



# Human Trafficking in Palm Oil Supply Chains

## Final Report

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May 2020



Ford Institute  
for Human Security  
[www.fordinstitute.pitt.edu](http://www.fordinstitute.pitt.edu)

# Acknowledgements

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We would like to thank the many supporters and contributors of this report.

With special acknowledgement to Dr. Taylor Seybolt, Director of the Ford Institute for Human Security, Diane Roth Cohen, Assistant Director of the Ford Institute for Human Security, Dr. Carey Treado, University of Pittsburgh, and Dr. Erica Owen, University of Pittsburgh.

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# Executive Summary

This report analyzes key indicators in human trafficking and labor laws from 22 countries and social compliance policies from 24 companies to assess best practices of combating human trafficking in global supply chains. It specifically examines policies on supply chain transparency, recruitment procedures, debt bondage, and child labor. It also reviews coverage gaps in these policies and obstacles to their implementation and enforcement.

To accomplish this, we selected 10 indicators of effective anti-trafficking laws and policies, informed by reports from the International Labour Organization (ILO), Verité, the Trafficking in Persons Report, and other research on the topic.<sup>1</sup> We examined these indicators across a sample of top palm oil countries like Malaysia and Indonesia, major palm oil consumers including the European Union and the United States, countries with large migrant workforces or agricultural sectors, and countries that have enacted innovative policies to address trafficking in supply chains. Our analysis of the indicators across these 22 countries<sup>2</sup> revealed the following key findings:

1. The majority of countries that we examined have existing laws that regulate or ban recruitment fees, debt bondage, working conditions, and child labor. However, there is a lack of systematic implementation, enforcement, and standardization globally.
2. The United Kingdom's and Australia's Modern Slavery Acts have established clear, effective regulations that can serve as a model for other countries developing modern slavery legislation. Any new law's success will depend on the country's political will and resources to implement it.
3. There is an overall lack of implementation and global standardization of laws regulating forced labor produced imports. The Trade Facilitation and Trade Enforcement Act of 2015 is effective in preventing forced labor produced imports and applying pressure to foreign governments.
4. There is a specific and persistent lack of clarity on recruitment fees and contract laws. As a result, workers are vulnerable to predatory practices resulting in debt bondage and forced labor.

<sup>1</sup> The full list of public sector indicators is: Carveouts exempting sectors of work or groups of workers (domestic, agricultural, migrants, etc.); Child labor provisions; Contract requirements; Minimum wage provisions; Migrant worker provisions; Penalties; Recruitment fee/recruitment agency provisions; Supply chain transparency provisions; Tier ranking; Trafficking definition.

\* Not all indicators applied to every law. We examined trafficking-related indicators and general-labor related indicators separately depending on the country and provisions.

<sup>2</sup> The full list of countries is: Australia, Brunei, Cambodia, Canada, Colombia, Cote D'Ivoire, Ecuador, Germany, Indonesia, Japan, Lao PDR, Liberia, Malaysia, Myanmar, Nigeria, Philippines, Qatar, Singapore, Thailand, Vietnam, United Kingdom, United States

5. Agricultural workers are uniquely vulnerable to trafficking due to the nature of work, the difficulty inspecting and enforcing labor standards on plantations, and quota-based systems. Quotas stipulate wage payments on collection targets, which can result in the withholding of wages, forced labor, and child labor to supplement collection efforts.

This report also highlights barriers the private sector faces to combat human trafficking in its supply chains, including a lack of existing government structure and incentives to drive responsible corporate practices. We selected 21 indicators of best social compliance practices based on a survey of research of innovative company policies, reputable third party certifier standards, research by NGOs such as Verité, and reports from the ILO and the U.S. Department of Labor (USDOL).<sup>3</sup> We examine these indicators across the codes of conduct from 24 companies to identify best private sector practices, as well as major gaps within corporate social responsibility practices. The companies represent a broad spectrum of sectors, including food and beverage, manufacturing, and technology, and include brand names like Wilmar International, Patagonia, Coca-Cola, Tony's Chocolonely, Microsoft, and Proctor & Gamble.<sup>4</sup> We specifically use Wilmar International as a case study on how trafficking is perpetuated in Indonesian and Malaysian palm oil supply chains. Our analysis of these private sector companies revealed the following key findings:

1. Profit, consumer pressure, and public awareness drive companies to pursue better practices for responsible sourcing.
2. Many tools and initiatives exist to help companies trace their supply chains and develop policies to combat human rights abuses. The private sector demand for these tools will continue to grow.
3. External certification bodies help enforce supplier codes of conduct and promote responsible practices throughout industry supply chains. However, external certification standards vary drastically.
4. An effective grievance process is one of the most critical parts of corporate codes of conduct. It is also a major gap among corporations seeking to promote better social compliance in their supply chains.

<sup>3</sup> The full list of private sector indicators is: Affiliations or memberships; Ban recruitment fees; Ban use of quotas; Certifications (Fairtrade, RSPO, etc.); Collaborates with NGOs; Conduct risk or impact assessments on human trafficking; Conduct awareness and advocacy Programs; Due diligence to evaluate and address risks in its supply chain, including those related to slavery and human trafficking; Employee awareness training; Grievance reporting mechanism; Internal supplier audits; Joint training and awareness raising exercises with business partners (including suppliers); Policy against document retention (visa/passport); Provide skills development, job training and/or employment opportunities to former victims of human trafficking; Regulated work hours; Report to stakeholders on performance and progress of anti-trafficking activities and engagement; Supplier Code of Conduct; Third party audits/verification on anti-trafficking policies; Traceability efforts; Transparency; Zero tolerance declaration.

<sup>4</sup> The full list of companies is: Adidas, Apple, Astra Agro Lestari, Campbells, Coca-Cola, Colgate-Palmolive, Hershey, Kraft-Heinz, Marriott International, Microsoft, Nike, Patagonia, PepsiCo, Proctor & Gamble, Sawit Sarana Sumbermas, Starbucks, StarKist, The Clorox Company, Tony Chocolonely, Under Armour, Unilever, Uniqlo (Fast Retailing), Walmart, Wilmar International.

5. Companies struggle to identify parts of their supply chain that are vulnerable to human trafficking. This is especially true in agriculture, in which corporations like Wilmar International must manage longer, more complex supply chains, and raw materials from different farms are often blended together before being sold to international buyers.
6. Human trafficking and labor exploitation in the palm oil sector occur primarily at the plantation level. Because the Roundtable on Sustainable Palm Oil (RSPO) assesses palm oil at the refinery level, much of the human trafficking on plantations goes unidentified.

## Limitations

Human trafficking is an illicit activity, making it difficult to research and develop policy interventions to address. We faced three specific limitations in researching and writing this report. First, our sample sizes of countries, companies, and certification standards are limited, and therefore our findings and recommendations do not conclusively assess the status of anti-trafficking policies and supply chain initiatives. Further, we frequently relied on unofficial translations and third-party reports to analyze laws and regulations. Without official translations, an understanding of how these legal systems operate, or access to ministerial implementing regulations, we cannot determine the accuracy of our policy assessments. Additionally, as this report acknowledges, corporate policies often do not reflect reality, but instead are aspirational, especially further up a company's supply chain. Our purpose is to provide a broad overview of trends and identify potential areas for collaboration and improvement, to an audience that includes policymakers, private sector stakeholders, and civil society that are engaged in the fight to combat human trafficking.

## Recommendations for States and Companies

The following recommendations are based on our analysis of current government and private sector practices, and potential areas for improvement and collaboration. Recommendations are discussed in further detail in the body of the report.

1. The U.S. Government should encourage countries with strong institutional structures and high dependency on imports to enact standards and import restrictions on trafficked goods. These efforts would be even more effective if pursued through multilateral channels like the G7, ASEAN, or APEC, which would encourage regional or even global standards on such restrictions and provide a forum for collaboration and sharing of best practices.
2. The U.S. Government—perhaps in cooperation with the United Kingdom, given its strength in this area—should encourage countries to enact supply chain transparency laws and strengthen corporate reporting requirements.

3. The U.S. Government should support national governments with assistance programs that help streamline labor inspectorates' access to resources and training, including a distinct checklist of indicators, a training program specific to agriculture, and a digitized system for real time reporting.
4. The U.S. Government and other high importing countries should establish legal standards for what can be labeled as sustainably sourced or fair trade. Such standards would be even more effective if coordinated across countries through multilateral channels like the G7, ASEAN, APEC, or G20.
5. The Governments of Indonesia and Malaysia, as well as other governments regulating recruitment, should strengthen protections for migrant workers, including standardized contract procedures, increasing oversight of recruitment agencies, and banning worker-paid recruitment fees. The Government of Indonesia should issue clear, publicly available implementing regulations banning Indonesian migrant-paid recruitment fees under Law No. 18/2017 on Protection of Indonesian Migrant Workers. The Government of Malaysia should amend the Private Employment Agencies Act of 1981 to regulate written contracts of migrant workers and passport retention practices.
6. The Governments of Indonesia and Malaysia and the ILO should issue specific protections and laws for agricultural workers to ban quota systems and restrict working hours. The Government of Malaysia should pass national labor laws that regulate hours worked or child labor that are specifically for agriculture work; pass laws that ban quota systems for agriculture work; and pass laws that specifically address forced labor. The Government of Indonesia should regulate the use of short-term contracts and contract payment schedules. The ILO should adopt an international agricultural workers convention, similar to the domestic worker convention, that will provide protections to plantation workers.
7. The Governments of Indonesia and Malaysia should pass laws and issue regulations that expand the labor inspectorate workforce and grant enforcement capabilities to labor inspectors.
8. The Government of Indonesia should increase coordination with the private sector through partnerships and appointments of a certified labor norms expert.
9. Civil society organizations, national governments, and private sector companies should increase information sharing about recruitment risks and social compliance efforts through a secure system with a trusted moderator. Specifically, Verité should expand its program, CUMULUS, to the palm oil sector and encourage major palm oil producing companies and suppliers to join.
10. Companies should ensure a reliable, efficient grievance mechanism in the workers' native language is present throughout the entire supply chain. This is especially critical for plantation work. Grievance mechanisms are most effective when they include an independent third-party.

11. Major palm oil industry stakeholders, such as Wilmar International, should take a forceful stance against the worst forms of child labor and eliminate practices that facilitate it, namely piece rate systems.<sup>5</sup>
12. The RSPO should implement regulations into the certification criteria requiring assessments of conditions at the plantation level. It should begin by requiring companies to prove that they have undertaken human rights due diligence on third-party sources of palm oil.

<sup>5</sup> The ILO notes that, “Agricultural work also presents great dangers, especially where children have to work with dangerous tools and equipment or with chemical substances, like pesticides for crops. Much of the time, the children have either no safety equipment, or it is adult equipment, which does not fit properly and does not provide proper protection. ...[The worst forms of child labour] interfere with a child’s education, as most children have neither the time, nor the energy, to attend school. Their families rely on the little wages the children make to survive.” “The worst forms of child labour,” ILO, accessed April 30, 2020, <https://www.ilo.org/ipecc/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm>



# Introduction

In partnership with the U.S. Department of State’s Office to Monitor and Combat Trafficking in Persons, the Ford Institute for Human Security at the University of Pittsburgh’s Graduate School of Public and International Affairs examined human trafficking in palm oil supply chains, researched current policies and social compliance protocols, and identified promising public and private sector practices.

Palm oil has frequently been recognized a high-risk sector for environmental and labor abuses. Palm oil is produced in over 40 countries, with Malaysia and Indonesia producing an estimated 85% of the global supply.<sup>6</sup> It is used in approximately 50% of all packaged food and household products.<sup>7</sup> Annual production quadrupled from 15.2 million metric tonnes<sup>8</sup> to 62.6 million metric tonnes from 1995 to 2015, and is expected to reach 240 million metric tonnes by 2050.<sup>9</sup>

As palm oil production, and the labor rights abuses that accompany it, increases, it is critical for governments and corporations to address human trafficking risk factors within supply chains. This report identifies best practices and areas for improvement by analyzing trafficking and labor laws, corporate codes of conduct, and civil society reports. While much research has been conducted on this topic, our report serves to synthesize existing research on human trafficking, labor rights, corporate social responsibility, laws, and sector-specific efforts and trends. To do this, we provide an overview of public sector efforts to combat trafficking, analysis of key gaps, and a highlight on Malaysia and Sabah. We then analyze private sector efforts to combat trafficking, both in palm oil and other sectors, and provide a case study of Wilmar International. The report concludes with recommendations for both the public and private sectors, which are based on our comprehensive research of best practices and areas for improvement.

