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Wong Wai Khuen¹,
Chinese University of Hong Kong
Dzulzalani Bin Eden,
Universiti Malaysia Sarawak

ABSTRACT

In recent years, the global community led by government institutions and prominent stakeholders has been aggressively addressing the issue of forced labour. It is evident with the increasing number of leading brand companies that have pledged to compel their global supply chain to improve labour standards and adoption of ethical recruitment for migrant workers. This manuscript aims to provide a descriptive analysis of the forced labour trend in the current economic landscape and the relevant stakeholders' responses in handling this issue. The information obtained from published academic literature, policy papers and reports, including awareness building support in private initiatives, sharing of best practices, identifying legal reform and research priorities provide an overview of Malaysia's efforts in tackling forced labour. This paper concludes that there is an urgent need for greater awareness among Malaysian employers to recognize forced labour as a pressing social issue. It requires a collaborative effort among all stakeholders, particularly with the government and civil society in order to eradicate such practice from their supply chain collectively.

Keywords: Forced labour, ethical recruitment, labour, human trafficking, business sustainability

1 Corresponding author (maxwongwk@gmail.com / wongwk@link.cuhk.edu.hk / wongwk@miti.gov.my)

INTRODUCTION

The issue of forced labour is a widespread problem in today's global supply chains, as reported by the International Labour Organization (ILO) and the Walk Free Foundation in September 2017 during the United Nations General Assembly. The report outlined the magnitude of the global modern slavery practice by revealing that in 2016 about 25 million people (16 million females and 9 million males) were victims of forced labour. These vulnerable groups are often threatened to work as domestic workers or manual labourers in the construction, manufacturing or agriculture sectors to produce consumer goods through questionable legitimate commercial channels.

This finding underlined many countries implemented ILO's observation that the global numbers of forced labour cases have not reduced substantially despite numerous policy and responses in the period of 2008-2012. This dismal development has prompted a clarion call for all stakeholders including Governments, UN agencies, businesses, civil society organisations and academia to pool their resources together in order to scale up their efforts in implementing interventions, advocating higher-level commitment, increasing global awareness and prevention, monitoring effective policies and facilitating the exchange of knowledge.

Serving as the crucial part of the global supply chain linkages, Malaysia's reliance on foreign labour in the manufacturing sector inevitably comes under intense scrutiny. It is pertinent as Malaysia remains one of the countries in the Asia Pacific with a high number of migrants to the total population, underscoring the growing dependency on foreign labour. This high dependency on foreign workers, for example, could lead to unscrupulous outsourcing companies taking advantage of the lucrative 'labour supply' business resulting in an excess supply of foreign workers in the labour market which then subjected to conditions of forced labour.

LITERATURE REVIEW

According to ILO, forced labour refers to “situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities”. There are three forms of forced labour including forced commercial sexual exploitation, bonded labour (the worker’s job is associated with a loan or financial penalty imposed by the recruiters/employers) and trafficking for forced labour (a person trafficked for the exploitation of forced labour).

The practise of bonded labour was greatly exasperated by the emergence of an interwoven supply-chain structure across the globe (Bales, 2010). In the context of linking globalization to vulnerable workers, Rioux (2018) illustrated that the major retailers’ unprecedented bargaining power in demanding lower prices from their suppliers would inherently lead to severe worker exploitation by the suppliers that are keen to pursue profit margin optimization. Already, the current global supply chain model has resulted in creating ‘supply’ of vulnerable workers and a business ‘demand’ of their labour — many who were exploited through informal and temporary contracts (Howard et al., 2018). Thus, there is an urgent need to understand the dynamics of sub-contracting and outsourcing in order to provide a meaningful form of labour protection.

RESEARCH METHODOLOGY

The purpose of this manuscript is to highlight the global community’s efforts in addressing forced labour, with several policy recommendations are identified to build on Malaysia’s process in eliminating such practices from the industry’s supply chain. The authors gathered information sources of this manuscript from a range of academic literature, relevant policy papers, relevant published reports and court cases analysis and media archival documentary. The multiple sources of information provide a brief description of the prevalence of forced labour in the global economy and the relevant stakeholders’ responses in handling the issues.

