

GLOBAL SUPPLY CHAINS & COVID-19

Exposing exploitation in the
personal protective equipment sector
in Malaysia and Australia





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Concerns about exploitative working conditions and recruitment practices extend across the Malaysian PPE industry. Underpayment of workers, unsafe working conditions, debt bondage to recruitment agents and compulsory or forced labour have been reported. Opposite Page Photo Caption: Remy Gieling via UnSplash

Acknowledgements

We are grateful to Melbourne Law School for their research assistance with this report. In particular, we would like to thank Professor Alison Duxbury, Deputy Dean of Melbourne Law School and Chair of the International Board of the Commonwealth Human Rights Initiative (CHRI), for initiating the collaboration between the Law School and CHRI. We would also like to thank the Clinic Director, Kate Fischer-Doherty, and Associate Professor, Jonathan Liberman, as well as the student researchers who provided initial research: Clare Graham-Stewart, Crystal Min, Sara Wong, and Thomas Polhill.

From CHRI, we are grateful to our research officer, Richard Hydes, for leading the drafting and also our interns, Johanna Straatman, Rushil Puri, and Malvika Rangta who provided vital support. We also extend our appreciation to those who took the time to review, share reflections and edit. This includes the director of CHRI's London office, Sneha Aurora, legal research and advocacy officer, Laura Bloom, and our intern, Mihika Poddar. Thanks also to Catherine Lutman who designed the publication.



The COVID-19 Pandemic deepened inequalities across the globe, and increased the demand for PPE, a sector characterised by exploitative working conditions. Photo Credit: InkheartX via Shutterstock

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Executive Summary

The COVID-19 pandemic has had a profound effect on the enjoyment of human rights across the globe. Besides its impact on health and safety, it has had serious consequences on livelihoods resulting in some people increasingly desperate for work, falling victim to traffickers and forced labour.

The pandemic also generated a boom in the global demand for personal protective equipment (PPE), a manufacturing sector which even before the pandemic was notorious for poor working conditions, particularly for its migrant workforce. Under international human rights law, States have a duty to respect human rights and ensure that business enterprises operating in their jurisdiction do so also. Typically, to ensure that business operations and supply chains comply with international standards on trafficking and forced labour, businesses conduct due diligence assessments. However, during the pandemic many such procedures were disrupted and certain businesses, linked to unethical recruitment practices and exploitative work practices, thrived as their profits soared.

This report examines the exploitative working conditions amongst businesses involved in PPE production in Malaysia and highlights the inadequate

state and private sector responses to detect and remedy abuses or prosecute crimes related to trafficking, forced labour, and debt bondage. It also examines the anti-slavery safeguards under the Australian *Modern Slavery Act 2018*, designed to ensure that public procurement and private sector businesses are accountable for and report on efforts to eradicate trafficking and forced labour in their business relations. It finds that some Australian businesses evaded the rules and continued to trade with suppliers widely reported to be in breach of human rights standards in Malaysia. All this, seemingly without sanction, which calls into question the impact and reach of Australia's modern slavery legislation.

The role of voluntary certification programmes and assurance processes used by businesses to claim compliance with human-rights quality standards, in particular the use of labour audits, are also examined here. How these processes can be corrupted and instrumentalised by both suppliers and buyers across global supply chains to deny responsibility for trafficking and forced labour is made clear.

To remedy these challenges, the report makes a number of recommendations to both Commonwealth governments and companies.