<sup>6</sup> WWF-UK. 8 things to know about palm oil. 2020. <https://www.wwf.org.uk/updates/8-things-know-about-palm-oil>

<sup>7</sup> Ibid.

<sup>8</sup> 1 ton = 2,000 lbs., 1 metric tonne = 1,000 kilograms (about 2,205 lbs.)

<sup>9</sup> Tullus, Paul. “How the world got hooked on palm oil,” *The Guardian*, February 19, 2019,

<https://www.theguardian.com/news/2019/feb/19/palm-oil-ingredient-biscuits-shampoo-environmental>

# Public Sector Best Practices and Challenges

## Overview

We analyzed 10 key indicators in anti-human trafficking and labor laws from 22 countries to assess best practices for the prevention of forced labor, and identify the largest gaps in combating human trafficking in global supply chains.<sup>10</sup> We specifically examined policies on corporate liability, supply chain transparency, recruitment procedures, debt bondage, and child labor. We also reviewed coverage gaps in these policies and laws using our identified key indicators, and obstacles to implementation and enforcement.

Our review includes top palm oil producers such as Malaysia and Indonesia, and major palm oil consumers including the European Union and United States. Malaysia and Indonesia supply more than 80% of the world's palm oil,<sup>11</sup> and use migrant labor in their palm oil production, especially for manual harvesting work on plantations. We examined labor abuses occurring on palm oil plantations in these countries, including coercive recruitment, the withholding of wages, and forced child labor. We highlight Sabah, the largest palm oil producing state in Malaysia, and review the conditions that have led to forced labor there. We also examine countries with large migrant workforces, large agricultural sectors, or countries that have enacted innovative policies to address trafficking in supply chains.

## Analysis

By analyzing existing laws on human trafficking, labor rights, and corporate supply chains, we identified the following:

**The majority of countries that we examined have existing laws that regulate or ban recruitment fees, debt bondage, working conditions, and child labor. However, there is a lack of systematic implementation, enforcement, and standardization globally.**

<sup>10</sup> The full list of public sector indicators is: Carveouts exempting sectors of work or groups of workers (domestic, agricultural, migrants, etc.); Child labor provisions; Contract requirements; Minimum wage provisions; Migrant worker provisions; Penalties; Recruitment fee/recruitment agency provisions; Supply chain transparency provisions; Tier ranking; Trafficking definition.

The full list of countries is: Australia, Brunei, Cambodia, Canada, Colombia, Cote D'Ivoire, Ecuador, Germany, Indonesia, Japan, Lao PDR, Liberia, Malaysia, Myanmar, Nigeria, Philippines, Qatar, Singapore, Thailand, Vietnam, United Kingdom, United States.

\* Not all indicators applied to every law. We examined trafficking-related indicators and general-labor related indicators separately depending on the country and provisions.

<sup>11</sup> "Assessing force labor risks in the palm oil sector in Indonesia and Malaysia," *Fair Labor Association*, last modified November 2018, accessed April 9, 2020, [https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia\\_web.pdf](https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf)

The Palermo Protocols formally define human trafficking and create international cooperation in the prosecution of human trafficking crimes. Countries have passed their own anti-human trafficking laws in response to the Protocols, which create variations in regulation. This lack of global standardization makes it difficult for countries to cooperate on the prosecution, protection, and prevention of trafficking.

Although countries maintain anti-trafficking laws, there are a number of factors preventing application of the law. Barriers to policy implementation include lack of political will, corruption, lack of continuity in government policies, inadequate human and financial resources, lack of training, and ineffective coordination.<sup>12</sup> These often lead to an “implementation gap, i.e. the widening of the distance between stated policy goals and the realization of such planned goals,” especially in developing countries.<sup>13</sup>

**The United Kingdom’s and Australia’s Modern Slavery Acts have established clear, effective regulations that can serve as a model for other countries developing modern slavery legislation. Any new law’s success depends on the country’s political will and resources to implement it.**

The United Kingdom and Australia are among a select few countries incorporating supply chain transparency into their trafficking laws. Of the 22 countries that we assessed, only Australia, Germany, the United Kingdom, and the United States have made efforts to address corporate supply chain transparency in their policies. Out of these four, the United Kingdom’s and Australia’s approaches to combining anti-trafficking and supply chain transparency provisions have been the most comprehensive.

<sup>12</sup> “What Are the Barriers to and Challenges in Accessing and Providing Services?” *ASPE*, accessed April 9, 2020, [aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature/what-are-barriers-and-challenges-accessing-and-providing-services](https://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature/what-are-barriers-and-challenges-accessing-and-providing-services)

<sup>13</sup> Makinde, Taiwo, “Problems of Policy Implementation in Developing Nations: The Nigerian Experience,” *Journal of Social Sciences (2005)*: 63-69, accessed April 9, 2020, [https://www.researchgate.net/publication/321216480\\_Problems\\_of\\_Policy\\_Implementation\\_in\\_Developing\\_Nations\\_The\\_Nigerian\\_Experience](https://www.researchgate.net/publication/321216480_Problems_of_Policy_Implementation_in_Developing_Nations_The_Nigerian_Experience)

## ***United Kingdom Modern Slavery Act 2015***

The United Kingdom's passage of the Modern Slavery Act 2015 was a monumental shift in protection of human trafficking victims. The Act not only calls for extensive preventative orders,<sup>14</sup> but addresses supply chain transparency. Part 6, Section 54 requires a "commercial organization, which supplies goods or services and has a total turnover of not less than an amount prescribed by regulations made by the Secretary of State, to prepare a slavery and human trafficking statement for each financial year of the organization."<sup>15</sup> Within the statement, the organization may include information on the business structure and supply chains, policies in regard to slavery and human trafficking, its due diligence process, and the effectiveness in ensuring that slavery and human trafficking is not taking place.<sup>16</sup> If an organization does not have a website, it must provide a copy to anyone who makes a written request for one within 30 days. Under Part 6 of the law, "The duties imposed on commercial organisations by this section are enforceable by the Secretary of State bringing civil proceedings in the High Court."<sup>17</sup> This procedure holds organizations liable and requires them to be diligent and responsive.<sup>18</sup>

The United Kingdom's Modern Slavery Act of 2015 is innovative in addressing the need for supply chain transparency and providing law enforcement with new means to prosecute traffickers. It includes penalties that comply with international law. Part 1, Section 5 clearly defines the penalties for a person who is guilty of an offense of human trafficking, forced labor, servitude, or who committed an offense with intention.<sup>19</sup> For those who are guilty of human trafficking or forced labor on conviction of indictment may receive imprisonment for life, while those guilty of summary conviction may be imprisoned for a length of time not to exceed 12 months.<sup>20</sup> By including specific, severe consequences, the Modern Slavery Act provides an ideal outline for other countries developing trafficking policy to emulate.

Although the Act helped establish the United Kingdom as a leader in fighting trafficking and promoting ethical supply chain practices, there is still opportunity for improvement. A 2018 review of the Modern Slavery Act, presented to Parliament in July 2019, suggested recommendations to improve anti-trafficking efforts that focused on four main themes: The

<sup>14</sup> According to the Institute for Human Rights and Business, the Modern Slavery Act not only includes actions within the UK, but also holds jurisdiction over UK nationals committing trafficking offenses in other countries. "Corporate Liability for Forced Labour and Human Trafficking," IHRB, 2016, p. 6, [https://www.ihrb.org/uploads/reports/IHRB%2C\\_Corporate\\_Liability\\_for\\_Forced\\_Labour\\_and\\_Human\\_Trafficking%2C\\_Oct.\\_2016.pdf](https://www.ihrb.org/uploads/reports/IHRB%2C_Corporate_Liability_for_Forced_Labour_and_Human_Trafficking%2C_Oct._2016.pdf)

<sup>15</sup> Modern Slavery Act, 2015, part 6, chap. 54 (United Kingdom). <http://www.legislation.gov.uk/ukpga/2015/30/enacted>

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., part 1, chap. 5

<sup>20</sup> Ibid.

Independent Anti-Slavery Commissioner, transparency in supply chains, legal application, and Independent Child Trafficking Advocates.<sup>21</sup>

### ***Australia's Modern Slavery Act 2018***

The Australia's Modern Slavery Act 2018 establishes an annual report in order to continue to combat trafficking in persons. In Part 4, Section 23A, the legislation requires the Minister to prepare a report for the calendar year, "including the following (without limitation): (a) an overview of compliance by entities with this Act during the year; (b) the identification of best practice modern slavery reporting under this Act during the year."<sup>22</sup> In doing so, the Australian government is able to consistently and adequately address trafficking as well as prosecute traffickers.

Unlike the United Kingdom's Modern Slavery Act, Australia's Modern Slavery Act does not include penalties or enforcement capacity in the legislation. It does cite Australia's Commonwealth Criminal Code as well as the Palermo Protocol and the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.<sup>23</sup>

The experience of the EU demonstrates that measures to promote supply chain transparency vary and require political will and resources in order to be properly implemented. EU Directive 2014/95/EU requires companies with more than 500 employees to disclose information on their social and environmental impacts; the European Commission issued non-binding guidelines on how to report the information.<sup>24</sup> However, one study found that the reports issued by European companies lack specificity and transparency; further, "only 6% of companies disclosed information about suppliers in identified high-risk supply chains."<sup>25</sup>

Although many countries, such as Japan, include specific provisions on corporate liability in human trafficking, they do not require businesses to be transparent about their supply chains or efforts to combat trafficking within supply chains.<sup>26</sup> This is especially of concern as Japan

<sup>21</sup> "Modern Slavery: Written Statement - HCWS1704." *UK Parliament*, 9 July 2019, [www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-07-09/HCWS1704/](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-07-09/HCWS1704/)

<sup>22</sup> Modern Slavery Act, 2018, part 4, chap. 23A (Australia). <https://www.legislation.gov.au/Details/C2018A00153>

<sup>23</sup> *Ibid.*, part 1, chap. 4

<sup>24</sup> "Commission guidelines on non-financial reporting," *European Commission*, 2019, [https://ec.europa.eu/info/publications/non-financial-reporting-guidelines\\_en](https://ec.europa.eu/info/publications/non-financial-reporting-guidelines_en)

<sup>25</sup> Berger, J. "European companies need more transparency on high-risk supply chains," 2019, <https://sustainabill.de/2019/03/27/european-companies-need-more-transparency-on-high-risk-supply-chains/>

<sup>26</sup> Japan's Labor Standards Act and Employment Security Act extend liability to corporations for forced labor related crimes

struggles to address labor and trafficking violations in its Technical Intern Training Programme.<sup>27</sup>

**There is an overall lack of implementation and global standardization of laws regulating forced labor produced imports. The Trade Facilitation and Trade Enforcement Act of 2015 is effective in preventing forced labor produced imports and applying pressure to foreign governments. The United States is the only G20 country that restricts forced labor produced imports.**<sup>28</sup>

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was the first authorization of U.S. Customs and Border Protection (CBP) that emphasized a fair and competitive trade environment. The TFTEA has nine key focus areas, including forced labor. Until the TFTEA repealed Consumptive Demand Clause, the United States had not prohibited imported goods made through forced labor if the product was in high demand.<sup>29</sup> The repeal of this clause was an important step for both the United States and international efforts in protecting human rights and upholding high labor standards in the global supply chain.

Allocating the necessary resources to effectively monitor and address forced labor produced imports is a large obstacle, especially for developing countries. The United States has the institutional capacity to divert resources to the CBP that developing countries may not. Further, there are currently no universal guidelines on preventing trade of forced labor produced goods. Even if countries have the capacity to pass legislation to address this issue, policies may vary across countries and lead to gaps in coverage.

The Global Slavery Index identified the lack of provisions restricting forced labor produced imports as a major gap among G20 countries. It reports that G20 countries are “collectively importing US\$354 billion worth of at-risk products annually,” and have a clear responsibility to mitigate trafficking outside of their borders.<sup>30</sup> It further notes that, “Developed economies are exposed to the risk of modern slavery not only when this crime is perpetrated within their national borders but also when that risk is effectively transferred to them via the products they import.”<sup>31</sup>

<sup>27</sup> As noted by the IHRB, the ILO has reported serious labor and trafficking violations in Japan’s Technical Intern Training Programme, which employs foreign workers in a skills-based training program. Predatory contracts, excessive fees, punishments, and dangerous living and working conditions have been reported.

