



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
PROLEXUS BHD. (HONSIN APPAREL)
MALAYSIA
FINDINGS, RECOMMENDATIONS AND STATUS**

April 23, 2014

A. Executive Summary

In September 2013, the WRC responded to a complaint from Cambodian migrant workers at Honsin Apparel Sdn. Bhd., a garment factory in Malaysia operated by the company, Prolexus Bhd., concerning the detention of and denial of needed medical care to one of their coworkers, a female Cambodian migrant worker who had been imprisoned by government authorities for alleged immigration offenses. Although the WRC, in collaboration with the factory's buyers and other stakeholders, was able to help secure the worker's release from detention, transportation for her home to Cambodia, and medical attention and financial compensation from the factory's owners, the case highlights the need for greater attention by brands and retailers, including university licensees, to labor rights abuses in the Malaysian garment industry against migrant workers.

Prolexus Bhd.'s Honsin Apparel factory, which is located in the Batu Pahat district of the Malaysian state of Johor, supplies garments to Under Armour, Nike, Li & Fung, Haddad and Kayser Roth. Up until 2010, Nike had disclosed the factory as a supplier of collegiate apparel, and it continues to list Honsin Apparel among its suppliers of non-collegiate products. Prolexus also operates a sister factory, Plas Industries, that Under Armour has disclosed as a supplier of collegiate apparel, and Nike has identified as a provider of non-collegiate goods.

Prolexus' Honsin Apparel plant employs roughly 1000 workers, the majority of whom reportedly are migrants from other countries. More than 200 of these workers are from Cambodia, with other migrants in the factory workforce coming from Nepal and Bangladesh. As wage levels have risen in Malaysia over the last decade, the country's garment industry has increasingly relied on migrant workers as a source of low-cost labor. At the same time, Malaysia's government, facing a growing foreign worker population, has adopted strict administrative requirements for migrant laborers and harsh legal penalties for those found to violate them.

On September 9, 2013, a female employee from Prolexus' Honsin Apparel plant, who was a migrant worker from Cambodia, was detained by Malaysian authorities on the charge of having illegally overstayed her work permit, which had been cancelled after she failed to pass a mandatory annual health exam.¹ Only a few days later, the worker was brought before a Malaysian judge on this charge, without a lawyer or an interpreter, and convicted and sentenced to a prison term, to be followed by pre-deportation detention. This situation, while already troubling from a labor and human rights standpoint, became especially concerning upon the news that, although the worker's health was rapidly deteriorating, she was not receiving medical treatment during her confinement.

¹ The worker requested that she not be named in this report.

A number of parties then intervened in the case, including the WRC, the Malaysian and Cambodian nongovernmental organizations (NGOs), Tenaganita (“Women’s Force”) and Community Legal Education Center (CLEC), two of the factory’s buyers, Nike and Under Armour, and the management of Honsin Apparel, itself. As a result of the efforts of these parties, on October 31, 2013, the worker’s case was opened for retrial, at which the worker was represented by counsel provided by Prolexus, and granted release by the court. After having secured her release from detention, the company, at the urging of the WRC and the other parties involved, provided the worker with air transportation back home to her family in Cambodia, substantial monetary compensation, and payment for her to receive necessary treatment, which ultimately required hospitalization and ongoing medication.

In this individual case, a positive outcome was achieved in what was, potentially, a life-threatening situation for the worker involved. This employee’s detention, however, was part of a much broader, and ongoing, pattern of violations of the basic human rights of migrant workers in Malaysia, many of which have far different outcomes.² As such, this case illustrates the need for both reform in the treatment of migrant workers in Malaysia by employers and government authorities, and the immediate involvement of brands and retailers in ensuring protection of the basic labor and human rights of such workers in their Malaysian supplier factories.

B. Methodology

The WRC’s findings concerning the detention and eventual release of the Cambodian worker and other foreign employees at the company are based on the following research:

- In-depth interviews with factory employees, carried out between September and November 2013;
- Communications with company management;
- Communications with Nike and Under Armour representatives;
- A post-release interview with the detained worker; and
- A review of relevant Malaysian laws and international standards.