Recommendations

CHRI CALLS ON COMMONWEALTH GOVERNMENTS TO:

1. Ratify all relevant international instruments prohibiting trafficking in persons, forced labour, slavery and slavery-like practices, including the International Labour Organisation (ILO) Protocol of 2014 to the Forced Labour Convention, 1930 (PO29), and align domestic legislation with international standards, criminalise all forms of trafficking in persons, and impose adequate penalties for violations.
2. Adopt effective legislation requiring transparency in supply chains, human rights due diligence throughout supply chains, public reporting and disclosure by businesses, as well as measures relating to procurement practices, and guarantee the implementation of such legislation.
3. Establish sanction mechanisms for companies that fail to fulfil their obligations, and equip law enforcement agencies with the resources necessary to follow up on reports of lack of compliance.
4. Enhance legislation on transparency, which should require companies to disclose actual measures adopted to tackle trafficking in persons and forced labour in their operations and supply chains. Such measures should address at the minimum recruitment practices, methodology used in monitoring compliance, use of alternative sources of information to supplement audit information, the quality of complaints or grievance mechanisms for workers, and coordination with relevant stakeholders, including trade unions and civil society representatives.
5. Ensure compliance across the recruitment industry with the relevant laws and regulations. Such measures should include public registration, licensing or other regulatory systems. The systems should be effective and transparent and should allow workers and other interested parties to verify the legitimacy of recruitment agencies and placement offers.
6. Ensure that legislation covering recruitment activities clearly prohibits the charging of recruitment fees and related costs to workers and jobseekers.
7. Ensure there is an efficient and sufficiently resourced labour inspectorate and that its staff is empowered and trained to investigate and intervene in recruitment processes and the workplace and is competent to detect situations of human trafficking, forced labour and other forms of exploitation.
8. Ensure that workers have rapid and affordable access to grievance and other dispute resolution mechanisms that enable them to address alleged abuses and fraudulent practices in recruitment and employment without fear of retaliation including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred.
9. Ensure full recognition of the rights of all workers, including migrant workers, to join and form trade unions and to bargain collectively.
10. Ensure that bilateral and multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workers; are concluded between countries of origin, transit and destination, as relevant; and are implemented effectively. States should also ensure that such agreements are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international human rights instruments and labour standards. Agreements should also contain mechanisms to ensure international coordination and cooperation, including on consular protection.
11. Equip embassies abroad to provide services to migrant workers, especially channels for consultations and complaints.
12. Increase the number of alternative options for regular and safe migration and for legal employment of migrant workers and maintain concessions made to immigration policies during the COVID-19 pandemic, such as extension of visas, to better support vulnerable migrant workers.



To address trafficking in persons, forced labour, slavery and slavery-like practices in supply chains, States should ratify all relevant international instruments and adopt national legislation. Photo Credit: YP_Studio via Shutterstock

RECOMMENDATIONS TO COMPANIES AND CERTIFICATION PROGRAMMES:

13. Companies should establish and implement a company policy on the elimination of human trafficking and forced labour from the company's supply chain and adhere to recognised certification programmes or multi-stakeholder initiatives that effectively address human trafficking and forced labour. Non-conformity with human trafficking and forced labour standards should entail suspension of certification or similar appropriate sanctions.
14. In selecting new suppliers, companies should develop an evaluation mechanism that takes into account the supplier's compliance with policies the company has adopted or adheres to and should widely communicate among potential bidders the conditions for selection.
15. Companies should establish or participate in grievance mechanisms, in accordance with the UN Guiding Principles on Business and Human Rights,¹ and cooperate with local and national authorities when a case of trafficking or forced labour is detected in order to ensure that workers have access to remedies, including compensation and assistance. Companies should take into account the specific barriers faced by and vulnerabilities of migrant workers, young people and women in accessing grievance mechanisms and remediation plans.
16. Certification programmes and multi-stakeholder initiatives should improve the quality of audit assessments by building the capacity of auditors to detect trafficking and forced labour risk practices, including risks related to unethical recruitment practices. They should also ensure that alternative sources of information are used for compliance verification alongside third-party audits, including information from workers, trade unions and civil society organisations active in the sector and region.

