

Public procurement of tainted PPE (Malaysia)

Sector: Personal protective equipment (PPE)

Issues: Worker exploitation, forced labour, recruitment fee payment and debt bondage

The companies: **Supermax Healthcare Limited** is a UK-based subsidiary of the Malaysian **Supermax Corporation** (Supermax), a latex gloves conglomerate that supplies medical gloves manufactured in its 11 Malaysian plants to over 160 countries worldwide.¹ Given the huge global demand for its PPE during the Covid-19 pandemic, the company's earnings surged 627 per cent in the 12 months between June 2020 and June 2021.²

In 2015, Supermax was awarded part of a contract worth £320-375m to supply PPE to the NHS.³ In April 2020, the UK Government purchased the entire inventory of Aurelia Gloves, a Supermax Healthcare brand, worth an additional £311m, without tender due to emergency pandemic regulations.⁴ In December 2021, Supermax was named an approved supplier, enabling it to pitch for contracts under a new framework agreement worth £6bn with **NHS Supply Chain**, a dedicated procurement arm of the NHS.⁵

Affected rights holders: Malaysia's economy is highly reliant on migrant workers from countries including Bangladesh, Nepal and Myanmar.⁶ In Malaysia, freedom of association and collective bargaining are restricted by law for migrant workers.⁷ Such restrictions, coupled with systemic union busting throughout the country, create a situation in which abuses can thrive.⁸ Unscrupulous recruitment agents and employers exploit these gaps in worker protection by confiscating workers' passports, charging exorbitant recruitment fees which force workers to seek high-rate loans to repay their debts, and failing to ensure adequate working conditions.⁹

Details:

Many migrant workers end up working in Supermax PPE manufacturing plants under these conditions. The company has been accused of worker exploitation and forced labour in its manufacturing operations in Malaysia.¹⁰ Workers reported facing poor working and living conditions, abuse, detention, salary deductions and passport confiscation.¹¹ Supermax announced that it had put in place a new migrant worker policy, raised wages and that it had begun reimbursing workers for recruitment fees in September 2021.¹²

Wilson Solicitors' judicial review application asserts that in September 2021, "NHS Supply Chain received a detailed summary of evidence underpinning growing concerns about Supermax".¹³ Following the decision of the US Government in October 2021 to put in place import bans on Supermax products based on its finding of forced labour, concerns relating to the company were raised yet again in the House of Lords, leading the Department for Business, Energy and Industrial Strategy (BEIS) to initiate an inquiry into the company.¹⁴

Despite the serious red flags concerning Supermax's labour practices and ongoing investigations, NHS Supply Chain named it an approved supplier in December 2021.¹⁵ While the company, in response to the US decision to ban imports from Supermax, had given assurances to the public sector body that "three audits of its factories were under way and that the results could be provided", it did not wait to receive the results, awarding Supermax the contract before the assessments were finalised.¹⁶

In January 2022, judicial review proceedings were issued by Wilson Solicitors LLP on behalf of a group of former and current Supermax workers and non-profit organisation, The Citizens, relating to NHS Supply Chain's decision to allow Supermax Healthcare Limited to enter a new tender for a £6bn framework deal to supply PPE to the NHS.¹⁷

The High Court claim challenging the public sector's procurement processes was settled and the authorities agreed to ensure that no orders will be placed with Supermax under the disputed agreement decision. They will also change how they assess the risk profile of potential suppliers in sourcing for the NHS.¹⁸

Abuses endemic to the sector

Medical gloves sourced by the UK Government from a number of other Malaysian companies, including **Top Glove** and **Brightway**, have also been linked with labour rights violations.¹⁹

The failures of social auditing are also clear from these cases.²⁰ Top Glove had been audited 28 times in the two years before a US Government investigation revealed that its products were made using forced labour.²¹

How could a UK Business, Human Rights and Environment Act have made a difference?

An independent regulator may be an appropriate mechanism to ensure that the public sector addresses risks in its procurement practices. In our assessment, this mechanism might have ensured that the public sector body's procurement processes addressed risks of forced labour in the NHS supply chain or provided a sanction if it failed to take reasonable steps to conduct due diligence including having proper procedures in place.

In our assessment, under a UK Business, Human Rights and Environment Act, the NHS procurement body might have ensured that its procurement processes were capable of detecting and reacting swiftly to credible allegations of abusive labour practices at its supplier's Malaysian plants. Considering the inherent risk in sourcing from Malaysia, a reasonable process might have included ensuring that the company had in place policies and processes addressing risks faced by migrant workers and a means to demonstrate to the NHS procurement body that these measures were meeting their objectives in practice. This might have included, for example, evidence that Supermax, rather than workers, proactively paid any recruitment fees. Strong procurement processes as mandated by the law might have helped protect vulnerable migrant workers from abusive practices in Malaysian plants.