² See, Philip S. Robertson Jr., *Migrant Workers in Malaysia: Issues, Concerns and Points for Action* (FLA: Oct. 2008), available at: <http://www.alfea.org/img/OutsourcingCompanies.pdf>; also, Verité, *The Electronics Sector in Malaysia: A Case Study in Migrant Workers’ Risk of Forced Labor* (May 2012), http://www.verite.org/sites/default/files/ElectronicsMalaysia_MigrantWorkers_WhitePaperFINAL3.pdf.

C. Findings

Background

On July 14, 2011, a Cambodian female worker, who was then nineteen years old, left Cambodia for Malaysia, having received an offer via a private recruitment agent of three years' employment at Prolexus' Honsin Apparel factory. The agent did not charge her an upfront recruitment fee, but, for the first fifteen months that she worked at the factory, the company deducted 200 Malaysian *ringgit* (RM) (roughly \$61) per month from the employee's pay, for a total fee of 2400 RM or more than \$730. These deductions amount to, on average, four-and-a-half months' wages.

These deductions, which reportedly are imposed on all migrant workers at the factory – and, in some cases, apparently, in even larger amounts – violate the code of conduct of the Fair Labor Association (FLA), to which Prolexus is subject as a supplier to FLA participating companies Nike and Under Armour.³ In addition to deducting recruitment fees, the company also requires migrant workers to let it hold their passports during the duration of their employment at the factory, in violation of Malaysian law.⁴

According to Malaysian government regulations, migrant workers headed to the country are required to undergo a medical examination before departing their home countries, and to be reexamined within one month of their arrivals in Malaysia.⁵ A private firm, the Foreign Workers Medical Examination Monitoring Agency Sdn. Bhd. (“FOMEMA”), which oversees the administration of the testing requirement under a contract with the Malaysian Ministry of Health, provides a list of physicians from which employers choose a provider to examine their migrant worker employees.⁶ FOMEMA makes an evaluation of each migrant worker's fitness for work based on the doctor's report, and may overturn the physician's initial findings.⁷

Malaysian law requires that even after passing these initial health checks, workers must still undergo annual medical testing, also under the administration of FOMEMA.⁸ Such compulsory

³ See, FLA, *Workplace Code of Conduct and Compliance Benchmarks re Employment Relationship*, § ER.6.2 (“Fees associated with the employment of workers shall be the sole responsibility of employers.”). The WRC notified the FLA of the situation of the detained migrant worker in October 2013 as part of the WRC's outreach to the factory's owners, buyers and other stakeholders.

⁴ See, Passports Act, 1966 (Act No. 150) §12(f) (prohibiting any person to have “without lawful authority . . . in his possession any passport or internal travel document issued for the use of some person other than himself”).

⁵ See, Immigration Department of Malaysia, *Application for Foreign Worker*, <http://www.imi.gov.my/index.php/en/main-services/foreign-worker>.

⁶ See, FOMEMA, *FAQ* (“... [I]t is the responsibility of employers to choose the doctor for their foreign workers' for medical examination....”), <http://www.fomema.com.my/faq.php>.

⁷ Ibid.

⁸ See, FOMEMA, *Highlights*, <http://www.fomema.com.my/highlight.php>.

medical testing, however, has been identified by the UN Human Rights Council as a violation of fundamental rights.⁹

Migrant Worker Loses Legal Status on Account of Untreated Illness

On June 25, 2013, after she had worked for nearly two years at the factory, and had ‘passed’ previous health checks in 2011 and 2012, the Cambodian worker had her annual health examination. Shortly thereafter, however, she was informed that she had failed the health check, reportedly, because the urine sample she submitted contained blood.

On July 13, 2013, the health declaration prepared by the physician who examined the worker was stamped by FOMEMA “temporarily suitable,” a classification allowing the worker a short time period to be treated and re-examined before her work permit would be revoked and she would, thereby, lose her legal immigration status. Although the worker reportedly was not given a copy of the results of this test, later medical examinations indicated that the blood in her urine was likely a symptom of a urinary tract infection (“UTI”), which is not a communicable illness.

According to Malaysian law, migrant workers are required to be tested annually for serious communicable diseases, such as HIV and tuberculosis, as well as other significant health conditions, including cancers, epilepsy, illegal drug use, malaria and pregnancy,¹⁰ but not for relatively less serious and/or noncontagious illnesses, such as UTIs.¹¹ This requirement, on its very face, violates the basic human rights of migrant workers – as screening employees for pregnancy, in particular, violates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which Malaysia is a signatory.¹²

While the health test requirement is already overbroad under international standards, the manner in which Malaysian authorities enforce it is even more sweeping, subjecting migrant workers to the risk of arbitrary deportation or imprisonment for having practically any ailment at all. As the case discussed here makes clear, the purpose of such annual testing is to provide a basis for the expulsion of migrants who become ill while working in Malaysia, not to identify the need for the treatment of their illness.

