

EXECUTIVE SUMMARY

Accountability for forced labor in a globalized economy

Twenty-five million people, many of them migrants, are currently in forced labor worldwide. The journey into labor exploitation often begins with malpractice in recruitment, which is widespread in global labor supply chains and, in its worst form, can amount to human trafficking. Companies bear responsibility for forced labor all along their supply chains. Their legal liability does not depend so much on whether they can control their supply chain, but whether they practice human rights due diligence in a way that substantially addresses the concrete risks of forced labor in their supply chains.

*“The possibility of changing one’s destiny is the single driving force that pushes people into precarious journeys all across the globe.” (Shahidul Alam)**

I. Introduction

Close to 25 million people in the world are currently in forced labor, according to figures of the International Labour Organization (ILO). The situation in the Gulf region has received increased public attention ahead of the 2022 FIFA World Cup in Qatar, though only 1.4% of the total

Forced labor: when a person is coerced to work, whether through violence or other means, such as intimidation or threats with a penalty, such as detention, deportation or debt bondage.

Human trafficking: the recruitment, transportation, transfer, harboring or receipt of a person, over international borders or within the boundaries of a country, for the purpose of exploitation, such as sexual or labor exploitation.

forced labor registered worldwide occurs in the Gulf. The majority of forced labor (66.6%) occurs in the Asia-Pacific region.¹

The European Center for Constitutional and Human Rights (ECCHR) has investigated whether transnational companies from Europe cause or contribute to forced labor or other labor abuses along their supply chains in the construction sector in Qatar. This report discusses whether these companies can be held accountable before courts and offers suggestions for civil society advocates, companies and governments, on how to move forward in the struggle against forced labor.

II. ECCHR’s research in the Gulf region

Based on approximately 60 interviews with migrant workers and further stakeholders in Qatar, Nepal, Pakistan and India, ECCHR found that bad recruitment practices are widespread and considerably increase the risk of forced labor. Workers are often

* Shahidul Alam is a Bangladeshi photojournalist, teacher and social justice activist.

¹ International Labour Organization and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2017).

charged illegal fees for recruitment, in extreme cases up to €3,525 for a job that pays €280 per month. Recruitment takes place through several tiers in countries of origin and destination, with corruption often lubricating the system. In order to pay the fees, workers rack up debt, with interest rates sometimes reaching 50%. During ECCHR's research in Qatar, contract substitution and deception were also common complaints among workers. Many employers unduly delay the issuance of legal residence papers, keeping workers in a state of legal limbo and at risk of arrest, charges and deportation. Workers often cannot change their employer, as they risk being criminalized as "absconders." Delays and deductions of salary payments as well as serious work accidents continue to be a concern.

Structural conditions that allow abuses to persist: (1) Migrant workers are often unable or not allowed to join or form trade unions, so they lack independent access to information about their rights, as well as legal advice, training, collective action and union support for complaints. (2) Workers often lack access to effective remedies, be it for lack of information, lack of time or lack of confidence in existing mechanisms to resolve their problems. Domestic workers, mostly women, face an even harder situation: the new labor law in Qatar does not apply to them. Living and working in the private houses of their employers, they are more vulnerable to physical, sexual and labor abuses, and have even less access to information, support and remedy than other migrant workers.

In contrast, exclusively for FIFA World Cup-related projects, Qatar has established Workers' Welfare Standards, Workers' Welfare Forums, grievance mechanisms, trainings and international labor inspections. Yet, these cover only around 2% of all migrant workers in Qatar,

meaning double standards exist between the few sites currently under the international spotlight and all others. (3) Corruption and so-called "kickbacks" are widespread in labor recruitment chains. Corruption not only increases the workers' financial burden, but also erodes accountability structures and access to justice.

III. Analysis: The problem and the system that sustains it

Forced labor is not a "cultural" phenomenon in certain states. Most of the labor abuses ECCHR found during the research are illegal both under Qatari law and the laws of many states of origin of migrant workers. Yet, employers frequently disregard local laws to keep labor costs low. Their transnational contractors directly benefit from this practice.

Forced labor is driven by the dynamics of a market-oriented global economy. In countries like Bangladesh, India or Kenya, there exists a growing number of "working poor." Both poverty and a global work force vulnerable to forced labor are socially constructed conditions that feed a demand for cheap labor that ensures profitability of labor-intensive sectors.² Labor supply chains dissociate transnational corporations from labor abuses on the ground. These same structures also increase the risk of transnational corporations being directly linked to forced labor through their business relationships. To minimize legal and operational responsibilities, companies operate through complex transnational business structures, including foreign subsidiaries, majority shareholding, joint ventures, subcontracting through several tiers, suppliers, franchising or management contracts. Recruitment is often delegated to a network of agents. The longer the chain of outsourcing, the higher the risk of encountering labor rights infringements along it.

