



EF – IOM
Multistakeholder Forum
on Ethical Recruitment for
the Palm Oil Industry
Outcome Report

26 June 2019

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EXECUTIVE SUMMARY

Earthworm Foundation (EF) in partnership with International Organization for Migration (IOM) held the Ethical Recruitment Multi-Stakeholder Forum in Kuala Lumpur on June 26, 2019, with support from Cargill, Nestlé, Bunge Lodders Croklaan, Reckitt Benckiser and Fuji Oil. 120 participants representing government agencies, palm oil companies, recruitment agencies, as well as civil society and non-governmental organisations (NGOs) came together to discuss the topic of ethical recruitment in the palm oil industry.

The main objective of the forum was to raise awareness of the industry on the standards on ethical recruitment, and to provide a space for companies to share their challenges, solutions, and best practices in a multi-stakeholder setting. The forum highlighted the need for human rights-based due diligence in recruitment, and introduced the Due Diligence Tool on Ethical Recruitment developed by EF as a resource for companies to support them in the implementation of their policy commitments.

Speakers from Earthworm Foundation, Nestlé, International Labour Organisation (ILO), Ministry of Human Resources (MoHR), and IOM presented various topics on the subject of Ethical Recruitment. One of the key messages highlighted was the important role that palm oil companies and other stakeholders play in identifying the gaps in their recruitment chain. With the emergence of best practices, tools, and initiatives, there is more and more information available for companies to adhere to regulations and market requirements. In a moderated panel discussion, representatives from Cargill, IOI Group, Sime Darby and Nestlé shared their companies' good practices and challenges relating to the ethical recruitment of migrant workers. All stakeholders emphasised that transparency and accountability must exist at every level of the recruitment chain to improve the recruitment process of migrant workers.

The forum concluded with group discussions on the challenges in ethical recruitment and possible solutions. Challenges exist at different stages of the hiring process. The root cause of most of the challenges is the companies' lack of awareness and knowledge in matters related to the recruitment of migrant workers. The proposed solutions therefore centred on identifying the gaps, developing the companies' recruitment policies, raising awareness on the issues, and increasing knowledge in the processes at all levels of the recruitment chain.

EF's Due Diligence Tool on Ethical Recruitment will be valuable in bringing about these solutions, enabling companies to build transparent recruitment processes, therefore setting the path towards ethical and responsible recruitment in the industry.

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Introduction

1. Introduction

In Malaysia, the topic of ethical recruitment of foreign workers dominates discussions on labour conditions across industries. The palm oil industry is very much part of this conversation as it employs many foreign workers of various nationalities in refineries, mills, and plantations across the country.

Earthworm Foundation (EF) is a member-based non-profit organization whose members cover the entire value chain of palm oil production and purchasing. Through hundreds of field assessments, EF has identified that many palm oil companies face numerous challenges relating to the recruitment of their foreign work force. Some companies do not have clear policy commitments on the topic of ethical recruitment, and some companies lack detailed due diligence processes on screening recruitment partners and monitoring recruitment processes. Considering the increasing pressure by the international community for companies to adopt the Employer Pays Principle (or Zero Cost Recruitment Principle), EF and its company members recognise the need for greater transparency in recruitment process and costs. EF's Ethical Recruitment work under its Respect for workers programme seeks to address the knowledge gap on ethical recruitment in Malaysia by raising awareness and developing practical solutions and resources for companies in Malaysia.

Established in 1951, IOM is an inter-governmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners to promote humane and orderly migration for the benefit of all. IOM's Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) is a regional partnership initiative that aims to realize the potential of business to uphold the human and labour rights of migrant workers in their operations and supply chains. Through the CREST initiative, IOM develops partnerships and projects with business to build stronger commitments to the elimination of modern slavery, implement ethical recruitment standards that address migrant workers' vulnerabilities and encourage collaboration across industries and stakeholders to achieve sustainable change. CREST initiative is supported

by the Regional Development Cooperation Section of the Embassy of Sweden in Thailand and IOM Development Fund.

1.1 Objective & Participation

The objectives of the forum were to:

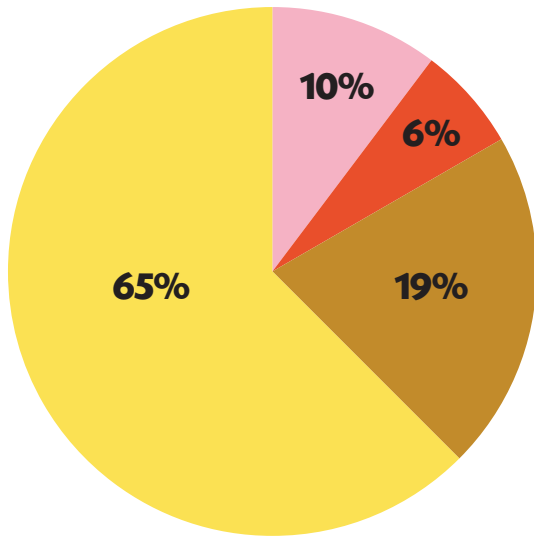
1. Raise awareness amongst palm oil industry players on national and international standards on Ethical or Responsible Recruitment.
2. Provide a platform for the sharing of practical solutions and good company practices.
3. Provide a space for industry players to share challenges and ideas for ethical recruitment in a multi-stakeholder setting.
4. Highlight the need for human rights-based due diligence for ethical/ responsible recruitment, and introduce a practical tool to supplement existing company processes.

