

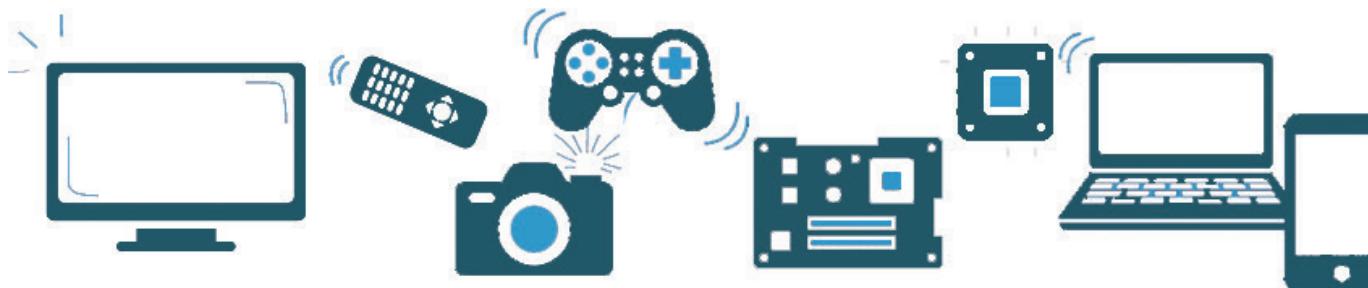


FORCED LABOR IN THE PRODUCTION OF ELECTRONIC GOODS IN MALAYSIA

A Comprehensive Study of Scope and Characteristics



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.