



Migrant Workers in Malaysia – Issues, Concerns and Points for Action

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Issues: Economic, Legal and Political Context

Malaysia has been experiencing close to full employment since 1990, yet population growth in Malaysia is relatively low, estimated at 1.74% in 2008. Total population stands at approximately 25.27 million, and is steadily aging with an estimated 13.2% over 50 years of age in the year 2000.¹ The size of the work force is estimated at 10.94 million in 2007. Many Malaysians are no longer willing to perform jobs that they consider as 3-D (dirty, difficult and dangerous), creating demand for migrants in sectors like plantations/agriculture, construction, manufacturing, and some service occupations. The number of documented migrant workers now in the country is 2.1 million persons, meaning that 25% to 30% of the work force is composed of migrants. When combining the unknown yet significant number of undocumented migrant workers, observers from NGOs, migrant support organizations, and the Malaysian Trades Union Congress (MTUC) estimate that there are between 1 to 2 million undocumented migrant workers, meaning that as many as 1 in 3 of the workers in the country are migrants.

Migrant workers currently come from more than 12 countries in Asia, with the majority coming from Indonesia. Other major source countries include Nepal, Bangladesh, India, Pakistan, Vietnam, Cambodia, Thailand, and the Philippines. All observers believe that migrant workers will continue to play an essential role in many sectors of the Malaysian economy, including manufacturing, for the foreseeable future.

Malaysia is a signatory to the UN Convention on Elimination of Discrimination Against Women (CEDAW), the UN Convention on the Rights of the Child (CRC), and has ratified five of the eight core ILO Conventions. Malaysia is also a member of the UN Human Rights Council. It is also a signatory to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, adopted by ASEAN in January 2007. According to ASEAN insiders it was Malaysia that played a major role (along with Singapore) in watering down provisions of the ASEAN Declaration and ensuring that undocumented workers, and families of migrant workers, are not included in the Declaration's coverage. Nevertheless, Article 8 of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, states that governments shall "promote fair and appropriate employment protection,

¹ This figure of over 50 year-olds in the population is expected to rise to 22.9% by 2030 and 29.7% by 2050 (Watson Wyatt Worldwide survey).

payment of wages, and adequate access to decent working and living conditions for migrant workers.”

Major issues of terms and conditions of work are regulated by the Employment Act and the Workman Compensation’s Act, overseen by the Labour Department. Issues regarding relations between employers and workers are covered by the Industrial Relations Act, while labor unions are regulated by the Trade Union Act. These laws are all overseen and implemented by the Ministry of Human Resources. A new Anti-Trafficking Act came into effect in 2008 and contains language that is in line with the standards set out in the UN Palermo Protocol (effectively criminalizing trafficking for forced labor) but implementation so far has focused primarily on cases of trafficking for sexual exploitation.

However, there is no Foreign Workers Act or other similar law that unifies regulation of migrant worker issues in one law. A comprehensive law is being drafted by the Malaysian Government but the draft has not been shared outside of government circles nor has a timetable been set for the law to be considered by the Cabinet, and ultimately, the Parliament. While there are disagreements on what the content of such a law should be, the concept of writing a comprehensive law has broad support among NGOs, trade unions, and employers groups. A previous attempt to develop such a law was not successful. The result is migrant workers affairs are regulated through a series of immigration laws and regulations, supplemented by policies from the Ministry of Home Affairs (MHA) which issues work permits, and labor laws overseen by the Ministry of Human Resources (MHR).

Documented migrant workers who have entered Malaysia to work are required to work only for the employer who brought them into the country. Work permits are good for one year, and can be renewed annually for up to three years.² A migrant worker’s employment can be terminated, and the worker’s work permit cancelled, by the employer at any time – and without the permit, the migrant worker becomes immediately subject to arrest and deportation. A migrant worker must also undergo mandatory health checks while in Malaysia and if the worker is found with one of the communicable diseases on the government’s exclusion list (such as TB, HIV/AIDS, etc.), s/he is automatically excludable and will be deported.³ Work permit renewals must be done by the employer, usually starting three months before the work permit is to expire – but according to cases received by Tenaganita and other migrant worker advocates, there have been many documented cases where employers allow work permits of lapse as a way to terminate workers, or discriminate against individual workers who are seen as playing a leadership/organizing role among their peers.