Participants were invited from the following stakeholder groups:

- Staff of refineries, mills, and plantations involved in the recruitment of foreign workers, or from departments with decision-making or sustainability functions
- Buyers of palm oil
- Palm Oil Industry Association representatives
- Other industry associations
- Recruitment agents
- Civil Society Organisations and international organisations
- Trade union representatives

In attendance were 120 participants from government agencies, palm oil companies, recruitment agencies, as well as civil society and NGOs (See Chart 1). Palm oil company representatives in attendance comprised of small, medium, and large companies, currently employing approximately 86,365 migrant workers (based on the baseline developed from the Forum registration process).

Forum Participants



- Government Agencies
- Recruitment Agencies
- NGOs / Trade
- Companies (Palm Industry related)

Chart 1: Breakdown of forum participants



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Summary of Opening Session



2.1 Keynote Address of YB M. Kulasegaran, Minister of Human Resources, delivered by his Special Function YBhg. Kunaseelan Nadarajah

The address highlighted the recent positive initiatives undertaken by the government to ensure ethical recruitment, such as the amendment of the Private Employment Agencies Act 1981 which came into force on 1 February 2018. The amendment sets out comprehensive procedures for the application and issuance of licenses for private employment agencies, and outlines clearly the conditions and fees imposed. Enforcement and offence provisions were also strengthened.

Amidst increased awareness of consumers worldwide, more and more investors from importing countries now impose good labour governance in their contracts. The Malaysian government hopes that the amendment to the Act will increase the level of professionalism and responsibility in the recruitment of both local and foreign workers, addressing the transparent management of recruitment, welfare of the recruited workers, and adherence to all government regulations. Most importantly, there should be a behavioural change of agents to treat labourers as human beings and not commodities.

To catalyse this change, the government encourages licensed private employment agencies to organise themselves into associations to institutionalise ethical principles. Associations of private employment agencies can function as platforms to share and promote ethical values, and to gain credibility in their common pursuit of better practices. Institutionalising ethical practices will also strengthen the businesses financially and build their capacity in exercising due diligence. In addition, recruiting agents should be proficient in IT technology as the application and reporting requirements for agencies are now accessible online.

More and more countries are now passing or drafting anti-slavery laws to eradicate human trafficking and forced labour. Malaysia has already passed the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 and currently in the midst of amending the Employment Act to cover forced labour.

2.2 Opening Remarks by Karl Yen Quek, Regional Lead, Earthworm Foundation (EF)

In his opening remarks, Karl highlighted EF's unique position and approach in supporting businesses to commit to ethical and responsible business conduct. As a non-campaigning and member-based not-for-profit organization, EF is committed to work in collaboration with different stakeholders, including its Members such as Nestlé, Cargill, Fuji, BLC, and other companies, especially in the palm oil sector. Since 2013, EF has visited, assessed and supported businesses, ranging from millers, estate operators and smallholders in Malaysia.

Karl emphasised the scale of the challenge presented by unethical recruitment due to its complex nature which cuts across countries, governments and various parties. The palm oil industry is a significant employer of migrant workers in Malaysia and can be an important driver to respond to this challenge. Although there are no ready-made solutions for unethical recruitment, strong collaboration and greater efforts by various stakeholders can set the path for positive transformation.

The global market is demanding responsible and sustainable business practices in the palm oil sector. The palm oil that Malaysia produces is sold in Europe and America, as well as markets within Asia (mostly China and India). Buyers demand greater transparency on the environmental and social risks, as well as more information on how to prevent and remedy violations when they occur. Karl further highlighted that while some leading companies have taken action to commit to the policy of Zero Recruitment Fees, there is a need for more action by a wider range of actors.

In closing, Karl emphasised that there is a role for every company in ethical recruitment, regardless of its size. He expressed hope that the forum marks the beginning of a good story, one that the attendees can be proud of, for safeguarding the interests of migrant workers in oil palm plantations. This will also send a positive signal for the markets to continue to support palm oil from Malaysia.



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Summary of Presentations

3.1 “Market Requirements & the Drive for Ethical Recruitment in Supply Chains” by Emily Kunen, Global Responsible Sourcing Leader, Palm Oil & Seafood, Nestlé

Emily opened her presentation by sharing Nestlé’s early findings when it embarked on tackling forced labour issues a decade ago. Based on initial analyses, sites with the greatest risks were identified, followed by the development of policies, human right impact assessments, targeted programs, and audits at factories, farms and fishing vessels. Through a series of dialogues, a common and recurring theme was identified: labour challenges in the supply chain cannot be addressed without looking at how workers arrive at the sites.

Building on its Human Rights Due Diligence Program, Nestlé publicly committed to key principles related to the responsible recruitment and employment of migrant workers in its supply chains. Recognising that migrant workers are particularly vulnerable to exploitation and human trafficking when crossing borders, Nestlé set up its Responsible Sourcing Standard which establishes environmental and social criteria to its procurement processes. Responsible Recruitment is a core part of that standard, including requirements such as workers do not pay recruitment fees, identity documents are not withheld, all workers have freedom of movement, etc.

In addition to improvements on company policies and due diligence processes, Nestlé also sought to collaborate with its peers in the private sector to send a common message to suppliers and to raise awareness within the industry. Through industry-based groups like Consumer Goods Forum (CGF), Responsible Business Alliance (RBA), Institute for Human Rights and Business (IHRB) Leadership Group on Responsible Recruitment, and in collaboration with expert organizations such as ILO, IOM, FLA, and Verité, Nestlé has conducted joint supplier trainings with peer companies, manufacturers, and retailers to underscore the importance of responsible recruitment.

Emily also stressed that although policy implementation may encounter challenges in its early stages, having a clear policy on recruitment fees establishes a crucial channel of communication with suppliers as well as with their recruitment agencies. These conversations create opportunities to share the tools and success stories in policy implementation. There is now increasing interest among the company’s suppliers to be responsible in their recruitment practices and to be more transparent with the companies that contract them. Riding the trend, companies can take the opportunity to become leaders in the industry by demonstrating their commitment to ethical recruitment.