“Corporate Liability for Forced Labour and Human Trafficking,” IHRB, 2016, p. 32.

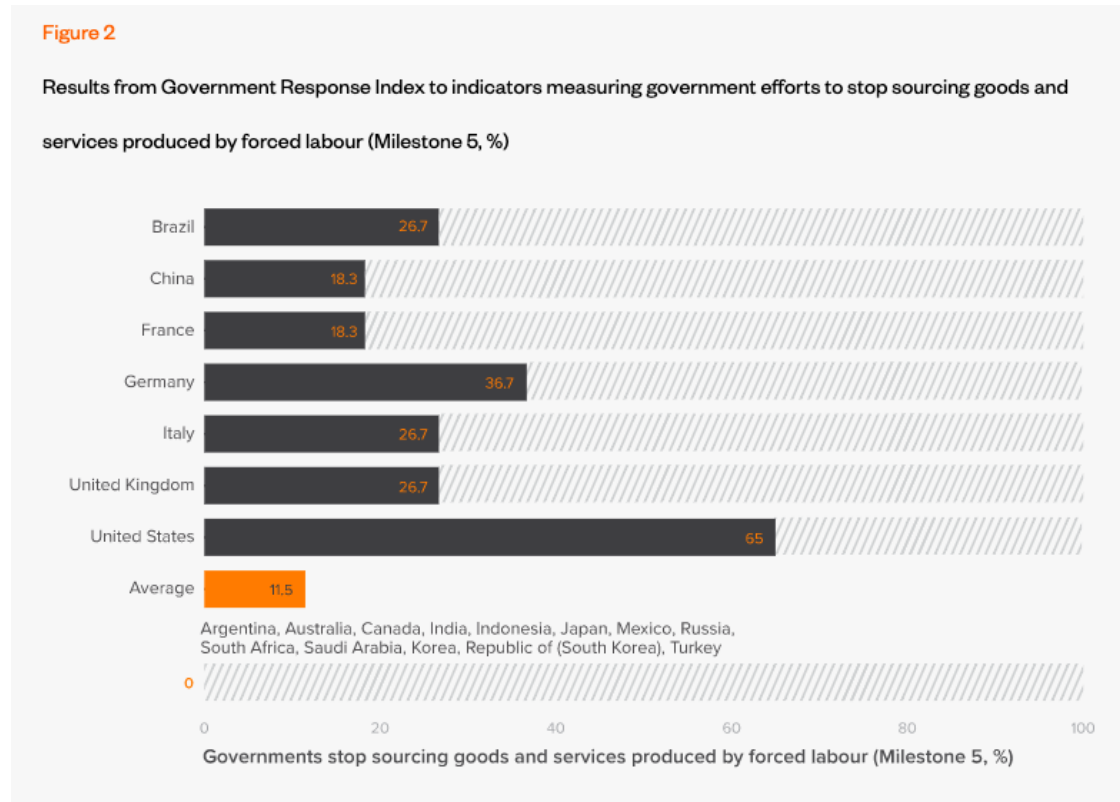
<sup>28</sup> “Importing Risk: G20 Countries,” *Global Slavery Index*, 2018, <https://www.globalsslaveryindex.org/2018/findings/importing-risk/g20-countries/>

<sup>29</sup> “Trade Facilitation and Trade Enforcement Act of 2015 Repeal of the Consumptive Demand Clause,” *US Customs and Border Protection*, [www.cbp.gov/sites/default/files/assets/documents/2020-Feb/Fact%20Sheet%20-%20Repeal%20of%20the%20Consumptive%20Demand%20Clause.pdf](http://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/Fact%20Sheet%20-%20Repeal%20of%20the%20Consumptive%20Demand%20Clause.pdf)

<sup>30</sup> “Importing Risk: G20 Countries,” *Global Slavery Index*, 2018.

<sup>31</sup> Ibid.

The Global Slavery Index assessed G20 countries’ efforts in stopping the source of at-risk goods based on identified best practices. The United States met the largest percentage of criteria with 65%, followed by Germany with 36.7%.<sup>32</sup>



Source: “Importing Risk: G20 Countries,” *Global Slavery Index*, 2018

While other G20 countries, such as Brazil, Germany, Italy, and France, have issued public procurement policies addressing forced labor, none except the United States have issued import restrictions as of 2018.<sup>33</sup>

**There is a specific and persistent lack of clarity on recruitment fees and contract laws. As a result, workers are vulnerable to predatory practices resulting in debt bondage and forced labor.**

A lack of transparency on recruitment practices in “sender” countries makes recruitment fee regulation difficult. The ILO defines recruitment fees as “any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection,” including payment for services to labor recruiters, payment to recover recruitment fees from workers after the fact, and related

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

costs such medical examinations, training, travel and lodging, and administrative.<sup>34</sup> Recruitment fees often are not clearly articulated to workers, resulting in a perpetual state of debt bondage in which workers must work off the fees assessed by the recruiting agency. In an analysis of Moldovan migrant workers, the ILO found that paying recruitment fees led to a statistically significant increase in the probability of forced labor; the effect was even greater if the fees were paid to third parties.<sup>35</sup>

Governments try to mitigate the risk of excessive fee charging and debt bondage by regulating recruitment agencies. The regulations are often unclear or unpublished. For example, Law No. 18/2017 on Protection of Indonesian Migrant Workers Article 30 prohibits charging placement costs to Indonesian migrant workers.<sup>36</sup> However, no implementing guidelines could be located for this section of the law. Further, Indonesia lacks jurisdiction to successfully enforce the law outside its borders.

Ethical recruitment standards should be codified in legally binding documents, like a publicly available, bilateral agreement between countries.<sup>37</sup> This requires careful monitoring to ensure that workers do not enter the underground or unregulated market to obtain employment. Additionally, there must be mechanisms in place to ensure that the terms of the agreement are implemented when the worker arrives in the destination country.<sup>38</sup>

Recruitment registration can be an effective tool in holding employers and recruitment agencies to high ethical standards, ensuring fair wages, and preventing coercive employment.<sup>39</sup> An ILO report highlights Tunisia as a positive example in recruitment agency regulation.<sup>40</sup> The country has implemented a registration system for private employment agencies recruiting Tunisians to work abroad. This process is supervised by the Tunisian Ministry of Vocational Training and Employment.<sup>41</sup> The report also notes that South Africa's 2013 Employment Services Bill prohibits recruitment agencies from "charging any fees to workers for services rendered and recruiters and employers would be prohibited from circumventing this restriction by deducting it

<sup>34</sup> "General principles of operational guidelines for fair recruitment and definition of recruitment fees and related costs," *International Labor Organization*, 2019, p 28, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_536755.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf)

<sup>35</sup> "Profits and Poverty: The Economics of Forced Labour," *International Labor Organization*, 2014, p 44. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_243391.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf)

<sup>36</sup> Law of the Republic of Indonesia on Protection of Indonesian Migrant Workers, 2017, article 30 (Indonesia). <https://asean.org/storage/2016/05/Law-of-Indonesia-No-18-of-2017-on-Protection-of-Indonesian-Migrant-Workers.pdf>

<sup>37</sup> Conference Call, February 5, 2020.

<sup>38</sup> Ibid.

<sup>39</sup> "Recruitment Fees," *Institute for Human Rights and Business*, May 2016, [https://www.ihrb.org/uploads/briefings/2016-05%2C\\_IHRB\\_Briefing%2C\\_Recruitment\\_Fees.pdf](https://www.ihrb.org/uploads/briefings/2016-05%2C_IHRB_Briefing%2C_Recruitment_Fees.pdf)

<sup>40</sup> Beate Andrees, Alix Nasri, and Peter Swiniarski, "Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities," *International Labor Organization*, 2015, p. 36, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_377813.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf)

<sup>41</sup> Ibid.



from the workers' wages."<sup>42</sup> While many of the countries that we examined have similar regulations, they do not have strict monitoring in place to enforce compliance by recruitment agencies and ensure the laws protecting workers from abuses and fraudulent worker practices are upheld.

**Agricultural workers are uniquely vulnerable to trafficking due to the nature of work, the difficulty inspecting and enforcing labor standards on plantations, and quota-based systems.** Quotas stipulate wage payments on collection targets, which can result in the withholding of wages, forced labor, and child labor to supplement collection efforts.

Deficient labor inspections underlie many of these vulnerabilities. Barriers facing labor inspectorates include staffing shortages, geographical barriers, lack of training, and subjective application of existing policies. Many countries face high turnover rates and lack the personnel necessary to complete inspections.<sup>43</sup> In some countries like Indonesia, labor inspectors are required to have a bachelor's degree.<sup>44</sup> This requirement may result in a shortage of candidates. Additionally, inspectors are paid low wages and have little career mobility, further discouraging potential candidates.<sup>45</sup> A majority of the inspectors are focused on industrial manufacturers in urban areas, while rural regions are regularly neglected. Accessibility constraints and ambiguous regulations make rural agricultural sites difficult to monitor.<sup>46</sup>

While countries like Indonesia provide initial training, labor inspectors typically do not receive follow-up training.<sup>47</sup> The absence of on-going training hinders inspectors' ability to implement newly developed strategies to combat forced labor. The ILO notes:

ongoing training is often conspicuously absent in developing countries...Other systems provide initial training but do not tailor the training to labor inspections; these systems offer a general introduction for all civil servants, which is unlikely to help inspectors learn how to meet the specific demands of their profession.<sup>48</sup>

A lack of specificity and clarity of current domestic laws and policies poses an enormous challenge to inspectors. For example, Indonesia bans "degrading living conditions." This

<sup>42</sup> Ibid., p. 40.

<sup>43</sup> Mendeloff, John, et al. "Human Resource Practices for Labor Inspectorates in Developing Countries," Rand, November 2014, p 7. [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR900/RR917/RAND\\_RR917.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR900/RR917/RAND_RR917.pdf)

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> "Module 15: Field Labour Inspection in rural areas," *ITC-ILO*, [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port\\_of\\_spain/documents/genericdocument/wcms\\_633614.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port_of_spain/documents/genericdocument/wcms_633614.pdf)

<sup>47</sup> J Mendeloff, John, et al. "Human Resource Practices for Labor Inspectorates in Developing Countries," Rand, November 2014.

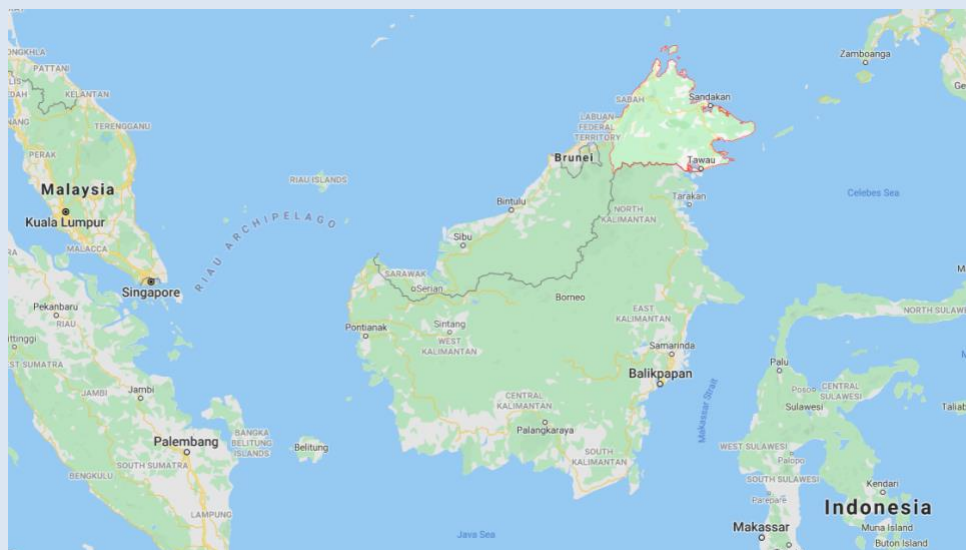
<sup>48</sup> Ibid., p 7.

language is too vague to allow the labor inspectorate to successfully judge worker housing.<sup>49</sup> Laws and regulations including specific parameters in which the inspector could easily identify and evaluate would be more effective.

## Malaysia and Sabah Highlight: Policy Gaps and Risks for Exploitation

In Sabah, a high-volume palm oil producing, semi-autonomous state of Malaysia, a confluence of the factors discussed above contribute to a high risk for exploitation.

