

INTERNATIONAL CONSTRUCTION LAW: THE DEVELOPMENT
OF THE BUSINESS AND HUMAN RIGHTS TREATY AND ITS
IMPLICATIONS ON MIGRANT WORKERS

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I. INTRODUCTION

While the Business and Human Rights Treaty is still in the drafting phase, it is important to take a look at the industries on which it will likely bear great weight. When enacted, the Treaty will regulate international corporations generally; however, it is important for the Treaty drafters to look particularly at construction corporations, which should be subject to international regulations as they often employ migrant workers. Some system of international accountability must be established in order to address alleged human rights violations in these corporations, and the Business and Human Rights Treaty, once past the draft phase and in its final form, should be the document governing such issues.

A. *Contemporary Issues in International Construction Law*

While traditional construction law disputes are commonly centered around one party's failure to follow building code standards or the terms of a contract, a largely unrecognized yet growing issue in the construction industry is the concern for human rights. Employers should be concerned with taking care of their employees in addition to adhering to contractual obligations for the success of a project. Construction companies not only need to worry about the future safety of people using their final project, i.e., apartment building, hotel, bridge, but also, they need to worry about the current safety of the workers employed to construct such projects. Now that it is common for large companies to have extensive supply chains, it is paramount that contractual provisions are added at each level of the company to protect the rights of their workers.¹

B. *Outline of Argument*

Human rights abuses occur in employment practices around the world; however, particularly in Qatar and the Persian Gulf, human rights abuses have been running rampant for years.² Labor recruitment in the United

¹ See Catherine Gilfedder & Esther McDermott, *Time for construction to step up to its responsibilities?*, DENTONS: INSIGHTS (Oct. 2, 2020), <https://www.dentons.com/en/insights/articles/2019/january/7/time-for-construction-to-step-up-to-its-human-rights-responsibilities> [hereinafter Gilfedder & McDermott] (“The nature of the construction process, with its complex supply chains, exposes the industry's players to the risk of liability for the actions of those down the chain. The very real prospect of legal liability and reputational damage dictates that UK construction businesses should scrutinise their supply chains and incorporate human rights due diligence into their procedures. For maximum protection, businesses should consider inserting clauses requiring respect for human rights in all contractual documentation.”).

² Mariam Bhacker, *The construction industry must step up on human rights*, THE GUARDIAN (Apr. 19, 2016) <https://www.theguardian.com/global->

Arab Emirates (UAE) is shockingly unregulated, and migrants are peddled into labor through “sponsorship[s].”³ The Persian Gulf is both a hub for migrant workers employed within the region and for global companies seeking cheap labor on a temporary basis.⁴ In response to these issues, the United Nations (UN) formed the International Labour Organization (ILO) in 1919 for the purpose of creating and applying standards in the workplace on a global scale.⁵ Nevertheless, human rights abuses have persisted over the years, and the ILO seems to be failing at taking substantive measures in applying its labor standards.⁶

In 2011, the UN created the Guiding Principles on Business and Human Rights (UNGPs), which provide nonbinding rules based on recognized obligations that all companies should owe their employees, particularly throughout their complex supply chains.⁷ In 2014, the UN Human Rights Council (UNHRC) established a working group to create an

development/2016/apr/19/construction-industry-must-step-up-on-human-rights-migrant-workers-qatar.

³ Hadi Ghaemi, *Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates*, HUM. RTS. WATCH (Nov. 11, 2006), <https://www.hrw.org/report/2006/11/11/building-towers-cheating-workers/exploitation-migrant-construction-workers-united#> (“[L]ocal recruitment companies in the source countries, working on behalf of UAE-based companies, advertise for and enlist workers for jobs in the UAE; construction companies dispatch recruitment scouts directly to source countries to work with local recruitment companies[.]”).

⁴ *See id.* (“There are also companies in the UAE that import migrant workers for the sole purpose of subcontracting them to other employers, including construction companies, for long- or short-term jobs. They are known as ‘manpower supply agencies.’” (internal citations omitted)).

