

OUTSOURCING LABOUR

Migrant labour rights in Malaysia's electronics industry

SOMO
January 2013



COLOPHON



OUTSOURCING LABOUR

Migrant labour rights in Malaysia's electronics industry

AUTHOR: SOMO

PUBLISHED BY: SOMO – Centre for Research on Multinational Corporations

COVER DESIGN: Justar.nl

ISBN: 978-94-6207-018-9

This report is published as part of the makeITfair campaign, a European-wide project on consumer electronics. makeITfair aims to inform young consumers about human rights, social and environmental issues along the supply chain. It also addresses consumer electronics companies to contribute to change.

makeITfair is coordinated by the Dutch organisation SOMO (Centre for Research on Multinational Corporations). Project partners are: SwedWatch and Fair Trade Center from Sweden; FinnWatch and Pro Ethical Trade Finland from Finland; DanWatch from Denmark; Germanwatch from Germany; Association of Conscious Consumers (ACC) from Hungary; ACIDH from the DR Congo; CIVIDEP from India; Workers Assistance Center (WAC) from the Philippines; and Civil Society Research and Support Collective (CSRSC) from South Africa.

FUNDING:

This publication has been produced with the assistance of the European Union. The content of this publication is the sole responsibility of SOMO and can in no way be taken to reflect the views of the European Union.



SOMO:

The Centre for Research on Multinational Corporations (SOMO) is a non-profit Dutch research and advisory bureau. SOMO investigates the policies of multinational enterprises and the internationalisation of business worldwide. Focus is placed on research into labour conditions in the global South and cooperation with local organisations and trade unions. Website: www.somo.nl.



CONTACT DETAILS:

SOMO, Coordinator makeITfair

Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands

Tel: +31 (0)20 639 12 91, info@makeitfair.org, www.makeitfair.org

FOREWORD

This report is part of the ‘makeITfair’ project to raise awareness about sustainable development issues in the production chain of the consumer electronics industry.¹ The project’s specific objective is to raise awareness among the selected target groups of electronics companies and consumers about human rights violations, workers’ rights and the environmental impacts of the supply chain of consumer electronics with a special focus on information and communications technology (ICT) products such as mobile phones, MP3 players, game consoles, digital cameras and laptops.

The focus is on the consumer electronics industry, as this industry is growing rapidly and facing many social and environmental problems throughout the world. The industry has only recently been the subject of public campaigns, and there is still limited awareness among the wider public about the industry’s problems. As the production chain of consumer electronic products is a truly global one, the sector is a particularly good example to use in discussing issues of globalisation with young consumers.

The makeITfair project aims to offer recommendations and, by doing so, to convince companies to adopt changes in their practices that contribute to respect for human and workers’ rights and to sound environmental practices. Previous research on working conditions by makeITfair among electronics companies in South-East Asia has identified critical workers’ rights issues such as low wages, compulsory overtime, the curbing of the freedom of association and collective bargaining, casualisation of labour, health and safety problems, and gender and age discrimination.²

Other issues that were subject of earlier research by makeITfair concern the conditions under which raw materials for electronics are extracted³ and the way electronics waste (e-waste) ends up in developing countries such as Ghana.⁴ The dissemination of the research involves the development of Consumer Guides, educational materials, toolkits for campaigning organisations and web-based tools. Other activities in this project include capacity building sessions in Eastern Europe and the organisation of an annual international Round Table to bring together electronics companies, non-governmental organisations (NGOs) and trade unions to discuss the various responsibilities for the environmental, human rights and labour conditions in the supply chain of the consumer electronics industry.

¹ For more information on makeITfair, see <http://makeitfair.org>.

² Various makeITfair publications: *Phony Equality: Labour standards of mobile phone manufacturers in India*, September 2011, <http://makeitfair.org/en/the-facts/reports/reports/phony-equality>; *Game console and music player production in China: A follow-up report on four suppliers in Guangdong*, February 2011, <http://makeitfair.org/en/the-facts/reports/reports/game-console-and-music-player-production-in-china>.

³ See for example: *Unheard Voices: Mining activities in the Katanga province and the impact on local communities*, 2011, http://makeitfair.org/en/the-facts/reports/reports/unheard-voices/at_download/file.

⁴ See for example: *What a waste how your computer causes health problems in Ghana*, 2011, <http://makeitfair.org/en/the-facts/reports/reports/what-a-waste>.

CONTENTS

Executive summary.....	5
List of abbreviations.....	9
1. Introduction.....	10
2. The Electronics Industry in Malaysia	14
2.1 Industrialisation in Malaysia.....	14
2.2 Export Processing and Free Industrial Zones	14
2.3 The Electronics Industry in Malaysia	15
2.4 Asia as a production hub and source of cheap labour.....	16
2.5 Labour and employment conditions.....	17
2.5.1 <i>Labour organisation</i>	17
2.5.2 <i>Women workers in the electronics industry</i>	18
2.5.3 <i>Migrant workers in the Malaysian electronics industry</i>	19
3. The legal position of outsourced workers in Malaysia.....	20
3.1 Becoming a country of immigration.....	20
3.2 Outsourcing: denying labour rights	21
3.3 Anti-union measures	23
3.4 Precarious work and discrimination	25
3.5 6P programme: drive towards legalisation?	26
4. Working and living conditions	27
4.1 Debt bondage.....	27
4.2 Human trafficking	28
4.3 Bad contracts, limited legal protection and no bargaining power	30
4.4 Low salaries, wage manipulation and non-payment	33
5. Factory profiles	35
5.1 Introduction.....	35
5.2 Company profile Takahata.....	35
5.2.1 <i>Workforce</i>	35
5.2.2 <i>Recruitment process</i>	36
5.2.3 <i>Working conditions</i>	37
5.2.4 <i>Living conditions</i>	40
5.3 Company profile Omron.....	41
5.3.1 <i>Work force</i>	41
5.3.2 <i>Recruitment process</i>	42
5.3.3 <i>Working conditions</i>	42
5.3.4 <i>Living conditions</i>	44
5.4 Company profile SMK Electronics (Malaysia) SDN BHD.	45
5.4.1 <i>Workforce</i>	45
5.4.2 <i>Recruitment process</i>	45
5.4.3 <i>Working conditions</i>	46
5.4.4 <i>Living conditions</i>	47
5.5 Conclusions	48

- 6. CSR Guidelines and company responses 51**
- 6.1 Corporate Social Responsibility.....51
- 6.1.1 *A need for tailor-made approaches52*
- 6.1.2 *Efforts of the electronics sector and individual companies on migrant workers53*
- 7. Conclusion and Recommendations 59**

EXECUTIVE SUMMARY

This report is aimed at exploring the working and living conditions of migrant labour in the electronics industry in Malaysia, with the aim of improving their working and living conditions by engaging companies in a discussion about their supply chain responsibilities. It is also aimed towards a formulation of recommendations that the industry can and should implement.

This report presents research findings based on two field researches and interviews with more than 100 workers in the electronics manufacturing industry in Penang and Selangor, conducted with the aim of identifying common problems experienced by migrant workers, who form a central part of global production and in particular in export-processing zones, which are characterised by very precarious employment conditions for migrant workers. After exploratory interviews with 78 workers from Nepal and Bangladesh and a review of existing literature, interviews were conducted with migrant workers employed by three factories, namely, Omron Malaysia, SMK Electronics and Takahata Precision Moulding. Together, they supply parts to, amongst others, electronics companies Amtek, Denso, Hitachi, JVC, Mitsubishi, Panasonic, Samsung, Sharp, Sony, Toshiba and Toto.

Migrants in Malaysia

Malaysia is currently the main destination for migrant workers in South-East Asia. Since 2000, immigration into the country has been growing, with the migrant population rising from 850,000 in 2000 to the current estimated 2 million documented and another estimated 2 million undocumented migrants. Indonesian workers constitute the largest group of migrant workers in Malaysia and in the electronics sector, followed by migrants from Nepal, Bangladesh, Burma, Philippines, Vietnam, Cambodia and India. Since the 1990s, the manufacturing industry has lobbied steadily for the government to open up the market for migrant workers, leading to an increase in the number of migrant workers.

Labour rights in Malaysia's electronics industry

Malaysia's manufacturing sector depends heavily on foreign investment by multinational corporations outsourcing their labour-intensive production. Malaysia is attractive to foreign businesses, amongst others, because of its low-cost workforce, low levels of unionisation and weak labour rights. Malaysia maintains a highly restrictive labour legislation, which, amongst others, limits collective bargaining rights and the right to strike. Malaysia's Industrial Development Council (MIDA) advertises its special economic zones (Free Industrial Zones) with "no minimum wage legislation", "minimum conditions of employment" and "responsible trade unions and harmonious industrial relations".

As a result of the anti-union measures specifically in Malaysia's electronics industry, the workforce is less able to defend its rights. This is reflected in the industry's working conditions. Factory workers are paid little and obliged to perform repetitive, tedious tasks and make long exhausting hours. Because of the high turnover rate, and the lack of local workers associated with harsh working conditions and low wages, the electronics industry relies heavily on migrant workers, of which 70-80% are women. The majority of these migrant workers are not hired directly by the factories, but by outsourcing agents, which manage not only the bureaucratic aspects of the recruitment and migration process, but increasingly the payment of workers; they have become direct employers.

The role of Multinational Corporations

Multinational corporations (MNCs) play an influential role in determining labour relations in the regions and industries they invest in. Indeed, in Malaysia, firms are known to threaten to leave Malaysia if their demands are not met, and the manufacturing industry has successfully lobbied for the liberalisation of foreign worker recruitment to meet their labour demands. The outsourcing system currently in place can be said to be a direct result of company demands. In 2010, the electronics sector contributed 27% to the country's manufacturing output, 49% to exports and 32.5% to overall employment, and almost all of related investments are foreign. In 2011, a staggering 93,23% (almost 6 billion USD) of investment in the Malaysian electronics sector is foreign, originating mainly from Japan, the USA and Germany.⁵

Outsourcing and exploitation

During the past few decades, many states that depend heavily on migrant labour have actively liberalised labour recruitment. This has instigated the blurring of employment relations in that recruitment agencies can increasingly also act, by law or if such legal basis is unclear, in practice, as a direct employer. The responsibility for labour rights violations has thus also become obscured, leaving space for abuse and hampering access to justice by law or through company complaint mechanisms.

In July 2005, Malaysia introduced a policy permitting recruitment agents to bring migrant workers under an outsourcing concept; this allowed for recruited workers to be employed by the outsourcing agents rather than the factories they work in. Whilst the legality of this practice remains contested, the government had nevertheless issued 277 licences for outsourcing agencies by 2010.

Whilst outsourcing works well for employers and the government, workers see their rights violated as a result. Outsourcing can result in discrimination at the workplace and working conditions that are worse than directly employed workers. Outsourced agency workers fall outside of collective bargaining agreements and are not entitled to bonuses or allowances under such agreements. They also cannot join unions, or be represented by unions when it comes to disputes between worker and employer. Some outsourcing agent practices also include paying workers only for the day or hours that they work, without granting regular labour rights such as a paid rest day per week, paid annual leave, paid public holidays, paid sick/hospitalisation leave and maternity leave and benefits. In fact, a Malaysian government official has openly admitted that outsourcing is an anti-union policy which is aimed at attracting foreign investment.

The violation of migrant workers' rights in the electronics industry

Migrant workers have a weak rights position in Malaysia and are often faced with repressive anti-migrant policies and practices. Undocumented stay was made a punishable offence in 2002, with up to five years' imprisonment, whipping, and fines of MYR 10,000 (around 2,500 EUR). This effectively means migrant workers whose rights are violated have no access to justice because a conflict with outsourcing agents or employers can lead to being fired and thereby being made illegal. Depending on an employer for a legal status makes migrant workers highly vulnerable to exploitation.

SOMO's own field research confirms that migrant workers in Malaysia's electronics industry are typically employed on a temporary basis and confronted with contract fraud (false promises about wage levels, not receiving a copy of the contract and/or in a language not understood by the worker), debt bondage and

⁵ MIDA. "Facts & Figures. Projects Approved by Major Industry, January - September 2012 and 2011, Retrieved from <http://www.mida.gov.my/env3/index.php?page=projects-approved-by-major-industry>

subsistence wages for above-average working hours, including structural unpaid overtime. Outsourced workers are discriminated against with regard to working hours, overtime and gender, as well as facing additional disciplinary measures and threats of deportation. All workers reported that sick days were deducted from their salaries by the agencies. Anonymous complaint mechanisms are virtually absent or not made accessible to migrant workers by failing to provide information in their native language. Most workers reported their passports were being held by the outsourcing agencies, some received threats of deportation when they complained about working conditions. In two of the three factories, hazardous working conditions with inadequate protection were reported.

RESEARCH FINDINGS

Debt: Most workers took a loan with family, friends or acquaintances in order to be able to pay for the recruitment fee and travel, accommodation and food costs, sometimes with interest rates for up to 25%. Other workers took a loan with the outsourcing agency to cover the recruitment fee and additional costs. Some workers are not sure if the agency applies an interest rate. In all cases, workers were ill-informed about applied interest rates and fees applied by the outsourcing agency.

Contracts: In one factory, none of the interviewed workers received a copy of their contract. In another, none of the interviewed workers were able to understand the contract they were given once in Malaysia because they cannot read English. All workers reported they were initially promised more wages than they received. Given workers agree to high loans and interest rates on the basis of promised salaries, this can throw workers effectively into debt bondage.

Wages: Most interviewed workers said that the amount they earn is different to the amount that was promised to them, often only half of what they were promised (150 instead of 300 Euro per month). In one factory, none of the interviewed workers received a copy of the contract, so that they had no proof of the salary initially promised to them.

Freedom of movement: Most of the workers reported that their passport is being held by the agency, as one agency confirmed, as a security measure to prevent workers from running away.

Working conditions: Workers are not supposed to talk about non-work related subjects during their shifts. Workers reported if they come late or if they are absent the factory will inform the agency. The agency will deduct part of the worker's salary, also when absent due to illness.

Working hours and overtime: Most interviewed workers reported twelve hour working days on most days, and 6 work days a week. On top of that migrant workers are expected to perform three to four hours of overtime work on a daily basis. Refusing overtime is reportedly very difficult. Workers also reported that occasionally they have to work more than twelve hours a day to complete their targets.

Hazardous working conditions: In one factory, workers reported they are exposed to toxic fumes and chemicals during the process of lead welding and many said they suffer from allergic reactions and often get coughs. In another factory, workers are required to stand for their work during the entire shift. They are also exposed to toxic fumes and chemicals during the process of lead welding. Many of the interviewed workers reported that they suffer from allergic reaction and often get coughs. The factory only provides workers with gloves. Masks are not provided.

Sickness and injuries: Most workers in all factories reported that if a worker is sick, salary will be deducted by the outsourcing agency for the days that s/he is absent.