**Sabah is a semi-autonomous state in Malaysia that is geographically and socio-economically distinct from Peninsular Malaysia.** Sabah had long been a plantation state, and by the 1970s, timber and plantation crops were among the most important contributors to Sabah's economy.<sup>50</sup> Sabah is the largest palm-oil producing state in Malaysia. As of 2017, it produced 5.7 million metric tonnes of crude palm oil each year.<sup>51</sup>



Source: Google Maps

Although it has some of the highest levels of poverty in the country—20% of indigenous people in Sabah live in poverty<sup>52</sup>—modest improvements to the education system in Sabah have created upward mobility for local communities, which in turn has created gaps in unskilled labor jobs like plantation work.<sup>53</sup> There is not enough labor in Sabah to meet the staffing demands for palm

<sup>49</sup> Conference Call, February 5, 2020.

<sup>50</sup> “Bonded Souls: Migration and Situation of Trafficking in Sabah, Malaysia,” *International Catholic Migration Commission*, <https://www.icmc.net/sites/default/files/documents/bondaged-souls.pdf>

<sup>51</sup> “Children in the Plantations of Sabah: Stakeholder Consultation Workshop,” *The Forest Trust*, 2017, <https://www.earthworm.org/uploads/files/Children-in-Plantations-of-Sabah-2017-report.pdf>

<sup>52</sup> “Malaysia: Sustainable Development Goals National Review 2017,” <sup>52</sup> *Economic Planning Unit*, June 2017, <https://sustainabledevelopment.un.org/content/documents/15881Malaysia.pdf>

<sup>53</sup> “Bonded Souls: Migration and Situation of Trafficking in Sabah, Malaysia,” *International Catholic Migration Commission*.

oil harvesting or production. In 2016, labor shortages and plantation employee turnover in Sabah hovered around 20%.<sup>54</sup> As a result, many sectors have relied on migrant workers to fill labor shortages.

**Sabah has large migrant worker populations.** Malaysia has the highest population of migrant workers—as high as four million—in Southeast Asia, but only half of these migrant workers are properly documented. Migrant workers in Malaysia typically fill less-desirable jobs in construction, manufacturing, agricultural and plantation markets.<sup>55</sup> Almost 25% of people living in Sabah are non-residents, including foreign workers from Indonesia and the Philippines with legal permanent residence and Filipino refugees. This statistic does not include undocumented workers in Sabah, so the numbers are likely much higher.<sup>56</sup> Porous land and sea borders with Indonesia and Brunei allow undocumented workers to easily enter Sabah.<sup>57</sup> Eighty percent of palm oil labor workers in Malaysia are foreigners.<sup>58</sup> Children, especially those of migrant workers, perform palm oil plantation work in Sabah.<sup>59</sup> According to one account, the Indonesian government estimates that there are tens of thousands of Indonesian children living on or near plantations in Sabah.<sup>60</sup>

**Disparate laws across Malaysia create conditions wherein variation in their enforcement is possible.** The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act is applicable in Sabah and is enforced by labor officers defined in the Sabah Labour Ordinance (Sabah Cap. 67). This Ordinance governs issues concerning plantation labor and the employment of migrant workers in the state, among others. But the Sabah Labour Ordinance, which is critical to implementation of the country’s human trafficking law, functions *in place of* other Malaysian labor laws. Notably, Malaysia’s national Children and Young Persons (Employment) Act, which regulates hours and type of work for children, does not apply to Sabah. Instead, Part XI of the Sabah Labour Ordinance establishes the standards for employment of children and young persons.<sup>61</sup> Sabah also keeps a separate, lower minimum wage from the rest of Malaysia.<sup>62</sup>

<sup>54</sup> “Children in the Plantations of Sabah: Stakeholder Consultation Workshop,” *The Forest Trust*, 2017.

<sup>55</sup> “Situation and gap analysis on Malaysian legislation, policies and programmes, and ILO Forced Labor Convention and Protocol,” *International Labor Organization*, 2018, [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_650658.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_650658.pdf).

<sup>56</sup> “Bonded Souls: Migration and Situation of Trafficking in Sabah, Malaysia,” *International Catholic Migration Commission*.

<sup>57</sup> “Situation and gap analysis on Malaysian legislation, policies and programmes, and ILO Forced Labor Convention and Protocol,” *International Labor Organization*, 2018.

<sup>58</sup> “Assessing forced labor risks in the palm oil sector in Indonesia and Malaysia,” *Fair Labor Association*, November 2018. [https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia\\_web.pdf](https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf)

<sup>59</sup> “Children in the Plantations of Sabah: Stakeholder Consultation Workshop,” *The Forest Trust*, 2017.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> “Situation and gap analysis on Malaysian legislation, policies and programmes, and ILO Forced Labor Convention and Protocol,” *International Labor Organization*, 2018.

Enforcement of legislation is also disparate between Peninsular Malaysia and Sabah. For example, children of foreign workers do not work on plantations as frequently in Peninsular Malaysia as those in Sabah due to, “stronger application of controls...that prohibits foreign workers from bringing their family to the country.” In 2015, an estimated 60,000 Indonesian children lived on or near plantations in Sabah.<sup>63</sup>

**There is no apparent requirement that businesses be transparent about forced labor prevention.** In its 2018 report, the ILO noted that, despite the vast number of Malaysian laws that touch on forced labor, contracts, wages, and employment of foreign and migrant workers, no laws require businesses to report any steps taken to prevent forced labor, nor do they promote transparency in reporting cases of forced labor.<sup>64</sup>

<sup>63</sup> “Children in the Plantations of Sabah: Stakeholder Consultation Workshop,” *The Forest Trust*, 2017.

<sup>64</sup> “Situation and gap analysis on Malaysian legislation, policies and programmes, and ILO Forced Labor Convention and Protocol,” *International Labor Organization*, 2018.

# Private Sector Best Practices and Challenges

## Overview

The private sector faces numerous barriers to combating human trafficking in supply chains, including a lack of existing government structure and incentives to drive responsible corporate practices. We systematically examined corporate codes of conduct from 24 companies to identify trends in best practices as well as gaps within corporate policies. The companies represent a broad spectrum of sectors, including food and beverage, manufacturing, and technology. The full list of companies include Adidas, Apple, Astra Agro Lestari, Campbells, Coca-Cola, Colgate-Palmolive, Hershey, Kraft-Heinz, Marriott International, Microsoft, Nike, Patagonia, PepsiCo, Proctor & Gamble, Sawit Sarana Sumbermas, Starbucks, StarKist, The Clorox Company, Tony Chocolonely, Under Armour, Unilever, Uniqlo (Fast Retailing), Walmart, and Wilmar International. We selected 21 indicators based on a survey of research of innovative company policies on social responsibility, reputable third party certifier standards, research by NGOs such as Verité, and reports from the ILO and the USDOL.<sup>65</sup> We also assessed third-party certification standards using a series of identified best practices.<sup>66</sup> These standards included: Fair Trade USA, Fairtrade International (Standard for Hired Labor), Indonesian Sustainable Palm Oil (ISPO), Malaysian Sustainable Palm Oil (MSPO), RBA (Responsible Business Alliance), Roundtable on Sustainable Palm Oil (RSPO), and SA 8000.

Patagonia met more of our responsible practices criteria than other companies did.<sup>67</sup> It provides insight into how the private sector can enact change where government policies fall short. Following a 2011 audit of its suppliers in Taiwan, Patagonia uncovered labor rights violations and predatory recruitment fees. In response, Patagonia revised its policies and clear benchmarks for suppliers to meet on work hours, facilities, freedom of movement, and more.<sup>68</sup> It requires

<sup>65</sup> The full list of private sector indicators is: Affiliations or memberships; Ban recruitment fees; Ban use of quotas; Certifications (Fairtrade, RSPO, etc.); Collaborates with NGOs; Conduct risk or impact assessments on human trafficking; Conduct awareness and advocacy Programs; Due diligence to evaluate and address risks in its supply chain, including those related to slavery and human trafficking; Employee awareness training; Grievance reporting mechanism; Internal supplier audits; Joint training and awareness raising exercises with business partners (including suppliers); Policy against document retention (visa/passport); Provide skills development, job training and/or employment opportunities to former victims of human trafficking; Regulated work hours; Report to stakeholders on performance and progress of anti-trafficking activities and engagement; Supplier Code of Conduct; Third party audits/verification on anti-trafficking policies; Traceability efforts; Transparency; Zero tolerance declaration.

<sup>66</sup> The full list of indicators is: Allows unions and collective bargaining; Creation of a fair trade committee or officer; Explicit policy preventing crimes against women; Explicitly forbids forced labor; Forbids discrimination; Forbids document retention; Forbids hiring/recruitment fees; Forbids production quotas; Forbids withholding wages; Grievance reporting mechanism; Maximum work hours per week; Minimum living wage; Provides training; Regular and unannounced audits; Requires third party recruiters to be in good standing; Requires wages to be paid at least monthly; Restricts or prohibits child labor; Staffs regular positions with permanent workers.

<sup>67</sup> Patagonia and PepsiCo both met 20 of our indicators.

<sup>68</sup> Patagonia, Supplier Workplace Code of Conduct, accessed April 30, 2020, <https://www.patagonia.com/our-footprint/code-of-conduct.html>

suppliers to reimburse workers for all recruitment fees within 30 days of hiring, and retroactively reimburse workers who paid recruitment fees exceeding legal limits prior to the new policy.<sup>69</sup> As one report notes, Patagonia’s “phased, cost-sharing approach is a useful way to show suppliers that companies will share the responsibilities presented by an ethical recruitment commitment,” while being clear that future violations of the policy will be the suppliers’ responsibility.<sup>70</sup>

## Analysis

Using our analysis of existing laws on human trafficking, labor rights, and corporate supply chains, we identified the following:

**Profit, consumer pressure, and public awareness drive companies to pursue better practices for responsible sourcing.** Allegations of human trafficking within a company’s supply chain can threaten its value and reputation. This can negatively affect sales, discourage stakeholder support, and decrease company growth.<sup>71</sup> By contrast, a strong reputation for social responsibility can create brand loyalty and financial benefits.<sup>72</sup> As international trade grows, the pressure applied to “manufacturers situated on the other side of the planet has very real regulatory impacts;” as one scholar notes, “it is significant that the most vivid examples of private regulation may be...inspired by consumer preferences.”<sup>73</sup> Lawsuits against Nestlé, Costco, Walmart and other companies have heightened the public’s awareness of forced labor and human trafficking in consumer products.<sup>74</sup>

As consumers become savvier and public awareness campaigns such as *Stop the Traffik*<sup>75</sup> and *Ethical Trading Initiative*<sup>76</sup> draw attention to trafficking in supply chains, companies are translating social awareness to profitability. One MIT study concluded that corporate social

<sup>69</sup> “Timeline of our key efforts to prevent the exploitation of migrant workers in our supply chain,” *Patagonia*, <https://www.patagonia.com/static/on/demandware.static/-/Library-Sites-PatagoniaShared/default/dwd52f9d06/PDF-US/migrant-workers-supply-chain-timeline.pdf>

<sup>70</sup> “Best practice guidance on recruitment of migrant workers,” *Interfaith Center on Corporate Responsibility*, 2017, p. 44. <https://www.iccr.org/sites/default/files/iccrsbestpracticeguidanceethicalrecruitment05.04.17.pdf>

<sup>71</sup> “The Business Case for Reputation.” *Reputation Institute*, February 16, 2020, <https://insights.reputationinstitute.com/blog-ri/the-business-case-for-reputation>.

<sup>72</sup> Xueming, Luo and Bhattachary, C.B., “Corporate Social Responsibility, Customer Satisfaction, and Market Value,” *Journal of Marketing*, October 2006, 70: 1-18.

<sup>73</sup> Grabosky, Peter, “Beyond Responsive Regulation: The Expanding Role of Non-State Actors in the Regulatory Process,” *Regulation & Governance* (2013): 114–23. <https://doi.org/doi:10.1111/j.1748-5991.2012.01147.x>.

<sup>74</sup> Mont, Joe, “Human Trafficking Lawsuits Expose Companies to Greater Supply Chain Risk,” *Compliance Week*, September 9, 2015, <https://www.complianceweek.com/human-trafficking-lawsuits-expose-companies-to-greater-supply-chain-risk/3229.article>.

<sup>75</sup> “Types of Exploitation, Human Trafficking & Slavery,” *Stop the Traffik*, <https://www.stopthetraffik.org/about-human-trafficking/types-of-exploitation/>.

