodation to the worksite. These buses may be operated by the employer or outsourced to third parties. Legal requirements in the Gulf countries require worker transportation vehicles to be air-conditioned, however this is not always the case in practice. Non-AC buses are all too common, and as seen in previous examples, quality of transportation is

also better when employers are willing to pay more. The extremely high summer temperatures in the Gulf (often exceeding 48C) make transportation without air-conditioning even more unbearable. This is exacerbated if workers had to endure harsh outdoor working conditions as well.

Example 4: During a social audit with a small construction company in the UAE, the contractor was asked why they do not provide air-conditioned buses for workers. The contractor stated this was the workers' preference and they would rather not have AC as they are worried they will fall sick with the extreme changes in temperatures. This was quite unusual as this employer was known to not pay workers on time, not provide adequate accommodation, and not listen to worker complaints about food. However, in this case, where it benefits the company to pay less for cheaper buses, he defends the decision to provide non-compliant buses as a response to an express request by the workers, which was denied during interviews carried out by the auditor with these workers.

- c. **Office support staff:** On the construction site, there are office spaces dedicated for supervisory staff including project managers, engineers, consultants, and other specialized senior managers who are responsible for the successful execution of the project. To cater for the office, within the Middle East, it is common practice to hire office assistants – often referred to as “tea boys” – who serve tea, coffee and water to office personnel, and undertake odd jobs around the premises. They are generally hired by the main contractor but may also be outsourced. These office assistants also provide beverages during meetings with clients, consultants and other office guests. Office assistants tend to be lower paid than other employees, with a very limited job description that often does not do justice the varied roles they play within the office setting. They also help manage administrative tasks such as copying, filing, printing, delivering mail, tidying up the office premises and organizing storage areas.
- d. **Security services:** For group labor accommodation facilities and certain major construction sites, employers contract security guards to protect the premises. In some countries, there are legal requirements to provide security to maintain safety on the premises and control access to and from the site for health and safety reasons, and to ensure the general public does not access an active construction site. Some of the various duties undertaken include record keeping of visitors, managing entry and access to the facilities by workers, addressing any issues of theft, and other “undesirable activities” such as alcohol consumption or gambling. Security service providers need to be licensed, and guards need to have permits to undertake their duties in a legal manner. Security guards' working conditions are challenging, with requirements to continuously be based in outdoor locations with minimal ability to take a break from their post. If companies are not willing to pay for additional security guards, only one guard can guard an entrance and he (usually these roles are undertaken by men) is unable to leave his duty post for comfort breaks or must be willing to have lunch breaks interrupted by visitors so he can sign them into the location. If the guard is working in a remote location in the desert, there are often few facilities for him to safely store his meals or to take a break. If he brings his own meals to work, they are often stored at room temperature and he is unable to reheat them before consumption. This also raises the risk of food-related illnesses.
- e. **Cleaning services:** Group labor facilities generally provide housing for anywhere between 20 and up to 10,000 workers. These facilities include multiple common areas including kitchens,

bathrooms, toilets, laundries, and recreational spaces. To maintain the cleanliness of these facilities, the tenant, or the owner of the labor facility may provide cleaning services either contracted from a cleaning service provider, or in-house cleaners. These cleaning staff often use chemicals and other supplies that may cause harm, but they are not necessarily provided with safety gear to reduce risk. Cleaning is limited to common areas and not within workers' rooms as they are expected to maintain cleanliness in their personal spaces. In better managed labor accommodation facilities, companies sometimes provide laundry services to reduce the time spent by workers on household tasks and increase their access to rest and recreation.

- f. **MEP (Mechanical, Electrical, Plumbing) and other services:** The housing facilities need to be maintained periodically to ensure the safety, security and hygiene are kept to required standards. This would require regular facilities management including mechanical repair, electrical services and checking of wiring, plumbing including the cleaning of water tanks, sewage tanks and kitchen grease traps. Additional services that are required also include pest control, fire safety and landscaping services.

As illustrated above, the quality of life experienced by workers is directly proportional to the amount of money a company is able to invest in the facilities provided to workers. If employers have to cut costs, the primary areas that are targeted for deductions are items that disproportionately impact workers and can range from reduced food quality and lack of air-conditioned buses to loss of pay or termination of employment.

