



WHEN COMPLIANCE IS NOT ENOUGH

Why victims of forced labour should be partners in the remediation design

Introduction

In 2018-2019 Electronics Watch conducted an investigation on working conditions at Possehl Electronics in Malaysia, a subsidiary of the [Possehl Group](#), which revealed at least 30 migrant workers at risk of forced labour.¹ Workers reported passport confiscation, delayed wage payments, illegal wage deductions, excessive overtime and violent threats from their employer JS Global Services, an outsourcing agent.

Electronics Watch engaged Possehl buyers and the Responsible Business Alliance (RBA), an industry organisation, to seek remedy for workers. The buyers and the RBA intervened, the workers received some reimbursements, and JS Global no longer supplies workers to Possehl. However, the former JS Global workers are still today without adequate remedy, many of them subsisting in intolerable conditions, exploited by other unscrupulous employers, and at risk of arrest, detention, and deportation. Tragically, there are hundreds of thousands of migrant workers in Malaysia in the same situation.

¹ This case became public when Danwatch launched its [“Forced Labour Behind European Electronics”](#) investigation in June 2019. The investigation focused on migrant workers in alleged forced labour at Possehl Electronics in Malaysia.

Notably, the former JS Global workers themselves organised to drive the remediation process, a courageous act for any forced labour victims, especially those who risk reprisal from both the employer and state authorities. Yet, in the end they were excluded from this process. From their perspective full remediation is lacking.

This case raises a fundamental question about the limits of responsible business conduct: When companies address violations in their supply chains in accordance with their codes of conduct, but workers still suffer serious harm, does human rights due diligence require the companies to do more? When victims of rights violations demand a voice in their own remediation do companies have an obligation to break with normal audit protocol and discuss and develop solutions in collaboration with these workers?

In this case, the buyers did much that was right. They waited to bring the case to Possehl's attention until Electronics Watch communicated that workers wanted them to take this action. They used their collective leverage to ensure reimbursements for workers. But they did not involve workers in the process of remediation and therefore lost the opportunity to push for outcomes that would have better protected workers and might have helped accelerate systemic improvements.

A Failed Regularisation Scheme

When Possehl's migrant workers found employment through JS Global, most of them had already fled abusive conditions of work in other companies in Malaysia which had originally recruited them. Escaping an abusive employer was their first "crime." Malaysian law does not allow migrant workers to change employer except in conditions of workplace insolvency, bankruptcy, or closure. Thus, they came to rely on the influence of JS Global for protection from arrest and were vulnerable to exploitation from the start.

In 2016, Malaysia's Ministry of Home Affairs introduced the Illegal Immigrant Rehiring Programme as a path to regularisation for migrant workers without proper work permits. JS Global's migrant workers at Possehl registered for this rehiring scheme, as evidenced by their pay slips and printed and online records from MYEG, a service provider to the Malaysian Government under the Rehiring programme. In all, 744,000 migrant workers registered for this programme using the services of private government appointed vendors. However, when the programme ended in failure on 30 June 2018, shrouded in a cloud of corruption, only 110,000 migrant workers had obtained their work permits. Thus, more than 600,000 migrant workers, including JS Global's workers at Possehl, remained irregular.

Cases handled by the human rights organization, Tenaganita, indicate that each migrant had paid an average of RM 6,000 (€1,200) to the programme vendors. Those who did not obtain the work permit lost all the money they had paid. Some of them also lost their passports which they had handed over to the vendors. As undocumented migrants without work permits, they continued to face the risk of arrest, detention, and deportation, now even poorer and more vulnerable to exploitation than before the start of the programme.

Under the official terms of the programme, JS Global workers and other migrant workers should have paid around RM 1,000 (€200) to enter the rehiring scheme for initial registration. If accepted, they should have paid no more than an additional RM 3,000 (€600) for a penalty, medical testing and insurance. This is equivalent to three to four months of a worker's salary. However, JS Global workers' payslips showed deductions amounting to a total of RM 6,000 to 10,000 (€1,200 to €2,000) for the rehiring scheme. When the programme ended the JS Global workers were at different stages of the rehiring process and some had not yet been accepted. Their hopes of starting off afresh with legal status in Malaysia were dashed.