<sup>76</sup> “Modern Slavery Initiatives,” *Modern slavery initiatives | Ethical Trading Initiative*, <https://www.ethicaltrade.org/issues/modern-slavery/modern-slavery-initiatives>.

responsibility ultimately results in higher profits because consumers are willing to pay more for ethically produced goods.<sup>77</sup>

**Many tools and initiatives exist to help companies trace their supply chains and develop policies to combat human rights abuses. The private sector demand for these tools will continue to grow.**

Given the breadth of global companies' sourcing practices, the Ethical Trade Initiative (ETI) recommends that companies prioritize risk assessments in high-risk countries that have weak state systems. Rather than discontinuing sourcing from a high-risk country, companies can use their influence to improve labor conditions and legal infrastructure by collaborating with other businesses, NGOs, and local institutions; collecting and sharing data; advocating for local workers; and using investment as leverage for change.<sup>78</sup> ETI suggests several different tools to help with social compliance implementation, including the Responsible Sourcing Tool, Trafficking Risks in Sub Saharan African Supply Chains, World Justice Project Rule of Law Index, and the Transparency International Corruption Perception Index.<sup>79</sup>

There is a growing demand for responsible sourcing tools in the private sector. According to a 2019 Deloitte report, the market for responsible supply chain tools could reach \$2.7 billion by 2023.<sup>80</sup> There are five categories for responsible supply chain tools: risk assessment, product traceability, ethical sourcing, ethical recruitment, and worker engagement. Of these categories, product traceability and risk assessment tools are likely to see the highest growth.<sup>81</sup> Private sector demand drives the market for supply chain tools. Increasingly, companies are working with fewer, more credible suppliers, streamlining facility audits and refocusing resources on other responsible supply chain tools, increasing industry data sharing and transparency, and embracing collaboration.<sup>82</sup>

Some brands are working on an integrated, multi-stakeholder approach to increase traceability and combat trafficking within industry supply chains. Through information sharing, companies can strengthen supply chain assessments and identify gaps in monitoring systems. For example, Nike is a part of an initiative with leading brands to identify risks in recruiting foreign migrant workers.<sup>83</sup> Verité's initiative, CUMULUS, uses technology and data sharing to assess forced labor risks in supply chains. Member companies can access a secure, online platform that allows them to "cost effectively map the labor supply chains of their suppliers and analyze, assess, and

<sup>77</sup> Trudel, Remi and June Cotte, "Does it Pay to be Good?" *MIT Sloane Management Review*, June 8, 2009.

<sup>78</sup> Berman, C., Rutledge, B. and Goswami, S, "Access to Remedy," *Ethical Trading Initiative*, 2019, p 15-16, [https://www.ethicaltrade.org/sites/default/files/shared\\_resources/Access%20to%20remedy\\_0.pdf](https://www.ethicaltrade.org/sites/default/files/shared_resources/Access%20to%20remedy_0.pdf)

<sup>79</sup> Ibid.

<sup>80</sup> Newman-Wise, Lisa, Caitlin Ryan, and Tony Siesfeld, "Responsible Supply Chain Tools: Understanding the Market Opportunity," *Deloitte*, April 2019, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-about-deloitte-humanity-united-responsible-supply-chain-tools.pdf>

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> "Nike statement on forced labor, human trafficking and modern slavery for fiscal year 2019," *Nike*, 2019, <https://www.nike.com/help/a/supply-chain>

prioritize forced labor risks introduced by the recruitment practices of their suppliers, and their recruitment agents, in both receiving and sending countries.”<sup>84</sup>

**External certification bodies help enforce supplier codes of conduct and promote responsible practices throughout industry supply chains. However, external certification standards can vary drastically.** Companies using an external certification system and “audits made by external actors are typically seen to be more credible than those conducted internally, particularly where steps are taken to reduce the chances of conflicting interests and corruption.”<sup>85</sup> However, certification standards vary drastically. While some certifications are comprehensive and reliable, others lack sufficient standards that ensure human rights are upheld throughout a company’s supply chain.

In our review of seven of the major external certifiers<sup>86</sup> for responsible sourcing and supply chains that included 18 different responsible practice indicators,<sup>87</sup> none of the indicators were consistent across every certification. The lack of consistency among certifiers and lack of legal regulations on what products can be labeled as “fair trade” means that consumers who choose products with a fair trade or external certification label cannot be sure their products are, in fact, produced responsibly.

Of the seven certifications we analyzed, FairTrade USA had the most comprehensive standards, with 16 of 18 of our responsible practice indicators included to some degree. SA 8000 included 14 indicators, followed by Fairtrade International with 13 indicators, and RSPO with 12. The standards and criteria we assessed varied across certifications and were therefore difficult to compare. This underscores the fact that monitoring products labeled as fair trade becomes difficult as standards vary.

<sup>84</sup> “Introducing CUMULUS Forced Labor Screen™,” *Verité*, September 25, 2018, <https://www.verite.org/cumulus-forced-labor-screen/>.

<sup>85</sup> “Labour inspection and private compliance initiatives: Trends and issues,” *International Labour Office*, December 2013, p. 37, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/meetingdocument/wcms\\_230798.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/meetingdocument/wcms_230798.pdf)

<sup>86</sup> These certifiers included Fair Trade USA, Fairtrade International (Standard for Hired Labor), Indonesian Sustainable Palm Oil (ISPO), Malaysian Sustainable Palm Oil (MSPO), RBA (Responsible Business Alliance), Roundtable on Sustainable Palm Oil (RSPO), and SA 8000.

<sup>87</sup> The full list of indicators is: Allows unions and collective bargaining; Creation of a fair trade committee or officer; Explicit policy preventing crimes against women; Explicitly forbids forced labor; Forbids discrimination; Forbids document retention; Forbids hiring/recruitment fees; Forbids production quotas; Forbids withholding wages; Grievance reporting mechanism; Maximum work hours per week; Minimum living wage; Provides training; Regular and unannounced audits; Requires third party recruiters to be in good standing; Requires wages to be paid at least monthly; Restricts or prohibits child labor; Staffs regular positions with permanent workers.



## Wilmar International Case Study

We focused on Wilmar International's global presence and supply chains to better understand drivers of trafficking in Indonesian and Malaysian palm oil. Our research draws on an Amnesty International investigative report that identified Wilmar International as a violator of labor and human rights.<sup>88</sup>

Wilmar International identifies itself as the "leading agribusiness company in Asia" with ownership of over 500 manufacturing plants to produce oleo-chemicals, specialty fats, palm biodiesel, fertilizers, and refined flour, rice, sugar, and palm oil.<sup>89</sup> Wilmar is the largest producer of palm oil in the world, controlling over 43% of the global palm oil trade, and it is the largest palm oil refiner in Indonesia and Malaysia.<sup>90</sup> Wilmar sources roughly 67% of its crude palm oil from Indonesia, 25% from East Malaysia and the remaining 8% from Africa.<sup>91</sup>

While palm oil refineries operated by Wilmar are located around the world, an Amnesty International investigative report suggests that human trafficking and labor exploitation in the palm oil sector occur primarily at the plantation level, rather than at palm oil mills and refineries.<sup>92</sup> In Indonesia, Wilmar's plantations are located in Sumatra, West Kalimantan, and Central Kalimantan. In Malaysia, they are located in the states of Sabah and Sarawak.<sup>93</sup>

### Structure of Wilmar:

Wilmar is a parent company that operates separately from its subsidiaries. Amnesty International confirms that labor and human rights violations occurred on plantations directly owned by Wilmar subsidiaries and on plantations owned by companies that supplied the palm oil fruit to Wilmar's refineries as third-party suppliers. These subsidiaries and suppliers were identified as the following: PT<sup>94</sup> Perkebunan Milano, PT Daya Labuhan Indah, PT Sarana Prima Multi Niaga, PT Abdi Budi Mulia, and PT Hamparan Masawit Bangun Persada.<sup>95</sup>

Wilmar International has full ownership, subsidiary presence, and third-party providers at every stage of palm oil production:

1. Palm Oil Plantations/Estates

<sup>88</sup> "The Great Palm Oil Scandal: Labor Abuses Behind Big Brand Names," *Amnesty International*, November 2016, <https://www.amnesty.org/en/documents/asa21/5184/2016/en/>

<sup>89</sup> "Corporate Profile," *Wilmar International*, 2020, Accessed on February 24, 2020, <https://www.wilmar-international.com/>

<sup>90</sup> "The Great Palm Oil Scandal: Labor Abuses Behind Big Brand Names," *Amnesty International*, November 2016.

<sup>91</sup> "Towards Sustainable Palm Oil: Wilmar Annual Report 2018," *Wilmar International*, January 2019. <https://www.wilmar-international.com/annualreport2018/>

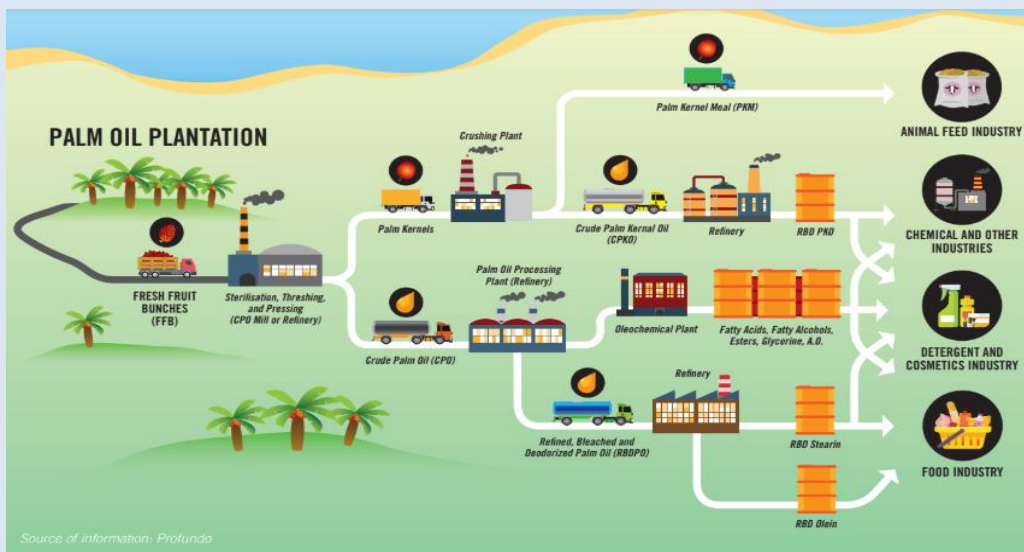
<sup>92</sup> "The Great Palm Oil Scandal: Labor Abuses Behind Big Brand Names," *Amnesty International*, November 2016.

<sup>93</sup> "Global Presence," *Wilmar International*, 2020. Accessed on February 24, 2020, <https://www.wilmar-international.com/>

<sup>94</sup> PT is an acronym for Perseroan Terbatas, a term that represents a limited liability company in Indonesia.

<sup>95</sup> "The Great Palm Oil Scandal: Labor Abuses Behind Big Brand Names," *Amnesty International*, November 2016.

2. Palm Oil Processing Mills
3. Palm Oil Refineries



Source: “The Great Palm Oil Scandal...” *Amnesty International*. November 2016.

Wilmar owns 25 palm oil refineries in Indonesia and 15 in Malaysia, which are supplied by 850 mills in the two countries alone.<sup>96</sup> These refineries receive palm oil fruit from wholly-owned Wilmar plantations, subsidiary plantations, and non-Wilmar owned plantations (third-party suppliers).<sup>97</sup> Wilmar International provides data on its refineries and lists the mills that supply each refinery. However, data is not readily available to trace which plantations supply these mills. The volumes of palm oil received from each source at any given point of time are also unknown.<sup>98</sup>

In addition to dangerous working conditions, Amnesty International identified several violations that increase the risk of child labor and human trafficking.<sup>99</sup> Plantations that supply palm oil to Wilmar use a “piece rate” system that pays workers based on the tasks completed rather than hours worked. Harvesters face penalties or salary deduction threats for not picking up or throwing away loose fruits and leaving stems on the palm fruit bunches.<sup>100</sup> To meet piece rate targets and avoid penalties, plantation harvesters remove their children from school and bring them to work. Amnesty International identified children under the age of 15 working on

<sup>96</sup> “Towards Sustainable Palm Oil: Wilmar Annual Report 2018,” *Wilmar International*, January 2019; Wilmar. (n.d.) Traceability. <https://www.wilmar-international.com/sustainability/traceability/supply-chain-map>

<sup>97</sup> “Traceability: Supply Chain Map,” *Wilmar*.

