



**FORCED LABOR IN THE
PRODUCTION OF ELECTRONIC
GOODS IN MALAYSIA**
*A Comprehensive Study of Scope
and Characteristics*

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ACKNOWLEDGMENTS

Verité thanks the United States Department of Labor for financial support of this research under Cooperative Agreement number IL-23980-13-75-K. The statements herein do not necessarily reflect the views or policies of the United States Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the United States Government.

This research would not have been possible without the hard work and dedication of many people in many different locations. Verité wishes to recognize in particular the efforts of the field research team in Malaysia, each of whom made personal sacrifices, working nights and weekends, in order to complete this research and make a contribution toward improving the work and lives of workers in Malaysia.

Most importantly, Verité wishes to thank the workers who agreed to participate in this study, each of whom did so at great personal risk. These workers gave two or more hours of their very limited free time to the project, typically agreeing to meet on weeknights after a long day of work, or on their only day of rest. They bravely and altruistically shared their personal experiences, knowing that they would not experience any direct or immediate improvement in their lives from the study, but in the hopes that the shared understandings emerging from the research would serve as a catalyst for change. This report is dedicated to them.

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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

Introduction

Malaysia's electronics sector workforce includes hundreds of thousands of foreign migrant workers who come to Malaysia on the promise of a good salary and steady work – an opportunity to make a better life for themselves and their families. But many are subject to high recruitment fees, personal debt, complicated recruitment processes, lack of transparency about their eventual working conditions, and inadequate legal protections. Unscrupulous behavior on the part of employers or third-party employment agents¹ can exacerbate vulnerability to exploitation, but the system in which foreign workers are recruited, placed and managed is complex enough to create vulnerability even in the absence of willful intent to exploit.

The conditions faced by foreign electronics workers in Malaysia have the potential to result in forced labor. In 2012, Verité received funding from the US Department of Labor to conduct a study to determine whether such forced labor does, in fact, exist in the production of electronic goods in Malaysia.

The Study

Verité conducted a combination of desk and field research, employing a mixed methods approach to field data collection. A total of 501 electronics workers were interviewed using a quantitative survey form by a team of twelve researchers. The sample included foreign workers from seven countries, as well as Malaysian nationals. A set of longer, semi-structured interviews were also conducted, to supplement the quantitative data. These interviews were used to explore particular aspects of vulnerability to forced labor, and to profile how various risk factors can combine to trap workers in their jobs. Regional and global stakeholders from civil society, government and business were also consulted.

Interpretation of the data was guided by the International Labor Organization's survey guidelines to estimate forced labor. Throughout the process of applying the ILO framework, Verité erred consistently on the side of caution, choosing to define forced labor narrowly to ensure that positive findings were always based on solid, unambiguous evidence – even when this meant leaving additional evidence aside that might also have contributed to a forced labor determination. For this and other reasons discussed throughout the report, the positive findings

of forced labor reported below are very likely lower than the actual rates of forced labor in the Malaysian electronics industry and should be viewed as a minimum estimate.

Summary of Main Findings

Forced labor is present in the Malaysian electronics industry.

Twenty-eight percent of all workers in the study sample were found to be in situations of forced labor. The rate of forced labor among only foreign workers was higher, at 32%, or nearly one in every three foreign workers. As mentioned above, this finding is based on conservative measures and should be understood as a minimum estimate of the problem.

Forced labor was found in the study sample in significant numbers across all major producing regions, electronics products, foreign worker nationalities, and among both female and male workers. These results suggest that forced labor is present in the Malaysian electronics industry in more than isolated incidents, and can indeed be characterized as widespread.

The key factors that contributed to forced labor conditions for the workers interviewed by Verité are discussed below.

Forced labor is linked to recruitment fee charging and the indebtedness that follows. Recruitment fee charging of foreign workers was found to be pervasive in the study sample, and fees were often excessive.

Ninety-two percent of all foreign workers surveyed paid recruitment fees in order to get their jobs. The recruitment fees that workers paid for their jobs often exceeded legal and industry standards equivalent to one month's wage.² Of workers reporting recruitment fees paid to employment agents in their home countries, 92% were excessive. Of respondents reporting fees paid to their employment agent in Malaysia, 99% reported excessive levels.

Worker indebtedness was strongly linked to excessive recruitment fees charged to workers in their home countries and in Malaysia.

Seventy-seven percent of workers who were charged fees had to borrow in order to pay them. Workers who had to borrow money to pay recruitment fees reported paying higher fees, on average, than workers who did not have to borrow. This suggests that higher fees mean a higher likelihood of indebtedness for workers.

When workers took on debt to pay for fees, this debt represented a significant and ongoing burden during their stay in Malaysia: 95% of workers who borrowed money to pay recruitment fees took longer than three months to pay off the debt, and 50% took longer than a year. When one considers that the typical work contract for a foreign worker is two years in duration (with the option of a third year extension), this means 50% of workers were paying off recruitment debt for at least half of their first work contract.

Recruitment-related debt compelled workers to work.

Of respondents that had not yet paid off their debt, 92% reported feeling compelled to work overtime hours to pay off their debt, and 85% felt it was impossible to leave their job before paying off their debt.

The rate of forced labor was higher among currently indebted workers (48%) than it was in the general respondent pool (28%). This finding lends credence to the notion that excessive fee charging and the debt that follows increases vulnerability to forced labor: Workers in this study who were charged higher recruitment fees were more likely to borrow, and, in turn, were more vulnerable to forced labor.

Forced labor is also linked to deceptive recruitment: One in five workers in the study was misled in the recruitment phase about the terms of their employment agreement.

Twenty-two percent of foreign workers were deceived about their wages, hours, overtime requirements or pay, provisions regarding termination of employment, or the nature or degree of difficulty or danger of their jobs. These workers had little ability to change or refuse their jobs upon arrival.

Passport retention, which is prohibited by law in Malaysia³, was widely experienced by workers in the study.

Ninety-four percent of foreign workers in the sample reported that their passports were held by the facility or their broker/agent, and 71% reported it was impossible or difficult to get their passports back when they wanted or needed them.

Foreign workers interviewed by Verité were highly constrained in their freedom of movement. Passport retention was a strong contributing factor.

Sixty-two percent, or nearly two thirds of all foreign workers interviewed, reported that they were unable to move around freely and safely without their passports or other travel documents.

Thirty-five percent of workers reported needing a pass or permit to go beyond a certain distance from their housing.

Many foreign workers in the study experienced poor living conditions, in housing provided by employers or third-party employment agents.

Thirty percent of foreign workers slept in a room with more than eight people, 43% of foreign workers said that there was nowhere they could safely store their belongings, and 22% of foreign workers said that they did not feel safe in their housing.

It was difficult for foreign workers surveyed by Verité to leave before the end of their work contracts.

Fifty-seven percent of foreign worker respondents reported they could not leave their job before their contract was finished because they would either be charged an illegally high fine, would forfeit wages or runaway insurance, would be forced to pay the balance of the levy, would lose their passport, or would be denounced to the authorities.

Once on the job in Malaysia, 88% of foreign workers said they did not have the option to insist on a different job arrangement, and 92% said they did not have the option of refusing their job arrangement and returning home with job procurement costs refunded.

A 2013 change in government policy compromised workers' ability to pay off recruitment debts and to leave before the end of their contracts.

In January 2013, employers were given the option of recovering the cost of a per-capita levy on foreign workers by charging the workers themselves for this cost. This change in policy, and the extra charges to workers that resulted, was a surprise to many workers in the study.

At MYR 1,250 a year (USD 387), the levy often represents a significant sum for workers. The employer pays the full year's cost of the levy for each foreign worker up-front, and then has the option to charge the worker for the cost in 12 monthly installments. Many workers being charged for the levy reported to Verité that they did not count on having to make monthly levy payments when they calculated their loan amounts, and that the levy obligation made it more difficult to pay off their recruitment debt.

Many workers also reported to Verité that employers required them to pay the remaining amount of the levy in order to leave before their contract is up. This requirement is not actually sanctioned by law, but is widely practiced. Seventy percent of all foreign workers reported that they felt they could not leave their job before the levy is paid off.

Workers in the study that were employed by third-party employment agents were found to be more vulnerable to forced labor conditions than directly hired workers.

Many electronics workers in Malaysia are now employed directly by third-party employment agents. These labor intermediaries manage the full employment life cycle of recruitment, hiring, deployment, management and repatriation on behalf of client companies. In large electronics manufacturing facilities it is now possible to find multiple employers, including both the factory and employment agents, who are in charge of different subsets of workers. This outsourcing arrangement, while sanctioned by law, acts to erode the essential worker protection and employer accountability inherent in an employer-employee relationship. Liability over violations of the worker's rights is obscured, creating vulnerability on the part of the worker to exploitation and abuse; and consequently, the worker's access to legal recourse and grievance mechanisms is effectively barred.

In the current study, 35% of workers employed by their outsourcing agent were found to be in forced labor, compared to 25% of directly employed workers.

Beyond a Minimum Estimate

In addition to a minimum estimate of forced labor in the Malaysian electronics sector, it is also useful to consider the number of workers that can be considered to be the threshold of forced labor, and to explore more comprehensive measures of the problem.

Vulnerability to forced labor is a prominent feature of the Malaysian electronics industry workforce.

In addition to the 28% of workers found to be in forced labor, 46% of study respondents were deemed to be on the threshold of forced labor, due to the presence of one or more forced labor indicators. A total of 73% of workers in the study exhibited forced labor characteristics of some kind, a finding which suggests that the risk of forced labor in the industry is extremely high.

When an alternative definition of passport retention was applied to the study's findings, the forced labor determination significantly increased.

Verité employed a conservative definition of passport retention in the minimum estimate of forced labor in the sample, based on Malaysian law and ILO guidance. Malaysian law clearly prohibits the practice of retaining a passport "issued for the use of some person other than

himself”.³ The ILO refers not only the lack of ability to access one’s passport, but also to the sense on the part of the worker that to leave employment would risk the loss of the document.⁴

The ILO’s requirement that the worker would not get his or her passport back if s/he were to leave the job is not a necessary precondition under Malaysian law and indeed may be too restrictive a definition of the indicator, given that the mere retention of the passport has a clear effect on a worker’s ability to refuse the employment arrangement.

When the study’s definition of passport retention was adjusted to reflect only Malaysian law – that the passport is held by someone other than the passport holder – as well as the concept that it is difficult or impossible for the passport holder to access the passport, the aggregate forced labor finding rose appreciably: Fifty-eight percent of all respondents, or 66% of all foreign workers, were found to be in forced labor.

Additional Factors

There are often significant factors not directly linked to the actions of employers that compound foreign workers’ vulnerability to forced labor. Some of the main factors of this kind found by this study include:

Foreign workers interviewed by Verité were closely scrutinized by employers, the government and citizenry.

Forty-six percent of foreign workers reported having encounters with immigration officials, police, or the volunteer citizen security corps (known as “RELA”) in the past year. The majority of these respondents reported having had to pay a bribe, being detained or being threatened with detention, physical harm or general intimidation.

Twenty-seven percent of foreign workers in the study reported that they could not come and go freely from their housing, were monitored at their housing, or were subject to some other form of surveillance.

These issues have a profound effect on the ability of foreign workers to move freely in Malaysian society.

Foreign workers surveyed were found to be dependent in multiple ways upon their employment agents. This dependency created vulnerability to exploitation.

Foreign workers are tied to their employers and jobs through their work permits, which require the sponsorship of a particular employer. The work permit cannot be transferred to another employer. The employer is also held responsible for ensuring accommodations, medical check-ups and medical insurance for the foreign worker.

For 92% of the foreign contract workers that Verité interviewed, housing was provided by the employer or broker. The location of the job, the type of job and the worker's pay structure were also determined by the employment agent. Workers often reported being moved from one facility to another, with no control over their assignments; or being put on furlough in between job assignments, with no indication of how long it would last. Some workers had to borrow money from agents to get along during this period of inactivity.

The dependency of the foreign worker on the employer or agent for legal status, job, housing and sometimes even food, creates a situation of heightened vulnerability to exploitation.

Conclusion

This mixed quantitative-qualitative study sought to estimate the presence and incidence of forced labor indicators and forced labor itself in the Malaysian electronics industry. The study has generated conclusive evidence of forced labor in the sample and a robust description of its key features. These findings lend a sense of pervasiveness to previous, largely qualitative research on the subject.

The analysis carried out by Verité of the component indicators of forced labor among the workers interviewed points to myriad connections between the core elements of forced labor in the Malaysian electronics industry and systemic, structural factors shaping the lives of foreign workers in the country.

Verité hopes that these findings will provide a platform of understanding from which concrete actions can be taken by government, business and civil society stakeholders alike to combat the abuses suffered by foreign workers in the manufacture of Malaysian electronics.

List of Abbreviations

6P	Foreign Workers Total Solutions Program
ASIC	Application-specific integrated circuit
CM	Contract Manufacturer
CWS	Contract Work Services
DSS	Direct Supply Services
E&E	electrical and electronics
EMS	Electronic Manufacturing Service
EPF	Employee Provident Fund
EA	employment agent
FIZ	Free Industrial Zone
FOMEMA	Foreign Workers Medical Screening Expert (the name of the company that manages and operates the mandatory foreign worker health screening system in Peninsular Malaysia)
HR	Human Resources
IC	integrated circuit
ILO	International Labor Organization
IOM	International Organization for Migration
IT	Information Technology
ITUC	International Trade Union Confederation
JO	job order
KDN	<i>Kementerian Dalam Negeri</i> (Ministry of Home Affairs of Malaysia)
KHED/KHEDN	<i>Kementerian Hal Ehwal Dalam Negeri</i> (the Ministry of Internal Affairs of Malaysia, before it was merged with Ministry of Internal Security and became Ministry of Home Affairs)

MNC	multinational company
MOHA	Ministry of Home Affairs of Malaysia
MOHR	Ministry of Human Resources of Malaysia
MTUC	Malaysian Trades Union Congress
MYR	Malaysian Ringgit
NGO	non-governmental organization
OBM	Original Brand Manufacturer
ODM	Original Design Manufacturer
OEM	Original Equipment Manufacturer
OSC	One-Stop Center
PEA	private employment agency
PKPP	<i>Program Khas Pengurusan PATI</i> , a special program for managing “illegal” immigrants in Malaysia
PLKS	<i>pas lawatan kerja sementara</i> (temporary visitor pass)
PMP	portable multimedia player
PMS	Partial Management Services
RELA	<i>Ikatan Relawan Rakyat</i> (volunteer citizen security corps in Malaysia)
SOCISO	the Social Security Organization in Malaysia that was set up to administer, enforce and implement the Employees’ Social Security Act, 1969 and the Employees’ Social Security (General) Regulations 1971
SOMO	Centre for Research on Multinational Corporations
TMS	Total Management Services
TOS	Total Outsourcing
UNHCR	United Nations High Commissioner for Refugees
USD	United States Dollar
USDOL	United States Department of Labor

1. INTRODUCTION



1. INTRODUCTION

PROBLEM STATEMENT AND PURPOSE OF STUDY

Malaysia's electronics sector is a destination for hundreds of thousands of foreign workers. These workers have been shown to be subject to a dangerous combination of personal debt, high placement fees, complicated recruitment processes, lack of transparency into working conditions, and inadequate legal protections. This can be exacerbated by unscrupulous behavior on the part of labor intermediaries and employers, but the system is complex enough to create vulnerability even in the absence of willful intent to take advantage of workers. Foreign workers are also at high risk of being or becoming "undocumented," leaving them vulnerable to harassment and deportation, and therefore also to severe economic exploitation.

The conditions faced by foreign electronics workers in Malaysia have the potential to result in forced labor. In 2012, Verité received funding from the US Department of Labor to conduct a study to determine whether such forced labor does, in fact, exist in the production of electronic goods in Malaysia. The specific research objectives were to:

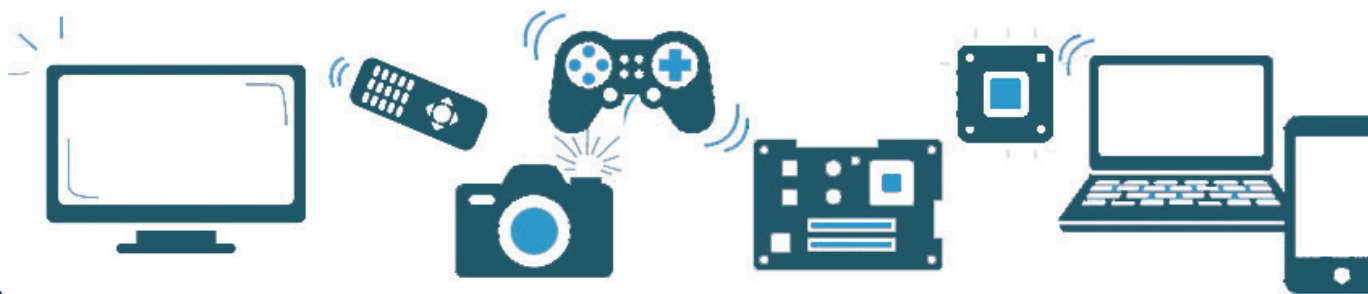
- examine whether or not forced labor in the manufacture of electronic goods exists in more than isolated incidents;
- describe the nature/characteristics/forms of forced labor found to be present in the electronics manufacturing industry;
- identify – to the extent possible – specific electronic goods being manufactured under such conditions;
- describe – to the extent possible – how widespread the practice of forced labor is in the production of these goods in Malaysia; and
- research the relationship between third-party employment agents, other intermediaries and employers, including producers of electronic components and finished parts, in all phases of recruitment, transportation, and placement of foreign workers in the Malaysian electronics industry, and consider what role these actors may play in forced labor, including debt bondage, in this sector.

To those ends, the following research questions framed the study:

1. Do indicators of forced labor exist in the production of electronic goods in Malaysia, including in the manufacture of specific electronic components and finished products?
 - a. If indicators of forced labor exist in the production of electronic goods in Malaysia, including in the manufacture of specific electronic components and finished products, do exist, what are those indicators?
2. Does forced labor exist in the production of electronic goods in Malaysia in more than isolated incidents, including in the manufacture of specific electronic components and finished products?
 - a. If forced labor exists in the production of specific electronic goods in Malaysia in more than isolated incidents, what are the specific components and finished products?
 - b. How widespread is each indicator in the electronics sector?
 - c. How widespread are each of the indicators in the production of each electronic good/component?
3. What is the relationship between third-party employment agents, other intermediaries and employers, including producers of electronic components and finished parts, in all phases of the recruitment, transportation, and placement of foreign workers in the Malaysian electronics industry?
 - a. What role, if any, do these actors play in forced labor in the sector?

This research has followed the legal and conceptual framework for forced labor and human trafficking established by Convention 29 and other ILO jurisprudence and guidance and Malaysian law. The Malaysian Constitution states that no person shall be held in slavery, and explicitly prohibits all forms of forced labor, except that which may be provided by law as a form of compulsory service for national purposes, and work incidental to the serving of a sentence of imprisonment.⁷ A Malaysian law adopted in 2007 prohibits human trafficking, and an amendment in 2010 makes specific reference to the protection of foreign workers.⁸ Malaysia is a signatory to Convention 29 of the International Labor Organization (ILO), which defines forced labor 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.*”⁹

2. BACKGROUND



2. BACKGROUND

2.1 The Sector

2.1.1 Composition of Sector

The electronics sector is Malaysia’s leading manufacturing industry and a key driver of the Malaysian economy, contributing 32.8% of exports and 27.2% of employment in 2013.¹⁰

Malaysia has become a major global manufacturing hub for the electrical and electronics industry, as attested by the large number of multinational companies (MNCs) from the USA, Japan, Europe, Taiwan and South Korea that have chosen Malaysia as their manufacturing base. The industry is characterized by high foreign investment holdings, with 86.5% (approximately 2.68 billion USD) of investment in the industry originating from foreign sources in 2013.¹¹

Jobs in the sector are primarily low-wage and low-skilled, and the competitiveness of the industry is derived from low labor cost.¹² Malaysia has strived to move its semiconductor industry beyond basic operations such as assembly, testing and packaging to higher value-added activities such as cutting and polishing of silicon wafers, integrated circuit (IC) design and wafer fabrication, and higher-level specialization and development of new technologies such as nano-technology in manufacturing processes.¹³

Range and Categories of Products in the Sector. The Malaysian Investment Development Authority divides the “electrical & electronics” (E&E) industry into four subsectors:¹⁴

Sectors	Sub-Sectors	Products
Electronics	Components	Semiconductors, passive components, printed circuit boards, metal stamped parts and precision plastic parts
	Consumer	Audio visual products such as television receivers, portable multimedia players (PMP), speakers, cameras, and electronic games
	Industrial	Multimedia and information technology products such as computers and computer peripherals, telecommunications equipment, and office equipment
Electrical	Electrical	Boards, panels and consoles; switching apparatus; lamps; air conditioners; vacuum cleaners; ovens; transformers; cables and wires; primary cells and batteries; and solar cells and modules

As shown in the table below, electronic components and boards is the biggest subsector by volume, gross output, and employment, followed by computers and peripheral equipment and consumer electronics. The electronic components and boards subsector is dominated by the testing, assembling, and packaging of semiconductors.

Table 2.2 Number of establishments, employment and gross value output of the electronics sector¹⁵

Group and industry code	Products	Number of establishments	Total number of persons engaged ¹⁶	Value of gross output (MYR '000; USD)
261	Manufacture of electronic components and boards	366	182,510	90,909,916 (28,637,561 USD)
262	Manufacture of computers and peripheral equipment	85	64,054	30,113,710 (9,486,129 USD)
263	Manufacture of communications equipment	55	27,272	11,420,863 (3,597,690 USD)
264	Manufacture of consumer electronics	90	40,197	40,259,593 (12,682,187 USD)
265	Manufacture of measuring, testing, navigating and control equipment; watches and clocks	58	9,952	2,505,840 (789,365 USD)
266	Manufacture of irradiation, electro medical and electrotherapeutic equipment	18	9,205	1,516,690 (477,773 USD)
267	Manufacture of optical instruments and photographic equipment	10	13,398	2,966,350 (934,431 USD)
268	Manufacture of magnetic and optical media	5	1,070	1,045,486 (329,339 USD)

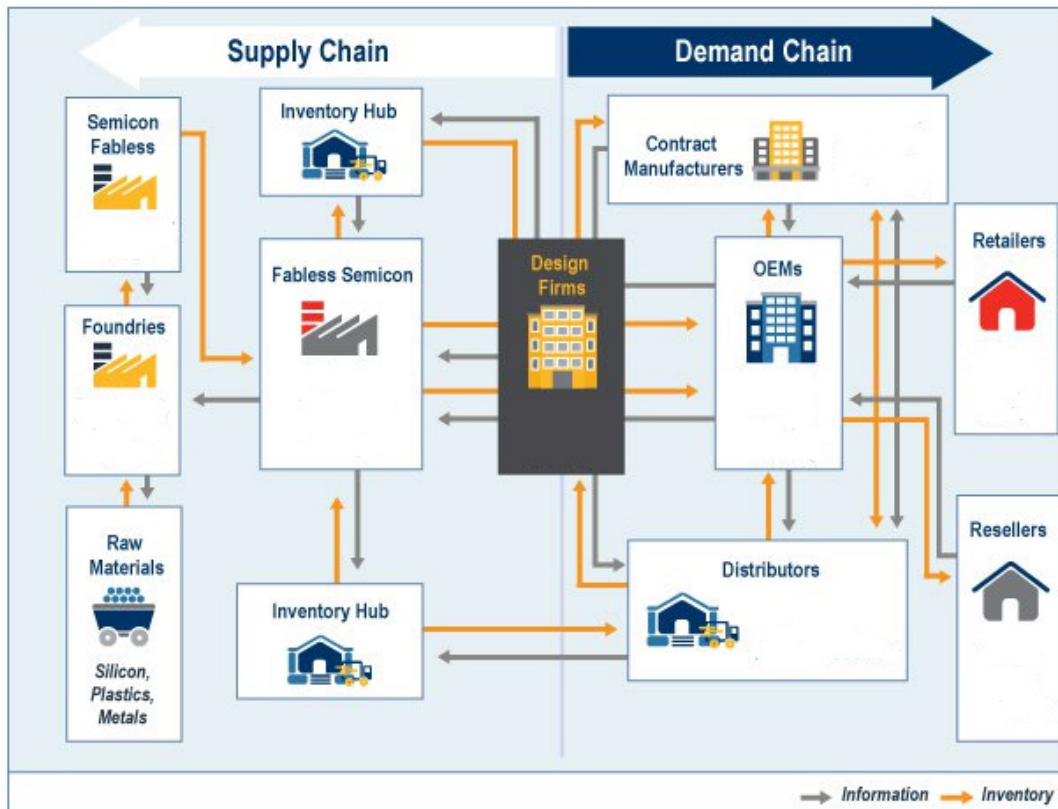
2.1.2 Supply Chain

The electronics industry in Malaysia is capital intensive and facilities tend to be large and formally organized. Of workers in facilities producing the three main categories of export products (semiconductors, computer peripherals, and consumer electronics), 95% work in facilities with over 200 employees and 56% work in facilities with over 2,000 employees. Large factories are usually located within Free Industrial Zones (FIZs) with lower-tier facilities in the supply chain often located around the edges of FIZs providing services and basic inputs to larger, higher-tier facilities. Although smaller facilities outnumber large facilities, they account for only 5% of employment in facilities producing the top exported products. Smaller scale service providers tend to be located around FIZs and focus on packaging, molding of cases, and support industries.¹⁷

At the top of the electronics supply chain are large, public-facing companies with well-known brand names.¹⁸ These global companies are known as Original Equipment Manufacturers (OEMs). While historically OEMs manufactured their products themselves, these companies now typically engage one or more contractors who design, manufacture, and/or package products on the OEM's behalf.¹⁹ Suppliers who perform the design, manufacturing and packaging are known as Contract Manufacturers (CMs) and Electronic Manufacturing Services (EMS). CM and EMS companies work with OEMs as well as Original Design Manufacturers (ODMs) and Original Brand Manufacturers (OBMs) to provide a range of manufacturing services.

The number of inputs in the supply chain of any given electronics product is vast and complex, with major component parts each possessing their own supply chains and, in some cases, brand identities, as is the case in the semiconductor industry.

Box 2.1 Complexity of Electronics Supply Chains and Product Classification: Semiconductors in Focus²⁰



Because electronics products are made up of so many component parts – some of which have their own, separate and complicated supply chains – the disaggregation of supply chains, and the determination of where one supply chain stops and another begins, is a challenging exercise.

For semiconductors, the process begins separately in integrated circuit design, fabrication and packaging houses, and technology providers, who supply Application Specific Integrated Circuit (ASIC) providers with needed inputs to make a chip tailor-made to a specific use for a specific company. Once that chip is delivered to the OEM for further work with product design houses and tooling houses, it becomes part of the supply chain of the particular electronics product. Thus, in terms of industry classification, activities upstream from the OEM fall within the semiconductor supply chain, while activities downstream of the OEM are considered part of the supply chain of the consumer electronics product.²¹

2.1.3 Geography: Regional Distribution

Electronics facilities, along with most other manufacturing companies in Malaysia, are primarily located in and around over 200 industrial estates or parks and 18 Free Industrial Zones (FIZs), of which more are being developed. The zones offer many benefits to companies, such as duty free import of raw materials, tax breaks, advanced infrastructure, and IT. Zones vary in their human resources policies and practices. Zones hosting facilities with higher value-added activities (such as those in Penang) tend to have better human resource development policies and labor relations practices than less developed zones, which have a high workforce turnover rate.²²

Figure 2.1 Map of free industrial zones in Malaysia



Based on industry publications, on the ground rapid appraisal research, and previous expertise, Verité has determined that the electronics industry is primarily located in the following regions in Malaysia: Penang, Johor Bahru, Kuala Lumpur and the surrounding Klang Valley, and to a lesser extent: Seremban, Negeri Sembilan; Malacca; Ipoh, Perak and Alor Setar, Kedah.

These regions are characterized by a multitude of FIZs and high concentration of electronics manufacturing facilities.

Electronics production in Malaysia started in Penang, where in the 1970s the government established the first Free Trade Zone, Bayan Lepas, in an effort to promote the growth of the electronics sector. Known as the “Silicon Island of the East”, Penang remains at the center of the electronics industry in Malaysia.²³ Penang’s history as an electronics hub has resulted in strong links between facilities within FIZs and surrounding suppliers.

Johor Bahru, the capital city of the southernmost state in peninsular Malaysia, is also a thriving center of electronics manufacturing due to sustained foreign direct investment in the electronics sector beginning in the 1980s. The city benefits from its close proximity to Singapore; the Johor state government actively fosters cross-border investments, and many firms headquartered in Singapore have manufacturing facilities in Johor.²⁴

The electronics industry in Kuala Lumpur, the federal capital and most populous city in Malaysia, is spread out over the surrounding area known as Klang Valley, which has a population of 7.2 million people, more than one fifth of the total population in Malaysia.²⁵ There are at least 25 industrial parks within Shah Alam and three free trade zones in Selangor, both of which are in Klang Valley.²⁶

2.2 Demographic Profile of Workers in the Malaysian Electronics Industry

Malaysia is a leading destination country for foreign migrant laborers in Southeast Asia. Low-wage, low-skilled factory jobs are increasingly performed by foreign workers in the country, and labor migration to Malaysia has steadily increased over the past decade. Estimates of the number of foreign workers vary, and official government statistics were unavailable at the time of this study. One report has estimated 1.9 million documented and at least 2 million undocumented foreign workers in Malaysia in 2010, comprising approximately 25% to 30% of the total workforce in Malaysia.²⁷ One stakeholder interviewed for this research estimated there to be closer to 4 million documented foreign workers in the country.

In 2010, 39% of documented foreign laborers were reported by one study to be working in manufacturing.²⁸ The Malaysian Department of Statistics reported that close to 350,000 people worked in the electronics industry in Malaysia in 2011.²⁹ Another independent study in 2010 estimated that foreign workers comprised 20 to 60% of the workforce in the electronics industry.³⁰

Estimates of the numbers of migrants from different countries of origin in Malaysia also vary, though there is consensus that the primary sending countries are Indonesia, Nepal, Bangladesh, Burma, the Philippines, Vietnam, India, Cambodia and Thailand. The International Organization for Migration (IOM) reported statistics on foreign workers in Malaysia working in all sectors by country of origin from both 2006 and 2008 (see Table 2.3 below). A news article published in 2013 reported similar levels, with Indonesians making up the largest share of migrant laborers at 935,058, followed by Nepalese (359,023), Bangladeshis (319,822), Burmese (174,477), and Indians (117,697).³¹

Country of Origin	Number of Workers (2006)	Number of Workers (2008)
Indonesia	1,215,000	1,120,828*
Nepal	200,200	207,053
India	139,700	138,083
Vietnam	85,800	103,338
Bangladesh	58,800	315,154
Burma	32,000	134,110
Philippines	22,000	27,105
Thailand	7,200	20,704
Others	88,900	43,579
Total	1,849,600	2,109,954

*Note: *50 percent of the total number of foreign workers in Malaysia.*

In terms of estimates of gender breakdown, according to the Government of Malaysia's Department of Statistics, approximately 60% of those employed in the electronics sector in 2011 were women³³, while an independent report from 2013 estimated that up to 70-80% of the sector is made up of women.³⁴

2.3 Labor Recruitment and Employment Agent Systems

2.3.1 Introduction

The sourcing and – in some cases management and/or employment – of foreign workers in Malaysia’s electronics sector is facilitated by third parties known variously as private employment agents, recruiters, outsourcing agents, manpower agents, or third-party employment agents. In sending countries, the labor supply chain often begins with subagents located in small towns and difficult to reach rural areas. Workers and other stakeholders interviewed by Verité indicated that agents charge workers a fee to refer them to larger recruitment agencies in major cities of the sending country. These bigger recruitment agencies have contracts to source workers to employment agents or factories in Malaysia. It is with these bigger, more formalized agents that workers often first sign a contract and learn about the nature of the potential job in Malaysia. These sending country recruitment agencies also charge a fee and provide services such as preparation of legal documents, facilitation of medical exams, and transportation to Malaysia.

Once in Malaysia, workers are often handed off to yet another agent, this time a Malaysia-based agent. Until 2005, Malaysia-based agents were authorized only to recruit and place foreign workers in jobs, but not to manage or employ them. In 2005, the Government of Malaysia’s Ministry of Home Affairs (MOHA) established guidelines that recognized the role of third-party employment agents as managers or employers of foreign workers.³⁵ In April of 2012, an amendment in the Employment Act of 1955 introduced the notion of a “contractor for labor”, which officially legitimized the role of labor contractors, suppliers, or employment agents as employers of foreign workers.³⁶

Many workers are now employed directly by labor suppliers or employment agents while working in Malaysia. In a large electronics manufacturing facility it is now possible to find multiple employers, including both the factory and employment agents, who are in charge of different subsets of workers. Different Malaysia-based agents often offer different services according to the type of employment arrangement the worker is under. Stakeholders interviewed for this research noted the lack of a consistent and clear legal framework for regulating the recruitment, hiring, and employment of foreign workers, with some laws applying only to recruiters and others to agencies that not only recruit but also manage and employ workers.

The fees workers pay to different agents along the labor supply chain are often high, and in many cases family land must be leveraged or a loan taken in order to pay the fee. These fees can vary widely by country of origin and are commonly above legal limits set by sending countries

and receiving countries. Fees charged by local sub-agents and recruitment agents in sending countries are unregulated and often leave a worker in debt before they have arrived in Malaysia.

These issues are discussed in more depth below.

2.3.2 Relationship of and Functions Provided by Labor Intermediaries to Employers and Workers in Malaysia

For industries heavily dependent on foreign labor for production, such as the electronics industry in Malaysia, labor intermediaries play a critical, and legitimate, role in putting employers in touch with large pools of job-seekers and facilitating the placement of the right number of workers with the right employers at the right time. Malaysian private employment agencies or manpower third-party employment agents ensure the smooth and continuous supply of much-needed, low-to-semi-skilled labor from countries like Indonesia, Nepal, Burma, Vietnam, Bangladesh, and the Philippines to the thousands of electronics manufacturing facilities located in the different federal states of Malaysia.

Some of the biggest Malaysia-based labor intermediaries servicing the electronics sector have been in existence for more than twenty years, operating with an efficient network of agents around Malaysia, and partnering with private and state employment agencies. They also partner with individual agents and intermediaries in the different countries whose nationals can be employed in the manufacturing sector (as per regulations of Malaysia's MOHA or *Kementerian Dalam Negeri* (KDN)).³⁷ These agencies provide a wide range of services aimed at relieving their client companies of the burden of managing the many concerns of thousands of workers, and of navigating the intricate immigration and labor regulations pertaining to foreign workers. They act as human resources (HR) consultants on the recruitment of workers from various countries with diverse overseas employment systems and laws. They support the client company in managing the day-to-day affairs of workers. They directly undertake key aspects of HR management of workers, from payroll to discipline and termination. They afford companies flexibility and ease of recruitment, selection and hiring of huge numbers of workers when production needs to be rapidly ramped-up, and of decreasing the workforce in leaner production seasons.

The mandate of agencies to provide these various services has shifted in recent years, and stakeholders interviewed for this research reported confusion around laws, government regulations and guidance, as well as government oversight, of labor intermediaries. Confusion is particularly concentrated around the issue of laws and regulations that apply to agencies that recruit and place (i.e., PEAs), as opposed to agencies that manage and employ (i.e., outsourcing agencies) foreign workers. By law, the term "private employment agency" (PEA) in Malaysia refers to "any person, company, institution, agency or other organization which acts

as intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly... the placing services of any company, institution, agency or other organization which... levies from either employer or worker from the above service an entrance fee, a periodical contribution or any other charge.”³⁷ In contrast, outsourcing agencies in Malaysian electronics had, in the past, traditionally taken on discrete, non-core work functions such as sorting, testing, or packaging, but did not handle labor sourcing or management (unless the agency was also a PEA). In July 2005, the government’s MOHA approved the implementation of the “Foreign Worker Supply and Management System according to the Outsourcing Method,” which stated that “employers may use the services of outsourcing companies to supply and manage the foreign workers.”³⁹ As of August 2006, companies hiring fewer than 50 foreign workers are required by the government to employ the services of labor outsourcing companies. In 2012, the term “contractor for labor” was introduced in amendments to the Employment Act, further legitimizing the labor-broker-as-employer arrangement. Coming off of these developments, many Malaysian PEAs servicing the electronics industry have secured licenses to undertake labor outsourcing.

To date, there are 241 licensed outsourcing agencies operating in Malaysia.⁴⁰ These agencies recruit, place, and employ workers directly under their name, having further expanded the range of services they offer to their clients and substantially shifting the landscape on which the relationship of foreign contract workers and employers is played out. This expansion of agencies’ services to client companies has also expanded their responsibilities towards foreign workers. Foreign workers are now often dependent on the agent-as-employer for provision of essential amenities such as housing, food, and transportation. Foreign workers’ legal status in Malaysia is also largely dependent upon the validity of their work permit, which only the employer – which, in this case, is the outsourcing agent – is authorized to apply for, renew, or cancel.

Interestingly, the practice of labor outsourcing, which used to be applied only to foreign workers, is now also used for local workers from the Malaysian states of Sarawak and Sabah. According to an industry watchdog, “Instead of employing the workers, many employers prefer to use workers supplied by outsourcing agents directly in order to avoid employment relationships... This reduces the duties and obligations imposed by law on employers... Outsourcing agents market this employment set up by emphasizing that the companies need focus only on their business without having to worry about their workers.”⁴¹

In general, there are three types of models or structures within which the recruitment, selection, hiring, and management of workers in the Malaysian electronics industry are undertaken by labor intermediaries. The first two can be undertaken by either a PEA or an outsourcing agent; the third, only by outsourcing agents.

- A. **Recruit and Supply (Recruitment Consultancy):** Under this arrangement, the client company is the employer of the workers. Recruitment processes are undertaken under the name of the client company and the labor intermediary only provides guidance, oversees, or facilitates the recruitment process for, and deployment of, foreign workers to the company.
- B. **Recruit, supply, and manage (Total management):** Under this arrangement, the labor intermediary is contractually responsible for recruiting, deploying and managing the workers for and on behalf of the client company throughout the workers' employment, but the company usually makes the final selection of candidates and remains the employer of the foreign workers on paper.
- C. **Recruit, supply, employ, and manage (Outsourcing):** Under this scheme, the full recruitment process and management of workers is undertaken under the name of the labor intermediary acting as outsourcing company. The labor intermediary is the employer of the foreign workers on paper, and the contractual relationship is only between the labor intermediary and the client company (principal), thus relieving the client company of direct legal responsibilities over the workers.

Notwithstanding the above-mentioned models or schemes, some PEAs also offer customized services and arrangements for specific recruitment procedures and requirements of particular client companies.⁴² Both PEAs and outsourcing agencies supplying workers to the first-tier electronics facilities, for instance, are in some cases contractually obliged by the client companies to adhere to codes of conduct and social responsibility standards that client companies are audited against. The PEAs supplying workers to top-tier electronics facilities that are part of a global supply chain are typically expected to have more formal and standardized procedures in place, and efficient records keeping and documentation systems. Client companies that have to undergo buyer audits (or supply chain responsibility audits) would then be required to perform due diligence over their subcontractors and service-providers, including PEAs, and to have more visibility and involvement in the recruitment and hiring systems of the PEAs they engage with.⁴³ Some stakeholders noted to Verité, though, that rigorous due diligence with respect to the labor supply chain is not a widespread practice.

The following is a sample of *Menu of Services* offered by a Malaysian PEA that is also licensed as an outsourcing agency, and servicing top-tier foreign and Malaysian electronics companies:

Box 2.2 Sample Menu of Services

Direct Supply Services (DSS)

Under DSS, our company will only recruit the foreign workers on behalf of the client company by carrying out all the Recruitment Services and our service ends with the delivery of the workers to the client company. The Recruitment Services that we provide under DSS include obtaining recruitment approvals from the relevant authorities.

The full costs for the Recruitment Services will be borne by the client company. Upon delivery of the foreign workers by our company, the client company will be solely and fully responsible for the entire Management Services in respect of the foreign workers. This is a bonus service that we are glad to provide to our valued clients without charging any service fee.

Total Outsourcing (TOS)

We can only supply foreign workers to our clients from existing pool of workers who are already in the country, subject to availability. These foreign workers have been recruited under the name of our company and they are our employees under the law.

Under TOS, as in the case of TMS, our company handles everything and bears full responsibility for everything and delivers a Total Solution for our client.

Partial Management Services (PMS)

Under PMS, we deliver exactly the same range and type of services as per TMS with a small variation in that any client company may, if it so wishes, carry out on its own any one or both of the following two management functions :

- Hostel accommodation.
- Daily transportation of workers between hostel and workplace.

Based on our business experience, there are client companies who already have the necessary facilities and prefer to carry out on their own any one or both of the said two management functions and we design and provide PMS for such purpose. On a case-by-case basis, we can also consider requests from client companies who wish to have specially customized PMS to suit their specific needs.

Total Management Services (TMS)

Under TMS, we handle everything and deliver a Total Solution for our client. Under the recruitment functions, our company is responsible for everything from getting recruitment

approvals from the relevant authorities to sourcing the workers from the source country, handling immigration and medical formalities in source country and Malaysia and delivery of workers to client's doorstep.

Upon delivery of the workers our company will be responsible for the entire management functions including :

- Payroll and salary payment.
- Hostel accommodation.
- Daily transportation between hostel and workplace.
- Medical attention and welfare care.
- Maintenance of discipline and proper conduct.
- Attending to immigration and labour matters.

Although the foreign workers will be recruited under the name of the client company, which will be recorded as the “employer” of the workers in the work permit so as to conform to recruitment formality, our company will take over all the responsibilities of the client company as the “employer” thereby relieving the client company from such responsibilities. The takeover of client company's responsibilities by our company will be securely covered under a formal written agreement.

Contract Work Services (CWS)

We are also a professional Contractor for undertaking and carrying out contract work services (CWS) that we provide through our subsidiary company, RafflesCare (M) Sdn Bhd, which is wholly-owned and managed by us.

The range of services that we provide include :

- All types of cleaning for all spaces from routine wiping and scrubbing of floor spaces to high-tech and specialized cleaning of “clean rooms”, machineries, high-rise external glass walls and windows, etc.
- Building maintenance related to air conditioning, lighting, plumbing, fire protection, etc.
- Landscaping and garden and parks maintenance.
- Solid waste collection and disposal.
- Moving, stacking & storage of goods & merchandises in supermarkets, warehouses, etc.
- Baggage & cargo handling for airline companies.
- General contract work services in any industrial and commercial sector.⁴⁴

2. Background

The above sample menu of services, taken directly from the website of a PEA that is also licensed as an outsourcing agency, perfectly illustrates the diverse and multiple roles that a labor intermediary in Malaysia can play.

In general, Malaysia-based labor intermediaries providing foreign workers to client companies, under any of the schemes detailed above, undertake any one or all of the steps involved in the recruitment-employment cycle of foreign workers – from pre-recruitment until the workers’ return to their country of origin:

Step 1	Apply for “quota” and approval from KHED
Step 2	Communicate Job Order (JO) to sending country PEAs (Sending country PEAs commence pooling of prospective candidates)
Step 3	Place Job Order or Letter of Attestation with the embassy of the sending country
Step 4	Screen and select prospective candidates at host country (Interview sessions may be conducted either by a representative of the company or by the Malaysian labor intermediary)
Step 5	Receive and process documentary and medical requirements of selected candidates
Step 6	Apply for calling visa ⁴⁵ for selected applicants
Step 7	Secure visa clearance from the Malaysia Embassy or Consulate in the sending country
Step 8	Secure approval from the sending country Labor Office and Manpower Ministry
Step 9	Conduct final security check
Step 10	Worker departure / deployment for Malaysia
Step 11	Secure Work Permit
Step 12	Conduct or facilitate induction of workers Manage workers onsite Manage yearly WP renewal
Step 13	Facilitate contract termination and worker’s return to country of origin

In most cases, the Malaysia-based agency partners with a local sending country agency or agent (individual), which conducts or facilitates the pooling and initial screening of potential candidates in the sending countries. The Malaysia-based agency, with the help of the local sending country agent, chooses from a pool of candidates provided by the local agent, taking into consideration the Malaysian clients' criteria.

Even if the Malaysia-based agent is duly registered and accredited by the proper authorities in Malaysia and has gone through the legal process of securing approval from the sending-country embassy, there is no guarantee that local agents in the sending countries do not engage with unlicensed, unauthorized individual agents. Involvement of the network of sending country agents and sub-agents in oversight and due diligence measures of the Malaysia-based labor intermediary or client company is rare. Experts and stakeholders from a range of institutions and perspectives all noted to Verité that visibility into practices of sending country recruiters is practically non-existent and there are essentially no active efforts to perform due diligence on those partners or to change any practices that may be problematic.

2.3.3 Mapping the Foreign Worker's Path to a Job in Malaysia: Sending-Country Labor Intermediaries

All foreign workers employed in the electronics industry in Malaysia, whether directly by the company, or as outsourced workers employed by the outsourcing agency, engage with one or more sub-agents at some or all points of the recruitment and employment cycle.

Even before the job-seeker makes a formal application for any job at a recruitment agency headquarters, usually located in major urban areas of the sending country, s/he would have already been engaged by one or more sub-agents. In many cases, the job-seeker's first contact with the prospective employer in Malaysia is through an agent at the village level of the sending country who may either be acting independently or may be officially affiliated with the licensed sending country recruiter.

