

Compliance Alert: Forced labour in Qatar - the ball is in the company's court now!

The seemingly endless supply of cheap labour is not a 'natural' phenomenon. Both poverty and the production of a global work force vulnerable to forced labour are socially and economically constructed conditions

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This article discusses the results of ECCHR's investigation into labour abuses and forced labour in the construction sector in the Gulf and the structural reasons of why these cases cannot be brought to the courts. It also discusses the question of legal responsibility of companies along their labour supply chains and the potential for trade unions to provoke change.

The problem

In 2010 Qatar won its bid to host the FIFA Championship 2022. Soon after construction works started for new World Cup stadiums and infrastructure, the first media reports revealed devastating working conditions for the migrant labourers. Football temples were always symbols of passion for sports and fair play, for international understanding and fun. Suddenly they were claimed to be built by the hands of 'slaves'.

The story of Qatar is not so different from other globalisation tales, it just happened fast track. Since the early 1990s global capitalism is on the rise. Transnational corporations blasted the chains of national borders and extended their market power to a global level. Today the core market dynamics of demand and supply apply to a worldwide marketplace. The borders for migrants remain closed, unless they feed the demands of a flourishing transnational labour market.

In countries like Bangladesh, India, Nepal or Kenya, there is a growing number of 'working poor' who are not only poor in terms of money, but also education, skill-training, access to health, sanitation and so on. These various factors of exclusion make them vulnerable for labour exploitation. If they are offered a job abroad, away from their families and for a salary of no more than 400 Euros a month, many will accept.

In the eyes of global market economy they become a seemingly endless supply of cheap labour force. This supply is not simply the consequence of poor people looking for work, as much as poverty is not a 'natural' phenomenon. Both, poverty, and the production of a global work force vulnerable to forced labour are socially and economically constructed conditions to feed a cheap labour demand that ensures the profitability of certain economic sectors¹.

On the labour demand side in Qatar, the multi-billion euro contracts for the construction of the FIFA World Cup infrastructure get awarded to transnational companies from China, Malaysia, Saudi Arabia, and Europe, such as Vinci, Porr, Besix or Hochtief.

They form part of a system that generates patterns of workers' rights infringements in Qatar. Since 2010 ever more reports of civil society organisations, investigative journalists and UN bodies denounce the labour conditions of migrant workers. They speak of people who seek an income to feed their families and must migrate abroad for it. Of people that pay high recruitment fees, even though these are illegal, in Qatar and in many home countries. Recruitment agents and sub-agents in several tiers - from the capital down to the home village - all demand their share and corruption often lubricates the system. It is the workers - not the employer - who end up paying all fees. Often they sell their land and little possessions. With great debts they arrive in a country of a different language and culture, and where they are prohibited from joining or forming a trade union. They hand over their passports to their employer to get residence papers. They are accommodated in labour camps, often in a deplorable state. Waiting for their legalisation for many months, they are fully dependant on their employers. Without a job they lose their visa. Without a visa, they fear detention and deportation. But they cannot return to their families with empty hands, still indebted. So even if they get paid only 200 euro instead of the promised 400 euro, they will still accept the job: 'the absence of choice, made the choice simple' (Shahidul Alam, *The best years of my life*, 2016).

A legal analysis shows that we are dealing here with forced labour rather than slavery, where a person would be reduced to an object. The ILO Convention No. 29 (1930) defines forced labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him (or her)self voluntarily.' In the decision of *Chowdury et al vs Greece* (21884/15), the European Court for Human Rights makes clear that where an employer takes advantage of the vulnerability of workers in order to exploit them, they do not offer themselves for work voluntarily (para 96) and that the validity of consent of the victim has to be seen in the light of all circumstances (para 90). Vulnerability is assessed by all relevant circumstances, including the withholding of wages, the lack of legal residence papers and resulting risk of being detained and deported, harsh living conditions (para 94).