Section 3: Accountability and enforcement of rights

Simply put, low-income workers often experience improved living and working conditions when they are employed by good employers. These better employers are not necessarily more conscientious than others, but may simply be more professional and have well-defined employment processes and policies. Such employers may have the following facets in common: international, long operational history, institutional knowledge of dealing with global regulations and, most importantly, financial clout. These employers are aware of the business implications of having a poorly treated workforce and are able to prioritize a short-term cost impact to maximize profits in the future and minimize reputational costs. They are indeed sensitive to public perceptions of their company and would not wish to undermine shareholder sentiment based on media exposes or investigative reports by civil society groups. An example would be allegations made against French company Vinci on claims of exploitation of workers in Qatar.¹⁶

If workers do not have the fortune of having a good employer, their employment conditions can range the full spectrum of blatant exploitation to simple apathy. The primary reason why this occurs is directly linked to the system that ties employment to residency rights as employers are legally required to provide all necessary facilities for their employees. In this manner, employers have an almost paternalistic role to play in the migration cycle of a worker and are expected to care for their low-income employees.

¹⁶ Thomson Reuters. (2018, November 22). Vinci denies new allegations of forced labor in Qatar. Reuters. Retrieved October 24, 2022, from <https://www.reuters.com/article/us-vinci-qatar-idUSKCN1NR1LF>

The responsibility of protection of worker rights is shared amongst multiple parties that include the following:

- a. **The direct employer:** The employer, as the legal party who has hired the employee has the primary duty of care to their employee. They are responsible for the provision of wages, decent living and working conditions, including safety and security issues.
- b. **The client:** The client that the employer is working for is also responsible, by having taken on this contractor to execute their project. Any violation of workers rights' will be directly linked to the client by media and civil society groups, regardless if they are the direct employer of contractor or not.
- c. **Third party monitors:** The client may at their discretion choose to appoint a third-party service provider to ensure the rights of workers are protected. This is particularly relevant for high-profile events such as the FIFA World Cup in Qatar, where third party (and in-house) labor welfare monitors have been appointed to ensure workers' rights are upheld. Depending on the scope of their contract, third party monitors may manage worker complaints, inspect accommodation facilities, check for ethical recruitment of workers, and hold contractors accountable to the standards of treatment expected by the client. The minimum permissible standards would be aligned to legal requirements, with additional project-specific enhancements that may go beyond legal requirements. For instance, standards specified by Qatar Foundation go beyond legal requirements on recruitment fees and specifically state that workers are not to be charged directly or indirectly for any recruitment-related costs.¹⁷

Section 4: Implications to worker rights because of complex contracting environment

As illustrated above, there are multiple actors involved in ultimately delivering the lived experience of workers. This section will attempt to shine a light on *why* certain actors get picked over others and the likely business decisions made that invariably have a negative impact on workers' lives. We also attempt to examine the many hidden aspects of the complex contracting chain that make it challenging to build a sufficiently suitable assurance mechanism to audit or assess workers' welfare.

1. **Pre-qualifications of contractors based on lowest cost:** For a project involving construction or a large-scale deliverable, the contracting process generally commences with a tender where Requests for Proposals (RFPs) are solicited from businesses interested in offering their services. Multiple businesses submit their proposals on how they would be ideally suited to meet the client's requirements and the client's procurement team reviews these submissions against their criteria. Multiple areas of the tenderer's processes are assessed to determine whether they have the required expertise to deliver. A key determining (but not only) factor is the commercial detail that outlines the cost of service. Usually, the cost of service takes priority over other factors, even if the tenderer may have other areas of concern that may have been flagged during the tendering process. An unfortunate reality is

¹⁷ *QF Mandatory Standards*. https://www.migrant-rights.org/wp-content/uploads/2018/01/QFMandatoryStandards_Rev0_20April20131.pdf. (n.d.).

that, with lower costs, the contractor will be cutting costs in other areas, which significantly affect the quality of life for their employees. These range from living conditions, wage levels, and management structures that adequately address any risks to employees.