Introduction

The COVID-19 pandemic has had a profound impact on human rights around the globe. The combination of risks to health and safety and the negative impact on the livelihoods of vulnerable people, has created an environment in which contemporary forms of slavery can thrive.²

From the outset of the crisis, millions of vulnerable workers lacked access to COVID-19 testing, vaccinations, health care, sick leave, or the option of self-isolating.³ Lockdown measures and the collapse of many sectors of the global economy also left unprecedented numbers of people out of work, with no means to support themselves and their families, making them increasingly desperate and vulnerable to exploitation by traffickers.⁴ Border closures and other travel restrictions left countless migrant workers stranded, unable to support themselves or return home.⁵

The COVID-19 pandemic also caused an unprecedented boom in global demand for the personal protective equipment (PPE) sector.⁶ Early in the pandemic, countries scrambled to secure enough provisions to protect their citizens, particularly those working in essential services such as healthcare and law enforcement.⁷ Many governments implemented measures such as mandatory mask wearing for the general population to slow the spread of the virus, leading to immense pressure on global PPE supply chains.

Exploitative labour practices were already well documented in PPE production even before the pandemic, for instance in rubber glove factories.⁸ The migrant workers, who make up the majority of the workforce in this sector, were therefore suddenly at both heightened risk of contracting COVID-19 and falling victim to human trafficking or forced labour in PPE supply chains.⁹

States have an obligation under international human rights law to protect against human rights abuses perpetrated by third parties, including business enterprises, within their territory. They are required to effectively investigate, prosecute and adjudicate human trafficking, as well as to punish individuals and legal persons found guilty of trafficking. Under the ILO Protocol of 2014 to the Forced Labour Convention, 1930 (PO29), they are also required to support due diligence by both the public and private sectors to prevent and respond to risks of forced labour.¹⁰ Due diligence should

include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed – impacts not only related to an enterprise’s own activities but also those to which it may be linked through business relationships, such as supply chains.¹¹

Human rights due diligence assessments, both in supply-side labour monitoring,¹² and through buyers’ monitoring supply chains,¹³ were disrupted during the pandemic.¹⁴ In addition, travel restrictions and lockdown measures prevented physical inspection of businesses,¹⁵ and made it difficult for victims to access essential support and legal services.¹⁶

This report aims to explore one of the five milestones identified in CHRI’s and Walk Free’s 2020 *Eradicating Modern Slavery report*, relating to government and business efforts to eradicate forced labour from their supply chains.¹⁷ The *Eradicating Modern Slavery report* assessed the steps taken by governments in this regard, including mandatory reporting requirements, due diligence and responsible investment. The current report, recognising this milestone as an essential component of efforts to eradicate modern slavery and achieve SDG Target 8.7, aims to better understand the nature of exploitative working conditions in the PPE sector in Malaysia and the measures needed to ensure that governments and businesses abide by international human rights standards in their supply chains. It looks primarily at the situation of migrant workers to meet the demand for PPE and casts a spotlight on the effectiveness of the modern slavery legislation in Australia, in minimising risks of exploitation in Australian supply chains of PPE.

Definitions

In this report, the term **contemporary forms of slavery** acknowledges the complex ways in which exploitation may manifest. This report reflects the terminology used in SDG Target 8.7, which calls on all nations to ‘*take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms*’.

Although **contemporary forms of slavery** is not defined, it is an umbrella term used to cover practices

which include slavery, human trafficking, forced labour, debt bondage, domestic servitude, forced marriage, and the sale and exploitation of children.

Different countries use different terminologies to describe contemporary forms of slavery, including the term '**modern slavery**', which is used in the Australian legislation. There are also more specific concepts such as human trafficking, forced labour, debt bondage, domestic servitude, forced or servile marriage, and the sale or exploitation of children. These terms are defined in various international agreements, which many countries are party to.

Three particular manifestations of contemporary forms of slavery of particular relevant to this report are defined below:

Trafficking in persons or human trafficking is defined in Article 3 of the UN Trafficking in Persons Protocol (the Palermo Protocol) as involving three elements:

1. Recruitment, transportation, transfer, harbouring or receipt of persons;
2. by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
3. with the intent of exploiting that person, for example through prostitution of others, sexual exploitation, forced labour, slavery (or similar practices), servitude, and removal of organs.¹⁸

The recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means – such as threat, use of force, or coercion.