So, deception of workers about expected salaries will most likely invalidate consent. Their vulnerability is increased if they are paid much lower wages than promised, especially if they have

significant debts. So, recruitment malpractice is at the entry into a concrete risk of forced labour. The lack of legal residence papers and the menace of detention and deportation upon leaving an employer without consent adds to workers vulnerability to forced labour.

The system that sustains the problem

Many actors are involved in this exploitative system: the direct hiring of workers is the exception. To minimise the legal responsibility, the job is delegated to a network of recruitment agencies. This may include local manpower companies (so called 'dalals'), recruiters based in countries of origin and local sub-agents in the rural areas the workers originate from. There are government authorities and agencies – in the home and the destination country – who regulate, monitor and enforce recruitment and labour standards. The employers in Qatar often are only subsidiaries or subcontractors, to main contractors. These main contractors again, might be subsidiaries or joint venture partners of international companies from all over the world, who are the ones probably taking the decision to apply for the construction of a football stadium. In sum they all create the problem of forced labour.

The longer the chain of subcontracting, the higher the risk of labour rights infringements somewhere along it. But back in Europe, the transnational companies claim, it is nearly impossible for them to track this process. They may be right, but that is part of the system. It allows the maximum access to cheap workforce with minimum legal liability. The legal responsibility of these companies harvesting the fruits of global free market economy cannot be limited to what happens in the headquarters of London, Paris, Brussels or Vienna. Non-traceability of the recruitment chain must no longer be an advantage to these corporations.

Working towards change is work by trial and error

So at the European Centre for Constitutional and Human Rights, (www.ecchr.eu), we set out to investigate cases where European companies might be directly or indirectly linked, with the aim of litigating an exemplary case in Europe.

The situation in the labour camps was intimidating. Workers who agreed to an interview were under constant fear to be discovered. But we found cases of labour abuse on construction sites. These men had been deceived and still worked extremely hard for a monthly wage just about the daily average income of a Qatari citizen. Domestic workers face an even harder situation. But they can hardly be contacted as they live in very controlled spaces, in the private houses of their employers, with hardly any freedom of movement, or free time, or even phone access.

Workers were not willing to accuse the companies openly. After security officers scanned through a café where interviews were taken, workers got worried and pulled back. They cannot afford to lose their jobs.

We undertook another attempt by reaching out to returned migrants in their home countries in Pakistan, Nepal and India. Again, we found records of numerous labour abuses, but now it was difficult to verify concrete information. Often interviewees did not have names and address of their recruiters and sub-recruiters and employers, or a photocopy of their contract and pay slips, did not remember names of persons or places, or specific dates.

Our results confirmed, that serious problems as described in many reports, still persist, especially relating to bad recruitment practice. However, they did not make a litigatable case. Not because the interviewed workers just had bad memory. It was because of structural reasons: workers are constantly fearing to lose their jobs, which are existential to them. Workers have no access to relevant information (even the names of their work site, for example) or might not know which information and papers are relevant to keep even after their contract ends. Trade unions are prohibited for migrant workers – and migrants make up more than 80 percent of the population in Qatar - so they will have no access to training, to collective action, or to support for complaints. Finally, where actors and evidence within the complex labour supply chain are spread out across different jurisdictions, it becomes practically impossible to identify and proof individual actions and responsibilities within them. This is particularly so, if you have a high level of corruption (sending countries), a low level of government oversight and enforcement (destination countries) and a low level of extraterritorial regulation (in home states of transnational companies).

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So, if complaint-based approaches do not work, we need a prevention focus. And here we want highlight the role of transnational corporations, who often do not see themselves yet in a role of relevant influence or even legal responsibility, as far as recruitment practices are concerned.

Bad recruitment practice is an issue for every compliance department of a company that works in a risk sector for forced labour, such as construction, agriculture and food-processing, hospitality, garments, electronics, domestic work or care work.

Compliance is about risk management. And high recruitment fees, and related indebtedness, but also deception through contract substitution are specific risk factors for forced labour.

