

# OECD National Contact Points and the Construction Sector

**IHRB** Briefing

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While construction companies can pose a risk to human rights in a variety of ways – such as around community consultation, gender issues, access to water and sanitation, amongst others – this briefing focuses primarily on impacts to workers.

*This Briefing highlights the key insights shared at a workshop organised by the UK National Contact Point and IHRB in London on Friday 15 April 2016., attended by a range of stakeholders from the construction industry, representatives from other OECD NCPs and civil society organisations.*

## What are the OECD Guidelines for Multinational Enterprises?

The OECD Guidelines are recommendations by adhering governments to their multi-national enterprises (MNE). They clarify the responsible business conduct expected of MNEs covered by the Guidelines, addressing all major areas of business responsibility and highlighting the positive contribution business can make to sustainable development.

Adopted in 1976, the Guidelines have undergone a number of updates to ensure they remain at the forefront of the responsible business conduct agenda and a leading tool in the ever-changing global economy. In 2011 the Guidelines were amended to add a new chapter on human rights aligned with the UN Guiding Principles on Business & Human Rights, together with a general requirement to carry out due diligence, including across MNE's value chains. This requirement applies across most areas covered by the Guidelines.

## NCPs and the Construction Sector

NCPs assist MNEs and their stakeholders to further the observance of the Guidelines. They provide a mediation and conciliation platform for resolving 'specific instances' (issues arising from alleged non-observance of the Guidelines).

Few specific instances have been labeled as 'construction'. However, many have involved a considerable element of construction, for example oil pipelines, infrastructure or dam building. Of those, most have focused on the impacts of construction, e.g. displacement and environmental issues or working conditions on-site.

## Construction Facts & Figures

**7% of the global workforce** is employed in construction according to BWI.<sup>1</sup>

Global Construction Perspectives and Oxford Economics predict the construction industry to account for **13% of global GDP** (\$12 trillion) by 2020.<sup>2</sup>

The industry contributed **£103 billion in economic output and employed over 2 million people** in the UK in 2014.<sup>3</sup>

## What are the key risks construction workers face?

Workers face a range of risks to their human rights when working in construction. These can range from discrimination, unfair treatment and unequal wages to harsh working conditions and other negative impacts on their basic dignity.

In addition, many construction workers are migrant workers, who are often among the most vulnerable to exploitation and frequently less able to understand, defend or promote their rights.

### Working Conditions

Low skilled, low wage construction workers often have to endure working conditions that negatively impact their human rights. Risks include:

- Inadequate health and safety provisions
- Lack of adequate job training, raising the risk of injury
- Excessive working hours
- Compulsory overtime
- Lack of worker representation and restrictions on trade unions
- Lack of grievance mechanisms
- Harassment, physical or psychological abuse
- Disciplinary measures that include deductions from salary or even violence

### Recruitment Practices

Labour intermediaries frequently charge large fees to migrant construction workers for recruitment and placement.

Many will find themselves receiving pay and working conditions that bear little resemblance to what they were promised during recruitment. These can include:

- Charging of exorbitant recruitment fees
- Contract substitution/terms changing
- Charging of Government levies or bonds
- Additional health checks
- Sponsorship systems that restrict a worker's employment to a single employer or ability to exit the country
- Passport confiscation
- Failing to secure proper work visas, making the worker undocumented
- Blacklisting of workers

### Living Conditions

Migrant construction workers' dormitories and shared accommodation are too often cramped and unsafe, and may lack privacy and basic facilities such as a shower or toilet.

Migrant workers frequently have minimal leisure and recreational opportunities outside of work. They often receive little if any support in adjusting to the local culture or environment, or in dealing with being separated from their families and homes, which can have detrimental effects on their physical or mental health. Risks include:

- Sub-standard accommodation
- Sub-standard or culturally inappropriate food
- Lack of security and privacy, e.g. safe storage for documents, possessions
- Poor healthcare provision
- Restrictions on freedom of movement
- Poor access to facilities, e.g. banks, shops
- Late and irregular payment of wages
- Lack of clear, itemised payslips
- Harassment or detention by local authorities
- Physical or psychological abuse while travelling for work

### Under the Spotlight

Employment within the construction sector globally is often characterised by informality, low wages and few protections or benefits. Health and safety provision may also be inadequate. Massive increases in infrastructure globally means the construction sector's human rights performance will increasingly be scrutinized.

### Taking Action

Media scrutiny of the situation of construction workers in the Gulf, especially regarding the FIFA World Cup in Qatar, has heightened the industry's awareness and engagement with human rights issues.

The **UN Guiding Principles on Business and Human Rights** have given companies in all sectors a common language and framework to better understand, identify and address their human rights challenges. Recent government regulation like the 2015 UK Modern Slavery Act has also served to increase the awareness of the sector's human rights challenges and a desire to better understand how they might be addressed.

## Key Challenges for Construction Companies

**Deep supply chains:** Many processes in the construction industry are outsourced or sub-contracted to third parties. The common industry model is based on low profit (frequently operating to a 2% margin) and quick turnover. Sub-contracting can go down nine levels or more, with wages and conditions squeezed at each to secure work and retain profit margin. Tight deadlines impact on labour rights and short-term contracts make it difficult to engage with and address systemic issues.

**Inadequate government oversight:** The operating context for construction firms globally is often characterised by a lack of government regulation or enforcement of national labour laws or international standards. In some countries there is an over reliance on voluntary sector-based initiatives which can fail to prevent abuse and exploitation within the industry as a whole. Governments can also be clients either directly or indirectly. In certain countries this may compromise construction firms willingness to press for change or insist on standards.