Undocumented workers who are arrested by the authorities and/or the People’s Volunteer Corps (Relawan Rakyat Malaysia, commonly known by its Malay acronym, RELA) are sent to detention camps. The Malaysian Government has set up Special Courts in the detention camps – but these courts have been strongly condemned by the Malaysia Bar Council as facilitating a court process where migrant

² For skilled workers, further extensions are possible – and employers can appeal for additional extensions if they can satisfy the authorities about the skills of the worker(s) in question.

³ The Ministry of Health (MOH) does not conduct the health checks directly, but has subcontracted management of the process to a private firm, Fomema Corporation (www.fomema.com.my).

workers are not given the right to understand charges and processes against them in their own language, and are effectively denied the right to legal counsel. Penalties for being an undocumented worker in Malaysia include monetary fines, imprisonment, corporal punishment (up to six lashes for men, none for women), and deportation. The Malaysian Bar Council estimates that 33% of the prison population is foreign born, but migrants are responsible for only 2% of the crimes committed every year in the country.

The Malaysian Government does not have a comprehensive legal and policy framework to regulate the recruitment, admission, placement, treatment, and repatriation of migrant workers. Oversight of migrant workers is divided among ministries, and even within ministries, between various departments. The MHA is in charge of approving applications to bring in migrant workers and overseeing manpower companies, while the MHR (Labour Dept. and Industrial Relations Dept.) are tasked with receiving and acting on complaints by migrant workers. The Police and Immigration Department are tasked with enforcement, but have delegated significant powers to the RELA, which is an armed (yet poorly trained and part-time) volunteer corps that has been repeatedly accused of serious human rights abuses against migrant workers and resident foreigners.⁴ RELA has the authority and power to stop any person who they believe to be a terrorist, undocumented migrant, or other undesirable person and arrest them without a warrant, and enter and search premises without a warrant. RELA is greatly feared by migrant workers: RELA has been implicated in the deaths of migrant workers⁵ and has been widely condemned by groups in the international community.

Migrant advocates in the NGOs and trade unions are strongly advocating that core responsibility for the migrant workers be shifted away from the “national security” context, and coordination of migrant policy taken out of the MHA and placed in the MHR. The rationale is that the MHR is in charge of regulating employment and so they are best positioned to determine in which commercial sectors and industries there is actually demand for migrant labor, and set out appropriate regulatory schemes to oversee those workers. These advocates are also calling for creation of an effective Inter-Ministerial Coordinating Body to handle policies, programs, and plans for migrant workers – with the MHR in the chair, and the Ministries of Home Affairs, Health and Education as members. They claim that the existing Inter-Ministerial Committee, which operates at the Cabinet level, is neither transparent nor effective. The demand for the MHR to be placed in charge of migrant workers matters is also reportedly supported by the major employer federations.

Malaysia has been subjected to increasing public criticism by labor-sending countries in the region, such as Cambodia, Indonesia, Philippines, Thailand and Vietnam. So far the Malaysian Government has not been terribly responsive to these criticisms, but there is a possibility that this could change. The lesson of the passage of the Anti-Trafficking Act in late 2007 is illustrative of the tempo of international criticism

⁴ Amnesty International refers to the RELA as “a body that has been known to act in an arbitrary and overzealous manner” and has strongly opposed efforts by the Government of Malaysia to establish RELA as a permanent department with greater authority and ability to source funds for its own budget.

⁵ In February 2007, the bodies of 5 migrant workers who drowned in a pond while fleeing a RELA raid were found – including one body which showed clear signs of physical abuse inflicted before the person drowned.

finally reaching a level (topped by the U.S. Government classifying Malaysia as “Tier 3,” the worst level, in its anti-trafficking report in 2006) where the Malaysian Government felt compelled to act.

Concerns and Points for Action

Labor Outsourcing Firms, Factories and Migrant Workers: Who is the Legal Employer?

Concern: A fundamental problem facing companies sourcing from manufacturers in Malaysia is the status of the migrant workers who are working in the factories. Starting in August 2006, companies who are hiring fewer than 50 foreign workers are required to use the services of labor outsourcing companies. These labor outsourcing companies are approved and regulated by the Ministry of Home Affairs and by August 2008, there were 277 such companies operating in Malaysia. This change essentially means that responsibility for labor management has moved from the employer (where the worker is toiling) to the outsourcing company.