- 2. Assessment of contractors – audits and inspections of multiple tiers:** When client-appointed inspectors (in-house or third-party) undertake assessments of contractors' worker welfare conditions, the challenge is quite complex. The length of the contracting chain is sometimes unclear with multiple tiers of contracting and subcontracting present on a single project. It is quite challenging to determine the number of tiers present on a particular project and to undertake assessments of the welfare of workers appropriately. There is a distinct lack of visibility of the number of sub-contractors present as one sub-contractor may appoint multiple others, sometimes without the main contractor being aware. The main contractor only holds their immediate sub-contractor accountable and generally believes they are not responsible for issues further down the chain, as they have no formal business relationship with them. These issues are exacerbated when violations of workers' rights are detected way down the chain but escalated to the client.
- 3. Detection of issues and investigations:** Issues of worker rights' violations can come about from multiple sources: complaints, worker interviews, whistle blowers, audits, and inspections. A critical factor of success for an effective business-led worker welfare program is gaining the trust of workers. Exploited migrant workers in the Middle East are often in a precarious situation: they do not wish to lose their employment, but also aspire for better living and working conditions. Those parties tasked with assessing worker living and employment conditions must regularly undertake activities to demonstrate that grievance mechanisms and structures actually work and will lead to improvements. Many companies claim to provide grievance avenues that are largely reactionary (suggestion boxes, complaints register) or other means where the onus is on the worker to make a complaint, with the employer providing amenities. However, a lack of complaints does not equate to a lack of issues for workers. If workers are able to see that grievance structures set up by their employer have worked in the past, without any repercussions to the complainants, they are more likely to speak up about issues. Believing workers when they complain is the first step to securing trust and remediation of issues in a timely fashion enhances this trust: they demonstrate the seriousness with which the employer responds to such complaints. In this manner, those who are responsible for improving worker conditions are able to execute their duties better, and also secure information from workers through interviews that may help in audits later.
- 4. Reasons for occurrence for non-payment of wages:** Arguably, the biggest challenge faced by workers is the lack of pay, delayed wages or incomplete wage payments. Often, the primary reasons for lack of wages are the accumulated costs that have risen for the contractor working on the project, and a delayed payment cycle. While contractors should have sufficient liquidity to cover their overheads, they often do not and if a payment to the contractor is delayed or withheld for any reason, there is an often-immediate knock-on effect on workers' wages. Complicating matters further is the hesitancy of the contractor to push the client to release payments sooner as they would not want to upset the business relationship and potential future business. Furthermore, the lower down the contracting tier, the slower they get paid. In a complex project that may involve multiple tiers, the

workers at the lowest contracting tiers are the most vulnerable, and the most likely to have significantly worse off conditions than those at the top tier, simply owing to their lack of visibility. If payments are delayed multiple times, contractors may also intentionally use these instances of not being paid by the client to inform workers to not go to work *after* arrival at the construction site, thereby placing additional pressure on their client to pay their invoices, to avoid the reputational damage of a large labor strike on their premises.

Section 5: Remedial solutions for various types of worker issues

This section explores tried and tested means of rectifying the most egregious forms of exploitation of workers. Ideally, a party is assigned to monitor (either directly or via third party) the levels of risk of worker exploitation and develop mitigation plans.

- 1. Ensuring payment of wages:** This can only come from strict monitoring of wage payments, securing monthly reporting of data from contractors to clients, third party monitors, and verifying through thorough document reviews and corroborating with worker interviews. Workers generally undertake overtime hours as standard practice alongside their regular working hours. However, the rates in which overtime is calculated is also critical. Oftentimes legally required calculations of overtime (generally 1.5 times regular pay) is not used, resulting in wage theft from workers. Workers generally want to work extra hours to increase their income, however they may not necessarily be aware of how their employers are calculating their rates. This is owing to the fact that workers are not always provided with payslips detailing hours worked, deductions and accrued time off. Important means to assess this include: securing time-keeping records, corroborating this with the pay earned by workers at the end of the month, and verifying for a sample number of employees. The pay earned by workers can be verified via bank account transfers that are assessed.
- 2. Preventing contract substitution:** Ensuring workers are in possession of at least two distinct versions of their employment terms and conditions: the job offer they are provided prior to departure from country of origin; and the job contract they sign in country of destination. Assessing these two documents will help determine whether any conditions of employment have been altered. Often, recruitment agencies who provide the initial job offer remove this document from them prior to departure from the country of origin. Furthermore, it is critical to partner with civil society groups and address aspiring migrants in countries of origin to keep copies of any documentation provided by recruiters prior to departure. With increased access to smart phones at lower prices, workers are increasingly taking pictures of their documents and keeping them in their phone.
- 3. Preventing excessive working hours:** Working hours are a key determining factor in the monthly wages earned by workers. On top of regular working hours, the additional overtime pay is calculated at a premium rate. Working hours should also be assessed to ensure that they are legally compliant. Workers should have at least a 24-hour continuous rest period for every week of work. Legally and as per ILO conventions, working hours should be limited to 8 hours per day with a maximum of 48 hours per week. While workers may wish to maximize their income with additional hours, their well-being and productivity should also

be considered. Productivity rates generally decline¹⁸ after 9 hours of work, and also leads to increased risk for occupational hazards or injuries.

