Southeast Asia and Malaysia Overview:
Forced labour landscape in Malaysia

AIM-Progress Supplier Event
24 October 2017

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Verité Southeast Asia
About Verité

- Started in 1995
- Mission: Ensure that workers worldwide work under fair, safe and legal conditions
- Research, Training, Audits/investigations, Performance improvement
- Works in multiple industries with various stakeholder groups; www.verite.org
- Develop practical solutions

Logos of various organizations and partners.
Our Work in Palm Oil Agriculture, Forced Labor and Human Trafficking, Latin America, Southeast Asia

Fifty million tons of palm oil are produced each year, and that volume is growing exponentially. Demand for palm oil continues to rise across the globe, as an affordable cooking oil, an input to an estimated 50 percent of grocery products, and an emerging biofuel.

But the production of palm oil has been linked to troubling social and environmental problems, including the presence of forced labor and human trafficking in its supply chain. Verité is combating these abuses, and promoting ethical labor practice in palm oil production, by helping companies and other stakeholders understand the problem, identify it in the supply chain, and build effective solutions. Download our Palm Oil Flier which provides an overview of our program.

Learn More

https://www.verite.org/commodity-atlas/
Landscape of Labour Issues in Southeast Asia
Child Labour: Manifestations in Palm Oil

• While most companies would have an anti-child labor policy; the amount of the premi/ kontanan is significant compared to the minimum wage rate; threat of or actual pay cut for not meeting the quota

• Underaged laborers/ children will not appear in company’s workers’ registry and are unrecognized; no access to training or safety equipment

• Children found working in plantations are usually unpaid helpers of their parents; they are usually assigned to gather loose fruits
Child Labour
Key Systemic Challenges

Plantations are remote, without easy access to schools

Parent’s monthly earning is not enough to support children’s education

In Malaysia, undocumented children cannot enroll in public/government schools
Documented Labour Issues in Fisheries

- Research by Verité, other NGOs, and the media, have identified indicators of forced labor, human trafficking and other labor abuse at nearly every level of the seafood supply chain.
- Workers, particularly migrant workers, are deceived and coerced by recruitment agencies.
- Illness, physical injury, psychological and sexual abuse and even death
Underpayment of wages, deception about wages/earnings, wage theft, etc.

Among the highest occupational fatality rates of any sector.

Linked to other forms of crime like transnational organized fisheries crime and corruption
Fishing Industry
Key Systemic Challenges

- Lack of laws on the rights of seaworkers, especially foreign workers in the fishing industry
- Bureaucratic compartmentalization
- Insufficient government data on fishing vessel workers
- Inadequate visibility on working and living conditions on both fishing vessels and processing factories/sites
- Lack of inspections/accountability for working conditions on vessels
Health and Safety Issues

- Low threshold for ‘accident’ or ‘injury’
- No preventive program on illness, harm or accident
- PPEs provided are usually not convenient for workers to use
- Workers are usually transported to work sites with chemicals
- Sprayers have abnormal levels of the cholinesterase enzyme in their blood samples, suggesting over-exposure to chemicals/pesticides.
- Toilet access on estate work sites is practically non-existent
Forced Labour: Manifestations in Manufacturing

- High recruitment fees leading to debt
- Deceptive recruitment
- Limited freedom of movement
- Inability to resign contracts: foreign workers could not resign without suffering some form of penalty like heavy fine or losing their passport
- Forced overtime
- Confiscation of passport and identity documents/ restricted access (deposits for “borrowing” passports)
- Denunciation to authorities
- Financial penalties, e.g., withholding part of the salary if quota is not met, deposit on tools or PPE
- Withholding of wages
- Dismissal without cause
- Constant surveillance
Forced Labour
Key Systemic Challenges

• Sending and receiving countries have different immigration policies and labor recruitment requirements
• Immigration policy framework is always stronger than labor protection mechanism = easy for workers to be delegitimized*
• In Malaysia, there is no coherent policy on foreign workers
• Laws on recruitment fees are not clear or non-existent
• Inadequate regulation over labor providers
• No mechanism for levy refund for early termination of contracts
Current Understanding of Forced Labour
It's the 21st century, and yet 40 million men, women and children are trapped in modern slavery.

Global estimation of modern slavery:
- Forced labour exploitation: 16,000,000
- Forced sexual exploitation: 4,800,000
- State-imposed forced labour: 4,100,000
- Forced marriage: 15,400,000
Annual profits forced labor per region

- Asia Pacific: $51.8bn
- Developed Economies and EU: $46.9bn
- Central/S.E. Europe & CIS: $18bn
- Africa: $13.1bn
- L. America Caribbean: $12bn
- Middle East: $8.5bn

International Labour Organization (ILO)
Forced Labor

In Indonesia (Article 28E(1) and Malaysia (Article 6, 1-2), protection against slavery or forced labor is Constitutionally guaranteed. Both countries have ratified ILO Convention 29 and currently in force.
ILO Convention 29

Defined as all work or service which is exacted from any person under the menace of any penalty, and for which said person has not offered himself or herself voluntarily.