**Corruption:** Corruption directly connected to construction and associated industries such as recruitment is common. In the UK alone, a CIOB survey found 48% of respondents believe corruption is common practice in the industry.<sup>4</sup>

**Awareness:** Within the industry there is a lack of awareness and little support or training for staff on human rights, compromising the industry's ability to identify and remedy risk and exploitation. This is beginning to change within some companies and several trade associations, professional bodies and training consultancies are beginning programmes to improve knowledge and develop new standards.



## Who is working on these issues?

Many construction trade associations and professional bodies have begun substantial work to raise awareness of human rights within the industry and to encourage the sector to work collaboratively to address key challenges. For example:

- The Chartered Institute of Building published a report on modern slavery in the industry in 2015.<sup>5</sup>
- Constructing Excellence has been actively raising the issue of labour exploitation as a risk to business from a moral, reputational and legal perspective, as well as an inhibitor to efficiency.<sup>6</sup>
- The Building Research Establishment is currently developing new employment labour standards for the industry.<sup>7</sup> They also continue to focus on the supply chains for products used in construction and the ethical sourcing of building materials.
- Many of the industry and professional bodies are working to include this information in research, training and continuing professional development.

## Influencers

The right to form and join a **trade union** is a key way to prevent exploitation, effectively manage and professionalise the industry, and lobby for national and international legislation aligned with ILO standards. There are over 20 global framework agreements between construction firms and trade unions.

**BWI** is a global union representing 12 million workers in building and forestry, covering 130 countries. Trade unions have successfully intervened in many cases directly with employers to resolve the issues, hence lower numbers of specific instances. To date, BWI has brought two (see FIFA summary below) and will consider bringing future cases where companies are unwilling to sign global framework agreements.<sup>8</sup>

**European Works Councils** brings together employee representatives from the European countries where an MNE operates, allowing consultation and information sharing with management on transnational issues of concern to its employees.<sup>9</sup>



## Spotlight on Qatar

Media coverage has increasingly scrutinised how mega-sporting events are delivered. In the run up to the 2022 World Cup, Qatar and FIFA have faced intense public scrutiny. Human Rights Watch reported in 'Building a Better World Cup' key areas of concern regarding the recruitment and employment of migrant workers as construction on stadia and associated infrastructure began in 2012.<sup>10</sup> Four years on, Amnesty International released 'The Ugly Side of The Beautiful Game: Exploitation of Migrant Workers on a Qatar 2022 World Cup Site' in 2016, highlighting migrant construction workers being subjected to a range of exploitative practices, including large recruitment fees, unsanitary and cramped accommodation, chronic abuse on worksites and in extremis forced labour.<sup>11</sup>

The Amnesty report also focuses on the Kafala sponsorship system through which migrant workers obtain a visa to work in the country. The worker is dependent on their sponsor for their legal status and needs their permission to change jobs or leave the country. This system, combined with lack of access to effective remedy, results in a huge risk of rights violations. Other methods for exploiting workers are also used, with passport confiscation, charging of recruitment fees, non-payment of salaries, lack of safety standards, poor accommodation and lack of freedom of association all identified in researchers' accounts.

## Swiss NCP – Ongoing Mediation with FIFA

After seeking to engage FIFA around a range of human rights violations of migrant construction workers in Qatar for the FIFA 2022 World Cup preparations, the global trade union Building and Wood Workers International (BWI) approached the Swiss NCP. After considering the status of FIFA and concluding the MNE Guidelines apply to it as a commercial organisation, the Swiss NCP then began to consider whether FIFA had failed to implement the MNE Guidelines and its responsibility to respect human rights. An external mediator is conducting confidential meetings between the two parties. A final report will summarise the meetings and their outcome, including any follow-up actions for either party.

However, as the specific instance involves FIFA, it will not address whether the MNE Guidelines cover those building the stadia or doing the landscaping. The mediation is also not expected to address how those at higher levels of the subcontracting chain can best handle the subcontractors who refuse to engage in the process.

## Influencers

**Export credit agencies (ECA)** provide insurance and direct loans to overseas buyers and guarantees to banks. ECAs financially support the sector, engineering procurement, subcontractors and exporters.

ECAs review the risks companies face at project-level and their systems for managing them. ECAs can require companies to improve their approaches on human rights. But ECAs also have limits on the resources available for due diligence and, like others, are challenged when client companies wish to keep issues hidden.

## References

- 1 See: <http://www.bwint.org/default.asp?Issue=CONST&Language=EN> (last accessed 30/5/16) | 2 GCP and Oxford Economics, 'A global forecast for the construction industry over the next decade to 2020' (2011) | 3 House of Commons Library, 'The construction industry: statistics and policy' (6/10/2015) | 4 CIOB, 'Corruption in the UK Construction Industry' (2/10/13) | 5 CIOB, 'Modern Slavery – The Dark Side of Construction in 2015' (2015) | 6 See: <http://constructingexcellence.org.uk/> | 7 See: <https://www.bre.co.uk/> | 8 See: [www.worker-participation.eu/European-Works-Councils](http://www.worker-participation.eu/European-Works-Councils) | 9 See: <http://www.worker-participation.eu/European-Works-Councils> | 10 HRW, 'Building a Better World Cup' (2012) | 11 Amnesty International, 'The Ugly Side of The Beautiful Game' (2016)