As an example, previous Verité research in Nepal found that Nepalese migrants working in Malaysia were typically hired through formal recruitment agents based in Nepal, but that the initial steps in the recruitment process had been facilitated informally by an individual usually already known to the worker. These individuals either (a) acted as unofficial sub-agents for broker agencies, or (b) acted independently to disseminate information about work abroad, encourage workers to apply, or offer services as fixers or facilitators in the recruitment process. In many cases, these individuals functioned as pooling agents, leaving the formal recruitment agencies to perform screening and conduct the actual, formal recruitment process.⁴⁶

Sub-agents in sending countries can take various forms, not only serving to link the job-seeker or potential candidate for overseas work with formal recruitment agencies, but in some cases with

state employment agencies as well. In other cases, sub-agents may be official representatives or employees of a formal recruitment agency, but also offer additional services to job-seekers on the side. These services can include providing assistance in securing travel documents, facilitating loan applications, or expediting job applications. All of these services by sub-agents usually come at a price, for which job-seekers are directly charged. In other cases, workers pay a lump sum to the formal recruitment agency. Many workers interviewed in previous Verité research reported paying lump sums to sending country recruitment agencies without being provided receipts or being informed of the breakdown of fees.

In Indonesia, schools and academic institutions have also taken on the role of labor intermediaries. At “Village Vocational Schools” in Central and Eastern Java, Indonesia, students are trained to acquire skills to match the needs of electronics facilities in Malaysia, and are recruited for work directly by electronics companies as soon as they graduate from the schools.⁴⁷

Labor recruitment agencies in sending countries are usually charged with orienting selected candidates to the terms and conditions of the job. Various forms of deception about the job, payment and employment arrangements, as well as the payment of excessive fees and the beginning of indebtedness, can occur at this phase of recruitment.

2.3.4 Mapping a Foreign Worker’s Path to a Job in Malaysia: Malaysia-Based Labor Intermediaries

Almost all documented foreign workers upon arriving in Malaysia are received by a labor intermediary who will often take the workers for the “Calling Visa”⁴⁸ application, before being turned over to their employers or to the worksite where they will be assigned. In fact, labor intermediaries have become gate-keepers for most jobs in the electronics industry. Even irregular foreign workers who are already in the country and who availed of government amnesty programs such as the 6P program, or foreign workers under awarded official “refugee status,” or (more recently) domestic migrant workers from Sabah or Sarawak, also typically engage the services of intermediaries in seeking jobs. (See discussion in Section 3: Immigration and Labor Policy Context).

Following the three general types of formal third-party employment agents systems described above, the level of the labor intermediary’s involvement in the recruitment, selection, hiring, and management of workers significantly deepens as the model shifts from “Recruitment Consultancy” to “Total Management” and, ultimately, “Outsourcing”.

Under the first scheme, “Recruitment Consultancy,” the interaction between the workers and the PEA can be limited, as the role of the PEA usually ends with the deployment of workers to the worksite. Below is a sample of “Recruitment Consultancy” services offered by a PEA/outsourcing company servicing various electronics companies in Penang.

Box 2.3 Foreign Worker Recruitment Consultancy

A. Direct Approval Application

- Application to related local authorities (Labor Office, KDN & Immigration)
- Approval / Documentation from related local authorities (Labor Office, KDN & Immigration)
- Application for Calling Visa
- Work Permit (PLKS) Renewal
- Immigration “Special Pass” application
- Passport Endorsement
- Selection of workers (Visa with reference)
- Clearance of workers after their arrival
- Transportation of workers after arrival
- Foreign workers replacement application
- FOMEMA medical examination

B. Overseas Recruitment and Selection Service

In order to fulfill our respective clients demand and need, we do offer OVERSEAS RECRUITMENT SERVICE to our clients which accompanied by our professional staffs as well. We always believe face to face interview always is the most effective methods to recruit foreign workers as our clients could select the preferable worker based of their requirement on site. On top of that our reliable foreign partnership will filter and do the first screening before recommend the workers for interview to ensure suitability for international employment requirements. Our company do provide adequate orientation program to minimized workers’ potential issues such as culture shock and home sickness when come to the country for work.

Lastly, we will in charge of obtaining approvals from the labour and immigration departments in source country arrangement as well as immigration clearance and arrangement deployment of workers to the country for employment.⁴⁹

According to the above example and interviews with workers, the Malaysian intermediary, in tandem with a “foreign partnership” [sic], usually conducts the pooling and screening of potential candidates and the pre-departure orientation for selected candidates prior to their deployment to Malaysia. Upon arrival in Malaysia, the labor intermediary, acting as a consultant to a client company (who, in this case, is the actual employer of the workers), usually receives workers at the airport. The labor intermediary ensures for the client that the workers have a “Passport Endorsement,” to facilitate work permit registration.⁵⁰

Under the “Total Management” arrangement, the labor intermediary is contractually responsible not only for recruiting and deploying workers to the company, and overseeing other bureaucratic necessities, but also for the full range of onsite management of workers, including:

- Housing and accommodations;
- Transportation from hostel to the worksite and back;
- Hospitalization;
- Mandatory health checks;
- Payroll administration;
- Counselling and discipline ;
- Work supervision;
- Immigrations and police-related services; and
- Deportation and repatriation.

These external services and key HR functions are undertaken by the labor intermediary on behalf of the client company, while the company remains the legal employer of the workers. This means that, where a foreign worker is involved, the work permit of the worker is tied to the company. The worker can only legally work for, and in this company, and receive her⁵¹ wages, benefits, and other entitlements directly from the company. In practical terms, however, control over the worker in terms of supervision and discipline may be shared between the company and the labor intermediary: while the worker is inside the factory, she is typically under the supervision of the company, but in the dormitory, the supervision is typically passed on to the labor intermediary. In some cases, a representative of the labor intermediary is assigned to work inside the factory in order to assist the company in managing the workers, especially if the worker does not speak the language(s) spoken by management.

The key difference between the “Total Management” and “Outsourcing” models is the level of control the labor intermediary-as-employer legally acquires over the worker and the level of accountability which the client company is relieved of in the latter scheme.

The legality of this system has been widely questioned and cited in many reports and campaigns as the root cause of many problems faced by foreign workers in Malaysia. A report of the Fair Labor Association, for instance, states that:

This change essentially means that responsibility for labor management has moved from the employer (where the worker is toiling) to the outsourcing company. Numerous NGOs, trade unions, and other migrant rights advocates have raised critical questions about the lack of effective oversight by the MOHA over these companies. Judging the outsourcing system is untenable, advocates at the National Consultation on the Protection and Promotion of the Rights of Migrant Workers (August 14-15) repeated their consistent demand that the outsourcing system be scrapped.⁵²

Under the “Outsourcing” model, the “outsourced” worker’s work permit is tied to the labor intermediary, rather than to the factory s/he works in. The worker’s wages, benefits, and other entitlements are provided directly by the labor intermediary. The labor intermediary-as-employer is empowered to directly take charge of the worker’s work performance and welfare, discipline, and termination. Arbitrary work assignments and transfers to the worksites of the intermediary’s various other client companies also fall within the ambit of the intermediary’s authority as the worker’s employer.

In practice, however, the outsourced worker, while inside the factory s/he is assigned to, falls directly under the supervision of the factory management, and is required to comply with factory rules and regulations, and even company personnel policies. However, as an outsourced worker, s/he cannot join unions or seek representation to advocate for better conditions. The outsourced worker is not covered by any existing collective bargaining agreement, nor entitled to company incentives and bonuses, and is often paid less than counterparts who are directly hired by the company.

This outsourcing arrangement, while sanctioned by law, acts to erode the essential worker protection and employer accountability inherent in an employer-employee relationship. Liability over violations of the worker’s rights is obscured, creating vulnerability on the part of the worker to exploitation and abuse; and consequently, the worker’s access to legal recourse and grievance mechanisms is effectively barred.⁵³

The labor intermediary-employer is also the party solely authorized by the MOHA to have the worker’s work permit renewed or cancelled. In other words, the legality of the foreign worker’s status, while in Malaysia, is almost wholly dependent on the labor intermediary. As demonstrated in Findings below, dependence of the foreign worker on the intermediary to maintain a legal status in Malaysia renders the worker highly vulnerable to exploitation, to threats of denunciation to the authorities, and to detention and deportation.

2.4 Review of Research on Working Conditions in the Malaysian Electronics Industry

The working conditions of foreign workers in Malaysia and its electronics industry have drawn scrutiny from international organizations, civil society organizations and the media in recent years.

In 2013 and 2012, the ILO's Committee of Experts on the Application of Conventions and Recommendations examined Malaysia's implementation of its commitments under Convention 29. The Committee "took note of the concern expressed by several speakers regarding the magnitude of trafficking in persons in the country, as well as the absence of information provided on the specific penalties imposed on persons convicted under the Anti-Trafficking in Persons Act." The International Trade Union Confederation (ITUC) has submitted several comments to the ILO's Committee noting the particular vulnerability of migrant workers to forced labor in Malaysia. The Committee requested that Malaysia reinforce its anti-trafficking efforts and strengthen capacity of public authorities to combat trafficking and forced labor.⁵⁴

On a 2013 mission to Malaysia, the UN Special Rapporteur on the Right of Food noted the vulnerabilities for migrant workers created by Malaysia's system of work permits, which link a migrant worker to one employer. The Special Rapporteur noted that, because termination of employment results in the cancellation of working permits and deprivation of the right to stay and work lawfully in Malaysia, workers are restricted in their ability to complain about human rights abuses. The Special Rapporteur also noted concern that Malaysia's minimum wage is not a living wage.⁵⁵

The UN Special Rapporteur on the Human Rights of Migrants requested to visit Malaysia 2013. A visit has not yet occurred.⁵⁶

A 2010 report by the ITUC noted that its Malaysian national member organization, the Malaysian Trades Union Congress, received hundreds of cases every month of migrant workers whose rights had been abused by employers and government authorities.⁵⁷

Research carried out by Amnesty International (2010),⁵⁸ the German civil society organization WEED (2010),⁵⁹ and the Netherlands-based organization SOMO – Centre for Research on Multinational Corporations (2013)⁶⁰ have investigated the lives and conditions of electronics and foreign workers in Malaysia.

Trapped: The exploitation of migrant workers in Malaysia published by Amnesty International in 2010 examines the plight of migrant workers in Malaysia. While this report focuses on issues relevant to all migrant laborers in Malaysia, the challenges and systemic vulnerability faced by migrants generally, as documented in this report, are broadly applicable to migrant workers within the electronics industry. Drawing from over 200 interviews with documented and undocumented migrants in Malaysia, this report describes some of the challenges migrant laborers face including excessively and illegally high recruitment fees, deceptive recruitment practices, and a political climate in Malaysia that is hostile to migrant workers. Amnesty found that the common practice of passport retention by employers and the lack of visa portability⁶¹ in Malaysia contribute to increased vulnerability for migrant workers.

Migration in the Digital Age, published in 2010 by the German civil society organization WEED, is a significant contribution to the study of working and living conditions in the Malaysian electronics industry. Drawing on interviews with workers employed in two US-owned Contract Manufacturer companies, this study found that workers were vulnerable to structural pressures, such as high recruitment fees and multiple dependencies on their employer that reduced their autonomy and made it difficult for workers to leave their jobs or advocate for better working conditions.

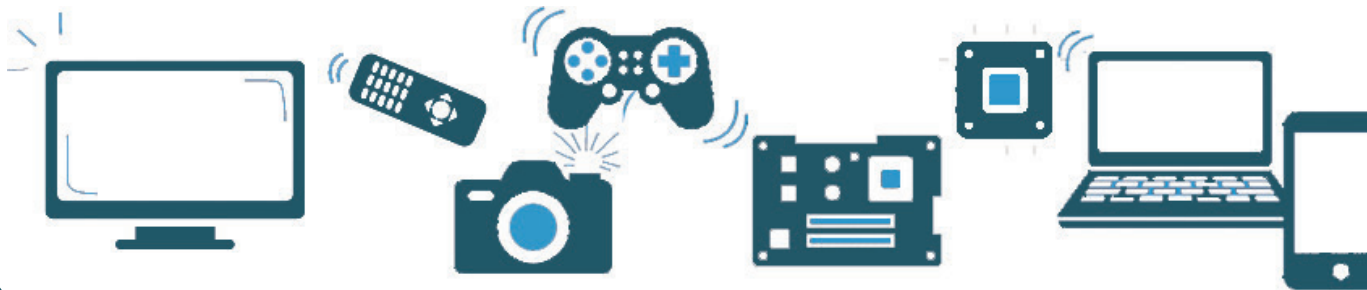
The case studies featured in the WEED report revealed the widespread use of the so-called “contractor for labor” system, in which workers are employed directly by employment agencies rather than the factories where they work. This system was identified as extremely burdensome for the workers interviewed, who depended on their employment agencies not only for their jobs and income, but also for their accommodation, transportation, and medical care in Malaysia. This study found that many workers had accrued substantial debt in order to pay excessively high recruitment fees, and that many had signed contracts written in a language they did not understand and that prohibited them from organizing or forming unions. This study also found multiple violations of Malaysian labor law, ILO Conventions and the *UN Convention on the Protection of the Rights of all Migrant Workers and Their Families*, including the withholding of passports by employers and the implementation of highly restrictive immigration laws.

Published in 2013, in *Outsourcing labour: Migrant labour rights in Malaysia’s electronics industry*, SOMO profiled three electronics manufacturing factories in Malaysia and reported on interviews with over 100 workers employed at these facilities. SOMO’s research findings illustrated the prevalence of illegally high recruitment fees, deceptive recruitment, forced overtime, hazardous working conditions, gender discrimination, discrimination against migrant workers, prohibition against union organizing, as well as a general failure to recognize basic rights of workers. Building on the findings from both the WEED and Amnesty International reports, this study identified many of the same problematic issues such as: debt related to recruitment, deceptive recruitment, poor working conditions, and vulnerability owing to migrant status. This study delved deeper into issues related to the precarious legal position of outsourced workers

and their multiple dependencies on their employer and/or employment agent.

In addition to these research reports, there has been a significant amount of media attention in recent years illustrating the exploitative working conditions in the electronics sector in Malaysia.⁶² Some media sources have highlighted the high fatality rates of migrant workers, particularly Nepalese migrants, in Malaysia. According to an article published in December 2013, 2,300 Nepalese had died in Malaysia since 2000, with 915 deaths occurring in the previous five years.⁶³ A recent report published by the National Human Rights Commission in Nepal drew attention to the high rate of suicide and stress-related deaths among Nepalese migrants working in Malaysia.⁶⁴

3. IMMIGRATION AND LABOR POLICY CONTEXT



3. IMMIGRATION AND LABOR POLICY CONTEXT

In Malaysia the term “foreign worker” signifies two distinct identities: that of a foreign migrant and that of a worker. A foreign worker entering Malaysia likewise crosses into the remit of two legal spheres that will regulate her life in the country of destination until she leaves.

In this section, the legal environment of a foreign worker composed of both immigration and labor policies will be described respectively, in order to identify features of the legal and policy environment that can create or heighten the vulnerability of foreign workers. These policies or laws are highlighted to provide context to the indicators of involuntariness and penalty.

3.1 Immigration Policy

3.1.1 Legal Entry, Prohibited and Illegal Immigrants, and Immigration Offenses

The Immigration Act 1959/63, as amended, regulates the entry and exit of citizens and foreigners alike to Malaysia. As a general rule, only citizens and those holding a (a) valid entry permit; (b) valid pass; or (c) endorsed as dependents of a holder of a valid entry permit; or (d) expressly exempted by the Director General can enter the country and stay until required to leave.⁶⁵ A foreign worker’s authority to enter, remain, and work in Malaysia emanates from a valid temporary visitor pass or *pas lawatan kerja sementara* (PLKS).

The law identifies “prohibited immigrants”⁶⁶ as persons who (a) are unable to show that they have definite employment waiting for them; (b) are suffering from a contagious or infectious disease; (c) refuse to submit to a medical examination after being required to do so; (d) are not in possession of valid travel documents or in possession of forged or altered travel documents or in possession of travel documents that do not fully comply with law; or (e) are family and dependents of a prohibited immigrant, among others. A foreign migrant can also be rendered illegal if the Director General subsequently cancels her hitherto valid pass or permit⁶⁷. An “illegal immigrant” is one, other than a citizen, who contravenes sections 5, 6, 8, 9 or 15 of the

Immigration Act⁶⁸ (see details in Table 3.1).

Once deemed a prohibited immigrant or rendered illegal through any of the enumerated instances above, or if the permit or pass has expired, the foreign migrant has to leave the country immediately or else be forcibly removed or, upon conviction, be penalized with a fine of not less than MYR 10,000 (USD 3,150) or imprisonment of not more than 5 years or both before being deported. Any person entering Malaysia without any pass or permit will likewise be penalized upon conviction with a fine of not more than MYR 10,000 (USD 3,092) or imprisonment of not more than 5 years or both, and shall be additionally liable to whipping of not more than six strokes.⁶⁹ Immigration offenses with their corresponding penalties are listed below.

Section	Offense	Penalty
Section 5	Entry via unauthorized landing place	Fine of not more than MYR 10,000 (USD 3,092) or imprisonment of not more than 5 years or both.
Section 6	Without valid pass and permit	Fine of not more than MYR 10,000 (USD 3,092) or imprisonment of not more than 5 years or both and shall be liable to whipping of not more than 6 strokes.
Section 8	Prohibited Immigrant	Fine of not more than MYR 10,000 (USD 3,092) or imprisonment of not more than 5 years or both.
Section 9	Remain in Malaysia after the cancellation of pass	Fine of not more than MYR 10,000 (USD 3,092) or imprisonment of not more than 5 years or both.
Section 15	Overstay the pass or permit	Fine of not less than MYR 10,000 (USD 3,092) or imprisonment of not more than 5 years or both.
Regulation 39(b)	Breach to condition of pass	Fine of not more than MYR 1,000 (USD 309) or imprisonment of not more than 6 months or both.

Employers who hire, allow to continue working, or harbor in their premises prohibited or illegal immigrants will be responsible for “removing” said persons from Malaysia, and for reimbursing the government in case of expenses relating to detention prior to the deportation of the prohibited or illegal immigrant.

Section	Offense	Penalty
Section 55B	Employing a person who is not in possession of a valid pass ⁷⁰	Not less than MYR 10,000 (USD 3,092) or imprisonment not more than 12 months or both for each such employee.
	Employing more than 5 persons who are not in possession of a valid pass	Not less than MYR 10,000 (USD 3,092) or imprisonment not less than 6 months but not more than 12 months and liable to whipping of not more than 6 strokes.
Section 55E	Permitting illegal immigrant to enter or remain at premises	Not less than MYR 5,000 (USD 1,546) and not more than MYR 30,000 (USD 9,277) or imprisonment not more than 12 months or both for each illegal immigrant found at the premises.
Section 56 (1)(d)	Harboring any person whom he knows or has reasonable grounds for believing to have acted in contravention of Immigration Act 1959/63	Not more than MYR 10,000 (USD 3,092) or imprisonment not more than 5 years or both.

The Passports Act of 1966 requires the production of passports upon entry into and departure from Malaysia.⁷¹ The following are some of the relevant offenses under Section 12 of the law:

- (a) any person who forges, alters or tampers with his passport or internal travel document, or any visa, uses a forged, altered or tampered passport or who has in his possession a forged, altered or tampered passport;
- (d) without lawful authority, has in his possession any passport or internal travel document which has been obtained as a result of making any material statement which was false or misleading, or as a result of the production of false evidence; and
- (f) without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself.

The commission of any of these offenses is punishable, upon conviction, with a fine not exceeding MYR 10,000 (USD 3,092) or imprisonment for a term not exceeding 5 years or both.

The Passports Act does not strictly require the production of a passport upon demand while the foreigner is already inside the country. It also does not make it an offense the failure to do so on the spot, though, as will be discussed in Findings below, workers are regularly detained for these offenses.

3.1.2 Implementing Structure for Immigration Policy

Within the MOHA, three divisions are relevant for the purposes of this study – Immigration, Foreign Workers Management and Security, and Public Order, which houses the volunteer citizen security corps known as *Ikatan Relawan Rakyat* (“RELA”). The Immigration Division is overseen by the Director General, supported by a number of Deputy Directors General, Directors, and as many immigration officers as necessary to perform the tasks.⁷² The Director General has broad powers that include absolute discretion to (a) prohibit entry,⁷³ (b) cancel any pass or permit, (c) limit the number of persons and period during which any person or class can remain in Malaysia,⁷⁴ (d) make inquiries before issuing a permit or pass,⁷⁵ (e) order the removal of illegal immigrants,⁷⁶ and (f) summon witnesses, among others.

Immigration officers’ authorities include the power to (a) examine any person entering Malaysia,⁷⁷ (b) send any person to the immigration depot⁷⁸ for further examination or pending removal,⁷⁹ (c) interrogate any traveler,⁸⁰ (d) arrest any person even without warrant, if the officer reasonably believed the person to be subject for removal from Malaysia,⁸¹ (e) enforce any provision of the Immigration Act that relates to arrest, detention, and removal,⁸² (f) make inquiries and require the production of documents or evidence that the officer may consider necessary,⁸³ and (g) search any premises or vessels even without warrant if the officer has reason to believe that any evidence of the commission of immigration offenses can be found on such premises, vessel, etc.⁸⁴

There are two provisions in the Immigration Act that are worth noting. First, the actions and decisions of the Director General under the Immigration Act are generally not subject to judicial review, and that immunity extends to the act of any immigration officer in exercising and discharging the powers and duties vested in the Director General.⁸⁵ Second, the Director General may order any reward as he sees fit to be paid to any person for any service rendered in connection with the detection and prosecution of an offense under the Immigration Act.⁸⁶

The Immigration Division is likewise tasked to implement the Passports Act 1966.

The Foreign Workers’ Division⁸⁷ deals with matters relating to the intake and regulation of foreign workers, and it is composed of four units – application and processing, policy and bilateral negotiation, inspection, complaint and outsourcing, and information system and administration. Its objective is to expedite and simplify the application approval process for intake of foreign workers according to approved sectors, and it has the following tasks:

- Acts as the Secretariat of the Foreign Worker One-Stop Approval Agency, or One-Stop Center (OSC);
- Implements procedures in relation to the issuance of the temporary pass to foreign workers according to work sectors, calling visa, and the check out memo;
- Processes application for replacement of foreign workers⁸⁸ and claims for refund of partial levy payment and deposit;
- Determines the forfeiture of security bond/ bank guarantee/ insurance guarantee/ personal bond for runaway foreign workers; and
- Responsible for inspection to ensure compliance with the terms of employment of foreign workers insofar as their work visas are concerned.

The MOHA and the Ministry of Human Resources (MOHR), together with the Ministry of Trade and Industry, compose what is known as the One-Stop Center (OSC). The OSC's purpose is to process and approve the application of eligible employers to hire foreign workers on the same day the application was filed. Generally the purviews of MOHA and MOHR over foreign workers are separate, but the OSC is the one instance in which their activities are coordinated. There is no other agency apart from the OSC whose function is dedicated specifically to foreign workers.

With regard to the MOHA's function relating to security and public order, the *Ikatan Relawan Rakyat*, or RELA, plays a significant part in checking the movements of foreign workers. Because of its significance for foreign workers, RELA is discussed in depth below.

3.1.2.1 RELA

RELA is composed of volunteer civilians that are deputized to perform tasks within the authority of the Home Affairs Ministry. RELA was established by the Government of Malaysia in the 1970s to create a volunteer self-defense corps made up of Malaysian citizens to “preserve and maintain the national peace and security”⁸⁹ and specifically, to guard against communism.⁹⁰ In 2005, the government revived the then dormant group and shifted the group's focus from fighting communism to controlling illegal immigration, reflecting changing national security concerns.⁹¹ That year, the government passed an amendment to Malaysian security legislation granting increased power to RELA volunteers to facilitate their ability to track down illegal immigrants.⁹² The amendment gave members of RELA the right to carry and use firearms, demand documents from individuals, carry out arrests and enter and search private property without an arrest or search warrant.⁹³ By including RELA volunteers under the Public Protection Authorities Act 1948, the 2005 amendment also gave effective legal immunity to RELA volunteers.⁹⁴ This expansion of powers, coupled with minimal training of volunteers and the absence of accountability, resulted in numerous reports of RELA volunteers abusing their power, ultimately creating an

extremely hostile environment for immigrants in Malaysia.⁹⁵ Human rights groups have alleged the volunteers of “violence, extortion, theft, and illegal detention.”⁹⁶

In 2008, the government further expanded the role RELA plays in the detention of immigrants in Malaysia by putting them in charge of security in immigration detention centers.⁹⁷ Independent agencies reported to Human Rights Watch that access to detention centers became more difficult when RELA became responsible for security. Human Rights Watch has reported that abuse within these detention centers was widespread, with detainees describing extensive violence and humiliation at the hands of RELA guards. The abuses reportedly suffered by individuals during the process of arrest and within the detention centers include: physical violence, intimidation, threats, humiliating treatment, extortion, theft, restricted communications with friends or family, disregard and destruction of identity or residency papers, and sexual abuse. Detainees also reported to Human Rights Watch that food was of poor quality, water was insufficient, and it was difficult to access medical care.⁹⁸

According to a 2010 Amnesty International report, RELA agents frequently humiliated and physically abused the people they detained. They also often abuse their power in order to make money. RELA agents have the authority to enter people’s private homes where they “terrorize migrant workers and their families, steal money and valuables, and destroy their few other possessions.” They also reportedly charged employers large bribes to release their employees.⁹⁹

Recently the government of Malaysia has taken steps to address the widespread corruption and abuse of power within the RELA corps. The Malaysia Volunteers Corps Act 2012 renewed the mandate of RELA when it came into effect on June 22, 2012. Under the new law, RELA has the following duties¹⁰⁰: (a) assist any security force or authority established under written law upon request of the force or authority; (b) give assistance to relevant authority in controlling or diverting a motor vehicle; (c) take part in community service; (d) assist in protecting building, installation or other property belonging to the Federal or State Government or any other statutory body or such private property upon the request of the owner of the building, installation or property; and (e) carry out any orders and directions issued by the Director General not inconsistent with the provisions of the law. While there is no express directive for RELA to be involved in the management and regulation of foreign workers, the duties are phrased broadly enough to accommodate such additional tasks, especially under item (a).¹⁰¹

This new law is said to significantly limit the powers of RELA members by removing their right to make arrests, to detain individuals, and to carry firearms,¹⁰² but there is no unequivocal revocation of these powers. The law merely itemizes the duties of RELA, and section 5 is couched in terms broad enough to allow RELA members to perform additional tasks upon the direction of their superior officers.

3.1.3 Immigration Measures to Regulate and Manage Foreign Workers

3.1.3.1 Foreign Workers' Levy

A per capita levy on foreign workers has been in place since 1992, with the responsibility for payment shifting from worker to employer, and then back to worker.

From 1992 to 2008, the foreign workers' levy was imposed on foreign workers as a tax for the use of public roads, utilities, and general services. Since the levy was required to be paid upon the application of work permits, employers had to pay this up-front and they were allowed to deduct the advance from workers' monthly wages. In 2009, the Government of Malaysia shifted the burden of the levy to the employers, reportedly to raise the cost of hiring foreign workers in order to disincentivize employers from relying on migrant labor at the expense of local workers.¹⁰³

On April 9, 2013, the Department of Labor in Peninsular Malaysia issued a General Authorization of Employee Payroll Deduction, in effect amending Section 24 of the Employment Act 155. This Authorization reinstated consent to employers to make monthly deductions from the wages of foreign workers to repay the advance levy. In order to make the monthly deduction, the employer must have instituted the minimum wage during the period when deduction is claimed, and the worker's work permit must be valid. Payroll deductions cannot be made for foreign workers who have probationary status or who have already paid the levy in person. The guideline reiterates the general rule that total monthly salary deductions, including the levy deduction, should not exceed 50% of the salary of the worker.

The new levy rates¹⁰⁴ as announced are:

(i) Manufacturing sector	MYR 1,250 (USD 387)
(ii) Construction sector	MYR 1,250 (USD 387)
(iii) Plantation sector	MYR 590 (USD 182)
(iv) Agriculture sector	MYR 410 (USD 127)
(v) Services sector	
(a) Restaurant (cooks)	MYR 1,850 (USD 572)
(b) Cleaning and sanitation	MYR 1,850 (USD 572)
(c) Resort islands	MYR 1,250 (USD 387)

In this study, researchers noted that employers require workers to pay back the balance of the levy before they can pre-terminate¹⁰⁵ their employment contracts, though this is not mentioned in the abovementioned guideline. This is elaborated in Findings below.

3.1.3.2 Amnesty Program for Illegal Immigrants

In 2011, through the decisions of the Cabinet Committee on Foreign Workers and Illegal Alien (JKKPA-Immigrants), Malaysia introduced what is known as the 6P amnesty program (Foreign Workers Total Solutions Program), aimed at registering illegal¹⁰⁶ immigrants in the country.

The following ‘illegal immigrants’ were required to register under 6P: those who (a) entered Malaysia without permission and are now living and working in the country illegally; (b) still live in Malaysia after a pass or work permit has expired or has been canceled; (c) abused the entry permit, pass, or travel documents through alteration or forgery; (d) violated the conditions of the permit as set under the laws of Malaysia; or (e) are in possession of UNHCR refugee cards.

The six stages of the 6P program were:

Registration - The first stage sought to register all illegal migrants in Malaysia. Personal information and biometric data were obtained from registrants to create a comprehensive database for all foreign nationals, supposedly for effective monitoring. The registrants were supposed to be given access to employer information in case they decided to stay in Malaysia to work.

During the registration period, which ran from June until October of 2011, about 1.3 million undocumented migrants registered with the program.¹⁰⁷ Of those who registered, 500,000 legalization applications were processed and 330,000 undocumented migrants were repatriated.¹⁰⁸

Legalization - At this stage, job vacancies and the current needs of employers were analyzed by sector and sub-sector, to determine whether there was a need to maintain the newly registered migrants in specific sectors. Determinations were formalized through agency regulations. Illegal migrants were legalized accordingly.

Amnesty - At this stage, illegal immigrants who were not listed for legalization and who voluntarily chose to return to their home country were deemed forgiven for immigration-related offenses and allowed to return home at their own expense without prosecution.

Monitoring - Employers’ premises throughout the country were inspected to advise the employer and explain the legal implications of harboring illegal workers who did not register with the 6P Program.

Enforcement - Integrated enforcement operations were implemented on a large scale and carried out to detect and arrest illegal immigrants and employers who were identified as committing immigration offenses. (See below)

Expulsion - In the final stage, illegal immigrants who were arrested through the integrated enforcement operations were subject to legal action before being expelled from the country. Each deported illegal has been/will be blacklisted from re-entering Malaysia.

3. Immigration and Labor Policy Context

The data gathering for this research coincided with the enforcement and expulsion phases of the 6P program.

On September 1st, 2013, Malaysia authorities launched an operation to find and arrest an estimated 500,000 undocumented immigrants residing in Malaysia. These raids, led by the Immigration Department with assistance from Armed Forces, RELA, Civil Defense, police, national registration department, and local councils, represent the nation's largest ever crackdown on undocumented migrants in Malaysia.¹⁰⁹

The raids, known as *Ops 6P Bersepadu*, targeted migrants who registered under the 6P but failed to complete the process and secure proper documents.¹¹⁰ The majority of the raids were carried out in Kuala Lumpur, Selangor, Penang, and Johor, which were areas identified as having significant populations of “illegal” immigrants. Authorities stated that they planned to deport migrants immediately in an attempt to avoid overcrowding Malaysia's 12 detention centers, which each have a capacity of 1,000.¹¹¹

Based on reports, within the first 24 hours of the operation, 8,100 people were checked and more than 2,400 undocumented immigrants were arrested by authorities. The Home Ministry reported that out of those arrested, Indonesians were the majority of those arrested, with 717 persons apprehended, followed by 555 Burmese, 387 Bangladeshis, and 229 Nepalese.¹¹² More than 2,200 personnel from various agencies carried out these raids on the first day.¹¹³ Over the course of the operation, the raids would involve an estimated 135,000 personnel in total.¹¹⁴ The raids also had significant implications for employers, who risked being charged under the Anti-Trafficking in Persons Act if they were found to have hired undocumented workers.¹¹⁵ By the time the raids officially started, 200 employers hiring irregular migrants had already been apprehended in unofficial raids conducted before the September 1st start date.¹¹⁶

Many employers protested the raids, claiming that they were exploited by unscrupulous agents and middlemen during the legalization process of the 6P program. They requested more time to process the applications of their undocumented foreign employees.¹¹⁷ The government responded by allowing employers the opportunity to present their cases to the Home Ministry and more time to register their employees under a special illegal immigrant management program (PKPP).¹¹⁸ This program extended amnesty until January 20, 2014.¹¹⁹

On January 21, 2014, the Government of Malaysia launched a second wave of raids aimed at arresting and deporting the remaining undocumented immigrants. By the second day of the crackdown, 1,757 foreign workers were detained by a force of 10,000 officers from the Immigration Department, police, RELA, and other agencies.¹²⁰ The majority of those arrested were from Indonesia, Bangladesh, and Burma.¹²¹ Home Minister Ahmad Zahid declared, “This is not a seasonal operation. It will not end this year, we will continue (until we reach) our goal of zero illegal immigrants in the country.”¹²²

Human rights groups such as the Malaysia-based NGO Tenaganita have criticized the government's implementation of the 6p program.¹²³ The Government of Malaysia authorized third-party agents to process the applications of many undocumented migrants. These agents reportedly exploited these migrants by charging exorbitantly high fees and failing to file the proper documentation, leaving many migrants who had attempted to file legally under the 6p program undocumented and vulnerable to these raids.¹²⁴ Since the beginning of the raids, the Government of Malaysia has also faced criticism from human rights groups who fear migrants will face mistreatment in detention centers.¹²⁵

3.2 Policy Governing the Recruitment, Management, and Labor of Foreign Workers

3.2.1 Laws on Forced Labor and Human Trafficking

The Malaysian Constitution states that no person shall be held in slavery and explicitly prohibits all forms of forced labor, except that which may be provided by law as a form of compulsory service for national purposes, and work incidental to the serving of a sentence of imprisonment.¹²⁶ In addition, Malaysia has ratified ILO Convention 29 on the abolition of forced labor and as such, it is a binding obligation on Malaysia to suppress the use of forced or compulsory labor in all its forms within the shortest possible period. ILO Convention 29 defines forced labor 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.”* A Malaysian law adopted in 2007 prohibits human trafficking, and an amendment in 2010 makes specific reference to the protection of foreign workers.¹²⁷

3.2.2 Implementation of Labor Law

The MOHR oversees the implementation of labor laws in Malaysia. It has a foreign workers division in charge of the employment issues surrounding of foreign workers. MOHR reviews and approves the labor contract and it is also in charge of the licensing and monitoring of private employment agencies (PEAs).¹²⁸ The Foreign Workers Division within the MOHR accepts and responds to complaints of migrant workers against their agents or employers, but due to lack of resources the division cannot conduct wide-scale inspection of businesses hosting foreign workers.

The Ministry of Human Resources hosts a grievance hotline called *Telekerja*, which is open to all workers, including foreign workers. Stakeholders reported to Verité that foreign workers also submit complaints to the government via their embassies, or through unions or worker advocacy organizations. Verité did not find evidence of a robust government-sponsored grievance mechanism system for foreign workers.

All stakeholders interviewed by Verité remarked that there are not sufficient resources to properly enforce regulations in the workplace and in the recruitment system. Private sector experts consulted for the study expressed a desire for more regulation of recruitment, in addition to more basic enforcement of labor and housing laws.

3.2.3 Recruitment of Foreign Workers

An employer intending to hire unskilled or semi-skilled foreign workers is required to file an application with the interagency One-Stop Center (see description above), although the authority to proceed will come solely from the MOHA. The applicant-employer should provide information on the background of the business (date of establishment, registration at the labor office nearest to the site) and recommendation or approval from the labor department allowing the applicant-employer to hire foreign workers. The employer then registers online and submits the hard copy of the application to the labor department. It usually takes two months to approve an application and once approved, the permit to hire foreign workers is issued in the name of the employer.

Having procured the approval letter from the MOHA and after paying the fees, security bond, and advancing the levy payment, the employer can take any of the following routes to recruit foreign workers: (1) contract with sending country recruitment agencies to pool and screen potential workers, and subsequently hire workers directly, (2) work with Malaysian recruitment agencies to pool and screen potential workers, including those in the latter's existing pool of workers, and hire workers directly, (3) hire workers directly, but outsource the human resource functions, including preparation of pay slips and other associated activities like transportation and housing to Malaysian outsourcing agencies, or (4) enter into a service contract with a Malaysian outsourcing company to provide the former with workers, whether local or foreign. In this case, the employer is the outsourcing agency.¹²⁹

A Malaysian recruitment and placement agency is defined under the Private Employment Agencies Act of 1981 (Act 246) as any Malaysian person, company, institution, agency, or other organization, duly licensed and registered, which conducts business:

- (a) For profit by acting as an intermediary for procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; or

- (b) Not for profit but it is allowed to levy from either the employer or worker for one of the above services an entrance fee, a periodical contribution or any other charge.

Only a private employment agency with a valid license can carry out the recruitment and placement of workers; however, the law allows an applicant to start operating even while the application for a license is still pending.¹³⁰ The license is valid for 12 months from the date of its issue, and it is due for renewal at least 2 months before the expiration date.¹³¹ The law mandates that PEAs shall not charge in excess of the prescribed fees,¹³² and based on the Schedule of Fees as of 2006, the placement fee for local placement of workers, chargeable to either the employer or the worker, is not more than 25% of the initial month's pay.

The law classifies as offenses the (1) charging or receipt of fees greater than the prescribed rates, and (2) knowing and voluntary deception of any worker by giving false information.¹³³ The penalty for either is a fine of not more than MYR 2,000 (USD 618) or imprisonment for a period not exceeding six months or both. A licensee convicted for either offense can actually continue operating as a private employment agency since the disqualification only refers to anyone sentenced to more than one-year imprisonment.¹³⁴

3.2.4 Employment and Management of Foreign Workers

A foreign worker is required to have a temporary employment visa (or more commonly known as a work permit), issued by the MOHA through the Foreign Workers Division of the Immigration Department (KDN). This work permit allows foreign workers to temporarily reside and work in Malaysia. The employer must apply for the permit on behalf of the worker, and the foreign workers must already have an employer-sponsor before they can enter Malaysia on a temporary employment visa.

The ability to procure a valid work permit rests on the would-be employer's possession of quota-based permission to import foreign workers. An employer first procures this quota-based permission, and then sets about recruiting foreign workers and arranging their transport to Malaysia. When a foreign worker first arrives in Malaysia, s/he is carrying a calling visa. This calling visa and the worker's legal and valid passport are submitted by the employer or the PEA representative to the State Immigration Office, along with the original approval letter from MOHA and original receipts showing payments. The Immigration Office then issues a special pass or a temporary employment sticker. The special pass is valid for 30 days. During this period, the worker is brought for medical examinations at FOMEMA registered clinics or health centers to prove fitness to work. (FOMEMA is the mandatory health screening system for foreign workers in Malaysia.) After the worker is found fit to work, a work permit is issued. The work permit includes the name and address of the employer.

Foreign workers enter Malaysia under the sponsorship of a specific employer and, as a matter of policy, are not allowed to change employers without amending the sponsor.¹³⁵ The work permit is renewed annually, and the employer has the sole discretion whether or not to renew the work permit for a particular worker. If a foreign worker chooses to return home at any point, the employer-sponsor must apply for a “check-out memo” to facilitate the worker’s return to her home country. Until this check-out memo is issued, a foreign worker has no legal means to leave the country. If a foreign worker wishes to change her employer, s/he must first obtain a check-out memo from her current employer, return to her own country, and then enter Malaysia again under a new employer-sponsor.

Regarding cases in which an outsourcing agency (which in some cases is also the recruitment/placement agency)¹³⁶ acts as the employer: In April of 2012, an amendment to the Employment Act of 1955 introduced the notion of a “contractor for labor”, which allowed labor contractors, suppliers or employment agents to be employers themselves.¹³⁷ Identifying the employer involves a determination of who has entered into a contract of service, whether written or oral, to employ another person as an employee.

A contract of service is required for any undertaking of work and it is required to be in writing if it involves the performance of a job in a period exceeding one month. The contract is required to specify, at the minimum, terms on wages,¹³⁸ rest days,¹³⁹ overtime,¹⁴⁰ leaves and other benefits,¹⁴¹ and work shift.¹⁴² Currently, the legal minimum wage for workers in Peninsular Malaysia is MYR 900 (USD 278) per month or MYR 4.33 (USD 1.34) per hour.¹⁴³ Total overtime work should not exceed 104 hours in any one month.¹⁴⁴

As a general rule, no deductions shall be made from wages except lawful deductions, like a refund in case of overpayment of wages, or legally authorized deductions for EPF, SOCSO, and income tax,¹⁴⁵ and those made only by written request of the worker for payments to a trade union, cooperative, or in respect of payments for the purchase of shares.¹⁴⁶ Other deductions can only be made with the written consent of the worker and with prior written permission by the Director General for:

- payments to a third party on behalf of the employee,
- purchase of the employee of any goods of the employer’s business offered for sale by the employer, or
- rental for accommodation and the cost of services, food, and meals provided by the employer to the employee at the latter’s request or under the terms of the employment contract, among others.¹⁴⁷

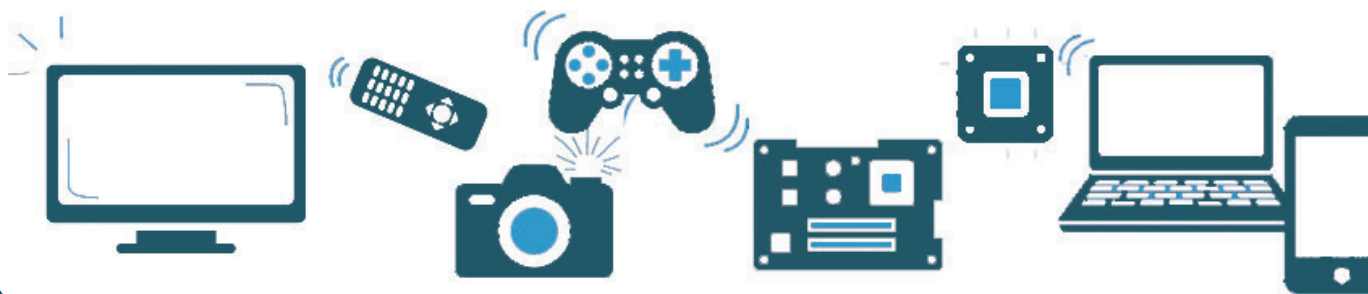
Termination of the contract¹⁴⁸ should be with prior notice, except under the following circumstances:

- By either party, provided indemnity is paid equal to the amount of wages which would have been accrued by the employee during the term of such notice or during the unexpired term of such notice;
- By either party in the event of any willful breach by the other party of a condition of the contract;
- By employer for employee's misconduct after due inquiry; or
- By employee when he or his dependents are immediately threatened by danger to the person by violence or disease that is beyond what the employee has undertaken.

The employment contract is deemed breached when (a) an employer fails to pay the wages and (b) when an employee has been continuously absent from work for more than two consecutive working days without prior consent from the employer, unless the employee has reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to, or at the earliest opportunity during, such absence. In such case, the parties are released from the contract and the offending party is liable.

The particular laws, policies, and guidelines mentioned above have been chosen for discussion in this report from a much larger body of Malaysian immigration and labor law, specifically to frame the understanding of the macro-context in which a foreign worker in Malaysia lives and works. These particular immigration and labor laws are discussed in order to acknowledge the interplay between managing migration, ensuring public safety and security, addressing the need for foreign workers to fill out the ranks of Malaysia's electronics industry workforce, and regulating the labor conditions of the foreign migrants who come to the Malaysian electronics industry to work. As observed by many stakeholders interviewed for this research as well as by a previous study,¹⁴⁹ there is a lack of a unified framework to regulate the migration and work of foreign workers, with work permits and recruitment licenses overseen by the MOHA and labor laws by the MOHR. Civil society representatives shared with Verité a concern that, where foreign workers are concerned, the regulatory emphasis is placed more on managing in- and out-migration, and less on ensuring decent working conditions.

4. RESEARCH METHODOLOGY



4. RESEARCH METHODOLOGY

4.1 Research Design

Verité used a cross-sectional, mixed-methods research design for this study, employing a combination of quantitative and qualitative methods to document the current experiences of workers in the Malaysian electronics sector. A mixed methodology allowed Verité to explore labor practices within the sector in multiple ways and at multiple levels of depth, systematically collecting numerical data while also gathering contextual details about workers' experiences. A mixed-methods approach was deemed particularly appropriate for this study given the complexity of the Malaysian electronics sector and its associated labor system, the challenges involved in evaluating the presence of forced labor and forced labor indicators, and the wide range of experiences among individual electronics workers in the country.¹⁵⁰

Quantitative, survey-based research was used to assess the presence of indicators of forced labor in the sector, and to provide a meaningful sense of how widespread these indicators and any determinations of forced labor were. Demographic and other relevant worker data were also collected in quantitative form. Qualitative data from surveys and semi-structured interviews were used to cross-check and complement the quantitative data, to yield a more nuanced, contextual understanding of the various dynamics involved, as well as to incorporate workers' voices and perspectives into the research findings. Representatives from the Malaysian and international business communities, Government of Malaysia, trade union, and civil society sectors were interviewed to gather background information and obtain diverse perspectives on the range of labor, recruitment, hiring, supervision, housing, and other major topics covered in this study. Quantitative and qualitative data were analyzed both separately and together, and are presented in an integrated manner in the findings below.

4.2 Sampling Approach

4.2.1 Study Population

The target population for this study comprised all adults currently employed in the manufacture of electronics components or goods in Malaysia.

To define what constitutes “electronics,” Verité relied on the International Standard Industrial Classification (ISIC), Rev. 4, Code 26, “Manufacture of computer, electronic and optical products.” Makers of products and inputs to electrical equipment (hairdryers, fans, etc.) were not included, except in cases like LEDs, where the input might be used in either electronic or electrical products.