⁵ Dantam Le, *Leveraging the ILO for Human Rights and Workers’ Rights in International Sporting Events*, 42 HASTINGS COMM. & ENT. L.J. 171, 174 (2020).

⁶ *See id.* (“Codes and standards are great on a theoretical level, but when looking to enact serious change for laborers, these codes and standards are all too easily lost in translation and are not enforced with any signification application or accountability. The ILO differentiates forced labour from sub-standard or exploitive working conditions by recognizing ‘[v]arious indicators [that] can be used to ascertain when a situation amounts to forced labour, such as restrictions on workers’ freedom of movement, withholding of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debt from which workers cannot escape.’”); *see also* Sara McBrearty, *The Proposed Business and Human Rights Treaty: Four Challenges and an Opportunity*, 57 HARVARD INT’L L.J. 11, 11-14 (2016).

⁷ Office of the U.N. High Comm’r for Human Rights, *Guiding Principles on Business and Human Rights* (2011), https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_en.pdf (last visited Oct. 13, 2020) [hereinafter *Guiding Principles*] (basing the principles on “(a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.”).

international legally binding instrument that would regulate the activities of transnational corporations and other business enterprises under international human rights law.⁸ In 2018, a draft of the Business and Human Rights Treaty was written by the UNHRC group.⁹ As the Treaty is still in its draft phase, this Note will address the potential for its future drafts and propose measures the Treaty should incorporate to go beyond simply suggesting nonbinding rules.

Looking ahead, establishing a substantive means of enforcing these guiding principles on international companies, particularly those in the construction industry, could yield actual results in the improvement of international labor conditions and human rights abuses. The issues revolving around the Treaty relate directly to the developing area of law known as Business and Human Rights. As this area of law is quite new, little research has been done regarding its implications on corporations globally. Some of the largest construction projects around the world, which employ countless migrant laborers, are run by large corporations. An understanding of construction corporations' employment practices will provide an interesting lens through which to consider how alleged human rights violations are addressed and how corporations are held accountable in the international legal realm.

II. BACKGROUND

Before exploring the future of the Treaty, it is important to understand the reasoning for its genesis. As globalization has infiltrated every commodity and industry in the world, companies are booming, and growth rates are exponential. As businesses extend their reaches beyond country borders, their responsibilities increase as well. The UN Commission on Human Rights adopted a resolution in 2005 to establish standards for transnational corporations as a system of accountability, especially regarding human rights.¹⁰ In 2011, in the aftermath of the 2005 resolution, the UN adopted the UNGPs, which provided the first “global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. . . .”¹¹ The UN working group has been focused on drafting a treaty

⁸ G.A. Res. 26/9, ¶ 1 (July 14, 2014).

⁹ Business and Human Rights Centre, *UN Treaty on Business and Human Rights “Zero Draft,” Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises* (July 16, 2018) <https://www.ohchr.org/documents/hrbodies/hrcouncil/wgtranscorp/session3/draftlbi.pdf> (last visited Jan. 15, 2021).

¹⁰ Human Rights Council Res. 2005/69, U.N. Doc E/CN.4/RES/2005/69 (Apr. 20, 2005).

¹¹ Office of the U.N. High Comm’r for Human Rights, *OHCHR and Business and human rights*, OFFICE OF THE U.N. HIGH COMM’R FOR HUM. RTS.,

to regulate transnational corporations and other businesses in regard to human rights.¹² The UN open-ended intergovernmental working group (IGWG) held its sixth session from October 26 through October 30 of 2020 when the second revised draft of the Treaty served as the basis for the negotiations.¹³ During this session, the group addressed definitional revisions to the draft treaty, disagreements on due diligence obligations imposed by states on companies, as well as liability and appropriate remedies.¹⁴

A. *The Business and Human Rights Treaty*

Although the Treaty currently imposes no legally binding duties on countries to oversee companies' operations, the UN Office of the High Commissioner for Human Rights (OHCHR) works in conjunction with an intergovernmental working group to establish legally binding measures to be enforced globally.¹⁵ The Treaty, in its current draft form, aims to make countries responsible for enforcing human rights laws on companies operating within their territories; it also makes suggestions and provides avenues by which individuals might avail themselves of jurisdiction to national courts in order to properly address their grievances.¹⁶ The draft Treaty's preamble emphasizes the importance of fostering the growth of companies while diminishing human rights abuses, recognizing that there are certain classes of people who are more at risk to suffer these abuses, including "girls, children, indigenous peoples, persons with disabilities, migrant refugees, [etc.] . . ." ¹⁷

<https://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx> (last visited Oct. 13, 2021).

