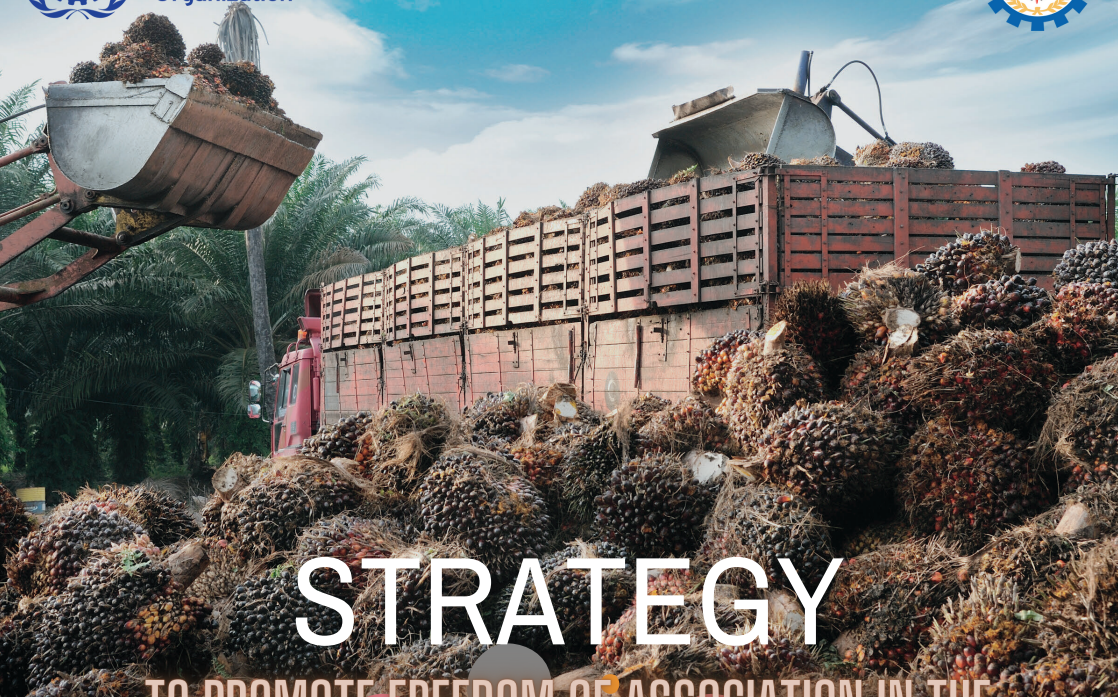


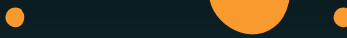


International
Labour
Organization



STRATEGY

TO PROMOTE FREEDOM OF ASSOCIATION IN THE
PALM OIL SECTOR



Produced by the Malaysian Trades Union Congress

*With support from the “Advancing Workers’ Rights in the Palm
Oil Sector in Indonesia and Malaysia” Project of the
International Labour Organization (ILO)*

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OVERVIEW

This MTUC strategy to promote freedom of association (FOA) in the palm oil sector aims to increase trade union membership among local and migrant workers in the sector in the immediate future. This will also contribute to the elimination of forced labour¹, child labour and discrimination in employment which are also fundamental principles and rights at work together with FOA and the right to collective bargaining (CB).

This work is supported by the ILO and is aimed to contribute to upholding the following principles of the Freedom of Association and the Right to Organise Convention, 1948 (No. 87):

- ▶ **Right of all workers and employers to set up and join organizations**
- ▶ **Right of organizations to freely decide on their internal matters**
- ▶ **Protection of organizations against suspension or dissolution**
- ▶ **Right to establish and join federations and confederations, and right to affiliate with international organizations**

FOA is the right of workers and employers to form and join organizations of their own choosing to represent their interests. These organizations must be independent; they can be established without prior authorization and cannot be dissolved or suspended by administrative authority. The rights to organize and to bargain collectively are “enabling rights”

as they are essential for the promotion of sound industrial relations and labour market governance, decent conditions at work and sustainable economic development. FOA and CB, together with the elimination of forced or compulsory labour, the abolition of child labour, the elimination of discrimination in respect of employment and occupation, and principle of a safe and healthy working environment constitute the five fundamental principles and rights at work. These rights are interdependent and mutually reinforcing, and one cannot be achieved in isolation from the others. Ensuring workers can form and join an organization is instrumental to preventing forced labour.