Numerous NGOs, trade unions, and other migrant rights advocates have raised critical questions about the lack of effective oversight by the MHA over these companies. Judging the outsourcing system is untenable, advocates at the National Consultation on the Protection and Promotion of the Rights of Migrant Workers (August 14-15) repeated their consistent demand that the outsourcing system be scrapped.

Points for Action: For Fair Labor Association (FLA) member companies, the significant issue is designating who is the responsible employer for ensuring that wages, conditions of work, and other aspects of the treatment of migrant workers (such as accommodation, access to medical care, etc.) comply with the relevant national labor laws, the FLA Workplace Code of Conduct, and the FLA member company’s own code of conduct. Workers hired by such labor outsourcing companies remain the employees of those companies and not the factories where they work. Under this arrangement, it becomes technically possible for a factory owner to claim that s/he is not legally responsible for the unlawful treatment accorded to migrant workers in his/her factory because they were provided by a labor contractor. Malaysian migrant worker policy generally requires the migrant worker to remain employed by the employer that applied for and brought the worker into the country – and makes migrant workers who lose their job with that employer immediately deportable.

Therefore, where documented migrant workers are employed in facilities producing for FLA member companies, it is important for the FLA and its members to proactively assess whether those migrant workers are direct employees of the factory in question or are being provided by a labor outsourcing company. In some cases, there may be multiple outsourcing firms involved. The open question is the relationship between the factory management and the labor outsourcing company and the degree to which the factory management can (and wants to) control the wages and conditions of work of migrant workers provided by such outsourcing firms. NGOs such as Tenaganita also claim that in the course of their casework in support of migrant workers they have often found collusive arrangements exist between factory human resource managers and the labor outsourcing firms. Such arrangements could

pose obstacles to efforts by the FLA and its members to insist factory management assert more direct contractual responsibility for migrant workers.

Where labor outsourcing is found, there are a number of options for action by the FLA and its members. Ideally there should be a requirement from the FLA members that all migrant workers in the factory be directly hired by the factory, i.e., no workers allowed from labor outsourcing firms. However, in the short term some transitory provisions might also have to be devised to ensure that documented migrant workers (provided by labor outsourcing firms) are not fired as a result of FLA affiliated companies' actions.

Greater regulation of the relationship between the factory and labor outsourcing firms is another possibility. Such regulation might be attempted through a number of means:

- FLA member companies could insist that their suppliers compel introduction and enforcement of standard contracts by outsourcing firms with whom they have contracted. These contracts could be made compliant with the FLA Workplace Code of Conduct and contain provisions that ensure compliance with national laws and regulations.
- Since payment of migrant workers' salaries is used as a control mechanism over workers, FLA member companies could also insist that their suppliers make direct payment of wages to the migrant workers rather than through the outsourcing firm, which often make deductions.
- Other interventions could focus on easing the other control mechanisms that outsourcing firms employ against migrant workers, such as seizure of workers' passports, imposing restrictions on movement and association (sometimes with actual guards, sometimes with threats of the police or RELA) at workers' accommodation, and imposing other unlawful requirements on workers.
- Providing access for workers to freely remit earnings to their home country (without having to pass money through the outsourcing company) is another way FLA member companies should encourage their suppliers to consider.

Throughout this discussion, it is important for FLA member companies to remember that almost all migrant workers have taken a life-changing risk to come to Malaysia. These migrant workers have all paid significant sums of money in advance (often to origin-country brokers, who work closely with Malaysian outsourcing firms), mortgaging homes and property, and taking loans from underground lenders (loan-sharks), in order to migrate for work in Malaysia. Facing extremely high interest rates and financial pressure on their families, they are fearful and easy to intimidate, and desperate to earn money to repay their debts in the origin country.

Equal treatment for migrant workers provided but not enforced

Concern: Specific guidelines for treatment of migrant workers are outlined in the Policy on Recruitment of Foreign Workers adopted in 1991. This policy sets out that

wages and benefits, and terms and conditions of employment will similar to those provided to local workers under relevant national labor legislation. The policy requires that all migrant workers must have a written contract. Costs involved with the recruitment of the work, and the repatriation of the worker after completion of the contract, are also to be paid by the employer. Finally, the policy also stipulates that employers must make available clean and hygienic housing and food to migrant workers they employ.