FINDINGS AND DISCUSSION

Stakeholders' Efforts in Addressing Forced Labour

a) Global organisations

In 2014, the International Labour Conference adopted the Protocol to the Forced Labour Convention that calls on member states to eliminate the use of forced labour, and to provide victims with protection including compensation, as well as to sanction the perpetrators of forced/compulsory labour. In the subsequent year, the global community took a collective stand to address forced labour when all UN member states including Malaysia agreed to adopt the 2030 Development Goals with the target to promote economic, social and environmental development. Under the commonly known Target 8.7, all countries pledged to work together with employees and employers' organisations and civil society organisations to end forced labour, child labour, modern slavery and human trafficking. Subsequently, the Alliance 8.7 was formed as an inclusive global platform to foster greater collaboration among various stakeholders in achieving this ambitious undertaking by sharing information and promoting coordinated responses.

b) Foreign governments

Foreign governments around the world have taken the initiative in ensuring that their imported consumable goods and finished products, including its supply chains, are free from forced labour. For example, Australia's Behind the Barcode project has published the electronics industry trends report that would grade 56 companies on mitigating the risk of forced labour, failing which would result in consumers boycotting the identified electronic brands (Rice, 2016). In 2015, the United Kingdom introduced legislation to compel all British companies to declare that their operations are not reliant on forced labour in every aspect of their supply chain (Gentleman, 2015). The United States' Department of Labour has published a list of global goods that were produced by child labour or forced labour to serve as a catalyst for the US Government to engage the respective countries in combating these problems. The Department also publishes the annual Trafficking-in-Persons (TIP) Report on that ranks governments' effort in addressing TIP including debt bondage, a form of human trafficking in which traffickers used to force a victim into forced labour.

c) Business and consumer communities

Recognising the need to protect their business reputation, global businesses and consumer groups responded by pursuing greater social responsibility with an emphasis on respecting human rights and promoting decent working conditions. In 2016, the Consumer Goods Forum (CGF), a global industry network comprising prominent brand member companies such as Coca Cola, Nestle, Walmart, Carrefour, Tesco with the combined employment size of nearly 10 million people and EUR3.5 trillion sales adopted a social resolution on forced labour. After a thorough review of the current global employment practices, CGF introduced the following 'Priority Industry Principles' to assist over 400 retailers, manufacturers, service providers across 70 countries to adopt ethical recruitment standards as a means to eradicate forced labour from their supply chains:

- 1) Every worker should have freedom of movement;
- 2) No worker should pay for a job; and
- 3) No worker should be indebted or coerced to work.

In this regard, an increasing number of investor groups have been actively engaging companies and buyers by frequently highlighting labour rights during investor-company dialogues. In 2017, a global coalition of 87 investors with close to USD5.3 trillion in assets under their management had issued a public investor statement in supporting the UN Guiding Principles Reporting Framework to allow corporate entities to review and assess human rights risks including forced labour. The Interfaith Center on Corporate Responsibility, a US-based interfaith shareholder coalition comprising over 300 investors with over \$200 billion in assets under management launched the "No Fees" Initiative to ensure companies they invested in adopting the following ethical recruitment policies:

- 1) Enforce written contracts for a worker (in the language they would understand);
- 2) Prohibit withholding of workers' passports; and
- 3) Require employers to pay recruitment fees for the workers.

Eradication of the Elements of Force Labour among Malaysian Business Communities

In tandem with the global movement towards eradicating forced labour, Malaysia pledged to end modern slavery, human trafficking and forced labour towards achieving Target 8.7 under the Agenda 2030 for Sustainable Development during the 72nd United Nations General Assembly in 2017. It comes on the heels of Malaysia being identified by the United States' Trafficking-in-Person (TIP) Report over the past five years as the destination and transit country for victims of forced labour and sex trafficking. The 2018 TIP Report also ranked Malaysia in Tier 2 Watch list, citing the reason that the Government of Malaysia did not meet the minimum standards for the elimination of trafficking, including the review of recruitment practices that would expose foreign workers to debt bondage.

Aside from the country's damaged reputation, the 2017 Know-The-Chain Report highlighted that forced labour allegations would pose significant operational risks where the buyer will be forced to discontinue their supplier contracts due to consumers' pressure, as well as reputational risks and legal risks stemming from potential lawsuits from employees, consumers and other stakeholders. Case in point, some of the major producers in Malaysia, namely Top Glove, Samsung and Panasonic were accused of labour exploitation in their supply chains in Malaysia (Peterson, 2018. Patisson, 2016). Several apparel manufacturers in Malaysia also came under scrutiny after an NGO published findings of forced labour abuse cases, including payment of illegal recruitment fees and retention of passport faced by migrant workers (Greenhouse, 2019).