⁹ See, Anand Grover, *Report of the Special Rapporteur on the on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, UN Human Rights Council, ¶¶ 31 (May 15, 2013) (“...[C]ompulsory testing is also inconsistent with the right to health, as it is done without informed consent and fails to respect the rights to autonomy, privacy, dignity and confidentiality of health information.”).

¹⁰ FOMEMA, *Prosedur Pemeriksaan Perubatan Pekerja Asing Oleh FOMEMA*, http://www.fomema.com.my/procedure_FOMEMA.pdf.

¹¹ *Ibid.*

¹² See, Convention on the Elimination of All Forms of Discrimination against Women, § 11 (2) (“[I]n order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status....”).

Instead of ensuring that the Cambodian worker received proper medical care for her illness, the doctor whom the company had examine her only provided the worker with “Ural” – an over-the-counter oral medicine whose active ingredients are simply baking soda and citric acid – that provides temporary relief from some of the symptoms of urinary tract infections, but does not provide a reliable remedy for the underlying condition.¹³ This failure to offer the worker adequate treatment for her illness again constituted a violation of international human rights standards.¹⁴

Indeed, the entire focus of company managers after the worker failed the health check appears to have been on whether she should return home to Cambodia or be retested to establish her ‘fitness’ for work, not on treating her illness. While the managers urged the worker to leave the country, she opted to be retested in the hope that she would be able to ‘pass’ the health check and continue working. Over the following two weeks, the Cambodian worker was retested four times, but ‘failed’ the health check on each occasion.

After FOMEMA, on July 13, 2013, declared the worker “temporarily suitable,” the company then took her to a FOMEMA-approved doctor. She was then reexamined on July 26, 2013, but, unsurprisingly, given that the FOMEMA-approved doctor had failed to provide her with effective medication, also ‘failed’ this reexamination. According to the company, on August 14, 2013, FOMEMA then declared the Cambodian employee “unsuitable,” meaning that her work permit and legal immigration status would be cancelled.

Not until late August, however, did the company inform the Cambodian worker of the cancellation of her status, and that, therefore, she was now an illegal migrant worker. Company managers thereupon told the worker that, due to her now being in the country illegally, she might not be able to return home by air, and suggested that she go overland to Cambodia, instead – which would have required her to travel alone through Thailand on a route that is heavily used by human traffickers. The worker refused to attempt the trip.

¹³ See, Aspen Pharmacare Australia Pty Ltd., *Ural* (“How it works: This pleasant effervescent drink helps to relieve the painful burning and stinging brought on by urinary tract infections such as cystitis. Ingredients: Each sachet contains sodium bicarbonate, tartaric acid, citric acid anhydrous, sodium citrate anhydrous. Also contains saccharin. . . . Do not use for more than five days without consulting your doctor. *See your doctor if irritation persists after 48 hours or if there is blood in your urine.*” (emphasis added)), <http://www.aspenhealth.com.au/product/ural/standard>.

¹⁴ See, United Nations, General Comment No. 14 (2000), “The Right to the Highest Attainable Standard of Health” (Article 12 of the International Covenant on Economic, Social and Cultural Rights), § 34 (“[I]n particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs.”).

Around the end of August, the company's management took the Cambodian worker to the offices of the Malaysian Immigration Department to process the documents for her return. According to the worker, she was not given any indication at that time that she was at risk of arrest and prosecution. Instead, she was simply instructed to return to the Immigration Department on September 9, 2013 to obtain a "checkout memo" authorizing her return to Cambodia.