The problem is that this policy is far from effectively enforced, and a two-tier system, with local employees receiving better pay and benefits, and migrant workers receiving far less, exists in virtually every economic sector where migrants are employed. Migrant workers themselves are also largely unaware of their rights, the Malaysian labor laws and policies, and avenues for redress. Many are also confused about the terms of their contract because they are victims of “contract substitution.” This means that migrant workers sign a contract in their country of origin with a labor recruiter that usually offers lucrative pay and conditions, but when they arrive in Malaysia, they are compelled by their employer to sign a different contract, usually with much lower wages and benefits, which is presented to them as their legal contract.

Points for Action: FLA member companies should require enterprises in their supply chain to comply with the Policy on Recruitment of Foreign Workers. FLA member companies should also closely examine migrant worker contracts, and their actual terms and conditions of employment, to see whether they comply with the requirements of the national labor laws, especially the Employment Act of 1955.

Another option that is being advocated by NGOs is the creation of standard migrant worker contracts for each economic sector, adapted to the needs of that sector but also compliant with the national labor laws and regulations. FLA member companies could consider solutions through use of standard contracts that stipulate conditions required by the FLA Workplace Code of Conduct, or other similar solutions employing standard contracts.

Difficulties for migrant workers to access justice

Concern: Article 60 (1) of the Employment Act of 1955 provides an avenue for migrant workers to file a complaint with the Director-General of Labour in cases where a “foreign employee is being discriminated against in relation to a local employee by his employer in respect of the terms and conditions of employment.” However, most complaints are filed under Article 69 of the Employment Act, which provides authority for the Director-General to investigate and issue orders based on terms and conditions of contracts, wages, and provisions of the Employment Act. For issues of unfair dismissal, complaints are filed by migrants under the Industrial Relations Act.

The complaints are filed by migrant workers, often with the assistance of NGOs and trade unions, with common areas of concern being non-payment of wages, late or partial payment, excessive working hours, cheating on wages (especially related to overtime premium pay and unauthorized deductions), refusal to provide paid leave (annual and sick leave), lack of medical benefits or assistance, failure to provide support and compensation in cases of occupational accidents, etc.

The problem is that documented migrant workers often are fired by employers for filing complaints with government officials or external advocacy groups like NGOs or trade unions. Termination of employment results in the ending of the work permit, which is the basis in law for the migrant's right to stay in Malaysia. Thus, filing a complaint prompts action by the employer that makes the migrant complainant subject to immediate deportation.

Malaysia has a "Special Pass" process that allows a terminated migrant worker to temporarily remain in the country while the worker's case is being considered, but this process is relatively difficult to access and expensive, and needs to be reformed. This Special Pass is issued by the Immigration Department using the authority under Regulation 14 of the Immigration Regulations of 1963 – granting discretion to the Immigration Department to allow an additional stay of one month for migrants for special reasons, and providing that the pass can be extended in one month increments. Often situations for which a Special Pass will be issued include complaints under consideration by the Industrial Relations Department or Industrial Court (matters under the IRA law), or before the Labour Office (Workman's Compensation Act or Employment Act), or in the Civil Courts when the decision of the relevant Department is appealed.

However, the Special Pass is issued at the discretion of the Immigration Department and there have been numerous cases when the denial of an application for the pass effectively short-circuits a worker's complaint to the relevant authorities. More than a hundred cases where this has occurred have been documented by Tenaganita. Moreover, the conditions of the Special Pass prohibit the worker from seeking employment, making it difficult for the worker to afford the 100 RM monthly fee charged by the Immigration Department. In cases where specific periods of time are granted (for example, 2 or 3 months), there are numerous instances where legal processes drag on and then for some reason the pass is not renewed – leaving the migrant worker with a dire choice of facing deportation, or becoming undocumented and subject to arrest at any time. A solution proposed by the Malaysian Bar Council to set out a procedure that will allow migrant workers to stay in the country until their complaint is resolved and to work during the period that their case is under consideration. This solution involves the issuance of a Special Pass, followed by a Visit Pass which permits the holder to work temporarily until the case is completed.