Disciplinary measures: Most workers reported that they get scolded by the line managers and supervisors if they come in late or have been absent or if they talk during working hours. In some cases workers are humiliated in front of their co-workers. In all factories, workers are encouraged to keep quiet during working hours. Some workers reported that if they come late or if they are absent the factory will inform the agency, which in turn deducts part of the worker's salary, also when the reason for being absent is sickness.

Discrimination: Workers reported discrimination with regard to the working conditions of local workers, and the control of women's fertility and personal life is a clear form of discrimination vis a vis men. Local workers are reported to work eight to ten hours a day, five days a week and mainly work in the morning shift, whilst outsourcing agency workers work 12 hours a day, sick days a week and all shifts. In the standard annual medical check-up, women have to undergo a

pregnancy test. They have to agree in the signed contract not to become pregnant during their employment term and interviewed women said that the agency frequently reminded them that they may not have sexual relationships because it could lead to a pregnancy. All women workers reported that if they were to become pregnant, then they would immediately be sent back to her home country.

Complaint mechanisms: In most cases, it is not possible to file an anonymous complaint because workers need go the Human Resources department in person. Some workers said that they could not make use of the complaint box because they could not write English or Bahasa; others reported the outsourcing agency had threatened to send them back to their home countries if they complained about low wages and non-payment of overtime work. Four workers said there is no possibility at all to make a complaint.

Code of Conducts: All factories had Code of Conducts, but most workers interviewed were not aware of this; those who were, did not understand them or did not know their content.

Trade unions: None of the interviewed workers are members of a trade union. In fact, most of the interviewed workers were not aware about their right to join a union.

CSR Guidelines and company responses

The research findings were presented to both, the factories and the large brands sourcing from them. Out of those companies that replied, several referred to their general CSR policy that could and should deal with migrant labour issues. Yet the above findings show that even if Codes of Conducts exist in supplying factories, they certainly do not protect migrant workers' rights. None of the codes refer specifically to migrant workers' rights.

There are some positive exceptions. Two companies (Apple and HP), albeit not sourcing from the factories researched, have begun including migrant workers in their monitoring and training activities. Philips has also let SOMO know that they have taken up the issue in their factory in Malaysia and are adapting their policies on migrant labour and are taking action on several problems they have identified.

SOMO believes that if the right mechanisms for monitoring and verification are in place, improving corporate Codes of Conduct to deal specifically with migrant workers' rights in the context of the sourcing country could be a starting point to address the problems identified.

However, Codes of Conduct are not sufficient: as this research has shown, multinational corporations are extremely influential in determining labour relations and working conditions in the Malaysian electronics industry, controlling more than 90% of investment in the sector in 2011. By advocating for the rights of trade unions, and an end of the outsourcing system, as well as only sourcing from factories that employ their workers directly rather than through outsourcing agents, companies could help protect migrant workers' rights. A concerted effort on the part of the private sector could address not only excesses such as debt bondage and human trafficking, but also violations of decent work standards, such as inadequate wages, unpaid overtime, wage deductions, health and safety standards and the right to organise and engage in collective bargaining.

Existing Codes of Conduct should offer scope for a direct dialogue with the contracting companies on employment conditions and (the lack of) workers' rights for migrants in the electronics sector, including the harmful practices of employment agencies.

LIST OF ABBREVIATIONS

AFL-CIO	American Federation of Labor - Congress of Industrial Organizations
ASEAN	Association of South East Asian Nations
BSR	Business for Social Responsibility
CSO	Civil society organisation
CSR	Corporate social responsibility
EICC	Electronics Industry Citizen Coalition
EZP	Export Processing Zones
FDI	Foreign Direct Investment
FIZ	Free Industrial Zones
ILO	International Labour Organization
MAEI	Malaysian American Electronic Industry
MIDA	Malaysian Investment Development Authority
MoU	Memorandum of Understanding
MTUC	Malaysian Trades Union Congress
MYR	Malaysian Ringgit
NEP	New Economic Policy
NDP	National Development Policy
SEZ	Special Economic Zones
TIP	Trafficking in Persons
TUAC	Trade Union Advisory Committee
UNHCR	United Nations High Commissioner for Refugees

1. INTRODUCTION

This report is aimed at exploring the working and living conditions of migrant labour in the electronics industry in Malaysia with the aim of improving their working and living conditions by engaging companies in a discussion about their supply chain responsibilities. It is also aimed towards the formulation of recommendations that the industry can and should implement.

To this aim, the report provides facts and figures on the electronics industry in Malaysia and on migrants working in the industry. The legal rights position of migrant workers, which is shaped by the recruitment process and role of outsourcing agents, is outlined. Prior research has already identified the rights violations common in Malaysia's electronics industry and the treatment of migrant workers generally in Malaysia. The report outlines these rights violations with reference to the international and domestic legal framework that aims to protect the rights of migrant workers. SOMO's research has found that violations of migrant workers' rights are indeed integral to the Malaysian electronics industry. It is also evident that multinational corporations are responsible for the treatment of migrant workers in the factories they source from, and that they are taking insufficient steps to address them. This report therefore provides several recommendations for corporations to improve the rights of migrant workers in their supply chain, ranging from specific Codes of Conduct to active advocacy for workers' rights in Malaysia.

The findings are based on two field researches and interviews with more than 100 workers in the electronics manufacturing industry in Penang and Selangor, conducted with the aim of identifying common problems experienced by migrant workers, who form a central part of global production and in particular in export-processing zones in Malaysia. After exploratory interviews with 78 workers from Nepal and Bangladesh and a review of existing literature, interviews were conducted with migrant workers employed by three factories, namely, Omron Malaysia, SMK Electronics and Takahata Precision Moulding. Together, they supply parts to, amongst others, electronics companies Amtek, Denso, Hitachi, JVC, Mitsubishi, Panasonic, Samsung, Sharp, Sony, Toshiba and Toto.

The research findings were presented to the factories and brands, the responses of which are included in this report. The role that sourcing companies, typically large electronics brands, could fulfil in improving the conditions of migrant workers in their supply chain is highlighted and a set of recommendations to achieve this goal are presented.

Structure

Chapter 3 provides an overview of the main facts and issues in the Malaysian electronics industry relevant to the working and living conditions of migrant workers, namely, the economic context of Export Processing Zones, foreign investment in the electronics sector, labour relations and constitution of the workforce.

Chapter 4 outlines some of the main developments in Malaysian immigration policy with regard to labour migration to put the role of migrant workers in the Malaysian economy and their working and living conditions in the electronics industry into context. A comprehensive outline of legal framework pertaining to migrant workers in Malaysia falls outside of the scope of this report. The focus therefore lies on outsourcing arrangements as they developed in recent years.

Chapters 5 and 6 present the common rights violations that take place in Malaysia's electronics industry with regard to migrant workers. Chapter 5 provides an overview of the problems identified in SOMO's preliminary field research from 2011 and existing literature, such as debt bondage, bad contracts, low salaries and human trafficking. Chapter 6 presents the field research conducted in factories in Malaysia in 2012. The findings indicate that migrants are highly vulnerable to exploitation and abuse. Interviews with migrant workers at three suppliers of large electronics brands underscore the image that they are typically employed on a temporary basis and confronted with contract fraud, debt bondage, and subsistence wages for above-average working hours, including structural unpaid overtime, with obligatory wage deductions for food and accommodation provided by their employment agencies. Women have to undergo pregnancy and HIV tests and if pregnant are sent back to their home countries. The chapter also presents the responses by factories to the findings.

Chapter 6 presents corporate responsibility issues, such as existing company and sector codes and guidelines dealing with the protection of migrant workers. Initiatives that have recently integrated specific provisions on and monitoring of migrant workers' rights are highlighted.

Chapter 7 provides general conclusions and recommendations as well as specific recommendations for companies sourcing from electronics factories in Malaysia.

Methodology

The findings in this report are based on desk research and two field researches in Malaysia. Desk research reviewed existing literature on the rights of migrant workers in global supply chains and specifically in the electronics industry in Malaysia. Literature is referenced in footnotes; all online sources were accessible in January 2013. Further, existing CSR policies of suppliers of electronics parts as well as the global brands that source from these suppliers were analysed with a view to formulating recommendations. The literature survey was complemented by field research which focused on contract companies supplying products to large well-known brands.

Exploratory research

An initial exploratory field research uncovered wide-spread abuses of labour and other individual rights, such as confiscation of passports, verbal threats by recruitment agencies and employers, extortionate fees and interest rates paid by migrant workers to recruitment agencies for loans as well as forced overtime at factories. A second in-depth field research confirmed these findings, which are presented in the form of three factory profiles in this report.

For the exploratory research, conducted in November 2011 by local researchers, 78 workers from Nepal and Bangladesh who were outsourced by three outsourcing agencies to various electronics factories in Penang were interviewed about their working and living conditions. Workers were interviewed individually as well as in groups. All interviewees were production and assembly line operators, producing for well-known brands. The ages of workers ranged from 22 to 42 and they were predominantly female (50 women and 28 men). Interviews were performed using a set of questionnaires and translators. Some of the outcomes of these exploratory interviews are used in this report to contextualise the general working and living conditions of migrant workers in the electronics industry in Malaysia, but were not presented to the factories, recruitment agencies or to the major brands sourcing from these factories. It was decided instead to conduct more in-depth interviews with migrant workers from three specific factories, chosen, amongst others, because they supply parts to large brand names. The results of this research were presented to the companies in question as well as brands for which they are producing.

Field research in three electronics factories

The second field research was conducted between April and September 2012 in the state of Selangor. The interviewees worked at the factories Omron Malaysia, SMK Electronics and Takahata Precision Moulding, which supply electronics components but also end products such as DVD players, televisions, cameras and speakers to large brands such as Panasonic, Samsung, SONY, Sharp, Toshiba, Mitsubishi, Hitachi, JVC, TOTO, DENSO and AMTEK.

Interviews consisted of in-depth one to two hour conversations and four focus group discussions, with a total of 55 migrant workers. Contact with workers was made through the local research team with the help of local support organisations.

Like the exploratory research, these interviews also reveal a common tale of precarious livelihood and employment, in a foreign environment and climate marked by fear, oppression, exploitation, discrimination and/or indifference. Abuses and rights violated are committed by employers (i.e. factories) and by recruitment agencies operating from Malaysia as well as from Burma.

Review procedure

Before publishing the findings, all buying and supplying companies mentioned in the factory profiles were given the opportunity to review the findings and to provide comments and corrections of factual errors. Of the manufacturers mentioned in this report, SOMO received an elaborate reaction from Takahata. The reaction from Takahata also included a letter from the outsourcing agency it works with. SMK sent some comments concerning the number of workers employed at the factory and the number of migrants among the workforce. SOMO received these comments through SONY, one of SMK's clients. Omron did not respond to the draft profile at all.

The following buying companies responded to SOMO's review request: Denso, Hitachi, Samsung, Sharp, Sony, Toshiba. JVC, Toto, Amtek, Mitsubishi⁶ and Panasonic⁷ did not respond at all.

Out of the brand companies that responded to SOMO, three indicated (SONY, Hitachi and Toshiba) that they had contacted their respective buyers about the labour rights issues described in the draft profile. SOMO requested all companies to indicate whether they had a policy regarding migrant workers in place. Only two companies (Hitachi and Sharp) responded to this question and sent their supply chain CSR policies which should equally apply to local and migrant workers. Two companies (Samsung and Denso) denied sourcing from the implicated factories.

Local research support and prior research

Local labour rights organisations were very helpful in verifying supply chain relations, for instance by providing details on brands sourcing from the identified factories and researching import data from U.S. ports. There was also collaboration and information exchange with several human rights defenders and support groups that are familiar with and work to improve the situation of migrant workers in Malaysia. The research by German civil society organisation WEED on the Malaysian Electronics industry, which offers well-documented and comprehensive insights into the living and working conditions of migrant

⁶ Mitsubishi was contacted by phone but refused to disclose an e-mail address as an alternative to the online e-mail form. The online submission, however, was not functioning at the time of writing.

⁷ The findings were communicated to Panasonic via facsimile, as the e-mail address provided to SOMO's researcher during a phone call resulted in repeated error reports.

workers in the Malaysian electronics industry merits special mention as a key source for our literature study,⁸ as does Amnesty International's report on the exploitation of migrant workers in Malaysia.⁹

Challenges in interviewing migrant workers

As this report shows, migrant workers are particularly vulnerable due to their precarious legal position and getting into contact with migrant workers and gaining the necessary trust for interviews is challenging. The preliminary research found that migrant workers had been told by their recruitment agencies and factory employers not to talk to strangers. Friends or strangers were found not to be allowed into the dormitories. It was often difficult and time-consuming to gain trust and agreement from the migrant workers to participate in the research, as from a migrant's perspective there is little direct benefit yet a high risk attached to disclosing bad working and living conditions or threats from recruitment agencies or employers, especially if these are intended for publication. The risk of being summarily dismissed is high. Employment passes only allow workers to work for one employer which compounds matters even further; when workers are sent home prematurely they may well end up with still having to pay off the large debts that they and/or their families incurred to be able to go to work in Malaysia.

Furthermore, migrant workers have little free time: interviewees worked on average 12 hours a day, both day and night shifts, six days a week, plus, on occasion, overtime. Researchers therefore found it very difficult to meet workers either inside or outside the dormitories. As an in-depth interview can last up to two hours, interview sessions were often interrupted as research teams could interview workers only for short periods of time before they had to return to the factories. Contacts with potential interviewees or follow-up interviews were sometimes also interrupted because workers left for their country of origin during contact with the research team.

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. As it was not possible to meet workers at their homes (dormitories) or places of work, finding suitable places for conducting interviews often proved problematic. Shockingly, the exploratory research found that some labour recruitment agencies agents rewarded workers with extra allowances to spy on their co-workers, causing animosity among them. Finally, researchers also faced language barriers and cultural differences. A culture of expressing discontent may be alien to migrants coming from countries with very repressive regimes like Burma.

⁸ Bormann, S., Krishnan, P., & Neuner, M. (2009). Migrants in a Digital Age. Migrant Workers in the Malaysian Electronics Industry: Case Studies on Jabil Circuit and Flextronics. WEED. Berlin. http://www2.weed-online.org/uploads/migration_in_a_digital_age.pdf

⁹ Amnesty International. (2010) 'Trapped. The Exploitation of Migrant Workers in Malaysia'. London: Amnesty Publications. <http://www.amnesty.org/en/library/info/ASA28/002/2010>.