Remediation

In April 2019 Electronics Watch submitted a worker rights complaint to Possehl buyers and the RBA on behalf of a group of 10 Nepali and seven Indonesian JS Global migrant workers after Possehl senior management provided assurances that there would be no retaliation against any worker who sought remedy. Notably, the workers themselves compiled collective data on their excessive wage deductions and collected payslips in evidence.

The workers reported passport confiscation, delayed wage payments, illegal wage deductions, and excessive overtime. Some workers stated that they could obtain their passports from JS Global only against a deposit of RM 2,000 (€400). When they asked for their wages the employer threatened them verbally and physically. In an audio recording of a meeting between the JS Global owner and workers, in which the workers complain about late salary payments and request access to their passports, the owner shouts and threatens workers. "All of you are so stupid to complain," the owner says. "Don't make me angry. Until now Immigration never arrested you all. Why do you all want to make me angry? I am a gentleman and yet you make me angry."

The RBA convened member companies that source from Possehl and also engaged Possehl directly to work towards compliance with the RBA Code of Conduct. Following this joint effort, the JS Global workers received their back-wages in May and June 2019. Possehl also provided each of the workers “ex-gratia” payments of RM 3,420 to RM 6,180 (€800 to €1,400) for JS Global’s unlawful wage deductions for the rehiring scheme and other costs.

Workers welcomed these steps but noted that their wage reimbursements for 2019 were based on the 2018 rather than the 2019 minimum wage rate. The difference, though a small one from a middle or high-income perspective, mattered to workers. They also informed Electronics Watch that they did not know how Possehl calculated the repayments for the unlawful deductions and that they believed they were owed more. In short, while workers received some reimbursements, they were not included in the process of remediation and did not believe they had been made whole.

Finally, Possehl, the buyers and the RBA informed the workers that they would support their return to their home countries, whilst JS Global offered to continue to employ and manage the workers. Most Indonesian workers elected to return home irregularly, and thus unable to return without facing arrest and detention, paying up to RM 3,000 (€600) for travel and other expenses. A few others chose to remain under JS Global. But the majority of the workers (around 20), mostly from distant Nepal, sought assistance from Electronics Watch to regularise their immigration status towards legal employment in electronics factories.

A Legal Challenge

In August 2019, lawyers in Malaysia working voluntarily alongside migration activists, launched a legal challenge on behalf of 17 of the former JS Global workers in Melaka High Court. An anonymous donation supported the court costs. The case was filed against JS Global, MYEG, the rehiring scheme vendor, and several government departments. The workers claimed their right to be regularised and protected against arrest, detention, and deportation whilst also seeking full remediation owed to them. Following multiple court hearings, the defendants are seeking to strike out the case on the basis of the workers’ irregular status. A ruling has been repeatedly delayed as of this writing, some six months after the filing of the case.

Where the Workers Are Now

While waiting for a court ruling, another six JS Global workers—three from Nepal and three from Indonesia—gave up hope and returned home under the Malaysian Government's [Back For Good](#) amnesty programme. Launched on 1 August 2019, this programme allowed undocumented workers to voluntarily surrender themselves to authorities and return home legally after paying a penalty of RM 700 (€150). About [180,000 undocumented migrant workers](#) across industries had been repatriated under this programme when it ended on 31 December 2019. They are now blacklisted and barred from returning to Malaysia for an indefinite period. In addition to the penalty the six JS Global workers who returned home under this programme also paid for identity documents and flight tickets, a total of about RM 3,000 (€600). Having registered under the Rehiring programme these workers remained undocumented through no fault of their own but were further penalised under the Back For Good policy.

The remaining eleven workers are still seeking legal remedy. They live in fear of arrest and detention as a consequence of the intensification of the immigration crackdown following the end of the Back For Good programme. They are currently employed in jobs that are dangerous, dirty and demeaning and pay less than the minimum wage. In detention centres they would face [overcrowding, unhygienic conditions, and violence](#), according to testimonies of migrants and refugees collected by Tenaganita. With each day their expectations diminish only further. As one of the group's leaders recently told us, "We have lost all hope already." This was before the Covid-19 crisis, which has exposed migrant workers and especially those without regular employment to even greater risk.