¹² Human Rights Council Thirty-first Session, *Report on the First Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, with the Mandate of Elaborating an International Legally Binding Instrument*, U.N. Doc. A/HRC/31/50 (Feb. 5, 2016) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/018/22/PDF/G1601822.pdf?OpenElement>

¹³ *6th Session of the IGWG Dedicated to Negotiations on the Proposed Binding Treaty on Business and Human Rights*, BUS. AND HUM. RTS. RES. CTR., <https://www.business-humanrights.org/en/latest-news/6th-session-of-the-intergovernmental-working-group-dedicated-to-negotiations-on-the-second-revised-draft-of-the-binding-treaty/> (last visited Sept. 24, 2021).

¹⁴ *Id.*

¹⁵ U.N. Doc. A/HRC/31/50, *supra* note 12 at 3.

¹⁶ See Gilfedder & McDermott, *supra* note 1 ("[T]he draft does not purport to impose direct obligations upon businesses, thus avoiding the controversial question of the existence of corporate obligations in public international law. . . . [T]he draft has provisions aimed at allowing victims to enforce applicable corporate obligations, such as information rights, jurisdiction for national courts, disapplication of limitation periods and access to compensation and restitution.").

¹⁷ See OEIGWG Chairmanship, *Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business*

The draft defines a human rights abuse as “any harm committed by a business enterprise, through acts or omissions in the context of business activities, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms. . . .”¹⁸ It also defines business activities as “any for profit economic or other activity undertaken by a natural or legal person, including State-owned enterprises, transnational corporations, other business enterprises, and joint ventures, undertaken by a natural or legal person.”¹⁹ Article 3 of the draft states that the scope of the agreement will apply to all companies of any transnational nature.²⁰ The draft clarifies that the responsibility lies with the states to monitor and regulate the “business enterprises domiciled within their territory[,]” and it also states that failure to adequately perform human rights due diligence measures will result in sanctions.²¹ Due diligence, however, will not absolve a party of liability if a human rights abuse still occurs as a result of their failure to prevent it.²²

B. Construction Law, Generally

Under the definition of “business activities,” it is clear that construction companies fall within the scope of the draft Treaty. Construction law is not always the first area of law that comes to mind when thinking about global corporations and human rights issues; however, over the years, construction companies have been one of the biggest sources of human rights

Enterprises, OEIGWG CHAIRMANSHIP SECOND REVISED DRAFT Second Revised Draft 06.08.2020, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (June 8, 2020), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf (June 8, 2020) [hereinafter Draft Treaty] (“*u*nderlining that all business enterprises . . . have the responsibility to respect all human rights, including by avoiding causing or contributing to human rights abuses through their own activities and addressing such abuses when they occur, as well as by preventing or mitigating human rights abuses that are directly linked to their operations, products or services by their business relationships[.]”).

¹⁸ *Id.* at art. 1, para. 2.

¹⁹ *Id.* § 1, art. 1, para. 3.

²⁰ *Id.* § 1, art. 3, para. 1.

²¹ *Id.* § 2, at art. 6 (“Failure to comply with the duties laid down under Articles 6.2 and 6.3 shall result in commensurate sanctions, including corrective action where applicable, without prejudice to the provisions on criminal, civil and administrative liability under Article 8.”).

