



**Panelist:** Chris Nolan, BSR Advisory Services, Hong Kong

### **BSR Construct**

I will approach the central panel questions from a private sector perspective. BSR has developed some concrete solutions to common migration challenges, and challenges for migrant workers working in global supply chains of multi-national companies. Though the initiative is still in its early stages, I would like to highlight some initial steps that have been taken in the following areas at a regional/national level:

- Multi-stakeholder dialogue – working constructively with business at the table
- Building constructive local cross-sector partnerships
- Identifying concrete roles for business

These lessons and recommendations have been developed at a regional and country level - in collaboration with the private sector. This work also illustrates the importance of multi-stakeholder coalition building at a national level. These lessons could be leveraged in the broader international dialogue to inform how to forge constructive partnerships and promote the human rights of all migrants.

### **Introduction to Initiative**

BSR initiated its labor migration work in 2008 with assistance from the John D and Catherine T. McArthur Foundation. Our impetus: we saw a dialogue where business, namely multi-national companies (MNCs) and national employers, was largely absent. Given the nature of our organization and composition of our membership, we set out to identify a positive role for business. MNCs are a primary driver of international labor migration, creating the product demand that is in turn creating the jobs that migrant workers fill through South-South migration. Our core recommendations for business came in the form of BSR's 2008 Trends Report on South-South Migration: *International Labor Migration: The Responsible Role for Business*. We put forth a three step framework of “**Educate, Engage, and Expand**” for business to become aware, proactively engaged and ultimately to become a key stakeholder in the dialogue on migration reform and improved rights protection regionally and globally.

Since its release, we have tested some of the ideas put forth in the report through a pilot project carried out in Malaysia – a country where constructive multi-stakeholder dialogue and tangible progress from both policy and political standpoints has been elusive. We organized a migration focus group with Apple, HP, JC Penney and Nordstrom's, and established a partnership with a prominent labor/migrant rights NGO, Tenaganita, led by Dr. Irene Fernandez. Lastly, we forged relationships with key employers, unions, and national employer associations.

### **Constructive and action-oriented dialogue is possible**

We facilitated a series of multi-stakeholder dialogues centered on finding areas of consensus amongst all stakeholders. Some project and legacy-related challenges included:

- Stakeholders not accustomed to coming together in a multi-stakeholder setting
- Setting aside larger areas of disagreement and maintaining focus on consensus areas
- Building sufficient trust between business and rights-based organizations that had been publicly critical of their practices

We were encouraged by the common ground identified, primarily around the need to improve post-arrival orientation programs for workers, grievance mechanisms, and strengthen approaches

towards the recruitment of workers. BSR found that constructive dialogue, at least at a national level, was possible when taking a consensus building approach and placing the focus on practical solutions.

### **Partnership: In-factory Pilot Project**

The byproduct of this dialogue was a pilot project pairing Tenaganita with electronics manufacturer Western Digital Bhd., the largest foreign private employer in Malaysia. This project focused on two main areas stemming from the dialogue: 1. improving post arrival orientation programs and 2. strengthening the grievance process for migrant workers who are often left without reasonable access to redress.

The partnership generated value for both parties. Company management – from top managers to frontline supervisors - become more aware of basic migrant rights and issues, and workers were trained on their basic rights and responsibilities. The employer believes that taking proactive steps with a credible external partner to improve safeguard measures gives the overall engagement process more credibility while helping improve their human resource systems. They believe this will help recruit and retain better quality migrant workers who wish to work for a responsible employer. The NGO partner was able to consult directly with management in an open manner and engage directly with workers. This helped build knowledge and understanding among their core constituency, which they believe is a central step to safeguarding rights.

We are now promoting more partnerships like this between business and civil society as a means of encouraging proactive business engagement. Building on the initial three-step framework from the Trends Report, the central framework for this level of follow-on engagement is: “**Educate, Partner, Build Capacity**”. First, business must build an awareness of the external environment, pertinent legal issues and common risks for workers. It is at this point that a policy review may be undertaken to assess where company policy gaps exist, and where such policies may fail to address gaps and ambiguities in the applicable regulatory framework. Second, seeking partnership with a credible third party entity can give business engagement efforts added depth and credibility with both workers and external stakeholders. Lastly, business must invest in capacity building for both management and workers to ensure that any improved policies related to migrant workers are supported by a capacity to effectively execute and institutionalize positive change over time.

