

## Terms of Reference

### **Consultant to Draft ETI Report on Human Rights Due Diligence in Malaysian General Merchandise Supply Chain - April 2019**

#### **Background**

In 2018, ETI has convened two inter-related working groups with an interest in the working conditions of migrant workers – a Migrant Labour Working Group and a Malaysian Furniture Working Group. These groups have formed as a result of growing concern related to the recruitment and employment of vulnerable workers in the supply chains of member companies. The former aims to look at broader thematic and policy related approaches to migrant labour whilst the latter is designed to look at conditions and the practical application of remedy.

The Malaysian Furniture Group has identified the need to document and develop guidance on the human rights challenges and identify ways in which human rights due diligence processes can be implemented in the context of sourcing from Malaysia primarily for the furniture and rubber sector although the group recognise that other related sectors in Malaysia may share similar business and human rights risks and so the learnings from such guidance could be applied more broadly.

Malaysia has traditionally been an end destination for low-skilled migrant workers from across South East and South Asia. Over the 2015-2016 period 11.3% of the population were international migrants. Officially, contract migrant workers account for about 22% of the Malaysian labour force<sup>1</sup>. Undocumented workers may actually make up a majority of the migrant workforce in Malaysia. Many migrants official and undocumented pay large fees to brokers and labour agents to come to Malaysia<sup>2</sup> to find the jobs. Bangladeshi workers reportedly pay up to US\$3000 - US\$5000.

In work, conditions for migrant workers are often poor, working hours are long and workers can find it practically impossible to leave their employer. Permits are tied to employers. Often the wages are lower than what they've been promised, trapping them in a situation akin to debt bondage. Sometimes management will retain workers passports. Absconding from an abusive, exploitative or non-paying employer is one of the most common pathways to becoming an undocumented worker.

The employment of migrant labour is tightly regulated, however it is implemented by a number of different government agencies and there are gaps in regulation and failures to implement and lack of enforcement mean that there are opportunities for exploitation. A recent decision – in which a court ruled that an undocumented domestic worker was unable to reclaim ~RM30,000 in unpaid wages on account of her immigration status – adequately

<sup>1</sup> Kanapathy V (2016) Migrant Workers in Malaysia: An Overview [http://www.cpiasia.net/v3/images/policy\\_papers/Migrant%20Workers%20in%20Malaysia\\_An%20Overview.pdf](http://www.cpiasia.net/v3/images/policy_papers/Migrant%20Workers%20in%20Malaysia_An%20Overview.pdf)  
<https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2435.00130>

<sup>2</sup> Why Do Migrant Workers Intend to Extend Their Stay in Host Countries? The Case of Bangladeshi Workers in Malaysia's Manufacturing Sector <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2435.00130>

demonstrates these institutional failures<sup>3</sup>. At the current time there is significant reform of employment legislation underway including drafts on reforms to the Employment Act, Industrial Relations Act and Trade Union Act. Trade unions and migrant groups are being consulted in the process.

The government of Malaysia has also recently been negotiating agreements with the Bangladeshi and Nepalese government. These agreements are yet to go into force, but the group has concerns about inconsistencies in the agreements. In the Nepalese agreement employers should pay recruitment fees but with Bangladeshi workers it is more difficult with the workers themselves expected to pay fees.

### **ETI's Human Rights Due Diligence Framework**

In June 2016, ETI published its new Human Rights Due Diligence Framework. This document serves as a guide for companies to help manage and mitigate labour rights risks, and understand why engagement, negotiation and collaboration is the best way to succeed. ETI's recommended approach to due diligence is holistic, inclusive, cost effective and drives not only better outcomes for workers but also better business. Find out more [here](#).

ETI has a long track record of multi-stakeholder engagement. A number of ETI member companies that source from Malaysia have demonstrated a keen interest in knowing what they could or should be doing to address the risks and realities of labour rights violations. ETI is exploring, with key stakeholders, how ETI and its membership can support local initiatives around labour rights from a multi-stakeholder perspective, and improve human rights due diligence practices.

ETI's work around human rights due diligence aims to enhance business competence and capacity in Malaysia as well as in countries where ETI corporate members are headquartered, in tackling salient human rights risks, at the same time providing examples for wider application across other sectors and in other countries. Our focus will primarily be on the provinces of Johor which are key sourcing and production centres for furniture and textiles, medical supply chains and household goods.