²² *Id.* § 2, at art. 8, para. ¶ 8.

violations in the world, particularly in the Persian Gulf, where work opportunities do not abound, and wages are low.²³

i. Olympics

Construction companies commonly seek out transient workers who will accept low wages, and many of the human rights abuses occur on major construction projects such as resorts, hotels, and even sports arenas. For instance, human rights abuses commonly occur during the leadup to the Olympic games, especially during the construction of stadiums.²⁴ In response to the atrocities that occurred during construction of the arenas for the 2016 Olympics in Rio de Janeiro,²⁵ the ILO reached an agreement with the Japanese government to promote safe working conditions for the Tokyo Olympics planned for 2020, but an enforcement mechanism has yet to be established.²⁶ Without any legally binding international laws, agreements reached between intergovernmental organizations and nations themselves continue to have the effect of mere suggestions that are simply ignored for the sake of cutting costs.²⁷

²³ Ghaemi, *supra* note 3 (“In most other places, a worker faced with hazardous working conditions and unpaid wages, in a free market economy that has an extreme shortage of labor, would move to a different job. But this is not an option for the migrant construction workers of the UAE, who like all other migrant workers in the country are contracted to work only for a specific employer.”).

²⁴ See, e.g., Le, *supra* note 5, at 184 (“The preparation for the Beijing Olympics in 2008 was full of human rights abuses, especially for those of migrant construction workers, many of which lost their lives in building the Olympic stadiums.”); *id.* at 184-85 (“[M]igrant workers were still being exploited both in the construction and hospitality sectors. Workers were paid piece-work rates, their wages were withheld, there were excessive deductions for food, transport and accommodation, debt bondage and outright forced labor. Again, there was no ILO response to the human rights atrocities in the London Olympics.”).

²⁵ See *id.* at 185 (“Brazilian residents in Rio de Janeiro were victims of violence and evictions stemming from building projects for the Olympic games. There were major police violations and poor labor conditions, including the use of child labor. As a result, thousands of children were displaced and left unable to access education, healthcare and other social services. These ‘street children’ were removed for ‘social cleansing.’ Residents awoke to eviction notices ordering them out of their long-time homes within ‘zero days.’” (internal citations omitted)).

²⁶ See *id.* at 186 (“This partnership will hopefully encourage enterprises to play a positive role through Corporate Social Responsibility (CSR). Collaborative activities will include awareness-raising on the labor dimensions of corporate social responsibility, dissemination of examples of good practices among delivery partners, seminars and workshops to enhance the capacity of delivery partners in advancing decent work and disseminating tools to help delivery partners implement socially responsible labor practices.”).

²⁷ See *id.* at 167-68 (“As a result of this enormous financial burden and pressure to host great games, these host countries tend to cut corners to complete projects quickly and cheaply leading to major workers’ rights abuses and in many cases, death.”).

ii. *World Cup*

The human rights abuses described here are not limited to one industry or region, but rather occur on a global scale across industries.²⁸ The 2022 World Cup will be held in Qatar, and in preparation, construction companies started working on site over six years ago with human rights abuses occurring regularly since; over thirty people have died as of March of 2020.²⁹ The Qatar government, despite making some headway by enacting new legislation with the purpose of protecting migrant workers' wages and insurance, requires more oversight to implement the human rights "benefits" it is allegedly attempting to provide to workers.³⁰ Qatar has a duty to work with the ILO, with whom the country signed an agreement, in addition to its duty to follow the UNGPs.³¹

The issue at the heart of implementing human rights protections emanates from the inability to adequately enforce such protections on a global scale. Within the developing business and human rights area of law, the UN is working to ensure that companies like the Fédération Internationale de Football Association (FIFA) shoulder the responsibility of protecting the workers on their projects.³² Large companies, with robust finances and power,

²⁸ See *id.* at 186 ("[P]ublic procurement is conducted on a large scale from bid campaigns to post-event legacy throughout various industries, including the construction, tourism, service, textile, sporting goods, business transaction, security services and waste management industries.").

²⁹ Pete Pattison, *Qatar World Cup: report reveals 34 stadium worker deaths in six years*, THE GUARDIAN, <https://www.theguardian.com/global-development/2020/mar/16/qatar-world-cup-report-reveals-34-stadium-worker-deaths-in-six-years> (last visited Nov. 14, 2020) ("Nine migrant labourers working on the stadiums for the 2022 World Cup in Qatar died in 2019, the 'supreme committee' organising the event has announced, bringing the number of deaths on World Cup projects to 34, since construction began six years ago.").

