

LIBERTY SHARED

CREATING AN ENVIRONMENT
SAFE FROM TRAFFICKING

This document is a summary of the petition (“Petition”) submitted to U.S. Customs and Border Protection on 20th April 2020 to exclude palm oil and palm oil products produced “wholly or in part” by forced labor and child labor by Sime Darby Plantation Berhad owned and affiliated companies (“Sime Darby Plantation” or “SDP”)

DISCLAIMER This document is a summary only of the original Petition submitted by Liberty Shared on 20th April 2020 (“Summary”) to U.S. Customs and Border Protection. The information, analysis and conclusions set out herein and in the Petition are not and are not to be read as legal opinions or analysis of potential or actual liability under the laws of Malaysia, of the jurisdictions of the United States or any other jurisdictions. The information and conclusions set out herein are only a summary of the Petition. The Petition was provided solely for the consideration by U.S. Customs and Border Protection under Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307). The content of this Summary, in whole or in part, is for information purposes only and is not intended to be and must not to be relied upon as advice or information relating to any decision making concerning business, investment, risk management or other purposes, and parties should refer to their professional advisors regarding the content herein. Liberty Shared, its registered charity and officers shall not be liable for any indirect, incidental, special, consequential or punitive damages, or any loss of profits or revenues, whether incurred directly or indirectly, or loss of goodwill or other intangible losses, resulting from use of the content in this Summary, including without limitation any defamatory, offensive or illegal conduct of third parties. In no event shall the aggregate liability exceed a hundred U.S. dollars (USD100).

On 20th April 2020, Liberty Shared submitted the Petition to Mr Mark Morgan, acting commissioner at U.S. Customs and Border Protection, concerning forced labor in the production of palm oil and palm oil derived products from plantations owned and/or run by Sime Darby Plantation Berhad and imported into the United States.

There were three primary elements to the Petition argument. First, identification of the presence of conditions of forced labor and child labor on palm oil plantations indicated as owned and/or run by SDP or its affiliated companies and the extent of these conditions. Second, analysis of whether the ongoing corporate governance, risk management and internal controls currently developed and implemented by Sime Darby Plantation appear to be sufficient and effective in consistently preventing conditions of forced labor and child labor from arising on an ongoing basis across any and all of its plantations/estates. Finally, third, identification of supply chains of palm oil imported into the United States of America which appear to be produced “wholly or in part” by forced labor and child labor from SDP plantations.

Our conclusions were reached via: interviews with workers and members of civil society; scrutiny of public disclosures, audit reports and sustainability-related initiatives; analysis of public information about corporate governance, risk management and internal controls; a review of civil society and academic research, and open source information about relevant supply chains; and consideration of the history of the recruitment and employment of unskilled labor to the Malaysian industrial agricultural sector.

Research objectives

We carried out our research with four objectives in mind. These objectives and our conclusions regarding each objective are summarized below, and later reported in greater detail.

1. The first objective was to examine and assess the work conditions and treatment of foreign and local workers and to understand the degree to which, if at all, any or all workers interviewed were in conditions of forced labor. At a minimum, we wished to assess whether any or all of the forced labor indicators set out by the International Labour Organisation¹ were satisfied.

We have interviewed a number of workers over the past few years but for the purposes of the Petition we included responses from workers across a number plantations interviewed multiple times during last twelve months. The workers interviewed comprised both foreign workers and local workers. We sought to support their responses with the knowledge of experts from civil society and with publicly available research from civil society

¹ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

organizations² & ³. Finally, we reviewed a number of audit reports⁴.

2. The second objective was to understand the nature and sophistication of SDP's worker supervision on the plantations and the management of the supervisors and forepeople (mandors). Whatever the nature of past and prevailing worker conditions and treatment, forced labor or otherwise, it was important to ascertain the degree to which, if at all, they were connected to structural issues arising from SDP's corporate governance, risk management and internal control frameworks, implemented through policies, procedures and practices on plantations. All businesses, regardless of industry and sector, should seek to act lawfully in the interests of its shareholders and, in order to manage prudently the risk to shareholders' interests, the board and senior management must seek to reduce risk and potential liability arising from unlawful and criminal actions, such as human trafficking and forced labor, through corporate governance, risk management and internal control frameworks.