Summary of Key Points

1. **Companies play important roles as buyers, traders, and as employers. They can bridge knowledge gaps in the recruitment chain by adopting responsible recruitment policies and by increasing awareness in the industry.**

2. **Labour challenges in a supply chain cannot be addressed without looking at how workers arrive at the sites in the supply chain.**

3. **Companies should seize the opportunity to become industry leaders as first movers on the topic of Ethical Recruitment.**

3.2 “Fair Recruitment of Migrant Workers” by Nilim Baruah, Regional Labour Migration Focal Point at the Regional Office for Asia and the Pacific, International Labour Organisation

Nilim opened his remarks by describing how cross-border unethical recruitment of migrant workers is the entry point to the cycle of debt bondage that traps migrant workers. Due to the nature of cross-border recruitment, certain factors contribute to the situation, such as 1) immigration laws, 2) fragmented labour market information, 3) supply of workers is higher than the demand, 4) weak enforcement laws, 5) vulnerable workers who lack information and are desperate for work. To illustrate this, Nilim shared information on migration costs against workers’ earnings in Asia and GCC, where the costs are high and differ between corridors.

Destination	Origin	Total migration costs		Average monthly earnings in destination country (US\$)
		Average (US\$)	In months of earnings in destination (averages)	
Saudi Arabia	Pakistan	4395	9.4	469
	India	1149	1.9	592
Qatar	Philippines	480	1.0	469
	Nepal	1054	3.1	339
Kuwait	Bangladesh	3136	9.0	347
	India	1248	2.5	494
UAE	Pakistan	2351	6.0	394
Spain	Bulgaria	201	0.2	1300
	Ecuador	1032	0.8	1300
	Morocco	333	0.3	1300
Malaysia	Vietnam	1382	3.9	535

Table 1: Migration cost against workers’ earnings

Source: KNOMAD World Bank / ILO Surveys

If the recruitment context is understood by businesses and the recruitment processes for sourcing companies are better managed, businesses can begin to implement guidelines on fair recruitment of migrant workers to end the cycle of abuse. Nilim underlined some recent principles and guidelines that can be adopted for fair recruitment policies by businesses:

- ILO's [Recommendations on Supplementary Measure for the Effective Suppression of Forced Labour](#) in which ILO calls on businesses to address abusive and exploitative practices during the recruitment process.
- The [General principles and operational guidelines](#) developed by the Tripartite Meeting of Experts held in September 2016, which is endorsed by the ILO Governing Body and includes recommendations for companies to conduct human rights due diligence assessments of recruitment procedures and address violation of human rights when and where such incidents are identified.
- The [UN Guiding Principles on Business and Human Rights \(UNGPR\)](#) which require companies to conduct [due diligence](#) to help identify, prevent and mitigate adverse human rights impacts in their business activities. The recommendations can be implemented during the companies' recruitment processes.

From the perspective of migrant workers, many of them experience huge financial burden not just from paying the recruitment agent fees before departure and while on the job, but also from government-imposed requirements to pay levy. Many migrant workers end up taking loans to secure their return to their home countries. In addition, state laws governing recruitment should ensure that all related governmental charges are transparent without any hidden costs. When the regulatory costs significantly reduce the employers and recruitment agents' projected profits, they may resort to exploitative recruitment practices. Examples include employers who turn to unregistered agents who bypass government regulations to save costs, and employers who refuse to accept the termination notice of their migrant workers to enable them to change jobs.

In closing, Nilim stressed that while gaps in regulations and enforcement mechanisms can lead to situations of debt bondage and forced labour, there are clear general principles that companies can abide by to apply industry best practices and human rights standards.

Summary of Key Points

- 1. Companies need to understand the recruitment context, forms of recruitment, and gaps in their recruitment strategies when sourcing migrant workers.**
- 2. Responsible and fair recruitment must be factored into financial costs of companies at all levels of the supply chain.**
- 3. Companies can adopt principles and guidelines that are outlined by ILO and the UN Guiding Principles on Business and Human Rights for their recruitment policies.**

3.3 “Legal Developments in Malaysia for Labour Agents & Contractors” by Rhymie Mohd Ramli, Senior Assistant Director, Enforcement Division, Department of Labour, Ministry of Human Resources

Rhymie conveyed the three core roles of the Ministry of Human Resources, which are: 1) to ensure that there is a real need for foreign workers, 2) to ensure that Malaysians are prioritised in the hiring process, and 3) to ensure that employers seeking to employ migrant workers observe the Malaysian labour laws.

As of May 2018, both the Ministry of Human Resources (MoHR) and the Ministry of Home Affairs (MoHA) are responsible for the management of migrant workers in the country.

MoHR drafts regulations relating to the country's labour needs and projects the supply of migrant workers. Its portfolio includes reviewing employers' qualifications to employ migrant workers by conducting labour inspections on the employers' compliance with labour laws.

Employers found to have committed any offence such as the non-payment of social security will be barred from hiring migrant workers. Employers who seek to recruit migrant workers must first submit their applications online via **ePPAx** (Sistem Pengurusan Pekerja Asing Bersepadu, Foreign Workers Integrated Management System); the applications must first be approved by the Labour Department (Jabatan Tenaga Kerja) before they will be passed to the Ministry of Home Affairs (MoHA) for consideration.

MoHA manages immigration affairs and coordinates the application of migrant workers through its **One-Stop Centre (OSC)**, and has the ultimate say in accepting or refusing the permit of migrant workers. The issue of illegal foreign workers is addressed through its mobilisation of the police force and the Immigration Department.