In practice, NHS Supply Chain's procurement processes proved incapable of detecting or responding adequately to allegations of abuse. As these allegations appear to be substantiated, it seems likely that the affected migrant workers might have had access to justice resulting from the failure to avoid sourcing goods linked to labour rights abuses in Malaysia.

Supermax was named an approved supplier even after an import ban had been imposed on the company in the USA, and the procurement body failed to wait until the BEIS Committee's investigation into the company was complete and to obtain the results of social audits from the company prior to this decision.²² As this absence of oversight undermined its own due diligence process, it seems likely that the public sector's processes would not be deemed reasonable or effective in the circumstances.

Union busting in NHS value chains

An ongoing dispute between the Australian medical glove manufacturer, **Ansell**, and workers in its Sri Lankan operations is enmeshed in **NHS** value chains.²³ A Freedom of Information request made by Unison in 2022 revealed that NHS trusts spent £14m procuring medical gloves from Ansell between 2019-2022.

In 2013, when representatives of the Sri Lankan union, the Free Trade Zone and General Services Employees Union (FTZ&GSE) tried to organise workers at an Ansell factory, the company fired almost 300 workers involved.²⁴ While part of the eventual resolution led 200 workers to either be reinstated or receive retirement packages, the 11 workers who led the organising efforts were never reinstated or compensated and they have taken legal proceedings forward in the local courts.²⁵ An arbitration process in 2019 found against Ansell, however, the company has appealed this decision and the case is ongoing.²⁶

Ansell refuses to recognise FTZ&GSE and to ensure that workers' rights to freedom of association and collective bargaining are protected.²⁷ The company has also refused to adhere to the decision of the Commissioner General of Labour instructing it to pay workers in its Sri Lankan operations who work overtime on Saturdays and Sundays, denying workers their legal rights and payments due.²⁸

In our assessment, an independent regulator may also be an appropriate mechanism to ensure that the public sector's procurement practices address risks relating to workers' rights to freedom of association and collective bargaining and prevent union busting from taking place in public sector value chains.

- 1 Supermax, ["About Us"](#). Accessed 10 February 2023.
- 2 Financial Times (21 October 2021), ["NHS rubber glove supplier banned by US for alleged forced labour"](#).
- 3 The Guardian (9 February 2022), ["A bad dream: Nepalis who made UK's PPE speak out on claims of abusive working conditions"](#).
- 4 Financial Times (21 October 2021); The Guardian (9 February 2022).
- 5 Financial Times (21 October 2021).
- 6 The Diplomat (22 November 2019), ["Clean Gloves, Dirty Practices: Debt Bondage in Malaysia's Rubber Glove Industry"](#).
- 7 ITUC, CSI, IGB, ["Survey of violations of Trade Union Rights"](#). Accessed 23 January 2023. ILO Committee on the Application of Standards (6 June 2022), ["Malaysia"](#).
- 8 Nagiah Ramasamy (January 2019), ["The future and challenges of the trade union movement in Malaysia"](#).
- 9 The Diplomat (22 November 2019).
- 10 Wilson Solicitors (7 January 2022), ["Legal action launched over government decision to award framework agreement to supplier accused of using forced labour"](#).
- 11 The Guardian (9 February 2022).
- 12 Reuters (3 January 2022), ["Malaysia's Supermax implements new policies for migrant workers after US import ban"](#).
- 13 The Guardian (9 February 2022).
- 14 The Guardian (21 November 2021), ["UK investigates supplier of NHS PPE over alleged use of forced labour"](#).
- 15 The Guardian (9 February 2022).
- 16 Reuters (21 October 2021), ["US bars Malaysian glove maker Supermax over alleged labour abuses"](#); Reuters (19 January 2022), ["Canada puts on hold contracts with Malaysia glove maker Supermax"](#); The Guardian (9 February 2022).
- 17 The Guardian (9 February 2022).
- 18 The Guardian (9 February 2022); Channel 4 (1 December 2022), ["Department of Health forced to scrap how it sources medical gloves for NHS after supplier accused of modern slavery"](#); Unison (5 December 2022), ["Blog: We need a new law to protect human rights and the environment"](#).
- 19 The Independent (1 April 2021), ["Government facing threat of legal action over PPE links to modern slavery"](#).
- 20 Business & Human Rights Resource Centre (20 October 2021), ["Beyond social auditing: Key considerations for mandating effective due diligence"](#).
- 21 Clean Clothes Campaign (September 2019), ["Fig Leaf for Fashion: How social auditing protects brands and fails workers"](#).
- 22 Reuters (19 January 2022).
- 23 We Are Union (27 January 2023), ["Ansell PPE supply chain campaign update"](#).
- 24 Industriall (14 October 2014), ["Workers at Ansell continue to fight for their rights"](#).
- 25 We Are Union (27 January 2023).
- 26 We Are Union (27 January 2023).
- 27 We Are Union (27 January 2023).
- 28 Unison (4 November 2021), ["Unions seek investor action in challenging labour rights abuses"](#).