This Strategy recognizes that the increase in trade union membership among local and migrant workers in the palm oil sector could be achieved through the following:

- ▶ **Effective communication and increased awareness among employers and workers about the importance and benefits of freedom of association and collective bargaining for healthy industrial relations and protection of labour rights;**
- ▶ **Increased technical capacity in workers’ organizing in the palm oil sector among trade unions; and**
- ▶ **Strategic partnerships with organizations and Embassies that have outreach activities for migrant workers.**

These components also serve as the Outcomes of this Strategy. This Strategy document is structured such that the next chapter discusses the rationale for having such outcomes through the SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis, and the key interventions to achieve the Outcomes.

The monitoring and evaluation of the Strategy is also covered in the last Chapter.

¹The National Action Plan on Forced Labor (2021-2025) (NAPFL), is Malaysia’s national framework for addressing this issue. This action plan includes promoting freedom of association and collective bargaining agreements as a strategy to prevent or address forced labour as a long-term and sustainable solution. Specifically, the NAPFL aims to raise awareness about freedom of association and how it protects workers against forced labour, amend Trade Unions Act 1959 to remove barriers to freedom of association and review and consider ratification of relevant ILO Conventions, namely the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

DESIGN OF THE STRATEGY

The components/Outcomes of the Strategy have been identified through the following SWOT analysis done through desk review and consultations with relevant stakeholders.

WEAKNESSES



- ▶ *Lack of awareness among the workers as to the true powers and ability of trade unions to protect workers. Youths are less inclined to join a trade union because FOA is not taught in school at any educational level.*
- ▶ *Knowledge and skills of trade union leaders to promote international labour standards need to be upgraded.*
- ▶ *The national laws are not applied to undocumented workers despite Court re-affirming that the legal status is not relevant to accessing justice for labour violations².*
- ▶ *No pre-departure or post-arrival training for migrant workers provided by government or trade unions.*

RATIONALE FOR THE OUTCOMES OF THE STRATEGY

STRENGTHS

- ▶ *FOA and CB are protected under the Trade Union Act 1955 and the Industrial Relations Act 1967. This protection extends to both documented and undocumented workers. Even the Federal Constitution of Malaysia protects all workers².*
- ▶ *There are existing trade unions in the palm oil sector, so we don't have to start from scratch.*
- ▶ *Social dialogue, as per ILO Convention 144, is being practiced in Malaysia.*
- ▶ *Pre-existing capacity building efforts from multiple actors i.e., ILO, ITUC and others could be leveraged on.*
- ▶ *Successful collective agreements in the palm oil sector exist.*

²Undocumented workers are not considered to be falling within the definition of worker in the Employment Act 1955. However, the Federal Constitution of Malaysia was drafted specifically with the concept of equality as enshrined in Article 8: all persons are equal before the law and Article 6 of the Constitution that prohibits any form of slavery and forced labour. Hence, any form of discrimination, slavery, and forced labour to migrant workers cannot be tolerated regardless of documentation status.

³<https://www.freemalaysiatoday.com/category/nation/2022/05/13/court-of-appeal-affirms-undocumented-can-seek-redress-from-labour-court/>

- ▶ **The NAPFL 2021-2025 has mainstreamed FOA and CB issues. This could be leveraged on and monitored in terms of implementation.**
- ▶ **Implementation Agreement with the ILO through the “Advancing Workers’ Rights in the Palm Oil Sector in Indonesia and Malaysia” project has technical and financial resources that could be utilized to advance the promotion of FOA and CB.**
- ▶ **Increased interest of the trade unions in migrant worker-intensive workplaces to organize migrant workers to be their members. This is due to increased understanding of the role of the unions in reducing forced labour.**
- ▶ **Experiences on organizing workers in the palm oil sector from other countries such as Indonesia could also be useful to learn from.**
- ▶ **Available tools and technology that could be utilized to promote FOA in Malaysia.**

