

Business Human Rights Responsibility in contexts limiting the freedoms and rights of migrants

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On 24 November 2021, 27 migrants who attempted to cross the Channel between France and the UK lost their lives. As French and British governments engaged in a blame game, out-competing each other on measures to stop the traffickers, their message was one for more border securitization. France argued for more means for FRONTEX, while the UK wants France to take back anyone who illegally crosses the Channel. All talks of strong action seek to make it even more unwelcoming for people seeking asylum and refuge, and whoever migrates in the hope of finding better livelihoods in Europe's advanced economies and wealthier shores. Sentiment against immigration and the resulting securitization of migration are not limited to Europe. They are also loud in the US, and widespread, if less reported about, in many countries in Asia, Eurasia, the Middle East, Africa and Latin America. At the same time, those many economies have come to depend on migrants to do so-called low-skilled jobs that usually offer low-paid and precarious working conditions in labour intensive sectors.

In such anti-immigration yet migration-needy contexts, we must ask: What message about migrants do governments send to companies and to people who work in those companies? What is the human rights responsibility of business in such anti-immigration contexts? How can they deliver where not only immigration laws but also labour laws impinge on the rights and freedoms of migrant workers? Should they stand with migrants and challenge governments to review their immigration laws that contradict the state's human rights obligations to protect human rights and make migrant workers vulnerable to exploitation? Or should they just stand by and not take a stand on the kind of discriminatory attitudes that are widespread in society and, potentially, among their employees and management?

The regulation and management of migration is a challenge for Business and Human Rights. Governments may design immigration regulations in ways that respond to the interests of business by creating and maintaining a pool of low-paid, flexible and docile labour. Anti-immigration sentiment and policies, however, lead to further restrictions on the rights and freedoms of migrants to live, work, and remain in a country that amplify their vulnerability to exploitation. National immigration policies are often designed and implemented in total disregard of states' international obligations to protect human rights. As such, the current context presents particular challenges for companies to deliver on their responsibility to respect human rights and eliminate exploitation from their operations. By restricting and not protecting the basic freedoms and rights of migrants, immigration policies not only open the door to misconduct and exploitative practices by employers but also undermine the ability of business to respect human rights. For instance, the visa status of foreign workers who take up low-skilled and low-paid jobs often limit their freedoms and rights. They may not be able to change employment due to their employer-sponsored visa, and thus are not free to choose employment or refuse poor employment. Their right to live and work in their host country may only be temporary and their freedom of movement limited to some areas close to their workplace. They may not be free to join a trade union and bargain for better working conditions. Their right to benefit from welfare may be tied to their being employed, while they pay high fees for healthcare and services, as part of already expensive work visa for which they might have become indebted.

In contexts where immigration policies undercut the basic freedoms of migrants – to appear tough on immigration or serve business interests by creating a precarious and docile pool of workers –, what should human rights due diligence (HRDD) look like? In our on-going project, Dr Claire Bright and I are developing a conceptual framework for a holistic approach to HRDD attentive to the vulnerabilities of migrant workers *in, around and beyond* work. The project itself focuses on the well-documented and informative case of migrant workers and the responsibility of international construction firms in Qatar. In a nutshell, the conceptual framework calls the attention of business to the structures that curtail migrants' freedoms and make them vulnerable to discriminatory social relationships and exploitative labour arrangements throughout the migration-life-cycle.

This framework requires that firms that rely on migrant workers or operate in contexts where migrants are likely to work in low-income jobs in different sections of their value chains consider the structures and relationships that frame their experiences *in, around and beyond* work. This means using HRDD to understand and act upon risks to migrant workers' rights *in* the workplace as well as *around* the workplace, in the society in and host communities, where they live, where they sleep, where they take transport, where they access health, etc. Understanding the structures and relationships that frame the experiences of migrant workers *beyond* work requires that they conduct HRDD in the recruitment chain.

Several instruments have been developed based on HRDD from recruitment to employment. For instance, the Dhaka Principles, or the IOM/ILO CREST initiative are based on HRDD and aim for safe labour migration. They point to the risks involved in the relationships between migrant, recruitment agent or brokers and employers. In particular, this includes indebtedment, incurred as migrant workers are required to pay for work, visas, travel, etc. when they should not, and one of the main relationships that leads people into situations of forced labor. Then, there are also practices such as changes in contracts and conditions when workers arrive in their host country, and identity documents being illegitimately retained by employers in ways that prevent movement and exit. Business relying on and recruiting migrant workers must use their HRDD to identify and act upon these common practices from the moment migrant workers seek work to the moment they are recruited, deployed, and employed in their host countries.