The Verité research team sought out workers of both genders, foreign workers and domestic (Malaysian) workers, documented and undocumented migrants, migrants from all of the major nationality groups involved in electronics work in Malaysia, workers in all key producing regions of the country, and workers in large and smaller-scale electronics facilities. Verité researchers also collected information from a small number of workers who were not currently involved in electronics work, but who had stories to tell that were relevant to the research. For example, Verité interviewed one worker who had previously worked in an electronics factory, but had fled her job due to an abusive employer, and at the time of the interview was employed in a grocery store. In cases such as those, the data were held separate from the study sample and used for case studies or background context. The background context in this report was also informed by outreach to representatives from the business, government, and civil society sectors.

The study is cross-sectional and descriptive, with a one year reference period, meaning that the research focused on workers’ labor experiences within the last 12 months only. The only exception was when issues such as workers’ migration, recruitment, or employment histories were explored, because key events in these histories often occurred prior to the current year window. In those instances, Verité researchers noted the time period in question, and analyzed data yielded on such subjects separately from the data corresponding to the 12-month reference period. This approach enabled the findings about the current state of the industry to be as up-to-date as possible.

4.2.2 Purposive Sampling Strategy

This study employed purposive non-probability sampling, a kind of sampling in which researchers intentionally seek out participants who are likely or known to have characteristics of relevance to the research at hand.¹⁵¹

For this study, Verité used targeted sampling. The term targeted sampling can have different meanings depending on the type of research involved. Verité uses this term to refer to a specific kind of purposive sampling that is often used in research among hidden, highly vulnerable, and hard-to-reach populations such as drug users or people in forced labor.¹⁵² This form of targeted sampling combines two frequently-used purposive sampling techniques, quota sampling and snowball sampling, in one unified approach. To determine which subpopulations are relevant to include, researchers draw upon their preexisting knowledge of the population.

In this case, Verité organized sampling of the overall electronics worker population by two key features: 1) the regions of Malaysia in which electronics are manufactured, and 2) the countries of origin of the workers in question. Insight derived from previous Verité work in Malaysia and from the preliminary rapid appraisal for the project pointed to the importance of exploring differences in the recruitment experiences of electronics workers from different countries (including both Malaysians and migrants), which is why attention to worker nationality was built into the research design at the level of sampling. Brokerage patterns, degrees of regulation, and fee levels all vary across the labor-supplying countries, so Verité wanted to be sure to gather adequate data from workers from all the relevant national populations involved in the sector. Taking into consideration the total time and resources available, quota targets were set for workers of each nationality in each of the major electronics-producing regions in the country. Since accurate data on the numbers, nationalities, and distribution of foreign contract workers in the Malaysian electronics sector are not publicly available, Verité drew upon accumulated knowledge and insights gained during a preliminary rapid appraisal to set the quota targets for workers from different countries of origin.¹⁵³ The process by which Verité decided how much research to conduct in each geographic region is discussed below in Section 4.2.3.

Once quota targets have been set, studies using targeted sampling strategies rely on snowball sampling to locate appropriate participants to include in the research sample. Within each relevant region of Malaysia, Verité researchers sought out potential recruits meeting criteria for inclusion in the study, and then asked them for referrals to others who similarly met the inclusion criteria. These acquaintances were approached for participation, and if successfully recruited, asked for referrals of additional potential participants, and so forth. The process of recruiting the initial “seeds” for the snowball networks varied depending on the researcher. Some members of the research team already had networks of contacts among workers in at least some regions of the country; others needed to recruit initial contacts by approaching them in public gathering places like restaurants or places of worship known to be frequented by electronics workers of particular nationalities. Efforts were made to recruit respondents from both genders, and from a mix of employment arrangements and immigration statuses, where possible. Verité sought to recruit workers from a range of facility sizes within the electronics industry. Researchers were asked to assess where a facility was located and if it was in an FIZ, if possible. In addition, researchers asked workers about the size of the facilities they worked in. Researchers were trained to recruit no more than three workers from any single factory, with the exception of factories with more than 2,000 employees, where they were allowed as many five, although typically not under the same employment arrangement (some outsourced to agents, some directly employed by the facility). New snowball networks were sought as needed until sampling quota targets were reached for each location.

Selection of interviewees for additional, in-depth, qualitative research was done with the goal of illuminating particular experiences or aspects of forced labor vulnerability that had surfaced during workers’ initial survey interactions with the research team. Again, efforts were made to

include a range of nationalities, genders, employment arrangements, and immigration statuses. In all, 15 qualitative interviews were conducted.

4.2.3 Geographic Distribution of the Research

In order to determine how to distribute the research geographically across the sector, Verité reviewed the location of electronics facilities in the country and identified seven key regions of electronics production:

- Ipoh/Perak
- Johor
- Kedah
- Klang Valley (Kuala Lumpur/Shah Alam/Selangor)
- Malacca
- Penang
- Seremban/Negeri-Sembilan

Each of these locations is home to multiple free industrial zones (FIZs), and is the site of significant electronics production. Together they account for approximately 97% of all Malaysian electronics output. Official statistics on the geographic distribution of employment in the electronics sector were not available publicly, but Verité created a composite estimate of employment levels in each region to aid in sampling (see Table 4.1 below).¹⁵⁴

Verité allocated its research efforts in the field by taking into account the regional distribution of electronics production, and by factoring in insights about the geographic distribution of workers of various nationalities. For example, while official statistical information about electronics manufacturing in the Klang Valley was unavailable, rapid assessment research indicated robust electronics production in this region, with a particular concentration of migrant electronics workers from Burma. This led the research team to concentrate on this subpopulation in that region. Such adjustments to initial quota targets as the population becomes better known are characteristic of a targeted sampling strategy.¹⁵⁶

Table 4.1 2008 gross value output and employment of select Malaysian states for ISIC Rev.3.1 industry code 321 – Manufacture of electronic valves and tubes and other electronic components¹⁵⁵

State	Gross value output (MYR '000)	Percentage gross value output out of total electronics sector in Malaysia	Employment	Percentage employment out of total electronics sector in Malaysia
Johor	16,046,535 (USD 5,023,962)	19.1%	31,355	16.5%
Malacca	6,581,491 (USD 2,060,579)	7.8%	15,374	8.1%
Negeri Sembilan	3,736,013 (USD 1,169,697)	4.4%	11,978	6.3%
Perak	3,809,280 (USD 1,192,636)	4.5%	20,002	10.6%
Penang	36,561,083 (USD 11,446,800)	43.4%	69,149	36.5%
Selangor	15,230,150 (USD 4,768,362)	18.1%	28,880	15.2%
Kuala Lumpur	No information			
Sum of values given here**	81,964,552 (USD 25,662,036)	97.3%	176,738	93.2%
MALAYSIA	84,200,000 (USD 26,361,925)	100%	189,532	100%

* In this table "electronics sector" refers to industry code 321 only. While this is not the entire electronics sector, the 321 code does represent by far the largest portion of the sector, and includes the manufacture of semiconductors.

** These values reflect the extent to which the information here is reflective of the electronics industry in Malaysia as a whole.

***More recent data using the ISIC Rev 4. Code 26 was not available.

4.3 Profile of Study Sample

4.3.1 Country of Origin

Verité research included workers from Indonesia, Malaysia, Burma, Nepal, and Vietnam, with smaller samples from Bangladesh, India, and the Philippines. Migrants from Bangladesh represent a significant part of the overall population of foreign contract workers in Malaysia, but neither they nor migrants from India are currently approved to work in the manufacturing sector. Filipino workers tend to be employed in more technical, higher-level positions than most foreign migrants, and were likewise not a principal focus of the study.

4.3.2 Gender

The total sample size for this study was 501. There was a balance between genders in the study. Although there were variations in gender by country of origin between worker populations, this reflected differences in migration patterns from the various countries.

4.4 Data Collection Process

4.4.1 The Research Team

A total of a dozen researchers carried out the fieldwork for this project, which lasted from June 2013 through February 2014. The team included members from Nepal, Burma, Vietnam, the Philippines, Bangladesh, Indonesia, and Malaysia. Several team members were fluent in multiple languages, and were able to interview workers from additional nationalities, as well as their own. Most of the researchers had some prior experience carrying out this type of research, and most also had some connections within the worker communities in question. The team was nearly evenly divided between women and men, and female researchers were

Table 4.2 Major demographic characteristics of the sample

Gender	No. of Respondents
Female	270
Male	227
Country of Origin	
Bangladesh	36
Burma	95
India	2
Indonesia	108
Malaysia	63
Nepal	99
Philippines	9
Vietnam	89
Region in Malaysia	
Johor	136
Klang Valley	159
Penang	140
Seremban, Negeri Sembilan	40
Other (Ipoh, Perak; Kedah; Malacca)	26

used to explore sub-populations where the electronics workers are predominantly female, as is the case with foreign workers from Vietnam and Indonesia. The field team was supervised by two senior researchers with extensive experience in documenting cases of forced labor in the Southeast Asia region. The methodology and data analysis for the project were designed and implemented by the two senior field research managers in collaboration with a team of Verité technical experts on forced labor, social science research, and data management.

4.4.2 Training and Oversight

Comprehensive training of the research team was conducted over several weeks in May 2013. Topics included:

- Review of the purpose and scope of the study to ensure full comprehension and buy-in to the design and methods of the study by all team members;
- Review of electronics manufacturing processes and categories of electronics components and products, to assist team members in determining the eligibility of potential respondents and understanding their role in electronics production processes;
- Review of the project design and sampling approach, including strategies for developing a robust and diverse sample of respondents;
- Review of the processes for obtaining informed consent and maintaining subject confidentiality;
- Detailed review of the survey instrument to clarify the meaning and intent of each question and emphasize the importance of consistency in survey translation and administration across languages and researchers;
- Review and practice exercises on effective interviewing, field note-taking, and note revision;
- Discussion of the interpersonal dynamics of research encounters;
- Training on security of researchers and interviewees; and
- Training on data management and entry.

Oversight of the research team was provided by the Principal Investigator and other Verité staff, who coordinated and supervised the team members and occasionally observed them as they administered field interviews with workers. Regular download meetings with the team members gave the researchers an opportunity to discuss any issues or problems that came up

in the course of the research, and ensured that all parts of the research process were clearly understood and systematically carried out.

4.4.3 Survey Development

Quantitative data were collected using a standardized survey instrument, which was administered in face-to-face interviews with electronics workers. The survey tool was developed by Verité specifically for this project, and was designed to capture sufficient information to determine the presence or absence of forced labor or indicators of forced labor within the past year for each worker interviewed, in accordance with the analytic framework for defining forced labor in the ILO report *Hard to See, Harder to Count* (2012). Initial drafts of the survey were vetted and revised in collaboration with Verité staff from the U.S. and South East Asia offices, and with members of the research team. The survey was then pilot tested in the field by several of the researchers, after which it was again revised and eventually finalized.

Most of the survey consisted of closed questions, in option list or scalar formats that allowed for the data generated to be analyzed statistically. Some open-ended, qualitative questions were also included, with responses recorded in text boxes embedded in the body of the survey form. Questions were formulated with ILO indicator analysis in mind, and were designed either to contribute directly to evaluation of the presence or absence of one of the ILO forced labor indicators or to provide relevant context for making such a determination during the data analysis stage. The survey can be found in Appendix 1.

4.4.4 Qualitative Data Collection

Most qualitative data for the study were collected from workers through the open-ended questions embedded in text boxes within the survey form. These questions typically gave workers the chance to elaborate or comment upon lines of inquiry pursued in the quantitative questioning and allowed the interviews to flow in a more natural way.

With a small subset of workers, the research team members were able to follow up on the survey encounters with additional in-depth, semi-structured interviews, in which they explored particular aspects of the workers' recruitment or labor experiences, or to discuss in greater depth specific thematic issues of concern to the project. These data were also translated by the research team, uploaded and coded by Verité staff.

Additional qualitative data were gathered from field notes and observations recorded by the research team, and from insights gained through open-ended consultations with key informants and stakeholders. More information on this stakeholder consultation process is offered in Appendix 4.

4.4.5 Data Systems Used

Quantitative data collected via the paper survey instruments were recorded on an ongoing basis by the field research team through a password-protected online data-entry platform hosted by the web-based survey software program Qualtrics (www.qualtrics.com). These data were monitored and analyzed as they came in, and regularly downloaded to the master project database, which was maintained in Microsoft Excel. Basic descriptive analysis of the quantitative data was conducted in Excel. More complex analysis of the quantitative data using the ILO forced labor indicator framework was conducted using the open-source statistical software program R, with R code developed by Verité for this purpose. (See more discussion below, in Section 5: Determining the Presence of Forced Labor.)

Qualitative data collected via the survey forms were translated and entered by the research team directly into text boxes embedded for that purpose in the online Qualtrics survey platform. From there they were downloaded into the master project database in Excel, and then re-exported as text files into a qualitative database created with the web-based, mixed-methods data analysis software program, Dedoose (www.dedoose.com). Longer texts such as transcripts of semi-structured interviews and expert informant interviews were translated and transcribed by the field researchers and then also uploaded to the qualitative database in Dedoose. Once in Dedoose, the qualitative data were coded with searchable tags to identify specific issues, recurrent themes, and exemplary passages.

4.5 Data Accuracy

4.5.1 Data Review and Cleaning

To ensure the highest level of data accuracy possible, Verité developed a system for regular data review and cleaning. As the survey data came in over the online platform, Verité staff reviewed each form, and flagged all responses that did not make sense, or seemed to have been improperly recorded. In many cases Verité staff was able to correct errors without difficulty; for example, by adjusting the format in which numerical data were entered, to make them consistent with other surveys and compatible with Verité's analytic software. Staff similarly corrected obvious recording errors, such as the accidental use of an incorrect currency designation when recording fees.

To ensure the substantive accuracy of data in the surveys, Verité staff reviewed the forms for internal consistency, noting, for example, cases where a respondent may not have replied in the affirmative to a question about experiencing a menace of penalty, but then later described an instance in which such a penalty was in fact threatened or imposed. In such cases, Verité

prioritized the more detailed information provided in the qualitative text-boxes, and used the qualitative data to correct the responses in the quantitative parts of the survey.

To confirm the accuracy of data entry, more than 80% of hard survey forms were spot-checked against the data recorded via the online platform.

Verité has kept a detailed log of each alteration made to the data set, and has also retained a copy of the raw data.

4.5.2 Control of Response Bias

Although much care was taken in design of the survey for this study, response bias is always a possibility in survey-based research. Socially-desirable responding (in which respondents answer questions in such a way as to appear positively in the eyes of their interviewers), acquiescent responding (in which respondents agree with any suggestion posed to them), extreme responding (in which respondents automatically select the most extreme negative or positive response offered), and midpoint responding (in which respondents automatically select the middle option offered) are all common sources of response bias.¹⁵⁷ All are possible here, although response bias is more likely to produce inaccuracy in surveys that explore opinions or impressions than in those seeking to document factual information, such as this survey.¹⁵⁸ For those questions in the survey that were most vulnerable to response bias because of their sensitivity or subjective nature, Verité cross-checked responses with other related questions, as well as with any qualitative information associated with that respondent, and with knowledge gained from the literature review and expert informant consultations.

To mitigate the likelihood of socially-desirable or acquiescent responding, training was provided to the research team on methods for establishing a respectful and neutral social stance in relation to respondents, and researchers were instructed to seek out sites for the interviews that minimized anxiety and distractions on the part of respondents. Researchers were also asked to note down the interpersonal dynamics of interviews, and any relevant impressions about the comfort levels and/or veracity of the workers they interviewed.

4.6 Human Subjects Considerations

As is noted in the ILO (2011) report *Hard to See, Harder to Count*, the fact that forced labor is a crime in almost all countries means that those who conduct or participate in research on forced labor may face significant dangers at the hands of those who perpetrate it. The inherent risk

involved in forced labor research elevates the burden on researchers to protect their subjects' safety and confidentiality beyond the standard level of ethical practice for studies involving human subjects. The ILO states that "the primary rule to follow is that interviewers must make absolutely sure that the survey does not in any way endanger the adult or child respondent. If there is any risk of negative repercussions, then they should not conduct the interview."¹⁵⁹

In keeping with ILO guidelines,¹⁶⁰ Verité researchers routinely sought safe and neutral places to conduct their interviews, worked to ensure that their research subjects felt secure and able to speak freely, took precautions to make sure that no employers, supervisors or guards could overhear their conversations, and observed appropriate cultural norms relating to gender or other factors that might have made subjects feel uncomfortable or intimidated. Verité field researchers were knowledgeable about the local resources available to workers in distress and trained in how to what to do if they encountered workers in dangerous situations who required immediate assistance.

An informed consent script was developed, and team members were trained on the use of this script and practiced administering it prior to commencement of the pilot research. To protect subject confidentiality, written consent was not obtained, but acknowledgment of oral consent was noted on the research survey forms in each interview. As the consent was recorded, the researcher reminded the interviewee that she could rescind consent at any time for any reason without consequence. Researchers were instructed that, if at any point during the research interaction the interviewee seemed to grow uncomfortable with the research, the researcher should again remind the respondent of their right to withdraw from the study without consequence, and to request consent again.

Names learned in the course of conducting the field surveys were not recorded on the interview data forms. Respondents were instead assigned a code number by which they were subsequently identified in all data tabulation and analysis. All quantitative data from the surveys is used and presented in the aggregate. In the case of qualitative data, confidentiality of interviewees was ensured through techniques such as name stripping, the use of pseudonyms, and the alteration of key identifying characteristics.

4.7 Limitations of the Study

4.7.1 Barriers/Challenges in Respondent Recruitment

Many electronics workers in Malaysia work six days a week for 12 hours a day, and have very little free time. They are tired at the end of shifts, and were frequently only available to meet with Verité researchers on Saturday evenings or Sundays, making it difficult for the research team to recruit participants or administer surveys except during these times.

Moreover, as with all studies of forced labor (which necessarily involve already-vulnerable populations), potential participants often perceived little direct benefit and much risk from participation in a study that probed into their terms of employment and working conditions. The perception of risk associated with participation in the study was likely particularly high given that foreign contract workers in Malaysia are subject to a high degree of surveillance, and live under the continual threat of detention and deportation. A recent report by the Dutch civil society organization SOMO found that employment agencies and factories in Malaysia sometimes warn their employees explicitly not to talk to strangers or researchers:

In some cases, the movement of migrant workers was monitored by scanning card barriers at entry and exit points of dormitories; recruitment agencies were found to question workers if suspicions arose about whom they were talking to; workers were threatened with deportation or salary deduction if they spoke to strangers; and workers were told not to damage their employers' reputation.¹⁶¹

The sense of insecurity among migrants engendered by such practices intensified while the present study was underway, as a result of the large-scale Government of Malaysia operation to identify, register, and deport undocumented foreign workers as part of the “6P” program during the research period (see “Section 6.2: Factors that affect the work and life of foreign workers and their vulnerability to forced labor” for further discussion). As this operation unfolded, reports circulated in migrant communities of widespread interrogation and detention of foreign workers, and many people also reported petty thievery against migrants by civilians posing as immigration officials. The climate of pervasive surveillance left many workers – both documented and undocumented – reluctant to speak with Verité researchers, both for fear of drawing unwanted attention to themselves, and in some cases out of concern that Verité researchers might actually be state agents in disguise. In a number of cases, workers with whom interviews had been arranged failed to turn up at the appointed time, and many unsuccessful recruits reported that they had been advised to stay indoors to avoid RELA during the 6P raids. Because 6P operations escalated during the final months of the research, qualitative in-depth

interviews were primarily limited to the Penang region, where surveillance of migrants was somewhat less intense.

In general, Verité team members found that it was typically necessary to spend significant time gaining the trust of a potential interviewee before being able to arrange an interview, which was often conducted later in a more secure location so as to enable the participant and researcher to speak freely for the approximately 45 minutes it took to administer the survey. An average of three to four hours was required to recruit each of 501 respondents in the survey, representing a significant outlay of time and effort by the field researchers. While portions of a few surveys were administered by phone (often when a face-to-face interview got interrupted and needed to be completed later), researchers virtually always established initial relationships with workers in person, a process that was both time and resource intensive. The vast majority of surveys were administered in person.

The study was also made challenging by the fact that the members of the Verité research team – most of whom hail from migrant-sending countries themselves – were frequently subject to the same modes of surveillance and threats of detention and deportation as the workers they sought to interview. In order to avoid attracting the attention of authorities, and to keep themselves and their respondents as safe as possible, the researchers generally avoided spending more than a few days at a time in any single research locale; instead, the researchers cycled through different regions of the country on a rotating basis. This practice added substantial logistical complexity to the study, and also increased the difficulty of recruiting new participants, since networks in the worker communities had to be reactivated each time a researcher visited them.

Field research for this study took place between June 2013 and February 2014. Government 6P operations were particularly intense during the months of September 2013 and January 2014. Research was also especially challenging during the month of August 2013, due to extreme levels of pollution-related haze in Klang Valley and Johor, making it too dangerous for researchers to travel out of doors in these regions for much of the month.

4.7.2 Sampling Bias

Relying on snowball networks to recruit research subjects is an effective and well-established way to reach populations that are hidden or otherwise difficult to access. However, samples recruited using this technique are biased by the non-random selection of the initial recruits from which each network is generated, and by the size and social boundaries of the networks in question.¹⁶² To offset these potential biases, Verité researchers established multiple informal networks of respondents within each research location, and worked to ensure that each network overlapped with others as little as possible by picking a diverse group of initial seeds.

As with all non-probability studies, it may also be expected that the data for this study were

biased in the direction of respondents who were able and willing to participate in the research. Significantly, it is likely that respondents to the Verité survey self-selected to some degree, either because they wanted to share their experiences, or because they were less fearful of reprisals or other negative consequences from participation than other workers may have been. Evidence of such bias is suggested by the fact that 89% of foreign migrants in the study sample have been in Malaysia for one year or more, and 72% for two years or more. A longer stay in-country is generally associated with lower levels of job-related indebtedness, greater familiarity with Malaysian society and language, more extensive support networks, and a greater level of comfort navigating state surveillance, all of which likely resulted in the longer-time workers in this study feeling less vulnerable in the face of the research. It is difficult to know for certain, but the Verité research team suspects that more recently-arrived electronics workers (i.e., workers who had been in Malaysia for under one year) were often simply too fearful to speak with researchers, particularly in the context of the government raids on foreign worker compounds as part of the 6P operations. Because it is likely that workers with the greatest vulnerability to exploitation and/or forced labor were also likely to have been especially cautious about participating in the research, Verité's positive findings of forced labor and forced labor indicators among those participants are probably low estimates.

4.7.3 Other Limitations

The study is also limited in the following regards:

Because the research employed nonprobability sampling, the data are not representative in a statistical sense.

Verité used purposive targeted sampling to achieve a nonprobability sample that reflected the population of electronics workers as accurately as possible given this limitation, but Verité's ability to meet optimal quota targets for various subpopulations within the overall sample was somewhat limited by finite time and resources, the logistical complexity of the study, and the difficulties in recruiting participants discussed above. Verité is confident in the robustness of the data presented, but including more participants would no doubt have made the research even stronger.

The study's findings have also been shaped by Verité's use of the ILO analytic framework for defining forced labor, the merits and limitations of which are reflected in the study. Verité's use of the ILO analytic approach is discussed in detail in "Section 5: Determining the Presence of Forced Labor: Analytical Approach" below.

At the level of data quality, the study was constrained to some extent by the survey format required for the quantitative portion of the research, and by the need to keep the survey short enough to be practical to administer to workers, given the time and safety constraints found

in the field. Verité found in particular that thorough information on deceptive recruitment, recruitment fees, and menace of penalty were difficult to collect using the survey tool. With deceptive recruitment, many respondents had difficulty recalling the details of the promises they had been made by recruiters prior to their arrival in Malaysia at the level of detail called for in the standardized format of the survey. With recruitment fees, survey respondents often had difficulty disaggregating and distinguishing between the fee they were charged for their job placement, and other payments or deductions they were charged for their loans, interest, and other expenses, making it challenging to arrive at a standardized amount that could be compared across respondents. With menace of penalty, at least some respondents failed to mention that they had experienced certain threats or penalties when asked in survey form, but later described them when given the opportunity to respond in a more qualitative manner. Wherever possible, qualitative data was used to supplement and offset such limitations in the quantitative data.

5. DETERMINING THE PRESENCE OF FORCED LABOR: ANALYTICAL APPROACH



5. DETERMINING THE PRESENCE OF FORCED LABOR: ANALYTICAL APPROACH

5.1 Answering the Guiding Research Questions

The three research questions that provide the basis for this study probe the presence or absence of forced labor indicators, as well as forced labor itself, in the Malaysian electronics industry. The research questions also require an assessment of whether the forced labor indicators and forced labor incidences are widespread. To answer these questions, Verité needed a methodology for determining the presence or absence of forced labor in the study population, and a definition of “widespread.”

Verité chose to apply an overarching methodological framework based on the approach to forced labor research outlined in the ILO’s 2012 publication, *Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labour of Adults and Children*.¹⁶³

The ILO parses the definition of forced labor into two aspects – involuntariness and coercion. Four principal dimensions are then identified: unfree recruitment, work and life under duress, impossibility of leaving an employer, and menace of penalty. A set of indicators of forced labor is identified for each dimension, and a formula is provided that, when applied, determines the presence of forced labor itself. Hence, it is in the type and combination of indicators that are present with a particular individual that a finding of forced labor is made, not the mere presence of indicators per se.

Box 5.1 Operational definition of forced labour

-ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (International Labour Office: Geneva, 2012), p. 13.

Forced labour of adults is defined, for the purpose of these guidelines, as work for which a person has not offered him or herself voluntarily (concept of “involuntariness”) and which is performed under the menace of any penalty (concept of “coercion”) applied by an employer or a third party to the worker. The coercion may take place during the worker’s recruitment process to force him or her to accept the job or, once the person is working, to force him/her to do tasks which were not part of what was agreed at the time of recruitment or to prevent him/her from leaving the job.

5. Determining the Presence of Forced Labor

To determine the incidence of individual forced labor indicators, Verité derived findings from quantitative and qualitative questions asked in a survey form. In-depth qualitative data from interviews with workers and key informants were used to hone in on particular aspects of worker vulnerability to forced labor that emerged during the research. These data supplemented the survey-based findings and enabled a more nuanced understanding of forced labor vulnerability.

To determine the incidence of forced labor itself, Verité employed the framework outlined by the ILO in its survey guidance (discussed in more detail below). To create the forced labor variable, all combinations of answers to questions that validated specific indicators of forced labor were recoded in the statistical software language R. These indicators were then combined to result in forced labor determinations. Any positive findings of forced labor were cross-checked with available qualitative data to ensure that the ILO-based analysis rang true.

Findings for individual workers were aggregated to provide a sense of the pervasiveness of each forced labor indicator and various constellations of indicators of forced labor within the study sample. Aggregated data on forced labor indicators and any findings of forced labor were further analyzed to determine any relevant associations with, for instance, country of origin, gender, or types of electronics labor performed.

As discussed in “Section 4: Research Methodology” above, participants in the study were selected with an eye toward coverage of the full range of diversity of workers within the sector, including in terms of geographic location and structural role within the Malaysian electronics sector, and in terms of demographic variables such as country of origin, gender, and migration status. Findings were then analyzed to determine whether forced labor was found across all or most major electronics producing regions (or, perhaps, in isolated pockets connected to idiosyncratic circumstances or isolated to certain employers, employment agents, or housing complexes), as well as across various other variables like country of origin, gender and migration status. If true, this would provide the grounds for the conclusion that forced labor is not isolated or tied to random or arbitrary situations or experiences, but rather is present across the industry. For the purposes of this study, Verité understood a forced labor indicator or finding of forced labor to be widespread in the country if it was found to be present in more than isolated incidents in the research locations sampled; for example, if it was found among workers beyond a single nationality in electronics production, among both men and women, and among workers in both top-tier and smaller electronics facilities. Verité also left open the possibility that forced labor or forced labor indicators could be found to be widespread within particular locations or portions of the electronics industry supply chain, even if they were not found to be widespread throughout the industry at large. In such cases, findings have been appropriately qualified in relation to any claims made about the industry at large.

5.2 The ILO Framework

Box 5.2 Identification of cases of forced labour of adults

-ILO. Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children (International Labour Office: Geneva, 2012).

The dimension “unfree recruitment” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present, and at least one of these indicators is strong.

The dimension “work and life under duress” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present, and at least one of these indicators is strong.

The dimension “impossibility of leaving employer” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present, and at least one of these indicators is strong.

Any adult worker for whom the dimension of unfree recruitment OR life and work under duress OR impossibility of leaving employer is positive, can be considered a victim of forced labour.

In *Hard to See, Harder to Count: Survey Guidelines to Estimate the Forced Labor of Adults and Children*, the ILO defines a set of indicators for each of three principal dimensions of involuntariness: 1) unfree recruitment, 2) work and life under duress, and 3) impossibility of leaving an employer. Indicators in these three dimensions must then be associated with one or more enforcing penalties or menaced penalties. Each indicator is assigned a medium or strong designation. The indicators are combined according to the formula shown in the box above in order to determine whether forced labor exists in the circumstances of an individual worker. For a forced labor determination, at least one indicator of involuntariness and one indicator of menace of penalty must be present in a given dimension, and one of the indicators must be strong.¹⁶⁴

See Box 5.3 for examples provided by the ILO provides of individuals who would be found to be in forced labor and not in forced labor, according to the framework.

Box 5.3 Examples of the use of indicators of forced labor of adults

from: ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (International Labour Office: Geneva, 2012), p.28.

A worker who is abducted, brought to a workplace **AND** forced to work under the threat of physical violence **IS** a victim of forced labour (one strong indicator of involuntariness, one strong indicator of penalty).

A worker who is recruited by force as collateral for a debt **AND** works under the threat of exclusion from community and social life **IS** a victim of forced labour (one strong indicator of involuntariness, one medium indicator of penalty).

A worker who is deceived about the wages to be paid **AND** cannot leave because his or her wages are withheld by the employer **IS** a victim of forced labour (one medium indicator of involuntariness, one strong indicator of penalty).

A worker who is dependent on the employer for housing and food **AND** is subject to financial penalties for refusing to perform additional tasks which are not part of the contract, though not employed in decent working conditions, **IS NOT** recognized as a victim of forced labour for purposes of data collection (one medium indicator of involuntariness, one medium indicator of penalty).

A person working in sub-standard working conditions **BUT** who can leave the employer if he or she finds a better job, though not employed in decent work, **IS NOT** recognized as a victim of forced labour.

A migrant worker who is deceived by an intermediary about the nature of the job **AND** who cannot leave the employer because he or she is threatened with denunciation to the authorities **IS** a victim of forced labour.

5.3 Operationalizing the ILO Framework

In operationalizing this framework, Verité first sought to identify the subset of the ILO’s forced labor indicators that were of highest relevance for the study. The decision of which indicators to include was based upon the results of literature review and rapid appraisal.

The indicators identified for the study were:

<p>Unfree Recruitment</p> <p>Strong indicators:</p> <ul style="list-style-type: none"> ● Deception about the nature of the work <p>Medium indicators:</p> <ul style="list-style-type: none"> ● Deceptive recruitment 	<p>Menace of Penalty</p> <p>Strong indicators:</p> <ul style="list-style-type: none"> ● Sexual violence ● Physical violence ● Threats against family members ● Other forms of punishment (deprivation of food, water, sleep) ● Imposition of worse/further deterioration in working conditions ● Withholding of wages ● Denunciation to authorities ● Dismissal ● Confiscation of identity papers or travel documents ● Isolation ● Locked in workplace or living quarters ● Constant surveillance <p>Medium indicators:</p> <ul style="list-style-type: none"> ● Exclusion from future employment or overtime ● Financial penalties Extra work for breaching labor discipline
<p>Work and Life Under Duress</p> <p>Strong indicators:</p> <ul style="list-style-type: none"> ● Forced overtime ● Limited freedom of movement and communication ● Degrading living conditions 	
<p>Impossibility of Leaving Employer</p> <p>Strong indicators:</p> <ul style="list-style-type: none"> ● No freedom to resign in accordance with legal requirements ● Forced to work for indeterminate period in order to pay off outstanding debt or wage advance 	

A quantitative survey form was then developed, the aim of which was to capture information that would either directly contribute to an evaluation of the presence or absence of one of the ILO forced labor indicators, or would provide relevant context for making such a determination during the data analysis stage.

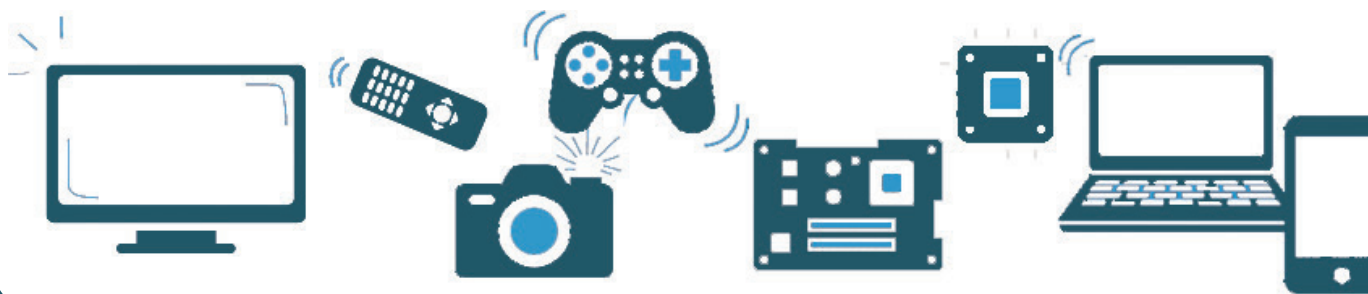
5.4 Forced Labor Analysis

To facilitate the analysis of findings gleaned from survey administration, definitions for each indicator were expressed in terms of the answers to one or more survey questions. In some cases, more than one possible definition for the indicator was created (see, for example, Freedom of Movement and Communication). The full set of definitions and formulas can be found in Appendix 2.

Many indicators have definitions that rely on the answers to clusters of questions and on conditional factors, which is reflective of Verité’s desire to create conservative definitions, bounded to the greatest extent possible by conditional factors that adhere to the letter and spirit of ILO standards and Malaysian law.

Definitions were expressed both narratively and in statistical formula language. The process for developing each indicator is discussed in more depth in “Section 6.3: Indicators of Forced Labor by Dimension” below.

6. RESEARCH FINDINGS



6. RESEARCH FINDINGS

Research findings from the study are discussed below in the following order: 1) demographic details about the study sample; 2) findings of cross-cutting factors affecting worker vulnerability to forced labor; 3) findings of specific indicators of forced labor within the study sample; and 4) findings of forced labor itself within the study sample.

Quantitative and qualitative data are presented in an integrated manner, typically with the quantitative survey data presented first, followed by supporting qualitative excerpts drawn from survey text-boxes and in-depth interviews. There are also longer case studies interspersed throughout the text to illustrate specific dynamics in greater depth, or to demonstrate the interconnected nature of forced labor indicators in the lived experiences of electronics workers.

6.1 Demographic Characteristics of the Sample

Verité collected basic demographic information for this research, forgoing the collection of more in-depth information in the interest of keeping the survey interaction to a reasonable length. Respondents were asked their country of origin, age, gender, marital status, languages spoken, total number of years in Malaysia, and some characteristics of their work, including the type of work performed, size of facility, who paid their wages, and location inside or outside an FIZ.¹⁶⁵

Sampled workers were generally young, with 81% of respondents under the age of 30. Eighty-nine percent of foreign workers in the sample had been in Malaysia for one year or more, and 72%, for two years or more. As discussed above in Section 4.7.2: Sampling Bias, this likely reflects sampling bias due to the greater risk associated with participating in the research for newly arrived foreign workers, as well as the likelihood that newly arrived foreign workers have less well-developed social networks and would thus be less likely to be surfaced than longer-term workers by the network sampling approach. This also should be kept in mind when interpreting the study's results.

Seventy-six percent of facilities were reported by researchers to be located in FIZs. The most common products manufactured by workers in the current study were electronic components and boards (including semiconductors); computer peripherals like monitors, printers, keyboards and scanners; telephones, modems, routers, or other communications equipment;

and consumer electronics like TVs, DVD players and stereos. Many workers reported working on more than one type of electronics product.

About 62% of workers reported being paid by the facility in which they work, although secondary research and the qualitative data suggest that this likely overstates the number of workers who are in fact directly employed by their factory, rather than outsourced through an employment agent. The opaque nature of many workers' employment arrangements is discussed in Section 6.3.1.2: Deception about the Nature of the Job, and Deceptive Recruitment, on the employment agent system.

Assembly, quality control and assurance, and parts fabrication were the most common job functions reported by respondents.

Table 6.1 Age of all workers in sample and length of time in Malaysia among foreign workers in sample	
Age	No. of Respondents
18-24	190
25-29	213
30-34	80
35-39	14
40-45	2
Length of time in Malaysia among foreign workers	
Less than 1 year	47
1 year	74
2 years	102
3 years	87
4 years	43
5 years	27
6 years	25
More than 6 years	31

Table 6.2 Facility characteristics, employment arrangement, products made and job functions performed of all workers in sample

Size of facility	No. of Respondents
< 100 workers	24
100-500 workers	130
500-2000 workers	201
> 2000 workers	131
Facility located in an FIZ?	
No	35
Yes	370
Unable to determine	85
Who pays wages	
Employment agent	185
Facility	309
Other	3
Top product groups*	
Electronic components and boards (includes semiconductors and cables)	213
Computers and computer peripherals like monitors, printers, keyboards, scanners	99
Telephones, modems, routers, or other communications equipment	68
Consumer electronics like TVs, DVD players, stereos, game controllers	97
Other products	116
Jobs performed	
Parts fabrication (molding, stamping, welding, cutting)	94
Parts surface treatment (painting, powder coating, metal plating)	35
Loading	24
Cleaning related to production (not janitorial)	12
Other	49
Kitting	0
Assembly	147
Quality Control/Quality Assurance	101
Reworks and troubleshooting	26
Recycling and waste management	8
Packing and labeling	0

**The sum of the products reported here is greater than the total number of survey respondents because respondents were able to choose more than one product in the survey.*

6.2 Factors that Affect the Work and Life of Foreign Workers and Their Vulnerability to Forced Labor

As the ILO has noted in its survey guidance,¹⁶⁶ investigations of forced labor must be tailored to the context of the sector and country in which the study is being performed. Verité followed ILO guidelines by first identifying a core set of context-specific forced labor indicators to investigate, and then developing a research methodology and set of survey questions to that end. The research design centered primarily on identifying and documenting individual cases of forced labor in the Malaysian electronics industry, a task that required Verité to establish a direct connection between indicators of involuntariness or coercion and the actions of an employer or employer agent.

There are often significant factors not directly linked to the actions of employers however, that compound foreign workers' vulnerability to forced labor. This section discusses some of the main factors of this kind in the Malaysian context, setting the stage for the findings of forced labor indicators, and overall levels of forced labor, presented below. These factors are discussed for contextual purposes only. While they are critical features of a worker's experience, and indeed also of a worker's vulnerability to coercion on the job, they are not taken into account for the current study's forced labor determination in recognition of the lack of a direct employer—worker link.

6.2.1 Citizen Scrutiny

The lives of foreign contract workers¹⁶⁷ in Malaysia are profoundly shaped by their physical positioning within broader Malaysian society. Foreign contract workers' separateness from the local population is emphasized and reinforced through a variety of spatial circumstances that make it difficult to integrate into society, and keep them accessible to surveillance by their employers and the Malaysian state.

When they are not at work, foreign contract workers are typically expected to stay in, or close to, hostels provided for them by their employers. These hostels are often located in city sectors and neighborhoods that are naturally/structurally contained and geographically segregated from other parts of the city, which has the effect of isolating foreign contract workers and making their comings and goings visible and easy to monitor. Within the hostels, foreign contract workers' movements are often closely surveilled by security guards or controlled by curfews imposed upon them by their employers: 27% of foreign workers in the study reported

that they either could not come and go freely from their housing, were monitored at their housing, or were subject to some other form of surveillance.¹⁶⁸

The visibility of foreign workers is heightened also by the widespread use of bright blue company buses to transport them between their residences and the electronics factories. While in many cases lending convenience to the work commute, the ubiquitous *bas pekerja* contains the movements of its passengers and renders them quite visible in the landscape.

Foreign workers are often stopped and questioned about their migration status by members of RELA or government officials. Many respondents reported rarely leaving their dormitories for fear of being stopped by these officials. One in three (35%) foreign contract workers interviewed for this research reported being stopped and asked to show identity documents by RELA, immigration officials, or police within the past year.

Foreign workers expressed particular concern about what they described to be a pattern of indiscriminate apprehension and capricious treatment by RELA, irrespective of their migration status. The fact that most foreign workers in the study sample were legally documented migrants had little effect on their fear of encounters with RELA or other similar officials, or on the deterrent effect that this fear had on their free movement in Malaysian society.

The police come to check on us everyday. While we are able to go to the store or do things that we want to do, we have to be careful so we don't get harassed by RELA, Immigration or police, or by local neighbors and residents.

-Male Burmese worker in Klang Valley

The risk of an encounter with RELA is compounded for foreign contract workers by the fact that the vast majority of them do not retain custody of their passports while in Malaysia, which require them to rely on photocopies or other inadequate substitutes for their identity documents when stopped and checked by RELA or other officials. Many regular (legal) migrants reported to Verité that they were questioned, detained, and/or forced to pay a bribe by RELA because of inadequate identity documentation.

We usually avoid going out, as we don't have our passports. Sometimes the police ask to see our original passports and will not accept copies. In that case, we have to bribe them [to be released].

-Female Burmese worker in Klang Valley

Many survey respondents reported having to pay bribes to avoid detainment or to be released from RELA custody, and that this was a commonplace practice. Verité also heard accounts of both RELA members, and regular citizens posing as RELA, reportedly stealing cell phones and cash from foreign workers. Verité received informal reports that some RELA personnel acted as sub-agents, offering to renew foreign workers' passports or permits. The conflict of interest and potential for corruption in such an interaction is readily apparent.

As shown in Table 6.3, 70% (142/203) of foreign workers that had encounters with RELA, immigration officials, or police were forced to pay bribes, were detained, or were threatened with detention, physical harm, or general intimidation.

Table 6.3 Incidence among foreign workers of encounters with immigration authorities, police, or RELA and nature of such encounters

Nature of encounters with immigration authorities, police, or RELA	Incidence of Encounter (%)	Incidence of Encounter (No.)	Total No. of Respondents
Workers who have been asked by immigration authorities, police, or RELA to show their passport or similar document	35%	154	438
Workers who paid bribes to immigration authorities, police, or RELA	11%	49	438
Workers who were threatened with detention, physical harm, or general intimidation by immigration authorities, police, or RELA	26%	115	438
Workers who were detained or brought to lockup by immigration authorities, police, or RELA	3%	15	438
All migrant workers who had some encounter with immigration authorities, police, or RELA in the last year	46%	203*	438

**This number is not the sum of the numbers in this column because it was possible for workers to report more than one type of encounter with immigration authorities, police, or RELA.*

In terms of the impact of these issues on the ability of foreign workers to move freely during their stay in Malaysia: Forty percent of all foreign worker respondents said that they either felt that fear of RELA, immigration officials, or police prevented them from moving around freely in Malaysian society; or that they could not go to the store, make a phone call, etc. because of harassment by RELA, immigration officials, or police, or because they did not hold their identity documents.

All foreign workers are fair game for RELA, it doesn't matter if you're the head of your department or have a good rank in the company. Also, not all who accost you and ask for your passport is RELA or an official of the government, some of them are just locals who want to harass you. A friend of mine was asked by a civilian for his passport, and when he opened his bag to take out his passport, the civilian took his wallet and ran.

-Male Philippine worker in Penang

I cannot go out alone. The fear of people is in me.

-Female Nepalese worker in Penang

I do not feel free to travel or talk with others. I don't feel safe in Malaysia.

-Male Nepalese worker in Kedah

6.2.2 6P and Raids

The 6P program and associated raid activity were described above, in Section 3: Immigration and Labor Policy Context. This section examines workers' actual experiences with the program.

The 6P program offered the opportunity for undocumented foreign workers to register and be granted legal status as part of an amnesty program. But in practice, as reported to Verité by workers and as seen in media reports, many of the agencies that were contracted by the Government of Malaysia to process amnesty requests actually defrauded workers – taking their money and either failing to process their amnesty papers or providing them with falsified documentation.¹⁶⁹ Many foreign workers who participated in the 6P amnesty program in good faith wound up being detained and deported based on information they had provided about themselves to the government. These workers also lost the money that they had paid for the processing of their 6P papers. A foreign worker advocacy NGO reported that 690 foreign workers

lodged complaints with them about 6P fraud. One news report stated that a single agent alone had stolen more than MYR 100,000 (USD 30,924) from a group of 26 foreign workers.¹⁷⁰

Raid activity created an environment in which civilians posing as Immigration officials or police also preyed upon foreign workers. An anonymous volunteer working to help advocate for the Nepalese foreign worker community reported to Verité that, with the crackdown, workers and those supporting them have to be more careful:

We don't want to endanger the workers' lives and work. They need to keep their jobs and stay out of detention so they can continue working and earning. Many people have taken advantage of the crackdown. It is hard to determine if they are really the authorities or just gangs taking advantage of workers. Workers have reported many times being stopped by locals who ask them to show their papers, and then rob them of cash, phones, and other valuables. The workers say they have reported this to the police but no action is taken.

-Anonymous volunteer advocate

Private sector informants for this study noted that the 6P program created confusion within the sector, as workforce dynamics were unpredictable with workers being detained or otherwise intimidated. Such an atmosphere outside the factory had effects inside, in terms of morale and productivity of workers and on the ability of management to plan based on availability of workers.