³⁰ See *Reality Check: Migrant Workers' Rights with Four Years to Qatar 2022 World Cup*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/latest/campaigns/2019/02/reality-check-migrant-workers-rights-with-four-years-to-qatar-2022-world-cup/> (last visited Oct. 2, 2020) [hereinafter *Reality Check*] ("174,000 domestic workers remain among several categories of workers still excluded from the abolition of the exit permit, the temporary minimum wage remains very low (around \$200 per month), poor enforcement of laws remain a major barrier to real progress on the ground, and in hundreds of current cases new dispute committees are still taking many months to hear cases – and may still fail to ensure payment when companies will not or cannot pay. Many workers have had to return home penniless as a result.").

³¹ See *id.* ("With less than four years until the World Cup kicks off, and more than a year since the ILO agreement was signed, it is essential that the Qatari authorities accelerate their efforts to truly transform the protections available to their migrant worker population.").

³² *Id.* (reiterating the need for countries to work in conjunction with the ILO and follow the UNGPs.), This article makes it clear that stronger enforcement mechanisms are essential

are in the best position to bear the costs of liability; thus, it should fall on them to provide adequate protections to their employees. Large companies also often have great influence on governments and the economy, and they should use their influence to effectuate positive change.³³ As explained in Article 8 of the second draft, parties may be held liable for human rights abuses that occur “under their control.”³⁴ Corporate veil piercing issues may arise, however, in the supply-chain context due to a lack of foreseeability from the parent company.³⁵

III. ANALYSIS

Labor conditions are often unchecked in international construction corporations, so the Business and Human Rights Resource Centre (BHRRC) conducts outreach work to generally check on their employee practices and monitor companies when allegations arise.³⁶ This outreach is an effort by the BHRRC to understand what companies are doing to mitigate any issues that may be arising before they become too serious.³⁷ Open lines of communication with companies are essential for the BHRRC to be able to obtain accurate information regarding the status of employees and the risks

to making countries, and the companies operating within them, to adhere to agreements that they are parties to, like Qatar’s agreement with the ILO.

³³ See Reality Check, *supra* note 30 (“FIFA should not only ensure the respect of labour rights in the construction of World Cup stadia, but also use its leverage to ensure rights are respected in a broader range of infrastructure projects needed for delivery of the 2022 World Cup. . . . FIFA should also proactively seek to influence the Qatari authorities to fully and quickly deliver on their promised reforms, so that the protection of all migrant workers in the country may be a positive and enduring legacy of the 2022 World Cup.”).

³⁴ See Draft Treaty, *supra* note 17 at art. 8 ¶ 1. (“State Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability of legal and natural persons conducting business activities, domiciled or operating within their territory or jurisdiction, or otherwise under their control, for human rights abuses that may arise from their own business activities, including those of transnational character, or from their business relationships.”).

³⁵ See Gilfedder & McDermott, *supra* note 1 (“The consequence of this would be legal liability for businesses for foreseeable human rights violations committed not only by their subsidiaries but by any other entity in their contractual or supply chain where there is a ‘strong and direct connection’ between their conduct and the violation. In the parent-subsidiary context, this may give rise to doctrinal difficulties regarding the piercing of the corporate veil.”).

³⁶ See Bhacker, *The construction industry must step up on human rights*, THE GUARDIAN (Apr. 19, 2016), <https://www.theguardian.com/global-development/2016/apr/19/construction-industry-must-step-up-on-human-rights-migrant-workers-qatar> (“The outreach programme was designed to try to understand what action companies are taking to protect vulnerable migrant workers.”).