By working closely with key stakeholders, the Government of Malaysia has strived to enhance the protection of migrant workers by reforming labour laws and improving migrant workers intake procedures following international labour standards (Jayamanogaran, 2019). For example, the amendment of Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 in 2015 has successfully led to an increased number of arrests and convictions of human traffickers and syndicate members involving forced labour cases as reflected in Table 1 below:

Table 1: Number of Trafficking, Trafficking-Related Investigations, Prosecutions and Convictions, 2015-2018

Year	Num. of Trafficking & Trafficking-Related Investigations	Num. of Prosecutions (against alleged traffickers)	Num. of Convictions
2015	158	38	7
2016	581	175	35
2017	398	80	45
2018	281*	50	50

(Source: US TIP Report)

The commitment of the Malaysian government to address forced labour issues are reflected with cases of prosecutions of offenders in the Court of law reflected in the number of cases above. Thorough reviews of legal cases have highlighted the seriousness of government efforts through punitive actions. In a recent appeal case at the High Court involving nine victims of human trafficking and forced labour from Indonesia, Vietnam and Thailand, the offender who operated a wellness centre in Selangor was charged and found guilty under section 12 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. Her appeal on the case was rejected, and the Court affirmed the decision of the Session Court for total imprisonment of 24 years (Au Yong Chee Wah v. Public Prosecutor, 2019). Another case involving a 14-year-old child from Indonesia, the offenders who are husband and wife were jointly charged before the Sessions Court for an offence under Section 14 of the Anti-Smuggling of Migrants Act 2007. Both were convicted, and each was sentenced to an imprisonment term of three years and a fine of RM4,000.00. Their appeal to the High Court was also dismissed, and the Court affirmed the decision imposed by the Session Court (Mohamad Nizam Mohamad Selihin & Nurafida Zamhari v. Public Prosecutor, 2018).

Those cases indicate the seriousness of the Malaysian Government to eradicate and penalise offenders of forced labour through the court of law via the provisions in the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. Further in March 2018, the Malaysian Government had established an anti-trafficking court beginning in the state of Selangor with further commitment

to set up in five other locations in stages namely in Ipoh, Melaka, Muar, Kota Kinabalu and Balik Pulau (Malay Mail, 2018)

Also, the Government implemented the following key initiatives to address the issue of human trafficking, where the victims are often exploited as forced labourers in the country:

- 1) The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) was established through National Strategic Office to the Council (NSO MAPO) to develop a cohesive and coordinated national response in addressing the issue of human trafficking and forced labour issues.
- 2) In response to the alleged forced labour abuse in the electrical and electronics sector, the Ministry of International Trade and Industry collaborated with the National Secretariat Office of MAPO and the Embassy of United States of America organising a workshop to enhance the level of awareness of Malaysian companies on best labour practices.
- 3) The implementation of Employers Undertaking (previously known as Employers Mandatory Commitment) by the Ministry of Human Resources in 2017 marked a significant milestone in securing migrant workers' rights by emphasising the following:
 - Employers are required to pay for their migrant workers' levy;
 - Employers are forbidden to withhold the migrant workers' passports;
 - Employers need to provide minimum wage, adequate accommodation and healthcare coverage for migrant workers.
- 4) The Home Ministry set up a special hotline under the 1Malaysia One Call Centre in August 2017 for the general public and victims to report on suspicious activities involving human trafficking or smuggling of migrant, as reported by *Bernama*. On a similar note, a Malaysian human rights organisation called *Tenaganita* also launched the 'Be My Protector' App to allow Malaysian to report similar cases to the organisation (2018).

- 5) The Companies Commission of Malaysia introduced *Best Business Practice Circular (BBPC) 6/2017* to promote corporate responsibility disclosure for all Malaysian registered companies particularly on environmental issues and human rights (including forced labour) in their business (SSM, 2017).

What's Next-Case for Way Forward?

The effort to address forced labour remains an unresolved issue (i.e., requires multi-pronged efforts to be undertaken by relevant stakeholders including government agencies, employees/ employers' organisations, civil society organisations and consumer groups) due to the complex nature of current globalised supply chain. However, the following proposed overarching policy strategies should warrant Malaysia's attention and due consideration when addressing forced labour issue:

a) Awareness-building

The implementation of aforementioned 'Employers Undertaking' policy that mandates employers to pay for their migrant workers levy (among other commitments) was met with objections from certain Malaysian industry groups, where some cited that migrant workers should pay for the levy in order to prevent them from leaving the country or leave their work at whim (Nathan, 2017). Such views underscore the lack of understanding among some quarters in Malaysia concerning the global trend in addressing forced labour. Thus, the industry must collaborate with government agencies, NGOs and consumer groups for closer engagement and education involving all sectors and stakeholders.