THREATS



- ▶ **Limited strategic collaborations with other organizations that may help promote FOA.**
- ▶ **Intimidation and threats done by employers to workers.**
- ▶ **Employers’ hesitation to allow organizing by trade unions. Usually, the negotiation technique leads to being at loggerheads with employers during negotiations, which strains the relationship between the trade union and employer in the long term, and the to principles governing industrial harmony. This in turn translates into a lengthy negotiation process, dispute and delay in the implementation of agreed terms.**
- ▶ **Migrant workers do not see the value of joining trade unions. This is due to limited knowledge and understanding of the benefits of trade union membership.**
- ▶ **Remote and far-flung locations of migrant workers.**



OUTCOMES AND INTERVENTIONS

The Outcomes of the Strategy have been identified to address the weaknesses and threats identified in the SWOT, while the interventions make use of the strengths and opportunities.

OUTCOME 1

Effective communication and increased awareness among employers and workers about the importance and benefits of freedom of association and collective bargaining for healthy industrial relations and protection of labour rights

WITH EMPLOYER

It is important to explain to the employers the benefits of having trade unions formed in the company that ensure workers' ability to exercise the right to FOA and CB, as this also has an impact on productivity, profitability and stability of the operations and workers' satisfaction.

Ultimately, fairness breeds trust. During the CB exercise, it's immensely important for the trade union to put all cards on the table and substantiate all demands with supporting arguments, statistics and laws. This equalizes the playing field and commands respect from the employers. Diplomacy combined with high capacity and knowledge base when making demands will facilitate effective social dialogue and the establishment of harmonious industrial relations, while positively impacting the promotion of decent work in the sector.


In getting the supporting arguments, statistics and laws, interviews with experts from departments such as Department of Statistics Malaysia (DOSM), MOHR specifically Trade Union Department (JHEKS), Department of Labour (DOL), IRD, SOCSO, Institute for Labour Market and Analysis (ILMIA) need to be held to get the latest and updated information.

Companies will be encouraged to have migrant desk officers to assist other migrant workers. These desk workers must be trained with communication skills and knowledge of the law and promote trade union membership.

WITH WORKERS

Awareness raising among workers would be necessary to ensure that they know what are their freedom of association rights in terms of forming, joining or being officers in a trade union as provided for in the national laws (JHEKS could be engaged to provide technical guidance). Additionally, workers need to be aware about the benefits of being a part of the trade union. Without knowing the full benefits of being members of the trade union, migrant workers can feel discouraged from joining. It is important for the workers to understand that the advantages of being a member of the trade union extend beyond the protection of labour rights. Existing benefits if any, such as health insurance, loans, cooperatives, subsidies, fair fee structure and other value-added activities also need to be highlighted to attract the workers.

Document and share how collective agreements have been successful in protecting the rights of workers – both locals and migrants. The collective agreement should be provided to the migrant workers in a language that they understand. Apart from the CA being in a language they understand, a very clear, concise, summarized list of benefits must be provided to the migrant workers in simple terms in fliers and text messages to workers.



When it comes to the approach taken to speak to the migrant workers the best approach is to use face-to-face approach or as we call it in Malaysia “Turun Padang” approach. The trade union leaders are to campaign, motivate and speak in such a manner that riles the spirit of trade unionism within migrant workers and this could only be effectively achieved with face-to-face gatherings.

Migrant workers are often in Malaysia for a short term and may feel it's an unnecessary expense for them to join the trade union. Testimonials of other migrant workers and/or network leaders that have benefited from being in the trade union despite their short stay could help convince others to join trade unions, too.

Migrant workers who are threatened by their employers to discourage them from joining trade unions should have access to the trade union-managed grievance mechanism that could protect their rights. And such grievances should be acted upon by the trade unions and the authorities without harming the security and employment of the complainants. This will serve as deterrent for actions of employers against workers who want to join trade unions.