Employers must prove that they have exerted reasonable effort in filling the job vacancies from the local talent pool before they can hire foreign workers. The Labour Department officers inspect the potential work sites to verify these claims. Rhymie gave an example of an

incident whereby labour inspection conducted by his team found that an application for migrant workers to work on a supposed “restaurant” turned out to have the address of a vacant piece of land. Had labour inspection not been done thoroughly, the foreign workers could have been hired then ‘sold’ to another party. He stressed that such deception by applicants could slip through the cracks of weak labour implementation, putting vulnerable job seekers at risk for human trafficking.

Rhymie highlighted notable improvements in national labour laws governing fair recruitment:

- The Private Employment Agencies (Amendment) Act 2017 came into force on 1 February 2018 and introduced new changes and provision which aim to, inter alia, protect migrant workers from abusive practises of recruitment agencies.
- Under the Amendment, a private employment agency must now be a company incorporated under the Companies Act 2016, with a minimum paid up capital, and whereby 51% of the total shares in the company must be held by Malaysian citizens.
- Previously, private employment agencies can be run by an individual or in the form of a partnership. Now, private employment agencies operating in Malaysia must have a license under the Act before they can carry out any recruiting activity in Malaysia, and the penalties for non-compliance is increased to a fine not exceeding RM200,000 or imprisonment for a term not exceeding 3 years or both.
- For agencies providing job placements for migrant workers, the category applicable is Licence C with a minimum paid-up capital of RM250,000.

In closing, Rhymie highlighted two upcoming changes in Malaysian labour regulations. The first is the tabling of the Amendment Bill to the Workers' Minimum Standards of Housing and Amenities Act (Act 466) to Parliament. The Amendment Bill would require the employer to provide accommodation facilities to the workers in accordance with the standards set, and those who fail to do so will be fined. Facilities here are not merely physical, but also cover medical services for workers living in the facilities. The Bill aims to widen the coverage of the existing act

to all sectors. If the Bill is passed, Medical Assistants in plantation estates would play an important role not only in giving preventive treatment for infectious diseases but also in ensuring that the workplace and accommodation for the workers are safe and clean.

The second upcoming change is the proposed amendment by MoHR to the Employment Act (Act 265), which includes four main components:

1. Employees and job-seekers will be legally protected from discrimination on the basis of pregnancy, marital status, gender, race, religion, disability, and language.
2. Employees will be legally protected from termination due to pregnancy.
3. Maternity leave will be extended from 60 days to 98 days, while fathers will receive 3 days of paid paternity leave.
4. Employees can request for flexible work arrangements, subject to their employers' approval. The Ministry's proposed amendments are set to be tabled in Parliament in July 2019.

Summary of Key Points

1. **As of May 2018, both the Ministry of Human Resources (MoHR) and the Ministry of Home Affairs (MoHA) are responsible for the management of migrant workers in the country. All guidelines and procedures are standardized across industries and individuals.**
2. **MoHR has placed emphasis on fair recruitment through national laws, and the Labour Department runs labour inspections to ensure that employers are not engaging in questionable activities such as labour trafficking.**
3. **There are upcoming amendments to two labour laws: the Workers' Minimum Standards of Housing and Amenities Act (Act 466) and the Employment Act (Act 265), which will ensure better working environments for all Malaysian workers.**

3.4 "Labour Supply Chain Mapping" by Maximilian Pottler, CREST Project Manager, International Organization for Migration (IOM)

Various forms of modern-day slavery are still a major challenge for businesses around the world. The majority of the 25 million people in situations of forced labour are working in the private sector. The palm oil industry, which adopts a labour-intensive business model that relies heavily on migrant workers, is at risk of being associated with incidences of forced labour and deceptive recruitment, particularly due to the use of additional labour recruiters.

Businesses have the potential and the responsibility of eliminating the risks of recruitment-related exploitation; through due diligence and industry-wide understanding of the highly complex and largely opaque cross-border recruitment chain.

In this context, the IOM provided an overview of common examples of what the journey of Asian migrant workers from their communities of origin through the recruitment process and their arrival at their destinations where they start their overseas employment could look like.

1. **Back in the village**
For the countries of origin, migrant worker remittances can account for a significant amount of their Gross Domestic Product (GDP). For communities living in poorer regions, the opportunity to work abroad becomes a prospect for a better life. The first node in the recruitment chain can be in a small and remote village, where young and predominantly male villagers seek job vacancies abroad through sub-agents who tend to be close contacts. Jobseekers are often given insufficient information on their labour rights, which increases

their vulnerability to exploitation. Community-based sub-agents may retain the passports of potential migrant workers which prevents them from applying for a job elsewhere. From a legal perspective, the involvement of these sub-agents is illegal in various countries of origin if these recruiter do not hold a valid license. Some agents may also pre-emptively recruit ahead of a job order (which can be illegal in some states) and upon winning the bidding, the sub-agent(s) then proceed to charge potential workers with initial recruitment fees.

2. The training centres

In some cases, the next point in the journey is the 'training centre' for potential workers, where jobseekers are provided with training (the quality of which could be inadequate), as well as housing with overcrowded and deteriorating dormitories. Many potential workers take out loans at high interest rates and mortgage family assets to pay for 'training' costs to increase their chances of getting these jobs.

3. Prior to departure

The third stage of the chain is pre-departure process, between two to three weeks prior to leaving to the destination country. At this stage, selected workers would have to pay a large amount of recruitment fees to sub-agents and brokers when employers are unwilling to absorb the cost (contrary to international standards of recruitment), but any information provided remains significantly insufficient, particularly with regard to the destination country of their future employers. At this stage, workers are likely to face challenges that puts them at risk, such as not having access to their personal documentation or passports, and little to no knowledge about their employment contracts.