More specifically, we believe that for businesses in the agriculture industry, including those in the palm oil industry, it can be reasoned and strongly argued that the greater the variance in the conditions and treatment experienced by workers within and across plantations then the weaker and more insufficient are the corporate governance, risk management and internal controls over employees managing and supervising plantation workers. At the very least, plantation managers and mandors in the palm oil industry should comply with any and all obligations and liabilities arising under the laws and regulations of relevant jurisdictions (local and foreign), with industry association and certification requirements, and with SDP's own relevant policies, procedures and practices arising from its corporate governance, risk management and internal controls. It should be expected that all plantation managers and mandors know and understand all these obligations.

3. We also sought to understand the underlying environment of modern worker recruitment to the palm oil industry and its relationship to unlawful and criminal practices, such as deception, loan sharking, debt bondage, illegal immigration, smuggling and human trafficking. It is important to recognize that these unlawful practices are rooted in a long history of problems in labor recruitment for industrial agriculture on the Malaysian peninsula. It is strongly arguable that the continued presence of these and other unlawful and criminal recruitment practices in the agricultural industry are long embedded structural problems in the foreign labor supply system, and to develop properly governed and managed plantations likely requires overcoming longstanding behaviors and practices. We hoped to determine whether or not there has been, and is currently, the requisite implementation and development

² https://www.amrc.org.hk/sites/default/files/Exploited%20and%20Illegalised_AMRC%20%28160120%29_New.pdf

³ http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf

⁴ <https://www.bsigroup.com/globalassets/localfiles/en-my/mspo/psr-2019/mspo-report-sime-bukit-kerayong-mill-and-estate-asal.pdf>

of a robust comprehensive corporate governance, risk management and internal control strategy and framework that would and will continue to create the procedures and practices needed for behavioral change in plantation worker management and supervision to prevent worker abuse.

4. We wanted to identify how and when palm oil was moving from plantations to mill and refinery, and to purchasers in the United States. For the purposes of the Petition, we found one such example of a supply chain which starts from a plantation at which the conditions and treatment seem to fulfill a substantial number of ILO forced labor indicators, and continues through to the mill and refining stages, and then to import into various ports in the United States.

Summary of conclusions

In relation to these four objectives we concluded the following:

1. The responses from workers and civil society experts do indeed reveal a wide range of experiences in terms of worker recruitment, working conditions, and treatment on the plantations by managers, supervisors and mandors. For example, workers described the imposition of arbitrary penalties, threat of and actual sexual harassment, physical threats and abuse, various and inconsistent deductions in pay, varying conditions of accommodation, and fees charged for basic facilities.

Furthermore, an examination of audit reports⁵ and independent research conducted by third parties, of not only SDP plantations in Malaysia but also of their plantations in Indonesia and Liberia⁶ (the latter was eventually exited), shows many instances of widely different and varied treatment of workers and working conditions. In our opinion, there are audit findings showing issues ranging from retention of passports, failure to provide contracts, failure to make payments, improper deductions, lack of knowledge of relevant laws for compliance requirements, and issues with recruitment agents. Conversely, audit assessments also stated that no sexual or physical harassment took place, yet the workers we interviewed described this as an issue. However, audits are assessed using only small population sample sizes so while it is indeed possible to be persuaded by the audit findings that there are some areas of consistent compliance, these small sample sizes and the very limited range of issues examined undermine confidence in the conclusions of the audit. In our opinion, some points should be of much greater concern.

⁵ <https://www.bsigroup.com/globalassets/localfiles/en-my/mspo/psr-2019/mspo-report-sime-bukit-kerayong-mill-and-estate-asal.pdf>

⁶ <https://www.farmlandgrab.org/post/view/21722-liberia-sime-darby-s-slave-camp-is-another-face-of-corporate-evil>

2. SDP has published various documents concerning its efforts to reduce forced labor in its operations, such as its UK Modern Slavery Statement⁷ and a Human Rights Charter (discussed below); it has also commenced various initiatives such as a worker helpline launched with Nestle⁸, and these policies are outlined in its Annual Report 2018⁹. Yet the descriptions by the workers of their working and living conditions and treatment, the varied range of their experiences, the lack of thorough ongoing assessment of the conduct and behavior of plantation managers and mandors (particularly in relation to dealings with recruitment agents), the incongruity of audit assessment conclusions against the statements of the workers and the descriptions given by civil society, exacerbated by the limited scope of assessment, builds, we believe, to a cogent argument that there are too many structural weaknesses in the implementation of SDP's corporate governance, risk management and internal controls to provide sufficient preventative measures and protection against forced labor conditions for plantation workers.