³⁷ *Id.*

they face at work, however, this information is extremely hard to come by, and the outreach is often met with silence.³⁸

A. *Migrant Workers in the Gulf*

Mariam Bhacker, an employee of the BHRRC, has described her experience reaching out to businesses regarding allegations of human rights violations by stating that typically seventy-five percent of businesses are responsive.³⁹ However, when it came to her outreach group's attention that many construction corporations, particularly in the Persian Gulf, employ migrant workers, they realized that construction work was a line of business that certainly needed to be monitored for human rights violations.⁴⁰ After reaching out and making an effort to contact these companies, Bhacker reported that her group only heard back from about twenty-four percent of those companies.⁴¹ This low level of feedback reveals a lack of transparency, which is a major impediment to groups trying to shed light on companies' employment practices.⁴²

The companies that did respond "have taken a significant positive step for transparency and accountability on migrant worker welfare"⁴³ But, the absence of any response from over seventy-five percent of the companies contacted suggests that the vast majority of construction companies are not making an attempt to improve working conditions.⁴⁴ Bhacker highlights a few of the ways in which construction companies continue to get away with a dearth of human rights protections: complex sub-contracting chains.⁴⁵ Based on the lack of transparency and failure on the part of corporate boards to take real action, it is clear that in drafting the Treaty, the ILO and the Business and Human Rights group should work together to

³⁸ *See id.* ("One reason for the silence from some in the construction industry might be that sub-contracting chains involved in large development projects are lengthy and complex. . . . This enables companies to pass the buck when it comes to the rights of migrant workers.").

³⁹ *See id.* ("The centre reaches out to businesses in different sectors to spotlight emerging or urgent issues where workers or communities are at risk from business activities and find out what action companies are taking to mitigate their impacts. . . . We frequently ask companies to respond to specific allegations of human rights abuse. Normally, we get a response from about 75% of companies.").

⁴⁰ *Id.*

⁴¹ *See id.* ("Of the 53 companies we have contacted regarding working conditions for migrant workers, only 12 have submitted completed questionnaires. Nine declined to respond. . . . This is particularly concerning because the construction labour pool in the region is made up almost entirely of migrant workers.").

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

enforce the agreements into which companies and countries often enter without any real anticipation of punishment when agreements are breached.⁴⁶

With construction being the “second-highest-risk sector for forced labor[,]” it is essential that construction companies answer for human rights violations and be held accountable.⁴⁷ In a guidance briefing referenced by the BHRRC, it is estimated that 4.5 million construction workers are in forced labor, and currently, the most common response from companies and investors is a total lack of action.⁴⁸ In fact, in Qatar and the UAE, only three companies provided evidence that they have made *any* effort to treat their workers fairly; similar practices occur in Jordan, Lebanon, and the United Kingdom.⁴⁹

B. Holding Companies Accountable

It is essential for international law to hold construction companies accountable for their labor practices because many of the employees of those companies are migrant workers.⁵⁰ As explained in the UNGPs, certain classes of individuals may be due more protection than others, especially if they are more susceptible to abuse.⁵¹ The lack of communication within large

⁴⁶ See *id.* (“Despite the growing indignation surrounding the lack of real action to deal with the abuses faced by migrant workers at the bottom of the recruitment chain, there persists a blind belief in many boardrooms of large construction firms that a policy commitment, or only using approved recruitment providers, or contractually obliging business partners to respect labour rights, is enough to ensure abuses don’t occur. There is still little proactive monitoring done to ensure that these measures translate to action.”).

⁴⁷ See *Investor Snapshot: Forced Labor in the Construction Sector*, KNOW THE CHAIN https://knowthechain.org/wp-content/uploads/KTC_Construction_brief.pdf (last visited Oct. 2, 2021) [hereinafter “*Investor Snapshot*”] (“An estimated 7% of the global workforce is employed in the construction sector, and the Gulf’s construction sector alone employs around 10 million workers. Responsible investors have a role to play in ensuring this growth doesn’t increase the risk of workers being forced into exploitation and abuse.”) (internal citations omitted).

⁴⁸ Adam Barnett, *Construction Sector Shows ‘Lack of Action’ on Tackling Forced Labour of Workers Globally, Says NGO*, BUS. & HUM. RIGHTS. RES. CTR. (Oct. 18, 2019) <https://www.business-humanrights.org/en/blog/construction-sector-shows-lack-of-action-on-tackling-forced-labour-of-workers-globally-says-ngo/>.

