



# Foreign Workers and Business: Working Collaboratively Towards Sustainable Solutions

## BSR International Labor Migration (ILM) Focus Group

15-16 JULY, 2009  
Kuala Lumpur, Malaysia

### Participants

#### ILM Focus Group:

Apple  
Hewlett Packard  
Nordstrom  
JC Penney

Nike

Burberry

Thai Garment Export Co.  
Limited

Esquel Group

Hytex Apparel

United SweetHeart Garments

South Island Garments

Avery Dennison

Western Digital

STATS ChipPAC Malaysia Sdn

Federation of Malaysian  
Manufacturers

Malaysia Packaging Industry  
Berhad

Malaysia Employers Federation

Tenaganita

Monitoring the Sustainability of  
Globalization

Malaysian Bar Council – Human  
Rights Committee

SUHAKAM - Human Rights  
Commission of Malaysia

Refugee and Migratory  
Movements Research Unit  
Dhaka University

Malaysia Trade Union Congress

The *ILM Focus Group* and Malaysian employers, international brands, civil society and unions met for two days in Kuala Lumpur to find ways together to build greater protection for migrant workers in Malaysia.

Appreciating that the current system in Malaysia presents complex challenges for brands and their local suppliers, the primary goal of the convening was to 1) build knowledge, understanding and relationships, 2) understand and agree on key areas of focus and participation for a pilot project in two factories in Malaysia, and 3) develop an ongoing stakeholder forum to continue the social dialogue in Malaysia.

Efforts to improve the situation of foreign workers in Malaysia should center on **'improving worker awareness'**, **'communication mechanisms'**, and a more **direct approach to recruitment**.

Specifically, the ILM Focus Group built consensus around two main initiatives:

- 1) **Pilot Project:** from August 2009 to November 2009 BSR will facilitate a Malaysia pilot project, implemented by partner organization Tenaganita, focused on worker capacity building and factory management processes/mechanisms.
- 2) **Continuation of the Social Dialogue;** a follow-up meeting in the medium term, as well as a longer term vision to create a more permanent employers committee, as well as an online email group or online portal to store and share relevant news and developments.

### Key Findings

In order to fully understand the issues regarding the protection of foreign workers, the first day of the convening focused on raising awareness on the full range of issues from pre-departure to arrival in the destination country and employment in a factory.

#### RECRUITMENT SYSTEM

Recruitment was confirmed as a key issue and recognized as a critical challenge for workers, international, and local stakeholders. There was agreement that more direct forms of recruitment are needed from all perspectives. The Malaysian employment/recruitment model relies heavily on outsourcing as any company with less than 50 employees is obliged to use outsourcing agencies. From a civil society standpoint, a more direct system of recruitment can enable better rights protections, and from a business standpoint, this model enables recruitment costs borne by employers to be managed and quality of workers to be improved. Some of the following challenges included:

- » exorbitant fees charged to workers
- » cost of recruitment borne by employers
- » lack of transparency with labor agents
- » lack of worker quality/preparedness
- » lack of transparency of recruitment cost and responsibility down the value chain

Consensus among all constituencies was that the government's current outsourcing format is problematic. However, many participants, including some employers, recognized the difficulty in enacting such a large reform in the immediate term.

Both employers and civil society recognized that the root cause of many of these problems lies at the initial recruitment phase in the country of origin where potential workers are most vulnerable, sending country government laws and enforcement is weak, and corruption is rife.

Professor Abrar Chowdhury highlighted many of the challenges of protecting worker rights in the Bangladesh context, identifying a critical piece of the puzzle - **reform within sending countries**, and the need to develop robust internal processes for minimizing risk and problems for workers.

Despite these challenges, some solutions for developing more direct forms of recruitment included:

- » Publicly available list of top recruitment companies
- » Establishing monitoring and assessment of agents
- » Employers engaged more directly in recruitment – sending internal HR people to conduct recruitment trips
- » One-stop-shop for permits and related government approvals
- » Peer to peer recruitment model; rehiring former workers
- » Finally, efforts at the sending country level would be most effective if targeted at the village level to help workers understand how to work the recruitment system, create clear understandings, and avoid all the sub agent recruitment fees.

## **WORKER ORIENTATION & WORKER RIGHTS AWARENESS**

The root cause of issues related to the poor protection of migrant workers can often be attributed to poor preparation of workers on basic rights and responsibilities before they arrive in Malaysia. In particular, challenges include:

- » lack of awareness of workers' basic rights and responsibilities prior to their departure from the sending company
- » unclear expectations about actual employment (conditions) in the destination country
- » lack of visibility of pre-departure orientation for employers and brands
- » unclear contracts, often not communicated in local language; contract substitution

The dialogue identified some areas of focus for employers, and opportunities for employer-civil society partnership. Quality orientation & post arrival programs for workers can both better protect workers while contributing to more stable workplace environments with clear terms of employment and strong lines of communication between worker and employer.