The raids have resulted in large-scale detentions of foreign workers. A law recently passed in Malaysia allows for indefinite detention without trial, which has led to concern in the human rights community.¹⁷¹ According to news reports, 2,433 foreign workers were detained in the first burst of sweep activity alone, in September 2013. Of the people arrested, 717 were Indonesian nationals, 555 were Burma nationals, 387 were Bangladesh nationals, and 229 were Nepal nationals. Other nationalities include Cambodian, Vietnamese, Indian, Pakistani, Filipino, Chinese, Nigerian, and Thai.¹⁷² Malaysian Immigration Department director-general Datuk Alias Ahmad said that they had detained 16,800 undocumented workers and 219 employers in the first phase of the raid operation, which started in September 2013 and ended in mid-January 2014.¹⁷³ The first three weeks of the second phase of the raid operation saw 4,660 illegal immigrants and 48 employers arrested and 3,978 “illegal” immigrants deported.¹⁷⁴ Another source reports that only 2,004 “illegal” immigrants were rounded up in the first seven weeks of the second phase. Of the 2,004 arrested, 504 were Indonesian, 16 were Bangladeshi, 15 were Filipino, six were Burmese, four were Indian, and there was one Pakistani, Cambodian, and Thai. The remaining 20 were of other nationalities.¹⁷⁵

According to an anonymous human rights monitor, as of early February 2014, there were thousands of Burmese workers in detention and it was difficult to determine who among them was actually undocumented. This monitor reported that many ethnic Rohingya workers are refugees but have irregular documents as well, and others have also sought refugee status but their situations have yet to be evaluated by authorities, and refugee cards have not yet been issued. Many other Burmese workers reported having gone through regularization via the 6P program, but were found to have insufficient papers.

Box 6.1 Case Study: Three Burmese workers detained during January 2014 raids

The following accounts were reported to Verité by an anonymous human rights monitor working in the detention centers. They demonstrate the kinds of situations facing workers detained as part of the 6P raids. These workers were labeled as undocumented even though they believed their status to be valid, and are now being held in detention centers with no success in contacting their agents and employers to advocate on their behalf. If they continue to be unable to furnish evidence of valid status, they will be deported.

Two workers working in a factory in the Klang Valley owned by a multinational brand were apprehended by RELA while walking around their neighborhood. They only had a photocopy of their passports with them, and it indicated that their passports were expired. The workers said that they knew that they were supposed to have their passports renewed and they had been asking their agent to release their passports to them so that they could renew them, but the agent never released the passports to them.

One other worker had proper documentation but did not have his papers on him. He had been visiting friends in Shah Alam while apprehended, but he worked in Penang. He was accused of having run away from his employer. The worker explained that he was indeed employed in a factory in Penang, and that he had not run away. However, the worker was not able to contact his employer in Penang, and only the employer can withdraw the worker from detention. This worker's visa/work permit was set to expire in a few weeks, and he was told that he could only be deported once his visa was properly cancelled, and he would have to pay a Burmese agent MYR 650 (USD 201) to process his travel documents for his deportation. In the meantime, he had to stay in the detention center.

6.2.3 Crime and Gang Activity

In addition to expressing concern about surveillance and possible apprehension by RELA or government officials, many foreign workers expressed fear and concern about gang-related or other criminal activity in their neighborhoods. Many had direct experiences of being mugged by gangs, or knew people who had been mugged. A number of female workers stated that they did

not feel safe going out alone or at night because of fear of sexual harassment or assault. Some workers also reported experiencing collusion between criminal gangs and RELA or government officials.

Robbery is common in our area and the police don't do anything about it. Our room has been broken into several times. One time robbers entered the hostel and took our mobile phones.

-Male Nepalese worker in Klang Valley

I am scared of robbers.

-Female Vietnamese worker in Johor

Around Sungai Way, there are a lot of cases of sexual assault and robbery.

-Female Indonesian worker in Klang Valley

Sometimes I am worried on my way home from the hostel. There are so many robberies of foreign workers.

-Female Indonesian worker in Klang Valley

I can talk with my supervisor if I don't like the work or talk about a better facility, but still the fear of gangs is with me.

-Female Nepalese worker in Penang

Different places, different problems. I am now in Bangi and I am faced with local gangs. In Penang, I was stopped mostly by police or sometimes by RELA asking for my documents.

-Male Burmese worker in Klang Valley

Many times, local gangs come with the police and force us to give over our money and also sometimes take our things at home, like our TVs and phones.

-Male Burmese worker in Klang Valley

Criminal violence against foreign workers became particularly serious in May and June of 2013, when local Muslim gangs, allegedly angered by ethnic clashes between Buddhists and Muslims in Burma, clashed with Burmese foreign workers in Selangor and Kuala Lumpur, resulting in the deaths of at least three workers and injuring several others. In response to these clashes, the Government of Malaysia initiated sweeps of the Burmese migrant population, detaining more than 1,000 Burmese foreign workers in the affected regions, and deporting any undocumented foreign workers identified.

6.2.4 Multiple Dependency of Foreign Workers on the Labor Intermediary

The ILO includes multiple dependency within its framework for evaluating forced labor. Verité explored various dimensions of dependency in Malaysia and found that foreign workers are highly dependent on their employment agent for housing and medical insurance, as well as employment status and, by association, legal status in the country. These aspects of dependency are almost ubiquitous among the foreign worker population. In the case of employment status and legal status, the dependency stems from the employer sponsorship system. As discussed in the policy section, a worker's temporary employment visa (more commonly known as work permit) is exclusively tied to her employer-sponsor. A worker intending to seek employment in Malaysia is required to have signed an employment contract with a Malaysia-based employer while still in her home country. As per government policy, the provision of accommodations, medical check-ups, and medical insurance for the foreign worker are part of the employer's responsibility. Because this multiple dependency of the foreign worker on her employer stems from the structure of immigration policy itself and is not due to the independent actions of employers, Verité has treated findings related to multiple dependency separately from the forced labor determination.

Ninety-two percent of non-Malaysian respondents in the study reported that their housing was provided by either their facility or employment agent. The location of the job, the type of job, and the worker's pay structure are also determined by the employment agent. When a worker gets into trouble with the police or is detained, it is the employment agent who must vouch for her legal status in the country. This dependency relationship has a profound effect on the experience of foreign workers in Malaysia. As many respondents explained to Verité researchers, if an agent is good, a worker's experience is likely to be good. If an agent is bad, a worker's experience is likely to be bad.

In cases where workers' relationships with their employment agents are problematic, workers have almost no alternative employment option: The work permit system ties them to their employer-sponsor (which, increasingly, is an outsourcing agent). As described in Section 3: Immigration and Labor Policy Context above, if a worker was to break the relationship by

resigning, the work permit would be canceled, a check-out memo would have to be applied for by the employer, and the worker would have to leave the country immediately. Only workers with valid work permits are allowed to remain in Malaysia, and only through a check-out memo can a foreign worker legally exit Malaysia. There is no mechanism for a foreign worker to change her employer while in Malaysia even if the original employer violates her legal rights or the terms of her contract. The worker must return to her home country via a check-out memo, and make arrangements with a new employer-sponsor in order to reenter.

Foreign workers are also dependent on the agent to renew and update their work permits annually while in Malaysia, and in general to maintain their documented status in the country. In practical terms, it is surprisingly easy for a worker to become undocumented, and workers frequently narrated worries about this to Verité researchers. If the agent fails to renew the work permit on time, or the worker's passport is lost, the worker becomes undocumented. Many of the workers that Verité interviewed had their legal status jeopardized by actions of their employment agent, as seen with the case study of the detained Burmese workers above.

One time the agent was late to renew my work permit. I was like the illegal workers. It is very dangerous.

-Female Vietnamese worker in Johor

Here [in Malaysia] my employer is my guardian.

-Male Bangladeshi worker in Johor

My visa status is at the will of the agent, so whatever I want to do, I must discuss it with my agent first.

-Male Bangladeshi worker in Johor

I have signed the contract, all the arrangements are dependent on the agent.

-Female Vietnamese worker in Johor

Workers often reported being moved from one facility to another, with no control over the assignments; or being put on furlough in between job assignments, with no indication of how long it would last. Some workers had to borrow money from agents to get along during this period of inactivity. Sometimes job changes and furloughs were used as punishment after workers complained about their conditions. Furlough, and a transfer to a less desirable facility

or location, were sometimes used as threats by the agent against the worker (see Section 6.3.4: Indicators of Menace of Penalty).

My agent will relocate us every year to different factory, not necessarily electronics factories.

-Male Burmese worker in Seremban, Negeri Sembilan

I have been assigned to three different facilities. The first was electronics, the second was non-electronics, and the current one is electronics.

-Male Nepalese worker in Penang

I was recruited to work in an electronics company. After working for one and half years, my agent sent me to work in a plastics company then moved me to work at another electronics company. ... It has been hard for me to adjust to working at different companies. The supervisors and new places of work are not easy [to adapt to].

-Male Nepalese worker in Penang

Workers frequently reported that they were at the mercy of their broker, and had to go wherever the broker assigned them.

The agent arranges everything for us. What can we do, since our passports are with them? We just have to accept whatever the agent gives [us].

-Male Burmese worker in Klang Valley

For everything, I have to follow the instructions of the agent. I don't want to do anything that is not instructed by the agent, it will cause problems for me.

-Female Vietnamese worker in Penang

When I first came to Malaysia, I was helpless—no friends, nothing. So whatever the agent decided, I just followed.

-Male Bangladeshi worker in Klang Valley

I don't understand the policy of Malaysia on foreign workers. All agents have imposed different rules on us, though we all are working in the same company. Do you have any idea, why are we treated in such a way?

-Female Burmese worker in Klang Valley

I depend on my agent to settle my problems.

-Female Vietnamese worker in Johor

We cannot speak up for our rights because agent would not listen.

-Male Nepalese worker in Johor

Box 6.2 Case Study: Workers transferred by agent

The following account provided to a Verité researcher by three Burmese workers demonstrates the multiple dependencies to which outsourced foreign workers are subject. The three were part of a group of workers employed by a Malaysian employment agency, and had been working for the previous two years at an electronics factory in Seremban. At the time of the interview, they had just renewed their contract with their EA for another two years.

The problems started when the factory asked their broker to raise the workers' wages to meet the new legal minimum wage standard. The broker initially agreed to the wage increase, but was disingenuous with them about how many deductions would be taken from their base salary, having them sign a contract written in English and Malay, languages that none of the three understood. When the workers got their first payslips, they realized that their wages were much lower than they had agreed, and complained about it to the factory management. The factory apparently confronted their broker about the issue, because only days later, they were informed by the broker that they were being pulled from their jobs, that the factory was "throwing them away."

Days later, they were made to pack their bags and move to a new housing area in Balakong, about 50 km away from their previous residence. There the broker left them in a new living area with more workers from a different employment agency. Ten men were sharing one room, and thirty women sharing another. Now effectively furloughed, the workers waited to learn their fates, while their broker repeatedly threatened to send them home to Burma, and in fact did arrange for two particularly outspoken women to be deported by reporting that they tested positive for pregnancy, resulting in cancellation of their work permits.

After some time, the workers were informed that they must start working at a new, much less desirable factory. The workers knew this factory to have a poor reputation and objected to the new assignment, repeatedly asking the broker to return their passports to them, but the agent refused to give their passports back. At the time of the interview, the workers had not received

pay for their final two weeks of work at the original factory, nor had they been paid at all since moving to Balakong. Instead of paying them their back pay, their broker offered to loan them money to cover their living costs.

Since nothing had been resolved regarding the new factory job yet, while winding down the interview, the researcher asked them what they wanted to happen. They said that they were not asking for more than they deserved, and that they wished to remain in Malaysia to continue working since they had not been able to save money yet, due to spending their first two years in the country paying off their debts. They said that they do not want to run away because they wanted to get their passports back. They just wanted to be respected and protected by the agent, and if that was not possible, they wanted to be able to transfer to another agent.

6.2.5 Verbal Abuse

Workers interviewed by Verité frequently reported experiences of verbal abuse. Survey respondents described being shouted at or scolded by their supervisor, particularly if they had made a mistake, or if they were just learning the job, or working too slowly. In many cases, respondents noted that they did not understand the meaning of the scolding or shouting because of language difference. Workers commonly reported struggling to understand the language of their supervisors, and having supervisors become frustrated because of these communication breakdowns.

Almost everyday [verbal abuse happens], and it happens to everyone, especially Indians. We get shouted at and scolded.

-Male Indian worker in Klang Valley

At work, supervisors raise their voices and use language that we don't understand, we only feel that they are being abusive.

-Female Nepalese worker in Penang

I didn't know the process of my job. I was scolded and shouted at by my leader many times. I do my best. I didn't even know why he was angry at me because I don't know the language.

-Male Burmese worker in Klang Valley

[Verbal abuse happens] only when something goes wrong, when I make a mistake.

-Male Nepalese worker in Johor

6.3 Indicators of Forced Labor by Dimension

One of the three primary research questions for this study was to determine whether forced labor indicators exist in the production of electronic goods in Malaysia, and if yes, to identify those indicators. To answer this question, as discussed earlier in Section 5: Determining the Presence of Forced Labor: Analytical Approach, Verité researchers first identified the ILO indicators of forced labor of relevance to the Malaysian electronics industry context. For the purposes of the quantitative research, one or more survey questions were then used independently and in various combinations to establish the presence or absence of each indicator. Qualitative research was employed in order to provide further context and understanding.

Quantitative and qualitative findings are discussed below. For each indicator, the quantitative survey-based definition is presented, followed by the quantitative results for that indicator and additional qualitative findings.

Aggregate, top-level findings for each indicator of forced labor are presented first, followed by an analysis of the various components that comprised the indicator. For example, for the Freedom of Movement and Communication indicator, the incidence of the indicator itself is first presented. This is followed by quantitative and qualitative data relating discretely to issues like passport confiscation and the ability to come and go freely from housing, each of which was encompassed in the definition of the indicator.

Following the measurement of incidence for each indicator of forced labor in the study, each respondent was then analyzed for the presence or absence of specific indicator combinations that would result in a determination of forced labor. These indicators comprised the building blocks of a forced labor determination, and their incidence therefore provides insight into the key causes and risk factors for forced labor among foreign workers in the Malaysian electronics industry.

6.3.1 Unfree Recruitment: Indicators of Involuntariness

“Unfree Recruitment covers both forced and deceptive recruitment. Forced recruitment is when, during the recruitment process, constraints are applied to force workers to work for a particular employer against their will – it being understood that poverty and a family’s need for an income are not recognized as indicative of such coercion; the coercion or constraints must be applied by a third party. Deceptive recruitment is when a person is recruited using false promises about the work. This represents involuntariness insofar as, had the worker been aware of the true working or other conditions, he or she would not have accepted the job.”

–ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (International Labour Office: Geneva, 2012), p.14.

“Unfree Recruitment” Indicators of Involuntariness Examined by this Research

Strong indicators:

- Deception about the nature of the work

Medium indicators:

- Deceptive recruitment

Many of the indicators of involuntariness associated with Unfree Recruitment by the ILO (including tradition or birth/descent into “slave” or bonded status, coercive recruitment through abduction or confinement during the recruitment process, sale of the worker, and deceptive recruitment through the promise of marriage) have not been reported in conjunction with the Malaysian electronics industry. Recruitment linked to debt, deception about the nature of the work, and general deceptive recruitment have all been documented for the industry. Of these, the ILO deems recruitment linked to debt and deception about the nature of the work strong indicators of involuntariness under the Unfree Recruitment dimension of forced labor, and general deceptive recruitment, a medium indicator.

As will be discussed in more depth below, for the purposes of a forced labor determination, in the Unfree Recruitment dimension Verité operationalized the ILO’s indicators for deception about the nature of the work and deceptive recruitment. The potential for debt incurred in recruitment to bind a worker to her job was not treated under Unfree Recruitment, but rather under the Impossibility of Leaving Employer dimension, with the indicator “forced to work for indeterminate period to repay outstanding debt or wage advance”.

Verité’s findings about indicators under the Unfree Recruitment dimension are discussed below. Verité also includes here the study’s findings on levels of recruitment debt, but these findings were not applied to the forced labor determination.

6.3.1.1 Recruitment Linked to Debt

Definition

In *Hard to See, Harder to Count*, the ILO includes the indicator “recruitment linked to debt” in the Unfree Recruitment dimension of its forced labor framework.

The issue of recruitment linked to debt is complex and broader than the specific issue of debt-linked forced labor, since debt is often incurred by workers in the course of being recruited, but that debt does not always effectively bind them to their jobs in such a way as to indicate force or coercion. The time period in question also raises challenges analytically, since workers typically pay off their debt at some point during their stay in Malaysia and may not still be in a situation where debt is binding them to their jobs at the time of the research, even if they were previously indebted and their experience of past indebtedness continues to shape their vulnerability.

In the present analysis, Verité decided to define the specific issue of debt that binds a worker to her job more precisely and narrowly than recruitment linked to debt, including it as a separate indicator under the Impossibility of Leaving Employer dimension. This decision enabled Verité to ensure that the debt indicator was only applied when workers felt they could not leave their jobs because of their recruitment debt *in the current-year time period of the study*. Findings on the debt indicator are discussed below, in Section 6.3.3.

Information gathered for the study on levels of fees and debt is offered here for contextual purposes. Verité did not use the indicator for recruitment linked to debt in its formal forced labor analysis for this study.

Findings

The majority of foreign workers in the study sample paid recruitment fees in order to get their jobs and had to borrow in order to do so: 92% (n=400) of all foreign workers surveyed paid fees, and 77% (n=306) of these workers borrowed to pay the fees. This underscores the role of fee charging in creating debt: Where fees were charged, over three-fourths of job-seekers became indebted in order to pay them.

The average size of the fees paid to get a job in the Malaysian electronics industry varied according to the workers’ country of origin. Workers from India and the Philippines reported

the highest average fees in the study sample, although the numbers of interviews from these countries were small. Among the more well-represented migrant populations in the study, workers from Vietnam reported paying the highest fees on average, and those from Indonesia, the lowest.

The study did not find recruitment linked to debt among Malaysian workers: Only two of a total of 62 Malaysians surveyed reported paying any fees to get their jobs, and neither of these two workers reported borrowing in order to pay the fee.

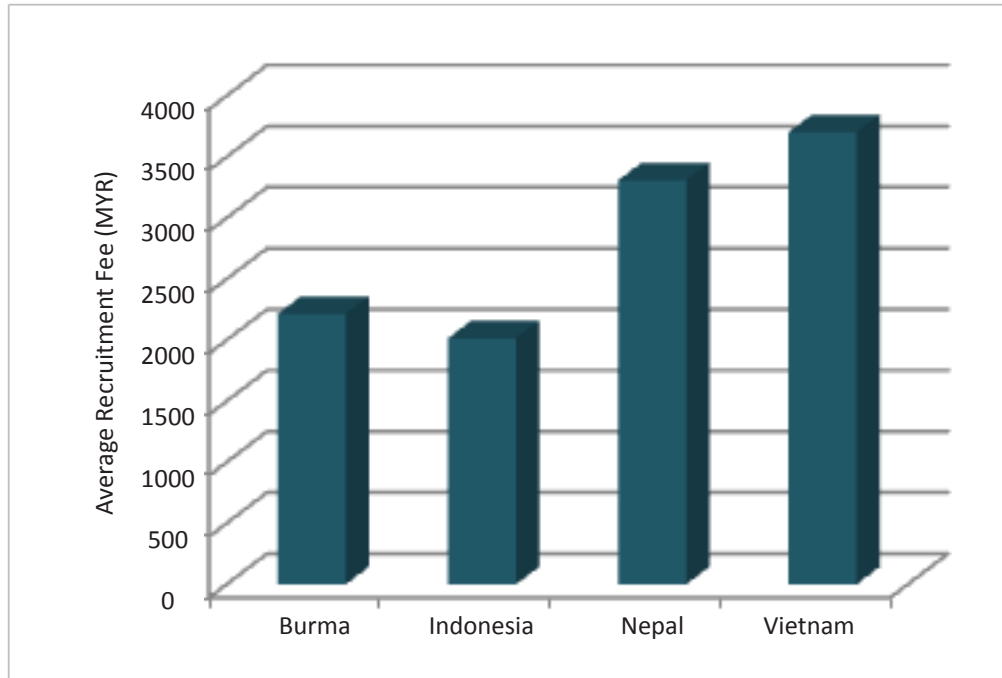
Table 6.4 Workers who paid recruitment fees, and who had to borrow to pay recruitment fees, by country of origin

Country of Origin	Workers who paid recruitment/ placement fees to get their first electronics industry job in Malaysia			Workers who borrowed money in order to pay the fees necessary to get their first electronics industry job in Malaysia		
	Percentage*	No. of Respondents	Total No. of Respondents**	Percentage*	No. of Respondents	Total No. of Respondents**
Bangladesh	56%	20	36	70%	14	20
Burma	94%	89	95	55%	48	88
India	100%	2	2	50%	1	2
Indonesia	92%	99	108	80%	78	98
Malaysia	3%	2	62	0%	0	2
Nepal	99%	97	98	98%	94	96
Philippines	100%	9	9	75%	6	8
Vietnam	94%	84	89	77%	65	84
All foreign workers	92%	400	437	77%	306	398**

*Note the percentages in this table are derived from the total number of respondents who answered the question.

**The number listed is the total number of respondents who answered the survey question. Some respondents who reported paying recruitment fees did not answer the question regarding whether they needed to borrow money in order to pay their recruitment fees

Figure 6.1 Average recruitment fees by country of origin among foreign workers who reported paying recruitment fees*



**Above chart only includes fees data for respondents from countries with 80 or more respondents. Data in this figure combines both fees paid in the sending country and those paid in Malaysia (if reported separately). Not all foreign workers interviewed reported fee data.*

Accurately capturing recruitment fee data from workers proved somewhat difficult in practice, and it is likely that the averages shown in Figure 6.1 underestimate the total fees paid by foreign workers to Malaysia. Verité inquired about fees paid as a matter of course in the study survey, but many workers had difficulty recounting the precise amount that they had needed to pay in order to get their jobs, and distinguishing fees paid to sending and receiving country agents. This was likely because fees tended to accumulate in increments over the course of the recruitment process, as workers first paid one or more sub-agents in their home country to connect them with an international recruitment agent, then paid that agent to place them in a job in Malaysia, and then paid additional fees to a Malaysian employment agent after their arrival. Fees were sometimes paid up front in a straightforward, lump amount, but were frequently paid over time to different people, often in multiple currencies, sometimes as prepayments, and sometimes as deductions taken from their monthly wages. Many workers were uncertain of the total amount they had ultimately needed to pay in order to get their jobs.

My debt in Burma is okay, because I know the balance, but here I know nothing about the charges and deductions taken.

-Male Burmese worker in Klang Valley

Uncertainty about fees was compounded by the general lack of transparency experienced by many workers about their wages and deductions, by their dependence on their employers, and by externally-imposed changes in policies affecting their hours, wages, and deductions.

When the Philippine agent quoted the placement fee of PHP 49,000 (USD 1,125), the worker was told that it was all-inclusive, including the airfare to Malaysia. When he got to the workplace, the agent told him that he needed to pay an additional MYR 380 (USD 118) for the airfare, to be deducted from his salary at MYR 100 (USD 31) per month.

-Interview by Verité researcher with male Philippine worker in Penang

Right now, he's only getting MYR 800 (USD 247) for the last 3 months (he's in Malaysia for only 6 months), including OT. He doesn't get a payslip so he doesn't know why he's only getting MYR 800 (USD 247) and not MYR 900 (USD 278), which is the basic salary. The worker also said that he and his mates called the Burma agent in Burma and the agent told them that he cannot help them regarding the pay. The agent told them to wait for one year.

-Interview by Verité researcher with male Burmese worker in Klang Valley

Box 6.3 Bishal: Difficult to pay off recruitment-related debt

Bishal (not his real name) is a Nepalese man working in Penang. Excerpts from a longer interview are included in relevant places throughout this report.

Bishal applied for a job with a major Malaysian electronics company in early 2011. He was offered a job, but only if he paid a recruitment agency NPR 130,000 (USD 1,266). Bishal had to take a loan from a creditor at an interest of 5% per month in order to come up with this amount. He leveraged his family's land in order to get the loan. Bishal says that this is a common set-up in Kathmandu: "We sign some papers before they give the money, we agree that they can take our land, our house, if we do not pay the loan."

He agreed to the terms of the loan because the recruitment agent promised him a monthly salary that, according to his calculations, would allow him to make the loan payments and still be able to send money home.

When Bishal got to Malaysia and received his first paycheck, he realized that making the monthly loan payment was not going to be as easy as he thought. Bishal only took home about MYR 750 (USD 232) per month after deductions, which is much less than he had been promised. His monthly expenses for food (MYR 250-300; USD 77-93) and phone calls home (MYR 200; USD 62) left him with less than MYR 300 (USD 93) per month. There were months when he had to make a choice between making loan payments or sending much-needed money home.

When Bishal took the job, he was confident that he could pay back his loan in a matter of months. Instead, it has taken him almost two years to pay it off.

An additional complexity is that the fee structures in the sending countries are themselves quite variable, with no standardized price established for migration to Malaysia.

Figures 6.2 and 6.3 give a sense of the range of fees reported by foreign workers in the sample. Fees from Vietnam appear to be both the highest and the most standardized. Those from Burma and Indonesia are the lowest overall, and both reflect a clear mode, with those from Nepal somewhat higher and spread over a wider range.

Figure 6.2 Range of recruitment fees paid

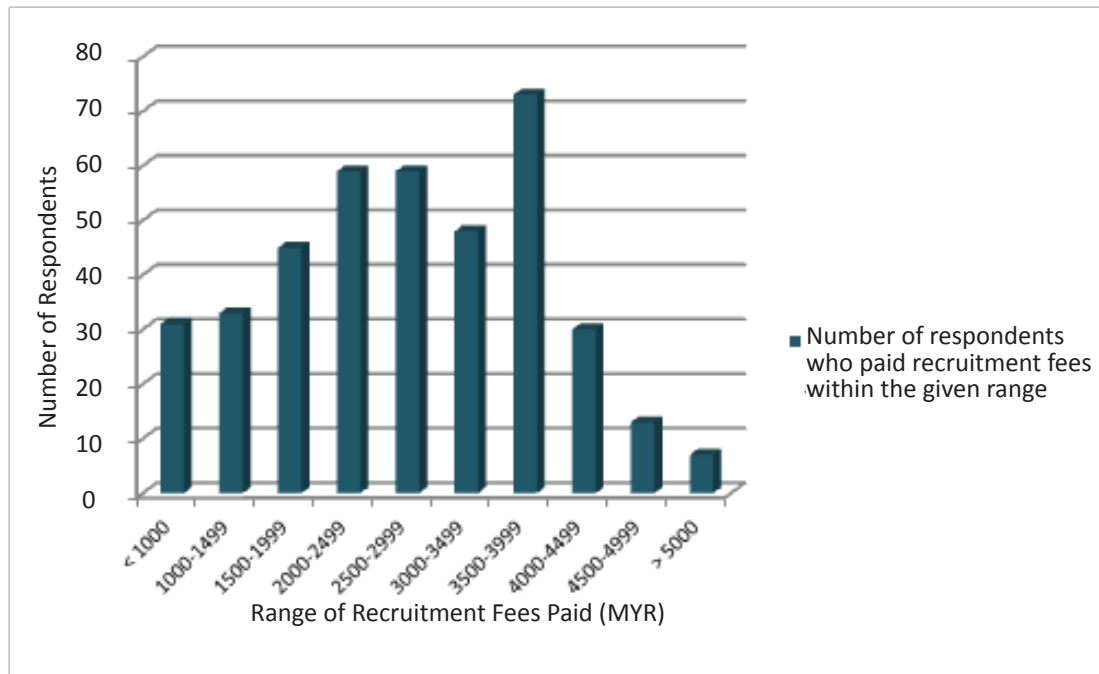
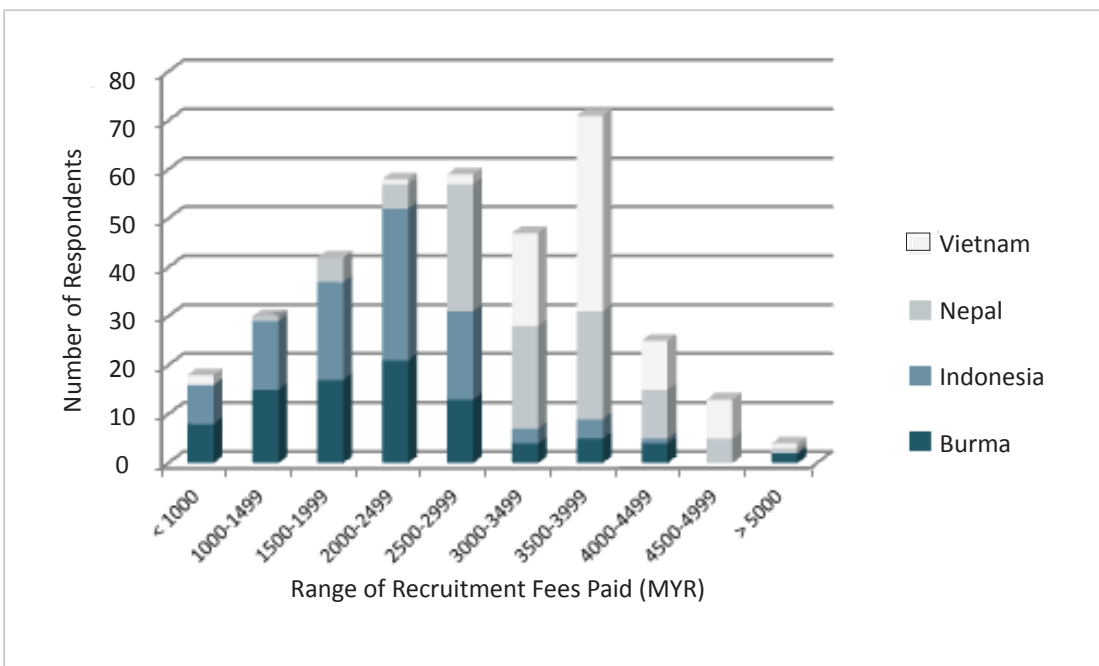


Figure 6.3 Range of recruitment fees paid by country of origin for top migrant-sending countries



6.3.1.2 Deception about the Nature of the Job, and Deceptive Recruitment

Definition

The ILO states that deceptive recruitment occurs when a person is recruited using false promises about the nature or conditions of work, and that deception may be considered a feature of involuntariness when a worker would not have accepted the job offer had s/he known what the actual job and/or associated working and living conditions would be like.¹⁷⁶ Identifying cases of such deception requires researchers to explore both the state of the worker's initial understanding of the job based on verbal or contractual promises made at the time of recruitment, and the actual working and living conditions that were encountered by the worker after arrival at the job site.

The ILO treats “deception about the nature of the work” as a strong indicator of forced labor.

The ILO treats deception about other aspects of the job (“deceptive recruitment”) as a medium indicator, and suggests that such deception could concern working conditions, content or legality of employment contract, housing and living conditions, legal documentation or acquisition of legal migrant status, job location or employer, and wages/ earnings. In operationalizing the “deceptive recruitment” indicator for the current study, Verité chose to limit the indicator to deception on wages, hours, overtime requirements and pay, and termination of employment.

Forced Labor Indicator Definition

Deception about the nature of the work

For this respondent either job duties or the degree of difficulty/danger of the work was either written in their contract, or had been agreed upon verbally. Upon arrival at the job, they found one or both of these issues to be worse than what they had been told beforehand.

Deceptive recruitment

This respondent found upon arrival at their job that at least one of the following aspects of their job was worse than what they had been led to believe beforehand based on their written contract or verbal agreement:

- wages,
- hours,
- overtime requirements and pay, and/or
- termination of employment.

To solicit data on deceptive recruitment, Verité asked survey respondents two sets of parallel questions, one about the information they had received about a variety of issues related to their job at the time of their recruitment, and another about whether those aspects of their job ultimately turned out to be worse, as promised, different but equivalent, or better than they had expected.

In practice, exploring such issues proved more difficult than had been anticipated. Because most respondents in the study sample had been in Malaysia for longer than one year, their recruitment experiences had often occurred long enough ago that workers had difficulty recalling with precision the exact state of the information provided to them about the job at the time of their recruitment. Some respondents also found it difficult to recall the details of contracts that were never written or explained to them by their recruiters in a language they could understand. Many workers reported simply not knowing what they had agreed to.

In the absence of clear memories of deception, many respondents likely under-reported their experiences of deceptive recruitment, a hypothesis borne out by the fact that Verité found rates for the deception indicators to be higher among recently-arrived workers than for those for whom memories of the recruitment process had faded with time. Therefore, the findings reported below likely underestimate the actual rates of deceptive recruitment experienced by workers in the study sample.

I cannot read or write so I trusted my sub-agent so much. The contract terms were not explained very well.

-Male Nepalese worker in Klang Valley

I don't know about the contract. I only knew that I was going to Malaysia to work and earn money.

-Female Burmese worker in Klang Valley

I have been staying and working here for 6 years. I can't remember details about the contract.

-Female Vietnamese worker in Malacca

The contract was too long and there was no time to read it. At the time, the company only asked us to sign, not to read first.

-Female Indonesian worker in Johor

We didn't know the language of the document that we signed.

-Female Indonesian worker in Seremban

Findings

The contract that we signed, it was written in English. The agent asked us to sign, and that was it. They explained it, but once I reached Malaysia, things there were totally different from the agreement.

-Male Bangladeshi worker in Klang Valley

This is a terrible life. I would have never come here if I had known that this is what I would go through. Luck has not favored me. I can't even return to my home country because I don't have my passport.

-Male Burmese worker in Klang Valley

The contract was too complicated and there was no time to read it. At that time, the company asked us just to sign it, not to read it first.

-Female Indonesian worker in Johor

To frame an understanding of how deceptive recruitment can force a worker into a particular job arrangement, the survey included two questions exploring whether workers had the option of refusing the job, or insisting on a different job or employment arrangement upon their arrival. Nearly all foreign workers asked responded “no” to both questions. These questions serve to establish that for most workers, if the job is not as promised, there is no turning back – asking for a different job, or refusing the job and being able to get your recruitment fee back, is simply not an option.

Table 6.5 Ability to change or refuse employment arrangement upon arrival in Malaysia among foreign workers

All foreign workers	Once you arrived at the job, did you have the option of insisting on a different job/employment arrangement?			Once you arrived at the job, did you have the option of refusing your job/employment arrangement and returning to your home country with your job procurement costs refunded?		
	Percentage	No. of Respondents	Total No. of Respondents	Percentage	No. of Respondents	Total No. of Respondents
No	88%	371	421	92%	344	372
Yes	12%	50	421	8%	28	372

**Note the percentages in this table are derived from the total number of respondents who answered the question.*

No Malaysian respondent reported deceptive recruitment, reflecting the much greater role that recruitment plays in the experience of migrant electronics workers, and also likely the greater degree of information available to Malaysian-national electronics workers about the jobs in question. Twenty-one percent (n=91) of foreign workers (and 18% of all workers) reported being deceived about their wages, hours, overtime requirements or pay, and/or provisions regarding termination of employment (Deceptive Recruitment), and 5% (n=20) of foreign workers (4% of all workers) reported being deceived about the nature, degree of difficulty, or danger of their jobs.

Table 6.6 shows that reported rates of deception were higher for foreign worker respondents who were closer in time to their experience of recruitment.

Table 6.7 details the rate of deception on a number of points. Deception about overtime had the highest rate of occurrence, at 13%, followed by quality of housing and food, wages, hours, who provides the housing and food, and transportation.

The wage and the working hours are different from the information I received before I came. In the contract, it states that we will be working four days on and two days off, but in reality we are working for six days at a time. This means we only have one day off per week.

-Female Indonesian worker in Klang Valley

When I was recruited, the agent promised my salary would be MYR 1,364-1,515 (USD 422-468), but in fact it is MYR 1,100 (USD 340).

-Female Vietnamese worker in Penang

Back in Nepal, the agent promised us regular OT, but here OT is uncertain.

-Male Nepalese worker in Johor

When we were still in Indonesia, the agent said that we would work under the company. But in reality, we are outsourced.

-Female Indonesian worker in Klang Valley

In the contract, transportation is written as free, but now I am being deducted MYR 40 (USD 12) per month for the shuttle.

-Female Burmese worker in Klang Valley

Reported rates of deception about the employer, name of company, location of facility, job duties, difficulty/danger of the work, and termination policies ranged from 2-4%. Some who experienced this type of deception spoke about it in vivid terms. The case studies of Win and Jan provide some examples. Deception about termination tended to focus around unanticipated barriers to termination such as fines, or the expectation of the broker of a longer term of service.

Box 6.4 Win: Deceived by recruiters, unable to save money to send home

Win is an Indonesian woman working in the Klang Valley. She is 22 years old, and comes from West Java. She has been in Malaysia for four years.

Win was barely out of vocational high school when she decided to take the job offer by a Malaysian electronics company. Her school had ties with the electronics company. Students were promised employment in this company or in another electronics facility in Malaysia when they enrolled in the school. Her school facilitated the recruitment of female students to become workers in Malaysia. Win said this is a common arrangement among vocational high schools in Java, and many girls from Java end up working in Malaysia after graduating.

Win remembered that someone from the HR Department of the electronics company came to her school to screen and select applicants for operator positions. This person described the work that the people did inside the factory, and offered what seemed to her a good salary – basic salary of MYR 550 (USD 170), plus the opportunity to do overtime work and get an OT premium, and good living conditions. The students were shown a video presentation of the factory and of the workers' living quarters. Win said that the factory in the video looked very new and clean, and so did the dormitory. All of them in that assembly wanted to be selected for the job.

The HR representative herself conducted the interviews and informed the selected candidates of the job offer. Win said that she was lucky to have been selected. A recruitment agent from a local employment agency was also present to facilitate recruitment activities, and received the applicants' documents and records from the school. Applicants were told that they just needed to pay for a medical checkup and secure their own passports, and then everything else would be taken care of by the company. The agent also told them that the company had advanced the money needed to cover their travel expenses, and that deductions for these costs would be made from their salaries once they were in Malaysia.

Upon arrival in Malaysia, Win learned that the deductions against her salary would be taken for a period of two years. The deduction amounted to MYR 82 (USD 25) per month, which was a significant portion of her earnings and prevented her from saving money to send home. The dormitory where Win was brought to also did not look like the one she saw in the video presentation. The building was older, and the two-to-three-bedroom hostel units were overcrowded, with eight to ten women in each room.

Win has not been home since she left four years ago and said that she missed her family every

day. She said that she could have gone home to visit when her first contract ended in 2012, since she would have been allowed to take her passport and was entitled to a one-way airfare upon contract completion. She decided to renew her contract immediately instead. She had not saved enough money to afford a return airfare to Malaysia and needed to return to continue working, since she had not yet saved any money to give her family. She said that her second contract ends soon and even though she has very little in savings, she plans on returning home for good this time. Win would not recommend taking a job in Malaysia to her friends or relatives back home. The work is difficult and exhausting. Workers only sleep 5 hours or less per night, and the pay was not as high as people think it is. She also said that it has been very hard to be away from home, especially when you get sick and there's no one to care for and comfort you.

Box 6.5 Jan: Deceived during the recruitment process, fired and deported due to fainting spell

Jan is a Nepalese man working in Penang. Jan was working as a construction worker in Kathmandu when he learned of job opportunities in Malaysia. He says that his work as a construction worker paid well enough but did not offer job security. There was no guarantee that he would have a job from one project to another.

Jan went to a recruitment agency in Kathmandu that was advertising job vacancies for an electronics company in Johor, Malaysia. Jan applied for this job, and was interviewed by someone claiming to be a company representative. This person informed Jan and some 50 other successful applicants about the job (packaging section), the pay (basic pay of MYR 900 (USD 278), potential total income of MYR 1,300 (USD 402) with OT pay), the lodging arrangements (their own house provided by the company, complete with kitchen and beds). They were told that they would be working 26 days per month, twelve hours per day, and that the first eight hours would be considered regular work paid at regular rate, and the four extra hours, overtime work to be paid at the overtime rate.

After the orientation, the Kathmandu-based agent informed Jan that he had to pay NPR 150,000 (USD 1,563) for processing his travel and work documents. Jan says that he was very surprised to hear this. He knew that there was money involved in applying for work abroad, but he didn't expect to be charged this much. Apart from the NPR 150,000 (USD 1,563) fee, Jan also had to pay the agency NPR 15,000 (USD 156) for a medical check-up and passport processing. The agent told Jan to return to the agency when he had the money, so that his papers would be processed.

Jan was able to borrow NPR 100,000 (USD 1,042) at an interest rate of 5% per month from a creditor, and another NPR 45,000 (USD 469) at no interest from an aunt. With this amount, Jan went back to the agency and told the agent that NPR 145,000 (USD 1,511) was all he could come up with. The agent accepted the amount and told Jan that he would be able to leave for Malaysia soon. However, it was almost two months before he was deployed.

When Jan arrived in KL, he and 73 others bound also for the same factory were met by the same person who interviewed them in Nepal. They were also introduced to the "boss of the factory"

who took their passports and accompanied them to where the factory was located.

Jan was surprised to learn that they were bound for Penang, and not Johor, as he had been told. No explanation was given to them for this change in job location. They were then brought by a Malaysia-based employment agent to their hostel. The hostel was located in a tall residential building in a remote area. Jan says that the apartment unit that he and ten others were brought to was almost totally barren. There were no beds or closets, no furniture or kitchen utensils. The workers were given MYR 80 (USD 25) each to provide for their own cooking and eating utensils. They were not provided mattresses or bedding and had to sleep on the floor. They also had to keep their personal effects inside their luggage, since there were no lockers provided. Jan says that this was not at all what he had imagined when they were being oriented on their accommodations.

A day after arriving in Penang, Jan and his fellow workers were brought to the factory. They went through two days of training and orientation. After that, they were brought to their work stations. Jan says he was surprised to learn that he was not going to be in the packaging section at all; rather he was assigned to the assembly line, where he had to handle chemicals. He says that there was no formal training on chemical handling and safety, but the work seemed simple enough.

On the second week of work in the factory, Jan passed out while he was at his work station. Jan says that he only remembered feeling dizzy, and then when he woke up he was already in a hospital. A series of tests were performed, and he was told by the doctor that it was a “gastric problem, caused by inhalation of chemical fumes.” He was cleared by the doctor, and allowed to check out of the hospital and return to work.

Jan reported for work the next day. At the end of the workday, the company HR called Jan to the office and told him not to report for work anymore. Jan was told that he would be sent back to Nepal within the week, and that his passport would be turned over to his agent. Jan says that no other explanation was given to him, that he was just told that he had to go and that he should wait in his hostel unit for the agent to get him. Jan asked the HR if it was because of his health, but the HR representative said that the employment agent would talk to him about his situation. Jan says that he knew he was fit to work and was declared so in Kathmandu, during his medical check-up, before he came to Malaysia. He said that, as a construction worker, he was definitely capable of manual labor and had never experienced fainting before.

Four days after he passed out on the factory floor, the same thing also happened to another worker in his department.

At the time of the interview, it had been more than a week since Jan had been furloughed, and he had been keeping to himself inside his hostel. An uncle who was employed in a restaurant in Johor came to visit him and was trying to find ways for Jan to get any kind of job. Jan said that he had “no money, no idea what will happen.” He said that the agent had only been to see him once, a week earlier, and had told Jan that he had two options, to go home or to work in another factory. Jan said that he could not possibly go back to Nepal with no money, with such big loans waiting to be settled. Jan said that he begged the agent to find him work, but he had not heard from the agent since, and had no idea if the agent was trying to find work for him.

Jan said that there was an office in the hostel building where he saw the agent once, but when he checked, it was empty. In the meantime, he reported that he could not even go beyond the hostel premises because he did not know who had custody of his passport. Jan said that he was not familiar with the place yet, and did not feel safe going out. He was also told by the other Nepalis that there were ongoing raids by the police, and that he should avoid being seen by the police since he had no employer or passport.

Jan said that he had not informed his family in Nepal yet about his situation. He said that he was getting desperate, he had not been sleeping well for many nights and had lost a lot of weight since he arrived in Malaysia.

Interviewer's Note: Jan appeared visibly distraught at the time of the interview. A Nepali pastor who lives in the next building had been counselling Jan, and observed that Jan had been growing more anxious and desperate. The pastor expressed worry that Jan could be suicidal. The researcher followed up with the pastor weeks later and learned that Jan had been deported. The pastor was unable to contact him in Nepal.

Deception about the employer typically centered around whether the worker would be employed directly by the factory, or via a third-party employment agent. Many workers mentioned that they had believed they would be directly employed by the electronics facility when they were recruited, only to discover that they were actually employed by a third-party employment agent once they reached Malaysia. In some cases, workers reported that this confusion persisted for them or their coworkers well into the term of employment. Workers wear company uniforms and carry company IDs. They carry out their work on company grounds, in many cases under the direct supervision of company line leaders and are expected to take orders from factory line managers, as well as from their employment agent. Therefore a worker told during recruitment that he would be employed by the factory might not have occasion to realize that he is actually employed by an agent until several months into his tenure in Malaysia. Bishal's story provides one example.

Box 6.6 Bishal: Deceived about his employer

It was when Bishal, a Nepalese man working in Penang, was in Malaysia, already working at Company F, when he realized he is not employed directly by the company, but rather by an employment agent.

Bishal says that it was when he had to go to a hospital to seek treatment when he found out that he did not have the health insurance that he had understood himself to be entitled to as an employee of Company F. Although he wore the company logo on his uniform and was issued a company ID, he was informed that he was employed by an agent. This ran counter to what he had been told during the recruitment process. "In Nepal, during the interview, there was no question

that I would be employed by the company.” Bishal had to pay for the hospital bill himself and got only a partial reimbursement from the agent who was, in fact, his real employer.

Bishal says that many Nepali workers are confused about who their employer is, and that they all think they are direct employees of Company F. All of them have to follow Company F’s rules.

Bishal notes that workers who are directly employed by the company have additional benefits that “agency workers” do not have. When it comes to passport-retrieval, for instance, “direct workers” only have to pay the remainder of their levy fee if they want to borrow their passport, while “agency workers” have to pay a deposit of MYR 3,500 (USD 1,082).