After so much reporting by NGOs and media, no corporate director in the respective business sectors can claim not to have known of the risks. And this knowledge obliges companies to invest every effort into prevention – as part of their human rights due diligence and compliance management.

Whoever – by doing business as usual – helps sustain such conditions, must be aware that they run

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as a discursive resource. Similarly, while the Histadrut faces accusations of corruption and lack of transparency, its power is recognised and its dominance continues despite challenges from new organisations. At the same time, entire industries are being prised open to competition and marketisation, and representation is fragmented and partially decentralised, yet this has different effects on different groups of workers. Crucially, the embrace of a liberal perception of workers' rights has opened opportunities for those who were excluded from

Israel's strongly nationalist variant of neocorporatism. It is not yet clear whether the opportunities for participation in collective IR frameworks can counter an increasingly strident and exclusionary ethnic nationalist politics.

1 To clarify: Israel's Palestinian citizens are those who remained within Israel's sovereign territory (inside the 'Green Line') following the war of 1948 which led to Israel's establishment. Israel usually refers to them as 'Israeli Arabs'. Here I am referring to Palestinians from the occupied territories, who came under Israeli military rule after the 1967 war, and are not Israeli citizens.

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the risk of aiding and abetting forced labour. This means we are talking of risks of criminal responsibility. This does not change where other actors along the chain may also be at fault. The subagent in a rural province in India promising a wrong salary to an unskilled labourer is not the root of the problem. His or her responsibility does not erase the responsibility of a transnational enterprise at the other end of the chain. Legal responsibility is not an 'either-or', but accumulative.

So, responsibility may apply to the recruiters, and also to the employer who demands labour, or the business partner of an employer, who benefits from low labour costs of the joint project.

The UN Guiding Principles for Business and Human Rights are clear that a company has a responsibility to help preventing human rights violations – that includes forced labour – not only within their own company, but in all their business relationships. This includes relations with subsidiaries, subcontractors, agents and joint ventures.

The crucial performance indicator to assess compliance with human rights due diligence is effectiveness. Prevention must be effective. General policies without monitoring or enforcement mechanisms are not enough. Proclaiming an expectation of fair recruitment but not paying a recruitment agency is clearly contradictory. A company needs to show how it responds to the high corruption risks in the supply chains, and to the increased but foreseeable challenges where agents work in different jurisdictions, to the lack of access to justice for victims, and the monitoring gap that results from it.

Provoking change through concrete action

Trade unions can play a unique role in provoking structural change here. And here are the reasons why they should:

1. Not only in Qatar but in many countries, also in Europe, are construction and domestic work risk sectors for labour abuses. The same applies for other risky business sectors.
2. Not only in Qatar are migrant workers unable to organise in a trade union, but in many countries, including Europe. They may be prohibited by law from joining, or they have no legalised residence status or they have no formal labour contracts, etc. – so there is a need for international solidarity.
3. ILO and international trade union federations are – specifically in Qatar – doing an important job and filling a much needed role there, negotiating with transnational companies and the government. But more is needed. A lot of power to exert pressure comes really from the national unions.
4. Trade unions have an interest in a sound corporate risk management and good governance. Corporate compliance is in their own interest. Trade unions should participate in determining how compliance is handled in all units of a transnational company.
5. Trade unions, because of their experiences, knowledge and skills, are well placed to work towards mandatory recruitment standards, effective monitoring mechanisms and effective access to remedy. The challenge will be to extent the scope of action to include those workers that are deprived of direct labour protections by the global labour supply chain system.

1 Well worthwhile reading is the analysis of the political economy of forced labour by Genevieve LeBaron, Neil Howard, Cameron Thibos, Penelope Kyritsis: 'Confronting the Root Causes: Forced Labour in Global Supply Chains' (2018), URL: <https://www.opendemocracy.net/beyondslavery/genevieve-lebaron-neil-howard-cameron-thibos-penelope-kyritsis/confronting-root-causes>