Forced labour is defined in Article 2 of the International Labour Organisation (ILO) Forced Labour Convention, 1930 (No. 29) as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.' This excludes compulsory military service, normal civil obligations, penalties imposed by a court action taken in an emergency, and minor communal services. The ILO has also enumerated a set of 11 indicators, which help to analyse if a certain situation amounts to forced labour.¹⁹

Debt bondage is defined under Article 1 of the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar



In the wake of the COVID-19 pandemic, PPE materials from suppliers breaching human rights standards have flooded into the Australian market unabated. Photo Credit: Griffin Wooldridge via UnSplash

to Slavery, 1956 as 'the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined'.

Methodology

This report is based on web-based, desk research conducted between September 2020 and July 2022, focusing on COVID-19 and contemporary forms of slavery in supply chains between Malaysia and Australia between September 2020 and May 2021. Since this research was conducted, certain businesses referred to in the report have made positive changes. For example, after facing serious allegations of forced labour and modern slavery within its supply chains, the Malaysian supplier of PPE equipment, Top Glove, appointed an independent ethical trade consultant, to assess and improve its human rights and labour practices. In recognition of this positive effort, the United States Customs and Border Protection withdrew its ban on imports due to forced labour concerns, allowing the import of disposable gloves from Top Glove.²⁰

1

Working conditions in PPE production in Malaysia



Though Malaysia has laws against forced labour, workers in Malaysian PPE manufacturing continue to be exposed to exploitative practices, such as passport confiscation, debt bondage and exploitative working conditions. Photo Credit: Nik via Unsplash

Malaysia is a major supplier of PPE products, meeting over 50% of global demand for rubber gloves²¹ and supplying large quantities across the Commonwealth, including to Australia, Canada, and the UK. The COVID-19 pandemic caused a dramatic spike in demand in the Malaysian glove industry, requiring manufacturers to hire thousands of new employees and accelerate production in an attempt to keep up with demand.²²

Even before the COVID-19 pandemic, many suppliers in the country were reported to be complicit in contemporary forms of slavery, including using forced labour and debt bondage.²³ In particular, these reports concerned major manufacturers namely Top Glove, WRP, Ansell, Supermax, Kossan and Hartalega who allegedly were underpaying workers, exposing workers to unsafe working conditions, and using forced labour.²⁴ One source who visited a WRP factory claimed that the overall working conditions were some of 'the worst he had ever seen', with factory temperatures reaching 70 degrees Celsius near ovens and with 3,000 workers housed in accommodation built for half that number.²⁵

Despite the adoption of an anti-trafficking national action plan and its public commitment to tackle

forced labour in supply chains,²⁶ manifested also in its request to become an 'Alliance 8.7 Pathfinder country',²⁷ the Malaysian government fell short in tackling contemporary forms of slavery in the private sector.²⁸ This appears, in part, due to the absence of adequate legislation and the ineffective implementation of existing laws. For example, the Malaysian *Employment Act 1995* protects employees by regulating working conditions, hours, wages, holidays, and redundancy payments.²⁹ But reports indicated that some Malaysian workers in PPE manufacturing had had their wages withheld or were unable to leave exploitative workplaces due to debts to recruitment companies.³⁰ International standards and guidelines require that jobseekers are not required to pay employment or recruitment agencies for job placements.³¹ Yet the *Private Employment Agencies Act 1981* of Malaysia allows employment agencies to request workers to pay recruitment fees, contributing to their vulnerability to contemporary forms of slavery.³²

Female migrant workers in some of Top Glove's Malaysian factories claimed that they were forced to work 12 hours a day, seven days a week, for extremely low wages during the pandemic, and were not able to

leave because of debt bondage.³³ Similar exploitative working conditions were documented in WRP³⁴ and Supermax³⁵ factories.