4. At the airport

The final node in the country of origin is at the airport. Often, just as the workers are about to check in for their flights, agents may inform them of a final and compulsory fee that has to be paid out. In such situations, workers feel obligated to pay such fees in order to secure the job placement. These exorbitant fees and costs paid along the way leads to debt bondage, trapping workers in abusive and exploitative working conditions.

This example shows that migrant workers can be exploited at many different points and multiple stages of the recruitment process, prior to their arrival and employment at the country of destination.

As a call to action, the IOM called for the attendees to participate in the labour supply chain mapping project co-launched by the IOM and Earthworm Foundation (EF). The project aims to understand the current realities and challenges related to recruitment in the palm oil industry and build a strong evidence base of policy recommendations to regulators, employers, buyers and recruitment service providers. The data collection process will involve field visits to recruitment agencies in Malaysia and other countries of origin, as well as two palm oil companies with plantations, mills, and refineries in Peninsular Malaysia. This will be an opportunity for participating companies to receive expert feedback from the project team, and undergo an assessment of its systems and current practices.

Summary of Key Points

1. Migrant workers can be exploited at multiple points and various stages during the recruitment process within their home countries, even before arriving at the destination country.

2. It is crucial for employers to carry out due diligence and commit to bearing the fees and costs for recruitment.

3. Attendees are asked to take action by participating in the labour supply chain mapping project co-launched by the IOM and EF to actively support the industry to further understand the current state of affairs and complex challenges related to recruitment in the palm oil industry, and further, to receive expert feedback from the project team, support industry leadership and improve agency management without additional charge to workers.

3.5 “Insights into Recruitment Practices and Training on Due Diligence Tool” by Natasha Mahendran, Project Manager, Social & Human Rights, Earthworm Foundation

EF’s field assessments of mills and plantations in Malaysia since 2013 show that companies are still struggling on the topic of ethical recruitment. EF conducted an initial scoping study between October 2018 and February 2019 into the company policies, costs, and processes of small and medium sized companies in Johor, Pahang and Melaka. The findings (from a sample consisting of 2 palm oil mills, 1 third party estate, 58 migrant workers, 1 recruitment agent and 1 contractor) show that companies’ recruitment challenges include:

- Lack of staff resources to handle recruitment
- Time and distance from government departments to complete administrative processes for recruitment in Malaysia
- Difficulty to get worker quotas for small estates.
- Lack of company policies or clear commitments relating to migrant workers’ recruitment costs and processes.
- Lack of knowledge at site level of recruitment practices or cost breakdown for recruitment, as recruitment is often covered at Headquarters.
- Lack of grievance processes for migrant workers on matters relating to recruitment.

Companies struggle with certain recruitment challenges in the migrant workers’ countries of origin, including the lack of knowledge of the source country’s recruitment regulations, fees, and recruitment agents. Companies also do not have information about contracts signed in the source country.

The initial findings on recruitment costs borne by employers and employees are shown in the table below.

Country	Employer	Employee
Indonesia	RM2200 - RM2470	RM1950
Nepal	RM4853- RM6018	RM5500
Bangladesh	No data	RM15000

Table 2: Self-declared recruitment costs borne by employer and employees

The costs borne by employers are said to cover charges and fees incurred during the pre-departure, arrival and post-arrival phases. At the same time, findings show that migrant workers also pay high amounts to aid their migration, indicating possible unethical practices on the part of recruitment agents and sub-agents. The surveyed migrant workers fund their migration from various sources. Bangladeshi and Nepalese workers mostly took loans from money lenders, whereas most Indonesian workers paid for their migration costs from their own savings or family support.

EF is developing a Human Rights-Based Due Diligence Tool to support companies and their suppliers to establish transparency in recruitment, and identify risks that could hinder them in meeting international standards for ethical recruitment. Using this tool, companies can establish policy commitments on recruitment, and embark on a deep-dive into understanding their recruitment processes, key actors, and actual costs incurred. They can also identify human rights risks along their supply chain(s) to mitigate risks and provide remedies.

Summary of Key Points

- 1. Small and medium sized companies face several challenges in recruitment, including the burdensome administrative processes, difficulty in getting worker quotas and the lack of knowledge on the recruitment process, particularly in the countries of origin of workers. These companies also lack of policy commitments and grievance mechanisms that cover recruitment related issues.**
- 2. Research findings suggest that agents and sub-agents may be double-charging recruitment costs to employers and workers. Workers arrive in Malaysia heavily indebted.**
- 3. Companies should conduct Human Rights-Based Due Diligence to establish transparency in recruitment, and identify risks that could hinder them in meeting international standards for ethical recruitment.**



Panel Discussion by
Representatives of
Cargill, IOI, Nestlé and
Sime Darby

Panel members (names in alphabetical order):

- **Emily Kunen** - Global Responsible Sourcing Leader, Palm Oil & Seafood, Nestlé
- **Izlin Ismail** - Social Performance Senior Manager, Sime Darby Plantation
- **Nasuha Thaha** - Stakeholder Engagement Manager, Cargill
- **Dr Surina Ismail** - Group Head of Sustainability, IOI Corporation

Moderator: Dr Andika Wahab, Research Fellow, Universiti Kebangsaan Malaysia

The format of the panel was a 10-minute presentation from each panel member on the topic of preventing unethical recruitment, followed by discussions facilitated by the moderator.

The opening presentation was made by the moderator, Dr Andika Wahab, who highlighted the ways in which recruitment agents in both sending and receiving countries profit from exploitative recruitment of migrant workers. In the Malaysian context, many private recruitment agents charge workers with exorbitant recruitment fees which go beyond the legitimate and reasonable costs of transnational recruitment, leading to an abusive pattern of forced labour.

While there is no legally binding definition of ethical recruitment, there are universal standards and principles as well as best practices which can be adopted.