Unforeseen deductions from the paycheck formed another primary concern for workers. Many recounted having been deceived about who would bear the cost of housing, food, and transportation, as well as the cost of the levy (discussed below, in Section 6.3.3: Impossibility of Leaving the Employer) and loan payments (discussed above, in Recruitment Linked to Debt).

The practice of passport retention was also cited by workers in qualitative interviews as an unanticipated practice. As discussed in multiple places in this report, passports are typically taken from workers at the airport upon their arrival in Malaysia and never returned. Workers may request temporary access, but in some cases must put down a deposit or provide other collateral in order to do so. For many workers, these procedures were not included in pre-departure orientations, nor written in employment contracts.¹⁷⁷

Table 6.6 Incidence of “deception about the nature of the work” and “deceptive recruitment” indicator among all workers and foreign workers according to length of time in Malaysia

Indicators of Involuntariness among all workers and foreign workers according to length of time in Malaysia	Both “deception about the nature of the work” and “deceptive recruitment”		
	<i>Incidence of Indicator (%)</i>	<i>Incidence of Indicator (No.)</i>	<i>Total No. of Respondents</i>
All workers	20%	98	501
Foreign workers	22%	98	438
Workers in Malaysia for less than 1 year	32%	15	47
Workers in Malaysia for less than 2 years	29%	35	121
Workers in Malaysia for 2 years or more	20%	63	315

Table 6.7 Aspects of the job about which workers were deceived

Aspects of the job that workers were informed of, either verbally or in a written contract, that they found to be worse upon their arrival in Malaysia among foreign workers	Incidence among foreign workers (%)	Incidence among foreign workers (No.)
Job duties	3%	14
Difficulty/danger of the work	2%	7
Wages	10%	44
Hours	9%	40
Overtime	13%	59
Location of factory	2%	10
Quality of the housing/food	12%	51
Who provides housing/food	8%	33
Transportation	6%	25
Termination of employment	3%	15
Employer (agent or facility)	4%	16
Name of company	2%	8

**The sum of the aspects of the jobs shown here are greater than the total number of survey respondents because respondents reported on all aspects of the job and were able to report deception about more than one.*

***Note that housing, food, transportation, location of the factory, employer, and name of company were not taken into account in the forced labor determination.*

6.3.2 Work and Life under Duress: Indicators of Involuntariness

Work and life under duress covers adverse working or living situations imposed on a person by the use of force, penalty or menace of penalty. ‘Work under duress’ may entail an excessive volume of work or tasks that are beyond what can reasonably be expected within the framework of national labour law. ‘Life under duress’ refers to situations where degrading living conditions, limitations on freedom or excessive dependency are imposed on a worker by the employer.

–ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (International Labour Office: Geneva, 2012), p.14.

“Work and Life Under Duress” Indicators of Involuntariness Examined by this Research

Strong indicators:

- Limited Freedom of Movement and Communication
- Forced Overtime
- Degrading Living Conditions

6.3.2.1 Limited Freedom of Movement and Communication

Definition

“Limited Freedom of Movement and Communication” is an indicator of forced labor under the ILO’s Work and Life under Duress dimension. The ILO discusses this indicator both with respect to the concept of “involuntariness” and “menace of penalty,” though it is listed for analytical purposes in the involuntariness category.¹⁷⁸ The ILO notes “Workers should not be confined, imprisoned or in any way detained in the workplace or employer-operated residences, either during or outside working hours,”¹⁷⁹ and notes that freedom to leave the premises, contact family, and talk with people outside the quarters should be considered in forced labor research.¹⁸⁰

The ILO provides several examples of restriction, including being locked in the workplace or living quarters, inappropriate use of security personnel, or having movement restricted or constantly surveilled outside, and notes “All means used by an employer to make it dangerous

or very difficult for a worker to leave the workplace fall under this category.”¹⁸¹ As to the issue of reasonable limits, the ILO has observed that “reasonable limitations to movement within the workplace during work hours are permitted under conditions related to workplace discipline.”¹⁸²

Forced Labor Indicator Definition

Limited Freedom of Movement and Communication

This respondent either:

- has their passport held by the facility or broker/agent, it is difficult or impossible to get the passport back when they need it, and either they are unable to move around freely and safely without their passport or travel documents on them or they feel they cannot move around freely due to their fear of immigration authorities, police, or RELA; OR
- is not allowed to come and go freely from their employer- or broker-provided housing, and they need a pass or permit to go beyond a certain distance from their housing.

Verité’s operational definition of this indicator was designed to capture two different scenarios of particular relevance to the Malaysian electronics industry context: constraint linked to housing, and to lack of proper personal identification. In both cases, a composite definition – combining answers to several survey questions – was used.

Regarding personal identity documents, Verité’s definition was designed to capture the concept that a worker’s passport is being retained in such a manner that they feel they will not be able to get it back if needed, and that they feel unsafe moving around in Malaysian society without it.¹⁸³

In the case of housing, Verité not only asked a question about the ability to come and go freely from housing, but also required that a respondent’s freedom of movement be limited by the requirement to have a pass or permit to go beyond a certain distance from the housing.

Other restrictions on freedom of movement –such as constant surveillance, isolation, or being locked in working or living quarters – are additionally defined by the ILO as stand-alone indicators of Menace of Penalty and were therefore employed by Verité as such. Verité did not include these elements in the Involuntariness category to avoid the possible overemphasis of the indicator (i.e., having it appear on both sides of the formula).

Findings

The indicator for Limited Freedom of Movement and Communication was found to be present for fully 41% (n=206) of all survey respondents; and 47% (n=206), for foreign workers. Thus nearly half of foreign workers in the study were subject to constraints on their freedom of movement and communication that rendered them potential victims of forced labor.

This indicator had the second highest incidence of all forced labor indicators in Verité’s study, reflecting both the widespread surveillance and constraints to which electronics workers are subject in their lives outside the factories in Malaysia, and the frequent practice of passport retention by employers in the electronics sector. This indicator is an important contributor to the pervasiveness of forced labor in the Malaysian electronics industry.

The indicator affected foreign workers of all nationalities, although foreign workers from Vietnam appear to have experienced somewhat less restriction on their movement than those from other countries in the sample. No Malaysian electronics workers in the sample were affected by this indicator. Limited Freedom of Movement and Communication was present at high levels for workers in the making of all kinds of electronics products.

Limited freedom of movement and communication was also found to be pervasive across all regions of the country with the exception of Seremban/Negeri Sembilan. It is possible that workers have more freedom of movement in the Seremban/Negeri Sembilan area, as suggested by the much lower rate of 13% found among the 40 workers interviewed there. However, given the relatively small sample size for the region, further research would be necessary to determine the validity and causes of this effect with certainty.

Table 6.8 Incidence of “limited freedom of movement” indicator across major demographic variables

Limited Freedom of Movement and Communication Indicator	Incidence of Indicator (%)	Incidence of Indicator (No.)	Total No. of Respondents
All workers	41%	206	501
Foreign workers	47%	206	438
Country of Origin			
Bangladesh	50%	18	36
Burma	36%	34	95
India	100%	2	2
Indonesia	48%	52	108
Malaysia	0%	0	63

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Nepal	74%	73	99
Philippines	56%	5	9
Vietnam	25%	22	89
Region in Malaysia			
Johor	49%	67	136
Klang Valley	40%	64	159
Penang	41%	58	140
Seremban, Negeri Sembilan	13%	5	40
Other (Ipoh, Perak; Kedah; Malacca)	46%	12	26
Top Products Groups*			
Electronic components and boards (includes semiconductors and cables)	36%	77	213
Computers and computer peripherals like monitors, printers, keyboards, scanners	48%	48	99
Telephones, modems, routers, or other communications equipment	54%	37	68
Consumer electronics like TVs, DVD players, stereos, game controllers	46%	45	97
Other products	38%	44	116

*The sum of the products reported here is greater than the total number of survey respondents because respondents were able to choose more than one product in the survey.

Limited Freedom of Movement Due to Passport Retention. Inability to hold one’s passport and to move around freely in society without it was the strongest contributor to the Limited Freedom of Movement and Communication indicator. Verité’s research suggests that passport retention by employers is nearly ubiquitous for foreign workers in the Malaysian electronics industry: 94% (n=405) of foreign workers in the sample reported that their passports were held by the facility or their broker/agent, in response to the survey question “Who has your passport right now?” Workers very often have little or no ability to get their passports back when they want or need them, with 71% (n=288) of foreign workers answering either “No” or “Yes, but difficult” to the question “Can you get your passport back when you need it?” Finally, 62% (n=259), or nearly two thirds of all foreign workers interviewed reported that they are unable to move around freely and safely without their passports or other travel documents.

Respondents frequently mentioned their lack of access to their passports as a primary concern. They often emphasized that they could not get them back, and expressed distress and/or anger

at this state of affairs. A few examples of the more than 115 comments made to this effect are included in this section.

They never give passport back to workers. I feel very angry because they won't let me have my passport.

-Male Nepalese worker in Klang Valley

Passport will only be given in the case of a life/death situation.

-Male Burmese worker in Klang Valley

I don't expect to get it back while working in Malaysia.

-Female Vietnamese worker in Penang

It is very hard to take back my passport, even when I request it. The agent gave many reasons to delay giving it to me.

-Female Vietnamese worker in Penang

Keeping our passports shows nothing more or less than modern slavery.

-Male Burmese worker in Klang Valley

Box 6.7 Win: Passport retention and limited freedom of movement

Win was an Indonesian woman working in the Klang Valley. Upon arrival in Malaysia, Win's passport was taken from her by the company representative who met her at the airport. She had never seen or held her passport since. She was instead given a photocopy of her passport and work permit with a stamp including the company's name, address and phone numbers. She said that, even with this photocopy, she does not feel comfortable going around town and that she is wary of the police.

Win and her fellow workers from Indonesia were also told by HR that they should not stray far from the area, and should avoid being questioned by the police and immigration officials. She said that the only time she ever left Klang Valley was on company-sponsored trips to other parts of Malaysia. As far as she knows, workers are not allowed to retrieve their passports from the company, and she said that her passport is probably safer with the company anyway, since she does not have a secure locker in the hostel.

Passports are typically taken from workers immediately upon their arrival in Malaysia, often while they are still at the airport, and are generally not returned permanently until the workers depart the country again. Many respondents described having to pay a deposit or “guarantee” in order to “borrow” their passports from their employers while in Malaysia. Deposit amounts reported in Verité qualitative research ranged between MYR 500 (USD 155) and MYR 3,500 (USD 1,082), with most in the MYR 1,200 (USD 371) range. These fees typically accounted for more than a month’s wages, and sometimes several months’ wages.

I really want to have my passport with me but HR does not release it. I need to give a MYR 500-1,000 (USD 155-309) deposit if I want to borrow it. I would be freer to move around if I had my passport with me.

-Male Nepalese worker in Penang

I need to deposit MYR 2,500 (USD 773) to get back my passport. It has been very difficult to travel without a passport in Malaysia.

-Male Nepalese worker in Penang

HR or someone from management would have to “accompany” (guarantee). Only then will the worker be allowed to borrow their passport.

-Male Nepalese worker in Johor

Some workers reported that the scale of the deposit required to access their passport changed depending on how long they had been in the country and whether they wished to travel outside of Malaysia, demonstrating clearly the link between the retention of passports by employers and the goal of binding workers to the workplace. One Philippine man reported, for example, that in his facility workers must pay MYR 3,500 (USD 1082) if they wish take vacation outside of Malaysia and have been employed less than a year, MYR 1,500 (USD 464) to take vacation outside Malaysia if employed more than a year, and MYR 500 (USD 155) to borrow their passport to travel within Malaysia, with the money to be refunded when the passport is returned to HR. In other cases, workers reported being denied access to their passports altogether.

Employers often provide workers with what is called a “Jalan card” – a laminated copy of their work permit – or a photocopy of their passports, for use in identifying themselves when out in Malaysian society. Many survey respondents, however, emphasized that these alternative documents are inadequate substitutes for actual passports, particularly in the context of recent

government efforts to identify and deport illegal foreign workers. Indeed, limited freedom of movement due to fear of being detained by RELA, the police, or other authorities was directly related to workers' lack of access to their actual passports.

Police arrest people (foreign workers) even if they have a passport. What more will they do when we can only show a copy of it? I will never take the risk of going out in this country during my stay.

-Female Burmese worker in Klang Valley

I can't go anywhere without a passport. The police are always around us.

-Male Burmese worker in Klang Valley

I would like to have my passport with me but I do not trust the facility. Immigration authorities and the police will detain me without my passport.

-Male Nepalese worker in Penang

My agent has kept the passport. I must have a document or passport copy. It is better to have my passport with me. If I go out or travel in Malaysia I need to have my passport. I heard from some friends that even if I have my passport, still police will question and intimidate me, so I have fear of the authorities.

-Female Nepalese worker in Penang

We are the same in Malaysia, legal or illegal foreign workers. We can't go anywhere freely and also we have never seen our passports since we came, we are just like those who are here with no documents.

-Male Burmese worker in Klang Valley

My passport is held by the outsourcing company. I hold a photocopy only, so it's scary to walk around.

-Male Bangladeshi worker in Klang Valley

Box 6.8 Bishal: Passport retention

Bishal is a Nepalese man working in Penang. Bishal says that all foreign workers, whether or not directly employed by the company, to his knowledge, did not keep their own passports. His was taken from him the moment he arrived in Kuala Lumpur and he has never held it since. He was given a photocopy of his passport and work permit, with a company stamp and the HR director's signature on it. He says that he has been fortunate that he has not had any difficult encounters with the police or RELA yet, as he does not feel confident going around town without his passport on him. He has heard many stories from fellow workers about being harassed or detained for not having their passports on them. He has been asked to show his original passport a few times, but has always managed to explain that the company was holding it, and that the police/RELA could call the company to confirm. He tried asking for his passport from the company, informing HR representatives of his encounters with the police, but was told that only photocopies could be issued to the workers, as per company rules. He says that he was not informed about this policy in Nepal when he applied for the job. He also says that workers were never consulted or oriented on this policy when they arrived at the factory, and that passports were taken from them at the airport and none of them knew that they would not be able to take their passport back.

Box 6.9 Ravin: Difficulty in retrieving passports

Ravin, a Nepalese male working in Penang, has been in Malaysia for seven years in total and has not been home once. He had planned on going home to Nepal for a short visit after he completed his contract last year; however, the agency would not grant him leave or provide him with airfare to travel home, contrary to what he was told when he took the job. He says that either the employment agency or the company has custody of his passport, and if he insists on leaving, he would have to pay his agency MYR 3,500 (USD 1,082) in order to get his passport back, and would then have to purchase his own ticket.

Ravin has not held his passport ever since it was taken from him seven years ago, at the airport, when he first arrived in Malaysia. He says that when his passport was taken from him, he had no idea that he would never be able to get it back. In place of the passport, he was given a photocopy with the company's stamp on it, and was told by the company that if he was ever stopped by the authorities, or if anyone gave him any problems regarding the photocopy of his passport, Ravin just needed to call the office.

Recently (exactly a week before this interview was conducted), Ravin requested his passport from HR, as he needed to apply for a new passport at the Nepal embassy in Kuala Lumpur. HR did not release Ravin's passport and assured him that he did not need to surrender his old passport in order to request a new one. He was given instead a "permit to travel" signed by HR. Ravin says that he is very worried about going to KL, so far away from Penang, without his passport, because of the ongoing crackdown on undocumented foreign workers, and he has heard about so many Nepalese workers rounded up and brought to detention in KL and Klang Valley. Ravin has only been to KL three times in the seven years he has been in Malaysia because he has never felt safe traveling outside of Penang without his passport.

Limited Freedom of Movement to and from Housing. Many workers reported that their movements to and from their housing were restricted by their employers. Notably, while 35% (n=174) replied “Yes” to the survey question “Do you need a pass or permit to go beyond a certain distance from your housing?,” only 6% (n=29) replied “No” to a direct survey question asking “Are you allowed to come and go freely from your housing?” This suggests that, for many workers, the notion that their movements are surveilled has become normalized, and they do not see the requirement to obtain permission to leave their dorms as a restriction on their personal freedom. This further suggests that the true level of constraint on foreign workers’ freedom of movement to and from their housing is likely underreported in this study, and merits further focused investigation.

The qualitative data provides context on how such restrictions are imposed, and gave a sense of the range of experiences associated with this form of restriction on worker freedom. The most extreme experience of this indicator was reported by a female Vietnamese worker in Penang, who described being effectively held prisoner in her hostel by her employer:

After work, the employer locks us in the hostel. Every week he just chooses a few of us to go out to the market for a few hours, then back to the hostel. The guard supervises us closely. We can’t go out, if we don’t listen to him, he will beat us.

The researcher elaborated:

This individual called me for help. Her employer keeps her passport, and he does not allow her to return to Vietnam even though her employment contract has expired. She and other workers are locked in the hostel frequently after work hours. There is no freedom of movement.

More commonly, workers reported that they were required to be in their hostels by a certain time of day, and had to follow certain procedures to obtain permission to go out on their own.

Information must be given first before being allowed to go out.

-Female Nepalese worker in Johor

The company does not allow us to come and go freely. They allow us to go outside but for a limited time.

-Female Indonesian worker in Klang Valley

If I need to travel to KL or outside Alor Star, I need to tell the agent.

-Female Burmese worker in Klang Valley

We need to inform them if we are going to town or to another state.
The factory will provide a letter for us.

-Male Burmese worker in Penang

6.3.2.2 Forced Overtime

Definition

The ILO's guidance on surveying to estimate forced labor lists "Forced Overtime (Beyond Legal Limits)" as an indicator of involuntariness,¹⁸⁴ and notes that this indicator is present when a worker is being forced to work overtime beyond the limits of the law,¹⁸⁵ but not where a worker is required to work overtime within legal limits.¹⁹⁶ ILO jurisprudence further observes that the threat of dismissal, or the need to work overtime because of payment of wages below the minimum (where a system of pay per productivity is in place), can drive a worker to work above legal limits; and that their vulnerability in such situations may result in a situation, in practice, where the worker has no choice but to work the required overtime. In such situations, the ILO's Committee of Experts regards this as compulsory overtime.¹⁸⁷

In the case of the Malaysian electronics industry, rapid appraisal interviews with foreign workers early in the project – as well as accumulated expertise in the sector– indicated that the presence of job-related debt, and the need to pay it off, can act to compel a worker to work overtime hours that exceed legal limits. Verité interprets the ILO's finding above – that job-imposed financial vulnerability can lead to situations of compulsory overtime – to apply also in the case of job-related debt that compels workers to work hours beyond legal limits.

Verité's consideration of this indicator was very conservatively bounded by the upper limit on overtime imposed by Malaysian law: Any respondent for whom the forced overtime indicator is present reported normally working more than 72 hours per week as a precondition. In addition, the respondent reports either that s/he is still in job-related debt and feels compelled to work overtime to pay it off, or that overtime is not always voluntary.¹⁸⁸

Forced Labor Indicator Definition

Forced Overtime:

This respondent works more than 72 hours a week AND either

- has not yet paid off their debt and feels that in order to pay for their job-related debt and living expenses they must work overtime OR
- has stated that overtime is not always voluntary.

Malaysian law sets a higher limit on overtime hours than most industry codes, including that of the Electronics Industry Citizenship Coalition (EICC), which defines excessive work hours as anything over 60 hours a week. The 72 hour limit was used for the final forced labor determination; but the incidence of the forced overtime indicator is reported using both limits, for comparative purposes.

Findings

The incidence of the forced overtime indicator in the study population was quite low, at 3% (n=16). Verité believes the low incidence of this indicator is in part a reflection of Malaysia's high limit on overtime, as well as the fact that only 15% (n=73) of the study population was still in job-related debt. Significantly, **37% (n=181) of respondents reported that overtime is not always voluntary**, but many of these respondents did not qualify for the forced labor indicator because they were not working in excess of the legal limit on overtime. When the industry standard limit of 60 hours of overtime per month is applied, the incidence of the forced overtime indicator rises to 19%, or almost one in five. Even more significantly, **of respondents that have not paid off their debt, 92% (n=65) felt compelled to work overtime hours in order to pay it off**. This supports the hypothesis that debt-induced compulsion to work excessive overtime is a significant risk in the industry.

Table 6.9 Incidence of “forced overtime” indicator using both the legal and industry-standard limits on hours per week

Forced Overtime Indicator	Incidence of Indicator (%)	Incidence of Indicator (No.)	Total No. of Respondents
Forced overtime among all workers, with legal limit of 72 hours per week	3%	16	501
Forced overtime among all workers, with industry standard of 60 hours per week	19%	95	501

I must do OT because I need more money to pay off my debt in Nepal.

-Male Nepalese worker in Penang

Without OT, my basic salary is not enough to pay back my loan.

-Male Nepalese worker in Penang

It is very difficult to pay off debt if there is no regular overtime.

-Male Nepalese working in Johor

There’s a huge difference when you get to take home all the (money) you earn. In the past, I had to work OT all the time in order to earn enough for loan payments and basic amenities.

-Male Philippine worker in Penang

While the purpose of Verité’s study was not to gather information on overall amounts of overtime being worked in the sector, it is worth noting some of the information offered by respondents during the course of interviews.

The majority of respondents reported working 12 hours a day and 6 days a week, on average (65% (n=322) and 55% (n=269), respectively); which is within legal limits. But 5% (n=27) reported that they typically work seven days a week; and many respondents shared experiences of feeling the need to work overtime to pay off debt or send money home, working so many hours that they are frequently exhausted to the point that their productivity is affected, and that they have no choice but to work these long hours. Some workers reported experiences of being threatened physically, or with the loss of future overtime, to make them work the extra hours.

My company forces us to work on Sunday. My friend refused to work on Sunday, they fined him. We are very angry with those wrongful deductions.

-Male Vietnamese worker in Penang

Our employer forces us to work seven days a week. I am exhausted. I stand for 12 hours every day. If we don't work, our employer beats us. I have seen a Nepalese worker beaten. The employer also beat a Vietnamese worker and cut her hair.

-Female Vietnamese worker in Penang

She [the respondent] says that workers have had to help each other when one of them falls ill. She says that a common problem experienced by workers is very low blood pressure and fainting during work hours. She says that this is probably because workers do not get much sleep. With 12 hours of work every day, and having to prepare meals, line up for the toilet and bathroom use, and being in the factory grounds 45 minutes before start of work, there is actually very little time for sleep and rest.

-Verité researcher, describing interview with female Vietnamese worker in Penang

The voluntary nature of overtime is further obscured by the fact that, for most workers, it is simply built into their work schedules. Workers assume they will be working 72 hours a week at minimum. When rush orders come in, or the volume is heavy, workers report being expected to work more than 72 hours – staying later, and picking up extra shifts on Sundays or other days off, with no option for refusal.

Normally I work from Monday to Saturday. Sunday depends on my health. When the factory is busy, we have to work 16 hours.

-Female Vietnamese worker in Penang

This month I have been working three 12-hour days and four 14-hour days a week. Regarding overtime, if I am tired, the agent will replace me with another employee.

-Vietnamese worker in Johor

If we come late, they deduct this from our overtime pay.

--Male Nepalese worker in Malacca

Many workers also noted the need to work overtime in order to achieve the production quota, which suggests that quotas – and not legal limits – can in some cases be the determining factor in levels of work.

6.3.2.3 Living Conditions

Definition

The ILO's framework for defining forced labor lists “degrading living conditions” as an indicator of involuntariness; for this indicator to be present, these conditions must be imposed upon the worker by the employer.

While the ILO does not define “degrading”, it does offer concrete guidance on housing for migrant workers in its Recommendation 151, which states:

Housing standards should include special attention to the following:

- *Minimum space allocated per person or per family (floor area; cubic volume; or size and number of rooms)*
- *Supply of safe water in the workers' dwelling in such quantities as to provide for all personal and household uses;*
- *Adequate sewage and garbage disposal systems;*
- *Appropriate protection against heat, cold, damp, noise, fire, and disease--- carrying animals, and, in particular, insects;*
- *Adequate sanitary and washing facilities, ventilation, cooking and storage facilities and natural and artificial lighting;*
- *A minimum degree of privacy both between individual persons within the household and for the members of the household against undue disturbance by external factors; and*
- *The suitable separation of rooms devoted to living purposes from quarters for animals.*

Where accommodations are provided for single workers or workers separated from their families, additional housing standards should be considered:

- *A separate bed for each worker;*
- *Separate gender accommodation*
- *An adequate drainage and sanitary conveniences; and*
- *Common dining rooms, canteens, rest and recreation rooms and health facilities, where not otherwise available in the community.*¹⁸⁹

The Electronics Industry Citizenship Coalition's code of conduct requires employer-provided residences to be maintained as clean and safe, and to be provided with appropriate emergency areas, hot water for bathing and showering, adequate heat and ventilation, reasonable personal space, reasonable entry and exit privileges, ready access to clean toilet facilities, potable water and sanitary food preparation, storage, and eating facilities, and that no more than eight people should be housed in one room.¹⁹⁰

As discussed above in "Section 4: Research Methodology," Verité was limited in the range and depth of questions that could be accommodated by the survey instrument. A set of in-depth questions on living conditions was not feasible. Verité therefore chose to focus on a handful of discrete, easily defined aspects of the housing arrangement and combine them, alongside the respondent's subjective assessment of the quality of their living conditions, to create the "degrading living conditions" indicator for the study.

First, a question was asked to establish whether the housing was being provided by the employer or labor intermediary. Questions on three issues of housing conditions were then also posed: on the number of people sleeping in the room, on safety, and on security. Verité also asked respondents to rate their living conditions on a five-point scale: good, okay, bad but tolerable, very bad, and unbearable. Finally, Verité encouraged respondents to describe their living conditions in further depth. These semi-structured narratives were then analyzed against the same criteria on number of people per room, safety, and security, as well as other ILO standards on basic issues such as sanitation and potable water, to make an assessment of whether the conditions were degrading. When a respondent described - in clear and unequivocal terms - housing conditions that were in contravention of international standards, the indicator was deemed positive even if they had described their living conditions as tolerable in the scalar question.

Forced Labor Indicator Definition

Degrading Living Conditions:

This respondent reports that the facility or the broker/agent provides their housing, that it is unbearable or very bad and that either:

- they sleep in a room with more than 8 people; or
- there is nowhere they can safely store their belongings; or
- they do not feel safe at their housing.

OR

This respondent reports that the facility or the broker/agent provides their housing, and that:

- there is nowhere they can safely store their belongings; AND
- they do not feel safe at their housing.

OR

This respondent reported that the facility or the broker/agent provides their housing, and in the qualitative portion of the survey, reported conditions that conformed to the study's definition of "degrading living conditions".

Findings

The incidence of this indicator among the total population of respondents was found to be 21% (n=107). Among all foreign contract workers (i.e., without the Malaysian workers), the incidence of the indicator was found to be 24% (n=105). This suggests that nearly one in four foreign workers in the study experiences extremely poor living conditions, in housing that is provided by the broker or employer as part of the employment arrangement.

Lack of a secure place to store one's belongings was the most frequently reported aspect of poor living conditions reported by foreign workers in the study, followed by crowded living quarters and feeling unsafe.

Table 6.10 Component analysis of “degrading living conditions” indicator among all foreign workers

Component of Degrading Living Conditions Indicator	Incidence of Indicator Component (%)	Incidence of Indicator Component (No.)	Total No. of Respondents
Workers that sleep in a room with more than 8 people	30%	129	436
Workers who have nowhere they can safely store their belongings	43%	187	431
Workers who do not feel safe at their housing	22%	94	427
Workers that describe their living conditions as “very bad” or “unbearable”	9%	41	437

**Note the percentages in this table are derived from the total number of respondents who answered the question.*

For 92% (n=399) of the foreign workers that Verité interviewed, housing was provided by the employer or broker. The dependence of foreign workers on their employer or broker for housing, and the absence of any leverage to advocate for better conditions, cannot be underestimated when discussing living conditions. In qualitative interview interactions, workers often reported poor conditions that they felt they could do nothing about. There were also reported instances of abuse or threatening behavior on the part of hostel supervisors.

The housing is worse in my present (second) job assignment, compared to my first one. The workers cannot choose.

-Male Nepalese worker in Penang

My agent is very bad. The deduction for housing is very high and there are 10-12 people living there.

-Female Burmese worker in Klang Valley

Recently, many male and female workers were beaten up by the supervisor at the hostel.

-Female Nepalese worker in Johor

The hostel supervisor took away all the workers' utensils while we were on duty and verbally threatened us.

-Female Nepalese worker in Johor

As noted above, workers' concerns about their housing often centered on issues of basic sanitation, safety and security – especially around the issue of not having a place to store personal belongings – and overcrowded rooms.

I live in very poor conditions, smelly, mess everywhere. When I first came here, I had to make [furnish] my room on my own.

-Male Nepalese worker in Klang Valley

The whole house has three rooms. There are over 40 people living there. It is overcrowded. There is no place to even walk around.

-Female Burmese worker in Klang Valley

We are all living in a hallway, no bedrooms, no privacy. There are too many people, 26 in all, but only one toilet. It's also very hot.

-Male Nepalese worker in Johor

The room is very crowded and noisy. Workers are staying in the hallway, without proper bedrooms. There is no drinking water, only tap water from the bathroom.

-Male Nepalese worker in Johor

Workers often also made comments about a lack of safety and security in their neighborhoods. High rates of crime and gang activity were common complaints, with workers noting personal experiences of being mugged, or knowing of others who had been mugged or raped. This issue is elaborated above, in Section 6.2: Factors that Affect the Work and Life of Foreign Workers and Their Vulnerability to Forced Labor.

I think that Malaysia is not safe, since there have been many robberies at my hostel. There are many rapes too. This makes me scared to go outside alone. Even when there are two of us, it is possible to be raped. No one will be able to help us because if they do, they will become a victim too.

-Female Indonesian worker in Klang Valley

While Verité did not take the issue of unsafe neighborhoods into account in the forced labor determination, it is important to note that the ILO considers “Isolation” to be a menace of penalty; over the course of many years of research on forced labor issues, Verité has found that foreign workers are sometimes housed by employers or labor intermediaries in dangerous neighborhoods as a mechanism of isolation, psychological control, and limiting freedom of movement.

6.3.3 Impossibility of Leaving Employer: Indicators of Involuntariness

“The difficulty to leave one’s employer is a characteristic of forced labour when leaving entails a penalty or risk to the worker. While the deliberate retention of wages is recognized as a form of coercion (as the worker has to stay because outstanding wages will be lost if he or she leaves, hence there is a penalty for leaving), a worker who cannot leave a job because of poverty or lack of alternative income opportunities is not in a situation of forced labour, unless specific elements of coercion or involuntariness are also present...”

–ILO. Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children (International Labour Office: Geneva, 2012), p.14.

“Impossibility of Leaving Employer” Indicators of Involuntariness Examined by this Research

Strong indicators:

- No Freedom to Resign in Accordance with Legal Requirements
- Forced to Work for Indeterminate Period in Order to Pay Off Outstanding Debt or Wage Advance

6.3.3.1 No Freedom to Resign in Accordance with Legal Requirements

Definition

The ILO lists “No Freedom to Resign in Accordance with Legal Requirements” as an indicator of involuntariness. Verité anchored the definition for this indicator in Malaysian law, as well as further interpretation of ILO standards.

Malaysian law has clear prohibitions against illegally high fines as a penalty for pre-termination, and against withheld wages. The law states that, regardless of contractual stipulation, either party can terminate a contract with due notice, which is defined as 2 weeks, for service of 2 years or under; 4 weeks, for 2-5 years’ service; and 6 weeks, for over 5 years’ service. Where either party terminates without notice, the terminating party shall pay the other party “an indemnity of a sum equal to the amount of wages which would have accrued to the employee during the term of such notice or during the unexpired term of such notice.”¹⁹¹ Verité defined an illegally high fine for pre-termination as an amount exceeding 4 weeks’ (i.e., one month’s) wages since the majority (72%, n=315) of respondents had been in the country for 2 years or more. The monthly wage was defined as MYR 900 (USD 278), which is the minimum wage, or the average monthly take-home wage reported by the respondent, whichever was higher.

Malaysian law also clearly states that workers should be paid for all work rendered; Verité understood this to mean that employers may not withhold accrued wages or any wages withheld as forced savings¹⁹² due as a penalty for pre-termination.¹⁹³

Forced Labor Indicator Definition

No Freedom to Resign in Accordance with Legal Requirements

This respondent reports that it is not possible to leave their job before their contract is finished without incurring a penalty of at least one of the following:

- would pay an illegally high fine, OR
- would forfeit wages due, OR
- would forfeit forced savings or “runaway” insurance, OR
- would not get back their passport, OR
- would be forced to pay the balance of the levy, OR
- would be denounced to the authorities.

Based on rapid appraisal interviews with foreign workers early in the project – as well as accumulated expertise in the sector and other previous research – Verité determined that workers in the sector are at risk of several other penalties for pre-termination of their contracts, including, chiefly, the inability to retrieve one's passport¹⁹⁴ and being denounced to authorities.¹⁹⁵

Finally, there is the issue of a levy imposed on foreign contract workers in January 2013 that also effectively acts as a penalty for pre-termination of contract since workers must pay off the balance of the levy pre-paid by their employers if they wish to resign early. The levy is a burden for workers, adds to their debt, and thereby serves as a deterrent to early resignation. Employers are acting outside the bounds of the law in requiring payment of the balance in order to pre-terminate. The specific details of this practice are as follows:

In January 2013, the Government of Malaysia issued a general authorization allowing employers to deduct the cost of an existing per-capita levy on the importation of foreign workers from foreign workers' wages. The flat-fee MYR 1,240 (USD 383) levy is due up-front, as a lump-sum payment. The new general authorization allows employers to recover the cost of the levy through monthly deductions. As discussed above in Section 3: Immigration and Labor Policy Context, this change in cost burden has resulted in a system whereby the employer pays the full year's cost of the levy for each foreign worker up-front, and then the worker repays the employer for the cost in 12 monthly installments of approximately MYR 104 (USD 32) per month. Assuming a base wage of MYR 900 (USD 278), the minimum wage, this payment represents 12% of a worker's monthly wage.

The pre-payment system compels the employer to shoulder the cost of levy until the full 12 months are deducted from workers' wages. There is no provision for an employer to procure a refund from the government for the advance levy in cases where a worker pre-terminates the contract. Based on the guideline, the levy can only be fully or partially refunded by the government if the worker was found to be medically unfit or if the worker did not show up in Malaysia at all. As a result, employers often seek refund from the worker herself in cases of pre-termination, requiring workers to pay back the balance of the levy in order to break the contract. For example, if a worker wishes to return home after the first month of her contract, she would have to pay MYR 1,146 (USD 354) to the employer, in addition to buying her own return flight ticket. The levy often represents a significant sum for workers, who typically have other debts and obligations. Importantly, the 2013 general authorization does not specify this practice by employers. Hence, employers are acting outside the bounds of the law in requiring full repayment of the levy in order to pre-terminate.

While the existence of the levy per se is not an indicator of forced labor, the manner by which employers in practice restrict and inhibit the ability of workers to walk away from their contracts and return home, by requiring workers to pay off the remainder of the levy, is treated by Verité as an indicator of the lack of freedom to resign in accordance with legal requirements.

Findings

The indicator for No Freedom to Resign in Accordance with Legal Requirements was found to be present for 50% (n=248) of survey respondents. For foreign workers, the incidence was 57% (n=248). In other words, at least half of respondents could not leave their jobs before their contracts were finished, because they would either be charged an illegally high fine, would forfeit wages or runaway insurance, would lose their passport, would be forced to pay the balance of the levy, or would be denounced to the authorities.

The indicator was present in significant proportions across all regions and products, and among men and women. There was a higher rate of reporting for outsourced workers, as opposed to direct employs, which suggests that workers may be at higher risk of being bound in their job contracts when working for employment agents.

Table 6.11 Incidence of “no freedom to resign” indicator across major demographic variables

No Freedom to Resign Indicator	Incidence of Indicator (%)	Incidence of Indicator (No.)	Total No. of Respondents
All workers	50%	248	501
Foreign workers	57%	248	438
Gender			
Female	45%	121	270
Male	56%	126	227
Region in Malaysia			
Johor	38%	51	136
Klang Valley	52%	82	159
Penang	59%	82	140
Seremban, Negeri Sembilan	53%	21	40
Other (Ipoh, Perak; Kedah; Malacca)	46%	12	26
Who pays wages			
Employment agent	59%	110	185
Facility	44%	137	309
Other	0%	0	3
Top Product Groups*			
Electronic components and boards (includes semiconductors and cables)	47%	101	213

6. Research Findings

Computers and computer peripherals like monitors, printers, keyboards, scanners	58%	57	99
Telephones, modems, routers, or other communications equipment	71%	48	68
Consumer electronics like TVs, DVD players, stereos, game controllers	58%	56	97
Other products	41%	47	116

**The sum of the products reported here is greater than the total number of survey respondents because respondents were able to choose more than one product in the survey.*

Payment of the balance of the levy was the most commonly cited barrier to pre-termination, followed by passport retention, forfeiting of wages, and the requirement to pay an illegally high fine. Denunciation to authorities and the forfeiting of forced savings or insurance were lesser concerns.

Table 6.12 Penalties included in composition of “no freedom to resign” indicator

Penalty	Incidence of penalty among respondents for whom the “no freedom to resign” indicator is present	
	Incidence of penalty (%)*	Incidence of penalty (No.)
Wouldn't get back my passport	25%	62***
Denunciation to the authorities	5%	13
Pay illegally high fine	10%	24
Forfeit forced savings or insurance	2%	6
Forfeit wages due	20%	50
Pay the balance of the levy	55%	136
[No plane ticket home]**	43%	106

**Note the percentages in this table are derived from the total number of respondents for whom the “no freedom to resign” indicator is present (n=248)*

***Note this was not included in the calculation of the indicator for the purposes of making a determination of forced labor but is included here to demonstrate its pervasiveness as a concern for workers.*

****Please note that this number is slightly higher than the menace of penalty indicator “Confiscation or Destruction of Identity Documents” because a small pool of respondents indicated that either they were not sure or that they were able to retrieve their passport under normal circumstances, but would not be able to get their passport back if they left before their contract was finished.*

Twenty-nine percent (n=147) of respondents reported more than one barrier to pre-termination, and 9% (n=45), more than two, which illustrates the numerous barriers to termination faced by many foreign workers. Many respondents indeed seemed puzzled by the set of questions in the survey related to the ability to pre-terminate their contracts. These respondents reacted in ways that suggested they had never even considered being able to leave before their contract was up, and that they thought it is simply not possible to leave a contract early. Workers who did report contemplating leaving early almost always expressed this idea in terms of “running away” and becoming undocumented.

This individual came to Malaysia about year ago. She used to work for a factory in Johor. She ran away because her salary was low, there was no overtime work, she had to pay for housing and utilities herself, and there were too many men from other countries working in the factory, which made her uncomfortable. She says that the life of a runaway is quite challenging. It is hard to return home, it is not safe when she moves around, and she has a poor work environment.

-Interview by Verité researcher with Female Vietnamese worker from Penang

The first recruitment was okay, but I was underpaid. I only earned 450 per month. Therefore, I decided to run away.

-Male Burmese worker in Seremban, Negeri Sembilan

Passport retention clearly plays a significant role in whether workers feel free and able to terminate their employment arrangements. Many workers expressed hopelessness about being able to get back their passport, and established a clear connection of the ability to leave the job.

I feel that the company would never let me pre-terminate, as long as my passport is with them.

-Male Bangladeshi worker in Johor

I can't go home or to any other place of work because my passport is with the company.

-Male Nepalese worker in Penang

I cannot leave without my passport, and my passport is held by my agent. Without my agent's authority, I cannot leave the job.

-Male Bangladeshi worker in Johor

Regarding fines, workers regularly reported needing to pay a flat fee in order to pre-terminate their contracts. In some cases, the fee to terminate was structured according to length of service. (This fee is different than needing to pay the balance of the levy, which is discussed below.) Many of the fee levels cited by workers were quite high, and ranged from MYR 500 (USD 154) to MYR 4,500 (USD 1,392).

I'll need to pay MYR 4,500 (USD 1,392) if I go back before 3 years is finished.

-Male Indian worker in Seremban, Negeri Sembilan

If we want to quit, we have to pay MYR 1,000 (USD 309).

-Female Indonesian worker in Klang Valley

The agent has a policy regarding pre-termination. Workers have to pay MYR 3,500 (USD 1,082) if they have been working for less than one year and MYR 1,500 (USD 464) if they have been working for more than one year.

-Male Philippine worker in Penang

I don't know the exact amount of the [pre-termination] fine, but a colleague paid around MYR 4,000 (USD 1,237) with 17 months remaining in his contract.

-Male Philippine worker in Penang

Regarding the levy, the practice of requiring payment of the balance has made it much more difficult for foreign workers to pre-terminate their employment contracts. Foreign workers consistently reported to Verité that if they want to pre-terminate their contracts, they are told by employers that they must pay off the balance of the levy first. Thirty-one percent (n=136) of respondents specifically described being told by the employer that they could not pre-terminate their contracts without first paying the balance of the levy, and 70% (n=269) of

foreign respondents to the survey said that they felt they cannot leave their job before paying it off.

I must pay 9 months of the levy if I want to return home to Burma.

-Male Burmese worker in Klang Valley

To pre-terminate the contract, I need to pay the levy plus MYR 1,000 (USD 309) for the air ticket.

-Male Burmese worker in Klang Valley

We just have to pay MYR 1,500 (USD 464) to pay off the levy if we want to pre-terminate the contract.

-Female Indonesian worker in Klang Valley

In the beginning I was not allowed to terminate if the levy was not cleared.

-Male Nepalese worker in Klang Valley

The definition of the no-freedom-to-resign indicator was narrowly focused for the purposes of the study on fines, forfeiting of wages or insurance, passport retention, payment of the balance of the levy, and denunciation to authorities. However, the concept of not being able to resign from one's job is complicated, and mediated by other compounding factors such as debt, being obliged to send money home, a lack of alternative livelihood, and, for foreign contract workers, the structure of their work visas, which tie their legal status to employment by a particular employer. More generally, there were many instances in which respondents seemed not to know the terms of their contracts regarding termination, but felt that in practical terms there was no option to terminate.

I am not sure how much I need to pay [to terminate the contract]. I can't leave, that's what I know.

-Female Burmese worker in Klang Valley

It is very complicated if I want to terminate my contract. There are certain requirements that seem impossible.

-Female Vietnamese worker in Johor

I don't know if I have a contract with the facility. The agreement paper was signed in Burma. I'm not sure if I can leave before the contract is finished.

-Male Burmese worker in Klang Valley

In other cases, respondents reported being told in clear terms by their employer or agent that they could not leave before the contract was up.

We were asked to sign a contract by the Burma-based agent that says, no one shall return to Burma or change job for two years. So we signed.

-Female Burmese worker in Klang Valley

The agent told us that we cannot go back or take long leaves until the contract is finished.

-Female Burmese worker in Klang Valley

It is very difficult to go back before the contract is completed, because the factory hardly allows it.

-Male Nepalese worker in Johor

It was new for me in Malaysia—I had no choice to leave my job.

-Male Nepalese worker in Penang

Finally, while the return ticket home was not taken into account in the No Freedom to Resign indicator, it is a significant factor in a worker's calculus as to whether she can afford to pre-terminate a contract. Many comments were made by workers about the plane ticket standing in the way of leaving early and acting, in practice, as a monetary fine. Particularly for workers who are still paying off debt, these can be serious hindrances to the freedom to leave the employment arrangement.

I can go home, but I would need to pay my own ticket.

-Male Nepalese worker in Penang

If I want to go home before my contract is finished, I will have to pay off all the levy and buy my own plane ticket home.

-Female Nepalese worker in Penang

Even after paying the levy, there is no guarantee that a return ticket home will be given if contract is pre-terminated by worker.

-Male Nepalese worker in Johor

I can't leave without paying [off the] levy, and my passport is with the facility. I also have to buy my own plane ticket home.

-Male Nepalese worker in Penang

6.3.3.2. Forced to Work for Indeterminate Period in Order to Repay Outstanding Debt or Wage Advance

Definition

The ILO lists “Forced to Work for Indeterminate Period in Order to Repay Outstanding Debt or Wage Advance” as an indicator of involuntariness, under the “impossibility of leaving the employer” dimension. In operationalizing a definition of this indicator for the current study, Verité did not attempt to define the concept of “indeterminate”, but looked instead to the level of the fee charged, requiring it to be excessive in order for this indicator to be present. A set of questions was then asked to determine whether a respondent’s fee-linked debt was actively binding them to their current job. In so doing, Verité purposed this indicator to represent the concept of time-bound, debt-induced forced labor.

In expressing the concept of an excessive fee, Verité looked first to the ILO, which in its Convention 181 states that recruiters should not charge fees to workers, but notes the possibility for exceptions in national law.¹⁹⁶ Verité next analyzed the regulations on fee charging by recruitment agencies in all the major sending countries for the study, as well as in Malaysia.

Malaysian law sets a limit for private employment agencies, requiring that fees be no more than 25% of the first month’s pay. This was the standard used by Verité for fees charged by Malaysian labor intermediaries.¹⁹⁷

Laws on fees in the major sending countries presented more of an analytical challenge for the study: There was a wide range of approaches to regulating recruitment fee charging; and in

some cases, a country-wide limit was not made clear in the law in absolute terms and would instead need to be derived on a per-factory basis. In one case (Burma) the law is silent. Therefore Verité had no comparable legal standards from which to operationalize a definition across all countries of origin – a finding that itself reflects the generally ambiguous and inconsistent state of international efforts to regulate recruitment fees.

Forced Labor Indicator Definition

Forced to Work for Indeterminate Period in Order to Repay Outstanding Debt or Wage Advance

This respondent borrowed money to pay an excessive recruitment fee, they have not yet paid off their debt, and they feel they cannot leave their current job because of job-related debt.