'Best practice' orientation programs should include:

- » *Contract orientation* – contract in local language and endorsed by local embassy
  - Terms of employment (wages, hours, overtime, benefits) established.
  - Repeated on a semi-annual basis
- » *Language training* – basic Bahasa Malay/English language course for workers lacking basic skills
- » *Rights and Responsibilities training* – workers trained on rights awareness using core ILO standards as a framework. Workers also briefed on workplace responsibilities.
  - Incorporate ILO standards on decent work and decent living.
  - Include risks: arrest and detention, RELA
  - Content dependant on needs of workforce
  - Training could be done semi-annually
- » Orientation on Malaysian culture and society: “How to live and be in Malaysia”

Knowledge, awareness and connections are key at every step of the process: from initial concept to pre-departure, in-factory employment and subsequent return.

Participants agreed that there are opportunities for employers and civil society to collaborate on some of the above. (See 'Next Steps', pilot project)

### **FACTORY MANAGEMENT MECHANISMS**

Upon arrival in the destination country and during employment, foreign workers also can face many challenges. Some of the root causes identified in the discussions included:

- » poor communication due to language issues and lack of infrastructure for grievance
- » insufficient communication on key employment practices and contractual obligations and rights

The convening produced possible solutions for improving the in-factory management of workers that could help address worker issues early on – before they grow more serious and costly for both workers and factories.

#### **Structure: A Voice for Workers and Mechanism for Employers**

The establishment of **foreign worker or welfare committees** was identified as a possible constructive means of allowing workers to organize for the purposes of raising issues with management. This would provide management with a consistent line of communication with workers to both address issues and disseminate relevant policies and announcements. This was mentioned as an area where civil society could utilize their experience with and understanding of foreign workers to help construct a committee in partnership with factory management, in alignment with existing worker committees.

**Worker hotlines and suggestion boxes** were also identified as a successful, simple and cost effective means of improving the communications channel.

#### **Grievance Processes**

An established **grievance system** for foreign workers was highlighted by both employers and civil society as a means of providing workers a consistent outlet with factory management, and providing management with a constructive and transparent means of addressing issues as they arise. This could include but is not limited to welfare committees. It was also recommended that origin country embassies be included in grievance process as necessary to increase transparency, share responsibility, and encourage greater sending country ownership over workers.

A clear code of conduct that addresses foreign worker issues could incorporate grievance systems and be introduced during the induction training. This is an area where brands can provide input for employers, shaped by both brand standards and in-factory consultation on implementation of standards.

### **GOVERNMENT FRAMEWORK/REFORM**

All participants recognized the fundamental role the Malaysian government plays in the migration process. All participants reiterated the importance of having government 'at the table' for dialogue with industry and civil society on reform as well.

#### **Progress on reforming the system was seen to be in both the interest of business and worker rights.**

Some of the following possible government reforms were mentioned:

- » 'One-stop-shop' approach – one body handles permits, approvals, processing etc.
- » Standard contract with minimum wage: industry specific; local specifics
- » Halt licensing of outsourcing companies
- » Enactment of ILO Conventions 87
- » Legislation clearly outlining work permit and approval processes
- » Transparent MOU process with sending countries and government to government arrangements.

The voice of the foreign worker and constructive channel with the employer is the fundamental basis on which this work needs to be built.

All participants recognized the fundamental role of the Malaysian government.

- » Recognize human rights in free trade agreements.
- » More flexible work permit transfers and processes
- » Clarification of policies for holding passports

## Next Steps

Day two of the convening provided BSR and the participants with specific steps that can be taken to move the migration system in Malaysia toward that more 'ideal system' discussed during the initial small group dialogue.

Ideas were marked by a degree of consistency among all groups centered on 'improving worker awareness', 'communication mechanisms', and a more direct approach to recruitment. There were also clear action items for BSR to consider taking on through the pilot project. Outcomes of the pilot project will be organized under a number of toolkits that can be used by brands and employers with other suppliers.

Though all the above suggestions and focuses are quality ideas, due to time and resource limitations, BSR cannot act on all recommendations. The exact scope of the pilots will be determined by the needs of the participating factories. BSR will aim to address **worker capacity building** and **factory management processes/mechanisms** as the two core focuses for the pilot project.

BSR will aim to take on a select number of the below mentioned areas and narrow the focus of the pilot in initial consultation with the participating factories and TenagaNita at the onset of the project process. There could also be other specific issues that may be addressed in addition to or instead of those mentioned below, pending the final agreed upon scope of each factory pilot.