The *Occupational Health and Safety Act 1994*, provides a framework for protecting the safety, health, and welfare of persons at work.³⁶ But a lack of adequate enforcement and resources to monitor workplaces allowed breaches of worker health and safety laws to continue during the pandemic.³⁷ Workplace health protections were especially relevant at this time, as cramped working and living conditions created potential hotbeds for infection, and the marginalised workers, exposed to such conditions, were less likely to have access to benefits such as sick-pay, unemployment benefits, or access to health-care services, including COVID-19 testing and vaccination programmes.³⁸ In January 2020, there were over 5,400 infections related to COVID-19 outbreaks at Top Glove factories alone.³⁹

In 2020, the State's anti-trafficking task force raided Top Glove's headquarters but, in spite of multiple reports to the contrary,⁴⁰ it found no evidence of forced labour.⁴¹ Malaysia's *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Anti-Trafficking Act)* criminalises trafficking and forced labour, but clearly there is a lack of adequate enforcement.⁴²

On the other hand, in December 2020, the Malaysian Government filed 30 charges against the rubber glove manufacturer Brightway Holdings and two of its subsidiaries after labour inspectors discovered over 200 migrant workers living in inhumane and unsanitary conditions.⁴³ The government also filed 19 charges against another rubber glove manufacturing company under the *Workers Minimum Standards of Housing and Amenities Act 1990* for inhumane living conditions in migrant workers' dormitories.⁴⁴ It did not however investigate or prosecute either of these companies for trafficking in persons or forced labour.⁴⁵

Increased vulnerability of migrant workers to exploitation

Since the beginning of the pandemic, the increase in demand for PPE has contributed to an influx of migrant workers from Bangladesh, Myanmar, and Nepal seeking work in Malaysia.⁴⁶ Many migrant workers are vulnerable to exploitation, due to their debts to recruitment agencies that assist them in finding employment with manufacturers.⁴⁷ Numerous reports have found that measures to regulate the recruitment of migrant workers are crucial to reducing risk factors to trafficking and forced



States should conclude bilateral and multilateral agreements that contain mechanisms to ensure international coordination and cooperation. Photo Credit: Branimir Balogović via UnSplash

labour but that the regulation of labour recruiters and the elimination of unethical recruitment practices is far from complete.⁴⁸ Migrant workers at WRP factories described having mental breakdowns at work and likening the experience to 'mental torture'.⁴⁹ Moreover, the resulting debt bondage prevented workers from leaving situations of exploitation.⁵⁰

Due to the evidence of forced labour in its supply chains, the US declared an import ban against Top Glove in July 2020.⁵¹ The US Federal Acquisition Regulation prohibits contractors from engaging in unethical recruitment practices, such as charging recruitment fees to workers. As a result of the ban, Top Glove declared that it would compensate 12,000 migrant workers up to RM 20,000 each (approximately USD 4,590), reimbursing recruitment fees,⁵² amounting to a total of USD 40 million.⁵³ Although the provision of compensation to the migrant workers was a significant achievement, it failed to address the systemic problems and, in the absence of other measures, migrant workers employed in PPE supply chains will likely continue to be exploited.

Inaccurate or fraudulent labour auditing

To ensure greater transparency in their business operations, many companies voluntarily commit to certification programmes and multi-stakeholder initiatives and pledge to adhere to certain quality standards. To ensure that the requisite standards are being met, businesses commit to 'assurance processes' or audits, often conducted by third parties who report



The pandemic has increased the demand for PPE, and has increased the risk of trafficking, forced labour and other forms of exploitation amongst migrant workers. Photo Credit: Omar Elsharawy via Unsplash

on the company's compliance. These non-financial audits may focus on different elements of the business, including environmental impacts, corruption or working conditions and labour rights. Assessments which focus on working conditions of the business are referred to as 'labour audits'. Often such audits are conducted by external companies employed by and answering to the business.⁵⁴