⁴⁹ *Id.* (“BHRRC found that just 39% of the 49 construction companies surveyed operating in Qatar and the UAE have a public commitment to human rights. . . . In Jordan and Lebanon, just 2/38 construction companies have policies to prevent workers being forced to pay recruitment fees, and just one disclosed information on how it ensures wages are paid on time for all hours worked. These abuses also occur in the UK, where a third of the country’s 100,000 construction workers from Europe have carried out work for no pay.”).

⁵⁰ See *Investor Snapshot*, *supra* note 47.

⁵¹ See *Guiding Principles*, *supra* note 7 at 14 (“[E]nterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples;

companies and their supply chains presents challenges to governments' abilities to effectively regulate the corporations within their jurisdictions.⁵²

Article 15 of the draft Treaty states that there shall be a Committee of twelve to eighteen members who are experts "of high moral standing and recognized competence in the field of human rights, public international law or other relevant fields."⁵³ States will be required to submit reports on measures they have taken in adherence to the Treaty.⁵⁴ The Committee is unable to punish a state for either failing to submit a report or failing to make any real improvements, which detracts from the Committee's ability to be an effective governing body.

Sanctions would be beneficial in achieving states' compliance with this requirement. Deciding what kind of sanctions should be enforced would be up to the working group to determine; however, stop-work orders could be imposed on construction jobs when violations are discovered. Sanctions could even be imposed for a lack of reporting in an effort to make transparency within company supply chains the top priority. Stop-work orders would inevitably attract the attention of the larger company and perhaps get an appropriate response aimed at remedying the issue, whether it's related to wages, work conditions, insurance, etc.

Another promising element of the draft Treaty is that states will be required to furnish the Committee with copies of their laws that reflect the changes the country has implemented; special attention will be paid to business activities in areas that are particularly rife with conflict.⁵⁵ If disputes arise between states regarding interpretation of the Treaty, the states shall solve it through negotiation, by way of arbitration, or by submitting the dispute or question to the International Court of Justice.⁵⁶

women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families.").

⁵² See Gilfedder & McDermott, *supra* note 1.

⁵³ See Draft Treaty, *supra* note 17 at art. 15 ¶ 1(a).

⁵⁴ See *id.* ¶ 2 ("State Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this (Legally Binding Instrument), within one year after the entry into force of the (Legally Binding Instrument) for the State Party concerned. Thereafter the State Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.").

⁵⁵ *Id.* at art. 16 ¶ 3 ("Special attention shall be undertaken in the cases of business activities in conflict-affected areas including taking action to identify, prevent and mitigate the human rights-related risks of these activities and business relationships and to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence.").

⁵⁶ *Id.* at art. 18 ¶¶ 1-3 ("If the State Parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the State Parties agree otherwise.").

The OHCHR outlines ways in which it plans to work on actual implementation of the UNGPs and the articles listed in the draft Treaty.⁵⁷ The OHCHR plans to help countries facilitate the reporting of human rights violations and implement the UN recommendations.⁵⁸ It also plans to focus on international law and the ways in which international jurisprudence can better evaluate and conduct judicial proceedings relating to human rights violations.⁵⁹ The OHCHR will also work to create more awareness of international human rights mechanisms in addition to developing ways to analyze human rights trends in an effort to prevent future issues.⁶⁰ The OHCHR states four “shifts” it intends to implement in an effort to focus on human rights violations and be better prepared to remedy them in the future, specifically with a focus on the human rights of women, children, and those with disabilities.⁶¹ These “shifts” are to: “[] [s]upport prevention of conflict, violence and insecurity[;] [] [p]rotect and expand civic space[;] [] [s]upport and further develop the global constituency for human rights[;] [] [d]eliver human rights in the context of emerging global concerns (‘frontier issues’).”⁶²

C. *Proper Forum for Bringing Claims*

The UN Forum was established in 2011 for the purpose of discussing current trends in human rights globally and the implementation of the Guiding

⁵⁷ Office of the U.N. High Comm’r for Human Rights, *Increasing implementation of the outcomes of the international human rights mechanisms*, <https://www.ohchr.org/EN/AboutUs/ManagementPlan/Pages/human-rights-mechanisms.aspx> (last visited Oct. 16, 2020).