### **Objectives**

ETI is looking for a consultant to draft a report on labour standards and human rights due diligence in Malaysia. This report shall map the current context against the UN "Protect, Respect and Remedy" Framework and UN Guiding Principles on Business and Human Rights (UNGPs):

- I. Basic demographic information about migrant workers in Malaysia (numbers, country of origin, legal/illegal, national origins in different sectors).
- II. Outline of the salient worker and labour rights issues for workers in the Malaysian furniture and rubber sectors. ETI assumes that the majority of workers in this sector will be migrant workers.

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<sup>3</sup> <https://www.malaysiakini.com/news/438931>

- III. Mapping of relevant of Governments' legislation and policy, and, assessment of current Government practices and strategies for implementation of labour laws and policies (factoring in both federal legislation as well as sub-national standards and practices), in line with the UNGP *Protect* Pillar.
- IV. Breakdown migrant workers' legal rights and the mechanisms through which they can access them
- V. Mapping of private sector and industry body initiatives, strategies and practices for implementation of labour laws and policies i(with a particular focus on migrant workers)
- VI. Mapping of trade union and civil society initiatives and migrant worker organisations working on labour rights for migrants in Malaysia

*Access to Remedy* in line with UNGP Pillar III;

- VII. Existing statistics to demonstrate implementation of labour laws and the UNGPs in practice (formal and informal sectors);
- VIII. Examples of good practice in business practice in the furniture and rubber glove sectors (if any).
- IX. International institutions and systems (e.g. relevant trade agreements and reporting requirements).

We envisage that this will involve identifying the key business and human rights issues in Malaysia, mapping out relevant laws and policies, identifying the most salient issues in relation to Human Rights Due Diligence & labour rights mapped against the ETI Base Code, identifying relevant actors, and setting out why human rights due diligence in Malaysia matters and what the implications of the Protect, Respect, Remedy agenda are for key parties involved. This should include analysis of conditions for migrant workers in the furniture and rubber glove sectors; informal as well as formal sectors, and on how gender discrimination and inequality impacts on women's rights. Although all human rights have application in Malaysia, ETI is first and foremost focusing on labour rights and how these intersect with human rights more broadly.

## **Methodology**

The detailed methodology will be developed by the contractor, in collaboration with ETI. We expect it to contain the following elements:

- A significant piece of desk-research building off existing studies and literature (
- Interviews with representatives in brands, retailers and suppliers.
- Interviews with workers in selected suppliers (as nominated by members of the working group).
- Interviews with trade union and civil society actors

## **Outputs**

- A (maximum) 30-page report covering the points highlighted above (excluding annexes).
- A two-page Exec Summary highlighting critical / most salient issues in relation to HRDD & labour rights in Malaysia

This report will focus on the furniture (e.g rubber gloves) and household goods sectors in Johor province.

ETI can provide examples of similar work commissioned for other countries, markets and sectors (for example [Pakistan](#)).

### **Competencies, skills and experience**

- Consultant may have a background in academia, local NGO or working with local trade unions, but have experience of addressing multi-stakeholder audiences.
- Excellent command of English and Malaysian
- Strong knowledge of labour rights in Malaysia and experience working with relevant institutions operating in Malaysia (local NGO's, the ILO, development agencies etc).
- Minimum five years' experience working on human rights and ethical trade issues.
- Capacity for high quality written work targeting different groups of stakeholders relevant to ethical trade, including corporate representatives, governments and human rights practitioners.

### **Duration and timing of contract**

The contract is for 20 - 25 days of work, starting mid-June 2019 and ending August 2019. This includes one day for integration of feedback from the draft. The first draft should be submitted by end July latest.

### **Fees**

To be agreed – please submit a budget with your application including daily fee rate.

### **Expressions of Interest:**

Expressions of interest for this work should be sent to the email addresses below by close of business on 31<sup>st</sup> May 2019.

Expressions of interest should include:

- Prior experience with examples of outputs for similar types of work
- Proposed methodology and approach
- C.V. with biographies and reference contact details
- Daily fee

### **Management and reporting**

Martin Buttle, Strategic Lead, General Merchandise, will manage the commissioning of this work. Please submit expressions of interest to: [martin.buttle@eti.org.uk](mailto:martin.buttle@eti.org.uk)