Our holistic framework goes some steps further. HRDD *in, around and beyond* work can serve business to understand and use their leverage over both the structures and the social relationships that shape the experience of migrant workers from their recruitment to their

employment and life in their host countries to their return. Both socio-economic and legal structures can undermine the freedoms of migrants and lead them into situations of exploitation that may be fostered by a company's own business model (e.g. long supply chain, outsourcing recruitment, sub-contracting, cost cutting, and pay on project delivery, etc.).

Starting with attention to legal structures, companies should also ensure that the basic freedoms and rights of migrant workers are protected in their home and host countries. As the above suggests, this includes understanding how legal structures can limit the freedoms of migrant workers, that is, limit their access to certain rights. For instance, a lead construction company that is highly reliant on migrant workers and recruits in Nepal, India, Bangladesh, Pakistan, Myanmar, etc. for its operations in Qatar should carry out in depth HRDD by identifying how the very different legislations around labour emigration and practices of labour agents and brokers affect the freedoms of migrant workers. Then, in the host country, they should check and take steps to respect their workers' right to freedom of movement, right to freely choose work and freedom of association and collective bargaining. These basic freedoms are vital for migrant workers to not be exposed to and be able to refuse exploitative labour arrangements and conditions. The protection of these basic rights and freedoms in law also lays the foundations for business to be able to respect human rights. In that sense, as part of and in order to be able to deliver on their human rights due diligence, business have a role to play to ensure that such protections exist. This entails using their leverage in collaboration with competitors and other labour and civil society stakeholders to change immigration rules, as well as ensuring that migrant workers in their operations and supply chains do not unduly suffer from such restrictions on or lack of basic freedoms and rights.

Furthermore, in the country where workers arrive social and labour relationships might not be that welcoming. In the case of Qatar, 90% of the workforce in low-income jobs is immigrant. This has led to strict laws and management of immigration that exclude migrant workers from welfare and segregate them in the margins of society. Until recently, the Kafala rule governed immigration: migrant workers depended on an employer-sponsor to get work, enter and leave the country, and change work. The system shaped labour laws and arrangements and pervaded deeply into social relationships between the local population, employers, and migrant workers. In her 2019 report, Tendayi Achiume, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, commended the reforms but warned against and urged action to end persistent discrimination based on race and country of origin. Legal reforms are a start. But change must also take place in customary norms and social attitudes towards migrant workers that imbue labour relationships and plausibly underpin exploitative practices.

In such context of legal reform, how can HRDD serve to uphold and advance human rights in labour and social relationships to overhaul the deep Kafala system? What is the role of companies that operate in Qatar in changing those norms in the lead up and beyond the FIFA World Cup 2022? These are all very important questions that we need to ask beyond the changes of law, beyond the regulation that require that companies respect the rights of migrant workers.

As Business and Human Rights scholars and practitioners, we need to realize the importance of discriminatory social relationships based on race and gender or other socially constructed dimensions that besides legal structures undermine migrant workers' rights and justify their exploitation. As noted in a recent paper by Erika George, Jena Martin and Tara Van Ho, race (and other intersecting dimensions of inequality and vulnerability) is not often talked about when it should be central to our investigations and understanding of the structures and relationships that reproduce human rights harms by corporate actors.

Finally, HRDD in, around and beyond work should draw our attention onto practices limiting access to remedy for migrant workers. While these include legal and social barriers, everyday organizational practices also need considering. For instance, using an anthropological lens, Andrew Gardner and colleagues point to the bureaucratic and

logistical challenges to implement reforms to the Kafala as well as existing protections and avenues for migrant workers to access remedy. Among these, lack of labour inspection authority and cozy relationships between government, local employers and foreign investors, tend to hinder the chances of migrant workers to claim any form of redress for harm. Then, employers' control over the accommodation site, food and transport can play an unintended role in preventing workers to seek and access independent counsel, legal support as well as healthcare services in urban areas away from workers' compounds. The 2020 COVID-19 lockdowns starkly exposed the combined impact of immigration policies, short-term and cash-trap business models, and employers' control over the movement and autonomy of migrant workers on their livelihoods, welfare, and wellbeing. In such contexts, human rights responsibility in businesses requires that they use their leverage to overhaul such structural and relational limits on the freedoms and rights of migrant workers.

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