b) Support in private initiative

The Responsible Business Alliance (RBA), previously known as Electronic Industry Citizenship Coalition, has established a Code of Conduct to influence their members and market peers to pursue continuous improvement in social, environmental and ethical responsibility within their electronic supply chains. By launching a supplement to the Validated Audit Process in 2016, RBA was able to work with its members in detecting the risk of forced labour in their factories, appointed middle-man/agents as well as the full recruitment cycle of migrant workers. Firstly established in 2004 comprising only eight members,

RBA has grown to over 100 prominent members including Dell, Hasbro, Lenovo, Microsoft, Intel with a combined employment size of over 6 million people and annual revenue USD4.75 trillion, in which thousands of Tier 1 suppliers to these members have pledged to eliminate forced labour as indicated in the RBA Code of Conduct (Rob, 2017). This industry-driven approach by BRA showcased a meaningful case study for other sectors in Malaysia to emulate in adapting and changing foreign labour employment norms within their respective industry.

c) Sharing of best practices

More Malaysian employers should take heed of the best practices related to foreign workers management in the country. For example, NXP Semiconductors, an electronics manufacturer with one of its factories located in Petaling Jaya had won a “stop slavery” award in 2016 for successfully maintaining a supply chain free of forced labour exploitation. Notably, the company’s CEO and board members took a proactive role by signing a charter on human trafficking policies that outlines key initiatives such as conducting training for their 300 suppliers in Malaysia to ensure safe working conditions, interviewing migrant workers during recruitment as well as repatriation to their home countries and refunding their recruitment fees, if applicable (Totaro, 2016).

d) Legal reform

According to ILO, there is a need for Malaysia to address some gaps in current laws to effectively address forced labour. ILO cited the example of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSON) Act 2007 that has a provision that ties an employee’s work permit to their employer. This provision implies that employers could terminate migrant worker’s permit that would render his/her status as undocumented/illegal worker, thus making it difficult for the affected migrant workers to pursue legal action against their employers should they become forced labour victims (Fadzell, 2018). However, the Malaysian high court in 2019 set a precedent for trafficked and forced labour victims to seek legal redress in court by ruling that undocumented domestic workers have the right to pursue their claim for unpaid wages (Beh, 2019).

e) Research priorities

The British Academy of the United Kingdom has embarked on eight research projects to investigate the relationship between UK companies and their

suppliers across 13 countries including Malaysia, with the aim to address the problem of sub-contracting, a conventional production system that pose considerable challenges for one to trace the production of textile manufactured goods across the global supply networks (Blitz, 2018). This development provides a strong incentive for the relevant authorities to conduct more in-depth research into Malaysia's role in today's cross border business supply chain structure as well as investigating the recent trend of Malaysian court cases with forced labour convictions to identify viable policy and practical solutions regarding forced labour.

CONCLUSION

As the global awareness of forced labour in supply chains continues to grow, the cooperation between governments, non-governmental organisations, employers and employee organisations, consumer groups and other stakeholders should be further strengthened to eradicate labour malpractices. On this matter, Malaysia as part of the global supply chain network should remain steadfast in the pursuit of internationally recognised labour standards and practices with commitment in ensuring ethical recruitment and safe working environment for all migrant workers.

REFERENCES

- Au Yong Chee Wah v. Public Prosecutor, 1 LNS 583 (2019)
- Bales, K. (2012). *Disposable people: New slavery in the global economy*. Berkeley: University of California Press.
- Beh, L.Y. (2019). *Malaysian court sides with forced labour victims over unpaid wages*. Reuters. Retrieved from <https://www.reuters.com/article/us-malaysia-rights-migrants/malaysian-court-sides-with-forced-labour-victims-over-unpaid-wages-idUSKCN1UP0ID>
- Blitz, B. (2018). British Academy Lectures, 2015-16. *British Academy*, 32 (Spring), ISSN2047-1866, 27-29. doi:10.5871/bacad/9780197266045.001.0001.
- Mohamad Nizam Mohamad Selihin & Nurafida Zamhari v. Public Prosecutor, 1 LNS 67 (2018)