<sup>98</sup> Lim, Chye Ing, and Wahidul Biswas, “Sustainability Assessment for Crude Palm Oil Production in Malaysia using the Palm Oil Sustainability Assessment Framework,” *Sustainable Development*, vol. 27. 2019.

<sup>99</sup> “The Great Palm Oil Scandal: Labor Abuses Behind Big Brand Names,” *Amnesty International*, November 2016.

<sup>100</sup> *Ibid*.

plantations in Malaysia and Indonesia that harvest palm fruit for mills and refineries owned by Wilmar, and children as young as eight years old on Wilmar's subsidiary plantations in Indonesia.<sup>101</sup> The report says that Wilmar "does not acknowledge the impact of low wages and the use of targets and penalties for certain tasks as causative factors that lead to parents bringing their children to help them with their work. The company instead attempts to shift responsibility exclusively onto parents."<sup>102</sup>

**An effective grievance processes is one of the most critical parts of corporate codes of conduct. It is also a major gap among corporations seeking to promote better social compliance in their supply chains.** According the United Nations Guiding Principles on Businesses and Human Rights Principle 31, grievance systems should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and have a continuous feedback system.<sup>103</sup> Further, grievance systems are most effective when they include a third party. Approximately 30% of the companies we studied either do not provide grievance reports or publicly disclose their grievance reporting system. Further, even if formal grievance procedures exist, workers may fear punitive action if the process is not implemented correctly.

Under Indonesian Ministerial Regulation (Ministry of Manpower) 32/2008 and Manpower Law 13/2003 Article 106, any organization operating in Indonesia with 50 or more employees must have a formal grievance procedure accessible on-site, which is called a Lembaga Kerjasama-Bipartit or LKS-Bipartite.<sup>104</sup> Wilmar adopted the No Deforestation, No Peat, No Exploitation (NDPE) policy and grievance procedure, which applies to any refinery, mill, or plantation that Wilmar owns, manages, or invests in, regardless of stake, and to all third-party suppliers within Wilmar's supply chain.<sup>105</sup> However, according to Wilmar's Grievance Procedure, the receiving, reviewing, investigating, and resolving of grievances is only conducted by internal entities of Wilmar.<sup>106</sup>

Reports indicate that there is an absence of effective grievance mechanisms (or absence of mechanisms altogether) on palm oil plantations beyond just Wilmar International. Nestlé commissioned the Danish Institute for Human Rights (DIHR) and The Forest Trust (TFT) to conduct a Labour Rights Assessment on its palm oil supply chain, which includes Singapore-based palm oil company Golden Agri-Resources. The report found that Golden Agri-Resources'

<sup>101</sup> Ibid., p. 41.

<sup>102</sup> Ibid., p. 7.

<sup>103</sup> "Guiding Principles on Business and Human Rights," *United Nations Office of the High Commissioner*, April 2011, [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>104</sup> Hoffman, Dirk, Tulika Bansal and Jahvavi Naidu. "Labour Rights Assessment: Nestlé's Palm Oil Supply Chain in Indonesia," *The Danish Institute for Human Rights and The Forest Trust*, 2018, p. 30-31.

<sup>105</sup> "Wilmar Grievance Procedure" *Wilmar International*, January 22, 2015, Accessed April 14, 2020, <https://www.wilmar-international.com/sustainability/grievance-procedure>

<sup>106</sup> Ibid.

plantation employees were not aware of any formal grievance mechanisms.<sup>107</sup> Further, the company required workers to raise complaints to their supervisors without protection of privacy or protection from reprisal. The report noted that there was “limited accountability as to how the complaints were recorded, processed and addressed.”<sup>108</sup>

**Companies struggle to identify parts of their supply chain that are vulnerable to human trafficking.** This is especially true in agriculture, in which corporations like Wilmar International must manage longer, more complex supply chains and raw materials from different farms are often blended together before being sold to international buyers.

Many companies are able to monitor their first-tier suppliers. However, monitoring becomes more challenging further up the supply chain. Companies with longer, more complex supply chains are at a higher risk of human trafficking. Additional steps in the supply chain introduce greater numbers of workers and more opportunities for exploitation.<sup>109</sup> According to a survey by the Zoological Society of London, only 19 of 83 companies surveyed could trace all of their raw materials back to their sources.<sup>110</sup>

**Human trafficking and labor exploitation in the palm oil sector occur primarily at the plantation level. Because the RSPO assesses palm oil at the refinery level, much of the human trafficking on plantations goes unidentified.**

The RSPO was established in 2004 in response to criticisms about the negative environmental and social impacts of palm oil.<sup>111</sup> The RSPO developed a set of environmental and social criteria which members must comply with in order to produce Certified Sustainable Palm Oil (CSPO).<sup>112</sup> The incentives for companies to become member to and comply with the RSPO are driven by consumer preferences. These members include oil palm producers and consumer goods manufacturers.

<sup>107</sup> Hoffman, Dirk, Tulika Bansal and Jahvavi Naidu, “Labour Rights Assessment: Nestle’s Palm Oil Supply Chain in Indonesia,” *The Danish Institute for Human Rights and The Forest Trust*, 2018.

<sup>108</sup> Ibid.

<sup>109</sup> “Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains,” *Verité*, 2015. [https://www.verite.org/wp-content/uploads/2016/11/JTIP-Verite-ExecutiveOrder\\_13627.pdf](https://www.verite.org/wp-content/uploads/2016/11/JTIP-Verite-ExecutiveOrder_13627.pdf).

<sup>110</sup> Sousa, Agnieszka de, “Most Palm Oil Companies Can’t Fully Trace Supplies, Survey Shows,” *Bloomberg*, October 2019. <https://www.bloomberg.com/news/articles/2019-10-29/most-palm-oil-companies-can-t-fully-trace-supplies- survey-shows>.

<sup>111</sup> “Sustainable Palm Oil? Promoting New Measures to Combat Risks of Forced Labor and Human Trafficking in Palm Oil Supply Chains,” *Verité*, May 2013.

<sup>112</sup> “Principles and Criteria for the Production of Sustainable Palm Oil in 2018,” *Roundtable on Sustainable Palm Oil*, November 2018.

CSPO is determined at the refinery level and members of the RSPO can advertise that they use CSPO on their product labels and may use the RSPO trademark.<sup>113</sup> However, the RSPO criteria for certification does not independently assess conditions at the plantation level. Palm oil is blended from different sources at the refinery stage, which makes tracing more difficult. Therefore, consumer goods corporations do not know if they are receiving palm oil from refineries with potential links to plantations conducting severe labor rights abuses. There are no RSPO requirements for companies to show that they have exercised human rights due diligence for third-party palm oil sources.

A company can claim its product contains CSPO when the percentage of the palm oil content is less than 95% certified under the following conditions:<sup>114</sup>

- The company making the claim is the end product manufacturer and an RSPO member. For example, in Unilever's 2019 RSPO progress report the company states that the total volume of palm oil and palm oil products it used in the year was 1,038,177.00 tonnes.<sup>115</sup> The total volume of palm oil and palm oil products that were RSPO-certified it used in the year were 711,997.00 tonnes. Therefore, only 68.58% of Unilever's palm oil is RSPO-certified, yet the company can claim their products contain CSPO.<sup>116</sup>
- At least 50% of the oil palm content has been supplied through an RSPO-certified supply chain.
- The remainder of the oil palm content that is not RSPO-certified is covered by purchasing RSPO Credits to an equivalent volume.

All of Wilmar's Malaysian upstream operations (mills and plantations) are fully certified by the RSPO and Wilmar claims it is on track to achieve the same for Indonesian upstream operations.<sup>117</sup> However, as noted above, Wilmar relies heavily on subsidiaries and third-party suppliers at the palm oil fruit harvesting stage on plantations. These large palm oil plantations are based in remote, rural areas of Indonesia and Malaysia, with little oversight, and have identified human trafficking and labor violations.<sup>118</sup>

Colgate-Palmolive (CP) is a leading producer of food, cosmetics, and other household items, and member of the RSPO. Reports have found that its products containing palm oil, produced largely in Indonesia, are tainted by human trafficking and labor abuses, including child labor.<sup>119</sup> CP sources its palm oil from refineries, including Wilmar, that supply palm oil either entirely or in part from

<sup>113</sup> "Principles and Criteria for the Production of Sustainable Palm Oil in 2018," *Roundtable on Sustainable Palm Oil*, November 2018; "Sustainable Palm Oil? Promoting New Measures to Combat Risks of Forced Labor and Human Trafficking in Palm Oil Supply Chains," *Verité*, May 2013.

<sup>114</sup> "RSPO Rules on Market Communications and Claims," *Roundtable on Sustainable Palm Oil*, 2016.

<sup>115</sup> "RSPO Annual Communications of Progress 2019 for Unilever," *Roundtable on Sustainable Palm Oil*, 2019.

<sup>116</sup> *Ibid.*

<sup>117</sup> "Towards Sustainable Palm Oil: Wilmar Annual Report 2018," *Wilmar International*, January 2019.

<sup>118</sup> "The Great Palm Oil Scandal: Labor Abuses Behind Big Brand Names," *Amnesty International*, November 2016.

<sup>119</sup> "Palm Oil: Global brands profiting from child and forced labour," *Amnesty International*, November 30, 2016, <https://www.amnesty.org/en/latest/news/2016/11/palm-oil-global-brands-profiting-from-child-and-forced-labour/>.

plantations with severe labor rights violations.<sup>120</sup> Amnesty International stated that companies, including CP, have used the RSPO as a “shield to deflect greater scrutiny,” and that they “have strong policies on paper, but none could demonstrate that they had identified obvious risks of abuses” within their supply chains.<sup>121</sup> CP claimed to have completed audits of its suppliers but has not disclosed how the audits were conducted or why the audits failed to identify and resolve labor abuses at the plantation level. CP has also confirmed that it has not carried out any independent inspections of working conditions on plantations.<sup>122</sup>

<sup>120</sup> “The Great Palm Oil Scandal: Labour Abuses behind Big Brand Names,” *Amnesty International*, November 2016.

<sup>121</sup> “Palm Oil: Global brands profiting from child and forced labour,” *Amnesty International*, November 30, 2016.

<sup>122</sup> *Ibid.*

# Recommendations

A lack of specific, transparent, and coordinated policies inhibits public sector efforts to combat trafficking and protect vulnerable populations. Further, businesses struggle to adequately monitor and implement best practices throughout their supply chains. To address this, we make the following recommendations:

## Responsible Party: U.S. Government

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Encourage countries with strong institutional structures and high dependency on imports to enact standards and import restrictions on trafficked goods.</b>	There is an overall lack of implementation and global standardization of laws regulating forced labor produced imports.	Promote initiatives through multilateral forums like the G7, APEC, and ASEAN to create regional standards on forced labor produced goods and trade.

## Responsible Party: U.S. Government, United Kingdom Government

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Encourage countries to enact supply chain transparency laws and strengthen corporate reporting requirements.</b>	Few countries require companies to diligently report on their supply chains and efforts undertaken to combat human trafficking.	Expand legislation for corporate transparency/reporting in supply chains and include enforcement clauses.

### *Additional Discussion*

- Several countries, such as Canada, have pending modern slavery legislation that would require corporate supply chain transparency. Following the model set forth by the United Kingdom, countries with the institutional capacity should enact legislation with clear reporting mandates and penalties for non-compliance.