If conducted properly, labour audits have the potential of flagging up problems for the business, identifying instances of exploitative working practices and providing recommendations to remedy detected abuses. If not, they serve little purpose, and may even worsen the situation by concealing abusive conditions and providing misleading assurances to other business partners, stakeholders and consumers.⁵⁵ For example, Top Glove alleged that it had a positive rating with auditors SMETA (owned by Sedex, an ethical trading membership organisation)⁵⁶ and amfori BSCI, bolstering its claims that its labour practices complied with international standards and that there was no forced labour in its manufacturing facilities, which in turn reassured its buyers.⁵⁷ However, both amfori BSCI and Sedex raised doubts as to the accuracy of the ratings given to Top Glove.⁵⁸ Sedex reported that it did not independently verify the content of audits conducted by SMETA, and amfori BSCI expressed concern regarding the supposed 'A-rating' of Top Glove and the type of audit employed.⁵⁹

Corrupted audits were also exposed where employees of Malaysia-based Brightway, a supplier to Australian PPE company Ansell, reported that they had been informed in advance of audits, and were asked to clean their hostels and provide only positive feedback to inspectors about their working and living conditions.⁶⁰ They also stated that Brightway kept workers' passports, but placed them in employee lockers temporarily during inspections.⁶¹

In stark contrast to the 'clean' audit issued to Brightway by the audit company, a raid by state officials in December 2020 at Brightway premises brought to light the reality of poor living conditions for workers, and recorded over 60 violations of global ethical standards, and 50 violations of Malaysian labour laws, including excessive working hours, high recruitment fees paid by workers, and unsafe living and working conditions.⁶²

Corruption in the audit systems also led to the generation of fake audit documents, certificates of excellence or sham reports with workers being coerced into lying about their pay and work conditions.⁶³ Inaccurate reports gave the appearance that there was limited risk or prevalence of contemporary forms of slavery, while forced labour practices were in fact present.⁶⁴

Labour audits should detect indicators of trafficking and forced labour and draw on alternative sources of information, such as information provided by workers, trade unions and civil society organisations. Photo Credit: Vladimir Fedotov via Unsplash

2

Australia's efforts to address abuses in supply chains



The Australian *Modern Slavery Act 2018* requires businesses to identify and address risks of contemporary forms of slavery, and report on their efforts through annual modern slavery statements. Photo Credit: Chris McLay via Unsplash

The due diligence principle and need to ensure business accountability have been at the centre of national legislation in a number of countries to ensure more transparency in business activity and their impact on trafficking in persons and forced labour. Under the *Australian Modern Slavery Act 2018*, businesses and other entities with annual consolidated revenues of at least AUD 100 million (approximately GBP 56.8 million) are required to identify and address risks of contemporary forms of slavery, including forced labour, trafficking and child labour, within their businesses, and report on these through annual 'Modern Slavery Statements' to maintain transparent supply chains.⁶⁵ The statements are published on a public register which is open to public inspection for free.⁶⁶

There are no penalties for failure to comply with the reporting requirements under the Act.⁶⁷ The only current safeguards include that the Minister can request a reporting entity which fails to comply with its reporting requirements, to provide an explanation and, only if it fails to do so, can the Minister publicise information

about the entity and its failure.⁶⁸ How a failure to comply with the reporting requirements under the Act is assessed is not described in the Act.

In November 2020, the government agency responsible for publishing the modern slavery statements, the Australian Border Force, published the first statements submitted by businesses pursuant to the Act. The register states that both compliant and non-compliant statements are published in the interests of transparency, but does not indicate which statements are considered compliant or not. Further, there is no information on the register as to whether a Minister has followed up with a particular reporting entity in relation to an assessment of non-compliance.

The Australian Border Force also published a report analysing the quality of the statements submitted. The report identified generic 'good-practices' in certain statements which took into consideration the impact of the COVID-19 pandemic on supply chains, highlighting where contemporary forms of slavery risks had increased and how it was responding to



As a result of the pandemic, human rights due diligence assessments were disrupted. The Australian Government granted a three-month extension for the submission of modern slavery statements. Photo Credit: Anna Shvets via Pexels

these heightened risks.⁶⁹ It also outlined areas of improvement in the statements. For instance, some statements only broadly named contemporary forms of slavery risk without going into detail, whereas others did not describe how the reporting entities consulted with other entities under their control to prepare the statement.⁷⁰ Crucially the report made no mention of companies that might be engaging in human trafficking or forced labour in their supply chains and whether or not they had registered their modern slavery statements.