Points for Action: FLA member companies should inform suppliers that terminating documented migrant workers who file complaints with the Malaysian Government authorities is not an acceptable practice. FLA companies should also consider setting up effective outreach and monitoring processes (using the language of migrants⁶) to ensure that migrant workers can file complaints with codes of conduct monitors in a way that is confidential and ensures a timely response. Finally, FLA member companies should consider undertaking advocacy efforts with the Malaysian Government to ensure reform of the Special Pass system that makes the process more

⁶ For FLA member companies with world-wide monitoring programs, this may require setting up an effective referral system to handle the language issue. For instance, a company sourcing from a factory in Malaysia that employs workers from Bangladesh might have to send a Hindi language complaint from those workers to its codes of conduct monitor in Bangladesh for translation.

dependable and accessible, and gives workers a way to support themselves while they seek legal redress for their grievances.

Administrative and Contractual Restrictions on Migrant Workers' Right to Freedom of Association

Concern: A fundamental concern is the restrictions on migrant workers' right to freedom of association in Malaysia. According to the Trade Union Act of 1959 and the Industrial Relations Act of 1967, it is possible for a migrant worker to join an existing labor union and participate in its activities. However, Article 28(a) of the Trade Union Act requires that any union officer must be a citizen of Malaysia, effectively disqualifying migrant workers from serving as leaders of a union.

The MHA also sets out a series of conditions connected to the issuance of work permits to migrant workers. One of these conditions is an absolute prohibition on migrant workers joining any sort of association. Employers have interpreted this provision to mean that migrant workers are forbidden to join unions, and the MHA has declined repeated appeals by the MTUC to make a judgment on the employers' interpretation of this MHA policy. The employers have taken the next step to write the restrictions on association into migrant worker contracts, which contradict these legal guarantees of freedom of association, and the MHA has taken no steps to prevent this. The result is the MTUC and other migrant advocates state that they regularly see language in migrant worker contracts that forbid the worker from forming associations or other types of labor organizations. Violation of the terms of the contract is an offense that can be punished by termination – which then in turn leads to revocation of the migrant's work permit and initiation of deportation proceedings. Needless to say, the threat of firing and deportation prompts great fear in migrant workers who become reluctant to organize efforts among workers for mutual support and assistance.

This is a clear violation of Article 8 of Employment Act of 1955, which states that no provision of a service contract may restrict the employee's right to join and participate in the activities of a union or associate with others for the purpose of organizing a trade union.

During the National Consultation on the Protection and Promotion of the Rights of Migrant Workers, held in Shah Alam on August 13-14, 2008, protection of migrants' rights to freedom of association in law was publicly reaffirmed by a Deputy Permanent Secretary of the MHR. However, when asked whether a law or a policy is considered legally preminent, the MHR official declined to answer directly and said only that MHR considered that migrant workers had the right to join unions but that he could not speak for the MHA. According to the MTUC, Tenaganita and others, the problem is the MHA is looking the other way when contracts with anti-union provisions are presented to them.

Points for Action: In cases where documented migrant workers are present in factories, the FLA member companies should review all migrant worker contracts to ensure that there are no provisions in the contract that restrict migrant workers' rights to freedom of association. If such provisions are found, the FLA member company should ensure the contract is re-done to eliminate that provision.

At the national level, FLA member companies should advocate for an end to the MHA provisions restricting freedom of association for migrant work permit holders. As a first step, the MHA be persuaded to hear the MTUC appeal against these work permit restrictions. FLA member companies will arguably benefit from greater clarity that laws should take precedence over policies, meaning the MHA's practice must be brought into compliance with the law, and documented migrant workers must be permitted to exercise their FOA rights under law. FLA members have an interest in advocating for this because the current situation causes confusion among suppliers who may believe (and argue) that that the MHA policies and worker contract are supreme and erroneously assume they are legally correct to deny workers the right to FOA contained in the FLA's Workplace Code of Conduct.

Use of migrant workers to frustrate union organizing

Concern: In early 2008, the Government completed a process of amending the TUA 1959 and the IRA 1967 in a number of ways which were vehemently opposed by the Malaysian labor movement. One of the provisions that has relevance to migrant workers is a change in the method for determining the legitimacy of a union's challenge to an employers' refusal to recognize the union. Under the old law, officials were required to use the register of trade union members (which the union is legally required to keep accurate and up to date).