In light of this circumstance, Verité based its understanding of the limit in relation to monthly wages, following the approach taken by many countries and some industry codes of conduct. The Philippines, often viewed as a leader in regulating overseas migration, limits the recruitment fee to one month's wages.¹⁹⁸ This is also the standard used by some industry leaders.¹⁹⁹ This was the limit chosen by Verité.

Regarding fee limits, it is important to note that the ILO recommends against any charging of recruitment fees to workers (though it allows for exceptions to be established by national country governments with tripartite consultation).²⁰⁰ Verité, as an organization, takes the position that no recruitment fees of any kind should be charged to workers, in recognition of the high degree of forced labor risk that is introduced by fee charging and the debt that typically ensues for migrant job-seekers. Many stakeholders from a variety of perspectives, including the private sector, also expressed to Verité a concern about the charging of fees to workers and acknowledged that, despite challenges, the future of corporate accountability for supply chain conditions will eventually involve prohibition of fees and more rigorous due diligence of labor recruiters. However, for the purposes of determining the pervasiveness of forced labor in the current study, Verité chose to define “excessive recruitment fees” as being in excess of one month's wages, in recognition that most national law and industry standards have not yet adopted prohibitions on recruitment fee charging.

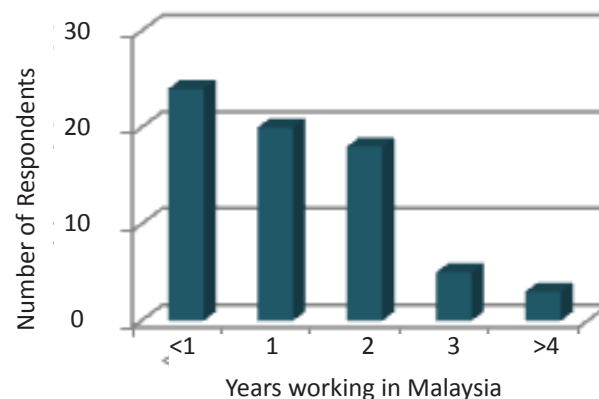
Findings

The indicator for “Forced to Work for Indeterminate Period to Repay Outstanding Debt or Wage Advance” was found to be present for 9% (n=46) of all survey respondents.

In contextualizing this finding, it is important to note that only 73 out of 501 workers interviewed reported that they had not yet paid off their job-related debt. This is related to the fact that most workers in the sample -- 72% -- had been in Malaysia for two years or more. As shown in Figure 6.4, most respondents took two years or less to pay off their job-related debt. Thus, there was only a small pool of respondents (15%) for which this indicator was potentially positive.

Significantly, of this small pool of current job-related-debt holders, 63% (n=46) were positive for the “Forced to Work for Indeterminate Period to Repay Outstanding Debt or Wage Advance” indicator. In other words, almost two-thirds of respondents who held job-related debt at the time of the interview felt it was impossible to leave their job before paying it off. This finding underscores the key role played by debt in creating forced labor vulnerability: among this respondent pool, if a worker had borrowed money to pay a recruitment fee and was still in debt, s/he had more than a one in two chance of being vulnerable to forced labor.

Figure 6.4 Years working in Malaysia among respondents who reported ongoing debt



It is also important to note here that workers who may previously have been in situations of debt-linked forced labor vulnerability, but no longer are, were not captured by this indicator. Verité only sought to include cases of *current* debt-linked forced labor vulnerability in the formal forced labor analysis. The findings presented in this report must therefore be understood as a

one-year snapshot, not as a measure of experiences encountered by respondents over the entire course of their stay in Malaysia. Forced labor itself, and the components or indicators that combine to create it, can very much be temporal in nature and bounded by the existence of debt or other factors that may change over the employment period. In the case of binding debt, 46% of workers held job-related debt at some point during their stay in Malaysia but had paid it off by the time of the interview. It is possible that a portion of these workers were in an earlier situation of forced labor that ended with the paying off of the debt.

Because the sample of currently-indebted workers was small, Verité’s analysis of patterns of debt-linked forced labor vulnerability across variables such as country of origin or employer is done with the understanding that these patterns may not be meaningful in an analytical sense. That said, this cross analysis does show the presence of this indicator across countries of origin, employer type, and electronics product.

Table 6.13 Incidence of “forced to work for indeterminate period to repay outstanding debt or wage advance” indicator across major demographic variables among workers who reported ongoing debt

Forced to Work for Indeterminate Period to Repay Outstanding Debt or Wage Advance Indicator	Incidence of Indicator (No.)	Total No. of Respondents
Country of origin of workers who reported ongoing debt		
Bangladesh	0	2
Burma	9	13
India	0	0
Indonesia	11	14
Malaysia	0	0
Nepal	10	22
Philippines	3	3
Vietnam	13	19
Total	46	73
Who pays workers’ wages among workers who reported ongoing debt		
Employment agent	19	35
Facility	26	37
Other	1	1
Total	46	73

Top Product Groups* among workers who reported ongoing debt		
Electronic components and boards (includes semiconductors and cables)	29	39
Computers and computer peripherals like monitors, printers, keyboards, scanners	5	9
Telephones, modems, routers, or other communications equipment	8	13
Consumer electronics like TVs, DVD players, stereos, game controllers	7	13
Other products	7	14

*Note that respondents were able to choose more than one product in the survey.

Excessive Fees and Job-Related Debt. In order to be considered as being “Forced to work for indeterminate period to repay outstanding debt or wage advance,” a respondent must have borrowed money to pay an excessive recruitment fee, still hold job-related debt, and feel that she cannot leave her current job because of job-related debt. Regarding fees, as reported above in Section 6.3.1 Unfree Recruitment, over three-quarters (77%, n=306) of the workers who reported paying recruitment fees had to borrow money in order to pay those fees and obtain their jobs in Malaysia. Of workers reporting the amount of recruitment fees paid in their home countries, 92% (n=233) were determined to be excessive based upon the criteria discussed above. Of respondents that distinguished the fees paid to their agent in Malaysia separately from other fees, 99% (n=84) reported excessive levels. In total, 94% of recruitment fees reported by workers were excessively high by common legal and industry standards.

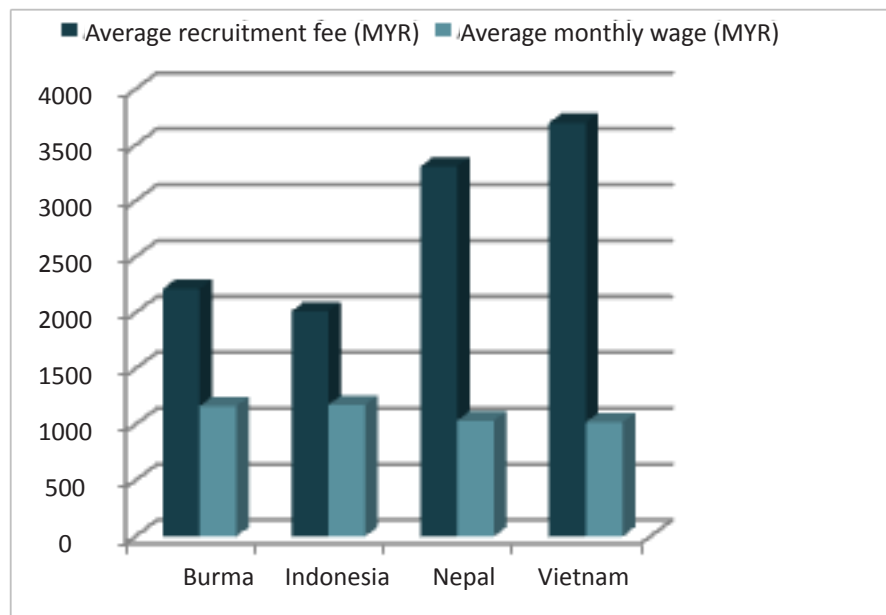
Workers who had to borrow money to pay recruitment fees reported paying higher fees, on average, than workers who did not have to borrow. This suggests that higher fees bring a higher likelihood of indebtedness for workers.

Table 6.14 Average recruitment fees for workers who had to borrow and workers who did not

Did the respondent borrow money to pay their recruitment fees?	Average recruitment fee (MYR)
Respondents who <i>did not</i> borrow money to pay their recruitment fees	MYR 2,077
Respondents who <i>did</i> borrow to pay their recruitment fees	MYR 2,985

Recruitment fees paid by workers well exceeded the industry standard of the first month's pay, on average, as shown in Figure 6.5

Figure 6.5 Average recruitment fee and average monthly wage by country of origin



As discussed above in Section 6.3.1: Unfree Recruitment, many workers had difficulty recounting the precise amount that they had needed to pay in order to obtain their jobs, and distinguishing fees paid to sending and receiving country agents. Fees tended to accumulate in increments over the course of the recruitment process, as workers first paid one or more sub-agents in their home country to connect them with an international recruitment agent, then paid that agent to place them in a job in Malaysia, and then needed to pay additional fees to a Malaysian employment agent after their arrival. Fees were sometimes paid upfront in a lump sum, but were more frequently paid over time to different people, often in multiple currencies, sometimes as prepayments, and sometimes as deductions taken from their monthly wages.²⁰¹ Many respondents remarked on the unexpected burden that additional, unanticipated fee charges represented.

I only just found out that I need to pay MYR 1,800 (USD 557) to my agent here in Malaysia. It is deducted from my salary.

-Female Nepalese worker in Penang

The worker did not know about the additional MYR 1,500 (USD 463) fee until she got to Malaysia. It was deducted from her pay on a monthly basis by the factory.

-Verité researcher, describing interview with female Burmese worker in Klang Valley

The debt is heavy for me to pay in Nepal and I also pay to management here in Malaysia every month. Still I need to pay MYR 500 (USD 155).

-Male Nepalese worker in Kedah

We paid almost double compared to the amount we were told in Vietnam.

-Female Vietnamese worker in Penang

As a way of exploring the burden represented by recruitment-related debt, Verité asked workers to estimate how long it had taken them (if already paid off) or would still take them (if not already paid off) to completely settle their debt.²⁰² Almost all respondents (95%, n=286) took at least four months to pay off their job-related debt, with fully half (50%, n=151) taking at least a year. When one considers that the typical work contract for a foreign worker is two years in duration (with the option of a third year extension), this means 50% of workers were paying off recruitment debt for at least half of their first work contract.

In Verité's interviews, many respondents remarked upon the heavy burden their recruitment debt placed upon them while working in Malaysia, frequently emphasizing the lengthy time it took them to pay their debt off and their difficulty saving any money while still paying off their debt obligations.

For more than 17 months, I earned too little as I need to pay for the levy, the debt (agent fee) and for the accommodations. And also, I have to send money for my family in Burma. I earn as little as MYR 300-500 (USD 93-155).

-Female Burmese worker in Klang Valley

I'm still working in order to return my debt. I have no saving.

-Female Burmese worker in Klang Valley

It is not worth working since I earn to pay back debt only. I will feel better after two years. I will have no more debt, just the levy, and can save.

-Male Burmese worker in Klang Valley

Every month, I pay levy and debt. End of the month, I have nothing left to save.

-Male Bangladeshi worker in Klang Valley

My salary is MYR 21 (USD 6) a day. When can I pay off my debt?

-Female Vietnamese worker in Johor

Even after 2 years, I have not been able to pay off my debt. I feel very burdened.

-Male Nepalese worker in Klang Valley

Box 6.10 William: Excessive recruitment fees

William was a Philippine man working in Penang. The employment agent in Manila referred him to a money lender. On paper, his loan was PHP 50,000 (USD 1,148) but he only actually received PHP 38,400 (USD 882). The money lender told him that PHP 11,600 (USD 266) would go to pay taxes and to open a checking account, although he really did not have to open a new checking account for this purpose, as he could have remitted the loan repayment directly to the money lender's account. The worker said that he had a very limited amount of time to obtain the loan, as the employment agent told him that the job would disappear if he did not come up with the money in one day, so he had no choice but to agree to the terms of the loan. The total amount that he ended up paying to the employment agent, including interest for the loan, was PHP 83,000 (USD 1,906). For 10 months, he remitted PHP 8,300 (USD 191) every month to the checking account in order to pay off the loan.

Binding Nature of the Debt. Thirty-one percent of workers (n= 155²⁰³) reported that they felt they could not quit because of their debt.²⁰⁴

Many workers underscored the relation between debt and inability to resign in the qualitative interviews.

I can't go home until my debt is paid off. I am paying 5% interest. It is very heavy so I must work to pay off my debt.

-Male Nepalese worker in Penang

I'm new. I don't know about terminating my contract. As I still need to pay my debt, I never think of leaving my job or moving anywhere.

-Male Burmese worker in Klang Valley

I can't refuse my job because I need to pay my debt and provide for my family in Nepal.

-Male Nepalese worker in Penang

To gain a sense of the nature of the binding force of indebtedness, Verité included a question in the survey asking all workers (both currently indebted ones and those who had already paid off their debt) to describe the consequences they would face (or would have faced while still indebted) if they were to leave their jobs before paying off their loans. Although many respondents did not specify a precise answer to this question, it is significant that 108 of the anticipated consequences reported by workers pertained to threatening personal danger to the worker or the worker's family.

Table 6.15 Consequences reported by workers if they left their job before paying off their job-related debt	
<i>If you were to leave before paying off your debt, what would happen?</i>	Incidence of Consequence (No.)*
I would be arrested	27
I would be in personal danger	47
I would be deported	25
My family would be in danger of losing assets	75
My family would be in personal danger	61
My work permit would be revoked	33

*Some respondents reported more than one consequence.

During interviews with Verité researchers, workers expressed being under pressure from both the social and financial/legal consequences of failing to pay off their debt.

If I do not pay my debt fees, my family will face intimidation and shame.

-Male Nepalese worker in Penang

If I do not pay my debt there will be more interest added every month. The debt total will increase and my family will lose some of our assets, like our land and gold.

-Male Nepalese worker in Penang

If I do not pay my debt my friend [creditor] will not be happy and I can be subjected to intimidation.

-Female Nepalese worker in Ipoh, Perak

Box 6.11 Raj: Debt burden

Raj, a Nepalese man working in Penang, had completed 14 months of a 3-year contract, but had not been able to save any money, as he was still trying to pay off the loan that he took out in Kathmandu before coming to Malaysia. Raj was required to pay a total of NPR 150,000 (USD 1,461) to the Kathmandu agent who processed his application for his job. Raj said that he begged for a discount from the agent but was told that if he wasn't willing to pay the amount required, the slot would be given to another applicant who was ready to pay.

Raj said that he was desperate to get the job in Malaysia, as his family's business – a rice and corn mill – had collapsed and the family was deep in debt as they struggled to revive the business. Raj and his brother looked for someone who could lend them the full amount of NPR 150,000 (USD 1,461), but they were only able to borrow NPR 120,000 (USD 1,169) at an interest rate of 36% per annum. Raj said that he was not certain, but he recalled that his brother co-signed the loan agreement, and that there seemed to be a condition that their land would be taken if the loan was not paid. Raj said that he and his brother agreed to the terms, as they felt that the amount would be easily repaid when Raj started working in Malaysia. The agent agreed to give Raj a discount and accepted a payment of NPR 120,000 (USD 1,169).

Raj was able to leave for Malaysia three weeks after he applied for the job. Every month, since he started receiving his pay from the company, he has set aside MYR 500-600 (USD 155-186) of his pay for loan repayments. There are times, however, when he does not earn enough money to send the full amount needed to pay the loan, and times when he had to prioritize his family's

emergency needs over the loan payment. He had planned to repay the loan within one year, but it seemed as though it would take him two years to do it, and in the meantime the interest was compounding.

He said that he had learned to live on less than MYR 300 (USD 93) per month for his own needs while in Malaysia through a regime of “strict discipline, no personal luxuries, a lot of overtime work, very little sleep.” The typical work schedule in the factory was 12 hours per day. During the first four days of the week he was paid the regular rate, but on the 5th and 6th days he was paid an OT premium rate (base wage x 1.5). He said that working 12 hours continuously every day for 6-7 days was very difficult and that he sometimes got dizzy in the afternoons, while other workers sometimes fainted and fell on the factory floor from exhaustion. “I also feel very tired all the time, have low capacity to do other things, low memory also... physically and mentally tired.”

Raj said that, sometimes he wanted to quit and return home to Nepal. However, if he decided to resign before the expiration of his contract, it would mean paying MYR 1,200 (USD 371) and purchasing his own return ticket at MYR 700 (USD 216), an amount that he would not be able to come up with easily with his loan payments still ongoing.

6.3.4 Indicators of Menace of Penalty

Penalty or menace of penalty (means of coercion) may be applied directly to the worker or to members of his or her family, by an employer or a third party. The coercion may take place during the worker's recruitment process to force him or her to accept the job or, once the person is working, to force him/her to do tasks which were not part of what was agreed at the time of recruitment or to prevent him/her from leaving the job.

—ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (International Labour Office: Geneva, 2012), p.13-16. ²⁰⁵

Indicators of Menace of Penalty Examined by this Research

Strong indicators:

- Sexual violence
- Physical violence
- Threats against family members
- Other forms of punishment (deprivation of food, water, sleep)
- Imposition of worse/further deterioration in working conditions
- Withholding of wages
- Denunciation to authorities
- Dismissal
- Confiscation or destruction of identity papers or travel documents
- Isolation
- Locked in workplace or living quarters
- Constant surveillance

Medium indicators:

- Exclusion from future employment or overtime
- Financial penalties
- Extra work for breaching labor discipline

Definitions

The concept of a menace of penalty in the compulsion to work is a core aspect of the ILO's Convention 29, which defines forced labor as "all work or service which is exacted from any person under the menace of any penalty [Verité emphasis] and for which the said person has not offered himself voluntarily."

The ILO describes "menace of penalty" as criminal sanctions and various forms of coercion such as threats, violence, the retention of identity documents, confinement, or non-payment of wages. The ILO further observes that menace of penalty may take the form of a loss of rights or privileges.²⁰⁶

In the ILO's survey guidance on forced labor, a universe of potential specific menaces of penalty is enumerated.²⁰⁷ As discussed earlier, the ILO assigns weight to its menace of penalty indicators, defining them as "medium" or "strong" in their level of threat to the worker. Where a medium menace of penalty is present, the corresponding indicator of involuntariness must be strong to result in a forced labor determination.

For the purposes of the present study, and based upon existing expertise and results from rapid appraisal work, Verité identified the subset of penalties of relevance for the Malaysian electronics sector, using the ILO's full list as *The Starting point*. During the data review phase, a few indicators for which the data collected was insufficient or unclear were removed.²⁰⁸

In all, Verité researched 15 menace of penalty indicators. Some were reported very infrequently, and others were fairly common in workers' experiences. Given the large group of indicators, Verité grouped them for the purposes of analysis into five broad themes, as follows:

Corporal threats and violence

- Sexual violence
- Physical violence
- Threats against family members
- Other forms of punishment (deprivation of food, water, sleep)

Work-related threats and punishment

- Imposition of worse/further deterioration in working conditions
- Withholding of wages
- Exclusion from future employment or overtime
- Financial penalties
- Extra work for beaching labor discipline

Compound vulnerability

- Denunciation to authorities
- Dismissal

Confiscation or Destruction of Identity Documents

- Confiscation or destruction of identity papers or travel documents

Threats to personal freedom

- Isolation
- Locked in workplace or living quarters
- Constant surveillance

The definitions for each are provided below, in the analysis of individual clusters. For reporting on the incidence of individual menace of penalty indicators, see Appendix 3.²⁰⁹

Findings

As shown in table 6.16, Work-Related Threats and Punishments was the menace of penalty most often recorded by respondents, followed by Confiscation or Destruction of Identity Documents and the Compound Vulnerability of denunciation and dismissal. Corporal Threats and Violence, and Threats to Personal Freedom, were reported in substantially lower numbers.

This pattern of incidence held true also in cross-analysis with major variables: Work-Related Threats and Punishments was the menace of penalty most often reported by both men and women, across all facility sizes and product categories; with Confiscation or Destruction of Identity Documents and Compound Vulnerability reported in lower numbers; and Corporal Threats and Violence and Threats to Personal Freedom, least frequently.

Menaces were reported overwhelmingly by foreign workers: Of the total of 271 cases of menace of penalty detected by this research, only nine were reported by Malaysian workers, with the rest, by foreign workers.²¹⁰ Women were more likely to report Corporal Threats and Violence and Threats to Personal Freedom, while men were slightly more likely to report Confiscation or Destruction of Identity Documents and Work-Related Threats and Punishments.

Table 6.16 Incidence of clusters of indicators of penalty across major demographic variables

	Corporal Threats and Violence	Work-Related Threats and Punishments	Compound Vulnerability	Confiscation or Destruction of ID	Threats to Personal Freedom	Total No. of Respondents
All workers	13 (3%)	87 (17%)	46 (9%)	54 (11%)	14 (3%)	501
Foreign workers	11 (3%)	84 (19%)	45 (10%)	54 (12%)	13 (3%)	438
Gender						
Female	9	42	22	24	12	270
Male	4	45	24	30	2	227
Size of facility						
< 100 workers	0	2	1	2	0	24
100-500 workers	3	22	16	15	3	130
500-2000 workers	4	34	14	23	9	201
> 2000 workers	6	26	13	13	2	131
Top Product Groups*						
Electronic components and boards (includes semi-conductors and cables)	4	41	21	21	6	213
Computers and computer peripherals like monitors, printers, keyboards, scanners	4	15	9	13	2	99
Telephones, modems, routers, or other communications equipment	3	14	12	13	3	68
Consumer electronics like TVs, DVD players, stereos, game controllers	2	21	9	13	2	97
Other products	1	16	7	12	6	116

**The sum of the products reported here is greater than the total number of survey respondents because respondents were able to choose more than one product in the survey.*

In general, Menace of Penalty indicators were detected much less frequently in the survey research than were indicators of Involuntariness. Verité researchers suspect that this is due in part to the more sensitive nature of these subjects, which do not lend themselves well to survey research. Even within the realm of menace of penalty, while work-related punishments such as withholding of wages and financial penalties may be comfortable to discuss with a survey researcher, subjects such as physical or sexual violence, threats against oneself or family members or even denunciation to the authorities, are delicate topics that cut to the heart of a worker's vulnerability. Verité suspects that the actual incidence of these indicators is significantly higher than that detected by the 45-minute survey interaction, and therefore these numbers should be understood as minimum estimates.

Qualitative research is offered alongside the discussion of survey results below to lend a fuller understanding of the menaces experienced by particular workers and to flesh out the context in which these menaces are applied.

Corporal Threats and Violence. The rate of occurrence of indicators of Corporal Threats and Violence in the total respondent pool was low, at 3% (n=13). These indicators represent some of the most sensitive topics raised with workers during the research interaction. While there was scant evidence from survey research of the use of corporal threats and violence as a means to bind a worker to her/his job, the testimonies that workers provided give a clear sense of the power of these menaces in the coercion to work.

Forced Labor Indicator Definitions

Corporal Threats and Violence

Sexual violence

This respondent was threatened with sexual violence or harassment, or had sexual violence or harassment actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Physical violence

This respondent was threatened with physical violence, or had physical violence actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Threats against family members

This respondent was threatened with harm to her family members, or harm to her family members was actually imposed, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Other forms of punishment

This respondent was threatened with the withholding of food, water or sleep, or had food, water or sleep actually withheld, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

The supervisor put my hand in the drill machine. I was hurt, and had to get six stitches in my hand. He [the supervisor] did that because he doesn't want me to sit down to work. He wants me to stand.

-Female Vietnamese worker in Penang

The supervisor pinches the arm of the worker, resulting in bruises.

-Female Indonesian worker in Johor

The agent is not very good. My friend who didn't get paid went and talked to her. Then, my friend was beaten and also dismissed from her job. My friend has gone back home now.

-Female Burmese worker in Klang Valley

The line leader asked the worker to stand in the corner and then beat him up.

-Male Vietnamese worker in Penang

I have seen others beaten up but it has never happened [to me].

-Male Nepalese worker in Malacca

Work-Related Threats and Punishments. At 17% (n=87), Work-Related Threats and Punishments were the most commonly reported of all the Menace of Penalty indicators examined by the study.

Forced Labor Indicator Definitions

Work-Related Threats and Punishments

Imposition of worse/further deterioration in working conditions

This respondent was threatened with the imposition of worse working conditions, or had worse working conditions actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Withholding of wages

This respondent was threatened with withholding of wages, or had wages withheld, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Exclusion from future employment or overtime

This respondent was threatened with exclusion from future employment or overtime, or had future employment or overtime revoked, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Financial penalties

This respondent was threatened with financial penalties, or had financial penalties actually imposed, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Extra work for breaching labor discipline

This respondent was threatened with extra work, or extra work was actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Many workers described being threatened with worse working conditions if they refused, or failed to excel at, their current arrangement. Common threats were to be put on furlough, to be reassigned to a different factory or region, or to be assigned difficult or dangerous work as a punishment.

When I can't finish the quota, I'm made to work more hours as punishment.

-Male Indian worker in Klang Valley

My supervisor told me that if I do not work well and hard, I will be transferred and assigned to other work.

-Male Nepalese worker in Penang

Recently, after pulling me [and some other workers] out of one factory, the agent negotiated a new contract with us. He promised to give us MYR 41.50 (USD 13) per day and there will be no deductions. I agreed to sign the new contract. When the payslip came, I saw that the deductions were still there. I complained to the agent. As a result, I was not given work for 6 days, I did not get my back pay from October 1-14 (at the previous factory), and I was transferred to yet another factory. I don't know what the terms of my employment are now.

-Male Burmese worker in Klang Valley

Workers interviewed for the study described wages being withheld as a means of keeping a worker from changing jobs or, in some cases, as a penalty for making a mistake, complaining, or failing to achieve a quota.

The agent is afraid that we will go back [home], so pay is always late.

-Female Burmese worker in Klang Valley

[Wages are withheld] if I make a mistake during my work.

-Vietnamese worker in Johor

I ran away because I was not paid for 5 months.

-Male Burmese worker in Klang Valley

Workers described being threatened with loss of overtime, or loss of days of work or the continued opportunity to work, if they could not work according to the supervisor's expectations. Workers also described having to work extra hours if they did not achieve their quota.

Many workers are threatened with exclusion from future employment or overtime. Supervisors usually pick on the Indians.

-Male Burmese worker in Seremban, Negeri Sembilan

I can't take leave. Furthermore, if I refuse to work overtime, they said they will cut off my overtime for the following week.

-Female Vietnamese worker in Penang

If you miss one day of work you will be punished with two days of no work.

-Female Nepalese worker in Klang Valley

Regarding financial penalties, workers reported being fined for arriving late to work, for damaging equipment or products, and for failing to achieve production targets.

If I come late, I have to pay.

-Male Nepalese worker in Malacca

The company sets a target. Workers are threatened that if we can't achieve the target, we will be fined.

-Male Vietnamese worker in Seremban, Negeri Sembilan

We can't refuse overtime on Sunday. If we refused to work, they would fine us.

-Male Vietnamese worker in Penang

If something is broken, we have to pay for it.

-Male Nepalese worker in Klang Valley

Compound Vulnerability: Contingent Legal Status, Dismissal, Denunciation.²¹¹

Forced Labor Indicator Definitions

Compound Vulnerability: Contingent Legal Status, Dismissal, Denunciation

Denunciation to authorities

This respondent was threatened with denunciation to the authorities sometimes or regularly, or she was actually denounced to the authorities, in order to make her work or work harder or to prevent her from leaving her job.

Dismissal

This respondent was threatened with dismissal sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job; and/or she was actually dismissed as punishment.

The rate of occurrence of this indicator cluster in the overall respondent pool was 9% (n=46).

Because a worker's legal status in the country depends upon continued sponsorship by her employer (who is in some cases her agent), all foreign workers in Malaysia labor in an environment where a failure to satisfy the work expectations of the employer could result not only in the termination of the work contract, but also in denunciation and deportation. Many workers interviewed by Verité had internalized this arrangement to such a degree that evaluating the threat of denunciation as a discrete, measurable incident did not make logical or intuitive sense. Worker advocates interviewed by Verité for this research observed that foreign workers labor under the constant threat of deportation, and that this threat does not have to be verbalized by an employer in order to compel a worker to accept a particular work arrangement. Therefore, the survey-based measure of the incidence of this indicator should be understood as a minimum estimate of the most egregious cases of this threat.

Workers who described their experiences with being threatened with denunciation and dismissal recounted being threatened after questioning the work arrangement – particularly pay rates – or for making mistakes on the line, or for inability to follow instructions.

The agent brought police to our sleeping quarters and threatened to get us locked up or deported.

-Male Burmese worker in Klang Valley

I am new in this factory. I just arrived here 3 months ago. I heard that the factory deported our Vietnamese friend when he spoke for himself.

-Male Vietnamese worker in Penang

My friend made a mistake in operating the machine. The next day, he was sent back home to India and he had to pay for the ticket himself.

-Male Indian worker in Seremban, Negeri Sembilan

When I make a minor mistake, they say the company doesn't need as big of a workforce, maybe they don't need me anymore.

-Female Vietnamese worker in Penang

My friend talked too much about her work hours, the agent deported her right away.

-Female Vietnamese worker in Penang

Supervisors tell us we will lose our jobs and be sent home when we make mistakes.

-Male Nepalese worker in Penang

When they don't like [our work], they will simply call the agent and return us.

-Male Burmese worker in Klang Valley

When the work is new and too difficult for me, and I can't do it yet, the line leader threatens me that if I can't do it, they will send me home.

-Female Vietnamese worker in Klang Valley

The contract termination is not acceptable. My colleague couldn't tolerate it when the line leader pressured him after the machine broke down. He said something to the engineer. The next day, he was deported.

-Male Vietnamese worker in Penang

You are mad, you are crazy if you don't follow the line leader's instruction. ...If my work performance is not good, I will be terminated or returned to the agent.

-Female Vietnamese worker in Johor

Confiscation or Destruction of Identity Documents.

Forced Labor Indicator Definitions

Confiscation or Destruction of Identity Documents

This respondent's passport is currently held by the facility or broker/agent, and it is either not possible, or difficult, for her to get it back; and she would not get her passport back if she were to leave her employer or job before her contract is finished.

OR

This respondent was threatened with the destruction of her identity documents sometimes or regularly, or her identity documents were actually destroyed, in order to make her work or work harder or to prevent her from leaving her job.

*"Any person who ...without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself ... shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both."*²¹²

-Government of Malaysia. 1966. *Section 12(f): Malaysia: Act No. 150 of 1966, Passports Act.* Available at: <http://www.refworld.org/docid/3ae6b5204.html>

*"...the retention of identity documents or other valuable personal possessions can be considered an indication of forced labour if workers are unable to access these documents at their discretion and if they feel they cannot leave employment without risking the loss of the documents."*²¹³

- ILO. *Combating forced labour: A handbook for employers & business. 2: Employers' Frequently Asked Questions* (International Labour Office: Geneva, 2008), p. 19.

Verité looked to Malaysian law and international standards in crafting a definition for the Confiscation or Destruction of Identity Documents indicator. Malaysian law prohibits the practice of passport retention.²¹⁴ The ILO does not offer a definition for "Confiscation of Identity

Documents” in its survey guidance, but does offer criteria toward a definition in its handbook for employers on forced labor.²¹⁵ The ILO’s formulation requires not only the concept of document retention, but also the sense on the part of the worker that to leave employment would risk the loss of the document. The International Convention on the Protection of the Rights of All Migrant Workers and Members prohibits the destruction and confiscation of identity documents by anyone except duly authorized public authorities.²¹⁶

Verité’s Confiscation or Destruction of Identity Documents indicator was formulated to capture two different scenarios. In the first, a worker’s passport is held by the employer or agent, it is either difficult or impossible to retrieve it, and the worker would not get the passport back if s/he were to pre-terminate her contract. In the second scenario, the employer or agent uses the threat of document destruction to compel the worker to work, work harder, or to prevent her from leaving her job.²¹⁷ These formulations of the Confiscation or Destruction of Identity Documents indicator were crafted conservatively, going beyond the letter of Malaysian law to reflect not only the concept of document retention, but also the sense on the part of the worker that to leave employment would risk the loss of the document. The implications of a broader definition of passport retention, adhering more closely to the letter of Malaysian law, on the aggregate forced labor findings is discussed below in Section 6.4.2: Beyond a Minimum Estimate.

Confiscation or Destruction of Identity Documents as a menace of penalty was reported by 11% (n=54) of survey respondents.

The incidence of the Confiscation or Destruction of Identity Documents cluster must be understood in the context of nearly ubiquitous retention of workers’ passports and little or no ability on the part of workers to get their passports back when they want or need them. As cited earlier in this report, 94% (n=405) of foreign workers in the sample reported that their passports were held by the facility or their broker/agent, and 71% (n=288) of foreign workers answered either “No” or “Yes, but difficult” to the question “Can you get your passport back when you need it?” These are two of the three components of this indicator definition. The third component is that the worker would not get her passport back if she pre-terminated her contract, which only 12% (n=52) of foreign workers reported. But, as mentioned earlier in the discussion of No Freedom to Resign in Accordance with Legal Requirements, when researchers broached the subject of contract pre-termination with workers, respondents were often visibly puzzled by the implication in the survey instrument that there could be any possibility of leaving before the contract was up without simply absconding and becoming undocumented. Therefore, Verité cautions that the survey findings for this indicator are likely understated by a significant degree.

According to interviews with workers and worker advocates, passports are generally taken from workers upon arrival at the airport and are not returned until the end of the two- or three-year

contract. The holding of passports by employers is indeed commonly understood to be the norm by all stakeholder groups, although private sector and government officials interviewed for this research emphasized the “other side” of this practice, which they describe as being helpful to the workers whose passports could easily be lost, stolen, or damaged if the worker kept her own passport (the provision of private, secure lockers controlled only by the worker herself is a good solution to this dilemma, but it is still not a common practice).

Many workers reiterated that it is complicated or difficult to access their documents if they wish to. Some workers reported having to fill out a request form and obtain the signature of a manager. Other workers reported having to put up money as collateral – sometimes as much as the amount of levy still owed on their contract. With the full cost of the levy at MYR 1250 (USD 387), this collateral can represent a large sum and therefore serious impediment to a worker being able to access her passport. Remarkably, some workers reported not even knowing who held their passport – the factory or the agent, much less how to access it.

Our agent is very bad. He refuses to give us our passports even for emergencies like hospitalization.

-Female Burmese worker in Klang Valley

I really want to have my passport with me but HR does not release it. I need to give a MYR 500-1,000 (USD 155-309) deposit if I want to borrow it. I would be more free to move around if I had my passport with me.

-Male Nepalese worker in Penang

My passport was held by my agency at my previous job. Workers - even those in our rank, engineers and technicians - had to pay a deposit if we wanted to retrieve our passports. We reported this to the embassy, and eventually we got the passports back. When we got our passports back, the agency said that because of the complaint we filed we will be blacklisted, no agency will want to take us.

-Male Filipino worker from Penang

The passport will only be given [to the worker] in a life-or-death situation.

-Male Burmese worker in Klang Valley

My passport is with the agent and don't know where it is genuinely working on a visa extension or not.

-Male Burmese worker from Klang Valley

I really wish to get back my passport or get registered for 6P. There have been a few times that the police came and checked the factory and we had to hide in the jungle behind the factory for long hours.

-[undocumented] Male Burmese worker in Seremban, Negeri Sembilan

We are the same in Malaysia: either legal or illegal migrants. We can't go anywhere freely and also we have never seen our passports since we arrived, just like those who are here with no documents.

-Male Burmese worker in Klang Valley

The agent has complete power by keeping my passport.

-Female Vietnamese worker in Penang

Earlier Verité research on the issue of passport confiscation found that workers are often reluctant to attempt to access their passports, because this can precipitate uncomfortable questions from factory management and attract unwanted attention and scrutiny. This research also found that workers are rarely provided with a secure place to store passports and other valuables in their living quarters. Therefore, while workers often wish for easier access to their documents, they often also comment that the documents are probably safer when kept with the employer or agent.

Threats to Personal Freedom.

Forced Labor Indicator Definitions

Threat to Personal Freedom

Isolation

This respondent was threatened with isolation, or had isolation actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.

Locked in work or living quarters

This respondent has been locked in or out of her housing as punishment, or has been threatened with being locked in or out of her housing as punishment.

OR

This respondent has been locked in her job site as punishment, or has been threatened with being locked in her job site as punishment.

Under constant surveillance

Surveillance is used as a way to control this respondent, as punishment; or has been threatened as a way of controlling her.

At only 3% (n=14), though the rate of occurrence of indicators of Threats to Personal Freedom was generally low, testimonies of these experiences were unequivocal. Workers described being locked up for making mistakes or questioning the work arrangement, and being surveilled as a mechanism of control and discipline.

I will be locked up for 3 months or they will deduct money from my salary if I make mistake in reporting my work hours.

-Female Vietnamese worker in Johor

We cannot speak up. We'll be punished by being locked-up, interrogated.

-Male Nepalese worker in Klang Valley

The guard supervises us closely. We can't go out. If we don't listen to him, he will beat us.

-Female Vietnamese worker in Penang

I have witnessed this [being locked in your housing] happen to someone else—A few people have been locked up and questioned for speaking up for better work.

-Male Nepalese worker in Klang Valley

6.4 Findings of Forced Labor

As discussed above, the ILO has operationalized the definition of forced labor from Convention 29 for the purposes of survey research in terms of three dimensions of involuntariness: 1) Unfree Recruitment, 2) Work and Life under Duress, and 3) Impossibility of Leaving Employer, each of which is associated with one or more enforcing penalties or menaced penalties. Specific indicators are identified within each dimension, and also for their associated penalties; each indicator is assigned a medium or strong designation. For a determination of forced labor in the circumstance of a given worker to be positive, at least one indicator of involuntariness and one indicator of menace of penalty must be present within the same dimension, and at least one of the indicators must be strong. Appendix 5 explains this process in more depth.

For each of the 501 workers surveyed in this research, Verité evaluated whether each of the ILO forced labor indicators identified for this study was present in his or her experience while working in the Malaysian electronics sector in the past year. The results of this indicator analysis were then used to determine whether each worker was in a situation of forced labor, in keeping with the ILO requirements that both an indicator of involuntariness and an associated menace of penalty be present, and that at least one indicator be strong. Appendix 5 explains this process in more depth.

Throughout the process of applying the ILO indicator framework to the data, Verité erred consistently on the side of caution, choosing to define indicator formulas narrowly to ensure that positive findings were always based on solid, unambiguous evidence – even when this meant leaving additional evidence aside that might also have contributed to a forced labor determination. For this and other reasons discussed throughout the report, the positive findings of forced labor reported below are very likely lower than the actual rates of forced labor in the Malaysian electronics industry and should be viewed as a minimum estimate. Results are presented below.

6.4.1 Minimum Estimate of Forced Labor in the Sample

The overall percentage of workers in the study sample found to be in forced labor was 28% (n=139). When Malaysian nationals are excluded from the study sample, the rate of forced labor rose to 32% (n=138). Only one of the 139 workers found to be in forced labor was a Malaysian citizen, a result that suggests that forced labor in the Malaysian electronics industry is almost exclusively a problem of foreign workers.

The great majority of respondents in forced labor exceeded the minimum threshold of one indicator of involuntariness and one menace of penalty: As demonstrated by Table 6.17 below, 81% (113/139) of respondents in forced labor exhibited three or more indicators of forced labor. This adds an additional layer of robustness to the study's findings.

The rate of forced labor was higher (48%, n=35) among currently indebted workers than it was

Table 6.17 Number of forced labor indicators exhibited by forced labor victims

Number of Indicators	Respondents in Forced Labor
0 Indicators	0
1 Indicator	0
2 Indicators	26
3 Indicators	39
4 Indicators	28
5 Indicators	11
6 or more Indicators	35
Total	139

Table 6.18 Average recruitment fees for respondents with positive and negative forced labor determinations

Forced Labor Determination	Average Recruitment Fee (MYR)
Respondents <i>not</i> in forced labor	MYR 2,646 (USD 818)
Respondent <i>in</i> forced labor	MYR 3,018 (USD 933)

in the general respondent pool, which lends credence to the notion that debt increases vulnerability to forced labor. The charging of recruitment fees generally precipitates job-related indebtedness, and the average recruitment fee was higher for respondents in forced labor than for those not in forced labor. Thus, it can be concluded that workers in this study who were charged higher recruitment fees were more likely to borrow, and, in turn, were more vulnerable to forced labor.

Forced labor rates ranged between 21% and 40% for foreign workers from the four major migrant-sending countries for which significant numbers of interviews were obtained (Burma, Indonesia, Nepal, and Vietnam). Rates were lowest for Indonesians (21%, n=23) and highest for Vietnamese (40%, n=36). The rate of forced labor by country of origin correlates very closely with the cost of the job for the foreign worker in the study: As shown in Figure 6.1, reported recruitment fees were also lowest for Indonesians and highest for Vietnamese. This offers further evidence that high recruitment fees are a major risk factor for forced labor vulnerability.

Men in the sample were somewhat more likely to be in forced labor than women. Forced labor was found among workers of all age groups represented in the sample, with higher levels among workers over the age of 24.

Workers whose wages were paid by an employment agent had higher levels of forced labor (34%, n=63) than those who were

directly employed by a facility (25%, n=76), a finding that suggests that workers employed by their agent could be more vulnerable to forced labor than those employed directly.

Forced labor was found at significant levels in all major electronics-producing regions of the country. Size of facility made little difference in the level of forced labor found to be present, for the sizes of facilities adequately represented in the sample. Forced labor was found in significant levels among workers manufacturing all of the four categories of electronics products that comprise the majority of the industry in Malaysia.²¹⁸

Table 6.19 Incidence of forced labor across major demographic variables

Forced Labor	Incidence of Forced Labor (%)	Incidence of Forced Labor (No.)	Total No. of Respondents
All workers	28%	139	501
Foreign workers	32%	138	438
Gender			
Female	26%	69	270
Male	31%	70	227
Country of Origin			
Bangladesh	28%	10	36
Burma	28%	27	95
India	100%	2	2
Indonesia	21%	23	108
Malaysia	2%	1	63
Nepal	34%	34	99
Philippines	67%	6	9
Vietnam	40%	36	89
Region in Malaysia			
Johor	23%	31	136
Klang Valley	31%	49	159
Penang	29%	40	140
Seremban, Negeri Sembilan	38%	15	40
Ipoh, Perak	0%	0	8
Kedah	25%	1	4
Malacca	21%	3	14

6. Research Findings

Age			
18-24	23%	44	190
25-29	31%	66	213
30-34	30%	24	80
35-39	36%	5	14
40-45	0%	0	2
Size of Facility			
< 100 workers	13%	3	24
100-500 workers	28%	36	130
500-2000 workers	27%	54	201
> 2000 workers	31%	41	131
Who pays wages			
Employment agent	34%	63	185
Facility	25%	76	309
Other	0%	0	3
Top Product Groups*			
Electronic components and boards (includes semiconductors and cables)	24%	51	213
Computers and computer peripherals like monitors, printers, keyboards, scanners	30%	30	99
Telephones, modems, routers, or other communications equipment	47%	32	68
Consumer electronics like TVs, DVD players, stereos, game controllers	33%	32	97
Other products	23%	27	116

**The sum of the products reported here is greater than the total number of survey respondents because respondents were able to choose more than one product in the survey.*

These results suggest that forced labor is present in the Malaysian electronics industry in more than isolated incidents, and indeed can be characterized as widespread. Forced labor was found across all major producing regions, electronics products, foreign worker nationalities, and among female and male workers. Nearly one in three foreign workers in Malaysia interviewed for the study reported conditions that amounted to forced labor.

Table 6.20 summarizes the incidence of each indicator of forced labor examined by the study. As discussed earlier in this report, No Freedom to Resign in Accordance with Legal Requirements was the forced labor indicator with the highest rate of occurrence in the study population, at 50% (n=248). Limited Freedom of Movement and Communication was the next highest, at 41% (n=206). Degrading Living Conditions, Deceptive Recruitment, and Work-Related Threats and Punishments were also among the indicators with the highest rate of occurrence for the study. These are the top contributors to the forced labor determination and thus provide a sense of where to target efforts to combat the problem.

Table 6.20 Incidence of indicators of forced labor among all respondents

Indicators of Forced Labor	Incidence of Indicator (%)	Incidence of Indicator (No.)
<i>Indicators of Involuntariness</i>		
<u>Unfree Recruitment</u>		
Deception about the nature of the work	4%	20
Deceptive recruitment	18%	91
<u>Work and Life Under Duress</u>		
Forced overtime	3%	16
Limited freedom of movement and communication	41%	206
Degrading living conditions	21%	107
<u>Impossibility of Leaving Employer</u>		
No freedom to resign in accordance with legal requirements	50%	248
Forced to work for indeterminate period in order to repay <u>outstanding</u> debt or wage advance	9%	46
<i>Indicators of Menace of Penalty</i>		
Corporal threats and violence	3%	13
Work-related threats and punishments	17%	87
Compound vulnerability	9%	46
Confiscation or destruction of identity documents	11%	54
Threats to personal freedom	3%	14

6.4.2 Beyond the Minimum Estimate: Patterns of Vulnerability and Alternative Measures of Forced Labor

Toward the Measurement of a Forced Labor Threshold. The great majority of respondents who were found to be in forced labor exceeded the minimum threshold of one indicator of involuntariness and one menace of penalty: 81% of respondents exhibited three or more indicators of forced labor. As the number of forced labor indicators held by a respondent went up, so did the likelihood that the respondent was in forced labor.

Table 6.21 Number of forced labor indicators exhibited by all study respondents

Number of indicators	Respondents <i>not</i> in forced labor	Respondents <i>in</i> forced labor	Total no. of respondents with this no. of indicators	Percentage of respondents in forced labor with this no. of indicators
0 Indicators	133	0	133	0%
1 Indicator	111	0	111	0%
2 Indicators	69	26	95	27%
3 Indicators	34	39	73	53%
4 Indicators	14	28	42	67%
5 Indicators	1	11	12	92%
6 or more Indicators	0	35	35	100%
Total	362	139	501	28%

In addition to a minimum estimate of forced labor in the Malaysian electronics sector, it is also useful to consider the number of workers on the threshold of forced labor. One way to approach this is to look at respondents who held at least one indicator of forced labor in the involuntariness category but no corresponding menace of penalty indicator, and, likewise, respondents who held at least one indicator of menace of penalty but no corresponding indicator of involuntariness. These respondents exhibited forced labor characteristics but did not have the full complement of indicators necessary for a forced labor determination. Respondents with one or two indicators could be characterized as vulnerable to, or on the threshold of forced labor; respondents with three or more, highly vulnerable.