2. THE ELECTRONICS INDUSTRY IN MALAYSIA

2.1 INDUSTRIALISATION IN MALAYSIA

Along with Indonesia, Thailand and the Philippines, Malaysia is regarded as one of the new Asian “Tiger” economies, indicating a shift from natural resource dependent growth to the development of a manufacturing sector that now accounts for the biggest bulk in the country’s economic expansion.¹⁰ Indeed, whereas in 1970 some 95% of Malaysia’s exports were still resource-based, by 2007 this figure had dropped to 30%.¹¹ The manufacturing sector depends on multinational corporations outsourcing labour-intensive production, and Malaysia in particular proved attractive for foreign companies because of its political stability and good infrastructure, and its educated, English-speaking, low-cost workforce.¹²

The Malaysian government began setting up a coherent industrialisation policy in the late sixties and early seventies. In 1968, the Investment Incentives Act was passed and the *Malaysian Industrial Development Authority* (MIDA) was established to coordinate development¹³. MIDA, amongst others, promotes foreign and local investment in the service and manufacturing industry.¹⁴ In 1971, the New Economic Policy (NEP) was introduced, which strengthened the focus on manufacturing as a leading industry¹⁵. Subsequent decades witnessed the development of the Second, Third, Fourth and Fifth Malaysian Plans aimed at setting and reaching practical targets derived from the NEP. The NEP ended in 1990 and was succeeded by the similar National Development Policy (NDP).

This chapter provides an overview of the main facts and issues in the Malaysian electronics industry relevant to the working and living conditions of migrant workers, namely, the economic context of Export Processing Zones, foreign investment in the electronics sector, labour relations and constitution of the workforce.

2.2 EXPORT PROCESSING AND FREE INDUSTRIAL ZONES

Like many developing economies, in an attempt to attract Foreign Direct Investment (FDI) to stimulate economic growth, Malaysia started offering investment incentives, often located in specific geographical areas or industries known as Export Processing Zones (EPZ), Special Economic Zones (SEZ) or Free Industrial Zones (FIZ). The World Bank defines an EPZ as “an industrial estate, usually a fenced-in area of 10–300 hectares that specializes in manufacturing for export.” But as the World Bank already points out, this definition has become obsolete as many firms profit from benefits associated with EPZs without being physically fenced in.

Malaysia’s first EPZ was set up in 1971 on the peninsula of Penang on the country’s west coast. Among the first to invest there were the American electronics companies Fairchild and Intel¹⁶. Between 1970 and 1974, a total of seven EPZs and 38 industrial estates were established. Three of these EPZs were built in

¹⁰ Shahid, Y., & Kaoru, N. (2009). Tiger Economies under Threat. World Bank, p. 2-3.

¹¹ Ibid. p.6.

¹² Sivalingam, G. (1994). The Economic and Social Impact of Export Processing Zones: The Case of Malaysia. ILO. p. 5.

¹³ Shahid, Y., & Kaoru, N. (2009). p.17.

¹⁴ MIDA. “About MIDA”. Retrieved from <http://www.mida.gov.my/env3/index.php?page=about-functions>

¹⁵ Shahid, Y., & Kaoru, N. (2009). p.17.

¹⁶ Mohd, I. (2001). “Foreign Direct Investments and Development: The Malaysian Electronics Sector”, CMI Working Paper, no. 4. p. 8.

Penang, two in Selangor, just north of the capital, and two in Malacca, south of Kuala Lumpur.¹⁷ By 1995, the number of EPZs in Malaysia had reached 17 and included EPZs in Johor, Pahang and Kelantan.¹⁸ Today, manufacturing companies in Malaysia are mainly located in over 200 industrial estates or parks and 18 Free Industrial Zones (FIZs), as the MIDA refers to these areas. New sites, fully equipped with infrastructure facilities such as roads, electricity and water supplies, and telecommunications are continuously being developed by both state governments and private developers to meet demand.

Amongst the benefits enjoyed by companies in these zones are:¹⁹

- duty free imports of raw materials, components, parts, machinery and equipment required in the manufacturing process,
- fewer bureaucratic barriers,
- tax breaks and tax holidays,
- subsidies for rent and utilities, and
- advanced infrastructure and IT.

MIDA also advertises that its FIZs have “no minimum wage legislation”, “minimum conditions of employment” and “responsible trade unions and harmonious industrial relations”.²⁰

In areas where FIZs are not available, companies can set up Licensed Manufacturing Warehouses (LMWs) which are accorded facilities similar to those enjoyed by establishments in FIZs. Such areas are sometimes advertised as Hi-Tech Parks.²¹

2.3 THE ELECTRONICS INDUSTRY IN MALAYSIA

Malaysia first identified the electronics sector as a key target area to boost investment, granting a seven year pioneer status to electronics companies,²² with lower taxes on imports, exports and profits and the first introduction of EPZs in the 1970s.²³ Trade unions were restricted in electronics factories, and the formation of a national union expressly forbidden. This only changed in 2009, when the government, under continued pressure, allowed the formation of four Regional Trade Unions in Peninsular Malaysia only.

The electronics sector rapidly developed to become Malaysia’s leading manufacturing industry. According to MIDA, in 2010, the sector contributed 27% to the country’s manufacturing output, 49% to exports and 32.5% to overall employment.²⁴ The industry can be divided in four subsectors:

- electronic components,

¹⁷ Sivalingam, G. (1994). p. 7.

¹⁸ Seguna, P. “Malaysian Country Report, Dignity in Labour”. Retrieved from <http://actrav.itcilo.org/actrav-english/telearn/global/ilo/frame/epzmal.htm>

¹⁹ World Bank. “Export Competitiveness and Export Processing Zones”. Retrieved from <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/TRADE/0,,contentMDK:20540534~pagePK:148956~piPK:216618~theSitePK:239071,00.html>

²⁰ MIDA. “Invest in Malaysia”. Retrieved from <http://www.mida.gov.my/env3/index.php?page=manufacturing-sector>

²¹ MIDA. “Why Malaysia”. Retrieved from <http://www.mida.gov.my/env3/index.php?page=developed-infrastructure>

²² Sivalingam, G. (1994). p. 5.

²³ World Bank (Dorsati Madani). A Review of the Role and Impact of Export Processing Zones, August 1999, Retrieved from <http://siteresources.worldbank.org/INTRANETTRADE/Resources/MadaniEPZ.pdf>

²⁴ MIDA. “Industries in Malaysia. Electrical and Electronics Industry”. Retrieved from <http://www.mida.gov.my/env3/index.php?page=ee>

- industrial electronics,
- consumer electronics, and
- electrical products.

The first sector, electronic components, is the biggest. It is dominated by the testing, assembling and packaging of semiconductors.

Meanwhile, Malaysia has become highly dependent on MNCs to ensure the continuation of this growth, including in its flagship electronics sector. In 2011, a staggering 93,23% (almost 6 billion USD) of investment in the Malaysian electronics sector are foreign, originating mainly from Japan, the USA and Germany.²⁵

The big brand names and leading firms with subsidiaries in Malaysia include:

- Computer manufacturers **DELL, HP, Toshiba²⁶, Intel, IBM,**
- Mobile phone manufacturers **Motorola, Nokia, RIM, Samsung**
- Hard disk producers such as **Western Digital.**
- Assembly firms **Flextronics, Solectron, Celestica, Jabil, Plexus** and **Sanmina-SCI.²⁷**
- Microprocessors and chipset (semiconductor) producers such as **Intel, AMD, Freescale Semiconductor, Texas Instruments, Fairchild** and Malaysian companies **Carsem, Globaltronic, Omega, Unisem, AIC semiconductor** and **Ids Electronics.²⁸**
- Consumer electronics companies producing household goods such as **Philips** and **Bosch.**

2.4 ASIA AS A PRODUCTION HUB AND SOURCE OF CHEAP LABOUR

Whilst the economic success of the Asian Tigers has been impressive, it has been noted that corporate activities leading to sustained capital accumulation, such as Research and Development (R&D) and the ownership of intellectual property rights has largely remained concentrated in the MNCs' home states and regions, such as Japan, Europe and the US. While some MNCs have invested in research and development in Malaysia, it is not clear whether this is a structural development. Of the big electronics companies, Intel has a 'Design and Development Centre' in Penang. Sony and Motorola also have R&D centres in Malaysia²⁹. Some local companies (Globetronics, Shinca and Vhico) have also moved up the value chain, i.e. they successfully made the transition from original equipment manufacturers (OEMs) to original design manufacturers (ODMs),³⁰ a development which is attributed to active involvement of the Penang Development Council. Yet it could be argued that the heavy presence of MNCs should have led

²⁵ MIDA. "Facts & Figures. Projects Approved by Major Industry, January - September 2012 and 2011, Retrieved from <http://www.mida.gov.my/env3/index.php?page=projects-approved-by-major-industry>

²⁶ Okokok. "Foreign Companies in Malaysia Yearbook 2009". Retrieved from http://www.okokok.com.cn/Htmls/PE_Product/081212/40876.html

²⁷ The German Chamber Network. Market Watch Malaysia 2010. Electronics Industry (2010), 3. Retrieved from http://malaysia.ahk.de/fileadmin/ahk_malaysia/Dokumente/Sektorreports/Market_Watch_2010/Electronic_2010_ENG.pdf

²⁸ The German Chamber Network. (2010). p. 4.

²⁹ ElectroIQ, "Electronics Production in Malaysia," ELeCtroIQ. Retrieved from <http://www.electroiq.com/articles/sst/print/volume-40/issue-2/features/feature/electronics-production-in-malaysia.html>

³⁰ It must be noted that there are no precise statistics regarding how much progress Penang has made. The companies that have succeeded in making the transition towards ODM may be limited. See for example: Kassim, H. (2009). "Innovation, R&D and Technology," CNEAC Paper no.3/2/2009. p.3. Retrieved from http://www.neac.gov.my/files/Innovation_R&D_and_Technology.pdf

to much more knowledge spill over and production of own brands.³¹ Many domestic firms still have a hard time moving up the value chain³² and continue to operate mainly as OEM suppliers in a highly competitive environment with small profit margins and little capital to invest in R&D.³³

With growth being achieved by means of increased output volumes instead of technological innovation and higher value-added production,³⁴ the workforce are under continuous pressure to increase efficiency, which is reflected in the labour standards in the electronics industry. Even where EPZs continue to show high employment rates, jobs remain predominantly low-wage and low-skilled.³⁵

2.5 LABOUR AND EMPLOYMENT CONDITIONS

Because of its reliance on MNCs using low-skilled cheap labour, Malaysia has placed itself in a position where it has to continue to cater to the demands of transnational corporate industry. In order to retain foreign investment in its key industries, the Malaysian state has an incentive to keep wages low. The business model used by MNCs does not rely on real assets in host economies, but rather on a web of suppliers and sub-suppliers that produce according to standards set out by the 'lead firm'. This generates important implications for their bargaining power vis-à-vis the labour force and the state. Since MNCs do not possess many factories or other 'immobile' assets in a country, they can easily threaten to leave a country if the state introduces unfavourable investment policies or if a well-organised labour pressures for changes.³⁶

2.5.1 LABOUR ORGANISATION

As a result of the various anti-union measures related to Malaysia's electronics industry, unionisation levels are low³⁷: According to the ITUC, only 7,8% of the total workforce is unionised.³⁸ On 27 May 2009, the Malaysian Cabinet decided that in the electronics industry only unions at regional level would be permitted, as opposed to other industries, where national unions are allowed. Between 2009 and 2010, four regional unions were established, namely, the Western Regional Union (covering Kuala Lumpur, Selangor and Perak), the Southern Regional Union (Johor, Malacca and Negri Sembilan), the Northern Region (Penang, Kedah and Perlis) and the Eastern Regional Union on (Kelantan, Terengganu and Pahang).³⁹ After registration, these Regional Unions started working towards the formation of trade unions in the electronic factories in their respective regions, but to date only one trade union has successfully been established and recognised (in STMicroelectronics Sdn Bhd in Muar, Johor).

³¹ Rajah, R. (2009). "Expansion and Slowdown in Southeast Asian Electronics Manufacturing," *Journal of the Asia Pacific Economy* 15, no.3. p. 125f.

³² Vijayakumari, K. (2007). "Controlling Irregular Migration: The Malaysian Experience," *Institute of Strategic and International Studies*. p. 11.

³³ Kassim, H. (2009). "Innovation, R&D and Technology," *CNEAC Paper no.3/2/2009*. p. 3. Retrieved from http://www.neac.gov.my/files/Innovation_R&D_and_Technology.pdf

³⁴ Bormann et al. (2009). p. 6.

³⁵ Vijayakumari, K. (2001). "Industrial Restructuring in Malaysia: Policy Shifts and the Promotion of New Sources of Growth," in *Industrial Restructuring in East Asia. Towards the 21st Century*, ed. Seuchi Masuyama and others (Singapore: Institute of Southeast Asian Studies). p. 144.

³⁶ Cowling, K., & Tomlinson, P. (2005). 'Globalisation and Corporate Power', *Contributions to Political Economy* 24. pp. 35-54, 44.

³⁷ Bormann et al. (2009). p. 3.

³⁸ ITUC. *Internationally Recognised Core Labour Standards in Malaysia* (Geneva: Report for the WTO General Council Review of the Trade Policies in Malaysia, 2010). p. 2. Retrieved from http://www.ituc-csi.org/IMG/pdf/CLS_Malaysia_2010_clean_final_def.pdf

³⁹ GoodElectronics. (2010). Space opening up for Malaysian electronics unions. Retrieved from <http://goodelectronics.org/news-en/space-opening-up-for-malaysian-electronics-unions/>

ANTI-UNION ACTION BY ELECTRONICS COMPANIES IN MALAYSIA

In 1988, the then Minister of Labour, Lee Kim Sai, announced that a sector-wide trade union would be allowed in the electronics industry. This was likely the result of international trade union outrage following a government crackdown on trade union activists in 1987, locking them up without trial under the Internal Security Act. The ILO and the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO) took action and the US congress threatened with a withdrawal Malaysian trade privileges. However, when US firms began threatening to leave the country if such a law was passed, the government announced it would limit unionisation to in-house unions only.⁴⁰ What was widely seen as the test case for Malaysia's future dealings with unions after this episode were the efforts by a certain union to be recognised as the sole representative union for a company owned by the Harris Corporation. The outcome was not in favour of the workers, as it resulted in the firing of the union executives. A report by the International Labour Rights Education and Research Fund provided evidence that "the Malaysian American Electronic Industry (MAEI) has systematically pursued a policy of intimidation and coercion in order to persuade the Malaysian government to protect the electronic industry from unions".⁴¹

The lack of an organised workforce that is able to defend its rights has led to the electronics industry being characterised by harsh working conditions. Factory workers are obliged to perform repetitive, tedious tasks and make long exhausting hours. This contributes to a high annual employee turnover rate, which in 2009 amounted to 30 to 40 per cent.⁴²

Although migrant workers are now allowed to join trade unions in Malaysia, the increasingly widespread practice of using migrant workers supplied by outsourcing agents makes it impossible for migrant workers to join trade unions as they are not considered employees of the factory. If the outsourcing agent is the employer, he generally supplies workers to many different sectors, and since all national/regional trade unions are sector-specific, it would be difficult for 'employees' of the outsourcing agent to form trade unions. Furthermore, workers who are employed by outsourcing agents do not fall under the Collective Bargaining Agreements applicable at the factory.