- 4. Providing mandatory rest days:** Complicating issues of working hours is the fact that workers, in their need to maximize income, are willing to work without days off. Many workers are aware that working on public holidays or weekends, entitles them to a premium pay rate, and are willing to undertake this in order to maximize their income. This issue is generally assessed through a combination of time-keeping records, worker interviews and evidence of wage payment amounts.
- 5. Providing decent quality of accommodation:** Poor living conditions have been well-documented for migrant workers, often living in shared living spaces with insufficient space and absence of personal storage space. Exacerbating this situation is that of poor sanitation standards followed by the employer, with inadequate cleaning of bathrooms, kitchens, and shared spaces. At a minimum, these shared labor accommodation facilities must be compliant with local legislations, paying particular attention to fire safety, hygiene, and meal provision. This is especially important during pandemic times where it would be highly implausible for workers to socially distance themselves from others. Accommodation facilities, when built on a larger scale, must also have adequate facilities for medical care, including a first aid room and isolation rooms in line with local legislations.
- 6. Providing reliable grievance mechanisms:** The ability for workers to raise a complaint and have this resolved is critical to a successful employee-employer relationship. However, very few companies have a documented grievance process that outlines resources for employees to reach out to in case they wish to raise complaints. Often, employers resort to a so-called “open-door policy” where they state all employees are more than welcome to come and speak personally and raise complaints. This poses a key challenge, as these complaints are often unrecorded and when it comes to serious issues of harassment, wage- deductions or complaints against immediate supervisors, workers have little recourse. The ability for workers to have a means to communicate with employers directly is critical and often mitigates any situation that may escalate into an untenable conflict, such as a worker strike or a refusal to work.
- 7. Worker forums and empowerment:** The ability for workers to speak up about any issues that negatively impact their living and working conditions, and have it taken seriously by their employer is important. This is especially so in countries where unionizing is not permissible under law. Under such restrictive conditions, an effective solution is setting up worker welfare forums. These are forums organized between employer and employee that meet regularly and air concerns to the employer, who in turn updates employees on actions taken. This is critical as workers are too often not provided with any information on what steps (if any) have been taken by their employer on complaints raised in the past. A lack of communication and transparency from employers to their employees is often the primary cause of a discontent workforce, and when issues are not addressed (or appear that way), they may escalate to more untenable situations of worker unrest. Providing means for

¹⁸ Messenger, Jon. “Working Hours and Future of Work.” *ILO Future of Work Research Paper Series, 2018, Section 2.3: Effects of Working Hours on OSH, work-life balance and productivity*: https://www.ilo.org/wcmsp5/groups/public/---dareports/---cabinet/documents/publication/wcms_649907.pdf

workers to voice their concerns also helps build internal structures for employers to increase workers' loyalty and dedication to their employer, empower migrants and reassure workers of their employment precariousness. Furthermore, studies have demonstrated quantifiably that a happier worker is a more productive worker.

Section 6: Conclusion

In summary, an effective approach to mitigate worker welfare risks is good for business. A business that cares for the individuals working within their supply chains are able to increase productivity of their workforce. Workers feel valued, have their needs met and are committed to a good outcome for their employer. The status quo model focuses on cost-effectiveness, which more often than not, means corners are cut in the benefits afforded to workers. While there may be initial costs upfront, the longer-term benefits to businesses are in the favor of the employer. Furthermore, increasing attention is paid to the social performance of businesses by investors via ESG ratings.¹⁹ Governments across the world are also paying attention to global supply chains and developing legislations to prevent modern slavery globally. As recently as Sept '22, the EU has tabled a resolution banning the sale of products potentially made with forced labor.²⁰ As global market pressures, legislative changes create the environment for change, businesses have an opportunity to gain long-term benefits by investing in improved conditions for workers today.

¹⁹ *This ESG (Environmental, Social, Governance) scores of businesses is a good starting point, but issues remain to be ironed out. For instance, the ratings largely rely on self-reporting by businesses to a ratings agency.*

²⁰ *Com(2022) 453 - proposal for a regulation on prohibiting products made with forced labour on the Union Market. Internal Market, Industry, Entrepreneurship and SMEs. (n.d.). Retrieved November 17, 2022, from https://single-market-economy.ec.europa.eu/document/785da6ff-abe3-43f7-a693-1185c96e930e_en*

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