### PROPOSED PILOT PROJECT

#### 1. Consultation: Factory Management Processes/Mechanisms

- » Welfare/Worker committee: develop/benchmark a factory welfare committee in which an elected group of foreign workers is institutionalized as a means of communicating with factory management on foreign worker issues.
  - Key consideration: each sending country has representation
- » Communication Channels: develop improved communication channels and grievance systems within a factory to facilitate ease of contact by individual foreign workers on issues of immediate concern as well as access support and counseling as appropriate.
  - Key ideas: develop Hostel leaders to facilitate dorm issues; develop regular meetings with HR; clarify means of immediate support and communication
- » Resource center: develop a resource center or other dedicated area within the facility where foreign workers can access information and language classes and reading room etc.
  - Key requirement: space for such a resource center, in a dormitory, factory site or other location
- » Supervisor-level training on rights/responsibilities of foreign workers and obligations of employers.
  - Key idea: integration of both knowledge (on rights/laws, including country of origin and destination country frameworks) as well as skills of people handling workers and processes.

#### 2. Worker Capacity Building

- » Orientation Training:

Rights and Responsibilities Training program to educate, assist and guide foreign workers will be developed with the following components:

- **New Arrival Orientation**

This orientation will focus on newly arrived workers to help orient them to and assist them with living, working and socializing in the local environment.

Key Elements of the orientation: education on the rights and responsibilities of the worker, including governing laws and factory rules; means of support and orientation; living in the new environment; health and safety – largely centered on necessary translation of language, approaches to teaching that accommodate backgrounds of workers.

- **Foreign Workers Manual**

As part of the orientation process, a manual will be given to foreign workers during the new arrival training; this will be easy to understand, conversational in tone, and built around assisting foreign workers in their transition to the new environment. This will also communicate the baseline factory policies and standards that apply to all workers, utilizing material that is already in employee manuals, adapted for foreign workers. It can also include sections with both country and factory specific details.

Key Process: the creation of this tool will need to synthesize a variety of needs and viewpoints including civil society, factory management, the needs of workers and be built on the legal and “lived” environment: social and cultural integration.

» **Refresher Training**

This training will be based on the new arrival orientation and the foreign workers manual and is intended to be a refresher training that would be updated to foreign workers on a regular (possibly annual) basis. Some elements would be ‘review and repeat’ basic information from the new arrival orientation. New topics would enable deeper discussions of both opportunities and challenges facing foreign workers and the role of the employer in helping them to meet these challenges and opportunities.

This training can provide workers with an additional forum through which to raise issues proactively and serve as ongoing capacity building for the factory.

Key Idea: for a factory that has developed existing training, this would be an opportunity to both review existing training and evaluate training effectiveness and knowledge retention.

**3. Baseline Assessment of Recruitment Practices:**

There were a series of strong recommendations for addressing recruitment. However, due to the importance of addressing this issue along the value chain of recruitment, starting at the sending country level, and limited by the scope of this project in Malaysia, BSR will begin the process of documenting this important element through a best practices documentation process. Through the course of the consultation with factory management in steps 1 and 2, a series of interviews with factory HR managers, both best practices and suggested ideas will be documented. These will provide the basis on which further steps can be taken, both by the employer and in the sending country.

Areas that will be explored may include:

- » Factory representative engaged directly in recruitment process with sending country agent
- » Survey process of workers on arrival – assess quality of agent (fees charged, quality of worker)

- » Advocating use technology (sms) among workers to raise awareness around process/fees
- » Invite agents to factory to talk to workers directly
- » Direct dealings with sending country agent
- » Peer-to-peer introduction amongst workers – leverage personal networks of workers
- » Establish list of reliable sending country agents, direct relationships, and terms of doing business

## **SOCIAL DIALOGUE**

### **A desire to continue**

There was strong desire among participants to further the dialogue with all current stakeholders while also expanding the circle to also include Malaysian government, other relevant employer associations, sending country embassies and direct worker representatives.

### **Business and human rights approach**

A second idea was to establish a Malaysian **employers committee** that could serve as a more permanent mechanism through which employers could exchange practices and information on topics ranging from recruitment models to experiences with in-factory communication mechanisms. Such a committee could have brand support and input across industries, and serve as a permanent linkage point for civil society, unions and government to continue the conversation with business on the issues.

### **Follow-up Meeting: Continuing the Exchange, Building a Network**

Most immediately, there was desire for a follow-up meeting in the next few months amongst current participants that would aim to achieve some of the following objectives:

- » Continue transfer of practices and forge collaborative relationships within and across sectors and industries
- » Continue discussion on and documentation of migration best practices.
- » Discuss initial learning from the pilot project
- » How do practices translate into policy and reflect ILO standards
- » Dissemination of practices/knowledge broadly throughout Malaysian industries – including more employers and industries such as food and agriculture
  - Inclusion of both well performing and underperforming employers – encourage peer-based knowledge transfer.
  - MEF and FMM possible dissemination points for industry/employers

For more information on BSR's International Labor Migration focus group activities, please contact Nicolette van Exel ([nvanexel@bsr.org](mailto:nvanexel@bsr.org)) or Chris Nolan ([cnolan@bsr.org](mailto:cnolan@bsr.org))