The following is a summary of the discussion by panel members for businesses to address exploitative recruitment practices in their supply chains, arranged by initiatives taken by the panel members' companies and their recommendations:

4.1 Initiatives Implemented by Panel Members' Company

According to a panel member, the entire recruitment process from country of origin to Malaysia must be transparent to the migrant workers. Drawing from his/her company's experience, if companies still use recruitment agencies, as soon as the migrant workers arrive on-site, the employers need to query whether recruitment fees have been paid, and if yes, how much and to whom. The answers provided by the migrant workers will reveal whether the fees paid reflect a reasonable and legitimate market rate of recruitment fees. If the amount is revealed to be excessive, due diligence on the recruitment agents or brokers engaged need to be conducted through an assessment.

4.1.1 Proper documentation system

A proper documentation system is important to ensure transparency, e.g. detailed invoices should be kept for each transaction to conduct due diligence on the recruitment agents. When companies discover through audits that workers have paid excessive or illegal fees, they have processes to ensure that the migrant workers are reimbursed.

4.1.2 Engagement with recruitment agents and verification visits

The process of one of the companies is to first inform recruitment agents of the purpose of the due diligence procedures before requesting them to submit information on their recruitment practices. At a later stage, the company's sustainability teams travel to migrant workers' countries of origin to participate in group recruitment consultations with the workers. These random and anonymous interviews with migrant workers help to verify the given information by the agents and to review their practices. If their consultations reveal that illegal fees have been paid to the agents or sub-contractors, or that the workers have been deceived in any way, there will be repercussions for the agents/sub-contractors concerned.

4.1.3 Assessment of suppliers and recruitment sub-contractors

The panel members shared that their companies have mostly committed to investigate any allegations of

migrant workers abuse such as through the imposition of unfair recruitment fees or deception in any form, through continuous assessment of their suppliers and recruitment sub-contractors. This includes direct oversight of all business dealings that occur throughout the companies' supply chains. This also includes direct communication with the migrant workers themselves. The panellists felt that their companies' efforts were in line with the UNGP's Guiding Principles on Business and Human Rights which call upon companies to prevent abuses "directly linked to their operations, products or services by their business relationships".

4.1.4 Institutionalize commitments to ethical policy

In an exceptional case, one of the companies launched their own Human Rights Charter to institutionalize commitments to ethical policy, prohibiting any abusive and deceptive conduct throughout their business practice and supply chains.

4.2 Advice and Recommendations

4.2.1 Understand and Promote the Business Case for Ethical Recruitment

Even though a Zero Recruitment Fees policy may cost a company financially to develop, panel members unanimously agree that there is a business case for doing so. The implementation of this policy in their respective supply chains has created tangible results. Employees were reportedly happier and more productive, and the abscondment rate is significantly reduced.

1. Employment contract
The written contracts must represent the situation correctly, and be in the migrant workers' native languages so they are aware of their rights and their employers' obligations prior to accepting the terms under the contract. The contracts should also outline wages, working and living conditions as well as overtime conditions.
2. Orientation module
Orientation modules should be developed for migrant workers, and include videos shown to them at the time of hiring. The orientation module should

explain the terms of the contract, the context of the workplace, and if possible depict the site and town where workers will work as well as the conditions of their accommodation. The videos can also feature other migrant workers from the same country of origin who have worked on-site for some time and who can provide tips for the new workers to adapt to their new host country.

3. Understanding the Business Case
In the long run, ethical recruitment practices increase worker productivity and makes it easier to recruit motivated workers in the future, through word of mouth. If working conditions are poor, workers may abscond, disrupting work and planning during peak seasons.

4.2.2 Ethical Recruitment Implementation in Supply Chains is a Gradual Process

Implementing ethical practices in recruitment throughout the supply chain takes time. It is a learning process for all involved, and is iterative in nature.

- Provide support to agents and sub-contractors
For companies committed to launch their own ethical recruitment policy, it is important for them to not fall into inaction when confronted with their agents' or sub-contractors' pushback. They are advised to continuously provide their agents with as much practical support as possible, such as bringing their suppliers together for in-person discussions and hold training programmes so that their suppliers/agents/ sub-contractors are aware of the value of ethical recruitment and the companies' expectations of workers' welfare and human rights.
- Engage with embassies
Working closely with embassies also helps the implementation process. Embassies can effectively negotiate with exploitative agents and help migrant workers to access support or guidance needed to match their expectations with local realities. These efforts can enhance the migration experience for workers.

4.2.3 Support from Top or Senior Management Essential to Roll Out Ethical Recruitment Policy

Gaining strong senior management support on ethical recruitment will help achieve internal alignment and send a clear message to supply chains that the traditional notions of corporate social responsibility must change to address current realities. All the panel members expressed that it is important to show suppliers that the entire company is on board in integrating ethical recruitment policies in their business. They also need to assure the suppliers, especially SMEs, that they will be given full support to implement the changes from “worker pays” to “employer pays”.

Additionally, panellists shared that partnerships and collaboration with civil society organisations, government and other peer companies attributed greatly to their achievements on rolling out the ethical recruitment policy at multiple levels. Results of research furnished by these stakeholders supported the initial recruitment mapping that led to support from the top management.

5



Summary of Group Discussions on Ethical Recruitment Challenges and Proposed Solutions



The participants were asked to work in several small groups. Each group was given 30 minutes to brainstorm on the following two questions:

- What are the ethical recruitment challenges that you recognise in your foreign labour supply chain?
- What do you think you can do (or have done) about these ethical recruitment challenges?

Following the group activity, key ideas generated during the brainstorming session were presented to the larger group. The results of the small group discussions are outlined in the tables below. These are the views of participants, and not necessarily endorsed by EF or IOM.