TOOLS

IT tools will be utilized to increase outreach to local and migrant workers:

- ▶ ***Search engines***
- ▶ ***All Google Tools - free and comprehensive***
- ▶ ***Facebook - Many support groups for migrants online, a good platform to have a presence on***
- ▶ ***WhatsApp/Telegram and other messaging system - Create groups for updates, can video call or voice call when needed***
- ▶ ***Digital Migrant Support systems to receive complaints***
- ▶ ***The software to manage the database: A few trade unions could work together and get quotations from reputable companies to set this up.***
- ▶ ***Application development: specific app developed by trade unions to serve the workers better.***

OUTCOME 2

Increased technical capacity in workers' organizing in the palm oil sector among trade unions

The Principle of equal treatment is universal and must be adhered to by trade unions and their leaders when vulnerable groups such as migrant workers are present in a sector as vital and large as palm oil.

"Labour migration is often touted as a triple win: a win for countries of destination that can support a level of economic activity that would be impossible without foreign labour; a win for countries of origin because it lowers unemployment and brings in remittances as well as new skills; and a win for the migrants who can earn higher incomes, escape poverty as well as gain experience and acquire new skills. To some extent, this all holds true across the region." - The cost of migration: What low-skilled migrant workers from Pakistan pay to work in Saudi Arabia and the United Arab Emirates - Ingrid Christensen, Director, ILO Country Office for Pakistan"

The above excerpt is something that holds true for Malaysia also, thus it becomes exceedingly important that trade union leaders have the capacity necessary to tackle issues faced by migrant workers in Malaysia.

MTUC and affiliates could discuss organization policies and practices that could promote this principle of non-discrimination, such as on increasing migrant workers' representative's involvement in decision-making.

Trade union leaders must know how to organize workers into a trade union and have complex and difficult discussions with the employers about issues the migrant workers have during the CB exercise. A consistent, standardized and specifically designed capacity building module made available to all trade union leaders in the palm oil sector could assist greatly in identifying gaps in knowledge and current strengths of the trade union leaders. It could be a certificate course or some sort of licensing that requires renewal every 2 years to ensure uniformity.

The trade union also needs to identify and develop the capacity of network leaders among migrant workers. Having a representative who is of the same nationality as the workers on the plantation will bridge the language and cultural gap between the trade union and the migrant workers. It also breeds trust as the migrant workers know that the trade union genuinely believes in their capacity as leaders and sees them as more than workers who are doing "3D" [dirty, dangerous and/or difficult] jobs.



OUTCOME 3

Strategic partnerships with organizations and Embassies that have outreach activities for migrant workers

As this campaign strategy is aimed at organizing workers in the palm oil sector, it is important that sectoral trade unions are engaged.

It is important to develop a common goal among the partners that will be engaged to implement this Strategy. In essence, the Objectives contained in this document should be co-owned by the partners. Messaging should be consistent to encourage stakeholders to work towards realizing freedom of association for all workers.

The key partners to engage with include, but are not limited to:

- ▶ *Malaysian Trades Union Congress (MTUC)*
- ▶ *National Union of Plantation Workers, Sabah Plantation Industry Employees Union and other trade unions relevant to the palm oil industry*
- ▶ *International Labour Organization (ILO)*
- ▶ *International Trade Union Confederation (ITUC)*
- ▶ *Global Union Federations (GUF), in particular International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)*
- ▶ *Foreign embassies of Countries of Origin, mainly Indonesia, Bangladesh, Nepal, Myanmar, and other Asian countries in smaller numbers including India, Cambodia, and Lao PDR*
- ▶ *Relevant NGOs and CSOs that have outreach activities for migrant workers in the plantations*
- ▶ *Certification bodies such as Malaysian Palm Oil Certification Council (MSPC) and Roundtable on Sustainable Palm Oil (RSPO)*

MONITORING & EVALUATION

The success of any strategy depends on sound monitoring and measurement practices, and having a suitable, efficient and reliable structure for monitoring in place as follows is key:

Important database to be monitored

- ✓ *Membership database*
- ✓ *Complaints database*
- ✓ *Organizing database*
- ✓ *Case management database*
- ✓ *Legal redress database*
- ✓ *Occupational Safety and Health issues database*

Methods of monitoring

- ✓ *Bi-weekly meetings*
- ✓ *Regular updating of database*
- ✓ *A data entry clerk on a regular or rotational basis*

THE END