3. Foreign workers may be recruited formally through the government mechanism¹⁰ but many are recruited by independent private commercial operations that specialize in identifying, contracting, transporting and placing foreign workers on plantations¹¹. The activities of these independent recruitment agents regularly involve unlawful practices and there is a long history of recruitments agents, particularly from India, engaging in such activities. Most recently, Malaysia entered into bilateral agreements with the source countries, such as India, Bangladesh¹² and Nepal^{13 14 & 15}, and it was intended that these would create a legal framework to reduce abuse, criminal recruitment practices and human trafficking. However, as discussed in relation to corporate policies, the bilateral agreements are at best statements of intent if there is no policing and enforcement to ensure that recruitment activities comply.

4. We believe we were able to identify an active supply chain and in addition to this information we found public disclosures by various companies using the palm oil as an ingredient for their own production. We believe the disclosures state previous and current use of palm oil from a mill that receives fruit from at least one of the estates on which some of the workers interviewed are situated. Details of this supply chain are not provided in this Summary.

⁷<http://www.simedarbyplantation.com/sites/default/files/2018%20SDP%20Modern%20Slavery%20and%20Human%20Trafficking%20Statement.pdf>

⁸ <https://www.confectionerynews.com/Article/2018/11/07/New-worker-helpline-launched-to-tackle-human-and-labor-rights-issues-in-palm-oil-supply-chain>

⁹ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>

¹⁰ <https://www.imi.gov.my/index.php/en/foreign-worker.html>

¹¹ Martin, Philip. Merchants of Labor (p. 64). OUP Oxford

¹² https://www.ilo.org/asia/publications/WCMS_459065/lang--en/index.htm

¹³ <http://archive.indianexpress.com/news/malaysia-india-sign-labour-pact/406525/>

¹⁴ http://www.ipcs.org/comm_select.php?articleNo=3801

¹⁵ <https://www.gfmd.org/pfp/ppd/11125>

Worker Experiences on SDP's Plantations

Experiences of the foreign workers interviewed

For the purposes of the Petition, we provided conclusions from interviews with foreign and local workers from a number of different estates.

Of the workers interviewed, a number described how they had been deceived into believing they would be working in factories and that the salary level would be higher than that which they actually receive. Workers say they had to pay recruitment fees and most had to take out loans, some at high interest rates, to pay the fees, and in some cases further fees were raised after initial payments had been made. All workers say they paid the recruitment agents for arrangement of the job, transport, and entry into Malaysia. No worker interviewed said they received minimum wage once deductions were taken into account, and some said they were unable to determine the wage they would receive. Workers complained of potential and actual physical threats.

It was important to the argument of the Petition that the workers interviewed described conditions that were consistent with some or all of the International Labour Organisation's Indicators of Forced Labour¹⁶. The ILO forced labor indicators are set out in the table below against which the labor conditions and treatment described by the foreign workers interviewed are given.

ILO Indicators of Forced Labour	Positive	Comments
Abuse of vulnerability	Yes	
Deception	Yes	Deceived by recruitment agent in relation to nature of work and level of pay.
Restriction of movement	Yes	Passports retained, ID cards and copies of passport inconsistently available.
Isolation	Not complete and total isolation but very isolated.	With the exception of occasional trips to local village or town all time is spent on plantation. Some must pay mandor for transport – potentially corruption/extortion.
Physical and sexual violence	Yes	Threats have been made against workers, see below.

¹⁶ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

Intimidation and threats	Yes	██████████ ██████████████████ ██████████████████
Retention of identity documents	Yes – passports retained and other forms of ID not issued (form of retention).	All retained BUT moreover no provision, such as a lock box, for workers to store their own passports safely and still have access. Audit report findings do discuss/explain SDP's intent with regards to passport retention.
Withholding of wages	Workers should be paid minimum wage under Malaysian law.	There is an expectancy of minimum wage and also an expectancy of the wage set out in the agreed contract. Neither are being satisfied.
Debt bondage	Yes – to recruitment agent or other third party.	Debt incurred to pay for recruitment and therefore must work to pay off debt (this is the same as the previous kangani system (see below)).
Abusive working and living conditions	Yes	Threats are made with arbitrary penalties and fines. Clear threat is to be sent to a remote part of the plantation, refused work and reprimanded verbally.
Excessive overtime	Yes	Overtime is often unpaid.

Experiences of the local workers interviewed

It was not our original intention to focus on the experiences of local workers but as more was learned about their working conditions and treatment it became clear that there were important issues that should be explored. It is worth examining these experiences against the ILO forced labor indicators. Obviously local workers cannot be coerced through retention of identity documents as they are Malaysian citizens.

The local workers describe a very different relationship with the plantation or estate and the business. Unlike foreign workers, local workers are not on fixed-term contracts but regularly have an intergenerational relationship with the plantation/estate, with many children born on a plantation/estate who then seek to work on the same plantation/estate.

Local workers explained that a primary motivation for working on a palm oil plantation is that housing is provided for employees. Many of the workers claim that they would be unable to afford housing elsewhere and this is well known by the plantation managers and mandors. However, as housing is linked to service then it may be taken away at any time, without necessity of cause. The threat of the immediate loss of family accommodation seems an obvious mechanism for potential coercion and the creation of vulnerability.

The housing contract does not seem to give any assurances of continuity or a secure term of tenancy – the provision of housing is essentially at the discretion of the relevant manager, which seemingly creates persistent vulnerability and an unmitigated mechanism for coercion and abuse.

The table below details the treatment described by local workers, set against the ILO's forced labor indicators.

ILO Indicators of Forced Labour	Positive	Comments
Abuse of vulnerability	Yes	Abuse of accommodation and wage security.
Deception	Yes	Deceived as to pay as workers describe not receiving minimum wage and sometimes only 60%.
Restriction of movement	Yes	Substantial vulnerability as to income and housing caused by the possibility they may be removed at any time as workers and civil society members describe.
Isolation	No	
Physical and sexual violence	Yes	Threats have been made against local workers.
Intimidation and threats	Yes	Female workers say there is continual threatened sexual harassment.
Retention of identity documents	No	
Withholding of wages	Yes	Workers should be paid minimum wage under Malaysian law but report that they never receive this. On top of this, there are also

		deductions that they cannot understand.
Debt bondage	Yes	Because their wage is often much lower than minimum wage, some workers borrow from loan sharks. In fact loan sharks have entered the plantation and, according to the workers, have abducted children to force and extort repayment which causes workers to enter into new arrangements with other loan sharks.
Abusive working and living conditions	Yes	For local workers, housing is provided by Sime Darby Plantation and may be removed at any time, simply by changing the workers status from employee (which has access to housing) to contractor (which enjoys no such right). This causes vulnerability and there is no clear grievance mechanism to prevent abuse. Threats are made with arbitrary penalties and fines. A clear threat is to be sent to a remote part of the plantation, and women are threatened with rape, refused work and reprimanded verbally.
Excessive overtime	No	

Child labor

Local workers reported that, as recently as less than four years ago, children of local plantation workers were used by a plantation manager and mandors to place rat poison at the foot of the palm oil trees.

The workers explain that the mandors had supported the use of children for this task but then the manager who had approved this activity departed. The new manager did not approve of this practice and it was stopped. However, that manager has now left and workers fear that their children will again be used for poison placement or some other such purpose. The children were not given any protective equipment.

As stated earlier, the Petition did not and this Summary does not offer or provide any legal analysis or opinions, therefore we do not seek to ascertain or opine on the legal position of the managers of that plantation/estate, under the Poisons Act 1952 (Revised 1989) of the

Laws of Malaysia¹⁷, who gave children under the age of 18 rat poison and instructed them to place it under the trees. These actions do seem unacceptable to us and very risky and it should be expected that there would be appropriate corporate governance and the requisite internal controls in place to prevent such acts having occurred and from being repeated. Sadly, the local workers do not seem convinced that the practice will not be repeated in the future.

Risk Management and Internal Controls of Sime Darby Plantation Bhd (Sime Darby) Concerning Labor Abuse and Forced Labor

SDP statements on human rights and recruitment

The history of SDP, as recounted on their website, “traces its roots to as early as the 19th Century, when pioneering English planters established rubber plantations in Malaya”¹⁸. SDP is described in its Roundtable on Sustainable Palm Oil listing as “the plantation and agri-business arm of the Sime Darby Group, representing one of the five core Divisions of the Group”¹⁹. The group’s overall business presence is global across 17 countries and 248 estates²⁰. In 2018, the company reported a total staff of 97,223 of which more than 80% were workers in fields, mills and refineries. In Malaysia alone, the upstream sector comprises no less than 63% migrant workers, predominantly from Indonesia, India, Bangladesh and Nepal²¹.

Across the pages of the Annual Report 2018, the importance of humans rights²² is highlighted repeatedly and includes references to the Guiding Principles on Business and Human Rights²³, and ways of eradicating exploitation²⁴, supporting freedom of association, and empowering local communities²⁵. SDP also regularly and widely discloses the various labor focused initiatives that it commences but there is little discussion about the limited nature of these initiatives and little explanation of any results and subsequent action. It is therefore worth looking at a number of these initiatives in more detail, and we draw attention to the following contained in the section of the Annual Report 2018 entitled “Our Social Impact”²⁶:-

“A key initiative was a pilot programme conducted in seven locations where over 1,500 workers were provided a safe and secure platform to hold their own passports. Given its

¹⁷ <https://www.pharmacy.gov.my/v2/en/system/files/poisons-act-1952-act-366.pdf>

¹⁸ <http://www.simedarbyplantation.com/corporate/history/2000--2099>

¹⁹ <https://rspo.org/members/29/Sime-Darby-Plantation-Berhad>

²⁰ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, page 8

²¹ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, page 81

²² <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, pages 7, 12,13,17, 20, 30, 38, 70, 80, 81, 82, 83,113,129, 136, 138, 139, 147 and 361

²³ <https://www.ungpreporting.org/>

²⁴ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, page 81

²⁵ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, page 82

²⁶ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, pages 80-83

success, we have since rolled out the programme in all 125 estates and 33 mills in Malaysia. We also continued to enhance our recruitment procedures by collaborating with partners in the supply chain such as recruitment agents in Malaysia and the countries of origin. As far as possible, recruitment is conducted by our team in the countries of origin, namely Indonesia, India and Nepal, where all briefing materials and contracts are translated into the relevant local languages to ensure potential workers are well informed and accept their positions voluntarily. Where we are required to work with partners, we conduct training sessions to create greater understanding of our policies and procedures, and accountability for carrying out the recruitment process accordingly. This includes emphasising that SDP does not impose a recruitment fee on potential employees.”²⁷

Examining the information in this excerpt, it is positive to read of the pilot program and enhanced recruitment procedures. However, a closer reading is less encouraging. SDP explained in its “Statements from the Floor”, regarding its responsibility to respect, support and uphold fundamental human rights during the Bali Process, 25th August 2017²⁸, that there were more than 38,000 plantation workers in Malaysia of whom 75% were migrants, mostly from Indonesia, India, Bangladesh and Nepal, this is equal to about 28,500 foreign workers. From a total of 28,500 individuals, 1,500 is a small number considering that all foreign workers should have their passports unless they have explicitly consented otherwise. It is not explained how these individuals were chosen but, more importantly, it is not explained why their passports are retained in the first place. There is no information on the nature of SDP’s collaboration with recruitment agents and how the aims and outcomes of this collaboration integrate into SDP corporate governance and internal controls governing the conduct of plantation managers and mandors, who seem to be the primary cause of many abuses. Despite the assurances from the “Our Social Impact”²⁹ section of the annual report, there is little mention of the conduct and behaviour of the plantation managers and their mandors – the primary complaint by the workers.

A question of legal liability or social impact agenda?

The fundamental question to be asked of SDP, and of other industry participants, is whether the lawful and proper management of plantation/estate workers, and the prevention of their abuse, is solely an issue of “social impact” and sustainability, as it appears to be repeatedly framed in the Annual Report 2018. In fact, it must be argued that issues such as these in any agricultural business, big or small, are legal issues. All businesses must comply with local and foreign laws and regulations to ensure they conduct their operations and transactions with third parties lawfully and free of direct or indirect exposure to or engagement with unlawful or criminal activities and practices. Forced labor and human trafficking are included as

²⁷ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, page 81

²⁸ <https://www.baliprocess.net/UserFiles/baliprocess/File/Statement%20-%20Business%20Leader%20Malaysia.pdf>

²⁹ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, pages 80-83

unlawful and/or criminal acts in many jurisdictions, including Malaysia³⁰, and should be a central and primary concern of business leadership and management. It would be reassuring and certainly preferable that attention to these issues should be clearly and comprehensively articulated in the corporate governance framework, risk management and internal controls, which in many businesses often include other issues such as anti-bribery and anti-money laundering, that formulate SDP's relevant policies, procedures and practices, such as those set out in the Corporate Governance Overview Statement³¹, Sustainability Committee Report³² and Risk Management and Internal Control section³³ of the Annual Report.

The first line of defence: plantation managers, mandors and risk management

It is worth noting that the Statement on Risk Management and Internal Control in SDP's 2018 Annual Report sets out the standard "Three Lines of Defence model" of risk management³⁴, a key element of standard enterprise risk management, which forms a part of their overall risk management framework. The use of FLOD, or first line of defence, in risk management is a very familiar and very widely used practice³⁵. In any business there are those functional personnel, such as line managers, supervisors or forepersons (e.g. mandors), who are responsible at the operational level. In regards to protection of workers from coercion, abuse and conditions of forced labor, the plantation managers and mandor are the first line of defence – and yet the interviewed workers describe abuse by these very people.

Finally, it is worth turning to the Human Capital Development section which makes no seeming mention of specific and detailed improvements to reduce the vulnerability of the upstream plantation workers arising from the conduct of their managers and mandors³⁶.

Conclusion

The Malaysian palm oil industry and its participants³⁷ have been the focus of investigative civil society for many years^{38 & 39} focusing on operations in both Malaysia and Indonesia⁴⁰

³⁰ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 <https://www.loc.gov/law/help/human-trafficking/malaysia.php>

and Laws of Malaysia Act 574 Penal Code

<http://www.agc.gov.my/ageportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>

³¹ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, page 98

³² <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, page 124

³³ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, page 130

³⁴ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, pages 133

³⁵ <https://na.theiaa.org/standards->

[guidance/Public%20Documents/PP%20The%20Three%20Lines%20of%20Defense%20in%20Effective%20Risk%20Management%20and%20Control.pdf](https://na.theiaa.org/standards-guidance/Public%20Documents/PP%20The%20Three%20Lines%20of%20Defense%20in%20Effective%20Risk%20Management%20and%20Control.pdf)

³⁶ <http://www.simedarbyplantation.com/sites/default/files/download/SDP-Annual-Report-2018.pdf>, pages 64-71

³⁷ http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf

³⁸ <https://www.reuters.com/article/us-malaysia-palmoil/malaysian-palm-giant-sime-darby-says-it-will-work-with-environmental-groups-idUSKBN2011RQ>

³⁹ <http://archivo-es.greenpeace.org/espana/Global/espana/report/other/quemando-borneo-3.pdf>

⁴⁰ <https://jakartaglobe.id/news/rspo-must-respond-complaints-sime-darby-rights-group/>

^{&41}. In response, SDP in particular has created an array of impressive disclosure and public sustainability corporate policy initiatives but the development and implementation of robust and comprehensive corporate governance, risk management and internal controls that would benefit foreign and local workers and protect and prevent them from experiencing and working in conditions of forced labor and abuse seem insufficient and ineffective. This is supported by a number of the audit findings, and the workers' actual experiences, but also the wide variety and variance of worker experiences and treatment. Sufficient and effective corporate governance, risk management and internal controls should create a consistent and controlled operational environment to provide protection to allow all workers to undertake and perform their responsibilities without these risks, however, this does not seem to have been achieved and so workers remain vulnerable.

Unlawfulness and Criminality in Foreign Worker Recruitment

Those who have an interest in forced labor and the treatment of migrant workers will be very familiar with the issues that have been raised regarding palm oil plantations in Malaysia, and will be aware of the extensive reporting and research over the past decade. Not least, this issue is already the subject of two other petitions under Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) regarding FGV Holding Berhad⁴². Without wishing to repeat this extensive literature and research, and while the research conducted and published by Fair Labor Association in November 2018⁴³ provides a comprehensive perspective of the industry's forced labor and child labor problems, it is still important to restate the elements of foreign labor recruitment to Malaysia and foreign worker supervision that cause vulnerability to abuse.

“Recruitment infrastructure”

According to research by Lee Hwok-Aun, Senior Fellow at the ISEAS-Yusof Ishak Institute, and Khor Yu Leng, Head of Research at Khor Reports – Segi Enam Advisors Pte Ltd, in their 2018 paper, the official overall foreign worker population fell precipitously – and, they say, implausibly – from 6.7 million in 2014 to 3.8 million in 2016. This suggests that an increasing number of workers – perhaps several million – are not recorded in official figures and are therefore undocumented⁴⁴. The numbers are considerable and it was important for the purposes of the Petition to understand the nature and structure of this movement. Workers do

⁴¹ https://www.asienhaus.de/archiv/user_upload/Palm_Oil_Workers_-_Exploitation_Resistance_and_Transnational_Solidarity.pdf

⁴² <https://www.reuters.com/article/us-malaysia-palmoil-fgv/activists-urge-u-s-customs-to-ban-palm-oil-imports-from-malaysias-fgv-idUSKCN1V51GT>

⁴³ https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf

⁴⁴ https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_25@50.pdf

not simply find their way to the plantations. Their movement is directed and coordinated, a process that is much more complex and permanent than a simple arrangement between three parties – i.e. agent, individual worker and plantation. Recruitment of workers can be characterized as deliberate and structured to achieve a population movement, a recruitment and migration industry together and as one.

Professors Biao Xiang and Johan Lindquist, anthropologists from Oxford University and Stockholm University respectively, spent considerable time researching and documenting the recruitment of migrants and describe the situation not as a process or network but as “recruitment infrastructure”. They found that the number of licensed recruitment companies and informal brokers in Indonesia has grown significantly since the 1997 Asian economic crisis.⁴⁵ This expansion corresponded with an increasing number of workers being sent abroad, from 200,000 workers in 1995 to 700,000 workers in 2007.⁴⁶

Their work provides the basis for a clear and compelling argument that many workers coming to Malaysia from Indonesia arrive already bound into complex unlawful ongoing arrangements, such as high-interest-rate debt (e.g. loan sharking), payment for their own recruitment, and deception regarding labor type. We believe these conclusions should put any business relying on such labor on notice of worker vulnerability that needs to be remedied, not exploited. The nature of this ongoing recruitment infrastructure is common and is general knowledge. SDP contracts with many Indonesian workers as already discussed above, and they should have the corporate governance, risk management and internal controls to ensure that the hiring and onboarding process for foreign workers on plantations ensure they are treated and received in a manner that resolves and mitigates issues arising from their recruitment – e.g. debt and contract substitution – rather than exacerbating their experiences and turning them into mechanisms for further abuse.

South Asian foreign workers – historical context

In 1910, indentured labor in Malaya was abolished, and replaced by a structured agency scheme, the kangani system, which focused on bringing Indian workers to Malaya via a brokering arrangement which often left the workers on rubber plantations in debt and poverty. Kangani means “overseer” or “foreman” in Tamil. The kangani would recruit workers from his home area and facilitate their transition into workplaces in Malaya. The kangani system had been employed earlier in the Straits Settlements but became increasingly popular, since by using it employers could bypass commercial or independent

⁴⁵ Biao Xiang and Johan Lindquist, “Migration Infrastructure,” *International Migration Review* Vol. 48 No. S1, 2014, pp. 123

⁴⁶ Biao Xiang and Johan Lindquist, “Migration Infrastructure,” *International Migration Review* Vol. 48 No. S1, 2014, pp. 123

intermediaries.⁴⁷ Arguably, the fact that the kangani received “head money” for each day worked by each laborer (which he lost if workers deserted) meant he had a vested interest in ensuring that they remained. The British were to abolish the last vestiges of kangani control over plantation workers in 1955, following the enactment of the 1955 Employment Act. However, it is argued that the Malaysian government essentially permitted a resurrection of the kangani role after it became the main plantation player⁴⁸.

Professor Amarjit Kaur, of the University of New England, concludes in her research paper, *Plantation Systems, Labour Regimes and the State in Malaysia, 1900–2012* that:-

“...divided by an interregnum during the quarter of a century immediately succeeding independence, Malaya/Malaysia’s colonial and contemporary plantation labour recruitment systems can arguably be seen as following two almost identical cycles. Both of these cycles rest on two factors: an overwhelming reliance on foreign migrant labour, as local labour is either considered absent in sufficient numbers (the colonial period) or deemed deserving of higher economic status (the contemporary period); and a general coincidence between the interests of plantation owners and government.”

Naturally, there are also differences between the two cycles described in this paper. Principally, these concern the commodity cultivated and the human subjects and objects of the processes described. Palm oil replaces rubber; the Malaysian government and Malaysians replace Britain and British plantation owners; and Indonesians replace Indian workers, while contractors replace kanganis.”

A problem as old as Malaysian industrial agriculture

As Professor Kaur sets out, the problems described by the workers interviewed in 2020 on SDP palm oil plantations would be very familiar to those working in rubber plantations 100 years ago. Debt bondage, fixed term contracts, movement restrictions, poverty and control through accommodation were the experience of plantation workers in colonial Malaya as they are in modern Malaysia. The problem then is not new to the country and its agricultural sector. Companies such as SDP with such a long history in the industry – Golden Hope Plantations Berhad, one of the plantation groups which merged with several other companies to form SDP as we know it today, was established in 1905⁴⁹ – can have few reasons not to have a complete understanding of the current problems of labor abuse and forced labor within

⁴⁷ Plantation Systems, Labour Regimes and the State in Malaysia, 1900-2012, Professor Amarjit Kaur, Journal of Agrarian Change, Vol 14 No.2, April 2014 pp 190-213

⁴⁸ Plantation Systems, Labour Regimes and the State in Malaysia, 1900-2012, Professor Amarjit Kaur, Journal of Agrarian Change, Vol 14 No.2, April 2014 pp 190-213

⁴⁹ https://en.wikipedia.org/wiki/Golden_Hope

the context of the history of Malayan and Malaysian industrial agriculture, and not to be able to create effective governance and controls to remove it from their operations.

Supply Chain into the United States

A crucial element of Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) is that there is the importation of the goods or products into the United States of America. It is understood that U.S. Customs and Border Protection are readily able to determine the details of goods lawfully imported into the United States. However, it was useful to be able to identify at least one supply chain likely coming from one of the plantations examined and be able to follow that supply chain from the plantation, to a mill and refinery, to the wholesaler/shipper and to warehousing in the United States. Details are not included in this Summary.

Conclusion

Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced labor or indentured child labor – including forced child labor. Such merchandise is subject to exclusion and/or seizure, and may lead to a criminal investigation of the importer(s).

The Petition sought to show that some palm oil products by SDP are at least in part produced in circumstances described by workers and activists as forced labor, as set out against the ILO Indicators of Forced Labour. The findings here are supported by the findings of other civil society members and by academics and researchers.

Furthermore, we wanted to understand whether SDP's corporate governance, risk management and internal controls across their businesses are sufficient and are implemented effectively, such that they protect workers on SDP plantations/estates and prevent abuse and conditions and treatment constituting forced labor. Corporate disclosure by SDP on human rights and sustainability is extensive and made widely available but findings from the audits of plantation operations, and the wide variance in the experiences described by workers, show that corporate governance, risk management and internal controls do not seem to create an ongoing consistently managed operational environment on the plantations/estates that benefits the workers to the extent that there is protection and prevention against conditions of forced labor and abuse. Responses by interviewed workers describe a working environment on the plantations/estates that leaves them vulnerable to arbitrary and subjective decision making from plantation managers and mandors. From our research, the SDP's current corporate governance, risk management and internal controls seem insufficient to provide consistent and reliable prevention and protection, especially considering that many foreign workers arrive on plantations already vulnerable due to unlawful and criminal recruitment practices.

Duncan Jepson
Managing Director
For and on behalf of

LIBERTY SHARED
CREATING AN ENVIRONMENT
SAFE FROM TRAFFICKING