Regarding whether such stakeholder cooperation can be institutionalized, this process is just exiting the pilot phase. We hope this cooperation can be institutionalized among local stakeholders without the need for BSR to play a facilitation role. However, our role is still a necessary one presently. Trust building is still in the early stages, and this is a necessary ingredient to solidifying a more permanent coalition at a national level. Though common ground has been found, divergent issues among stakeholders remain that could still impede progress or even derail the process. Continued dialogue is the key to actively managing these issues and expanding mutual understanding and areas of consensus. As the dialogue and engagement progresses and more businesses realize the value, the next step towards institutionalization is securing institution-level support for a multi-stakeholder initiative and expanded business engagement, moving beyond the support of individual stakeholders representing those institutions.

### **Rights of Migrants**

Regarding the topic of improving rights protections, one primary role business can play in improving rights protections is first understanding what these rights are – both internationally and nationally enshrined. As far as rights protection in the workplace is concerned, improved awareness among company managers is fundamental. Secondly, through quality pre and post arrival programs, it is essential to properly train workers on their rights and responsibilities. This is both a worker rights safeguard as well as a means of improving understanding/awareness between worker and employer. Regarding grievance, to strengthen the migrants voice in the workplace, freedom of association should be respected, workers should be aware of this right and

more specifically, migrant workers should have clear and transparent representation and access to the appropriate channels, in a language they can understand. Cultural sensitivities should also be respected and understood by management. These issues of language and culture often marginalize workers seeking redress.

We have compiled a migrant worker toolkit for employers introducing employers to the process of creating a quality post-arrival program and stronger grievance processes.

### **Human Development Outcomes**

From our perspective, the primary ways in which business can contribute to improved human development outcomes are through improved recruitment practices – more ethical, more direct recruitment – and secondly by ensuring fair and equal wages for migrant workers – increasing their ‘take home pay’.

BSR has conducted preliminary research on what we term ‘ethical recruitment’, and we plan to focus on this area more closely in the coming two years. In collaboration with our partners in Southeast Asia and multi-national members, we aim to identify some select practices that can help employers recruit migrant workers more directly and safely. This effort aims to limit the role of licensed recruitment agencies and marginalize any role sub agents and other actors in sending countries may have in the recruitment process.

As we all know, the challenges further upstream, at the initial stages of recruitment, are enormous. There are, however, some positive examples to build on. One example is advocating that employers 1.) establish clear and transparent contractual terms with a licensed labor agent, 2.) send company HR staff to the country of origin to recruit workers and manage the process first hand and enforce strict ethical policies on labor agents (e.g. disallowing the use of sub agents).

Secondly, to minimize the likelihood of excessive fees being paid by the worker to the labor agent, the employer will pay a flat fee per worker directly to the agent (as per contractual terms) and not allow the agent to collect any placement fees from workers. This is an obvious upfront investment for the company but can enable employers to recruit and retain better workers over the long term.

We believe that by establishing a more direct line between the employer and worker during the recruitment phase – costs can be minimized and the likelihood of debt bondage can be reduced significantly. From a policy standpoint, an ideal system for workers and business seeking more certainty in the recruitment process is government-government recruitment. This arrangement can be brokered at a regional or bi-lateral level and can embolden company efforts to promote more direct recruitment.

### **The need for policy reform**

Though some companies will step forward as leaders absent broader reform, most companies will act in response to legislative requirements. National policy and regulatory frameworks are needed to ensure that such positive company practices are sustainable and institutionalized. Regulation on legal recruitment fees and associated costs borne by the worker should be clearly established *and* enforced. The larger challenge presently in Southeast Asia is enforcement and weak governance. Strong and well enforced policy provides the certainty that responsible businesses seek and migrant workers need.

In closing, as a first step, we believe business can ultimately contribute to better development outcomes by limiting the cost of migration upfront (and thus the cost burden for the worker’s family) and by providing fair wages that translates to increased remittances sent back to their country of origin. Lastly, business should be at the table as important stakeholders in the migration process to inform policy reform, but it will ultimately take strong political leadership at national, regional and international levels to enact the reforms that are needed to better protect migrant worker rights.