At the beginning of September 2013, however, the Malaysian government announced that it was launching a crackdown to, in the words of Home Minister Datuk Seri Ahmad Zahid Hamidi, "flush out illegal immigrants in the country."¹⁵ According to Immigration Department Deputy Director Saravana Kumar, the crackdown was intended to target 400,000 workers and 45,000 employers,¹⁶ and, reportedly, it would involve deploying the country's armed forces as well.¹⁷

Migrant Worker Arrested and Imprisoned

On September 9, 2013, the worker went with a company human resources manager to a government office in the state capital of Johor Bahru to have documents prepared for her to return to Cambodia. The manager told the worker that she would likely be able return to Cambodia on September 13. The worker remained waiting at the government office with the company human resources manager throughout the day, until, at approximately, 5:45 PM, police officers suddenly appeared, and proceeded to arrest her. The worker was allowed to make a single telephone call, to her roommate, after which, the police officers confiscated her mobile phone, placed her in handcuffs, and took her from the building. According to the worker, the human resources manager who had accompanied her to the government office appeared genuinely shocked by her arrest.

After being arrested on September 9, the Cambodian worker was held for three days in a police detention center in Johor Bahru. Following this, the worker was brought before a judge and, after a hearing which reportedly lasted only five minutes, was informed that she had been sentenced to prison for four months. While a company representative reportedly was present and tried to argue with the judge, the Cambodian worker, herself, was not provided with legal counsel or interpretation, and, so, was unable to understand anything said or speak on her own behalf.

¹⁵ *Malay Mail Online*, "2,433 held so far in crackdown on illegal immigrants" (Sep. 2, 2013), <http://www.themalaymailonline.com/malaysia/article/2433-held-so-far-in-crackdown-on-illegal-immigrants>.

¹⁶ Nicholas Cheng, "M'sia begins crackdown on illegal immigrants," *The Star* (Sep. 1, 2013), <http://www.asianewsnet.net/Msia-begins-crackdown-on-illegal-immigrants-51035.html>.

¹⁷ See, *The Star*, "Over 1000 illegals nabbed in M'sia" (Sep. 2, 2013), <http://www.asianewsnet.net/Over-1000-illegals-nabbed-in-Msia--51059.html>.

Thereafter, the worker was taken from the police detention center in Johor Bahru and transferred to Kluang Prison, approximately 110 kilometers to the north. There, she was held in a cell of less than 100 square feet with four other prisoners, and was not allowed to make any phone calls.

On September 12, after learning of the worker's arrest, roughly 120 of the other Cambodian employees at Prolexus' Honsin Apparel factory went on strike demanding her release. After extracting from factory management a written pledge to obtain her release by September 28, the other workers ended their strike. On September 14, one of these employees visited the detained worker at the prison and found her to be in poor health, which further heightened her coworkers' concerns.

Intervention by the WRC and Other Stakeholders

At this time, the other Cambodian employees also contacted the WRC, as well as the Malaysian and Cambodian human rights organizations, Tenaganita and CLEC, respectively, concerning their coworker's detention. The WRC immediately alerted Nike, which has a local representative based in Malaysia, to the situation, and requested its urgent intervention to help secure the Cambodian worker's release and medical treatment.

Reportedly, Nike immediately contacted both the factory owners and the Cambodian Embassy in Malaysia to find ways to secure the worker's release. By early October, however, as the worker was still detained, the Malaysian NGO, Tenaganita, made its own inquiries to Kluang Prison officials regarding her case.

The NGO learned that the Cambodian worker was scheduled to be transferred at the end of November from the prison to the Pekan Nenas Detention Center south of Johor Bahru. The WRC then reached out to two other Prolexus buyers, Under Armour and Haddad, to request their intervention as well.

On October 19, the Cambodian worker's brother, who also is employed at Prolexus' Honsin Apparel factory, accompanied by representatives from the CLEC, and with help from Nike's local representative, attempted to visit the worker at Kluang Prison. Ultimately, only the worker's brother was allowed to visit her. The brother learned that, although the worker's health symptoms had worsened alarmingly, she was still not receiving any medical treatment from prison authorities.

A medical practitioner to whom the WRC described the worker's symptoms indicated that she urgently needed a thorough medical examination and course of treatment. The continuing denial

of urgently needed medical treatment to this worker constituted a violation of her human rights by the Malaysian authorities.¹⁸

Migrant Worker Released, Returned Home, Given Medical Treatment and Compensation

On October 30, 2013, however, the worker's case was reopened for hearing by the Johor State High Court, apparently as a result of intervention by Nike's local representative and the factory owners. At the rehearing of her case, unlike at the original court proceeding the company retained a lawyer to represent the worker, who successfully obtained her release.