This means that the employment of migrant workers by outsourcing agents rather than the factories themselves effectively makes it impossible for migrant workers to join trade unions. Factories can also directly employ migrant workers, even when recruitment took place through intermediaries, in which case they are able to join trade unions.

2.5.2 WOMEN WORKERS IN THE ELECTRONICS INDUSTRY

The industry knows a high gender division of labour. Nearly 70 to 80 per cent of the workforce is female. Their perceived greater dexterity and docility make them the preferred sex for the tasks required in producing and assembling products in the electronics industry.⁴³ In 2003, the Trade Union Advisory Committee to the OECD (TUAC) noted that women in EPZs worked excessive hours, with more than 90 per cent working more than 48 hours per week. TUAC found that instances where women were required to work a further eight hours' overtime after their eight-hour shift, while legislation restricting night work for women in Malaysia had been cancelled to allow factories to operate 24 hours a day. At the same time, promotion prospects for women, who are predominantly employed as semi-skilled or unskilled

⁴⁰ Wad, P. & Jomo, KS (1994) 'In-house unions: Looking East for industrial relations' in S. Jomo (ed.) *Japan and Malaysian Development*. Routledge. p. 224.

⁴¹ Ibid. p. 225-226.

⁴² Hürtgen and others, S. (2009). *Von Silicon Valley nach Shenzhen: Globale Produktion und Arbeit in der IT-Industrie*. Hamburg: VSA – Verlag, p. 203.

⁴³ Bormann et al. (2009). p. 11.

workers, are low.⁴⁴ As are wages in the industry: basic salaries rarely exceed the cost of living per household nor exceed the poverty line set by the Malaysian government.⁴⁵ With employers having to review their pay structures to comply with the new legislation, the impact for EPZ workers of the recent introduction of a minimum wage⁴⁶ set just above the poverty line⁴⁷ remains unclear.

2.5.3 MIGRANT WORKERS IN THE MALAYSIAN ELECTRONICS INDUSTRY

Because of the high turnover rate, and the lack of local workers associated with the prevailing harsh working conditions and low wages^{48,49}, the electronics industry relies heavily on migrant workers, who are generally employed on a short term contract basis. In 2010, the number of documented migrant workers was estimated around 1.9 million persons. The total Malaysian labour force numbered 12.06 million as at December 2010,⁵⁰ which means that roughly 25% to 30% of the work force is composed of migrants. In addition, migrant support organisations and the Malaysian Trades Union Congress (MTUC) estimate that there are between 2 and 5 million undocumented migrant workers in the country.⁵¹ That means that the estimate that one in three workers in Malaysia are migrants⁵² is a conservative one. In 2010 the share of migrants working at a company active in the electronic sector varied between 20 to 60 per cent.⁵³

Malaysia is currently the main destination for migrant workers in South-East Asia.⁵⁴ Since 2000 the stream of migrants into the country has been growing steadily, from 850,000 to the current roughly 2 million.⁵⁵ Indonesian workers constitute the largest group of migrant workers in Malaysia and well as in the electronics sector, followed by migrants from Nepal, Bangladesh, Burma, Philippines, Vietnam, Cambodia and India.⁵⁶ Local research indicates that many migrant workers come from rural areas and that poverty is the main factor pushing people to come to Malaysia to work in the electronics sector. Recruiting agents are known to travel to villages to convince young women and their parents with false promises of good working conditions a salary that will help them out of poverty.⁵⁷

⁴⁴ Findings of the OECD's Trade Union Advisory Committee to (TUAC), cited in 'Export processing zones - Globalisation's great deceit', International Metal Workers' Association. Retrieved from <http://www.imfmetal.org/index.cfm?l=2&c=8459>

⁴⁵ Jeyakumar, D. (2004). 'Has Malaysia really eradicated poverty? Unrealistically low poverty line results in rosier statistics' *Aliran Monthly* 2004 no.2. Retrieved from <http://aliran.com/archives/monthly/2004a/2j.html>

⁴⁶ Malaysia introduced a minimum wage for the first time on 1 May 2012, see <http://www.bbc.co.uk/news/business-17903906>

⁴⁷ Immediately prior to the introduction of Malaysia's minimum wage, Reuters reported that the minimum wage, which would vary from region to region, would range from MYR 800-900 (USD265-298) monthly, while the poverty line is MYR 760 per month. See 'Minimum wage imminent'. Retrieved from <http://www.mercer.com/referencecontent.htm?idContent=1452630#Malaysia>

⁴⁸ Bormann et al. (2009). p. 11.

⁴⁹ Richard, P., & Henderson, J. (2009). "Global Production Networks and Industrial Upgrading. Negative Lessons from Malaysian Electronics," *Journal für Entwicklungspolitik* 25, no.2. p. 43.

⁵⁰ Hector, C. (2012). 'Migrants in Malaysia – An Overview (Part 1)'. In: *Praxis Chronicle of the Malaysian Bar*, January – March 2012, Kuala Lumpur: 2012. pp. 11-17.

⁵¹ Ibid.

⁵² Fair Labour Association. (2009). *Migrant Workers in Malaysia – Issues, Concerns and Points for Action*, Retrieved from <http://www.alfea.org/img/OutsourcingCompanies.pdf> p. 1

⁵³ Bormann et al. (2009). p.11.

⁵⁴ Kaur, A. (2009). "International Migration and Governance in Malaysia: Policy and Performance," *UNEAC Asia Papers* no. 22. p. 7f. Retrieved from <http://www.une.edu.au/asiacentre/PDF/No22.pdf>

⁵⁵ Department of Statistics Malaysia, "Selected Social Statistics, Series 10," Department of Statistics Malaysia. Retrieved from http://www.statistics.gov.my/portal/download_Labour/files/BPTMS/PST-Siri10.pdf

⁵⁶ Bormann et al. (2009). p. 11.

⁵⁷ A Fair Deal And Development For Migrant Workers: Issues And Challenges (2008); in Preliminary research findings, SOMO 2011. p. 23.

3. THE LEGAL POSITION OF OUTSOURCED WORKERS IN MALAYSIA

Whilst the demand for foreign labour in some key industries in Malaysia remains high, the government attempts to prevent permanent settlement as well as irregular migration through strict immigration policies (migrant workers are not allowed to bring their families to Malaysia, for instance). At the same time, the government actively promotes foreign labour recruitment for sectors that rely heavily on migrant labour. Indeed, between 2005 and 2010, Malaysia received an estimated 26,000 migrants per year, the third-highest average annual net migration in the South East Asia.⁵⁸

This chapter outlines some of the main developments in Malaysian immigration policy with regard to labour migration to put the role of migrant workers in the Malaysian economy and their working and living conditions in the electronics industry into context. A comprehensive outline of legal framework pertaining to migrant workers in Malaysia falls outside of the scope of this report. The focus therefore lies on outsourcing arrangements as they developed in recent years.

3.1 BECOMING A COUNTRY OF IMMIGRATION

After Malaysia's independence in 1957 until the 1960s, there were no clearly defined policies regarding entry into the country and migrant workers were often recruited through informal intermediaries in countries that had a historical affiliation with Malaysia, such as Thailand and Indonesia. The Employment Restriction Act of 1968 introduced a requirement for migrants to have a contract or work permit upon entry.⁵⁹ The closure of legal immigration routes, however, creates the phenomenon of undocumented migration, so that irregular migration into Malaysia today is as high as regulated labour immigration, a social and legal phenomenon Malaysia – like many migrant-receiving countries today - is trying to tackle with a mix of amnesty and deportation (see below).

In the wake of growing industrialisation, fuelled by the increase in foreign direct investment stimulated by government incentives, the demand for foreign workers has risen steadily since the 1970s. Malaysia began actively recruiting migrant workers from Bangladesh, Indonesia, the Philippines and Thailand in the mid-1980s for its construction and plantation and domestic work sectors by signing a Memorandum of Understanding (MoU).⁶⁰ Since the 1990s, the manufacturing industry too started a heavy lobby for the government to open up the market for migrant workers, leading to large-scale contracting of foreign labour by recruitment or employment agencies.⁶¹ Since 1992, the government has placed a variable sectoral levy on foreign worker permits as an instrument to regulate (encourage or discourage) the employment of foreign workers in specific sectors.⁶²

⁵⁸ United Nations, Department of Economic and Social Affairs, Population Division, International Migration, 2009 Wallchart, UN Sales No. E.09.XIII.8 (New York: United Nations, 2008). Retrieved from http://www.un.org/esa/population/publications/2009Migration_Chart/ittmig_wallchart09_table.xls

⁵⁹ Kaur, A. (2009). p. 7.

⁶⁰ Amnesty. (2010). p. 10-11.

⁶¹ Bormann et al (2010) p. 11.

⁶² Kaur, A. (2009). p. 12.

MEMORANDUM OF UNDERSTANDING (MOU)

Malaysia has signed multiple MoUs with eight sending countries. These are Bangladesh, Indonesia, Thailand, India, China, Sri Lanka, Pakistan and Vietnam. The MoUs, which differ from country to country, cover issues such as minimum wages, the specific sector where the workers will be employed, housing, legal status, duration, etc. The ILO has concerns regarding Malaysia's MoUs as they fail to specify minimum standards of labour conditions. The MoUs do state that migrant workers have no right to join trade unions and employers are authorised to withhold their passports. MoUs can be important tools in achieving stronger rights positions however, if sending countries possess bargaining power and political will to enforce rights for their citizens employed abroad. For example, after a highly publicised case about the abuse of Indonesian workers in Malaysia, the Indonesian government imposed a ban on sending domestic workers to Malaysia, unless an MoU for better treatment of Indonesian migrant workers was signed.

After the financial crisis of 1997, there was a political backlash against the high presence of migrant workers in the Malaysian economy. The Immigration Act was amended in 1998 and 2000 to increase the penalties for irregular migration. With the amendment of the Immigration Act 1959/63 working without a working permit or visa was finally criminalised.

3.2 OUTSOURCING: DENYING LABOUR RIGHTS

During the past few decades, many receiving states have liberalised labour recruitment. This has instigated the blurring of employment relations in that recruitment agencies can increasingly also act, by law or if such legal basis is unclear, in practice, as a direct employer. The responsibility for labour rights violations has thus also become obscured, leaving space for abuse and hampering access to justice through legal means or through private complaint mechanisms.

In July 2005, Malaysia introduced legislation which transformed the system of recruitment agencies to so-called outsourcing agents, whose remits now included the “management of certain matters related to the employment of migrant workers including accommodation, transportation, paying wages, medical examination and also the obligations to get the necessary insurance coverage for these workers”. Although the law was only intended to outsource *some* of the obligations that an employer of migrant workers was under, instead of fully relieving them of their responsibility, “the practice of outsourcing agents has gone far beyond what the Cabinet Committee envisioned.”⁶³ This includes becoming direct employers of recruited workers, for instance.

In April 2012, the amended Employment Act 1955 came into effect makes it legal for labour outsourcing agents to remain employers of migrant workers even after the recruited worker started working at the factories in question. The amendment created the concept ‘contractor for labour’ and permits these to supply workers to principal employers, which was not lawful before. Outsourced workers are not covered by the Collective Bargaining Agreement applicable in their workplaces and if they demand their rights, can be summarily dismissed. The amended Act stands in stark contrast to earlier legislation,⁶⁴ which stipulates that when a company pays an outsourcing agency for a worker, the company becomes the employer of the workers, which would apply regular labour laws to recruitment agency workers. As migrant and local

⁶³ Hector, C. (2011). ‘Outsourcing Agents and Their Practices: An ‘Illegality’ and Injustice that Must End. Employment relationships must respect worker rights guaranteed by law’, in *Praxis. Chronicle of the Malaysian Bar*, April-June 2011, Retrieved from http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_view&gid=3168&Itemid=332 p. 24.

⁶⁴ Notably the Private Employment Agencies Act of 1981.

workers are increasingly supplied by outsourcing agents, the bargaining powers of local unions in disputes between employers and workers or when negotiating collective agreements, is therefore severely weakened.

STATE REGULATION OF THE RECRUITMENT SECTOR⁶⁵

The Ministry of Human Resources is responsible for overseeing the implementation of the National Labour Policy, including the employment of migrant workers and the protection of employment opportunities for citizens.

The Ministry of Home Affairs, of which the Immigration Department is a part, is responsible for immigration matters and the processing and approving of applications for migrant workers, determining the source country, issuing and revoking employment visas and preventing irregular employment. As part of the application approval process, it takes steps to verify that the company needs a particular number of workers, officials with the ministry explained. The Immigration Department administers and enforces the Immigration Act and its corresponding rules, including by carrying out the deportation of migrant workers who work without authorisation.

The Ministry of Health is responsible for health matters and approves health clinics, which screen migrant workers on entry and then on an annual basis. National policy on the employment of foreign workers is developed by a Cabinet Committee on Foreign Workers and Illegal Employment, which is chaired by the Deputy Prime Minister.

The official position on the legality of outsourcing is unclear. The Deputy Prime Minister was reported in May 2010 to have said, “We feel that employers are the people who should be responsible for their foreign workers. Outsourcing companies are only responsible for bringing them in. After that, employers must assume full responsibility.”⁶⁶ Yet only a month later, the Malaysian government tried to retrospectively legalise outsourcing agencies (“contractors for labour”) directly employing workers in Malaysia’s employment laws, with the Employment (Amendment) Bill in July 2010. Due to civil protests⁶⁷, however, the Bill was withdrawn in October the same year.⁶⁸ The practice, however, is continuing without a proper legal basis:⁶⁹ by 2010 the government had issued 277 licences for outsourcing agencies.⁷⁰

Next to the weak legal rights position of migrants in countries of destination, the violation of migrant workers’ labour rights is inextricably linked to their vulnerable position vis-à-vis the middle-men that bring them in, who are alternatively termed recruitment, outsourcing agencies or temporary work agencies in different contexts. Every country knows different legal arrangements with regard to recruitment agencies, which typically recruit migrant workers in their home countries and act as middle men between the employing factory or business and the worker. In addition to recruitment, this often involves the organisation of legal documents (work permits) and accommodation, as well as work contracts.

⁶⁵ Reproduced from Amnesty International (2010). pp. 14-15.

⁶⁶ Hector, C. (2011). pp. 25-26, citing New Straits Times, 21/5/2010. ‘Higher levies for foreign workers’.

⁶⁷ Joint Statement: Abolish the contract for labour system. Retrieved from <http://aliran.com/9129.html>

⁶⁸ Hector, C. (2011). p. 25.

⁶⁹ See Hector, C. (2011). *ibid* for a detailed discussion on the illegality of the current outsourcing practice and its impact on migrants’ labour rights.

⁷⁰ Malaysian Trades Union Congress (MTUC IR Committee) 12.08.2010, ILO Meeting, *Rang Undang-Undang*, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_154304.pdf, p2.