As shown in Table 6.21, 46% (n=229) of respondents in the study exhibited a negative forced labor determination and at least one indicator of forced labor. Of these, 49 respondents, or

10% of the total respondent pool, had three or more indicators of forced labor, rendering them highly at risk.

In all, 73% of workers in the study possessed at least one indicator of forced labor, and therefore exhibited some indication of forced labor vulnerability.

An Alternative Measure of Forced Labor Incidence. As discussed throughout this report, Verité adopted a conservative approach to measuring forced labor incidence, and therefore the 28% finding should be viewed as a minimum estimate. Verité highlights here for further consideration one of the most critical ways in which the estimate may be understated, which relates to the issue of passport retention, and the effect that a broader definition of the “Confiscation of Identity Documents” indicator would have on the forced labor finding.

Retention of the passports of foreign workers by their employer or agent is a nearly ubiquitous practice in the Malaysian electronics industry. The fact that foreign workers do not hold their passports restricts them in many ways. As discussed above, workers do not feel free to move around safely in Malaysian society. They do not feel free to leave their jobs before their contracts are up. They also feel obligated to accept an employer’s work demands because their passports hang in the balance: to go against an employer’s wishes could result in loss of passport and legal status. As one Burmese man from Klang Valley observed, “The agent arranges everything for us. What can we do, since our passports are with them? We just have to accept whatever the agent gives [us].” Or, as a Vietnamese woman from Penang shared, “The agent has complete power by keeping my passport.”

In defining the Confiscation of Identity Documents indicator, Verité referred both to Malaysian law and international standards. Malaysian law clearly prohibits the practice of retaining a passport “issued for the use of some person other than himself”.²¹⁹ The ILO refers not only the lack of ability to access one’s passport, but also to the sense on the part of the worker that to leave employment would risk the loss of the document.²²⁰

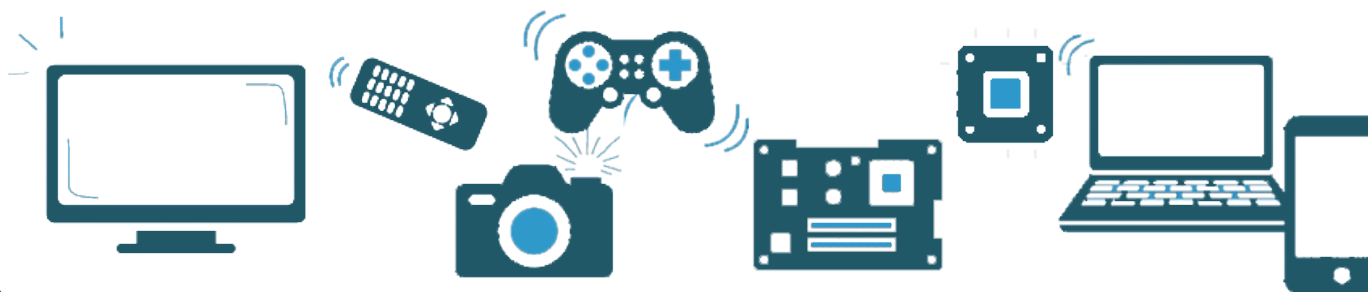
Verité’s indicator encompassed the concepts reflected in Malaysian law and ILO guidance, including the ILO requirement that the respondent would not get her passport back were she to leave her job.²²¹ But this is not a necessary precondition under Malaysian law and indeed may be too restrictive a definition of the indicator, given that the mere retention of the passport has a clear effect on a worker’s ability to refuse the employment arrangement.

When the Confiscation or Destruction of Identity Documents indicator is adjusted to encompass only the Malaysian legal requirement – that the passport is held by someone other than the passport holder – as well as the concept that it is difficult or impossible for the passport holder to access the passport, the aggregate forced labor finding rises significantly: 58% (n=291) of all

respondents, or 66% (n= 290) of all foreign workers, are found to be in forced labor.

Verité suggests that more discussion and guidance concerning how to measure passport retention in the context of a forced labor determination, by governments, the ILO and forced labor researchers, would be helpful for informing future studies.

7. DISCUSSION AND CONCLUSION



7. DISCUSSION AND CONCLUSION

Prior to the current study by Verité, the presence of forced labor in the Malaysian electronics sector had already been reported by several other international labor and human rights organizations, with earlier studies highlighting many of the same issues found here to be significant problems in the industry. Reports published by Amnesty International,²²² SOMO,²²³ WEED,²²⁴ and the National Human Rights Commission in Nepal²²⁵ all identified numerous problematic issues confronting foreign workers in Malaysia, with the reports by WEED and SOMO focusing explicitly on the electronics sector. For the most part these studies found similar conditions on the ground in Malaysia, and nearly all describe instances of foreign workers experiencing excessively high fees, debt bondage, deceptive recruitment, passport retention, multiple dependency on their employer, and abuse both within factories and in Malaysian society more generally.

Verité's core research findings broadly corroborate the troubling patterns identified in these prior studies, and deepen and extend knowledge of them in important ways. Previous major studies on foreign worker experiences in Malaysia have been primarily qualitative in nature, relying methodologically on in-depth or semi-structured interviews with workers and expert informants, and on case studies highlighting problematic practices. The current study has employed quantitative methods and a sampling strategy designed to address the question of pervasiveness of forced labor indicators and forced labor itself within the electronics industry of Malaysia. The use of the ILO's 2012 survey guidance on estimating forced labor has lent an added level of precision to the identification of individual cases of forced labor and the evaluation of the pervasiveness of the problem.

The present study has also set the stage for several new directions for research.

At a methodological level, one issue that emerged from Verité's experience was the difficulty of gaining adequate sampling access to newly-arrived migrant workers during the first year of their employment, when their level of job-related debt is likely to be the highest, and their support systems to be the least developed. Such workers are not only likely to be more wary of being interviewed due to their heightened vulnerability, but also to be less well socially-connected, and therefore less likely to be netted through sampling practices that rely on social networks, such as snowball sampling. A study that developed a sampling strategy designed to target this newly-arrived population would provide an important supplement to the current research.

A second set of methodological issues emerging from the current study has to do with the challenges involved in collecting accurate information about deception in recruitment and

menace of penalty using survey-based research. Collection of accurate data about deceptive recruitment proved difficult in the present research, given that many workers interviewed had difficulty recalling with precision the various promises they had been made about their jobs prior to their departure for Malaysia, due to distance in time, or lack of clarity or focus on the terms of their employment at the time of their migration. In the case of menace of penalty, the sensitive nature of questions about the subject often made it difficult to elicit forthcoming responses from workers within the constraints of a brief survey encounter, and Verité suspects that data on menace of penalty may have been underreported in the present study in consequence. Efforts to improve the tools and techniques for exploring both recruitment deception and menace of penalty would benefit future quantitative studies of this kind.

The limitations of survey-based research on deceptive recruitment also point to the more general need for further research on recruitment processes in migrant-sending countries. Studies that document the contractual negotiations between workers and recruiters at the point of migration would provide a useful counterpoint against which to triangulate survey data based on workers' later recollections in the receiving country during the course of their employment. In addition, sending-country research would provide insight into the layers of sub-brokerage that extend to the village level which identify and deliver workers to their eventual points of departure, and would allow for collection of far greater detail on the structure of fees and other recruitment practices than has been possible in a receiving-country-focused study such as this one. Such research might also shed light on any additional costs being passed along to workers illegally, for example the cost of a sending-country agent gaining access to a job placement on the receiving-country side in a "pay to play" scheme.

In terms of the contributions of the current study to the understanding of working conditions in the Malaysian electronics sector: This research found forced labor to be present in more than isolated incidents in all major producing regions of the country, in all major categories of electronics products made, and among all key subpopulations of foreign workers employed in the sector; thus indeed it can be fairly characterized as widespread. Forced labor was not found to be present among Malaysian nationals working in the industry; however, a point that confirms the observation of earlier studies that forced labor in the sector is strongly associated with the plight of foreign workers.

This study documented quantitative evidence of pervasive excessive fee charging and a strong link between this fee-charging and worker indebtedness. Indebtedness, in turn, was correlated with a higher likelihood of forced labor conditions. The current study similarly marshals conclusive evidence of ubiquitous passport retention, which is a strong contributing factor to highly constrained freedom of movement and communication and inability to leave before the end of one's work contract.

Many workers are now employed directly by labor suppliers or employment agents while

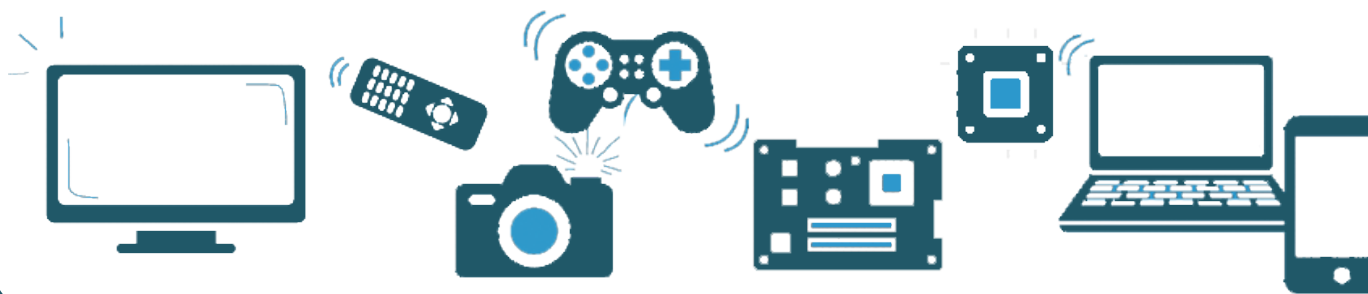
working in Malaysia, and this study found that workers employed by these third-party agents were more vulnerable to forced labor conditions than directly hired workers.

The analysis carried out by Verité of the component indicators of forced labor among the workers interviewed points to myriad connections between the core elements of forced labor in the Malaysian electronics industry and systemic, structural factors shaping the lives of foreign workers in the country. Some of the most significant connections identified include:

- The inability of many foreign electronics workers to resign their contracts when they wish can be traced in part to a requirement imposed by their employers that they must repay any outstanding balance of the government-imposed foreign workers' levy prior to resigning;
- The multiple dependency of many foreign electronics workers on their employment agents stems from Malaysian outsourcing policy;
- The restricted freedom of movement experienced by many foreign electronics workers as a result of the widespread practice of passport retention in conjunction with surveillance of foreign workers by RELA and other authorities; and
- The compound vulnerability to dismissal, denunciation to the authorities, and deportation created by Malaysian visa and work permit policies tying the legal status of foreign workers to their employers.

While recommendations are beyond the scope and mandate of this report, efforts to address the underlying causes of forced labor in the Malaysian electronics industry will clearly need to engage these widespread problems. Verité hopes that the findings herein will provide a platform of understanding from which concrete actions can be taken by government, business, and civil society stakeholders alike to combat the abuses suffered by foreign workers in the manufacture of Malaysian electronics.

8. APPENDICES



APPENDIX 1: SURVEY FORM

Section 1. Context of the Interview (to be completed by the research team)

1. Respondent ID number _____
2. Name(s) of interviewer (s) _____
3. Date of interview _____
4. Region/town/city in Malaysia where interview was conducted _____
5. Is there sufficient privacy and freedom from intimidation at the interview site?
Yes No

Section 2. Qualifying Question (to be completed by the research team)

6. Does this worker currently work in the Malaysian electronics industry, doing work such as assembling computers or computer parts, or doing other kinds of work in factories that make electronics goods?
Yes No

Section 3. Informed Consent

(RESEARCHERS: Present the study, goals, what to expect in the interview, risks, benefits, safeguards on confidentiality, assure of freedom to refuse or withdraw at any time)

7. Are you willing to participate in this study?
Yes No

Section 4. Personal Information

8. What country are you from?
 Malaysia Burma Philippines
 Indonesia Cambodia Thailand
 Vietnam India Other
 Nepal Bangladesh
9. Sex: Female Male

10. Age:

< 18 18-24 25-29 30-34 35-39 40-45 > 45

11. Married? Yes No

12. Aside from your own language, can you speak or understand:

English Malay or Bahasa Malaysia
 Little/Some English Little/Some Malay or Bahasa Malaysia
 Other _____

Section 5. Work Information

13. Where do you currently work? (name and location of facility)

14. How large is the facility?

< 100 workers 100-500 workers 500-2000 workers >2000 workers

15. What kind of work do you do?

Parts fabrication (molding, stamping, welding, cutting)
 Parts surface treatment (painting, powder coating, metal plating)
 Kitting
 Assembly
 Quality Control/Quality Assurance
 Reworks and troubleshooting
 Recycling and waste management
 Packing and labeling
 Loading
 Cleaning related to production (not janitorial)
 Other _____

16. What kind of product do you help make in this facility? (check all that apply)

Electronic components and boards (includes semiconductors and cables)
 Finished computers
 Computer peripherals like monitors, printers, keyboards, scanners
 Telephones, modems, routers, or other communications equipment
 Consumer electronics like TVs, DVD players, stereos, game controllers
 Measuring, testing, navigating and control equipment (includes GPS devices)
 Watches and clocks
 Electromedical equipment like X-ray machines and CT or PET scanners
 Optical instruments and photographic equipment
 Magnetic and optical media (tapes, CDs, hard disks)
 Not sure

17. What brand names have you seen on the products your facility produces (list all you can remember)?

Not sure

To be answered by the researcher if possible:

18. Is the facility located inside a Free Industrial Zone (FIZ, also known as EPZ, FTZ)?

Yes No Unable to determine

19. Can you identify where this facility fits into the supply chain?

Top tier (Malaysian-owned) Second or third tier facility

Top tier (International brand-owned) Unable to determine

Section 6. Employment Arrangement

20. How many years have you been in Malaysia?

From Malaysia < 1 1 2 3 4 5 6 > 6

21. Are you now working in the same facility you started in when you first began work in the Malaysian electronics industry? **(if yes, skip to Question 22)**

Yes No

If no,

21a. How long have you worked at your current facility?

Less than 6 months

6-12 months

1-2 years

More than 2 years

21b. Where did you work in your last job? (name and location of facility)

22. When you got your first electronics job in Malaysia, who was your employer?

Factory Original employment agent New employment agent

Other _____

23. Who currently pays your wages?

Factory Employment agent Other _____

24. If you are paid by an employment agent, do you know this person's name and contact information?

Yes No Not applicable

25. Are you dependent on your current employer for housing and/or food?

8. Appendices

Yes No

26. How many facilities have you worked at in total in the last two years? **(if 1, skip to Question 28)**

1 2 3 4 5 6 >6

27. How many of these have been electronics facilities?

All Most Half Some None

Section 7. Recruitment Process

28. How did you get your first job in the Malaysian electronics industry? (check all that apply)

- Recruited by a sub-agent in my hometown or home country
 Recruited by an employment agent in my home country
 Recruited directly by the factory while still in my home country
 Recruited in my home country for a job in another sector, but once in Malaysia, assigned to electronics work by my employment agent
 Recruited in Malaysia by an employment agent
 Hired in Malaysia directly by the factory
 Other _____

29. Before starting your first job in the Malaysian electronics industry, did you sign a contract or make a verbal employment agreement with a recruitment agent? **(if no, skip to Question 30)**

Yes No

If yes,

29a. Was it written or explained to you in a language you understand?

Yes No

29b. Were you made to sign or agree to a different contract upon your arrival in Malaysia?

Yes No

Can you tell me about the level of information you had at the time of your recruitment about each of the following topics?

	Not discussed with recruiter or employer	Promised/ agreed verbally	Written in contract	Don't recall	Not relevant
30. Job duties					
31. Degree of difficulty/danger of the work					
32a. Employer- agent or facility					
32b. Name of electronics company					
33. Wages					
34. Hours					

8. Appendices

35. Overtime requirements and pay					
36. Location					
37. Quality of housing and food					
38. Who provides food and housing					
39. Shuttle bus/ Transportation					
40. Termination of employment					

How did the job you found on arrival compare with the information you had received beforehand?

	Much worse	Worse	As promised or agreed	Different but okay	Somewhat better	Much better	Don't recall
41. Job duties							
42. Degree of difficulty/danger of the work							
43a. Employer-agent or facility							
43b. Name of electronics company							
44. Wages							
45. Hours							
46. Overtime requirements and pay							
47. Location							
48. Quality of housing							
49. Who provides housing or food							
50. Shuttle bus/ Transportation							
51. Termination of employment							

52a. Once you arrived at the job, did you have the option of insisting on a different job/employment arrangement?

Yes No

52b. Once you arrived at the job, did you have the option of refusing your job/employment arrangement and returning to your home country with your job procurement costs refunded?

Yes No

53. Any additional comments or things you want to tell us about your recruitment experience?

Section 8. Fees and Debt

8.A. Fees

54. Did you have to pay any recruitment/placement fees to get your first electronics industry job in Malaysia? ***(if no, skip to Question 55)***

Yes No

If yes,

54a. What was the total amount that you have to pay (including to any and all sub-agents, employment agents, and others)?

- | | | |
|--|--|--|
| <input type="checkbox"/> Malaysian ringgit | <input type="checkbox"/> Nepalese rupee | <input type="checkbox"/> Philippine peso |
| <input type="checkbox"/> Indonesian rupiah | <input type="checkbox"/> Indian rupee | <input type="checkbox"/> Cambodian riel |
| <input type="checkbox"/> Burmese kyat | <input type="checkbox"/> Thai baht | <input type="checkbox"/> Other |
| <input type="checkbox"/> Bangladeshi taka | <input type="checkbox"/> Vietnamese dong | |

54b. Paid to whom? (check all that apply)

- Sub-agent in home town or region
- Recruitment agent based in home country
- Employment agent based in Malaysia
- Factory official
- Government official in home country
- Government official in Malaysia
- Other _____

54c. What expenses did the fees cover? (check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Labor broker fee | <input type="checkbox"/> Runaway insurance |
| <input type="checkbox"/> Airfare to Malaysia only | <input type="checkbox"/> Orientation fee |
| <input type="checkbox"/> Round trip airfare | <input type="checkbox"/> Accommodations en-route |
| <input type="checkbox"/> Ground transportation | <input type="checkbox"/> Bribes to get job |
| <input type="checkbox"/> Passport preparation | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Visa fee | <input type="checkbox"/> Not sure |
| <input type="checkbox"/> Medical check-up fee | |

8.B. Loan

55. Did you have to borrow money in order to pay the fees necessary to get your first job in Malaysia?

(if no, skip to Question 56)

Yes No

If yes,

55a. How much?

- | | | |
|--|--|--|
| <input type="checkbox"/> Malaysian ringgit | <input type="checkbox"/> Nepalese rupee | <input type="checkbox"/> Philippine peso |
| <input type="checkbox"/> Indonesian rupiah | <input type="checkbox"/> Indian rupee | <input type="checkbox"/> Cambodian riel |
| <input type="checkbox"/> Burmese kyat | <input type="checkbox"/> Thai baht | <input type="checkbox"/> Other |
| <input type="checkbox"/> Bangladeshi taka | <input type="checkbox"/> Vietnamese dong | |

55b. From whom did you borrow?

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> Employment agent | <input type="checkbox"/> Family |
| <input type="checkbox"/> Credit agent | <input type="checkbox"/> Friends |
| <input type="checkbox"/> Factory owner | <input type="checkbox"/> Other _____ |

56. Did you have to provide collateral or some form of guarantee to your creditor to get your loan?

Yes No

8.C. Debt Burden

57. Have you paid off your job-related debt already?

Yes No

58. How long did it take you (or do you think it will take you) to be able to pay off all your job-related debt?

1-3 months 4-12 months 1-2 years Longer than 2 years

59. Do you know how much you have paid so far and how much you still owe?

Yes No

60. Do you feel that you cannot leave your current job because of job-related debt?

Yes No Not applicable

61. If you were to leave before paying off your debt, what would happen? **Researchers please ask this question even if the debt is already paid off.** (check all that apply)

- I would be arrested
- I would be in personal danger
- I would be deported
- My work permit would be revoked
- My family would be in danger of losing assets
- My family would be in personal danger
- Other _____

8.D. Levy Burden

62. Are you being charged for the migrant workers' levy? **(if no or not applicable, skip to Question 63)**

- Yes No Not applicable (not a migrant) Don't Know

62a. Do you feel you cannot leave your job until the levy is paid off?

- Yes No

62b. If you want to pay off your levy in order to pre-terminate your contract, is that allowed?

- Not allowed Almost impossible
 Easy to do Not sure
 Difficult to do

64. Any additional comments about your fees or debt burden?:

Section 9. Work Permit

65. Do you have a work permit to work in Malaysia?

- Yes No

If no,

65a. Is your employer helping you to apply for a work permit?

- Yes No My employer doesn't know

66. Does your work permit tie you to a particular employer?

- Yes No Don't know

To be answered by researcher if possible:

67. Can you identify this worker's documentation status?

- Unable to determine
 Came in with valid work permit, currently in status
 Came in with valid work permit, currently out of status (overstayed visa, ran away, etc)
 Came in without documents, currently out of status
 Previously out of status, but now documented as a result of 6P program
 Other scenario _____

68. Additional comments:

Section 10. Passport Retention

10.A. Passport Custody

69. Who has your passport right now? ***(if with the worker, skip to Question 70)***

- With the worker
- Facility
- Broker/agent
- Left behind when ran away from previous job
- Lost or stolen
- Not sure

69a. Comments?

If your passport is not with you,

69b. Can you get your passport back when you need it?

- Yes Yes, but difficult No

69c. When do you expect to get it back?

- When period of contract has ended or job is finished
- Don't expect to get it back
- Upon request
- Not sure

70. Can you move around freely and safely if you don't have your passport or travel document with you?

- Yes No

70a. Do you have anything else you'd like to tell us about this?

8. Appendices

71-73. In your current job within the last year, has anyone threatened or punished you in any of the following ways to make you work or work harder or to prevent you from leaving your job?

	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
71. Denunciation to the authorities								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
72. Revocation of work permit								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
73. Destruction of identity documents								
Please describe:								

10.B. Scrutiny

74. In the last year, have you been asked by A, B, or C to show your passport or similar document?

(if no, skip to Question 75)

Yes No

If yes,

74a. By whom? (check all that apply)

8. Appendices

A B C Other _____

75. Have you been threatened with any of the following by A, B, or C during the last year?

- Detention General intimidation
 Deportation Other _____
 Physical harm Not applicable

76. During the last year, have you had to pay or give anything to A, B, or C to avoid being detained or harmed in some other way?

- Yes No

77. During the last year, have you been detained or brought to lock-up because you cannot show your passport or travel document? ***(if no, skip to Question 78)***

- Yes No

If yes,

77a. How many times have you been detained or brought to lock-up in the last year?

- Once
 More than once

78. Does fear of trouble with A, B, C, or local gangs/thugs prevent you from moving freely in Malaysian society?

- Yes No

79. Does fear of trouble with A, B, or C prevent you from leaving your job if you want to?

- Yes No

80. Does fear of trouble with A, B, or C prevent from advocating for better working or living conditions for yourself?

- Yes No

80a. Do you have any other additional comments about this issue?:

Section 11. Labor Conditions

(Researchers please remind workers that their answers should only be about conditions in their current job within the last year.)

11.A. Contract

81. Do you have a contract or employment agreement with your current employer?

(if no, skip to Question 82)

Yes No

If yes,

81a. Is it written or was it explained to you in a language you understand?

Yes No

82. Within the last year, have you been made to sign a blank contract or a contract you didn't understand or agree with?

Yes No

83. Can you leave your employer or job before your contract is finished?

Yes No Yes, with penalty

If no or yes with penalty,

83a. Why not/what penalty? (check all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Would lose my work permit | <input type="checkbox"/> Forfeit forced savings or insurance |
| <input type="checkbox"/> Wouldn't get back my passport | <input type="checkbox"/> Forfeit wages due |
| <input type="checkbox"/> Denunciation to the authorities | <input type="checkbox"/> No plane ticket home |
| <input type="checkbox"/> Pay fine _____ | <input type="checkbox"/> Other _____ |

84. Any additional comments about your contract?:

11.B. Wages and Deductions

85. Are any deductions taken from your paycheck? ***(if no, skip to Question 86)***

Check all that apply:

- | | |
|--|---|
| <input type="checkbox"/> No deductions taken | <input type="checkbox"/> Housing |
| <input type="checkbox"/> Yes, but not sure what for | <input type="checkbox"/> Meals |
| <input type="checkbox"/> Repayment of recruitment debt | <input type="checkbox"/> Mandatory savings |
| <input type="checkbox"/> Repayment of wage advance | <input type="checkbox"/> Medical care/insurance fee |

8. Appendices

- Levy on foreign contract workers Saving for cost of return airfare
 Utilities (electricity/water) Other _____
 Transportation

86. On average, how much money do you actually take home per month?

- Amount _____ Not sure

87. Are you ever paid late, underpaid, or not paid your wages?

- Never Sometimes Rarely Often

88-89. In your current job within the last year, has anyone threatened or punished you in any of the following ways to make you work or work harder or to prevent you from leaving your job?

	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
88. Withholding of wages								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
89. Financial penalties								
Please describe:								

11.C.Hours and Overtime

90. How many hours in total do you normally work per day?

- <9 9 10 11 12 13 14 >14

91. How many days per week do you normally work?

- 1 2 3 4 5 6 7

92. Is overtime always voluntary?

- Yes No

93. Anything else you'd like to tell us about your hours?:

94. Do you need to work overtime to earn what you need to pay for your job-related debt and your living expenses in Malaysia?

Yes No

95-97. In your current job within the last year, has anyone threatened or punished you in any of the following ways to make you work or work harder or to prevent you from leaving your job: (check all that apply)

	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
95. Exclusion from future employment or overtime								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
96. Imposition of extra work								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		

97. Imposition of worse working conditions								
Please describe:								

11.D.Comfort and Safety

98. Are you ever restricted from using the toilet facilities while at work?

- Yes No

99. Can you get free drinking water whenever you want it?

- Yes No

100. If you get sick or hurt, do you have access to medical care? (check all that apply)

- No access
 I would have to for pay it
 My insurance would pay for it
 My employer would pay for it
 Not sure

101. Would you lose your job if you get injured or sick?

- Yes No Not sure

102-103. In your current job within the last year, has anyone threatened or punished you in any of the following ways to make you work or work harder or to prevent you from leaving your job?

	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
102. Withholding of privileges								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		

103. Withholding of food, water or sleep								
Please describe:								

11.E. Gender Discrimination

104. To your knowledge, if a woman gets pregnant will her contract be terminated?

- Yes No Not sure

105. Are women’s movements more restricted than male workers?

- Yes No Not sure

Section 12. Living Conditions

(Researchers: please again remind workers to answer with regard to conditions in their current job within the last year.)

106. In your current job, who provides your accommodations?

- Facility Broker/agent Self-hired

107. How many people sleep in the same room with you?

- 0-4 5-8 9-12 13-16 > 16

108. Is there anywhere you can safely store your personal belongings (passports, money, etc.)?

- Yes No

109. Do you feel safe at your housing?

- Yes No

110. How would you describe your living conditions?

- Unbearable
 Very bad
 Bad but tolerable
 Okay
 Good

111. If they are not good, what are the main problems with your living conditions?

(Researchers: again please remind workers to answer with regard to conditions in their current job within the last year.)

112. Are you able to go to the store, get to a phone to call family members, attend religious services, or do other things you want to do when you are not working? **(if yes, skip to Question 113)**

Yes No

If no,

112a. Why not? (check all that apply)

- Harassment by A, B, or C
- Harassment by local neighbors or residents
- Movement restricted by employer
- Lack of cultural or language skills
- Lack or cost of transport
- Lack of documents
- Other _____

113. Are you able to practice your religion?

Yes No

114. Are you ever prevented from observing religious rituals as a work-related punishment?

- Yes No, but it has been threatened No
- I have witnessed this happen to someone else

114a. If yes or witnessed this happen to someone else, please describe:

115. Are you allowed to come and go freely from your housing?

Yes No

116. Do you need a pass or permit to go beyond a certain distance from your housing?

Yes No

117. Is there anyone monitoring you while you are at your housing?

Yes No

118. Is surveillance ever used as a way to control you?

- Yes, but not necessarily as punishment
- Yes, as punishment
- No, but it has been threatened
- No

118a. If yes, please describe:

8. Appendices

119. Have you ever been locked in or out of your housing?

- Yes, but not necessarily as punishment No, but it has been threatened
 Yes, as punishment No
 I have witnessed this happen to someone else

119a. If yes or witnessed this happen to someone else, please describe:

120. Have you ever been locked in your job site?

- Yes, but not necessarily as punishment No, but it has been threatened
 Yes, as punishment No
 I have witnessed this happen to someone else

120a. If yes or witnessed this happen to someone else, please describe:

121. While at work, can you get permission to leave the factory under reasonable circumstances?

- Yes No

122. Have you ever been forced to sleep at your job site?

- Yes No

123. Do you have a cell phone?

- Yes No

124. Has anyone ever confiscated your cell phone in order to make you work or work harder or to prevent you from leaving your job?

- Yes No, but it has been threatened No
 I have witnessed this happen to someone else

125. Do you have internet access?

- Yes No

126. Is there anyone you can ask for help if you need it?

- No one NGO
 Friends or personal contacts Faith-based organization
 Employer Embassy

8. Appendices

Not sure

127. Additional comments:

--

Section 14. Penalty/Menace of Penalty

128-134. In your current job within the last year, has anyone threatened or punished you in any of the following ways in order to make you work or work harder or to prevent you from leaving your job: (check all that apply)

	Threatened penalty			Actually imposed penalty			Witnessed it Happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
128. Verbal abuse								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it Happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
129. Physical violence								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it Happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
130. Sexual harassment								
Please describe:								

8. Appendices

	Threatened penalty			Actually imposed penalty			Witnessed it Happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
131. Sexual violence								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it Happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
132. Isolation								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it Happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
133. Harm to family members								
Please describe:								
	Threatened penalty			Actually imposed penalty			Witnessed it Happen to someone else	Who made the threat?
	Never	Some-times	Regularly	Never	Some-times	Regularly		
134. Dismissal								
Please describe:								

135. Anything else you'd like to tell us about any of these incidents?:

8. Appendices

136. In the last year, has your employment agent, supervisor, or employer at your current job threatened or harmed you in some other way not mentioned above?

Yes No

136a. If so, please describe:

137. Have you had any other experiences related to these issues at any time since you have been working in Malaysia that you would like to share?

138. Please feel free to write additional comments below:

Section 15. Wrap Up

139. If you worked in more than one electronics facility in Malaysia within the last year, how similar would you say your experiences there have been to the one you are working at currently?

Much worse Worse Similar Somewhat better Much better

140. Can we speak with you at more length at a later time?

Yes No

Thank you very much for your help with this study!

Appendix 2: Indicator Formulas and Definitions

Indicators of Involuntariness		
Indicators	Narrative	Formulas
Indicators of unfree recruitment		
Strong indicators		
Deception about the nature of the work	<i>For this respondent either job duties or the degree of difficulty/danger of the work was either written in their contract, or had been agreed upon verbally. Upon arrival at the job, they found one or both of these issues to be worse than what they had been told beforehand.</i>	If Q30 = "Written in contract" OR "Promised/agreed verbally" AND Q41 = "Much worse" OR "Worse" OR If Q31 = Written in contract" OR "Promised/agreed verbally" AND Q42 = "Much worse" OR "Worse"
Medium indicators		
Deceptive recruitment	<i>This respondent found upon arrival at their job that at least one of the following aspects of their job was worse than what they had been led to believe beforehand based on their written contract or verbal agreement:</i> <ul style="list-style-type: none"> ● wages ● hours ● overtime requirements and pay ● termination of employment 	If Q33 = Written in contract" OR "Promised/agreed verbally" AND Q44 = "Much worse" OR "Worse" OR If Q34 = Written in contract" OR "Promised/agreed verbally" AND Q45 = "Much worse" OR "Worse" OR If Q35 = Written in contract" OR "Promised/agreed verbally" AND Q46 = "Much worse" OR "Worse" OR If Q40 = Written in contract" OR "Promised/agreed verbally" AND Q51 = "Much worse" OR "Worse"
Indicators of work and life under duress		
Strong indicators		
Limited freedom of movement and communication	This respondent either: <ul style="list-style-type: none"> ● <i>Is provided housing by their employer (the facility or broker), is not allowed to come and go freely from their housing, and they need a pass or permit to go beyond a certain distance from their housing.</i> ● <i>their passport is held by the facility or broker/agent, it is difficult or impossible to get their passport back when they need it, and they are unable to move around freely and safely without their passport or travel documents on them.</i> 	If Q106 = "Facility" OR "Broker/agent" AND Q115 = "No" AND Q116 = "Yes" OR If Q69 = "Facility" OR "Broker/agent" AND (Q69b = "Yes, but difficult" OR "No") AND (Q70 = "No" OR Q78 = "Yes")

Forced overtime	<p><i>This respondent works more than 72 hours a week and either has not yet paid off their debt and feels that in order to pay for their job-related debt and living expenses they must work overtime, or they have stated that overtime is not always voluntary.</i></p>	<p>If Q94 = "Yes" AND Q57 = "No" AND total work hours > 72 OR If Q92 = "No" AND total work hours > 72</p>
Degrading living conditions	<p><i>This respondent reports that the facility or the broker/agent provides their housing, that it is unbearable or very bad and that either:</i></p> <ul style="list-style-type: none"> ● <i>they sleep in a room with more than 8 people; or</i> ● <i>there is nowhere they can safely store their belongings; or</i> ● <i>they do not feel safe at their housing.</i> <p><i>OR</i></p> <p><i>This respondent reports that the facility or the broker/agent provides their housing, and that:</i></p> <ul style="list-style-type: none"> ● <i>there is nowhere they can safely store their belongings; AND</i> ● <i>they do not feel safe at their housing.</i> <p><i>OR</i></p> <p><i>This respondent reports that the facility or the broker/agent provides their housing, and reported conditions in a textbox that were judged by the Verité research team to reflect "degrading living conditions".</i></p>	<p>If Q106 = "Facility" OR "Broker/agent" AND Q110 = "Unbearable" OR "Very bad" AND: EITHER: Q107 = "9-12" OR "13-16" OR ">16" OR Q108 = "No" OR Q109 = "No" OR If Q106 = "Facility" OR "Broker/agent" AND Q108 = "No" AND Q109 = "No" OR If Q106 = "Facility" OR "Broker/agent" AND LC_assessment (our qualitative assessment of living conditions) = "Yes"</p>
Indicators of impossibility of leaving employer		
Strong indicators		
No freedom to resign in accordance with legal requirements	<p><i>For this respondent it is not possible to leave their job before their contract is finished without incurring a penalty of at least one of the following: would not get back their passport, would be denounced to the authorities, would forfeit forced savings or insurance, would forfeit wages due, would pay the balance of the foreign worker's levy, or would pay an illegally high fine.</i></p>	<p>If Q83 = "No" OR "Yes, with penalty" AND Q83a = "Wouldn't get back my passport" OR Q83a = "Denunciation to the authorities" OR Q83a = "Forfeit forced savings or insurance" OR Q83a = "Forfeit wages due" OR Q83a = "Pay balance of levy" OR Q83a_Fine = "Excessive"</p>

Forced to work for indeterminate period in order to repay outstanding debt or wage advance	<i>This respondent borrowed money to pay their recruitment fee, the fee was excessively high, they have not yet paid off their debt, and they feel they cannot leave their current job because of job-related debt.</i>	If Q55 = "Yes" AND recruitment fee = "Excessive" AND Q57 = "No" AND Q60 = "Yes"
--	---	---

Indicators of Penalty (menace of penalty)		
Indicators	Narrative	Formulas
Threats and Violence		
Strong indicators		
Sexual violence	<i>This respondent was threatened with sexual violence or harassment, or had sexual violence or harassment actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q131Threatened = "Sometimes" OR "Regularly" OR If Q131Actually Imposed = "Sometimes" OR "Regularly" OR If Q130Threatened = "Sometimes" OR "Regularly" OR If Q130Actually Imposed = "Sometimes" OR "Regularly"
Physical violence	<i>This respondent was threatened with physical violence, or had physical violence actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q129Threatened = "Sometimes" OR "Regularly" OR If Q129Actually Imposed = "Sometimes" OR "Regularly"
Threats against family members	<i>This respondent was threatened with harm to her family members, or harm to her family members was actually imposed, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q133Threatened = "Sometimes" OR "Regularly" OR If Q133Actually Imposed = "Sometimes" OR "Regularly"
Other forms of punishment (deprivation of food, water, sleep)	<i>This respondent was threatened with the withholding of food, water or sleep, or had food, water or sleep actually withheld, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q103Threatened = "Sometimes" OR "Regularly" OR If Q103Actually Imposed = "Sometimes" OR "Regularly"

Work-related Threats and Punishment

Strong indicators

Imposition of worse/further deterioration in working conditions	<i>This respondent was threatened with the imposition of worse working conditions, or had worse working conditions actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q97Threatened = “Sometimes” OR “Regularly” OR If Q97Actually Imposed = “Sometimes” OR “Regularly”
Withholding of wages	<i>This respondent was threatened with withholding of wages, or had wages withheld, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q88 Threatened = “Sometimes” OR “Regularly” OR If Q88 Actually Imposed = “Sometimes” OR “Regularly”

Medium indicators

Exclusion from future employment or overtime	<i>This respondent was threatened with exclusion from future employment or overtime, or had future employment or overtime revoked, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q95 Threatened = “Sometimes” OR “Regularly” OR If Q95 Actually Imposed = “Sometimes” OR “Regularly”
Financial penalties	<i>This respondent was threatened with financial penalties, or had financial penalties actually imposed, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q89Threatened = “Sometimes” OR “Regularly” OR If Q89Actually Imposed = “Sometimes” OR “Regularly”
Extra work for breaching labor discipline	<i>This respondent was threatened with extra work, or extra work was actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q96Threatened = “Sometimes” OR “Regularly” OR If Q96Actually Imposed = “Sometimes” OR “Regularly”

Compound Vulnerability

Strong indicators

Denunciation to authorities	<i>This respondent was threatened with denunciation to the authorities sometimes or regularly, or s/he was actually denounced to the authorities, in order to make her work or work harder or to prevent her from leaving her job.</i>	If Q71Threatened = “Sometimes” OR “Regularly” OR If Q71Actually Imposed = “Sometimes” OR “Regularly”
Dismissal	<i>This respondent was threatened with dismissal sometimes or regularly, in order to make this her work or work harder or to prevent her from leaving her job; and/or s/he was actually dismissed as punishment.</i>	If Q134Threatened = “Sometimes” OR “Regularly” OR If Q134Actually Imposed = “Sometimes” OR “Regularly”

Confiscation or Destruction of Identity Documents

Strong indicators

Confiscation or destruction of identity papers or travel documents	<p><i>This respondent's passport is currently held by the facility or broker/agent, and it is either not possible, or difficult, for her to get it back; and s/he would not get her passport back if s/he were to leave her employer or job before her contract is finished.</i></p> <p>OR</p> <p><i>This respondent was threatened with the destruction of her identity documents sometimes or regularly, or her identity documents were actually destroyed, in order to make her work or work harder or to prevent her from leaving her job.</i></p>	<p>If Q69 = "Facility" OR "Broker/agent" AND Q69b = "Yes, but difficult" OR "No" AND Q83a = "Wouldn't get back my passport"</p> <p>OR</p> <p>If Q73Threatened = "Sometimes" OR "Regularly"</p> <p>OR</p> <p>If Q73Actually Imposed = "Sometimes" OR "Regularly"</p>
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Threats to Personal Freedom

Strong indicators

Isolation	<p><i>This respondent was threatened with isolation, or had isolation actually imposed upon her, sometimes or regularly, in order to make her work or work harder or to prevent her from leaving her job.</i></p>	<p>If Q132Threatened = "Sometimes" OR "Regularly"</p> <p>OR</p> <p>If Q132Actually Imposed = "Sometimes" OR "Regularly"</p>
Locked in workplace or living quarters	<p><i>This respondent has been locked in or out of her housing as punishment, or has been threatened with being locked in or out of her housing as punishment.</i></p> <p>OR</p> <p><i>This respondent has been locked in her job site as punishment, or has been threatened with being locked in her job site as punishment.</i></p>	<p>If Q119 = "Yes, as punishment" OR "No, but it has been threatened"</p> <p>OR</p> <p>If Q120 = "Yes, as punishment" OR "No, but it has been threatened"</p>
Constant surveillance	<p><i>Surveillance is used as a way to control this respondent, as punishment; or has been threatened as a way of controlling her.</i></p>	<p>If Q118 = "Yes, as punishment" OR "No, but it has been threatened"</p>

Appendix 3: Incidence of Menace of Penalty Indicators

Menace of penalty clusters and their component indicators		
	Incidence among all respondents (%)	Incidence among all respondents (No.)
Corporal threats and violence	3%	13
Sexual violence	1%	4
Physical violence	2%	9
Threats against family members	0%	0
Other forms of punishment (deprivation of food, water, sleep)	0%	0
Work-related threats and punishment	17%	87
Imposition of worse/further deterioration in working conditions	5%	27
Withholding of wages	6%	28
Exclusion from future employment or overtime	8%	40
Financial penalties	6%	30
Extra work for beaching labor discipline	2%	11
Compound vulnerability	9%	46
Denunciation to authorities	6%	28
Dismissal	5%	24
Confiscation or Destruction of Identity Documents	11%	54
Confiscation or destruction of identity papers or travel documents	11%	54
Threats to personal freedom	3%	14
Isolation	0%	1
Locked in workplace or living quarters	1%	6
Constant surveillance	2%	9

Appendix 4: Approach to Expert/ Stakeholder Consultations

An important part of Verité’s research was outreach to a variety of individuals and officials in Malaysia and elsewhere to gain a range of perspectives on working conditions, labor recruitment patterns, public policy and its implementation, initiatives in the sector, and other issues examined in this study.

Verité reached out to representatives from the private sector (both supplier representatives and those who work for companies that manufacture and/or procure from Malaysia’s electronics sector); the Government of Malaysia; civil society organizations; international organizations; trade union representatives; and academic and other experts. The core of Verité’s report is the survey and other data from hundreds of workers, as detailed and analyzed in the body of the report. However, the context as described in the report and analysis of major issues was informed by confidential interviews with the stakeholders from the groups mentioned above. Considering the sensitive nature of many of the topics covered in this public report, those who participated in these interviews were promised anonymity for themselves as individuals and for the business, organization, or institution for which they work. Verité thanks them for their insight and interest in this research.

Interviews were not rigidly structured and covered a range of topics, as outlined below. Interviewees were deliberately queried about positive efforts and conditions in this sector, in addition to perspective and insight on challenges and difficult conditions for workers.

Topics of discussion in the expert stakeholder interviews included:

- How your institution keeps track of what is happening in the electronics sector generally and in particular with respect to recruitment and hiring issues and working and living conditions for workers?
- Initiatives for change in the sector related to workers or other things that could impact recruitment and working conditions.
- Trends in public and private labor inspection in the electronics sector- What public and private resources are available to monitor conditions? What is being found by inspections? What are the priority issues? Are inspections increasing or decreasing?
- Trends in public and private inspection or other accountability mechanisms for labor recruiters.

- Impressions of what is working well, as well as where there are gaps and challenges, in government policy and its implementation related to protecting workers' rights, enforcing workplace standards, and regulating international labor migration.
- Insight into public and private mechanisms for worker grievance and redress.
- Insight and trends around wages, deductions, and hours of work.
- Perspective on levy charged on foreign contract workers and how re-payment is administered.
- Perspective on practices related to passports.
- Insight into how various government agencies relate to foreign contract workers.
- Information, trends, and insight into how different types of employment agencies operate and issues related to their regulation by the government.
- Insight into how recruitment abuses in sending countries, as well as in Malaysia, might be handled in the future.
- Perspective on the different roles of government, employer, buyer, and recruiter to ensure that excessive fees are not paid by the worker in the sending country.
- Perspective on housing conditions and oversight, including curfews and other restrictions.
- Perspective on whether conditions differ in the sector by gender and/or national origin.
- Perspective on whether conditions for workers differ significantly by product category, region of Malaysia, and/or tier of supply chain.
- Predictions for the future of the sector in Malaysia.

Appendix 5: Additional Information on the Analytical Approach to Determining Forced Labor

This appendix provides a more detailed description and examples to demonstrate Verité’s approach to identifying victims of forced labor for this study.

Verité based its approach on the guidance of the International Labor Organization on estimating forced labor, as articulated in its 2012 publication, *Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labor of Adults and Children*. There were two primary phases in Verité’s determination of whether an individual was in a situation of forced labor: In the first phase, each individual was evaluated for the presence or absence of a set of forced labor indicators. These indicators are the component pieces of a person’s forced labor experience, and thus comprise the building blocks of a forced labor determination. In the second phase, the indicators exhibited by each individual respondent were evaluated to determine whether they amounted to a situation of actual forced labor.

Measuring for Indicators of Forced Labor

For the present study, Verité first defined a set of indicators of forced labor using the ILO’s framework as the basis. The ILO separates indicators into two dimensions – Involuntariness and Menace of Penalty – and designates each indicator as either medium or strong. The indicators explored by this study are shown here.