Upon the worker's release, the company took her to be examined by a physician, who prescribed a course of antibiotic medication. The company then provided the worker with air transportation home to Cambodia, accompanied by her brother, to whom the company granted leave for this purpose from his job at the factory, and a company human resources manager. Upon her arrival in Cambodia, the worker was met by representatives from the WRC and the CLEC.

The company committed to pay for any additional medical treatment required for the infection the worker had contracted while in Malaysia, and provided her with financial compensation, in the amount of the wages she otherwise would have received for September and October 2013, plus an additional amount. The amount of compensation was deemed adequate by the WRC and by the worker, herself, although, at her request, the exact amount will remain confidential. After her return to Cambodia, the worker underwent several additional courses of medical treatment for her UTI, and reported to the WRC in April 2014 that, although she still needs medication, her symptoms have largely subsided.

While primary responsibility for the worker's detention lies mainly with the Malaysian authorities, the factory's management also contributed to her predicament by failing to provide immediate medical treatment for her condition. An immigration control system that puts a worker found to have an illness in detention rather than under medical care will unavoidably violate workers' rights and place their health at risk, a situation that, in this case, neither the company nor the Malaysian authorities initially seemed to take seriously.¹⁹

The company, to its credit, once pressed by its buyers – at the urging of the WRC and Cambodian and Malaysian NGOs – as well as by the factory's other Cambodian migrant workers who went on strike in the employee's defense, took meaningful steps to secure her early release, provide her with medical treatment, and compensate her for her hardship and lost wages.

¹⁸ See, United Nations, *supra*, n. 14.

¹⁹ See, Grover, *supra*, n. 9 at ¶ 38 (May 15, 2013) (“[E]nsuring the availability, accessibility, acceptability and quality of health facilities, goods and services on a non-discriminatory basis, especially for vulnerable populations like migrant workers, is a core obligation under the right to health.”).

However, this is an exceptional outcome, since, as has been recently reported, on a national level, human rights violations against migrant workers in Malaysia continue unabated.²⁰

D. Recommendations

The WRC recommends that university licensees and other brands and retailers doing business in Malaysia:

- Require their suppliers to adopt policies related to the Malaysian government’s health screening procedures to ensure that workers who ‘fail’ their annual health checks are provided immediate medical treatment and, when necessary, transportation to their home countries, thereby avoiding any risk of imprisonment as a result of cancellation of their work permits.
- Ensure that migrant workers who, for reasons unrelated to their ability to perform their jobs, ‘fail’ their annual health checks and are required to return home prior to the end of their employment contracts, receive appropriate financial compensation.
- Ensure that workers at their supplier factories are not subject to pay deductions or fees related to obtaining employment, and are compensated for any past deductions or fees of this kind.
- Ensure that migrant workers at their suppliers are permitted to retain their passports during their entire period of employment.
- Communicate to the Malaysian authorities the need to comply with international standards for the treatment of migrant workers, nondiscrimination against women, and the right to access to health care.

The WRC looks forward to collaboration with university licensees and other stakeholders to address the serious and ongoing violations of migrant workers’ rights in the Malaysian garment sector. The WRC will continue to monitor the labor rights situation at Prolexus Bhd.’s factories and may issue further recommendations.

²⁰ See, Cam Simpson, “Tech Factories Luring Migrants Risk U.S. Labor Violations,” *Bloomberg Businessweek*, (Nov. 25, 2013), <http://www.bloomberg.com/news/2013-11-26/tech-factories-luring-migrants-risk-u-s-labor-violations.html>; Jason Ng, “Malaysia Gets Tough on Illegal Immigrants As Amnesty Program Expires,” *Wall Street Journal* (Jan. 21, 2014), <http://blogs.wsj.com/searealtime/2014/01/21/malaysia-gets-tough-on-illegal-immigrants-as-amnesty-program-expires/>; *The Nation*, “More than 1,000 undocumented immigrants arrested in Malaysia” (Jan. 21, 2014), <http://www.nationmultimedia.com/breakingnews/More-than-1000-undocumented-immigrants-arrested-in-30224815.html>; Jennifer Gomez, “Migrant workers worse off here than back home, say Asian MPs,” *Malaysian Insider* (Apr. 16, 2014), <http://www.themalaysianinsider.com/malaysia/article/migrant-workers-worse-off-here-than-back-home-say-asian-mps>.