MALAYSIA'S RECOGNITION OF CORE INTERNATIONAL LABOUR STANDARDS

Malaysia has signed the four core Labour standards set by the ILO in its *Declaration of Fundamental Principles and Rights at Work*, e.g. Freedom of Association and Collective Bargaining, The Elimination of Forced and Compulsory Labour, the Elimination of Discrimination in Employment, and the Abolition of Child Labour.⁷¹ Malaysia denounced its ratification of the *Abolition of Forced Labour Convention (no. 105)* in 1990. It has never ratified the *Discrimination (Employment and Occupation) Convention, 1958 (no. 111)* or the *Freedom of Association and Protection of the Right to Organise Convention, 1948 (no. 87)*.⁷² Some conventions have only been signed at the state level: Notably the *Migration for Employment Convention (revised), 1949 (no. 97)*, which has only been ratified by the state of Sabah.⁷³ Malaysia never ratified the *Migrant Workers (Supplementary Provisions) Convention, 1975 (no.143)* which establishes measures to ensure equal treatment of migrant workers with nationals.⁷⁴ And, as is frequently the case, ratification and monitoring and enforcement are very different things.

In the Association of South East Asian Nations (ASEAN), of which it is a founding member, Malaysia resisted efforts to come to a legally binding treaty aimed at providing multilateral regulations for migration and protection of foreign workers among ASEAN's member countries. ASEAN did introduce a non-binding *Declaration on the Promotion and Protection of the Rights of Migrant Workers* in 2007.⁷⁵ Trade unions and activist urged the ASEAN member states on a summit in April 2011 to introduce a legally binding framework based on UN conventions to protect and promote migrant's rights.⁷⁶ There have been negotiations among ASEAN member states towards a legally binding treaty; yet Malaysia's commitment to such a treaty is low as it would make the country vulnerable to complaints and lawsuits from other member states.

3.3 ANTI-UNION MEASURES

The use of outsourcing through employment agencies has been justified by a government official as an investment friendly anti-union measure: In 2008, the then head of the enforcement unit of the Immigration Department, DatukIshak Mohamed, was quoted in a national newspaper⁷⁷ as follows:

“Outsourcing is good as it will attract foreign direct investment. Investors will not want unions to be formed in their establishments. Through outsourcing, it would be difficult for unions to be formed as the outsourcing company, and not the factory, would be the employer.”

This strong anti-union language can only be explained in the context of a general anti-union and pro-business position of the state, and indeed Malaysia maintains a highly restrictive labour legislation, which, amongst others, limits collective bargaining rights and the right to strike.⁷⁸ The Malaysian government has

⁷¹ ILO. “ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up. Article. 2,” ILO (adopted June 18, 1998). Retrieved from <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

⁷² For a current list of Malaysia's ratifications, see the ILO website:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960

⁷³ Hassan, K.H., & George, C.M. (2009), External Migration of Labour Force and Access to Justice: Malaysian Law in the Context of ILO Standards, part of the research project “Transformation of Dispute Resolution Mechanism Towards Social Justice” (Malaysian Ministry of Higher Education). pp. 5-7.

⁷⁴ FIDH / SUARAM, Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination (2008). Retrieved from <http://www.fidh.org/IMG/pdf/MalaisieCONJ489eng.pdf> p. 7.

⁷⁵ Amnesty International (2010). p. 12.

⁷⁶ Antara News. “ASEAN Urged to Adopt Legally Binding Agreement on Workers”. Retrieved from <http://www.antaranews.com/en/news/70164/asean-urged-to-adopt-legally-binding-agreement-on-workers>

⁷⁷ New Straits Times (20.7.2008), cited in Malaysian Trade Union Council (MTUC IR Committee) 12.08.2010, pp. 2-3.

⁷⁸ Registration of new unions can be denied without reason by the Director General of Trade Unions within the Ministry of Human Resources. Trade union formation is restricted to economic sectors and national general trade

justified its anti-union policy with the argument that trade unions threaten the national interest with wage demands that induce companies to relocate their business.⁷⁹

Anti-union legislation has invariably led to low unionisation levels in Malaysia (7.45 per cent in 2008),⁸⁰ and unionisation in the electronics sector in particular remains low due to the legacy of a ban on unions when this sector began to be promoted as a pioneer industry.⁸¹ Over and on top of the sectorial restriction of union rights, the overall restrictive measures against migrants in force add to the legal barriers impeding migrant worker organisation.

SOMO's preliminary survey found that, even though migrants are not expressly forbidden to join a labour union, migrant worker union membership is discouraged by stipulations in employment contracts.⁸² Furthermore, the Ministry of Home Affairs sets as one of the conditions for obtaining and maintaining a work permit for migrants, that the worker must not be a union member or join any sort of association. This is contrary to the Employment Act.⁸³ Finally, should migrant workers still decide to join a union in the face of all these barriers, they cannot become union organisers as the law stipulates that all union officers must be Malaysian citizens.

THE MALAYSIAN TRADE UNION CONGRESS AND MIGRANT LABOUR

The main national platform for the Malaysian labour movement is the Malaysian Trades Union Congress (MTUC), a federation of trade unions. Since Malaysian Labour legislation prohibits the formation of general nationwide unions that represent cross-industry workers' interests and engage in collective bargaining, the MTUC serves as an organising platform for the different trade unions across the country. It assists unions in organising and fulfilling administrative work and issues advice on labour issues to the government. According to the MTUC, the unions affiliated with the federation encompass roughly 500,000 members. In addition, the MTUC represents

unions are not permitted. The Ministry categorises industry sectors, and can decide to reclassify sectors to break large unions. Unregistered trade unions are treated as illegal organisations. The government may dismiss a union if two or more unions exist in the same category. The government may also suspend trade union activities for up to six months if it is justified in the interests of the national security of the public. Certain categories of workers are prohibited from joining a union, among them certain classes of civil servants and public employees, decided by the Director General Unions are not allowed to take action over issues with trade union registration or illegal dismissals and general and solidarity strikes are not permitted. On the whole, the right to strike in Malaysia remains limited and in some services that are considered essential, such as the health care, education and transportation sectors, even completely prohibited. See ITUC, "Annual Survey of Violations of Trade Union Rights 2010," ITUC. Retrieved from <http://survey.ituc-csi.org/Malaysia.html?lang=en>

⁷⁹ Bhopal, M., & Rowley, C. "The State in employment: the case of Malaysian Electronics", *The International Journal of Human Resource Management* 13 no. 8 (2002): 1173; Malaysia's stance was reaffirmed in 2008 when the Enforcement Director of the Immigration Department stated in an interview with the *New Strait Times* that outsourcing is a good method of attracting FDI, because it is a barrier to unionisation, which is seen as an investor friendly measure. Cited in Malaysian Trades Union Congress (MTUC IR Committee) 12.08.2010. p. 3.

⁸⁰ Rose, C.R., Kumar, N., & Ramasamy, N. (2011). 'Trade unions in Malaysia: perspectives of employers & employees of unionized companies', *Indian Journal of Industrial Relations*, 2011, vol. 46, issue 3.

⁸¹ *Ibid.*

⁸² "The Employee shall not participate in any political activities and activities of those related to trade union in Malaysia; or instigate others to commit such acts". "The Employee [...] shall not participate in any political activities and activities of those connected with Trade Union in Malaysia. The breach of the restriction will entail a termination of service." SOMO Research (2011) *SOMO Research: Working and Living Conditions of Migrant Workers in the Electronic Sector in Malaysia*: 36.

⁸³ ITUC. Internationally Recognised Core Labour Standards in Malaysia (Geneva: Report for the WTO General Council Review of the Trade Policies in Malaysia, 2010). p. 2. Retrieved from http://www.ituc-csi.org/IMG/pdf/CLS_Malaysia_2010_clean_final_def.pdf

Malaysian workers at ILO conferences. The ILO estimates the number of represented workers to account for 7,8% of the total workforce in Malaysia.⁸⁴

Apart from campaigning for general labour rights (for instance, minimum wage, five-day work week, the right to organise),⁸⁵ the MTUC also campaigns for the abolition of the outsourcing system. The issue of migrant labour, however, is not uncontested in national labour unions, as local workers compete with migrant workers for jobs. In 2009, for example, the MTUC faced criticism for its opposition to the immigration of some 55,000 Bangladeshi workers, which led to the workers' visas being revoked.⁸⁶ In October 2011 the union called for a ban on labour immigration to ensure employment for the 1,3 million registered workers in unapproved sectors during the 6P Programme.⁸⁷ Whilst pursuing a nationalist agenda on the one hand, however,⁸⁸ the MTUC also continues to assist migrants in claiming rights, although it is unclear how migrant themselves perceive the trade union's support.

3.4 PRECARIOUS WORK AND DISCRIMINATION

Whilst outsourcing works well for employers and the government, workers see their rights violated as a consequence. Outsourcing can “often result in discrimination at the workplace. Workers supplied by these outsourcing agents are treated differently and often worse than other workers at the same company.”⁸⁹ Outsourced agency workers fall outside of collective bargaining agreements and are not entitled to bonuses or allowances.⁹⁰ Some outsourcing agent practices also include paying workers only for the day or hours that they work, without granting regular labour rights such as a paid rest day per week, paid annual leave, paid public holidays, paid sick/hospitalisation leave and maternity leave and benefits.⁹¹ The concern about non-discrimination at the workplace was taken up by the Malaysian Parliament as “something that Parliament felt important enough to insert by amendment a prohibition against discrimination on the basis of whether one is a local worker or migrant worker.”⁹²

Outsourcing agents hold a particular power of migrant workers, as employment permits are linked to a certain location and company. Migrant workers are thus tied to a specific industry sector and employer, often the outsourcing agency. Leaving an outsourcing agent therefore automatically makes a worker illegal as his/her work permit is also tied to their visa⁹³. This means migrant workers are highly dependent on employers and employment agencies, which makes them particularly vulnerable to exploitation. Migrants may become technically illegal when the appropriate documents are more or less in place, but details have been carelessly filled in by recruitment agencies or employers. Migrants can even become unwittingly undocumented when employers fail to secure the necessary permits before migrants outstay their temporary visa or fail to renew existing work permits, but continue to employ them. This is particularly problematic in light of the criminalisation of undocumented stay in Malaysia. In 2002 a law was introduced that provides for up to five years' imprisonment, along with whipping up to six strokes, and

⁸⁴ Ibid.

⁸⁵ Malaysian Trades Union Congress. “About Us”. Retrieved 2011, from http://www.mtuc.org.my/about_us.htm

⁸⁶ InformBusiness. “Malaysia Revokes Visas for 55,000 Bangladeshi Workers”. Retrieved from http://www.channelnewsasia.com/stories/afp_asiapacific_business/view/414311/1/.html

⁸⁷ The Star Online. “MTUC Calls for a Freeze on Intake of Foreign Workers”. Retrieved from <http://thestar.com.my/news/story.asp?file=/2011/10/6/nation/9640371&sec=nation>

⁸⁸ The Star Online. “Give Actual Statistics on Foreign Workers, Govt Told”. Retrieved from <http://thestar.com.my/news/story.asp?sec=nation&file=/2011/3/7/nation/8202551>

⁸⁹ Hector, C. (2011). p. 26.

⁹⁰ Bormann. p. 11. Phillips and Henderson. p. 54.

⁹¹ Hector, C. (2011). p. 26.

⁹² Ibid.

⁹³ Amnesty International (2010). pp. 15-16.

finest of MYR 10,000 (around 2,500 EUR) for violations.⁹⁴ Employing or housing undocumented migrants also became a punishable offence, subject to fines and imprisonment.⁹⁵

3.5 6P PROGRAMME: DRIVE TOWARDS LEGALISATION?

In June 2011 in an attempt to tackle the large irregular labour force, the Malaysian government introduced the 6P programme, which stands for registration (pendaftaran), legalisation (pemutihan), amnesty (pengampunan), supervision (pemantauan), enforcement (penguatkuasaan) and deportation (pengusiran).⁹⁶ The plan includes an amnesty for the estimated two million undocumented migrant workers in the country. In the past, amnesties have been used as a tool to detect migrants and force them to return home; in practice, it can also be used to expand the legal labour pool in light of on-going complaints of employers about labour shortages. The proclaimed aim of the amnesty is to assign newly registered migrant workers with jobs, with the help of the Ministry of Human Resources, in five approved sectors, namely, plantation, agriculture, construction, manufacturing and domestic help. The identification of migrants takes place through a biometric identification scheme, which has raised privacy concerns and fear among migrants that once detected and biometrically identified, they will be subject to removal and a re-entry ban.

The Ministry of Home Affairs announced on 6 October 2011 that in the course of the 6P programme some 1,3 million undocumented migrants (more than half of the estimated total) had registered for the amnesty, while a further 1 million legal foreign workers had registered for the biometric programme.⁹⁷ While it is expected that the government – now that the 6P programme on 11 April 2012 moved from the legalisation and amnesty phase into the enforcement phase – will intensify its clamp down on undocumented immigrants,⁹⁸ it has to date only legalised some 480,000 out of the 1,3 million newly registered illegal migrant workers, leaving over 70% of those who registered undocumented, without a work permit and thus vulnerable to arrest and deportation. It is estimated that another 1.7 million undocumented workers remain unaccounted for.

Home Affairs figures of May 2012 indicate that under the 6P programme close to 147,000 illegal immigrants opted to leave the country. Some 2,000 undocumented migrants have reportedly been deported, with a further 7,000 under investigation or in the process of being deported.⁹⁹ These figures are expected to rise in the next phases of the 6P programme. Meanwhile, the UNHCR has expressed its concern that Malaysia does not distinguish between undocumented migrants and refugees.¹⁰⁰

⁹⁴ United States Committee for Refugees and Immigrants (17.6.2009) World Refugee Survey 2009 – Malaysia. Retrieved from <http://www.unhcr.org/refworld/country,,USCRI,,IDN,,4a40d2adc,0.html>

⁹⁵ Laws of Malaysia. (2006). “Section 55”, *Immigration Act 1959/63*. Malaysia: The Commissioner of Law Revision, Malaysia.

⁹⁶ New Strait Times. “2 million register but thousands yet to do so,” New Strait Times, August 20, 2011.

⁹⁷ New Strait Times. “Hisham: 6P op results worrying,” New Strait Times, September 6, 2011.

⁹⁸ The New Strait Times reported on 12 April 2012 that with the 6P programme now entering the enforcement phase, ‘enforcement bodies are ready to weed illegals out of their hiding places and those working in unapproved sectors’. “Time to weed out the illegals”. Retrieved from <http://www.nst.com.my/nation/general/time-to-weed-out-the-illegals-1.73181>

⁹⁹ “How effective was 6P?”. Selangor Times. 15 June 2012, April 12, 2012. Retrieved from <http://www.selangortimes.com/index.php?section=insight&permlink=20120615101712-how-effective-was-6p>

¹⁰⁰ UNHCR country operations profile 2012 - Malaysia. Retrieved from <http://www.unhcr.org/pages/49e4884c6.html>

4. WORKING AND LIVING CONDITIONS

Migrant workers in Malaysia face structural inequalities with regard to labour rights. Starting from the recruitment phase, the ways in which migrant workers are subject to exploitation are diverse. The over 400 complaints received by the Malaysian Trade Union Congress (MTUC) in 2010 form an indication of the rights violations migrant workers in Malaysia face. These were related to non-payment of wages, arbitrary and unexplained wage deductions, breach of working hours, including overtime pay, annual leave, paid public holidays and weekly days of rest.