Unfree recruitment
Life or work under duress
Impossibility of leaving the employer

+ Menace of penalty
ILO Indicators of Involuntariness: Unfree Recruitment

- Tradition, birth/descent into ‘slave’ or bonded status
- Coercive recruitment (abduction, confinement during the recruitment process)
- Sale of the worker
- **Recruitment linked to debt** (advance or loan)
- Deception about the nature of the work
- **Deceptive recruitment** (regarding work conditions, content or legality of employment contract, housing and living conditions, job location or employer, wages/earnings, etc)
- Deceptive recruitment through promise of marriage
ILO Indicators of Involuntariness: Work and life under duress

- Forced overtime (beyond legal limits)
- Forced to work on call
- Limited freedom of movement and communication
- Degrading living conditions
- Forced engagement in illicit activities
- Forced to work for employer’s private home or family
- Induced addiction to illegal substances
- Induced or inflated indebtedness
- Multiple dependency on employer
- Pre-existence of a dependency relationship with employer
- Being under the influence of employer or people related to employer for non-work life
ILO Indicators of Involuntariness: Impossibility of leaving employer

- Reduced freedom to terminate labor contract after training or other benefit paid by employer
- **No freedom to resign in accordance with legal requirements**
- Forced to stay longer than agreed while waiting for wages due
- Forced to work for indeterminate period in order to repay outstanding debt or wage advance
ILO Indicators of Menace of Penalty

Denunciation to Authorities
Confiscation of Identity Papers or Travel Documents
Sexual Violence
Physical Violence
Other forms of Punishment (deprivation of food, water, sleep)

Removal of rights or privileges
Religious retribution
Withholding of assets (cash or other)
Threats against family members
Confiscation of mobile phones

Further deterioration in working conditions
ILO Indicators of Menace of Penalty

Isolation
Locked in Workplace or Living Quarters
Violence against worker in front of other workers

**Constant Surveillance**

**Withholding of Wages**
Exclusion from future employment
Exclusion from community and social life

**Financial Penalties**
Informing family, community or public about worker’s current situation
   (blackmail)

**Dismissal**
Extra Work for Breaching Labor Discipline
Forced Labour

Unfree recruitment
Life or work under duress
Impossibility of leaving the employer

Menace of penalty
Deception about the nature of the job (involuntariness indicator) + Confiscation of passport/identity document (penalty indicator) = FORCED LABOR
Forced overtime (involuntariness indicator) + Denunciation to authorities (penalty indicator) = FORCED LABOR
Deceptive recruitment, e.g., contract substitution (involuntariness indicator) + Financial penalties, e.g., punitive deductions (penalty indicator) = FORCED LABOR
Degrading living conditions (involuntariness indicator) + Withholding of wages = FORCED LABOR
No freedom to resign according to law (involuntariness indicator) + Violence against the worker (penalty indicator) = FORCED LABOR
## Trafficking in Persons

### Critical Components

<table>
<thead>
<tr>
<th>ACT</th>
<th>Recruitment, transportation, transfer, harboring or receipt of persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEANS</td>
<td>Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits</td>
</tr>
<tr>
<td>PURPOSE</td>
<td>For exploitation, including exploitation of prostitution, sexual exploitation, forced labor, slavery or similar practices, removal of organs or other types of exploitation.</td>
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*When a human being is trafficked for the purposes of forced labor, the result is modern day slavery.*
Role of Labour Brokerage System in Forced Labour and Trafficking
Foreign Workers in Malaysia

2.8 to 2.9 million foreign workers in total
Approximately 20% of the Malaysian labor force
Around 50% of the construction workforce
As much as 60% of the manufacturing workforce
Source countries: Indonesia, Nepal, Myanmar, Bangladesh, India, Vietnam, Cambodia, the Philippines
Between 1-4 million unregistered workers

A significant number of foreign workers are subcontracted labour.
Push & Pull: Migration Factors

- Labor shortages in receiving countries
- Labor surplus in countries with high unemployment and underemployment

Labor migration

- Receiving countries keep businesses in-country
  - Employers get skilled workers
  - Workers get jobs, and acquire and improve skills
- Sending countries earn from foreign direct investments

Unintended outcome: Growth of the labor broker industry and the trend towards exacting payment of placement fees from job-seekers rather than employers
Recruitment patterns: Malaysia

Regulated through the Private Employment Agencies Act 1981 (Act 246) as amended

PEAs are either labour suppliers

(a) an employment agency conducted with a view to profit, that is to say, any person, company, institution, agency or other organization which acts as intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker;
or **placement agencies**