- Fadzell, A. (2018). *Loopholes in labour laws allows for forced labour*. The Sun Daily. Retrieved from <http://www.thesundaily.my/news/2018/02/22/loopholes-labour-laws-allows-forced-labour>.
- Gentleman, A. (2015). *UK firms must show proof they have no links to slave labour under new rules*. The Guardian. Retrieved from <https://www.theguardian.com/world/2015/oct/28/uk-companies-proof-no-links-slave-labour-supply-chain>
- Greenhouse, S. (2019). *NGO's softly-softly tactics tackle labor abuses at Malaysia factories*. *The Guardian*. Retrieved from: <https://www.theguardian.com/business/2019/jun/22/ngos-softly-softly-tactics-tackle-labor-abuses-at-malaysia-factories>
- Gurney, V. *New Guidance to Ensure Ethical Recruitment of Migrant Workers*. *Interfaith Center on Corporate Responsibility*. Retrieved from <http://www.iccr.org/new-guidance-ensure-ethical-recruitment-migrant-workers>
- Howard, N., Thibos, C., Kyritsis, P. & Lebaron, G. (2018). *Confronting root causes: forced labour in global supply chains*. Retrieved from <https://repository.uantwerpen.be/docman/irua/70fd54/149544.pdf>
- ILO 20th International Conference of Labour Statisticians on Measurement of Forced Labour. (2018). *International Labour Organization*. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_651209.pdf
- ILO 40 million in modern slavery and 152 million in child labour around the world. (2017). *International Labour Organization*. Retrieved from http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_574717/lang-en/index.htm
- Jayamanogaran, T. (2019). *Kulasegaran to declare war on forced labour and human trafficking*. *Malay Mail*. Retrieved from <https://www.malaymail.com/news/malaysia/2019/02/12/kulasegaran-to-declare-war-on-forced-labour-and-human-trafficking/1722148>
- KDN sets up special hotline for human trafficking reports. (2017). *Bernama*. Retrieved from <http://www.bernama.com/en/general/news.php?id=1378360>

- Know The Chain. (2017). *Forced Labor Action Compared: Findings from Three Sectors*. Retrieved from https://knowthechain.org/wp-content/uploads/KTC_CrossSectoralFindings_Final.pdf
- MITI Media Release: Joint Malaysia-US Electrical & Electronics (E&E) Sector Best Labour Practices Workshop. (2015). Retrieved from <http://www.miti.gov.my/index.php/pages/view/2602>
- Nathan, L. (2017). Cost to rise with foreign worker levy. *The Malaysian Reserve*. Retrieved from <https://themalaysianreserve.com/2017/12/22/cost-rise-foreign-worker-levy/>
- Pattison, P (2016). Samsung and Panasonic accused over supply chain labour abuses in Malaysia. *The Guardian*. Retrieved from <https://www.theguardian.com/global-development/2016/nov/21/samsung-panasonic-accused-over-supply-chain-labour-abuses-malaysia>
- Peterson, H (2018). NHS rubber gloves made in Malaysian factories linked with forced labour. *The Guardian*. Retrieved from <https://www.theguardian.com/global-development/2018/dec/09/nhs-rubber-gloves-made-in-malaysian-factories-accused-of-forced-labour>
- Rice, D. (2016). Consumers urged to boycott popular electronic brands over worker exploitation concerns. *ABC News*. Retrieved from <http://www.abc.net.au/news/2016-02-10/consumers-urged-boycott-electronic-brands-worker-concerns/7155098>
- Rioux, S. (2018). Food Retailers, Market Concentration and Labour. *Forced Labour in the Global Economy*. Volume 2. 2018
- Rob, L. (2017). *The electronic industry against forced labour*. Retrieved from <https://www.osce.org/magazine/293391>.
- Surahanjaya Syarikat Malaysia - SSM. (2017). *Best Business Practice Circular 6/2017 on Business Review Report: Guidance to disclosure and reporting*. Retrieved from https://www.ssm.com.my/Pages/CR/best_business_practice_circular_6-2017.pdf

Tenaganita & Change Your World Joint Press Statement - Fight Human Trafficking through BE MY PROTECTOR App. (2018). Tenaganita. Retrieved from <http://www.tenaganita.net/news-and-press-releases/press-releases/joint-press-statement-by-tenaganita-change-your-world-fight-human-trafficking-through-be-my-protector-app/>

The meanings of forced labour. (2014). International Labour Organization. Retrieved from http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang--en/index.htm

Totaro, P. (2016). Two tech companies win first Stop Slavery Award after workforce scrutiny. *Reuters*. Retrieved from <https://www.reuters.com/article/us-women-conference-slavery-award/two-tech-companies-win-first-stop-slavery-award-after-workforce-scrutiny-idUSKBN13P2OH>

U.S. Department of State (2019). *2019 Trafficking in Persons Report*. Assessed via <https://www.state.gov/reports/2019-trafficking-in-persons-report/>