Challenges faced by Industry	Solutions suggested by participants
<p>Application Process</p>	
<p>Difficulty in obtaining approval</p> <ul style="list-style-type: none"> • Small companies find it difficult to get approval from the Dept. of Labour because their quota is small. 	<ul style="list-style-type: none"> • Large companies should assist the small players in recruiting migrant workers responsibly by providing advice and support to their suppliers • Large companies can offer to share the list of recruiters they use. • Small and medium-sized companies should be able to combine their need for migrant workers and apply for the quota together. This raises the quota figure and is more likely to receive approval from the Dept. of Labour.
<p>Unexpected need for workers</p> <ul style="list-style-type: none"> • Many times, the sudden need for workers is unexpected. • This can arise from abscondment during peak season, or it can happen when the application for workers is not approved by Jabatan Tenaga Kerja (Dept. of Labour), or if the number of workers applied for is reduced. • Reapplication from Dept. of Labour takes time. During these times, company rely on agents to bring in workers and are not really concerned about ethical recruitment of temporary workers. 	<ul style="list-style-type: none"> • Employers must have proper planning and projection of productivity, and have allocations for sudden labour shortage and challenges arising in production. They should not leave things to the last minute. • Companies should shift to focus on retaining workers, e.g. give incentives to extend contract, improve practices to prevent abscondment, provide basic medical claims for workers. • Some companies felt the Dept. of Labour need not impose a quota on the number of workers, preferring companies decide the quota of workers needed and being able to pay accordingly.
<p>Tedious application process</p> <ul style="list-style-type: none"> • The application process not only takes time but it changes from time to time – it is hard to keep up with the changes of the guidelines. • A lot of documentation is involved, it is very cumbersome to manage. • There are overlaps in the processes of the Department of Labour and the Home Ministry, making the application process confusing. 	<ul style="list-style-type: none"> • Companies can use the E-system to apply, there should not be any need to submit hard copies. • The relevant government agencies need to enhance transparency in the process and give clear and unambiguous reasons for the rejection of applications. More importantly, the reasons for rejection should be standardised across and within industries to be consistent.

Challenges faced by Industry	Solutions suggested by participants
Recruitment Process	
<p>Lack of information on recruitment process</p> <ul style="list-style-type: none"> • "I don't know what I don't know – I use agents and entirely leave the process to them." Employers depend entirely on agents (both in the country of origin and the destination country) because they think that that is their area of expertise. 	<ul style="list-style-type: none"> • Employers need to review existing policies to identify where the gaps are. • Employers must recognise that migrant workers are vulnerable by default, because of the power imbalance favouring businesses and employers. • Since companies/employers are already subjected to audits and other forms of due diligence, (e.g. human resources, finance, filing, legal documentation), human rights due diligence should not be something entirely unfamiliar to them.
<p>Lack of visibility in country of origin</p> <ul style="list-style-type: none"> • Recruitment happens in countries of origin; what happens there is not visible to companies in destination countries. 	<ul style="list-style-type: none"> • Employers need to engage with agents to understand their practices, and request a breakdown of the invoices for details of the payment.
<p>Mismatch of workers expectations with reality</p> <ul style="list-style-type: none"> • Although some companies verify that contract templates (in the origin country) are in line with the Malaysian company's contract template, sometimes there is still a mismatch of expectations from workers' perspective (on pay and job scope). • The mismatch occurs because of exaggerated promises made by sub-agents in the village to the workers. 	<ul style="list-style-type: none"> • Governments in the countries of origin should create awareness and educate workers about potential working conditions, weather, culture etc. before departure. This reduces the risk of agents misrepresenting the employment situation that workers are getting into. • Companies can get an existing worker as a leader/spokesperson to recruit from his village, to share his experience – this is a common practice with Indonesian workers in Sabah and Sarawak. • Agents must make sure the job descriptions are available at community level by collaborating with village heads. Existing workers can help disseminate the information.
<p>Constraints in resources</p> <ul style="list-style-type: none"> • Large companies have a quota of approximately 12,000 workers annually, hence it is challenging for companies' representatives to be present for all worker's interviews at country of origin. Companies would usually be involved in the first batch of interviews, and if companies are comfortable with the recruitment agent(s), the agent will thereafter take over the process. 	<ul style="list-style-type: none"> • Companies should establish transparent communication with all migrant workers, and understand the costs incurred during migration. If the workers were not given receipts for what they paid for, this alone should raise red flags.
<p>Workers do not disclose information</p> <ul style="list-style-type: none"> • Workers do not reveal challenges faced to the company. Often, companies are only made aware of the issues and gaps during external audits (e.g. RSPO audits). 	<ul style="list-style-type: none"> • Employers must show agents/recruiters that they are aware of what is happening in the supply chain and proper recruitment processes, so that agents will be more observant of ethics.

Challenges faced by Industry	Solutions suggested by participants
Receiving Process	
<p>1. No standardized medical examination in country of origin</p> <ul style="list-style-type: none"> There is no one standardised medical examination centre in the country of origin. Workers may pass the medical tests in their country but fail it in Malaysia. Companies have to absorb the costs of sending these medically unfit workers back to their countries. 	<ul style="list-style-type: none"> The Malaysian government should share the list of medical practitioners recognized in the countries of origin (of migrant workers) with companies seeking workers at the time of application. The government should thereafter make it clear that they are only accepting medical examinations done at the clinics provided in the list and not others.
<p>2. Workers physically unfit for the job</p> <ul style="list-style-type: none"> There have been instances when agents claim that the workers had passed their medical tests at the country of origin, but the workers fail the FOMEMA tests when they arrive and need to be sent back. This creates delays and complicates the administrative processes. 	<ul style="list-style-type: none"> Companies have to ensure that agents take responsibility in the recruitment process. They can assess the company-recruiter relationship if necessary, and convey this message to the agents so that they know that the company takes this issue seriously.

