Protecting the Wages of Migrant Construction Workers: Paper Summary

Whether crossing national frontiers or moving from the countryside to town, migrant workers are subject to varying degrees of legality and bear risks across the entire migration cycle. The risk of late or non-payment of wages is one of the most serious facing migrant workers in the construction industry. The paper examines the role of migrant workers in construction and explores the factors surrounding the issue of late or non-payment of wages.

The focus is on the small countries of the Gulf Cooperation Council (GCC) where migrant workers constitute up to 90% of the construction workforce. The problem of late payment of wages in the construction industry is not unique to the countries of the Gulf but it is particularly serious in these countries where, under the *kafala* system, workers are unable to change their employer even when they are not being paid. Despite efforts to ban the payment of recruitment fees, it is still the case that the vast majority of migrants pay money to recruitment agents and arrive in the host country in debt to money lenders. Failure to receive their wages on time means that they cannot transfer money back to their home country to meet the debt repayment schedule and interest mounts up, causing serious stress for the workers.

Consistent late payment of wages, which can transform into non-payment, is also the major cause of industrial unrest. Strikes and work stoppages hamper progress of the work and are of concern to contractors, their clients and governments. This is apparent even in parts of the world where workers have no protection from local trade unions. Late payment of wages led to strikes in Qatar in 2006, in UAE in 2014 and in Saudi Arabia in 2016. While delayed payment of wages may sometimes be a deliberate strategy on the part of unscrupulous employers to cheat migrant workers or prevent them from absconding, the threat of industrial action suggests that factors other than the greed of employers are probably at work. One such is the likelihood that the employer does not have the funds to pay, because they have not themselves received payment for the work that has been done and the expenses incurred and they have insufficient reserves to bridge the gap. This was found to be the case in Qatar in 2013 and in Saudi Arabia in 2016.

In order to gain a better understanding of the reasons for late payment of wages in the construction industry and why migrant workers are most likely to be affected, the paper explores the changes that have taken place in employment relationships in the construction industry in recent years. In the search for greater flexibility in the recruitment of labour, employment relationships have been quite profoundly redefined, as labour is externalised by the use of subcontractors, labour contractors and temporary employment agencies. These developments have facilitated the integration of migrant workers into the workforce while increasing the social distance between the workers and the principal contractor. The subcontractors and labour contractors who are now the main employers of the workforce are small firms which are not on an equal footing with the main contractors. Imbalanced power in the subcontracting chain leads to questionable contracts that define the market transactions between the different levels and exploitation of the subcontractors operating at the lower levels of the chain. This is most apparent in the area of payment, creating real problems for the workers employed directly or indirectly by the subcontractors.

While the industry has changed quite dramatically in the past few decades, the payment system has failed to adapt. The traditional practice is for the client to make periodic payments to the principal contractor for the value of the work done and certified during the previous period. Subcontractors must assemble applications for payment which are assessed by those above them in the chain. As applications for payment travel up the chain, actual payment has to travel down. In the best possible scenario, when there are no disagreements and every actor makes prompt payment to the tier below, it can clearly take several months to reach the furthest points.

In reality clients often do not pay on time. This may be due to disputed items in applications which can cause months of delay, to bureaucracy or it may be a deliberate policy to reduce their financing costs by shifting the burden to contractors. Principal contractors may not have large capital assets or credit available to cover payment delays so they in turn may hold back payment to their subcontractors. In many situations principal contractors are not obliged to pay their subcontractors until they have received payment from the client, a practice known as ‘pay when paid’ which is widely considered unethical but is still commonly incorporated into contracts. Last to be paid are the small firms employing the workforce. When the flow of cash dries up the only option for these firms with limited cash reserves is to borrow from the bank or renege on their debt to the workers.

It has been widely recognised that the conventional payment mechanism places a considerable and unfair strain on particular parties. There is substantial evidence from around the world of subcontractors having been driven out of business by late payment. Less frequently reported is the suffering of millions of workers who are being deprived of their wages. If a contractor or subcontractor files for bankruptcy the construction workers that the company has hired for the work may never be paid.

Notwithstanding the human rights issues involved, the late payment to subcontractors is not without economic cost – costs which will ultimately be passed on to clients in the form of higher prices. The paper concludes that the current payment mechanism is therefore not only failing to protect subcontractors and workers but also failing to benefit clients. A subsequent paper is being prepared that will explore the options and incentives for change.