⁵⁸ *See id.* (“We will support Governments to strengthen their engagement, coordination, consultation, and information management capacity with a focus on ensuring meaningful consultations; and assist States to develop implementation plans and use related tracking databases.”).

⁵⁹ *See id.* (“We will support mechanisms’ efforts to identify gaps in international law and provide jurisprudential guidance on emerging human rights issues. We will develop our in-house capacity; identify experts and key forums in association with States, UN and regional bodies, NHRIs, and civil society organizations; organize platforms and meetings to elaborate legal issues or clarify standards; increase the collaboration and involvement of the mechanisms with regional human rights organizations; and develop guidelines to facilitate their engagement in judicial proceedings, as amicus curiae or expert witnesses.”).

⁶⁰ *See id.* (“We will focus on making the mechanisms coherent and promote enhanced integration in the various processes that influence their operation. . . . We will work to ensure that the mechanisms are more accessible and visible, through enhanced use of videoconferencing and webcasting, and will document and disseminate stories about the impact that mechanisms have on the lives of people.”).

⁶¹ *See id.*

⁶² *See id.* (“These ‘Shifts’ will further unify our efforts as one Office; driving coherence, scale and measurable human rights impact in an uncertain world.”).

Principles.⁶³ The Forum specifically covers all three pillars of the Guiding Principles.⁶⁴ The ninth annual UN Forum on Business and Human Rights was held virtually on November 16-18, 2020.⁶⁵ The theme of the forum was "Preventing business-related human rights abuses: The key to a sustainable future for people and planet[.]"⁶⁶ In fact, during the virtual forum, Qatar provided a government statement outlining the steps it has taken to address worker safety, specifically in response to the COVID-19 pandemic.⁶⁷

IV. CONCLUSION

The OHCHR has taken great steps toward establishing effective instruments for measuring, documenting, and addressing human rights violations through the pillars outlined in the UN Guiding Principles. Hopefully the draft Treaty will soon progress from its draft phase to full implementation throughout participating nations as a result of the work done

⁶³ United Nations Human Rights Office of the High Commissioner: About the UN Forum on Business and Human Rights, <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx> (last visited Nov. 14, 2020) ("The UN Human Rights Council established the Forum in 2011 to serve as a global platform for stakeholders to 'discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices.'").

⁶⁴ United Nations Human Rights Office of the High Commissioner: 2019 Forum on Business and Human Rights, <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx> (last visited Nov. 13, 2021) ("The Forum addresses all three pillars of the Guiding Principles: [(1)] The State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication; [(2)] The corporate responsibility to respect human rights, which means to avoid infringing on the rights of others and to address adverse impacts with which a business is involved; [and (3)] The need for access to effective remedy for rights-holders when abuse has occurred, through both judicial and non-judicial grievance mechanisms.").

⁶⁵ United Nations Human Rights Office of the High Commissioner: 9th Annual Forum on Business and Human Rights, <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2020ForumBHR.aspx> (last visited Nov. 14, 2020).

⁶⁶ *See id.*

⁶⁷ Workers' Welfare, Tackling COVID-19: Case Study, (https://www.ohchr.org/Documents/Issues/Business/ForumSession9/Workers_COVID19_Measures_EN.pdf (last visited Nov. 13, 2021) ("By March 2020, Qatar's Ministry of Public Health (MoPH) began reporting COVID-19 cases in the country. The Supreme Committee for Delivery & Legacy (SC) immediately introduced a range of proactive measures across our construction sites to amplify our existing healthcare infrastructure, which helped us delay the onset of the spread. We recorded the first case within our workforce on 13 April 2020, six weeks after the first case was recorded in the country.").

at the OHCHR's annual meetings. The common issue threaded through every corporation is a failure on the part of those who are at the top to enforce oversight and adequately monitor the actions within their supply chains. With effective communication and appropriate measures in place to address issues when they arise within construction corporations, there is great hope for the future as many other corporations have already taken steps in the right direction.