The new IRA has further weakened union protections by abandoning previous practice of requiring officials to use the register of trade union members (which is required by law) to make determinations of the legitimacy of challenges to employers' refusal to recognize a union. Now the law requires a secret ballot of workers to be undertaken, in which the union must achieve a majority to win. However, the law fails to provide adequate safeguards against employer manipulation of the size of the bargaining unit (through addition of temporary or fixed-term contract workers, including those who are migrants) for the purposes of the election. Employer intimidation then is used to either prevent migrant workers from voting or ensuring they vote against the union – in either case contributing to the same goal of defeating the union's effort to prove its representative status to challenge to the employer's refusal to recognize the union.

Points for Action: FLA members should consider taking extra precautionary efforts to ensure a free and fair election in any facility in their supply chain that faces a union organizing effort. Specifically, monitoring in such situations should focus on preventing intimidation of migrant workers, and recognize and mitigate the possibility of the employer seeking to artificially inflate the number of workers empowered to vote in a poll of workers.

Seizure of migrant workers' passports by employers

Concern: Migrant worker advocates report that it is common practice for employers (whether labor recruitment companies or factories where the migrant works) to seize migrant workers' passports upon arrival in Malaysia. This practice is illegal under the Passports Act of 1955, yet according to migrant rights advocates, the Malaysian Government has never formally sanctioned employers who seize and hold migrant

worker's passports.⁷ Holding of migrant workers' passports is widely used as a mechanism of control of employers over the workers which emphasizes their vulnerability and restricts their ability to move.

In March 2007 the Government launched the i-Kad (also informally known as a "jalan-Kad," or walking/street card), which is an identification card issued by the Immigration Department that has a photo and contains biometric information of the holder. This card is being issued to foreign students, expatriates, and documented migrant workers, and is supposed to allow for workers to travel in Malaysia safely, without fear of arrest, since the card identifies them as being legally in the country. However, there have been significant delays in the issuance of the i-Kad. The Immigration Department is now targeting to have i-Kads issued to all documented migrant workers by the end of 2008 in conjunction with the renewal of migrants' work permits. Migrant advocates are raising concerns that employers may also hold migrant workers' i-Kads once those are issued. Despite requirements that the payment for the i-Kad be borne by the employer, the cost is invariably paid for by the worker through deductions in their salary.

Points for Action: FLA members should insist that enterprises producing their products not seize migrant workers' passports and ensure that all migrant workers receive their i-Kads when they go for work permit renewal. Monitoring by FLA member companies should be done to ensure employers allow migrant workers to hold their own documentation since all non-Malaysians are subject to immediate arrest by authorities or RELA if they are found without documents.

Living/accommodation for migrant workers

Concern: Housing conditions are matters in Malaysia that have been largely decentralized to the purview of local councils, creating significant difficulties for effective enforcement of standards for migrant worker accommodation. Despite its mandate for preservation of public health, NGO and trade union leaders state that the Ministry of Public Health has done little to address overcrowding and lack of hygiene in migrant worker accommodation. Migrant workers are required to undergo mandatory health testing within the first month of arrival in Malaysia, and again when renewing the work permit after year one and after year two.

Points for Action: FLA member companies should engage the Government of Malaysia, and the Malaysia Employers Federation (MEF), to revise and promulgate guidelines that establish clear standards for migrant worker housing. A voluntary national agreement on guidelines could then be reinforced by FLA member companies making it compulsory for their suppliers to comply with those guidelines. Active monitoring would then be required to ensure continued compliance.

⁷ Tenaganita could cite only one case where a violation of the Passports Act has been taken to court. This occurred in Penang and the judge's decision ordered the employer to return the passports, citing the Passport Act, but declined to take punitive action. Tenaganita is working with the Malaysian Bar Council to file more test cases against violations of the Passport Act. Malaysia-based diplomats in Embassies of countries that send migrant workers to Malaysia have been strongly supportive of greater efforts to prevent the seizure of their nationals' passports.

Migrant workers will continue to be an important part of the Malaysian work force for years to come. This means that FLA member companies will have to be pro-active in understanding the composition and origin of the work-force in facilities manufacturing their product. From this starting point of developing knowledge about who are in the factories, all other steps can proceed. While the FLA member companies will have to make decisions about how they feel about their products being made by migrant labor, UN human rights instruments emphasize non-discrimination based on origin and nationality. Therefore, if migrant workers are legally recruited by the factory that actually employs them and the employer provides them with wages and terms of employment that are in compliance with the relevant national laws, the FLA companies should continue the relationship with that factory.