Other issues of concern on the topic of ethical recruitment raised by participants during the forum are also summarized here, as follows:

Corresponding to companies/employers/buyers
<p>Brands and buyers must identify where the risk is highest, then prioritise these risks. The risk tends to be highest at the node of the raw material supplier (e.g. palm oil in Malaysia, seafood in Thailand, hazelnut in Turkey).</p>
<p>The elimination of unethical and unfair recruitment requires collaboration with other stakeholders such as industry associations, government, civil society and international organisations given its complexity.</p>
<p>Leading companies have designed and implemented Zero Recruitment Fees to provide long-term solutions for their migrant workers.</p>
<p>Companies that hire migrant workers must develop clear policies and critical priority areas for implementation. Ethical recruitment may appear as a Human Resources component, but it is in fact a sustainability and human rights component because of the impact it has on the business.</p>
<p>The topic should be brought up to higher management to gain internal buy-in by emphasizing that this is a market requirement and will ensure wider market access through establishing a better reputation. and it also ensures reputational continuum.</p>

Corresponding to companies/employers

All related costs to hire workers (airfare, visa fees, medical fees etc.) are fixed and **should be borne by the employer**. If an employer recruits workers using agents, the employers are effectively hiring only workers who have the ability to pay money to the agents. They may not be getting the best workers.

Companies should **map the supply chain** – the closer the company is to the recruitment process, the lower the risk of deception or exploitation.

Companies should **collaborate with peers** to keep abreast with emerging best practices on fair recruitment as well as current costs. This also helps promote good practices in retaining workers and ensures future recruitment needs.

Corresponding to regulators

Regulators should **enhance the capacity of the Labour Department** to conduct labour inspections, and this includes investments on database technologies. A good example is South Korea.

They should also **provide adequate support to recruitment process** and understand the severe human rights impacts of unethical recruitment. Remittances sent back by migrant workers is said to have decreased lately - this may indicate that agents are taking a big cut from their earnings.

The government should **establish high standards and clear legal frameworks** in relation to the recruitment of migrant workers. Currently, Thailand is the only country in South East Asia to have specific laws relating to illegal recruitment fees.

The government should **review terms and conditions attached to the status of a migrant worker's permit**. Migrant workers' permits are attached to a specific company, based at a specific location. When the company shifts them to a different site/ location, migrant workers can become irregular through no fault of theirs, and this situation makes them vulnerable to exploitation.



IN



Next Steps

The forum successfully gathered interest from many companies and stakeholders on the topic of ethical recruitment. Four companies expressed their interest to learn more about joining the labour supply-chain mapping project (conducted by IOM in partnership with EF) after attending the forum. This project will assist companies and their suppliers along their ethical recruitment journey, on establishing values and transforming practices.

The forum also garnered support from various government agencies and ministries. It is important that government agencies better understand industry concerns and challenges. EF sees great value to engage the government for further collaboration on ethical recruitment.

Palm oil companies (small, medium, and large) showed great interest in the practical human rights based due diligence tool to assist them in their implementation of ethical recruitment. Stakeholders' feedback on the challenges and opportunities of ethical recruitment will be taken into account to improve the tool.

There is a clear demand for ethical recruitment from the consumers, international community, governments, companies and civil society. It is evident from the discussions that stakeholders have different perceptions of what ethical recruitment could and should be. The EF – IOM Multi-Stakeholder Forum on Ethical Recruitment was a first step in the process to raise awareness in the industry, and to bring together various stakeholders to learn together, share experiences, challenges and good practices. This, together with the forthcoming launch of the Human Rights Based Due Diligence Tool on Ethical Recruitment, has the potential to begin establishing transparency in recruitment processes and practices and to shape future recruitment related policies in the industry.

Annex 1

Agenda for the EF – IOM Multistakeholder Forum on Ethical Recruitment for the Palm Oil Industry

8.30am	Arrival of participants & registration
9.00am	Opening Remarks Earthworm Foundation
9.10am	Keynote Address Ministry of Human Resource
9.25am	Market Requirements & the Drive for Ethical Recruitment in Supply Chains Nestlé
9.40am	Fair Recruitment of Migrant Workers International Labour Organisation
	Q&A
10.20am	Coffee break
10.45am	Panel session: Good Practices on Ethical Recruitment by Palm Oil Companies Cargill, IOI Group, Sime Darby & Nestlé
	Q&A
12.15pm	Lunch
1.15pm	Legal Developments in Malaysia for Labour Agents & Contractors Ministry of Human Resource
2.15pm	Labour Supply Chain Mapping International Organization for Migration
3.15pm	Coffee Break
3.30pm	Insights into Company Recruitment Practices and Introduction to the Human Rights Based Due Diligence Tool Earthworm Foundation
4.00pm	Group Activity
5.00pm	End

About The Organisers

Earthworm

Earthworm Foundation (EF)

Earthworm Foundation (EF) is an impact-driven non-profit that works on the ground to create conditions for nature and people to thrive. Partnering with businesses, civil society and governments, we focus on implementing responsible sourcing commitments in supply chains, innovating practical solutions to the social and environmental challenges of production practices, and catalyzing industry-wide chain reactions to scale up change.

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International Organization for Migration (IOM)

Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) is a Regional Partnership Initiative of the International Organization for Migration (IOM). It aims to enable business and regional actors to respect and promote human and labour rights of migrant workers, in key industries and supply chains in Asia. With the support from the Regional Development Cooperation Section of the Embassy of Sweden in Thailand and the IOM Development Fund, IOM CREST covers the Asian region, working across key labour migration corridors.



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