INDICATORS OF INVOLUNTARINESS

Strong:

- Deception about the Nature of the Work
- Forced Overtime
- Limited Freedom of Movement and Communication
- Degrading Living Conditions
- No Freedom to Resign in accordance with Legal Requirements
- Forced to Work for Indeterminate Period in order to Pay Off Outstanding Debt or Wage Advance

Medium:

- Deceptive Recruitment

INDICATORS OF MENACE OF PENALTY

Strong:

- Sexual Violence
- Physical Violence
- Threats against Family Members
- Other Forms of Punishment (deprivation of food, water, sleep)
- Imposition of Worse/Further Deterioration in Working Conditions
- Withholding of Wages
- Denunciation to Authorities
- Dismissal
- Confiscation of Identity Papers or Travel Documents
- Isolation
- Locked in Workplace or Living Quarters
- Constant Surveillance

Medium:

- Exclusion from Future Employment or Overtime
- Financial Penalties
- Extra Work for Breaching Labor Discipline

Sets of survey questions were then developed that would collect information about the presence or absence of each of these indicators in the experiences of individual workers. In some cases, a single survey question was used to probe for an indicator, but in most cases, several questions were asked and then combined in various ways. See Appendix 2 for how each indicator was defined and the survey questions that were used for measurement.

The survey questions relating to each indicator were then translated into sets of commands that expressed each indicator, using statistical programming software. In this way, the presence or absence of each indicator could then be determined for each respondent in the study.

For example, Verité defined the indicator for “Limited Freedom of Movement and Communication” as follows:

This respondent either:

- *Is provided housing by their employer (the facility or broker), is **not allowed to come and go freely from their housing, and they need a pass or permit to go beyond a certain distance from their housing.** OR*
- *their **passport is held by the facility or broker/agent, it is difficult or impossible to get their passport back when they need it, and they are unable to move around freely and safely without their passport or travel documents on them.***

The survey questions that were used to measure for the presence of the “Limited Freedom of Movement and Communication” indicator were:

106. In your current job, who provides your accommodations?
 Facility Broker/agent Self-hired

115. Are you allowed to come and go freely from your housing?
 Yes No

116. Do you need a pass or permit to go beyond a certain distance from your housing?
 Yes No

AND

69. Who has your passport right now? ***(if with the worker, skip to Question 70)***

With the worker

Facility

Broker/agent

Left behind when ran away from previous job

Lost or stolen

Not sure

69b. Can you get your passport back when you need it?
 Yes Yes, but difficult No

69c. When do you expect to get it back?
 When period of contract has ended or job is finished
 Don't expect to get it back
 Upon request
 Not sure

70. Can you move around freely and safely if you don't have your passport or travel document with you?
 Yes No

78. Does fear of trouble with A, B, C, or local gangs/thugs prevent you from moving freely in Malaysian society?
 Yes No

These questions were then translated into commands that expressed the presence of this indicator for individual respondents. These commands were applied to the entire data set to measure for the presence of “Limited Freedom of Movement and Communication” for each respondent. The specific commands for the “Limited Freedom of Movement and Communication” indicator were:

If Q106 = “Facility” OR “Broker/agent” AND Q115 = “No” AND Q116 = “Yes”
OR
If Q69 = “Facility” OR “Broker/agent” AND (Q69b = “Yes, but difficult” OR “No”) AND (Q70 = “No” OR Q78 = “Yes”)

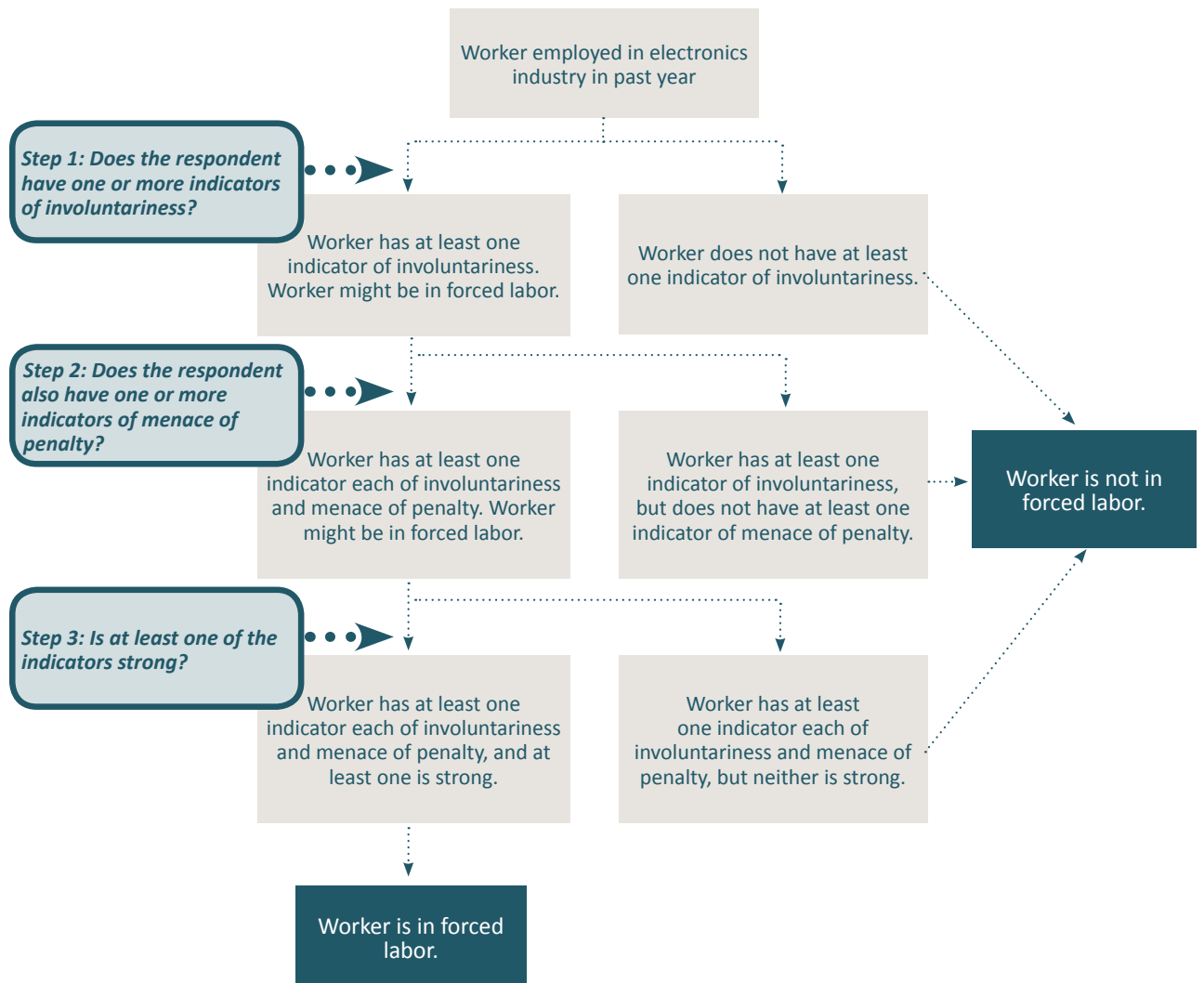
A similar process was followed for each indicator in the study. Survey data for all respondents was then analyzed for the presence or absence of each forced labor indicator.

Making a Forced Labor Determination

Once the presence or absence of each indicator was established for each respondent, a forced labor determination could be made for that respondent.

The ILO’s *Hard to See, Harder to Count* framework states that a worker is in forced labor if s/he is found to have at least one indicator of involuntariness, and at least one indicator of menace of penalty, and if one of these indicators is strong.

Verité applied the following three-step process to the indicator data for each respondent, in order to make a forced labor determination for individual workers.



To demonstrate how this framework was applied, consider the following example involving three workers, A, B and C. (Note the data for this example is notionalized.)

Worker A cannot move about freely in society due to restrictions placed on her movement by her employer. She is living in extremely poor living conditions. She does not hold her own passport and has reported that she does not have free access to it, and would not get it back if she left her job. Her employer has threatened her with withheld wages in order to force her to accept her work arrangement.

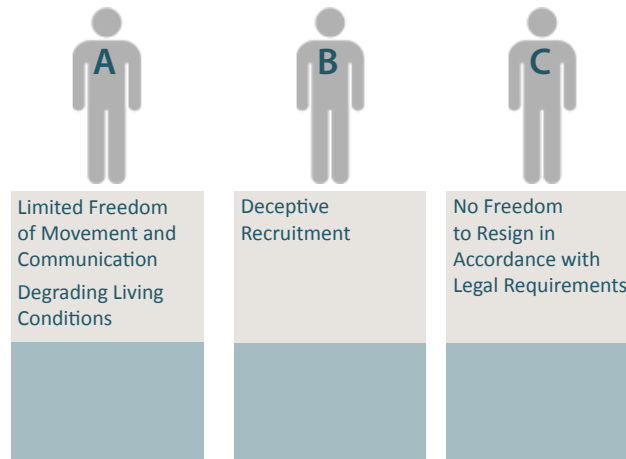
Worker B was deceived about the nature of his job during the recruitment

process. His employer has threatened him with financial penalties in order to force him to accept his work arrangement.

Worker C cannot leave her job without having to pay a heavy fine.

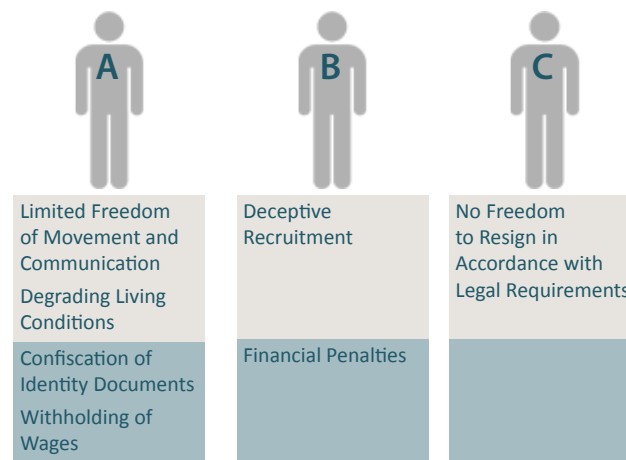
The three-step process of forced labor analysis is applied to workers A, B and C as follows.

Step 1: Does the respondent have one or more indicators of involuntariness?



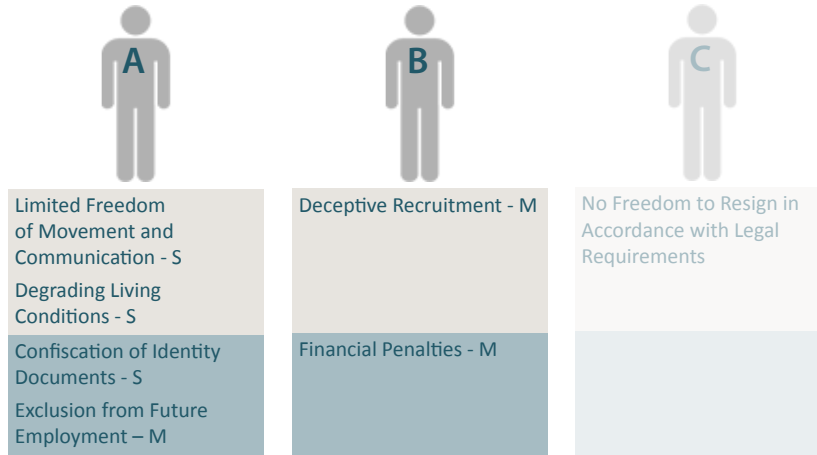
Worker A has 2 indicators of involuntariness, and Workers B and C each have one. All three therefore qualify for the second step in the forced labor analysis.

Step 2: Does the respondent also have one or more indicators of menace of penalty?



Worker A has two indicators of Menace of Penalty, and Worker B has one. Workers A and B qualify for the third step in the forced labor analysis. Worker C does not have any indicators of Menace of Penalty. Worker C is not in forced labor.

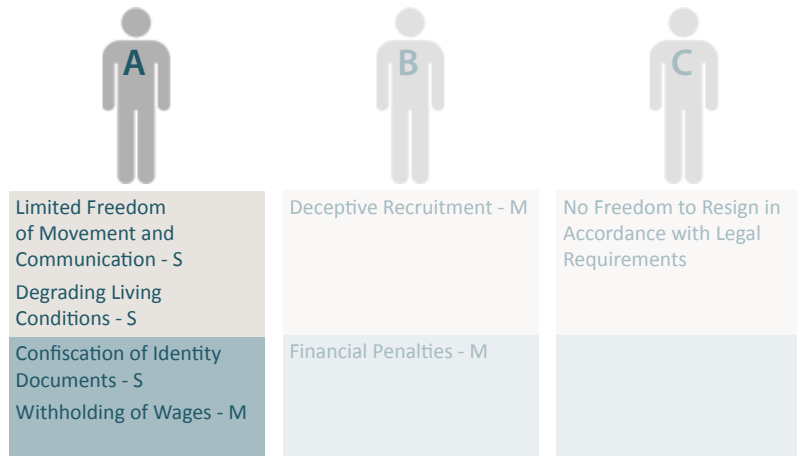
Step 3: Is at least one of the indicators strong?



Worker A has indicators of involuntariness and menace of penalty, and at least one of the indicators is strong. Worker A is in forced labor.

Worker B has indicators of involuntariness and menace of penalty, but does not have at least one strong indicator. Worker B is not in forced labor.

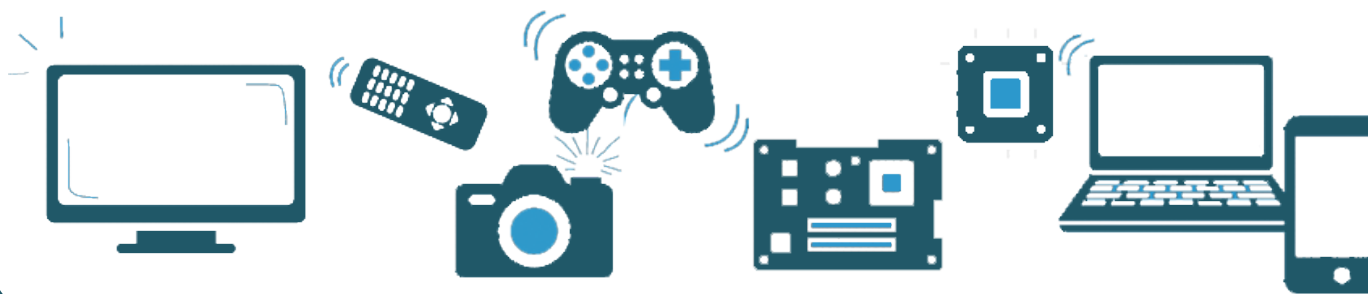
FINDINGS: Worker A is in forced labor. Workers B and C are not in forced labor.



As shown in this example, not all respondents with indicators of forced labor are necessarily found to be in situations of actual forced labor. Worker A had a sufficient complement of indicators to warrant a forced labor determination, but workers B and C did not.

Appendix 2 of this report shows the forced labor indicators and definitions that Verité used in making individual forced labor determinations for this study.

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ENDNOTES

1. Third-party employment agents are referred to by many and various terms, *inter alia*, labor brokers, manpower agents, private employment agents, recruiters, and outsourcing agents. In some cases these names denote particular functions played by the agent; in others, the term is used generically to refer to any third-party agent performing some combination of recruitment, placement, hiring, management and/or employment on behalf of a client facility. This report uses the term “third-party employment agent” to refer to these labor intermediaries in general terms. More specific terms are used in a few instances in the report, to signal particular functions played by these third-party intermediaries.
2. See the discussion of “forced to work for indeterminate period to repay outstanding debt or wage advance” for more information on how “excessive” was defined for the purposes of this study.
3. The Passports Act of 1966 of the Government of Malaysia, Section 12 Article F, prohibits, without lawful authority, the possession of any passport or internal travel document issued for the use of some person other than himself.
4. Section 12(f): *Malaysia: Act No. 150 of 1966, Passports Act*, Government of Malaysia, 1966, <http://www.refworld.org/docid/3ae6b5204.html> [accessed 30 June 2014].
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 - Services:** Being "Your One Stop Manpower Solution", we do provide total workers management and services such as: Outsourcing Management Services; Foreign Worker Recruitment Consultancy; Related Immigration Services; Domestic Helpers; Hostel and Transportation Management Services.
 - "Outsourcing Management Services:** The demand for manpower in the market had increased significantly and in order to overcome this demand **Ami Awana Sdn Bhd**, a licensed government (Home Ministry) approved out-sourcing company KDN:100/637/1-4 (472) have binding contract with many well-established multinational and local companies in Malaysia and successfully managed foreign workers since 2007. We are glad to share and understand to know more of our clients need and identify and facilitate placements within a short period of time.
 - As a foreign worker consultant, we do provide services: Hostel and Accommodation

arrangement; Transport Services arrangement; Go & Back from work; Doctor visit; Fomema checkup and etc.; Payroll and administrative; Counseling and Disciplinary solution; 24/7 supervision; Issues related to immigration and police department; Go & Back from work; Medical and Doctor visit.”

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50. As discussed in Findings below, many workers reported to Verité that when passports are taken from them at the airport upon their arrival in Malaysia, it usually the last time they ever have personal custody of the document. In many cases, workers are required to lodge deposits before they can retrieve or “borrow” their passports. Moreover, workers shared that the practice of passport retention is something that is not included in pre-departure orientations or written in employment contracts.

51. Most estimates of the Malaysian electronics workforce indicate that it is majority female. Therefore this report uses the female pronoun for generic references to workers.

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106. Note Verité uses the term "illegal" immigrant to signify a migrant without legal status in the country when discussing official Malaysian policy, as this is the term used by the government. In all other parts of this report, the term "undocumented" migrant is used.

- 107.** “First day of Ops 6p Bersepadu yields encouraging results”, in *The Star*, Sept. 3, 2013, <http://www.thestar.com.my/News/Nation/2013/09/03/2400-illegals.aspx/> [accessed 27 Feb. 2014].
- 108.** “First day of Ops 6p Bersepadu yields encouraging results”, in *The Star*, Sept. 3, 2013, <http://www.thestar.com.my/News/Nation/2013/09/03/2400-illegals.aspx/> [accessed 27 Feb. 2014].
- 109.** “Nation’s biggest ever crackdown soon”, in *The Star*, Aug. 28, 2013, <http://www.thestar.com.my/News/Nation/2013/08/28/Nations-biggest-ever-crackdown-soon.aspx> [accessed 27 Feb. 2014].
- 110.** “First day of Ops 6p Bersepadu yields encouraging results”, in *The Star*, Sept. 3, 2013, <http://www.thestar.com.my/News/Nation/2013/09/03/2400-illegals.aspx/> [accessed 27 Feb. 2014].
- 111.** “Nation’s biggest ever crackdown soon”, in *The Star*, Aug. 28, 2013, <http://www.thestar.com.my/News/Nation/2013/08/28/Nations-biggest-ever-crackdown-soon.aspx> [accessed 27 Feb. 2014].
- 112.** “First day of Ops 6p Bersepadu yields encouraging results”, in *The Star*, Sept. 3, 2013, <http://www.thestar.com.my/News/Nation/2013/09/03/2400-illegals.aspx/> [accessed 27 Feb. 2014].
- 113.** “First day of Ops 6p Bersepadu yields encouraging results”, in *The Star*, Sept. 3, 2013, <http://www.thestar.com.my/News/Nation/2013/09/03/2400-illegals.aspx/> [accessed 27 Feb. 2014].
- 114.** “71 illegal migrants nabbed as nationwide crackdown begins”, in *The Star*, Sept. 1, 2013, <http://www.thestar.com.my/News/Nation/2013/09/01/Ops-Cantas-71-illegal-migrants-nabbed-as-nationwide-crackdown-begins.aspx/> [accessed 27 Feb. 2014].
- 115.** “First day of Ops 6p Bersepadu yields encouraging results”, in *The Star*, Sept. 3, 2013, <http://www.thestar.com.my/News/Nation/2013/09/03/2400-illegals.aspx/> [accessed 27 Feb. 2014].
- 116.** “71 illegal migrants nabbed as nationwide crackdown begins”, in *The Star*, Sept. 1, 2013, <http://www.thestar.com.my/News/Nation/2013/09/01/Ops-Cantas-71-illegal-migrants-nabbed-as-nationwide-crackdown-begins.aspx/> [accessed 27 Feb. 2014].
- 117.** “Major crackdown on illegal immigrants”, in *The Edge*, Jan. 10, 2014, <http://www.theedgemaalaysia.com/in-the-edge-financial-daily-today/270928-major-crackdown-on-illegal-immigrants-starts-jan-21-.html> [accessed 27 Feb. 2014].
- 118.** “6P whitening programme will not be extended”, in *The Malay Mail Online*, Oct. 2, 2013, <http://www.themalaymailonline.com/malaysia/article/6p-whitening-programme-will-not-be-extended> [accessed 27 Feb. 2014].
- 119.** “6P amnesty programme to end in January”, M. Lakshana in *FZ.com*, Oct. 2, 2014, <http://www.fz.com/content/6p-amnesty-programme-end-january> [accessed 27 Feb. 2014].
- 120.** “1,757 illegal immigrants detained on the second day of the crackdown”, K. Harindaran in *The Rakyat Post*, Jan. 23, 2014, <http://www.therakyatpost.com/news/2014/01/23/1757-illegal-immigrants-detained-on-the-second-day-of-crackdown/> [accessed 27 Feb. 2014].
- 121.** “Malaysia Gets Tough on Illegal Immigrants As Amnesty Program Expires”, J. Ng in *The Wall Street Journal*, Jan. 21, 2014, <http://blogs.wsj.com/searealtime/2014/01/21/malaysia-gets-tough-on-illegal-immigrants-as-amnesty-program-expires/> [accessed 27 Feb. 2014].
- 122.** “First day of Ops 6p Bersepadu yields encouraging results”, in *The Star*, Sept. 3, 2013, <http://www.thestar.com.my/News/Nation/2013/09/03/2400-illegals.aspx/> [accessed 27 Feb. 2014].
- 123.** “6P, an engineered mess?”, in *FMT News*, Oct. 4, 2013, <http://www.freemalaysiatoday.com/>

category/nation/2013/10/04/6p-an-engineered-mess/ [accessed 27 Feb. 2014].

124. “Regulating Foreign Workers”, in *The Business Radio Station (BFM)*, Sept. 24, 2013, <http://www.bfm.my/regulating-foreign-workers.html> [accessed 27 Feb. 2014].

125. “Malaysia rounds up thousands of migrant workers”, *BBC*, Sept. 1, 2013, <http://www.bbc.co.uk/news/world-asia-23931833> [accessed 27 Feb. 2014].

126. Article 6, Constitution of Malaysia.

127. Government of Malaysia: *Anti-Trafficking in Persons (Amendment) Act 2010; and Government of Malaysia: Anti-Trafficking in Persons Act, 2007*.

128. See, Act 246 (Private Employment Agencies Act 1981), as amended.

129. See Labor Intermediary section above for a discussion of the differences between recruitment/private employment agencies and outsourcing agencies.

130. Government of Malaysia: “Section 7: Necessity to obtain a license”, (Feb 12. 1981).

131. Government of Malaysia: “Section 10: Form and duration of license”, *Private Employment Agencies Act 1981, Act 246* (Feb 12. 1981).

Government of Malaysia: “Section 11: Renewal of license”, *Private Employment Agencies Act 1981, Act 246* (Feb 12. 1981).

132. Government of Malaysia: “Section 14: Fees for services”, *Private Employment Agencies Act 1981, Act 246* (Feb 12. 1981).

133. Government of Malaysia: “Section 29: Miscellaneous offences”, *Private Employment Agencies Act 1981, Act 246* (Feb 12. 1981).

134. Government of Malaysia: “Section 9: Conditions to be fulfilled for the grant of a license”, *Private Employment Agencies Act 1981, Act 246* (Feb 12. 1981).

135. P.S. Robertson Jr.: *Migrant Workers in Malaysia: Issues, Concerns and Points for Action* (FLA, 2008).

136. See Labor Intermediary section above for a discussion of the differences between recruitment/private employment agencies and outsourcing agencies.

137. *Laws of Malaysia: Act A1419 Employment (Amendment) Act 2012*, Government of Malaysia, Jan. 30, 2012, <http://www.mkma.org/Notice%20Board/2012/EmploymentAmendedAct2012.pdf> [accessed 26 Feb. 2014].

138. Government of Malaysia: “Section18: Wage period”, *Employment Act of 1955, Act 265*, (1955).

139. Government of Malaysia: “Section60: Work on rest day”, *Employment Act of 1955, Act 265*, (1955).

140. Government of Malaysia: “Section 60A: Hours of work”, *Employment Act of 1955, Act 265*, (1955).

141. Government of Malaysia: “Section 60E: Annual leave”, *Employment Act of 1955, Act 265*, (1955).

Government of Malaysia: “Section 60F: Sick leave”, *Employment Act of 1955, Act 265*, (1955).

- 142.** Government of Malaysia: "Section 60C: Shift work", *Employment Act of 1955, Act 265*, (1955).
- 143.** See, Malaysia's *Minimum Wages Order 2012*. Domestic workers are excluded from the scope of the law. In Sabah, Sarawak and Labuan, the minimum wage rate is MYR 800 per month or MYR 3.85 per hour.
"Minimum Wages Order 2012", Government of Malaysia, 2012, <http://www.mohr.gov.my/pdf/minimumwagesorder2012.pdf> [accessed 24 Feb. 2014].
- 144.** Section 2, Employment (Limitation of Overtime Work) Regulations 1980.
- 145.** Government of Malaysia: "Section 24: Lawful deductions", *Employment Act of 1955, Act 265*, (1955).
- 146.** Government of Malaysia: "Section 24: Lawful deductions", *Employment Act of 1955, Act 265*, (1955).
- 147.** Government of Malaysia: "Section 24: Lawful deductions", *Employment Act of 1955, Act 265*, (1955).
- 148.** Government of Malaysia: "Section 10-16", *Employment Act of 1955, Act 265*, (1955).
- 149.** P.S. Robertson Jr. : Migrant Workers in Malaysia: Issues, Concerns and Points for Action (FLA, 2008).
- 150.** J. Creswell: *Research design: Qualitative, quantitative, and mixed methods approaches*, 3rd ed. (Sage Publications, 2009).
J. Creswell and V.L. Plano Clark: "The nature of mixed methods research", in *Designing and conducting mixed methods research* (Sage Publications, 2011).
R.B. Johnson, A.J. Onwuegbuzie, and L.A. Turner: "Toward a definition of mixed methods research" in *Journal of Mixed Methods Research, Vol. 1, No. 2* (2007), pp.112-113.
- 151.** M.P. Battaglia: "Nonprobability sampling", in *Encyclopedia of survey research methods* (Sage Publications, 2008), p. 524.
- 152.** J.K. Watters and P.Biernacki: "Targeted sampling: Options for the study of hidden populations", in *Social Problems*, Vol. 36, No. 4 (1989), pp.416-430; D.D. Heckathorn: "Respondent-driven sampling: A new approach to the study of hidden populations", in *Social Problems*, Vol. 44 No. 2. (1997), pp. 174-199.
- 153.** Kanapathy (2008) discusses the challenges of gaining accurate information about migration in Malaysia. Vijayakumari Kanapathy: "Malaysia", in *Asian and Pacific Migration Journal*, Vol 17, Nos 3-4 (2008) pp. 335-347.
- 154.** Data on the gross value output and employment on the state and national level were found in reports published by the Department of Statistics in Malaysia and downloaded from their website. The data on the national level is from the Annual Survey of Manufacturing Industries, 2009 (for reference year 2008). Other sources were Principal Statistics by State, Department of Statistics, Malaysia, "Table 3a: Contribution to gross output by group, 2007 & 2008" AND "Table 3b: Contribution to total employment by group, 2007 & 2008", Annual Survey of Manufacturing Industries, Department of Statistics, Malaysia. The percentages were calculated as follows: to determine the percentage gross value output of total electronics sector in Malaysia, the total gross value output of the electronics sector for the respective state was divided by the total gross value output of the electronics sector in Malaysia. Similarly, to determine the percentage employment out of total electronics sector in

Malaysia, the number of employed workers in the electronics sector in each state was divided by the total number of workers employed in the electronics sector in Malaysia. These percentages are intended to demonstrate the relative significance each state represents within the electronics sector in Malaysia. The purpose of including the “Sum of values given here” row was to show that the data provided here on the gross value output and employment by state represents 97.3% and 93.2% respectively, of the national totals for 2008. In this way Verité was able to verify that the majority of the electronics sector is represented in the states that chosen for focus in this research.

155. Note that Kedah is not included in this table, but was later added to the research. Verité received information on an FIZ in Kedah during the course of the research, and included a small sample of workers from that FIZ.

156. J.K. Watters and P.Biernacki: “Targeted sampling: Options for the study of hidden populations”, in *Social Problems*, Vol. 36, No. 4 (1989), pp.426-7.

157. H. Baumgartner and J.E.M. Steenkamp: “Response biases in marketing research”, in R. Grover and M. Vriens (eds.): *The handbook of marketing research: Uses, misuses, and future advances* (Sage Publications, 2006).

158. H. Baumgartner and J.E.M. Steenkamp: “Response biases in marketing research”, in R. Grover and M. Vriens (eds.): *The handbook of marketing research: Uses, misuses, and future advances* (Sage Publications, 2006).

159. ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012).

160. ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012).

161. Centre for Research on Multinational Corporations (SOMO): *Outsourcing labour: Migrant labour rights in Malaysia’s electronics industry* (Amsterdam, Jan. 2013).

162. B.H. Erickson: “Some problems of inference from chain data”, in *Sociological Methodology*, Vol. 10 (1979) pp. 276-302.

163. The “Operational Definition of Forced Labour” is from: ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012), p. 13,

164. The full list of ILO forced labor indicators is attached in Appendix B.

165. Data on country of origin, gender, and location in Malaysia is presented earlier, in Section 4.3, Profile of the Study Sample.

166. ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012).

167. Verité uses the term foreign contract worker to indicate a worker who has migrated to Malaysia from a separate country of origin, for the purposes of temporary, time-bound employment.

168. According to some stakeholders interviewed by Verité for this research, curfews and surveillance systems are sometimes seen by employers and agents as a way of protecting foreign workers, to keep them from getting into trouble and to prevent social conflicts. While the intent of these systems may in some cases be to protect, 22% of workers interviewed by Verité said they did not feel safe at their housing, and 43% of foreign workers said that there was nowhere they could safely

store their belongings. Several shared anecdotes of guards who failed to take interest in threats to their personal security such as muggings or thefts from their rooms.

169. “Regulating Foreign Workers”, in *The Business Radio Station (BFM)*, Sept. 24, 2013, <http://www.bfm.my/regulating-foreign-workers.html> [accessed 27 Feb. 2014].

170. “Complaints point to massive 6P scam by gov’t insiders,” in *Malaysian Trades Union Congress*, Sept. 6, 2013, <http://www.mtuc.org.my/complaints-point-to-massive-6p-scam-by-govt-insiders/> [accessed 26 June 2014]

171. The UN Periodic Review of Malaysia highlighted key legislation that has significant implications for individuals detained in Malaysia. The repeal of the Internal Security Act (ISA) was greeted as a laudable measure to end indefinite detention without trial. Subsequent legislation, however, has not shown significant improvement. The ISA was replaced in July 2012 by the Security Offenses (Special Measures) Act (SOSMA), which limits detention to 28 days, requires that next of kin be notified within 24 hours of an arrest, and mandates access to a lawyer and a free trial. The review noted that SOSMA still allows for detention without charge or trial, and detention in isolation. In addition, the recently amended Prevention of Crime Act (PCA) passed in October 2013 allows for indefinite detention without charge or trial. The amendments include restrictions on judicial reviews and secrecy provisions, as well as the creation of a “Crime Prevention Board” allowed to issue detentions to suspects without legal representation. The amendments were greeted with outrage by human rights organizations and the opposition party, who argued the legislation closely resembled the ISA. Prime Minister Najib Razak cited a recent increase in crime as grounds for the controversial amendments.

172. “Malaysia arrests hundreds of suspected illegals”, UPI, Sept. 3, 2013, http://www.upi.com/Top_News/Special/2013/09/03/Malaysia-arrests-hundreds-of-suspected-illegals/UPI-74321378202580/#ixzz2v6qGJbz0

173. “Ops 6P Sepadu: Immigration to raid homes, offices from Jan 21,” C. Ramendran, in *The Sun Daily*, Jan. 12, 2014, <http://www.thesundaily.my/news/928133> [accessed June 26 2014].

174. “4,660 illegals nabbed since launch of nationwide operation”, in *The Sun Daily*, Feb. 16, 2014, <http://www.thesundaily.my/news/958746> [accessed June 26, 2014].

175. “Ops 6P enters eighth week with more arrests”, in *Borneo Post Online*, Mar. 13, 2014, <http://www.theborneopost.com/2014/03/13/ops-6p-enters-eighth-week-with-more-arrests/#ixzz35mSuDeGC> [accessed June 26, 2014].

176. ILO. *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012), p.14.

177. Verité did not gather quantitative evidence of the deceptive aspect of passport withholding for the purposes of a forced labor determination, as this was not included in the ILO’s original indicator framework.

178. ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012), pp.14-15, 24-25.

179. ILO: *Combating forced labour: A handbook for employers & business* (Geneva, 2008), p. 11.

180. ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012), p.75.

- 181.** ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012).
ILO: *Combating forced labour: A handbook for employers & business* (Geneva, 2008).
- 182.** *Verité took this definition to also include all means used by an employer to make it difficult for a worker to leave her/his employer-operated residence.
ILO: *Combating forced labour: A handbook for employers & business* (Geneva, 2008), p. 11.
- 183.** The ILO considers “Confiscation of Identity Documents” to be an indicator of menace of penalty. The current study also found that, when a worker does not hold her passport, this affects her ability to move around freely in Malaysian society, and her ability to pre-terminate her employment contract. This study accordingly integrates the concept of document withholding into three separate indicators of forced labor: Limited Freedom of Movement and Communication, No Freedom to Resign in Accordance with Legal Requirements, and Confiscation of Identity Documents.
The definition of **Limited Freedom of Movement and Communication** includes the that worker’s “*passport is held by the facility or broker/agent, it is difficult or impossible to get the passport back when they need it, and either they are unable to move around freely and safely without their passport or travel documents on them or they feel they cannot move around freely due to their fear of immigration authorities, police, or RELA*”.
For **No Freedom to Resign in Accordance with Legal Requirements**, the “*respondent reports that it is not possible to leave their job before their contract is finished without incurring a penalty of at least one of the following*”, with one of the penalties being “*would not get back their passport*”.
The **Confiscation of Identity Documents** indicator is defined as either “*This respondent’s passport is currently held by the facility or broker/agent, and it is either not possible, or difficult, for her to get it back; and she would not get her passport back if she were to leave her employer or job before her contract is finished*” OR “*This respondent was threatened with the destruction of her identity documents sometimes or regularly, or her identity documents were actually destroyed, in order to make her work or work harder or to prevent her from leaving her job.*”
Please see each relevant section of the report for more information on how these three indicators are analyzed.
- 184.** ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012), p.24.
- 185.** ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012), p.26.
- 186.** ILO: *Eradication of forced labour*, Report III (Part 1B), International Labor Conference, 96th Session, Geneva, 2007, p. 80.
- 187.** ILO: *Eradication of forced labour*, Report III (Part 1B), International Labor Conference, 96th Session, Geneva, 2007, p. 72.
- 188.** The Employment Act of 1955 sets maximum regular working hours at eight per day or 48 per week over a six-day workweek. The Employment (Limitation of Overtime Work) Regulations of 1980 limit overtime hours to no more than four hours per day and 104 hours per month. For the purposes of the forced overtime indicator, Verite followed the limitations set by these legal regulations (an 8 hour day plus 4 hours of overtime over a 6 day workweek) to reach 72 hours as the legal limit of hours worked per week. Section 60A(3) of the Employment Act requires companies to pay workers 1.5 times their regular wages for overtime work on a regular workday, and more for overtime work conducted

on Sundays and holidays. Amendments made to the Industrial Relations Act in 2008, gave employers greater leeway to impose longer working hours.

Full text of the Employment Act of 1955 is available here: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm>

Full text of the Employment (Limitation of Overtime Work) Regulations 1980 is available here: <http://pesaraonline.net/ot-regulation.htm>

189. International Labor Organization: *Migrant Workers Recommendation, 1975 (No. 151) Recommendation concerning Migrant Workers*. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R151. [accessed 26 July 2014]

190. *Electronic industry citizenship coalition code of conduct, Version 4.0*, EICC, 2012, <http://www.eicc.info/documents/EICCCodeofConductEnglish.pdf> [accessed 25 Feb. 2014].

191. *Malaysia: Employment Act of 1955*, Government of Malaysia, 1955, www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm [accessed 26 Feb. 2014].

192. Also commonly referred to as “runaway insurance”.

193. “The wages, less lawful deductions, earned by but not yet paid to an employee whose contract of service terminates in accordance with section 11 (1) or of section 12 shall be paid to such employee not later than the day on which such contract of service so terminates.”

“Part III: 20. Payment on normal termination of contract”, *Malaysia: Employment Act of 1955*, Government of Malaysia, 1955, www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm [accessed 26 Feb. 2014].

194. See endnote 155 for a discussion of the integration of passport withholding into the indicators for Limited Freedom of Movement and Communication, No Freedom to Resign in Accordance with Legal Requirements, and Confiscation of Identity Documents.

195. Centre for Research on Multinational Corporations (SOMO): *Outsourcing labour: Migrant labour rights in Malaysia’s electronics industry* (Amsterdam, Jan. 2013), pp. 8, 30.

Amnesty International: *Trapped: The exploitation of migrant workers in Malaysia* (London, Amnesty International Publications, 2010), p. 24.

AI Commentary: pp. 24 employers said that they held passports to ensure workers did not leave.

196. It should be noted here that, alongside the ILO, the International Association of Private Recruitment Agencies also recommends against fee charging, and there is growing consensus within industry that recruitment fees should be banned.

197. As per Government of Malaysia: “Section 14: Fees for services”, *Private Employment Agencies Act 1981, Act 246* (Feb 12. 1981); and the Schedule of Fees of 2006. For the purposes of defining an allowable fee for recruitment and placement, Verité interprets this law to apply to all suppliers of labor in Malaysia.

198. “Private land-based recruitment agencies are allowed to collect from its selected/hired workers a placement fee equivalent to one (1) month salary, except in countries where laws prohibit collection of fees from workers.”

Hiring Filipino workers, Republic of the Philippines, POEA, <http://www.poea.gov.ph/about/hiring.htm> [accessed 26 Feb. 2014].

- 199. Industry codes:** (1)“We consider excessive recruitment fees — anything higher than the equivalent of one month’s net wages — a form of bonded labor, and these fees are strictly prohibited by our Supplier Code of Conduct.” *Supplier responsibility: Labor and human rights*, Apple, <https://www.apple.com/supplier-responsibility/labor-and-human-rights/> [accessed 26 Feb. 2014]. (2) “Where workers are required to pay fees in connection with obtaining employment, Suppliers shall be responsible for payment of all fees and expenses in excess of the amount of one month of the worker’s anticipated wages. Such fees and expenses include, but are not limited to, expenses associated with recruitment, processing or placement of both direct and contract workers.” “5.1.1 Freely chosen employment”, in *Molex social responsibility (SR) policy*, Molex, 2012, http://www.molex.com/suppliers/about/QEHS-699010-003_CoC%20Suppliers_Rev%20C.pdf [accessed 26 Feb. 2014].
- 200.** *C181 – Private employment agencies convention, 1997 (No.181)*, ILO, 1997, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C181 [accessed June 26, 2014]
- 201.** Fees data was evaluated vis-à-vis legal limits only in cases where workers had clearly delineated fees paid to the sending and receiving country agents. Therefore the pool of respondents evaluated for the excessive fee paying is smaller than the total pool of workers that reported fees paid. 399 people reported the fee they paid. Of those, Verité could only determine who the fees were paid to for 359. 57% reported a sending country fee that Verité could analyze, and 21% of respondents reported fee paid to a Malaysian agent that Verité could analyze.
- 202.** Because detailed data were not collected about interest rates and other loan terms due to the need to limit the survey length, Verité did not rely on worker responses to this particular question in determining the rate of occurrence of the “Forced to Work for Indeterminate Period to Repay Outstanding Debt or Wage Advance,” indicator.
- 203.** The total of 155 includes all respondents for whom the forced labor indicator was positive, plus additional respondents for whom the indicator was not positive, but who answered the survey question in the affirmative.
- 204.** The fact that this number is higher than the number reporting they had not yet paid off their debt suggests a measure of confusion on the part of workers about the scale and structure of their various obligations to pay for loans, deductions, and other fees. As discussed above, the general uncertainty faced by workers about how much they owed, to whom, and when they would be finished paying off their debts, is a structural feature of the electronics industry.
- 205.** The ILO further notes: The “coercion” dimension can be further divided into the six sub-categories presented below:
- i. Threats and violence encompass all forms of punishment or threat of punishment, which put the worker in a position of subordination to the employer. Violence may be physical, sexual or psychological. Deprivation of food or sleep is included in this sub-category.*
 - ii. Restriction of workers’ freedom of movement due to isolation, confinement or surveillance. Workers may be locked in the workplace or living quarters or their freedom of movement outside be otherwise restricted or under constant surveillance. All means used by an employer to make it dangerous or very difficult for a worker to leave the workplace fall under this category.*
 - iii. Debt bondage or debt manipulation and any accompanying threats against a worker or his or her family members.⁸ The debt may have been contracted at any time during the work history of the worker, whether at the time of recruitment (where an advance payment or loan is given and the debtor*

has to repay it through his or her work and/or that of a family member) or when the person is already employed. For operational purposes, it is suggested that the sub-category includes all cases where a debt is imposed on a worker without his or her consent, for example when an employer “creates” an inflated debt for travel, for the use of work tools or for other costs. This category also covers the absence of accounts and a lack of transparency or deliberate manipulation in the repayment of the worker’s debt.

iv. Withholding of wages or other promised benefits may be used by an employer to retain a worker longer than agreed. As the worker does not want to leave without being fully remunerated, and in the absence of access to legal means of recourse, he or she is obliged to remain with the employer in the hope that eventually this will happen.

v. Retention of passport, identity papers or travel documents refers to all situations where workers do not have access to their documents upon request. Cases in which an employer holds the documents for safe-keeping but the worker can retrieve them at any time, do not fall under this category. On the other hand, if an employer confiscates the documents upon the worker’s arrival and refuses to return them, this effectively prevents the worker from leaving and clearly represents a means of coercion; this is especially true for migrant workers, who are often required by law to have their identity documents in their possession at all times.

vi. Abuse of vulnerability, including threats of denunciation to the authorities, is a means of coercion where an employer deliberately and knowingly exploits the vulnerability of a worker to force him or her to work. The threat of denunciation is used especially in the case of irregular migrant workers. Other instances of abuse of vulnerability include taking advantage of the limited understanding of a worker with an intellectual disability and threatening women workers with dismissal or with being forced into prostitution if they refuse to comply with the employer’s demands. As noted above, the obligation to stay in a job due to the absence of alternative employment opportunities, taken alone, does not equate to a forced labour situation; however, if it can be proven that the employer is deliberately exploiting this fact (and the extreme vulnerability which arises from it), to impose more extreme working conditions than would otherwise be possible, then this would amount to forced labour.

206. ILO: *Combating forced labour: A handbook for employers & business* (Geneva, 2008), p. 8.

207. ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (2012), pp. 23-25.

208. For example, the ILO lists “confiscation of cell phone” as a menace of penalty, and this indicator was originally included in Verité’s study. Data collected on this point, however, was not strongly linked to the coercion to work. Therefore this indicator was removed from the forced labor determination.

209. For individual determinations of forced labor, the presence of each independent indicator was evaluated, not the clusters.

210. Aggregate reported cases of each menace indicator can be seen in Appendix 3.

211. A foreign contract worker’s legal status in the country is contingent on employment with a particular employer. This creates an environment in which a threat of dismissal, by association, carries also the threat of denunciation and deportation. Workers made this association clear in their testimonies. Verité therefore clustered together the Menace of Penalty indicators for “Dismissal” and “Denunciation” in its analysis.

212. Section 12(f): *Malaysia: Act No. 150 of 1966, Passports Act*, Government of Malaysia, 1966,

<http://www.refworld.org/docid/3ae6b5204.html> [accessed 30 June 2014].

213. ILO: *Combating forced labour: A handbook for employers & business. 2: Employers' Frequently Asked Questions*. (Geneva, 2008), p. 19.

214. Section 12(f): *Malaysia: Act No. 150 of 1966, Passports Act*, Government of Malaysia, 1966, <http://www.refworld.org/docid/3ae6b5204.html> [accessed 30 June 2014].

215. ILO: *Combating forced labour: A handbook for employers & business. 2: Employers' Frequently Asked Questions*. (Geneva, 2008), p. 19.

216. "It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family." International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by UN General Assembly resolution 45/158 of 18 December 1990, <http://www2.ohchr.org/english/bodies/cmw/cmw.htm> [accessed 30 June 2014].

217. See endnote 155 for a discussion of the integration of passport withholding into the indicators for Limited Freedom of Movement and Communication, No Freedom to Resign in Accordance with Legal Requirements, and Confiscation of Identity Documents.

218. The four categories are electronic components and boards (includes semiconductors and cables); computer peripherals like monitors, printers, keyboards, scanners; telephones, modems, routers, or other communications equipment; and consumer electronics like TVs, DVD players, stereos, and game controllers. These categories of electronics products comprise 86% of establishments, 90% of employment, and 95% of gross output in the sector, respectively. (See: Jabatan Perangkaan Malaysia, Department of Statistics: *Banci Ekonomi Economic Census 2011 (2011)* pp. 115-116.)

219. Section 12(f): *Malaysia: Act No. 150 of 1966, Passports Act*, Government of Malaysia, 1966, <http://www.refworld.org/docid/3ae6b5204.html> [accessed 30 June 2014].

220. ILO: *Combating forced labour: A handbook for employers & business. 2: Employers' Frequently Asked Questions*. (International Labour Office: Geneva, 2008), p. 19.

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