SOMO's own field research confirms that migrant workers in Malaysia electronics industry face these issues, which are outlined in more detail below. They indicate that migrants are highly vulnerable to exploitation and abuse, and highlight the urgency for companies to take action to protect workers in their supply chains. Interviews with migrant workers at three suppliers of large electronics brands underscore the image that they are typically employed on a temporary basis and confronted with contract fraud, debt bondage, and subsistence wages for above-average working hours, including structural unpaid overtime, with obligatory wage deductions for food and accommodation provided by their employment agencies.

4.1 DEBT BONDAGE

Many migrant workers start their employment in Malaysia under a heavy debt burden. Recruiting agencies, who often work for larger Malaysian employment agencies¹⁰¹, tend to charge aspiring migrants high recruitment fees up front, or demand pay backs after they commence work in Malaysia.¹⁰² Amounts tend to vary according to the sending countries. Amnesty International reports that Bangladeshi migrants pay an estimated USD3,205 and USD3,645, Vietnamese workers pay between USD1,030 and USD1,275 and Nepali workers typically pay between USD935 and USD1,335.¹⁰³ The recruitment fees often exceed legal limits set by sending countries.¹⁰⁴ The only regulation Malaysia has set regarding recruitment fees is in an agreement made with Indonesia, which stipulates that fees should not exceed RM1800-RM2400 depending on the home province of the migrant. But according to local researchers in Malaysia the law is not enforced.¹⁰⁵ These practices are in breach of Malaysian employment law and Article 9 of the Protection of Wages Convention,¹⁰⁶ which Malaysia has ratified¹⁰⁷ and which prohibits “any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter)”.

¹⁰¹ Bormann et al. (2009). p. 17.

¹⁰² Amnesty International. (2010). p. 17.

¹⁰³ Ibid.

¹⁰⁴ Nepalese law, for example, stipulates that recruitment fees should not exceed RM3,500 or US\$1,139). Indonesian law stipulates that the total costs of being recruited and send to Malaysia, should not exceed US\$513,75. in Preliminary research findings, SOMO 2011: 14-15.

¹⁰⁵ Preliminary research findings, SOMO281211. p. 12.

¹⁰⁶ ILO. Protection of Wages Convention, 1949, no. 95 (Geneva: ILO, 1949). Retrieved http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C095. This states that “Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited”.

¹⁰⁷ For a current list of Malaysia's ratifications, see the ILO website:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960

Migrant families often go into debt to pay for the high fees, selling farm animals, taking out mortgages on their land or borrowing money at exorbitant interest rates of even up to 40 per cent. Under threat of losing their collateral or creditors going after their families, workers are under pressure to repay these (family) debts quickly.¹⁰⁸ SOMO's preliminary research found that of 78 workers interviewed by local researchers, all were directly paying back a loan and/or sending money back home to repay family debts. Given their poor wages, it takes most workers two to three years to pay back their recruitment fees and begin saving money.¹⁰⁹

The imposition of steep recruitment fees leading to stifling debts on migrant labourers has been linked directly to debt bondage.¹¹⁰

4.2 HUMAN TRAFFICKING

Article 3(a) of the Protocol to the United Nations Convention against Transnational Organized Crime (Protocol to Prevent, Suppress and Punish Trafficking in Persons) defines human trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Given that trafficking charges can lead to considerably higher punishments than the violation of labour laws, an act of exploitation has to fulfil certain criteria to be identified as trafficking. The UNODC has there laid down 3 elements an act of exploitation has to meet to constitute human trafficking, namely, the act (what is done), the means (how it is done) and the purpose (why it is done).

- The act entails recruitment, transportation, transfer, harbouring or receipt of persons
- The means entails threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
- The purpose is exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.

To ascertain whether a particular circumstance constitutes trafficking in persons, the above definition of trafficking and the constituent elements of the offense as defined by relevant domestic legislation are considered.

SOMO's researchers did not come across any clear-cut cases of human trafficking. Yet it is widely recognised that labour exploitation amounting to human trafficking is a global phenomenon that is found in low-pay sectors of work.

In its 2012 U.S. Department of State Trafficking in Persons (TIP) Report¹¹¹ says that:

“The overwhelming majority of trafficking victims are among the estimated two million documented and two million or more undocumented foreign workers in Malaysia. They migrate willingly to Malaysia from

¹⁰⁸ Bormann et al. (2009). pp. 17-18.

¹⁰⁹ Preliminary research findings, SOMO (2011). p. 24.

¹¹⁰ U.S. State Department. Trafficking in Persons Report 2011. Retrieved from <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm> p. 8.

¹¹¹ See <http://www.state.gov/j/tip/rls/tiprpt/index.htm> for all reports.

countries including Indonesia, Nepal, India, Thailand, China, the Philippines, Burma, Cambodia, Bangladesh, Pakistan, and Vietnam in search of greater economic opportunities. Some of them subsequently encounter forced labour or debt bondage at the hands of their employers, employment agents, or informal labour recruiters. While many of Malaysia's trafficking offenders are individual businesspeople, large organized crime syndicates are also behind trafficking. “

Recruitment agencies are therefore recognised as playing a central role in human trafficking. Their misconduct (such as providing false information about the nature of the work, withholding passports charging illegal fees, etc.) may amount to constituting human trafficking. SOMO's research has found incidents of outsourcing agents 'keeping' workers' passports and of providing contracts in foreign languages. In one case, a contract reviewed tied a worker to the outsourcing agent by taking a mandatory wage deduction in the first year as a deposit, to be returned upon completion of the full term of the migrant worker's contract.¹¹² Migrants are threatened with deportation if they do not comply with the recruitment agencies' demands.

Although the U.S. Department of State's practice of ranking countries in a tier system with regard to their anti-trafficking efforts is contested (published annually in its Trafficking in Persons (TIP) Report), the fact that Malaysia is on the “Watch List“ (Tier 2) is an indication as to the country's weak compliance with international minimum standards to combat trafficking.¹¹³

In 2010 and 2011, Malaysia was promoted from Tier 3 to Tier 2 by the U.S., chiefly because the country signed the signing of the *Anti-Trafficking in Persons Act*¹¹⁴, which makes smuggling migrant workers into the country an offense punishable by 20 years' imprisonment. While the Act also officially grants immunity to trafficked persons, there is little real recognition on the part of the authorities of the precarious situation that victims of trafficking and debt bondage find themselves in. Trafficked persons are not provided with the necessary support and assistance to seek remedies, such as legal aid and interpretation assistance.¹¹⁵ They continue to be rounded up, detained and deported as 'illegal aliens'. Indeed, being identified as a victim of trafficking can be dangerous for migrants, because a state “rescue” might provide protection for the time of investigation but will most likely result in them being handed over to the Immigration Services for deportation to their home country without compensation for unpaid wages, as trafficking is notoriously hard to prove.

WORKER TESTIMONY

The story of NeelaHumla - a female Nepalese worker*¹¹⁶

“I came from Kathmandu last February and I paid my recruitment agent a fee of RM4,500 (USD1462). My parents are poor farmers and borrowed the money for the fee from a relative at a rate of 5% interest. I have two brothers who are going to school and I have to support them. My mother is old and sick and she cannot work on the farm anymore. The agent in Nepal told my mother not to worry as Malaysia is very safe. The big companies would look after her daughter and give her food, accommodation and an air-conditioned workplace. I signed a contract written in Nepalese which stipulated that wages and overtime would amount to a sum of about RM1,300 (USD442.50) a month.”

¹¹² SOMO keeps a copy of the contract on file

¹¹³ Amnesty International (2010). p. 6.

¹¹⁴ U.S. State Department. Trafficking in Persons Report 2011. p. 243.

¹¹⁵ Ibid. p. 244.

¹¹⁶ Preliminary research findings, SOMO 2011: 26-27.

Neela's nightmare began when she landed at Kuala Lumpur International Airport, where the Malaysian agent came to take her and her friends to Penang. He immediately asked for their passports and made them sign several documents. "We could neither speak nor understand what was written and there was no one to explain to us what was happening. We were so tired and he asked another male Nepalese worker, who could speak some English to inform the others that this was an immigration matter and they all need to sign. Believing this was for the immigration, we signed it."

"When we reached Penang, about ten of us were taken to a wooden house which was dark, no lights and scary. He told us to stay there until he could find us a hostel. He warned us not to go out anywhere and we were so afraid. The next day he brought us a bag of rice and told us to stay put until he told us what to do. He brought along a woman and searched us so we would not have any phone numbers on us. We practically stayed there for two months before he placed us in a company in Penang".

"We were placed in a hostel and there were 10 of us in all with one bathroom and one toilet. After the first month of work, we did not get any salary. We got RM100 (USD32.50) as food allowances. The following month was also the same, the agent gave us RM150 (USD48.75) and the third month we got wages of about RM550 (USD178.75) per month but there were deductions. We could not understand the deductions and why we getting paid so low. We worked 12 hours daily. When we asked the agent why there is so much deduction, he said 'you think food and accommodation is free'...".

"We were not treated the same way as the local people. They work 8 hours and we work 12 hours without overtime. We have to work on our day off, which is considered overtime, and the locals do not have to work. We work 30/31 days without a rest. We get so tired. We could not report to anyone, our agent will just scold us and tell us to shut up and do our work. When we try to talk to the supervisors, they say we have to talk to the agent. We just did not know who to go to".

"Some of our friends were so frustrated with the wages, and the terrible working and living conditions that they ran away to the Nepal embassy in Kuala Lumpur and asked to be sent back to Nepal. They keep us like prisoners here and we cannot do anything or go anywhere. The police and RELA are after us, the agents are after us. And we do not have our passports. We get so depressed. There is no one to help us in case there is an emergency".

Source: Interview with Female Nepalese Worker, November 2011

**Name changed for privacy*

4.3 BAD CONTRACTS, LIMITED LEGAL PROTECTION AND NO BARGAINING POWER

Since 2005, when legal changes allowed for outsourcing agents to directly employ the workers they recruited instead of the principal employers, the practice of outsourcing (rather than recruitment and then direct employment at the place of work) has increased. If migrant workers receive a contract at all, frequently the first time a migrant worker is presented a contract to sign is at the airport, just before they leave their country for Malaysia.

Contracts often state significantly worse arrangements than prospective migrants were promised when they were recruited. However, having already paid out the exorbitant recruitment fees, migrants often feel they have no choice but to sign.¹¹⁷ Once in Malaysia, migrants usually receive a second contract; most of

¹¹⁷ Amnesty International (2010). p. 24.

the workers interviewed, however, did not understand the contract as it was in English. The interviewees reported to SOMO's researchers that they are paid monthly wages at around or even below the level of the national poverty line of RM800 (\$263), and in some cases they were only paid half of what they were promised. In addition, there are stark differences in wages between migrant workers as often the wage to be paid is dependent on the sending country, since countries specify in their MoU the minimum pay expected for their migrant workers. For example, the Philippines has agreed with Malaysia in their MoU that the minimum wage of domestic workers is USD400 . This year (2012), on Labour Day, Malaysia's Prime Minister announced the introduction of a minimum wage within the year, of RM800 (\$263) for the states of Sabah and Sarawak and RM900 (\$297) for peninsular Malaysia. Any positive effects the introduction of such a minimum wage – which is set around the poverty line and hence has been heavily criticised by Malaysia's labour unions - could have for migrant workers, will be heavily constrained by existing practices of wage deductions and non-payments.

Also, as confirmed by the International Trade Union Confederation (ITUC), as outsourced labour migrant workers are excluded from the scope of collective agreements, which in Malaysia are restricted to making provisions to enhance skills, annual wage review and for remuneration systems. Hiring and firing, transfer and promotion, dismissal and reinstatement are excluded. Even though according to Employment Act 1955 foreign workers (with the exception of domestic workers) enjoy the same rights as any ordinary employee, a 2005 court ruling which entitles migrant workers to leave on public holidays, annual leave, shift allowances and basic wages as stipulated in collective agreements, continues to be ignored by employers.

SOMO researchers came across contracts stipulating that migrant workers can be dismissed by their employer if they create social problems or engage in illegal or criminal activities, are absent for two consecutive work days without reasonable cause or leave, and/or are deemed unfit for employment as stated by a doctor. Violation of these clauses will result in immediate dismissal and repatriation to the home country on the migrant's costs. Local researchers also found contracts of recruitment agencies stipulating that workers cannot participate in “any political activities” or join labour unions.¹¹⁸

Migrant workers are further disadvantaged by the Malaysian employment act, which allows for discrimination when firing workers that are redundant. Article 60 of the Malaysian Employment Act 1955 clearly states that ‘no employer shall terminate the contract of service of a local employee for the purpose of employing a foreign employee’, and goes on to say ‘where an employer is required to reduce his workforce by reason of redundancy necessitating the retrenchment of any number of employees, the employer shall not terminate the services of a local employee unless he has first terminated the services of all foreign employees employed by him in a capacity similar to that of the local employee’. Even where migrants are technically protected by Malaysian law, in real life these regulations are often not enforced.

LEGAL HARASSMENT OF HUMAN RIGHTS DEFENDERS

Not only migrants have a hard time seeking legal redress, human rights activists who seek to address labour issues are also subject to intimidation. Human rights activist Charles Hector repeatedly wrote on his blog about 31 migrant workers who were threatened by their employer, Asahi Kasei, after they complained about wage deductions and the lack of sick leave. Hector was subsequently slapped with a €2.3 million lawsuit for libel. The judge seemed to not consider Hector a Human Rights Defender, and the 31 workers as not related parties to the

¹¹⁸ Preliminary research findings, SOMO 2011: 28. Copies of several contracts are on file at SOMO.

case, which means they enjoy no deportation protection.¹¹⁹ On August 25th 2011, Hector saw himself forced to accept a settlement with Asahi Kasei, in which it was agreed that he made a public apology in two major newspapers and was to pay a symbolic sum for costs and damages. The outcome of the conflict was widely seen by Human Rights Organisations as a failure of the Malaysian government and electronic companies sourcing from Asahi Kasei to respect human rights.¹²⁰

On the one hand, migrants, as our case studies corroborate, are often unaware of their (labour) rights. On the other, should they attempt to exercise the (limited) rights they have or seek redress in case of violations, they face formidable barriers. Employers can dismiss and revoke the work permit of migrant workers if they file a complaint, making them vulnerable to arrest, fines, imprisonment and deportation due to a lack of a working permit. Employment agencies, who withhold migrant workers' passports as a matter of course, intimidate migrant workers wanting to claim their rights by threatening to call in the police or the RELA militia.¹²¹ The low level of unionisation among migrants means that they typically do not have a support network to fall back on which can assist in litigation. Many migrants cannot afford to invest, including financially, in a long judicial process, especially when the outcome thereof is uncertain. Malaysian law makes it illegal for a migrant worker to remain in the country once a contract has been terminated, so that access to justice is made effectively impossible. Deported migrants are permitted to pursue a court case from another country, but in practice this is time-consuming and expensive. Lack of finances means it is unrealistic for migrant workers to keep an appeal or case going and return to Malaysia for the necessary attendance of court days. Winning a case is often difficult as an employee has to prove he has worked for the company in the first place. As contracts or payslips are not always given, this is sometimes impossible to do. In these circumstances it is understandable that migrants, if they complain at all, often opt to settle with a company for a fraction of the amount they are entitled to, should they file an official complaint.