However, the presence of documented migrant workers in the supplier networks requires added vigilance by FLA member companies who will need to constantly update that knowledge on a regular basis. FLA member companies will also need to consider how to: (1) devise systems to ensure effective coverage of migrant workers by the FLA code; (2) ensure monitoring efforts can reach migrant workers, especially considering language barriers and close proximity of migrant worker housing to the factory in many instances; (3) monitor to make sure that undocumented migrant workers are not brought into the workforce (4) ensure that treatment of migrant work forces at all times complies with the national labor laws.

Regional Developments on Migrant Workers

Finally, it is worth noting that the situation on migration within the region covered by the Association of Southeast Asian Nations (ASEAN) is increasingly dynamic, and Malaysia's treatment of migrant workers is coming under increasing scrutiny. In January 2007, the ASEAN leaders adopted the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers, which sets out for the first time duties and obligations of labor sending and receiving states in the grouping to protect migrant workers. Even more importantly, in July 2007, the ASEAN Foreign Ministers adopted an implementation track mechanism – the ASEAN Committee to Implement (ACI) the Declaration on the Protection and Promotion of the Rights of Migrant Workers, composed of a Government focal point from each member nation. The ACI has been tasked with developing an “Instrument” to be agreed between the ten ASEAN members on management and protection of migrant workers. This “Instrument” is called for in the Vientiane Action Program, ASEAN's current core activity planning document for the period of 2004-2010. ASEAN has committed to economic integration of the economies of its ten member countries by 2015 – so this effort on migrant workers is the leading edge effort to address the labor market realities which will be engendered by ASEAN economic integration.

Civil society in ASEAN has mobilized to address this challenge as well. In 2005, the ASEAN Secretary-General tasked the Working Group for an ASEAN Human Rights Mechanism to take up the challenge of helping develop the above-mentioned “Instrument” on migrant workers. The Working Group in turn turned this matter over to its Singapore focal point, which established the Task Force on ASEAN Migrant Workers. The Task Force is a network of regional trade union organizations and human rights/migrant workers support NGOs that has conducted national consultations in seven ASEAN nations (Cambodia, Indonesia, Malaysia, Lao PDR,

the Philippines, Thailand, and Vietnam) and developed a comprehensive draft Framework Instrument that is still be reviewed by its civil society partners. It is expect the that Task Force’s draft Framework Instrument will be proposed to ASEAN within months, and will serve as the basis of a sustained dialogue between ASEAN (represented by the ACI) and civil society groups represented by the Task Force.

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About this Report

This report is the first in a series of papers commissioned by the Fair Labor Association (FLA) to contribute to FLA affiliates and stakeholders’ understanding of cross-border, migrant worker issues in South East Asia. The paper will be discussed at the Migrant Workers Rights Multi-Stakeholder Roundtable Discussion, which is being hosted by the FLA and the Bar Council Malaysia on August 5, 2009 in Kuala Lumpur. The multi-stakeholder meeting will bring together FLA affiliated companies, suppliers, local migrant rights organizations and trade unions to promote dialogue among diverse stakeholders around migrant rights issues and working conditions in the apparel sector, and to develop practical responses from both a buyer and supplier perspective on priority issues. An addendum of stakeholder contacts in Malaysia was developed as part of this paper and is available for FLA affiliates upon request. Please direct comments or questions to HeeWon Brindle-Khym at hkhym@fairlabor.org or Susan Webb at swebb@fairlabor.org.

The Fair Labor Association commissions occasional papers by experts on labor-related issues to provide members and stakeholders with insight into current issues in labor compliance and best practices in corporate social responsibility. The views expressed in this publication are those of its author and do not reflect those of the FLA or FLA affiliates.

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About the Fair Labor Association

The Fair Labor Association (FLA) is a collaborative effort to improve working conditions in factories around the world. By working cooperatively with forward-looking companies, non-governmental organizations (NGOs), and colleges and universities, the FLA developed a workplace code of conduct based on ILO standards, and created a practical system of monitoring, remediation and verification to achieve these standards. For more information on the FLA, please visit our website at www.fairlabor.org.