One Australian PPE supplier, Ansell, duly submitted its modern slavery statement for 2020, available to view on the public register.⁷¹ During this period it continued to procure PPE from Malaysian suppliers, who were regarded as engaging in human rights abuses, including Top Glove, WRP and Brightway.⁷² In fact Ansell's modern slavery statement highlighted the concerns raised by human rights organisations about working conditions, forced labour and debt bondage amongst Malaysian suppliers, although not naming any. Aware of these concerns, Ansell writes in its statement: *'In line with best practice guidance on remediation, we have been engaging with these suppliers on how to improve their approach and are monitoring their performance closely through regular*

discussions. While we plan to continue to engage with these suppliers on these issues, we note they are complex and systemic issues that will take time and multi-party collaboration to fully address.' The fact that US Customs had banned imports from Top Glove in July 2020 because of evidence of migrant abuse and possible forced labour⁷³ was seemingly not of consequence to Ansell's operations nor the Australian authorities, who evidently took no action against this company for its presumed non-compliant conduct.

The untrustworthy labour audits of Malaysian suppliers were also relied upon by Australian companies when claiming that their operations were free of trafficking or forced labour.⁷⁴ In response to media allegations about the working and living conditions of the workers in Brightway, one of Ansell's suppliers, Ansell stated that the audit did not reveal 'unacceptable living conditions'. Shielding itself from possible further criticism, it stated nonetheless it would continue to work with Brightway as it implemented the necessary changes.⁷⁵ It also claimed that when its suppliers do not implement 'corrective actions' or 'work towards improvement', Ansell would discontinue the relationship.⁷⁶ It clearly chose to pay no attention to alternative sources of information about the true

abusive working conditions of its supplier, even though such determinations had been made by state agencies.

The continued use of Brightway supplies by Ansell highlights how half-baked audits of companies under the relevant certification schemes, to which the companies adhere, are instrumentalised by both the supplying company and the buyer to justify inaction and collusion over exploitative working conditions. Given that governments, the public and other businesses may rely on the information disclosed by reporting entities in their modern slavery statements, accountability, accuracy, and confidence in audit reports of the suppliers are essential.

Ansell was not the only entity that reportedly relaxed concerns with human rights abuses in PPE supply chains during the pandemic. Other Australian companies also abandoned their 'know your supplier' checks, in favour of obtaining face masks more quickly, given the pressing needs for PPE.⁷⁷

Principles to combat human trafficking in global supply chains

In 2018, Australia, along with Canada, New Zealand, the UK, and the United States, developed a set of principles to tackle contemporary forms of slavery in global supply chains.⁷⁸ These principles prescribe that governments should take steps to counter human trafficking in government procurement, whilst also encouraging the private sector to prevent and address human trafficking in supply chains. The principles aim to advance responsible recruitment practices and harmonise relevant laws and policies between the countries.⁷⁹



Numerous Australian entities have identified PPE procurement as a high-risk supply chain. Risk mitigation strategies include supplier diversification; increased due diligence, including compliance with human rights and risk of contemporary forms of slavery; and conducting factory visits. Photo Credit: Clay Banks via Unsplash

Although possessing considerable purchasing power as a bloc, only the US acted on the principles during the pandemic, putting pressure on PPE suppliers such as Top Glove to eradicate forced labour in their factories.⁸⁰ In contrast, the Australian Government did not formally issue any warnings to or bans against Top Glove, despite reporting that it was concerned by the risks of contemporary forms of slavery in PPE manufacturing.⁸¹ Unfortunately, due to the strong demand for its products globally during the pandemic, Top Glove's revenue and profit were largely unaffected by the US import-ban which serves to emphasise that countries have to collectively commit and, equally as important, take action to stamp out human trafficking and forced labour in supply chains.⁸²

The Principles to guide Government Action to combat human trafficking in global supply chains will advance responsible recruitment practices and harmonise relevant laws and policies between Australia, Canada, New Zealand, the United Kingdom and the United States. Opposite page Photo Credit: UN Photo / Martine Perret



Conclusions

The pandemic increased the risk of migrant workers falling victim to human trafficking, forced labour and other forms of exploitation as it destroyed many vulnerable peoples' livelihoods. At the same time, instances of abuse escalated significantly as the PPE sector was placed under considerable pressure to upscale its production.