¹¹⁹ MakeITFair. "Urgent Appeal for Human Rights Defender Charles Hector", MakeITFair. Retrieved from <http://makeitfair.org/en/the-facts/news/urgent-appeal-for-human-rights-defender-charles-hector>

¹²⁰ GoodElectronics. "Human Rights Defender Made to Accept Settlement With Electronics Company". Retrieved from <http://goodelectronics.org/news-en/human-rights-defender-made-to-accept-settlement-with-electronics-company/?searchterm=charles%20hector>

¹²¹ RELA stands for Ikatan Relawan Rakyat Malaysia, i.e. the People's Volunteer Corps. It is an untrained civil militia set up by the government and linked to the police that has a remit to seek out migrant workers and arrest and detain them for engaging in illegal activities or not carrying a passport. It is estimated that there are between half a million to three million RELA members. They are allowed to carry fire-arms and enter homes and workplaces without a warrant. Until 2007, RELA was paid MYR 80 for each arrest. According to migrant activists, RELA members even go as far to plant evidence to justify arrests. The government has promised to curb abuses and is considering training RELA members to diminish abuse of power (UNDP, Human Development Report, Overcoming Barriers: Human Mobility and Development (UNDP, 2009), 62.). However, it is unclear how this was followed up. Prior to 2009, RELA was also responsible for the detention of illegal aliens in Immigration Depots, often under deplorable conditions (Amnesty International, 2010, p. 82). Currently the Immigration Department is responsible for detaining illegal migrants or migrants that have violated their permits. But in 2010 the government announced plans to reinstate RELA with the responsibility for the detention of immigrants (Temme Lee, "SUARAM: Changes to Immigration Detention Centre Must Respect Human Rights," Malaysian Civil Society Voices, August 26, 2010. Retrieved from <http://malaysiancivilsocietyvoices.blogspot.com/2010/08/suaram-changes-to-immigration-detention.html> Meanwhile, press reports indicate that RELA still plays an active role in the crackdown on illegal immigrants (see, for example, <http://www.theborneopost.com/2012/10/16/580-foreigners-rounded-up-under-6p-programme-till-oct-14/>).

4.4 LOW SALARIES, WAGE MANIPULATION AND NON-PAYMENT

Migrants have a hard time repaying their debts and earning the capital they planned to accumulate while working abroad.¹²² Once in Malaysia, they frequently find they are being forced to work long hours, while being paid much less than they were promised by their recruiters. They often only receive a salary close to the poverty line set by the Malaysian government.¹²³ Because migrants do not have a direct contract at their companies they do not fall under any collective agreements or bonus systems. They are required to meet production quotas without extra payment, whilst not fulfilling the quota or an alleged slow rate of production are sometimes met with threats of deportation. Mistakes on the job often lead to wage deductions.¹²⁴

Wage manipulation on unfounded grounds is a major issue. Migrants are often forced to sign contracts in a language they do not know. This is a violation of Malaysian law, which stipulates that all contracts must be written in the native language of the signee.¹²⁵ As a consequence of the language barrier migrant workers are often ignorant of the content of the documents they sign. They often are unable to calculate the wages on their pay slips and can't understand the explanations offered for deductions and reduced pay for overtime, if they are offered at all.¹²⁶

These practices are in violation of *ILO Convention No. 95*, which was ratified by Malaysia. According to Article 8.2, “workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made.”

The preliminary research leading up to this report found that agencies require that migrant workers work long hours, which sometimes structurally exceed the maximum working week stipulated in the Malaysian Employment Act 1955. Workers are also required to sign contracts that stipulate putting in mandatory overtime. Twelve hour working days, six days a week were reported.¹²⁷

Apart from migrant workers being not or insufficiently paid for overtime¹²⁸ or working night shifts, they struggle to receive full pay for their regular working hours. These practices occur frequently and often go unpunished, even though they are illegal according to Malaysian law.¹²⁹

Delayed salaries and non-payment of wages happen frequently. Delay in payment is a violation of *ILO Convention No. 95*, Article 12, which states that “wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for

¹²² Bormann et al. (2009). p. 21.

¹²³ For example, this was the case for the majority of the workers interviewed by the German CSO WEED at *Jabil* (ibid).

¹²⁴ Preliminary research findings, SOMO 2011:22 & 24

¹²⁵ Bormann et al. (2009). p. 21.

¹²⁶ Ibid. p. 22.

¹²⁷ Copy of contract on file with SOMO

¹²⁸ The Malaysian Employment Act 1955 Section 60.3 states that “for any overtime work carried out in excess of the normal hours of work, the employee shall be paid at a rate not less than one and half times his hourly rate of pay irrespective of the basis on which his rate of pay is fixed.” However, migrant workers in particular often end up underpaid. One worker at *Jabil* received only half of the overtime payment he was entitled to. See Bormann et al., 2009:22.

¹²⁹ Malaysian Employment Act 1995, Article 24.

the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award”.¹³⁰

Agencies often deduct salary on the basis of so called levies on the work permit. They refer to “Malaysian tax requirements” which require an annual tax on foreign labour as justification. But since 2009 it is illegal to deduct salaries on this basis, as companies themselves have to pay the tax on foreign labour. Nevertheless this practice continues to be widespread.¹³¹ Reports from workers interviewed for the purposes of this research indicate that, again in violation of Malaysian law, substantial amounts are being deducted from workers’ wages for food and accommodation.¹³²

The *Memoranda of Understanding* between Malaysia and home countries states that employers are obliged to provide migrant workers with accommodation, free access to water and electricity as well as transportation to the factory.¹³³ However, when housing is tied to a contract at an agency, this gives agencies substantial added leverage in forcing their workers to accept this precarious situation. Being dismissed by the agency will mean the worker will become homeless and lose his or her work permit.

Illness also frequently leads to wage deductions, and can even be a ground to terminate workers’ contracts. Agencies are legally obliged to cover the medical treatment of employees. However, workers report that, in breach of Malay law¹³⁴ coverage is often limited to RM200,00 (USD65) a year, with any additional expenses falling to the workers. In addition, sick leave is often not paid out. Instead, workers may find their wages were deducted for the time they were officially off sick.¹³⁵ These practices, which violate the *Malaysian Labour Code*¹³⁶, can lead to migrants neglecting potentially serious medical conditions.

FORCED INTO CRIME

Research by the German CSO WEED¹³⁷ highlights how wage manipulation and delayed or non-payment of wages can force migrants into criminal activities in order to survive, in particular as Malaysian immigration law forbids migrant workers to switch employers. Migrants find themselves caught in a bind, being forced to either take on more debt to cover living expense during the time that salary is not being paid or to engage in illegal activities to generate income. Ten female Nepalese workers saw themselves forced to turn to prostitution to cover their living expenses during the two months they were in Malaysia without a promised job at a factory, all the while receiving no support from their agency. At the same time, the creation of social problems or engagement in illegal or criminal activities constitutes ground for immediate dismissal.

¹³⁰ ILO. Protection of Wages Convention, 1949, no. 95 (Geneva: ILO, 1949). Retrieved http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C095

¹³¹ Bormann et al. (2009). p. 22. Amnesty International (2010). p. 22.

¹³² The *Malaysian Employment Act 1955*. Section 24.4 states

(4) The following deductions shall not be made except at the request in writing of the employee and with the prior permission in writing of the Director General:

(e) deductions in respect of the rental for accommodation and the cost of services, food and meals provided by the employer to the employee 'at the employee's request or under the terms of the employee's contract of service.

¹³³ Bormann et al. (2009). p. 26.

¹³⁴ According to the *Employment Act 1995, Act 265: art. 60f* there should be no limit to the costs covered by the employer for a doctor’s visit.

¹³⁵ Preliminary research findings, SOMO 2011: 25.

¹³⁶ Bormann et al. (2009). pp. 27-28.

¹³⁷ Bormann et al. (2009).

5. FACTORY PROFILES

5.1 INTRODUCTION

This chapter focuses on the working and living conditions of migrant workers employed at three electronic factories in Malaysia. These manufacturers – Takahata Precision Moulding, Omron Malaysia and SMK Electronics – produce electronic components and products for the following brands: Amtek, Denso, Hitachi, JVC, Mitsubishi, Panasonic, Samsung, SONY, Sharp Toshiba and TOTO. Before publishing the findings, SOMO sent a draft version of the factory profiles to all buyers and suppliers mentioned in this chapter. Where relevant, reactions of the companies have been included in the profiles.

5.2 COMPANY PROFILE TAKAHATA

TAKAHATA COMPANY	
Name	TAKAHATA PRECISION MOULDING SDN. BHD.
Parent company	Takahata Precision Pte. Ltd., Singapore
Type of products produced by the company	Electronic components and spare parts for electronic products (such as DVD covers, IC, crystal) End products produced by Takahata include DVD/VCD, Camera, Handy cam, speaker, TV.
Clients	Hitachi, JVC, TOTO, AMTEK ¹³⁸
Work force	269 (69% female workers)
Number of migrant workers among the workforce	150-170 ¹³⁹
Origin countries of migrant workers (in order of numbers)	Burma, Indonesia ¹⁴⁰
Certification	ISO 9001, ISO 14001, ISO/TS 16949:2009
Corporate Social Responsibility	Participant of the United Nations Global Compact ¹⁴¹
Interviewed workers	18

5.2.1 WORKFORCE

Takahata Moulding Malaysia (hereafter referred to as Takahata) is a manufacturer of electronic components. Takahata Malaysia employs 269 workers. Women comprise 69% of the workforce. Female workers are mainly employed as operators and some as administrative workers. Men are employed as machine and technical operators and as administrative workers.

According to the interviewed workers, local workers are employed on a permanent basis. Migrant workers are short-term workers. All the interviewed workers (eighteen in total) were employed on three-year contracts.

¹³⁸ Denso was also identified as a buyer of Takahata but in its response the company denied sourcing from Takahata.

¹³⁹ In its reaction, Takahata stated that it employs 61 migrant workers. The discrepancy between the number of migrant workers as indicated by the interviewed workers and the number mentioned by the company could be explained by the fact that the company does not consider workers that are supplied by the outsourcing agency as its own employees.

¹⁴⁰ The interviewed workers stated that there are also Nepalese workers at Takahata but the company denied this in its reaction.

¹⁴¹ United Nations Global Compact website, Participants & Stakeholders – Participant Information Takahata. Retrieved <http://www.unglobalcompact.org/participant/11701-Takahata-Precision-Japan-Co-Ltd->

5.2.2 RECRUITMENT PROCESS

The eighteen migrant workers interviewed for this research were all recruited in Burma by a Burmese recruitment agency. All workers signed a contract with this agency (in Burmese) but none of them received a copy of this contract. When the workers arrived in Malaysia a Malaysian outsourcing agency took over. Workers had to sign another contract, this time in English. All interviewed workers received a copy of this contract.

None of the interviewed workers were able to understand the contract. In a reaction to a draft version of this report, the outsourcing agency writes that the content of the contract was explained to them by the agency's supervisor.¹⁴²

The secondary conditions in this contract specify that the agency will provide accommodation for the workers and that the factory will provide a medical card and compensation scheme.

Recruitment costs

Out of the eighteen interviewed workers, fifteen had to take a loan with friends, relatives or acquaintances in order to be able to pay for the costs needed to travel to Malaysia. These include transport, accommodation and food costs. Also workers need to pay for a medical screening which costs between MYR 30 and MYR 50. Six workers had to undergo the medical screening twice and thus had to pay the amount twice. Most of the interviewed workers have to repay the loan – which ranged from MYR 900 to MYR 2000 - with an interest rate, which varies from five to a maximum of twenty per cent.

On top of the above mentioned costs, workers have to pay a recruitment fee to the Burmese agency, ranging from MYR 2700 to MYR 3200. None of the workers, except for one, were able to pay this amount at once and agreed with the agency that part of their salary would be deducted to pay for this amount. The interviewed workers were not able to tell what interest rate is being used by the agency, though they do know that the agency applies an interest rate. In its response to SOMO, the agency confirms that monthly salary deductions are made in order to repay the recruitment fee to the Burmese agency.

In its reaction to SOMO, Takahata writes that they were not aware of this arrangement until they received the draft version of this report and upon further investigation and discussion with the outsourcing agency. Takahata states that: “this is an arrangement or condition imposed by a third party, in Burma which is beyond our purview and control. It is our understanding that these arrangements are made with the full knowledge and conscience of the workers in question. We have not received complaints on this issue to date.”

Medical screening: pregnancy and HIV test

Before travelling to Malaysia workers have to undergo a medical screening. This medical screening usually consists of a blood test, a pregnancy test and a mandatory HIV test. The contract signed by the workers in Burma included a clause which stated that it is prohibited for workers to get pregnant during their employment term. The interviewed workers said that the agency keeps on reminding them not to get pregnant. All interviewed workers said their application would be rejected if they were diagnosed with an illness.

¹⁴² Takahata emails in response to SOMO review request , 21 November 2012 and 17 December 2012.

In its reaction to SOMO, Takahata says that the workers undergo a second medical screening in Malaysia to ensure the authenticity and avoid the possibility of false reports from their country of origin.

“Regarding pregnancy, sexual intercourse outside a marriage is still taboo in the Asian culture but the main reasons this is implemented so as not to affect the productivity of work in the industry” Takahata writes. In addition, the reaction of the outsourcing agency mentions: “if they really get pregnant during their employment term, they have the right to be repatriated to their country. In that case we will send them back. This is to control the workers to not affect the production.”

5.2.3 WORKING CONDITIONS

Wages

The Burmese agency recruited the workers with a (verbal) promise of an average monthly wage ranging between MYR 850 and MYR 1200. All interviewed workers receive a significantly lower wage which ranges from MYR 450 to MYR 700. All interviewed workers were unsatisfied with their wages because it turned out to be much lower than what was promised to them. All workers indicated that their wage differs from the wages local workers earn. According to six interviewed workers local workers earn up to two times more than migrant workers for the same work.

Salary deductions are made for utilities in the accommodation and to repay recruitment fees. Once a year, an amount is deducted for a medical check-up and health insurance.