The Responsibilities of the Government and Companies

Clearly, the Malaysian government bears responsibility for the exploitation of the former JS Global workers and other migrant workers in similar conditions. It is in clear violation of its obligations under International Human Rights Law. Punitive laws that chain migrant workers to an employer even if that employer is abusive are at the root of the problem. The failure of the Rehiring programme, in which the government and its vendors profited off poor and vulnerable migrant workers without providing anything in return, exacerbated the crisis for migrant workers.

What is the responsibility of companies in this situation?

The RBA and Possehl buyers used reports provided by Electronics Watch to ensure Possehl reimbursed workers for late wages and illegal wage deductions, seeking to correct violations of their code of conduct. However, when asked, the companies elected not to support the legal challenge or provide shelter and protection to workers. Two Possehl buyers offered to employ the former JS Global workers—an opportunity the workers would have welcomed—but only once they were regularised. The RBA reportedly discussed regularisation of workers with state authorities but reached the conclusion that it was not possible under existing law.

Should the companies have done more to protect these victims of forced labour?

Recent international human rights due diligence guidance such as the [OECD Guidance](#) for Responsible Business Conduct, develops the corporate responsibility to respect human rights. This suggests that companies that are directly linked to adverse impact on workers in their supply chains should use their leverage to influence the entity causing the adverse impact to prevent or mitigate the impact. The Guidance also suggests that companies should engage with suppliers to address systemic issues in the supply chains. In some cases, this requires companies to use their leverage with governments to press them to affect change. This Guidance further suggests that while responsible business conduct primarily entails compliance with the law, this obligation does not begin and end with legal compliance. Finally, the Guidance recommends that companies seek to mitigate and prevent adverse impacts by engaging with impacted or potentially impacted rightsholders in developing and implementing corrective action plans.

The buyers and the RBA did much that was right within the boundaries of their code of conduct and the former JS Global workers received sorely needed reimbursements. But neither Possehl nor the buyers informed them how those reimbursements were calculated and did not consult with the workers themselves about appropriate remediation. The amounts the workers received are significantly less than what workers themselves believe they are owed after receiving nothing in return for their payments into the rehiring scheme.

It is worth repeating: The former JS Global workers organised themselves. They collected and compiled data. They presented documentary evidence to support their claims. They initiated the process of remediation. Companies could have welcomed their participation in the process, learning from them, keeping them updated on their own activities, and negotiating a settlement that made sense to all parties. Companies

might have then learned from the workers whether or not remediation should have been something more than reimbursements.

[The UN Guiding Principles](#) on Business and Human Rights suggests that remedy may “include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions” (UNGP No. 25). When workers have faced forced labour through debt bondage, passport confiscation, violent threats and intimidation, what is appropriate remediation? First and foremost, the JS Global workers who brought a legal case against an employer who had violently threatened them needed and requested physical protection. In the initial stages they were in desperate need of shelter as they were afraid of remaining in the same city as their former employer. Beyond that, did workers believe a public apology was in order? Did they think that JS Global, should be held accountable in a court of law? These are questions companies could have asked which might have resulted in meaningful remediation from workers’ perspective.

Finally, these workers wanted more than anything else to be rehired in decent jobs. While some companies may be lobbying Malaysian authorities to end punitive migrant workers policies that prevented rehiring of these workers, what would happen if they did so transparently alongside the victims of these policies? That could demonstrate to the authorities that companies, domestic and important foreign investors alike, value migrant workers’ involvement and voices to drive systemic solutions to forced labour.

The Covid-19 crisis heightens the urgency of this engagement as victims of forced labour are without protection and at the mercy of employers operating at the fringes of the law.

With hundreds of thousands of migrant workers in Malaysia still at risk of forced labour, companies have a responsibility to provide meaningful remedy to those workers whose rights to safe and decent work have been and continue to be violated in the production of the goods they bring to market. Once companies begin to take action beyond the strict requirements of their codes of conduct and engage victims of rights violations meaningfully in the remediation process—as partners in the design of remediation—the former JS Global workers and others in similar situations will have reason for hope.