## Responsible Party: U.S. Government, national governments

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Support national governments with assistance programs that help streamline labor inspectorates' access to resources and training,</b>	Labor inspectorates in palm oil producing countries lack clear mandates, guidelines, resources, and capacity to implement the law	Develop a labor inspectorate training program specific to agriculture. Create a manual with a checklist of indicators for the labor

<p><b>including a distinct checklist of indicators, a training program specific to agriculture, and a digitized system for real time reporting.</b></p>	<p>and advise employers.</p>	<p>inspectorate to address in the workplace. Work to strengthen the labor inspectorate’s credibility and application of laws through supplied checklists, manuals, and guides. Initiate a digital reporting process.</p>
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*Additional Discussion*

- As noted above, inspectors often look for non-specific criteria. Labor inspectors should be provided with a checklist containing identifiable parameters in order to determine whether or not a business is abiding by the laws.
- In developing a specific indicator checklist, the U.S. Government may reference Qatar’s Workers Welfare Standards Contractor Self Audit Checklist. The Qatari Workers Welfare Standards defines the minimum mandatory requirements in the workplace that works to ensure workers welfare is maintained at all times. The labor inspectorate is provided with a packet of explicit requirements and a checklist of clearly defined indicators in which they can determine if the agency “complies,” “partially complies,” or “does not comply” in a range of categories. Alongside the provided indicators, the Workers Welfare Standards also contains enforcement capabilities towards the contractor, including “suspension of payment; reporting the contractor to MOADLSA; reporting the Contractor to the State of Qatar Central Tenders Committee; and Contract Termination.”<sup>123</sup>
- Although digitized reporting would create real time documentation, governments first must provide basic resources. According to the U.S. Department of Labor, labor inspectorates in developing countries report a “severe lack of adequate facilities, office supplies, and other resources required to carry out inspection,” including furniture, electricity, running water, and transportation.<sup>124</sup>

**Responsible Party: U.S. Government and other high importing countries**

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<p><b>Establish legal standards for what can be labeled as sustainably sourced or fair trade.</b></p>	<p>There are no legal requirements or guidelines that uniformly regulate fair trade or sustainably sourced labeling. As a result, criteria for</p>	<p>Issue sustainability guidelines and encourage countries adopting supply chain transparency laws to include these provisions. Promote</p>

<sup>123</sup> “Workers’ Welfare Standards: Edition 2,” n.d., Supreme Committee for Delivery and Legacy, p 107-109, <https://www.qatar2022.qa/sites/default/files/docs/Workers-Welfare-Standards-Qatar-2022-v2.pdf>.

<sup>124</sup> “Human Resource Practices for Labor Inspectorates in Developing Countries,” *U.S. Department of Labor*, 2014, p 8, [https://www.dol.gov/sites/dolgov/files/ILAB/research\\_file\\_attachment/FY13-RAND-Final.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/research_file_attachment/FY13-RAND-Final.pdf).



	certifications and labeling vary drastically.	initiatives through multilateral forums like the G7, APEC, and ASEAN to create regional standards on fair trade.
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*Additional Discussion*

- Modern slavery legislation, including in the United Kingdom and Australia, regulate supply chain transparency to combat human trafficking. However, the acts do not provide explicit guidelines for marketing fair trade items. Incorporating uniform labeling standards could enhance the credibility of certification systems, motivating companies to increase transparency and publicize their efforts. Multiple certifications with varying standards will weaken sustainable and fair trade labeling as a whole.

**Responsible party: The Governments of Indonesia and Malaysia**

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Strengthen protections for migrant workers, including standardized contract procedures, increasing oversight of recruitment agencies, and banning worker-paid recruitment fees.</b>	Many countries are not implementing standardized contract procedures or adequately regulating recruitment agencies. Recruitment agencies are imposing coercive recruitment fees in exchange for locating employment. Often these fees result in a state of perpetual bondage between employer and worker.	Implement standardized contract procedures and best legal practices in accordance with international labor standards.
	The Government of Indonesia has banned Indonesian migrant worker-paid placement fees. However, implementing regulations for this section of the law could not be located.	<b>Government of Indonesia:</b> Issue clear, publicly available implementing regulations banning Indonesian migrant-paid recruitment fees under Law No. 18/2017 on Protection of Indonesian Migrant Workers.
	There are existing legal loopholes in Malaysian law that may lead to forced labor.	<b>Government of Malaysia:</b> Amend the Private Employment Agencies Act of 1981 to regulate written contracts of migrant workers and passport retention practices.

*Additional Discussion:*

- There are several reports that countries looking to establish a framework for monitoring the recruitment process can utilize. A 2015 ILO report outlines an institutional framework for effectively using bilateral agreements to monitor the recruitment process, and enforce domestic laws governing recruitment and labor standards.<sup>125</sup> Another 2015 ILO report addresses private recruitment agencies registration and implementing effective, proportionate, dissuasive penalties for noncompliance with existing law.<sup>126</sup>
- NGOs like the Institute for Human Rights and Business (IHRB) advocate for private sector commitment of prohibiting worker-paid recruitment fees. Under its Employer Pays Principle, the IHRB states, “no worker should pay for a job, the cost of recruitment should be borne not by the worker but by the employer.”<sup>127</sup>
- Recruitment agencies may be helpful in facilitating employment. A total ban on worker-paid recruitment fees must consider potential negative effects, such as harming legitimate recruitment agencies and perpetuating black markets for job seekers.
- In 2017, Malaysia amended the Private Employment Agencies Act 1981 to regulate private employment agencies’ recruiting practices. The government can deny license to agencies with a record of trafficking or forced labor. According to the ILO, this amendment created greater accountability but did not address other areas of recruitment that can lead to forced labor, including migrant worker contracts or passport retention practices by employers.<sup>128</sup> Although Malaysian Passport Act 1966 prohibits passport retention, the ILO found that some employers or agents take migrant workers’ passports upon their arrival.<sup>129</sup> Further, civil society reported that clauses permitting migrant worker passport retention appeared within some Memoranda of Understanding (MOUs) between Malaysia and countries of origin.<sup>130</sup>

<sup>125</sup> “Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review,” *International Labour Office Geneva*, 2015, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_385582.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_385582.pdf).

<sup>126</sup> Beate Andrees, Alix Nasri, and Peter Swiniarski, “Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities,” *International Labor Organization*, 2015.

<sup>127</sup> “Recruitment Fees,” *Institute for Human Rights and Business*, May 2016, [https://www.ihrb.org/uploads/briefings/2016-05%2C\\_IHRB\\_Briefing%2C\\_Recruitment\\_Fees.pdf](https://www.ihrb.org/uploads/briefings/2016-05%2C_IHRB_Briefing%2C_Recruitment_Fees.pdf)

<sup>128</sup> “Situation and gap analysis on Malaysian legislation, policies and programmes, and ILO Forced Labor Convention and Protocol,” *International Labor Organization*, 2018.

<sup>129</sup> *Ibid.*, p. 9

<sup>130</sup> *Ibid.*, p. 14

## Responsible Party: Governments of Indonesia and Malaysia, ILO

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Issue specific protections and laws for agricultural workers to ban quota systems and restrict working hours.</b>	Predatory practices, such as child labor, use of quotas, and sector-specific exclusions in labor laws, are highly prevalent in the agricultural sector.	<b>Government of Malaysia:</b> Pass national labor laws that regulate hours worked for child labor that are specifically for agriculture work. Pass laws that ban quota systems for agriculture work. Pass laws that specifically address forced labor.
	Some Indonesian agricultural companies use short-term contracts, which are then renewed repeatedly, to exclude workers from receiving social protections associated with long-term contracts, such as insurance and social security.	<b>Government of Indonesia:</b> Regulate the use of short-term contracts and contract payment schedules.
	Agricultural workers are uniquely at risk for labor violations and trafficking.	<b>ILO:</b> Adopt an international agricultural workers convention, similar to the domestic worker convention, that will provide protections to plantation workers.

### *Additional Discussion*

- As noted previously, quota systems perpetuate child and forced labor. Some countries, like Malaysia, have national labor laws that regulate work hours or work done by children but carve out exemptions for agricultural sector work.<sup>131</sup> The ILO notes, “the agricultural sector accounts for by far the largest share of child labour. The sector accounts for 71 percent of all those in child labour and for 108 million children in absolute terms,” the majority of whom work alongside their families.<sup>132</sup>
- Although short-term contracts are appropriate in some situations, companies may use them as a cost saving measure. One NGO estimated that a company using this practice saved approximately \$800,000 USD, roughly 956 workers, in less than two years.<sup>133</sup> Further, some large palm oil companies pay workers only once during a contract period,

<sup>131</sup> Malaysia’s Children and Young Persons Employment Act regulates working hours for children, but exempts children 15-18 working in agriculture.

<sup>132</sup> “Global Estimates of child labor: Results and trends,” *International Labor Organization*, 2017, p 12. [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575499.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575499.pdf).

<sup>133</sup> Conference Call, February 5, 2020.

which can last up to two years.<sup>134</sup> This predatory practice increases the risk of debt-bondage and is especially prevalent in land development projects.<sup>135</sup>

### Responsible Party: Governments of Indonesia and Malaysia

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Pass laws and issue regulations that expand the labor inspectorate workforce and grant enforcement capabilities to labor inspectors in Indonesia and Malaysia.</b>	There is a shortage of labor inspectors. Further, unclear laws and regulations prevent labor inspectors from entering workplaces and enforcing laws.	Reform requirements to become a labor inspector in Malaysia and Indonesia. Issue clear powers to labor inspectors to enter workplaces and issue penalties.

#### *Additional Discussion:*

- Strict requirements to become an inspector limits potential labor sources. For example, Indonesia, Kenya, Sri Lanka, Tanzania, Uganda, Vietnam, and Zambia require labor inspectors to have a college degree.<sup>136</sup> By exempting educational restrictions for trade knowledge (ex. allowing for a combination of education and agricultural workplace knowledge), Malaysia and Indonesia could increase their labor inspectorate workforces and expand access to civil service jobs. Further, labor inspectorates underutilize women. A 2011 ILO report estimated that only 18.4% of the total inspectorate in Indonesia were women, versus 54.4 in Malaysia, 30.4 in Singapore, and 42.6 in Brunei.<sup>137</sup>
- Malaysian law gives inspectors the power to freely enter workplaces for inspection and includes provisions to address obstruction of an inspector in performing his duties.<sup>138</sup> It is unclear if inspectors in Indonesia are afforded the same rights.
- Singapore’s Employment Act specifically grants inspecting officers the power to freely enter workplace premises, collect evidence, and arrest individuals committing certain labor violations.<sup>139</sup> Malaysia and Indonesia should adopt similar specific regulations granting inspectors these powers.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Mendeloff, John, et al. “Human Resource Practices for Labor Inspectorates in Developing Countries,” Rand, November 2014, p 7.

<sup>137</sup> “Sex-Disaggregated Data on Labour Inspectors, Selected Countries,” *International Labor Organization*, 29 July 2011, [www.ilo.org/labadmin/info/WCMS\\_160319/lang--en/index.htm](http://www.ilo.org/labadmin/info/WCMS_160319/lang--en/index.htm).

<sup>138</sup> “Situation and gap analysis on Malaysian legislation, policies and programmes, and ILO Forced Labor Convention and Protocol,” *International Labor Organization*, 2018.

<sup>139</sup> The Statutes of the Republic of Singapore, Employment Act (Chapter 91), 1968, Part XIII. [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=3210](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=3210)

## Responsible Party: Government of Indonesia

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Increase coordination with the private sector through partnerships and appointments of a certified labor norms expert.</b>	Both government and private inspectors struggle to adequately monitor worksites.	Implement a pilot program that creates a partnership between private compliance inspectors and government labor inspectors in palm oil producing countries.  Government of Indonesia: Require agricultural worksites to have a certified labor norms expert.

### *Additional Discussion*

- Corporations use private compliance initiatives (PCIs) to monitor and evaluate legal and company standards throughout their supply chain,<sup>140</sup> According to the ILO, public-private cooperation can increase transparency, improve compliance with national laws and international standards, and increase the consequences of non-compliance.<sup>141</sup>
- Although corporations and governments may be hesitant to share information, a pilot program between an engaged labor inspectorate and corporation committed to monitoring and labor standards throughout its supply chain could help assess the strengths and challenges of public-private collaboration.
- Indonesia established the Labour Norms Expert/Cadre (KNK) by decree to address the shortage of labor inspectors.<sup>142</sup> It requires labor-intensive factories with more than 100 workers to have certified labor norms experts. The norms expert is a factory staff member that is trained in labor laws and assists businesses in conducting self-assessments to improve labor law compliance. The initiative covered more than 350 companies and 500,000 workers by the end of 2016.<sup>143</sup> Expanding this model to agricultural workplaces could improve labor law compliance, assist corporations in monitoring workplace conditions, educate workers on their rights, and improve grievance mechanisms.

<sup>140</sup> “Labour Inspection and Private Compliance Initiatives: Trends and Issues.” *International Labor Organization*, 2013, p 45. [www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/meeting\\_document/wcms\\_230798.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/meeting_document/wcms_230798.pdf).

<sup>141</sup> Ibid.

<sup>142</sup> “Factsheet on Labour Inspection in Indonesia.” *International Labor Organization*. [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms\\_549704.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_549704.pdf)

<sup>143</sup> Ibid.

**Responsible Party: Civil society organizations, national governments, and private sector**

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Increase information about recruitment risks and social compliance efforts sharing among industry stakeholders through a secure system with a trusted moderator.</b>	Corporations have difficulty mapping their supply chains and assessing the risks of forced labor throughout.	Expand Verité’s program, CUMULUS, to the palm oil sector and encourage major palm oil producing companies and suppliers to join.