(b) an employment agency not conducted with a view to profit, that is to say, the *placing services of any company, institution, agency or other organization which, though not conducted with a view to derive any pecuniary or other material advantage, levies from either employer or worker from the above service an entrance fee, a periodical contribution or any other charge;*

Both a labor supplier and a placement agency have to be licensed by the Ministry of Human Resources (MOHR) to conduct their supplying or placement business/ activities.
A person who contracts with a principal, contractor or sub-contractor to supply the labor required for the execution of the whole or any part of any work which a contractor or sub-contractor has contracted to carry out for a principal or contractor, as the case may be.
Legal recruitment/ placement arrangement

COMPANY

Workers

PEAs/ SCAs
Current employment arrangement

COMPANY

Workers

Contractor for Labor
Recruitment configuration

Contractor for labor

Labor supplier

Placement agency

Sending country agent (SCA)

Sub-agents

Company

Pool of workers
The first triggers take place as early as in the initial pooling and recruitment processes. This phase in the cycle is poorly regulated, tends to be informal, and out of the scope of oversight mechanisms imposed either by government or employers. Moreover, these activities happen in remote villages, in workers’ communities. Some workers already incur debts, as early as this stage. Many of the workers interviewed said that they did not have money even to secure copies of their personal government-issued documents, so they already had to borrow money at this point.
The next triggers take place during selection and hiring, wherein workers are asked to pay fees, and then sign documents that may be either onerous or inaccurate. Hence, these can occur: contract substitution; contract amendment and supplemental agreements; or the absence of formal agreements and contracts. Also, this is when most workers secure their loans, as fees payment is the critical requirement in securing the job abroad.
While on the job, more triggers can take place. Passport confiscation is a widely accepted practice among employers and brokers. This severely restricts workers freedom of movement, and make them vulnerable to abuse, and to being denounced to authorities. Obscure employment status contributes to the vulnerability of workers.
Response from Governments and Business
Key Drivers: Legal Requirements

- International Labour Organization (ILO) Core Conventions
- ILO Core Conventions
- UK Modern Slavery Act
- Local Legal Standards
- U.S. Federal Acquisition Regulation
- U.S. Trade Facilitation & Enforcement Act
- U.S. Customs and Border Protection
- U.S. Foreign Corrupt Practices Act
- UK Bribery Act
- Transparency in Supply Chains Act: A practical guide
- California Transparency in Supply Chains
- The California Transparency in Supply Chains Act: A Resource Guide
Social Sustainability @ The Consumer Goods Forum
Our Social Sustainability work is focused on striving to eradicate forced labour from the supply chains of our members

What We Do
Our members have been long committed to promoting decent working conditions worldwide but recognise that the eradication of forced labour remains a key challenge. We are, therefore, now working as an industry to drive global collaboration between retailers and manufacturers and thereby address forced labour as one of the most pressing social issues of our time. This commitment was confirmed in January 2015 with a Social Resolution on Forced Labour. The resolution is the first industry commitment of its kind and is approved by the CGF Board.

Why We Do It
Today, according to the International Labour Organization (ILO), almost 21 million people are in forced labour, with 14 million being victims of labour exploitation. Our industry is at risk, because of its complex, disaggregated global supply chains that rely on low-skilled labour. Forced labour can be found in sectors such as food and beverage, agriculture, manufacturing, and many sub-segments of fast moving consumer goods. They often involve some of the poorest countries in the world with limited institutional capacity for regulation to protect worker’s rights.

How We’ll Do It
To help ensure implementation across our wider membership, we will harness the power of collective action as an industry group to identify and address issues and geographical concerns, enhancing the efficiency of any individual company initiatives. We will also work closely with other industries, with governments and with civil society. In areas of shared concern, we will jointly develop specific action plans supporting the eradication of forced labour, in alignment with the widely embraced guidance provided by the United Nations Guiding Principles on Business and Human Rights. Part of these action plans is the development of three priority industry principles, outlined below.

Priority Industry Principles
"Forced labour is an unacceptable human rights violation that can take multiple forms, and must be addressed.

While certain employment and recruitment practices may not initially appear problematic, in aggregate or combined with other forms of leverage, they can result in forced labour, particularly among vulnerable workers. We will take active measures to apply these Principles across our global value chains and own operations, to cases where such practices may lead to forced labour. We will seek to apply these Principles to all workers regardless of their employment status, location, contractual arrangements or role. We will do this as part of our collective journey to advance the human rights of workers and positively shape global labour markets.”

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HP Enterprise, NXP win Thomson Reuters Foundation anti-slavery awards

“The resolution is the first industry commitment of its kind and is approved by the CGF Board.”

“Social Sustainability work is focused on striving to eradicate forced labour from the supply chains of our members.”

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Vision:
Decent working conditions and sustainable supply chains worldwide

Leadership Group for Responsible Recruitment
Statement of Intent
May 2016

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“As some of the biggest companies in the world, we have a particular responsibility to eradicate forced labour from our supply chains.”
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Thank You!

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