² For a comprehensive analysis of the political economy of forced labor, see G. LeBaron et al., *Confronting the Root Causes: Forced Labour in Global Supply Chains* (2018), available at:

www.opendemocracy.net/beyondslavery/genevieve-lebaron-neil-howard-cameron-thibos-penelope-kyritsis/confronting-root-causes.

IV. Legal accountability of transnational corporations and access to justice

The ILO defines forced labor 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.*” Deception of migrant workers about expected salaries or contract substitution invalidates consent. Similarly, illegal recruitment fees and the debt burden they provoke affect *voluntariness*. Illegally withholding salary or legal papers amounts to a *menace of penalty*, constitutive of forced labor.

International law prohibits forced labor, but cannot be enforced against private companies. However, according to the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs), corporations have a responsibility to respect human rights, including the prohibition of forced labor, and help prevent or remedy abuses, including along their supply chains. Companies must apply human rights due diligence, which means they must (1) assess actual and potential human rights impacts, (2) act to prevent, mitigate and remedy these impacts, (3) track the effectiveness of their responses, and (4) account for these efforts by communicating them.

A focus on the transnational supply chain shows that *every actor* in the chain that sustains and benefits from a system of exploitation needs to be held to account if systematic change is to occur. The question ECCHR asks through this study is: Can transnational litigation be viable against the actors furthest up in the chain?

Situations of labor exploitation in Qatar might amount to several crimes under domestic laws in companies' home states, as well as migrant worker's destination and origin states. These include crimes such as forced labor and human trafficking, but also fraud, manslaughter or bodily harm. Many actors in the supply chain are only indirectly involved in such crimes, but they may still be complicit in them if their specific

conduct in fact facilitates, encourages, or instigates the crimes.

Victims of forced labor and labor exploitation can also sue their employer or recruiter for damages. Or, if that is not effective, they may also sue actors further up the supply chain. If, for example, a Nepali worker files a tort case against the Italian joint venture partner of their Qatari employer, an Italian court can hear the claim and will decide according to Qatari tort law. The question of whether the Italian company has failed to apply the relevant due diligence standards under the UNGPs can be decisive for the claim. The content of due diligence varies from actor to actor. For example, a main contractor has a due diligence obligation to know the supply chain and make the best possible use of their leverage to help prevent and mitigate human rights abuses. This could be fulfilled by mandatory stipulations in supplier contracts against forced labor and recruitment malpractice, along with effective sanctioning mechanisms.

Several procedural challenges make successful transnational criminal or civil litigation difficult, including that investigations and evidence must be gathered in various jurisdictions. Evidence is also difficult to come by when informal practices do not leave paper trails or witnesses fear repercussions. Complex corporate webs often require specialized investigation skills, as well as transnational judicial assistance. The lack of mutual judicial assistance agreements, short statutes of limitation for tort cases, as well as prosecutorial discretion to close investigations all add to the difficulties. However, there are also more **structural obstacles to accountability and access to justice**: (1) **Worker vulnerability** is high in terms of economic dependency on their jobs and due to lack of information about their rights or available remedies. (2) The structural **inaccessibility of trade unions** for migrant workers perpetuates their vulnerability to forced labor and labor exploitation. (3) **Opaque diversification of**

business structures, from shareholding to outsourcing, leads to the dispersal of evidence across different business units and jurisdictions, often making it impossible to identify, attribute and prove individual actions and responsibilities.

V. Moving forward

Forced labor risks are particularly high in sectors that rely on outsourcing their operations, such as construction, hospitality, domestic or care work, all of which frequently rely on migrant workers. Bad recruitment practices specifically increase the risks for forced labor.

A company that does not verify and act upon bad recruitment practices in its supply chain not only sustains the conditions for forced labor, but also risks complicity in it. Highly diversified business models can make it difficult for companies to act in accordance with the required human rights due diligence standards.

Transnational responses should begin with connecting international human rights standards, such as the UNGPs, with local realities. For example, a company should:

- **when assessing human rights impacts**, identify the full supply chain and bad recruitment risks along it;
- **when acting upon the findings**, include real costs of recruitment into bidding proposals;
- **when tracking impact of measures**, establish independent worker-organized

grievance mechanisms that allow structural problems to be identified and addressed as such;

- **when accounting for its risk management**, collaborate with trade unions.

With the intention of sharing lessons learned from the work in and on Qatar, ECCHR further suggests:

International human rights litigators should develop genuinely collaborative transnational working relationships with local civil society actors, not only using their knowledge but seeking to support their causes. Local civil society structures are the most likely to ensure sustainability in the work towards change and, precisely because of that, are often threatened.

Civil society activists should fill the abstract UNGPs with concrete content and claim this definitional power.

Trade unions should work to include migrant workers even if they are not (yet) formally admissible.

Home states of transnational corporations should adopt mandatory human rights due diligence and liability rules.

More suggestions, also for states of origin and destination, as well as more details on the research can be found in the [full report](#).

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