*Additional Discussion*

- Verité piloted CUMULUS in Southeast Asia with 30 suppliers and 250 recruitment agencies in the manufacturing sector.<sup>144</sup> The program combines not only private sector information, such as companies’ auditing reports and compliance investigations, but also government records and civil society reports. It confidentially shares “risks related to the practices of recruitment agents used by other member companies’ suppliers that are identified in data contributed by supplier or company members” on a source-redacted basis.<sup>145</sup> By expanding the program and providing a secure platform for information sharing for the palm oil industry, Verité could encourage private sector stakeholders to identify specific areas within their supply chains that require corrective action.
- Further, as noted above, there is a growing demand from the private sector for supply chain tools and industry information sharing. Corporations may be hesitant to share information with competitors on vulnerabilities of their supply chains. Nevertheless, information sharing could increase the effectiveness of supply chain assessments, allowing the industry as a whole to improve monitoring.

**Responsible Party: Companies, multilateral organizations, civil society, certification bodies**

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Ensure a reliable, efficient grievance mechanism in the workers’ native language is present throughout the entire supply chain. This is especially critical for plantation work.</b>	Many companies do not provide or publicly disclose their grievance reporting system. Further, workers may fear punitive action if the process is not implemented correctly.	Ensure that their grievance processes are accessible to all workers throughout their supply chain and translated into their native languages. Collaborate with external entities, including third-party certification bodies and civil

<sup>144</sup> “Introducing CUMULUS Forced Labor Screen™,” Verité, September 25, 2018, <https://www.verite.org/cumulus-forced-labor-screen/>.

<sup>145</sup> Ibid.

		society, to ensure grievance procedures are effectively implemented and monitored.
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*Additional Discussion*

- Companies creating effective grievance processes should meet the requirements under the United Nations Guiding Principles on Businesses and Human Rights. Processes must also be accessible, account for language barriers, with provisions for illiterate workers, and ensure that workers have privacy and protection from reprisal.
- Grievances must also be resolved in a timely manner. An evaluation of USDOL funded project MWEA, Protecting the Rights of Migrant Workers through Empowerment and Advocacy in Malaysia (MWEA), found that “The process of documenting and addressing violations of migrant worker rights can take years while migrant worker contracts typically run from six months to two years.”<sup>146</sup>
- “Palma Futuro,” a project funded by USDOL Bureau of International Labor Affairs and implemented by Partners of the Americas, Social Accountability International (SAI) and J.E. Austin Associates (JAA), targets forced labor and human trafficking in the palm oil industry in Ecuador and Columbia.<sup>147</sup> The project provides palm oil companies with technical guidance to develop social compliance systems that adhere to the components of USDOL’s standard, including formal grievance mechanisms. A similar project focusing on the Indonesian/Malaysian palm oil sector could be conducted. Such would also allow for independent monitoring of the grievance handling processes.

**Responsible Party: Major palm oil industry stakeholders (Wilmar International)**

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Take a forceful stance against child labor and eliminate practices that facilitate it, namely piece rate systems.</b>	Plantation harvesters bring their children to work with them in order to meet piece rate targets and avoid penalties.	Adopt a zero-tolerance position on child labor within its subsidiaries, eliminate piece rate systems, incentivize parents to send their children to school

<sup>146</sup> O’Brien and Associates International, “An independent multi-project evaluation of protecting the rights of migrant workers through empowerment and advocacy in Malaysia and support for labor law and industrial relations reform in Malaysia,” *Department of Labor*, 2018, p 12, [https://www.dol.gov/sites/dolgov/files/ILAB/evaluation\\_type/final\\_evaluation/2018-malaysia-final-evaluation\\_0.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/evaluation_type/final_evaluation/2018-malaysia-final-evaluation_0.pdf)

<sup>147</sup> “Palma Futuro: Preventing and Reducing Child Labor and Forced Labor in Palm Oil Supply Chains,” *United States Department of Labor Bureau of International Affairs*, Accessed March 30, 2020, <https://www.dol.gov/agencies/ilab/>.

*Additional Discussion*

- Only two of the companies we researched explicitly ban the use of quotas. This practice increases the vulnerability of migrant workers and children to trafficking.

**Responsible Party: RSPO**

<i>Recommendation</i>	<i>Issue</i>	<i>Steps</i>
<b>Implement regulations into the RSPO certification criteria requiring assessments of conditions at the plantation level.</b>	CSPO is determined at the refinery level. RSPO criteria for certification does not independently assess conditions at the plantation level.	Begin by requiring companies to prove that they have undertaken human rights due diligence on third-party sources of palm oil.



## Conclusion

Public-private sector collaboration in building institutional capacity, promoting transparency, and allocating resources is critical to combat trafficking in supply chains. Governments and civil society organizations must promote policies that require transparency, streamline resources and training, and provide specific criteria that companies must meet. The private sector must also promote transparency, traceability, and implement codes of conduct throughout its supply chains.

Overall, the void within the private sector's efforts to combat trafficking within the supply chain is lack of resources and guidelines. The public sector, conversely, enacts policies, but struggles with implementation and monitoring. Independently, neither are sufficient. Combating trafficking in palm oil supply chains requires full cooperation from both sectors.

## ***Appendix A: Palm Oil Labor Analysis***

To increase profits, businesses must either increase revenue (largely by increasing quantity sold), or decrease costs, which include labor, land, equipment, marketing, and inventory.

$$\begin{aligned}\text{profit (p)} &= \text{revenue (r)} - \text{costs (c)} = \text{unit profit} * \text{quantity} \\ \text{revenue} &= \text{sales price} * \text{number of palm oil sold}\end{aligned}$$

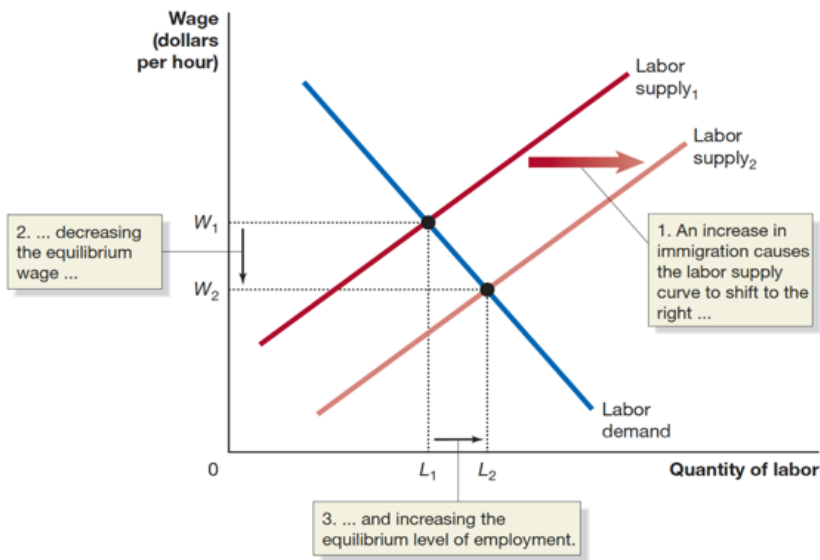
A massive production of palm oil requires large amounts of land, agricultural and natural resources, and pesticides. Introducing cheap labor significantly reduces labor costs, which can increase profits.

Assuming the demand for labor is fixed in the short term, if the labor supply increases in a country, wages will fall as the labor pool increases. Under this model, palm oil companies may seek to increase the labor supply, and therefore lower labor costs, by introducing foreign workers into the market. Palm oil companies may also increase supply by coercing domestic labor through community coercion, land grabs, or arranging favorable tax incentives to access land at the lowest possible cost. These predatory tactics can increase the domestic labor supply. Individuals who lose their land by force or by other means are vulnerable to exploitation. Low-skilled or low-educated individuals are less competitive in the labor market and are also vulnerable.

Migrant workers are also vulnerable as they seek better opportunities outside of their home countries. In neoclassical economic theory, labor tends to flow from low-wage areas to high-wage areas. This theory helps to explain some of the trends in migration flows. For example, “foreign workers constitute more than 20 percent of the Malaysian workforce and typically migrate voluntarily—often through irregular channels—from Indonesia, Bangladesh, the Philippines, Nepal, Burma, Cambodia, Vietnam, India, Thailand, and Laos.”<sup>148</sup> Malaysia’s GDP per capita, \$21,900 USD, is significantly higher than the source countries (ex. Indonesia: \$12,400, Philippines: \$8,400, Vietnam: \$6,900).<sup>149</sup> While this trend cannot explain all workforce or trafficked labor flows, it helps to explain some of the patterns.

<sup>148</sup> “2019 Trafficking in Persons Report: Malaysia,” *U.S. Department of State*, June 2019, <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/malaysia/>.

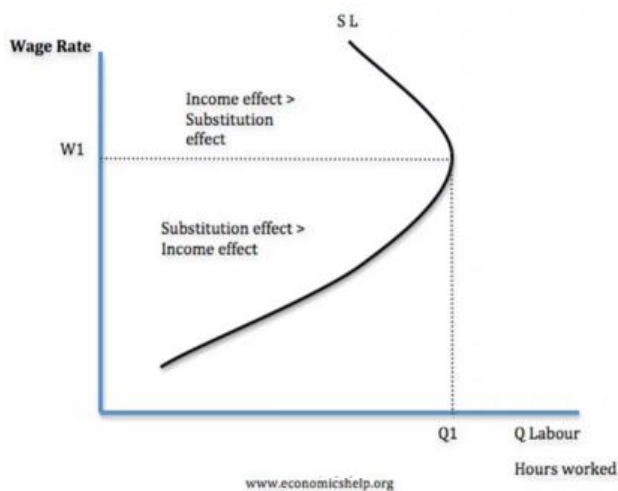
<sup>149</sup> “The World Factbook,” *Central Intelligence Agency*, <https://www.cia.gov/library/publications/the-world-factbook/fields/211rank.html>.



Source: R. Glenn Hubbard and Anthony Patrick O'Brien, *Microeconomics 7th Edition* (New York: Pearson Education, 2019), 573.

The income-substitution wage effect, which weighs the value of wages against leisure, supports this argument. As wages increase, the benefits of work outweigh leisure (substitution effect). Simultaneously, higher wages allow workers to maintain a decent standard of living through less work (income effect). Individuals will continue to work more hours if the substitution effect is greater than the income effect. However, at a certain hourly wage, workers will be able to work fewer hours to maintain their standard of living, choosing leisure over additional working hours.<sup>150</sup> As GDP per capita rises, companies may require additional migrant labor to fill labor gaps.

#### Income and substitution effect for wages



Source: Economics Help. Income Substitution Effect. n.d.

<sup>150</sup> "Income Substitution Effect," *Economics Help*, <https://www.economicshelp.org/blog/glossary/income-substitution-effect/>.

An evaluation of a DOL-funded program in Malaysia affirmed this theory, stating:

The structure of the Malaysian economy still features high demand for ‘low-skill’ workers unmet by the supply of Malaysian workers willing to accept such jobs...[The] country’s dependence on foreign, “cheap” labor to power its economy was a systemic problem contributing to migrant worker exploitation. An employer representative likewise indicated that pressure from buyers to keep prices low in global supply chains was a factor affecting demand for low-cost workers.<sup>151</sup>

### ***Agriculture***

Agriculture is labor intensive, leading to ample opportunity for forced labor to occur. According to a 2014 ILO estimate, forced labor in agriculture generates \$9 billion (approximately \$2,500 per victim) in profits per year out of \$51 billion from forced labor overall.<sup>152</sup> Annual profits of forced labor are highest in the Asia-Pacific. Annual profits per victim in agriculture are approximately \$400 in Asia-Pacific.

<sup>151</sup> IMPAQ International, “Final performance evaluation: Protecting the rights of migrant workers through empowerment and advocacy in Malaysia,” *Department of Labor*, 2019, p 28, [https://www.dol.gov/sites/dolgov/files/ILAB/reports/Final%20Draft\\_ILAB%20MWEA%20Final%20Evaluation\\_non-PII\\_Section%20508.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/reports/Final%20Draft_ILAB%20MWEA%20Final%20Evaluation_non-PII_Section%20508.pdf)

<sup>152</sup> “ILO Profits and Poverty: The Economics of Forced Labour,” *International Labor Organization*, 2014, p. 16. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_243391.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf)