



Working Towards a “Brussels Effect” on Forced Labour in Malaysia

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Executive Summary

Forced labour is a persistent problem worldwide. International organizations, including the European Union, and several countries – led by the United States - seek to end abusive labour practices. Their commitment is reflected in new domestic regulations, due diligence requirements for companies, new provisions in trade agreements, and additional customs requirements that align with international norms such as those endorsed by the International Labour Organization. However, implementation and enforcement remain problematic.

This paper outlines recent developments in the fight against forced labour and uses Malaysia and the palm oil industry in Malaysia as a case study to show how a specific country is attempting to meet international standards and present itself as a reliable partner. The policy recommendations made here can assist the European Union in the development of more effective regulations against forced labour in order to assume a global leadership role.

These recommendations include asserting moral leadership by immediately and forcefully addressing forced labour problems that exist in EU Member States; ensuring that new regulations do not restrict trade and avoid the temptation of protectionism; differentiate between countries with a track record of systemic forced labour and those who recognise and are attempting to resolve labour issues; and using EU partnerships and funding to support labour rights activities in partner countries.

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1. Overview of Global Forced Labour Issues

Recent reports of labour rights abuses from China and Qatar are reminders of the persistence of forced labour.² Governments and the private sector are increasingly aware of the problem and are addressing it with a variety of voluntary and regulatory measures.³ The European Foundation for Democracy has been working to end Uyghur forced labour in close cooperation with Uyghur organisations and activists.⁴

This paper is a continuation of and complement to these efforts. It defines forced (or compulsory) labour according to the International Labour Organization's (ILO) Forced Labour Convention, 1930 (No. 29), as "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily."⁵ In addition to coercion through physical violence, forced labour encompasses more subtle means such as debt bondage, retention of identity papers, and threats of denunciation to immigration authorities.⁶

The number of people working in conditions of forced labour is estimated at 25 million worldwide. Debt bondage (often based on debt incurred during the recruitment process) affects half of all victims of forced labour imposed by private actors.⁷ Another study found that the number of detected victims increased over the last 15 years. Their composition changed as well, with the share of adult women decreasing to less than 50 percent and the share of children increasing threefold to over 30 percent. The share of adult men nearly doubled to 20 percent. Forced labour conditions are particularly likely in agriculture, construction, fishing, mining, and domestic labour, where victims tend to work in isolated conditions.⁸

The prevalence of forced labour varies significantly from country to country: North Korea is the worst offender with an estimated rate of 104.6 per 1000 population, in part due to the high reliance on state-imposed forced labour. Malaysia is ranked 42nd in the world with a prevalence

² See for instance <https://www.ecchr.eu/en/case/china-zwangsarbeit-uighuren/> and <https://www.hrw.org/news/2022/05/18/fifa-pay-harm-qatars-migrant-workers>.

³ On the ineffectiveness of voluntary measures enacted via corporate social responsibility (CSR) practices, see Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It* (Cambridge & Medford: Polity Press, 2020).

⁴ <https://www.europeandemocracy.eu/event/forced-labour-in-china-time-for-concrete-measures-at-eu-level/>; <https://www.europeandemocracy.eu/publication/the-potential-consequences-of-doing-business-with-prc-firms-for-belgian-companies/>.

⁵ <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>.

⁶ https://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang--en/index.htm.

⁷ https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf and <https://www.globallslaveryindex.org/resources/downloads/>. Both reports rely on data collected between 2012 and 2016.

⁸ <https://www.unodc.org/unodc/frontpage/2021/February/share-of-children-among-trafficking-victims-increases--boys-five-times-covid-19-seen-worsening-overall-trend-in-human-trafficking--says-unodc-report.html> (using 2018 data).

rate of 6.9. For the sake of comparison, there is one EU member – Greece (7.9) - and two EU candidate countries - North Macedonia (8.7) and Albania (6.9) - with prevalence rates at or above that of Malaysia.⁹

2. Overview of Recent Global Developments on Forced Labour Regulations

International organizations and individual states have issued a plethora of regulations addressing forced labour. For the sake of brevity, this paper focuses on recent trends in the United Nations (UN) and affiliated agencies, the United States (US), and the European Union (EU). While there is a widespread commitment to end forced labour, Malaysia’s adoption, implementation, and enforcement of international conventions remain a challenge.

A. United Nations

Article 5 of the “UN Convention to Suppress the Slave Trade and Slavery” (1926) commits signatories to “prevent compulsory or forced labour from developing into conditions analogous to slavery.”¹⁰ While Malaysia is not among the 99 countries that ratified this treaty, it acceded to the “Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery” (226 U.N.T.S. 3, 1957).¹¹

The UN resolution “Transforming our world: the 2030 Agenda for Sustainable Development” (2030 Agenda) seeks to “eradicate forced labour and human trafficking and end child labour in all its forms.”¹² This commitment is further clarified in Sustainable Development Goal (SDG) Target 8.7, pledging to “take immediate and effective measures to eradicate forced labour.”¹³ Malaysia adopted the 2030 Agenda when it was issued in 2015. Since then, the country created a National SDG Council and presented two Voluntary National Reviews (VNR) in 2017 and 2021.¹⁴ Neither explicitly mentions forced labour, but the 2021 version addresses labour trafficking via a national action plan and outlines improved working conditions for foreign workers by increasing labour rights awareness, enforcing minimum housing standards, providing more social protections (including an app to report grievances) and health insurance.¹⁵ SDGs also feature

⁹ <https://www.globallslaveryindex.org/resources/downloads/>. Eritrea (93), Burundi (40), the Central African Republic (22.3) and Afghanistan (22.2) round out the “top five” (see Table 4, pp. 178-181).

¹⁰ <https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention>.

¹¹ <https://www.ilo.org/global/topics/dw4sd/themes/forced-labour/lang--en/index.htm>;
<http://hrlibrary.umn.edu/research/ratification-malaysia.html>.

¹² <https://sdgs.un.org/2030agenda>.

¹³ <https://www.unodc.org/roseap/en/sustainable-development-goals.html>.

¹⁴ <https://www.epu.gov.my/en/sustainable-development-goals>.

¹⁵ For the 2017 review, see <https://sustainabledevelopment.un.org/content/documents/15881Malaysia.pdf>. For 2021, see https://www.epu.gov.my/sites/default/files/2021-07/Malaysia_Voluntary_National_Review_%28VNR%29_2021.pdf.

prominently in materials used by the Malaysian palm oil industry to promote sustainability efforts and improved working conditions.¹⁶

The 2018 UN Resolution “Global Compact for Safe, Orderly and Regular Migration” addresses forced labour in Objective 6 (“Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work”). Key provisions include improving regulations of recruitment agencies to prevent debt bondage, strengthening national laws and public-private cooperation, and enhancing supply chain transparency.¹⁷ While Malaysia is a signatory, it did not participate in the 2022 International Migration Review Forum where members shared their progress on the implementation of the compact.¹⁸

B. International Organization for Migration

As coordinator of the UN Network on Migration, the International Organization for Migration (IOM) promotes the SDGs and combats forced labour due to the nexus between migration, criminal exploitation, and economic development.¹⁹ Malaysia is an observer state rather than a member.²⁰ However, IOM supports the government with counter-trafficking as well as immigration and border management programs. The Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) initiative also involves private actors to protect migrant workers and implement decent work standards.²¹

C. International Labour Organization

The International Labour Organization (ILO), a UN agency, offers a comprehensive set of tools to detect and end forced labour practices. First among these are the international labour standards (ILS), a body of legally binding conventions and protocols that ILO member states are encouraged to ratify. Assembled in the “Toolkit on Developing National Action Plans (NAP) on Forced Labour” (2020), the standards include the aforementioned Forced Labour Convention; the Abolition of Forced Labour Convention, 1957 (No. 105); the 2014 Protocol to the Forced Labour Convention, 1930 (No. 29); the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203); the 1998 Declaration on Fundamental Principles and Rights at Work, as well as several conventions that affect issues closely related to forced labour, such as collective bargaining, child labour, discrimination, and migration.²² Malaysia has been a signatory to the Forced Labour

¹⁶ See for instance <https://www.mpooc.org.my/about-mspo>.

¹⁷ https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_73_195.pdf.

¹⁸ <https://migrationnetwork.un.org/international-migration-review-forum-2022>.

¹⁹ <https://www.iom.int/migration-sustainable-development-and-2030-agenda>.

²⁰ <https://www.iom.int/observer-states>.

²¹ <https://www.iom.int/countries/malaysia>;

https://www.iom.int/sites/g/files/tmzbdl486/files/country/docs/malaysia/iom_malaysia_crest.pdf.

²² https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_762187.pdf.

Convention since 1957 and became the second ASEAN member state to ratify the 2014 Protocol to the Forced Labour Convention in March of this year.²³

The second important ILO tool to address forced labour is technical assistance in the form of eleven “ILO Indicators of Forced Labour” (2012). They are intended to help “front-line” personnel identify potential victims of forced labour.²⁴ Malaysian companies have incorporated these indicators into their certification processes (see below).

Lastly, the ILO encourages the international diffusion of best practices. A 2019 report, “Ending forced labour by 2030: A review of policies and programmes”, in support of UN SDGs lists several efforts to improve labour conditions in Malaysia: workshops for journalists to increase awareness of forced labour issues, the construction of Migrant Worker Resource Centres to offer social and legal services, unionizing migrant workers, bringing national legislation into ILO compliance, and improving anti-trafficking enforcement.²⁵

D. United States

The United States is currently the global norm-setting power when it comes to forced labour. In addition to the geographically targeted Uyghur Forced Labor Prevention Act, which went into effect on June 21 of this year, U.S. law covers forced labour more generally.²⁶

Enforced by U.S. Customs and Border Protection (CBP), Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) prohibits imports “mined, produced, or manufactured wholly or in part by forced labor, including forced or indentured child labor.” The law is triggered in the form of a “withhold release order” (WRO) when CBP receives an allegation of forced labour and the product in question is “reasonably” (but not necessarily “conclusively”) found to be made with forced labour.

A WRO functions as a contestable import ban with a relatively low burden of proof for the United States. However, the order is only modified or revoked if the producer has made “every reasonable effort” to trace both the source and type of labour used in the production of the merchandise (including its components).²⁷ This process includes an unannounced third-party audit that addresses all indicators of forced labour, a corrective action plan with implementation,

²³ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312174;https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_840054/lang--en/index.htm. For a list of ILO Conventions ratified by Malaysia, see https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102960.

²⁴ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

²⁵ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_653986.pdf.

²⁶ <https://www.cbp.gov/trade/forced-labor/UFLPA>.

²⁷ <https://crsreports.congress.gov/product/pdf/IF/IF11360>.

evidence of forced labour indicator remediation, and verification by the same third-party auditors.²⁸

There are currently 35 active WROs against Chinese entities, but Malaysia is in (distant) second place with six active WROs, two of which are targeting palm oil and palm oil products.²⁹ Since the United States is Malaysia's third-largest trading partner, after China and Singapore, these enforcement actions of Section 307 pose considerable economic risks to the country in terms of export revenues and foreign investment, but they can also become a catalyst for reforms.³⁰

E. European Union

The European Union has increased its regulatory output regarding forced labour in the last two years in an attempt to address particularly egregious abuses in China, to align its policies with the United States, and to demonstrate its commitment to a global leadership role on labour issues. EU regulations tackle forced labour directly, but normative statements on human rights and sustainability also impact Malaysia and its palm oil industry.

The "EU Action Plan on Human Rights and Democracy 2020-2024" (November 2020) establishes a baseline for subsequent policies by pledging to "promote...the eradication of forced labour." Partnerships, support for labour rights in EU trade relations, due diligence in global supply chains, and improving working conditions of migrants, including in third countries, are more specific means to this end.³¹

The EU currently provides financial support to civil society organisations under the European Instrument for Democracy and Human Rights (EIDHR) while maintaining a regular dialogue with the Malaysian Human Rights Commission (SUHAKAM) and the Malaysian Bar Council. Additional funding and capacity building is focused on the promotion of migrant rights.³² The "2021 EU Annual Human Rights and Democracy Country Report" welcomes Malaysia's launch of the "National Action Plan on Forced Labour 2021-2025" and the ratification of ILO Protocol 29 to the Forced Labour Convention, but also notes the persistent exploitation of migrant workers.³³

In July 2021, the EU Commission and the European External Action Service (EEAS) published new guidance to help the private sector avoid forced labour in supply chains. This document will be replaced by legislation on Sustainable Corporate Governance, which promises to contain a due diligence duty requiring EU companies to "identify, prevent, mitigate and account for

²⁸ https://www.cbp.gov/sites/default/files/assets/documents/2021-Oct/Slicksheet_Forced%20Labor%20What%20is%20in%20a%20petition%20for%20mod%20or%20a%20revocation%20508%20Compliant.pdf.

²⁹ <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

³⁰ <https://www.state.gov/u-s-relations-with-malaysia/>; <https://www.voanews.com/a/forced-labor-claims-at-malaysian-firms-spur-spate-of-us-import-bans-/6433838.html>.

³¹ <https://www.consilium.europa.eu/media/46838/st12848-en20.pdf>.

³² https://www.eeas.europa.eu/malaysia/european-union-and-malaysia_en?s=170.

³³ <https://www.eeas.europa.eu/sites/default/files/documents/2021%20EU%20Annual%20Human%20Rights%20and%20Democracy%20Country%20Report.pdf>.

sustainability impacts in their operations and supply chains.”³⁴ Until then, businesses are advised to implement a zero-tolerance policy for forced labour (including in recruitment and subcontracting), protect whistle-blowers, and raise internal as well as external awareness of indicators for forced labour. However, the guidance does not specifically mention enforcement or possible sanctions for noncompliance.³⁵

The “Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence” followed in February of this year. In addition to a corporate due diligence duty, the directive complements EU climate legislation, specifically more ambitious energy efficiency and renewable energy targets for member states by 2030 (“Fit for 55”). Another new element is a duty for the directors of covered EU companies to establish and oversee the implementation of due diligence processes and integrate them into corporate strategies.³⁶ Additional guidance is provided in an Annex, which lists adverse environmental and human rights impacts relevant for this directive.³⁷ The document has been criticised for its narrow scope, because small, medium, and micro enterprises, which account for about 99 percent of all EU-based companies, are largely excluded.³⁸ The proposed enforcement, sanctions, and remediation architecture is silent on the role of businesses. It relies on supervisory authorities of national governments for implementation while providing minimum standards, such as the principle of proportionality between infringement and remedy. Furthermore, civil liability is limited to “established business relationships with which a company expects to have a lasting relationship” rather than throughout the entire supply chain.³⁹

Combining a high-profile political commitment by the President of the European Commission in her “State of the Union” speech in September 2021 with this proposal and a parallel communication from the Commission on “decent work worldwide”, the European Parliament adopted a resolution in June of this year on a new trade instrument to ban products made by forced labour.⁴⁰ This latest attempt by EU institutions to catch up with their U.S. counterparts calls for a “WTO-compatible trade instrument to complement the corporate sustainability due diligence rules”. Among other details, it incorporates ILO indicators and standards to determine the existence of forced labour. It further recommends that product seizures should occur “on the basis of sufficient evidence that forced labour has been used,” while releases of seized goods require remediation so that “indicators of forced labour are no longer present”. Other important

³⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3664.

³⁵ https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159709.pdf.

³⁶ https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF.

³⁷ https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_2&format=PDF.

³⁸ <https://www.hrw.org/news/2022/02/28/eu-disappointing-draft-corporate-due-diligence>.

³⁹ https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF.

⁴⁰ For the full text of Ursula van der Leyen’s address, see https://ec.europa.eu/info/sites/default/files/soteu_2021_address_en_0.pdf.

stipulations are calls for technical assistance for smaller companies, creating an EU-wide coordination system, transparency requirements, a public list of sanctioned entities, and engagement with non-EU countries.⁴¹

The EU is Malaysia's fifth-largest trading partner, accounting for 7.4 percent of total trade, which implies that the country has a significant stake in EU regulations.⁴² On June 17, 2022, the Malaysian Palm Oil Council (MPOC) submitted comments on the proposed ban of products made by forced labour. It criticises the lack of a full impact assessment for the new initiative and calls on the Commission to base any import bans on "reliable and conclusive evidence", which is a higher threshold than the one established by U.S. authorities. On a more positive note, the MPOC feedback describes recent steps to combat forced labour in Malaysia and welcomes both continued dialogue and assistance from the EU in support of these efforts.⁴³

3. Malaysia's Palm Oil Industry and Forced Labour

The following sections provide details on the current state of the Malaysian palm oil industry, the extent to which all actors involved are aware of challenges, and how they are addressing them.⁴⁴

A. Relevant Data Points

Palm oil is "the world's most consumed and traded vegetable oil" as well as an essential part of Malaysia's economy, which is responsible for 26 percent of global production and 37 percent of global exports.⁴⁵ Agriculture (at 7.4 percent) is the third-largest contributor to Malaysia's GDP (services and manufacturing combined contribute 80 percent). Within that sector, oil palm is by far the most important product with a 37.1 percent share.⁴⁶ The Russian invasion of Ukraine and subsequent fears of an acute shortage of vegetable oils in Europe drove the market price of Malaysian crude palm oil to record highs in April of this year, but also kindled hopes in Malaysia for improved access to the European market.⁴⁷

⁴¹ https://www.europarl.europa.eu/doceo/document/TA-9-2022-0245_EN.html.

⁴² https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/malaysia_en.

⁴³ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13480-Effectively-banning-products-produced-extracted-or-harvested-with-forced-labour/F3316181_en.

⁴⁴ In addition to desk research, the empirical evidence in these sections comes from interviews and observations during a three-day visit to Malaysia in June 2022.

⁴⁵ The world's largest producer is Indonesia with a production share of 59 percent.

<http://palmoilscorecard.panda.org/#/context>; <https://mpoc.org.my/malaysian-palm-oil-industry/> (data is from 2020).

⁴⁶ https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=72&bul_id=TDV1YU4yc1Z0dUVyZ0xPV0p_tRIhWQT09&menu_id=Z0VTZGU1UHBUT1VJMFpaXRRR0xpdz09 (data is from 2020).

⁴⁷ https://bepi.mpob.gov.my/index.php/en/?option=com_content&view=article&id=1030&Itemid=136; <https://www.nst.com.my/opinion/columnists/2022/04/785491/europe-may-be-forced-turn-malaysian-palm-oil>.

Palm oil has the highest yield among all oil crops, accounting for 8.6 percent of global land use for vegetable oils while delivering 36 percent of global production. This yield is about four times higher than alternatives commonly grown in Europe, such as sunflower or rapeseed oil.⁴⁸ In 2021, Malaysian oil palm occupied an area of about 5.74 million hectares, of which 73.2 percent was planted by private and state agency estates, 15.1 percent by independent smallholders, and 11.1 percent by organized smallholders.⁴⁹ Farmers who own about 40 hectares or less are considered smallholders.⁵⁰

Palm oil is a labour-intensive product. It employs an estimated one million people (including downstream sectors), making it the second biggest employer after the Malaysian government.⁵¹ The industry, like many other parts of the Malaysian economy, is heavily dependent on foreign labour.⁵²

B. Consensus on Challenges

Macro- and micro-economic factors have created a labour market with a high potential for exploitation, which is neither systemic nor inevitable. Governmental actors as well as representatives of the palm oil industry – advocacy and marketing organizations, employers’ associations, trade unions, and certification boards – are working on solutions based on a shared understanding of current challenges, disagreements about details notwithstanding. Commonly identified areas in need of policy responses are recruitment, working and living conditions, sustainability, and the diffusion of new regulations and norms.

In terms of recruitment as well as working and living conditions, plantations rely on the manual labour of low-skilled migrant workers because locals tend to perceive this work as “difficult, dangerous, and dirty.” Conversely, migrant workers continue to seek employment in Malaysia as a pathway to better economic opportunities. The recruitment process is potentially exploitative because it is institutionally fragmented across national borders with limited transparency and accountability between employers, recruiters, and their local and regional subcontractors. The presence of a large number of actors, including unethical agents, in a complex labour supply chain complicates meaningful enforcement efforts by governments or the private sector.

Excessive fees, debt bondage, passport confiscations, and subsequent restrictions on workers’ movements can be the result. Beyond limited international cooperation and national differences between regulations for labour recruiters, there are cultural reasons for the persistence of

⁴⁸ <https://ourworldindata.org/palm-oil> (data is from 2018).

⁴⁹ https://bepi.mpob.gov.my/images/area/2021/Area_summary2021.pdf.

⁵⁰ https://theoilpalm.org/about/#Small_Farmers.

⁵¹ <http://mpoc.org.my/nearly-1m-work-in-oil-palm-industry/>. For the challenges in measuring the foreign population in Malaysia, see <https://documents1.worldbank.org/curated/en/892721588859396364/pdf/Who-is-Keeping-Score-Estimating-the-Number-of-Foreign-Workers-in-Malaysia.pdf>.

⁵² <https://www.verite.org/wp-content/uploads/2021/04/A-Brief-Guide-to-Ethical-Recruitment-for-the-Palm-Oil-Sector.pdf>. About 80 percent of workers in the palm oil industry are migrants from neighbouring countries. In comparison, the overall share of international migrants in Malaysia is 8.2 percent, based on 2021 data: <https://www.iom.int/countries/malaysia>.

practices that ILO and others consider to be illegal. For instance, many migrant workers secure employment through personal contacts or have been part of informal and, more importantly, undocumented labour migration networks that span generations and decades.⁵³ Upon arrival in Malaysia, the precarious position of foreign workers can then affect their working and living conditions. Pay below the legal minimum, lack of safety equipment and healthcare, the inability to organize collectively and access legal remedies, or being restricted to substandard housing have been reported. All of these issues occur more frequently among workers employed by smallholders.⁵⁴

Sustainability is a concern in Malaysia because it is a competitive advantage in relation to countries such as Indonesia, whereas environmental degradation poses reputational risks.⁵⁵ Deforestation and the concomitant endangerment or extinction of animal and plant life are the main reasons why palm oil is controversial in Europe.⁵⁶ Although the rate of deforestation in Malaysia has slowed in recent years, sustainability is an important topic for public and private actors.⁵⁷ The palm oil industry now advocates for its products by explicitly linking them to environmentally friendly production methods.⁵⁸ Industry representatives are also taking note of the growing importance of environmental, social, and governance (ESG) principles embedded in EU regulations, including on deforestation and finance.⁵⁹

Lastly, all participants in the Malaysian palm oil economy voice concerns about the need to spread awareness of new regulations and norms. This applies to international, national, and even company-level standards, such as grievance procedures and whistle-blowing. Migrant workers – as the arguably weakest link in the palm oil value chain – are especially likely to lack knowledge about their rights and responsibilities.⁶⁰

C. Recent Responses by the Public and Private Sector

The Malaysian government as well as the private sector, in an industry-wide capacity and as individual companies, are taking accusations of forced labour seriously and have responded with a series of initiatives. The overall goal is to create a regulatory regime in which government acts as a top-down enforcer, while workers should be empowered to hold both industry and public entities accountable from the bottom up.

⁵³ <https://www.verite.org/wp-content/uploads/2021/04/A-Brief-Guide-to-Ethical-Recruitment-for-the-Palm-Oil-Sector.pdf>.

⁵⁴ https://link.springer.com/chapter/10.1007/978-3-030-68944-5_10#Sec4.

⁵⁵ <https://www.eastasiaforum.org/2022/06/07/sustainable-palm-oil-production-is-in-malaysias-hand/>.

⁵⁶ [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/659335/EPRS_ATA\(2020\)659335_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/659335/EPRS_ATA(2020)659335_EN.pdf).

⁵⁷ <https://gfw.global/3tMI01M>. For an overview of sustainability initiatives led by the Malaysian Ministry of Environment and Water (KASA), see https://www.kasa.gov.my/roadmap/Roadmap_KASA_2020-2030-en.pdf.

⁵⁸ <https://www.palmoilhealth.org/category/sustainability/>.

⁵⁹ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5916; https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en. For a data tool assessing the ESG policy transparency of global palm oil companies, see <https://www.spott.org/palm-oil/>.

⁶⁰ <https://www.earthworm.org/uploads/files/recruitment-practices-malaysia-2019.pdf>.

1. National Action Plans and Laws

In addition to the adoption (or lack thereof) of international conventions as outlined above, the Malaysian government articulates its broadest commitments against forced labour in the first “National Action Plan on Forced Labour 2021-2025” (NAPFL). This document aligns with the already existing National Action Plan on Anti-Trafficking in Persons 2021-2025” (NAPTIP), the “National Action Plan on Business and Human Rights” (NAPBHR), and the “National Action Plan on Elimination of Child Labour” (NAPCL), the latter two of which are currently under development.⁶¹ The NAPFL will be implemented by the Ministry of Human Resources and focuses on a “4Ps” strategy: prevention (through raising awareness, enforcement, and strengthening migration management capacity), protection of victims (through improved identification and services), prosecution, and partnerships (including outside of government).⁶² The first measurable results of the plan are expected in a review in 2023.⁶³

Excluding Article 6 of the Federal Constitution (which prohibits all forms of slavery and forced labour except for compulsory service for national purposes) and the penal code, there are 16 national laws that address forced labour. In March of this year, Malaysia amended the “Employment Act 1955” with several provisions that improve working conditions and protect potential victims of forced labour.⁶⁴ In April, the Ministry of Human Resources announced an e-wages online system to monitor regular payments by employers (including foreign workers).⁶⁵ In May, the Prime Minister followed up with a minimum wage increase, which ostensibly benefits low-skilled workers, but may have also been electorally motivated.⁶⁶

In general, Malaysia’s laws forbid many practices associated with forced labour. For instance, the “Passports Act 1966” mandates that only those with lawful authority (an immigration, police, or customs officer) can hold the passport issued in the name of another person. This prohibition is strengthened by the “Employers Undertaking”, a pledge by employers to adhere to certain standards, such as paying the full levy cost of employing migrant workers, paying legally mandated wages, and avoiding passport retention.⁶⁷ Instances of violations thus suggest at least two areas of continued improvement for the public sector to achieve the elimination of forced labour: broader awareness and more consistent enforcement of existing laws.

⁶¹ For more information on the NAPBHR, see <https://www.undp.org/malaysia/blog/five-lessons-emerging-malaysias-first-national-conference-business-and-human-rights-2021>.

⁶² <https://www.mohr.gov.my/ebook/National%20Action%20Plan%20On%20Forced%20Labour/NAPFL%202021-2025.pdf>.

⁶³ https://www.ilo.org/asia/media-centre/news/WCMS_829873/lang--en/index.htm.

⁶⁴ https://mpma.org.my/v4/wp-content/uploads/2021/11/DR-1_2021-BI.pdf.

⁶⁵ <https://www.nst.com.my/news/nation/2021/04/686475/e-wages-system-monitor-salary-payments-employers>.

⁶⁶ <https://www.eastasiaforum.org/2022/06/09/who-gains-from-the-minimum-wage-hike-in-malaysia/>.

⁶⁷ https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_717944.pdf.

2. Industry Standards

The Malaysian palm oil industry recognises that governmental mandates alone are insufficient in the fight against forced labour and has taken several steps to become a regional standard-setter.

a) MSPO Certification

The Malaysian Sustainable Palm Oil (MSPO) Certification Scheme may have the greatest potential impact on the industry's reputation, including its ability to curb forced labour practices and promote sustainable practices. It has recently undergone a revision that included the involvement of trade unions and ILO-endorsed worker groups. Governed by the Malaysian Palm Oil Certification Council (MPOCC), MS2530:2022 is a mandatory national scheme for Malaysian oil palm estates, independent and organised smallholders, and palm oil processing facilities. Applicants must undergo a multi-stage auditing process run by an accredited third-party certification body (CB), which assesses and verifies that management is in compliance with MSPO standards. These standards now incorporate social components (explicitly addressing forced labour according to ILO indicators, child labour, discrimination, and ethical recruitment) as well as deforestation and climate change.⁶⁸ An important change with implications for recruitment and supply chain liability is the stipulation that businesses must treat contract employees as if they are direct employees.⁶⁹ Almost 98 percent of sector holdings, from oil palm plantations to smallholders to mills, are currently MSPO certified, but will have to be recertified according to the new standards beginning in 2024.⁷⁰

MPOCC notes two main benefits of the MSPO scheme: internally, certification is a prerequisite for an operating license, and externally, the industry can meet the global demand for sustainability criteria in the importation of palm oil products. However, the council also concedes that independent smallholders remain the most challenging segment for certification, in part because of a lack of understanding and knowledge of the requirements as well as due to the additional costs of the process (which are mitigated by financial aid).⁷¹ Another area for improvement is the need to communicate the MSPO scheme to a wider audience, particularly in Europe.⁷²

⁶⁸ <https://www.mpocc.org.my/about-mspo>. For a detailed outline of the certification steps, see https://947f1e9a-cdce-49fa-ac6f-bba3863f98eb.filesusr.com/ugd/3ef157_a953382c869d4ef08e086bf65b354867.pdf. For an evaluation of the previous scheme, especially its neglect of smallholders and migrant workers, see https://www.forestpeoples.org/sites/default/files/documents/Palm%20Oil%20Certification%20Standards_lowres_spreads.pdf.

⁶⁹ <https://www.mypalmlaborfacts.com/malaysias-mspo-takes-big-steps-on-labour-rights-compliance/>.

⁷⁰ <https://www.cspo-watch.com/malaysian-sustainable-palm-oil-scheme-progress.html>;
<https://www.mpocc.org.my/mpocc-announcements/circular-on-transition-to-ms25302022-standard-series>.

⁷¹ <https://www.mpocc.org.my/faqs#gettingstarted>.

⁷² <https://www.theparliamentmagazine.eu/news/article/mspo-sustainable-palm-oil-redefined>.

b) RSPO Certification

This certification standard, governed by the Roundtable on Sustainable Palm Oil (RSPO), is a global and voluntary scheme.⁷³ It is widely accepted by companies in Western markets, which purchase Malaysian palm oil, although the majority of RSPO-certified palm oil is currently produced in Indonesia.⁷⁴ Because the Roundtable originated in the sustainability movement, it was initially judged to have established more stringent environmental (but not necessarily labour) standards than MSPO.⁷⁵ While it is too soon to conduct a formal comparison between RSPO and the new MSPO, the latter certification scheme now appears to be more rigorous in terms of labour rights and compliance, which may change when RSPO reaches the end of its five-year review cycle in 2023.⁷⁶

c) Responsible Employment Charter

In December 2021, the Malaysian Palm Oil Association (MPOA) launched the “Responsible Employment Charter”, which commits its members to the “responsible recruitment and treatment of their workers”. This voluntary commitment is based on UN principles, ILO conventions, national laws, and MSPO standards. However, there are no enforcement provisions, and individual companies are responsible for the implementation.⁷⁷

3. Actions by Individual Companies

Intent on improving the international image of palm oil and aware of potential labour shortages, leading companies in the Malaysian palm oil industry want to be perceived as “employers of choice”.⁷⁸

Sime Darby Plantation, currently the target of an active WRO, issued a new “Migrant Worker Responsible Recruitment Procedure” in August 2021 which promises “no charging of recruitment fees and related costs”, “clear and transparent terms and conditions of employment”, “no withholding of passports or personal documents”, and “non-discrimination”.⁷⁹ In February of this year, the company went further and established a fund to reimburse current and former migrant workers who paid recruitment fees for job referrals.⁸⁰

Sime Darby also touts its commitment to “ensuring favourable working conditions” by listing several benefits for all of its field workers, including paying at least the national minimum wage (with overtime premiums) as well as free in-kind provisions such as food, housing, transportation,

⁷³ <https://rspo.org/standards>.

⁷⁴ <https://rspo.org/about>.

⁷⁵ https://wwfmy.awsassets.panda.org/downloads/rspo_vs_msपो_report_2018.pdf.

⁷⁶ <https://rspo.org/standards-review-2022-2023>.

⁷⁷ <https://www.mypalmlaborfacts.com/wp-content/uploads/2021/12/MPOAEmploymentCharter-121621.pdf>.

⁷⁸ <https://www.aljazeera.com/economy/2022/5/25/malaysian-palm-oil-giant-seeks-to-revive-image-amid-labour-claims>.

⁷⁹ https://sime-darbyplantation.com/wp-content/uploads/2021/12/210820_Recruitment-Policy.pdf. IOI Group, another large palm oil producer, had already announced a “no recruitment fee” policy in 2017, see <https://www.ioigroup.com/Content/S/PDF/Foreign%20Workers%20Recruitment%20Guideline%20Procedure.pdf>.

⁸⁰ <https://www.reuters.com/article/malaysia-labour-sime-darby-idUSL4N2UQ1OJ>.

education facilities, and access to medical care.⁸¹ As an additional accountability tool, workers can seek advice or file grievances anonymously via three third-party channels. The company advertises these channels and other information, such as wage calculations, in seven languages.⁸²

4. Recommendations for EU Policymaking on Forced Labour

As this paper has shown, there is no shortage of international regulations to address forced labour. The case study of Malaysia and the Malaysian palm oil industry also suggests that a country facing credible allegations of forced labour can draw on international norms to reform its own laws and regulations. This constellation prompts several questions and recommendations for the European Union.

A. Leadership

The United States is currently leading the global fight against forced labour. If the EU is interested in achieving a “Brussels effect” – that is the “unilateral power to regulate markets” beyond one’s own jurisdictional borders – it should prioritize solving its own substantial forced labour issues.⁸³ Inaction on this front may be inconsistent with global trade rules, invites claims of hypocrisy by trading partners such as Malaysia, and confirms the perception in some developing countries that the focus on forced labour outside of the EU is used to shield domestic industries from competition.

B. Better Regulations

The EU is committed to “making simpler and better” laws.⁸⁴ Improved communications with stakeholders and increased transparency to evaluate the evidentiary basis for a regulation are vital parts of this agenda.⁸⁵ However, these two goals should also apply directly to the content of regulations. In the case of proposals to ban forced labour and punish companies that employ it, this means that the EU should be as clear and precise as possible about the requirements that will be imposed upon importers. The EU needs to codify what constitutes a violation (i.e., what

⁸¹ <https://sime-darbyplantation.com/sustainability/human-rights-statement/>.

⁸² <https://www.foodingredientsfirst.com/news/reporting-human-and-labor-rights-in-palm-oil-nestlé-and-sime-darby-plantation-launch-worker-helpline.html>; <https://www.eco-business.com/news/can-technology-save-the-palm-oil-industry/>; <https://dagangnews.com/sime-darby-extends-voice-helpline-across-its-operations-malaysia>.

⁸³ Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (New York: Oxford University Press, 2020). For examples of forced labour in the EU or enabled by the EU, see https://www.researchgate.net/publication/321988148_Exploitation_of_migrant_labour_force_in_the_EU_agriculture and https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_QATAR.pdf.

⁸⁴ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en#documents.

⁸⁵ https://ec.europa.eu/info/sites/default/files/better_regulation_joining_forces_to_make_better_laws_en_0.pdf.

As mentioned above, MPOC has recently taken advantage of the opportunity to provide feedback to a proposed directive.

kind of evidence brought forth by whom produces a finding of forced labour practices), what sanctions are being enforced in such a case, and what a sanctioned company needs to do to remedy the violation and regain its ability to access the EU market. These stipulations also suggest that actions against forced labour should be taken in accordance with international trade rules and thus minimize trade restrictions.

C. The Spectrum of Forced Labour

Unlike China, which dismisses evidence of forced labour in Xinjiang as “the lie of the century”, Malaysia is not only acknowledging instances of forced labour, but is willing to take meaningful steps to improve its record.⁸⁶ The EU should support these and subsequent actions and encourage countries that want to be reliable partners. One way to do so is to incentivise Malaysia’s accession to additional human rights treaties and IOM membership.⁸⁷

D. Trust but Verify

In order to provide meaningful and targeted support, the EU should remain in regular contact with actors in Malaysia and the Malaysian palm oil industry to monitor latest developments, such as the new MSPO standards and their implications for forced labour and sustainability. This process also includes understanding the historical context of the industry and the potential for backsliding.

E. Credible Commitments

One element of US leadership against forced labour is financial support. The Bureau of International Labor Affairs (housed within the US Department of Labor) currently operates four programs related to forced labour in Malaysia with a total funding commitment of over \$ 36 million.⁸⁸ Is the EU willing to match or surpass this amount – and if so, where does it want to invest its money?

F. Spread the Word

Despite Malaysia’s reform efforts, various actors in the public and private sector have confirmed that there are capacity barriers to raise awareness of forced labour issues, particularly among smallholders and migrant workers. SUHAKAM is already developing human rights training guidelines for publicly listed companies and is allowed to receive external funding for these and similar educational activities.⁸⁹ Targeted EU funding and technical assistance could build or improve local, regional, and even international outreach programs.

⁸⁶ <https://www.nytimes.com/2022/06/20/business/economy/forced-labor-china-supply-chain.html>.

⁸⁷ Malaysia stands out for having signed and ratified only three international human rights treaties, the lowest number among ASEAN countries. <https://upr-malaysia.com/why-human-rights/>.

⁸⁸ https://www.dol.gov/agencies/ilab/projects?field_ilab_region_target_id=All&field_project_ilab_project_reg_target_id=5530&field_project_grantee_target_id=All&field_office_target_id=All&active_select=between&active_on_date=&active_from_date=&active_to_date=&funded_select=infiscalyears&field_fiscal_year_value=All&funded_from_year=All&funded_to_year=All&items_per_page=10. I was unable to locate a similar data portal to obtain information on current EU funding in Malaysia.

⁸⁹ <https://suhakam.org.my/portfolio/human-trafficking/>; <https://suhakam.org.my/portfolio/migrant-workers/>.

5. Conclusion

The European Foundation for Democracy is presenting this paper as a contribution to its ongoing activities addressing forced labour. More importantly, the overview of recent global developments and the case study of Malaysia provided here argue that the European Union has a unique opportunity in a favourable environment. Not only is forced labour a timely and highly relevant topic, but in contrast to other parts of Asia, there is a receptive audience in Malaysia willing to cooperate with EU institutions.

The European regulatory regime can impact forced labour directly, as part of an evolving body of human rights law, and subsumed under sustainability goals. These concurrent pathways can lead to regulations that rely on empirical evidence, take local contexts into consideration, provide precise guidance, and culminate in consistent enforcement. When backed by financial and technical assistance to raise awareness of new norms in partner countries, this constellation will allow for the EU to stake a credible claim as a global leader in the fight against forced labour.