Although both Malaysia and Australia have legislation and enforcement mechanisms in place to minimise the risks of worker exploitation in business, these systems have not performed effectively during the pandemic. In certain cases, state agencies may be under-resourced or insufficiently trained and competent to detect cases of trafficking and forced labour in the workplace. In other cases, enforcement agencies are not working in tandem and sharing relevant information, such as information on inhumane living conditions or other breaches of labour rights, with the State's anti-trafficking task force. Labour inspectors in Malaysia found and charged for numerous abuses related to working and living conditions of migrant workers in PPE factories, but seemingly this information did not trigger alarm bells for the country's anti-trafficking units, nor did it result in the necessary investigations and adjudications for human trafficking, forced labour or other related crimes.

On the other end of the supply chain, some Australian companies appear to be especially selective regarding the kind of information they rely on in verifying that their business links do not engage in non-compliant behaviour. Despite the existence of multiple reports from various sources of possible risks of forced labour amongst their suppliers, not to mention a US import ban against a discredited company, Australian companies continued to trade with the very same suppliers. In doing so, they hide behind the supplier's own labour audit, discredited even by the trading initiative to which it is party.

States are good at making commitments to act collectively to eradicate modern slavery, as evinced in the 2022 Commonwealth Heads of Government Meeting (CHOGM) Communiqué, and as seen by the commitment of a number of Commonwealth countries to *The Principles to guide Government Action to combat human trafficking in global supply chains*. However, as this report demonstrates, States are not so good at acting on these pledges when needed.

There is clearly a need for better enforcement of the existing legislation on labour, health and safety, and human trafficking and forced labour. There is also an

urgent need to better equip the relevant state agencies to both work together and upskill their understanding of risk factors of human trafficking and forced labour. Simultaneously, the legislation regulating labour recruiters needs to reflect the basic 'employer pays' principle to free workers from suffocating debt bondage situations.⁸³

Although laudable that companies voluntarily commit to comply with international human and labour rights standards through different certification schemes, more efforts are needed to ensure that the standards are actually set and met by the certifying body and that the assessment process, by way of audits, is genuine and valuable.

At the same time legislative efforts to ensure that companies assess and report on their efforts to minimise abuses in their supply chains should be pursued. Currently only four out of fifty-six Commonwealth countries require businesses to report on their actions for implementing risk minimisation policies to address contemporary forms of slavery in their supply chains (Australia, Cyprus, Malta, and the United Kingdom).⁸⁴ That said, the effectiveness of the Australian *Modern Slavery Act* has to be reviewed in light of the failings, outlined in this report, of its preventing or sanctioning the trading of Australian companies with suppliers reportedly engaging in forced labour.

Finally, there is a need to focus on the workers/ victims, and the accessibility of complaints procedures and grievance mechanisms that allow victims to bring complaints in safety and without risk of detention or deportation. Basic principles of rights at work must be adhered to by all businesses, such as to leave an exploitative employer, to join a trade union, etc.

There is also a need to promote deeper cooperation between countries and stakeholders to tackle the forced labour and exploitation of migrant workers. If the commitments made at the 2022 CHOGM on contemporary forms of slavery are to be achieved, all Commonwealth States must collaborate with the Commonwealth Secretariat, civil society, and private sector organisations to put in place Commonwealth-wide frameworks that decisively tackle contemporary forms of slavery and slavery-like practices, protect the most vulnerable communities, and create a future free from exploitation.

States must take decisive steps to achieve the eradication of contemporary forms of slavery, including by promoting deeper cooperation and protecting vulnerable communities. Opposite page Photo Credit: Blue Planet Studio via Shutterstock



Endnotes

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