In reaction to the draft version of this report, Takahata writes that monthly wages vary from MYR 850 to MYR 900 and can reach up to MYR 1000 – MYR 1200 if workers work on Sundays or public holidays. In addition, workers may receive an attendance bonus if they have not been absent for a whole month. Further, Takahata explained that as of 1 January 2013 the Malaysian government introduces a basic minimum wage of MYR 900 a month. The outsourcing agency will adjust the salaries accordingly.

Takahata categorically denies that local workers would earn up to two times more than migrant workers for the same work. The company writes that wages are determined according to working experience and performance.

Table 1: how do workers spend their wages?

HOW DO YOU SPEND YOUR WAGES?	FOOD	TRANSPORT	SENDING HOME	OTHER
W1	100	50	250-300	50 (telephone costs)
W2	50 - 100	50 - 100	300	-
W3	100	100	300	50 – 150 (savings)
W4	100	50	200 – 300	200 (savings) 50 (telephone)
W5	100	100	200 – 300	200 (savings)
W6	100 – 150	100	300	100 – 150 (savings)
W7	100	100	300	150 (savings)
W8	150	50	250 – 300	-
W9	100	100	300	100 (savings)
W10	150	100	200	150 (savings)
W11	100	100	200	200 (savings)
W12	150	50	300	100 (savings)
W13	100	50	200	250 (savings)

W14	100 – 150	50 – 100	200	200 (savings)
W15	100	100	200	250 (savings)
W16	150	100	200	250 (savings)
W17	100	100	300	100 – 150 (savings)
W18	200	100	200	100 (savings)
Average spending	RM 118	RM 83	RM 253	RM 144

Working hours

The interviewed workers work twelve hours a day (this includes a one-hour break) and six days a week. A regular shift consists of eight hours. On top of that migrant workers are expected to perform three to four hours of overtime work on a daily basis. Refusing overtime is very difficult, especially during weekdays. On weekends migrant workers may refuse overtime but they have to have a good reason. Local workers usually work eight hours a day and five days a week. Migrant workers receive 150% of their hourly wages for overtime hours. None of the interviewed workers were able to tell if this is in accordance with Malaysian labour law.

Takahata writes in its reaction that a regular working week consists of 48 hours. On top of that workers may perform up to 24 hours of overtime work a week.

In its reaction, the outsourcing agency writes that workers should work 22 to 26 days a month. If they work extra hours on weekdays and weekends, their salary will be higher. “If they work less overtime the salary will be low and if the salary is low they [the workers] start to argue with the factory and strike.” “Local workers and migrant workers are different. They should not compare with local workers.”

Freedom of association

None of the interviewed workers are member of a trade union. In fact, none of the interviewed workers were aware about their right to join a union. One worker added that the agency discourages the workers to engage with other groups and that they are told by the agency not to discuss work issues with others. The outsourcing agency writes the following in its reaction to the draft report: “Of course foreigners could not be a member of a trade union because they are not allowed to discuss the issues in Malaysia”. Takahata stated in its reaction to SOMO that there is no in-house union but that the company has never prevented workers from forming one.

Complaint/ grievance mechanism

Four workers said there is no possibility at all to make a complaint. Eleven workers mention that complaints can be made with the supervisor or line leader (in person), while three workers also mention the possibility to go to the Human Resources department to make a complaint (again in person). One worker added that they dare not make any complaints because “that may affect our working conditions”. Another worker said that there is no mechanism in place to make complaints and that all workers are expected to do is work hard and don’t cause any trouble.

Takahata states in its reaction that workers can lodge a complaint to their respective leaders, supervisors, Human Resource Department and/ or the supervisor of the outsourcing agency. Takahata included an extract of the Company Manual which includes an article on the company’s grievance procedure (article 63).

Occupational health and safety

Overall, workers are satisfied with the temperature and ventilation in the factory. Three workers reported that it is sometimes freezing cold.

Eleven workers said that they have to do standing work during the whole shift (eleven to twelve hours a day). Seven workers said that they have to do standing work most of the time but that they are allowed to sit sometimes.

All interviewed workers said that the factory provides all necessary protective equipment at no costs. However, three workers said that workers prefer not to use the hand gloves as it may slow down their production. If they use the gloves, workers have difficulties achieving the daily production targets.

Sickness and injuries

All interviewed workers indicated that they are exposed to toxic fumes and chemicals. All workers said that they regularly get coughs. In addition, four workers said that workers regularly have the flu. Two workers indicated that workers experience breathing problems during work. The outsourcing agency writes in its reaction to SOMO: "We do not agree with the complaint about toxic fumes and chemicals causing cough, flu and breathing problems because the workers have been working for more than two years within the same environment. If the environment is not suitable for them they have the right to be repatriated to their country."

Takahata writes that the factory undergoes a certified Chemical Hazard Risk Assessment by external consultants. Takahata include extracts of a Chemical Health Risk Assessment executed in June 2009.

There is no medical facility on the factory grounds. If workers are injured or ill they go to a panel clinic near the factory. Workers have a medical card (provided by the factory) with which medical costs up to MYR 25 can be covered. Additional costs should be paid for by the worker. Workers are not entitled to any paid sick leaves.

Workers have to undergo an annual medical check-up, including a pregnancy test. Workers have to agree in the signed contract not to become pregnant during their employment term. The interviewed workers said that the agency frequently reminded them that they may not have sexual relationships because it could lead to a pregnancy. Should a worker become pregnant then she would be immediately send back to Burma

Disciplinary measures

Workers are encouraged to keep quiet during working hours. If workers talk during working hours they may receive a warning or get scolded.

Takahata explained in its reaction that the encouragement to keep silent during working hours is a way to maintain discipline and order, as well as encouraging productivity during work. "There is a danger of injuries and harm should workers lose their concentration during work."

Other occasions where workers may receive warnings is when they come late or when they are absent. If a worker is absent for more than two consecutive days then the supervisor will inform the agency and the worker could get fired. None of the workers knew of any cases where workers had actually been fired though, more often repercussions are in the form of salary deductions.

In its reaction to SOMO, Takahata writes that a two-day absence without excuse is considered a breach of contract by the worker under Malaysian labour law. However, if a reasonable explanation is given then a deduction of salary due to absenteeism will be imposed.

Code of Conduct

Four workers indicated that the factory has a CSR code of conduct. None of these workers understood what was in the code however. All the other (fourteen) interviewed workers said they were not sure if the factory has a code of conduct.

Takahata writes in its response that the company has a CSR code of conduct. Activities that have been implemented by the company include blood donation campaigns, yearly health checks, birthday vouchers and support to countries that have disasters.

5.2.4 LIVING CONDITIONS

All interviewed workers share a house with ten to fifteen co-workers. Bathrooms are shared with seven or eight people. Workers are responsible for keeping the house clean. All interviewed workers were satisfied with the cleanliness of the house and with the facilities. The accommodation is provided by the agency and workers don't have to pay for it. Workers do have to pay for 'utilities' though via monthly salary deductions. In the letter received by SOMO, the agency further explains that costs for electricity and water are covered by the agency. The factory is located at 15 minutes by bus from the workers' accommodation. The factory provides transport for the workers.

Freedom of movement

Workers are free to go wherever they want on their day-off. There is no curfew imposed in the workers' accommodation. Four workers said that their passport is being held by the agency. None of the interviewed workers had been threatened with deportation.

In its reaction to SOMO, Takahata confirms that the outsourcing agency retains the passports of the workers "as security to prevent any possibility of the workers running away. And "this would avoid any possibility of theft or loss of these passports".

Follow-up by Takahata

After receiving a draft version of this report, Takahata contacted the outsourcing agency in question. Takahata discussed the issues that are highlighted in this report with the outsourcing agency. As a result, the outsourcing agency presented an improvement plan to Takahata which includes the following elements:

- **Contracts:** for newly recruited workers the outsourcing agency will draw up a contract which includes: job description (clarifying the role, responsibilities, hours and place of work, skills and attributes required), a copy of the rules of behaviour in the workplace. The outsourcing agency's supervisor will explain each clause to the worker before they sign the contract.
- **Health insurance:** the outsourcing agency will provide the workers with medical cards and health insurance. In addition, the outsourcing agency will provide every worker with medical benefits of MYR 120 per year. The outsourcing agency will ensure that the workers undergo an annual medical screening. The outsourcing agency will renew the health insurance for the workers every year, if the results of the medical screening are positive.

- **Wages:** the wages of the workers will be increased to MYR 900 a month, based on an 8-hour working day. The outsourcing agency will give full attendance allowance to those workers without absence. The outsourcing agency will only deduct costs for the medical card (RM 137.20 per year) from the worker's salary. MYR Other costs (Levy, MYR 1250, PLKS, MYR 50 process fee, MYR 60 visa, MYR 19,50 and air ticket back to the country of origin after employment period) will be covered by the outsourcing agency.
- **Induction training:** the outsourcing agency will provide a training for the workers to inform them about the workplace risks and ensure workers understand what is required of them and that they know how and with whom they can raise concerns.

SOMO welcomes the fact that Takahata engaged in discussions with its outsourcing agency about some of the issues highlighted in this report. However, the improvement plan presented by the outsourcing agency does not address important issues such as the retention of passports and the excessive recruitment fees charged by the recruitment agencies in the country of origin.

In addition, Takahata did not provide any information about corrective measures it would implement itself to address labour rights issues such as excessive working hours and; unhealthy working environment and the absence of a grievance mechanism where workers can file complaints anonymously.

5.3 COMPANY PROFILE OMRON

OMRON	
Name	Omron Malaysia Sdn Bhd (OMB)
Parent company	Omron Corporation, Japan
Type of products produced by the company	Chips and other electronic components such as relays.
Clients	Panasonic ¹⁴³
Workforce	1200 employees
Number of migrant workers among the workforce	500
Origin countries of migrant workers (in order of numbers)	Burma, Vietnam, Nepal, Bangladesh, Indonesia and India.
Certification	ISO 14001 and ISO 9001
CSR policy	Omron Corporation is participant of the United Nations Global Compact (since 2008) ¹⁴⁴
Workers interviewed	19

5.3.1 WORK FORCE

Omron Malaysia (Omron) produces chips and other electronic components for clients such as Panasonic and Samsung. Omron has a work force of roughly 1200 workers. Among the work force are 500 migrant workers. Most migrant workers come from Burma. Other migrant workers hail from Vietnam, Nepal, Bangladesh, Indonesia and India. Male workers are employed as mechanical workers, technicians and (forklift) drivers. Women work as operators, quality controllers and installers. According to the interviewed workers, local workers are employed on a permanent basis and migrant workers on a temporary basis. All interviewed workers are employed on three-year contracts.

¹⁴³ Samsung was also identified as a buyer of Omron but in its reaction the company denied sourcing from Omron.

¹⁴⁴ United Nations Global Compact website, Participants & Stakeholders – Participant Information Omron Corporation. Retrieved, from <http://www.unglobalcompact.org/participant/7121-Omron-Corporation>

5.3.2 RECRUITMENT PROCESS

The interviewed workers were all recruited in Burma by a Burmese agency. Upon arrival in Malaysia the workers were transferred to a Malaysian outsourcing agency. Seven workers took a loan with family, friends or acquaintances in order to be able to pay for the recruitment fee and travel, accommodation and food costs. These loans range from MYR 2000 to MYR 4000. Two workers need to repay this loan with an interest rate of 15 and 25%. The remaining 12 workers took a loan with the agency to cover the recruitment fee and additional costs. These loans range from MYR 3500 to MYR 5700. The workers are not sure if the recruitment agency applies an interest rate.

Medical screening: pregnancy and HIV test

Before coming to Malaysia, all interviewed workers had to undergo a medical screening, which consisted of a blood test, pregnancy test and a mandatory HIV test. The contract they signed included a clause which stated that workers may not get pregnant during their employment term. Workers reported that the agency keeps reminding them not to get pregnant and to avoid entering into relationships with male colleagues. All workers said that if they would get pregnant they would be send back to Burma. Workers paid between MYR 100 and MYR 170 for the medical screening.

Contract

All workers signed a Burmese written contract with their recruitment agency in Burma. The workers did not receive a copy of this contract. When they arrived in Malaysia, they had to sign a different contract, this time written in English. All workers, except one, have a copy of this contract. None of the workers are able to understand what is written in the contract however as they cannot read English. In the second contract, a monthly net wage of MYR 828 (maximum) is mentioned. Health insurance and accommodation are included in the contract as secondary conditions.

5.3.3 WORKING CONDITIONS

Wages

The average monthly wage is between MYR 600 and MYR 800. All interviewed workers said that the amount they earn is different to the amount that was promised to them. One worker said that the recruitment agency in Burma promised she would receive a salary of MYR 1200 a month, it turns out she only earns half of the promised amount (RM 600 a month). Workers receive 150% of the hourly wage for overtime hours but overtime hours are not always paid out. Deductions are made for water and electricity in the hostel and for medical insurance. Workers are not sure though if they actually have a health insurance.

Working hours

One shift consists of eight hours. Additionally, the interviewed workers perform three hours of overtime work on a daily basis. Refusing overtime is difficult but not impossible. Workers said that they may refuse overtime if they have a good reason. During the twelve hours of work, workers get a thirty-minute lunch break and a thirty-minute tea break. All interviewed workers said that local workers work eight hours a day. All workers (migrants and local workers) work six days a week. If workers work on their rest day, regular hourly wages are paid out. If they work on public holidays, double wages are paid out. Sometimes workers have to complete their daily production targets and don't receive any wages for the additional time needed. Workers also reported that occasionally they have to work more than twelve hours a day to complete their targets.

Trade unions

Out of the nineteen interviewed workers, three are aware of their rights to join a trade union. None of the workers are member of a trade union though. The workers that were aware of their right to join a trade union said that there is no trade union at the factory representing migrant workers. Another worker said that there was no trade union present at all at the factory.

Table 2: how do workers spend their wages?

HOW DO YOU SPEND YOUR WAGES?	FOOD	TRANSPORT	SENDING HOME	OTHER
W1	RM 100	RM 100	RM 100	RM 300 (savings) RM 50 (utilities)
W2	RM 250	RM 50	RM 400	-
W3	RM 150	RM 50	RM 100 – 200	RM 200 – 300 (savings)
W4	RM 200	RM 100	RM 100	RM 200 (utilities and savings)
W5	RM 150	RM 150	RM 200	RM 250 (utilities and savings)
W6	RM 200	RM 50	RM 400	RM 50 (utilities)
W7	RM 200	RM 100	RM 200 – 300	RM 100
W8	RM 200	RM 50	RM 400	RM 100
W9	RM 100	RM 100	RM 400	RM 150
W10	RM 150	RM 100	RM 400	RM 200
W11	RM 200	RM 100	RM 200 - 300	RM 100
W12	RM 200	RM 100	RM 300	RM 100
W13	RM 150	RM 100	RM 300	RM 100
W14	RM 200	RM 100	RM 300	RM 150
W15	RM 200	RM 100	RM 200 – 300	RM 200
W16	RM 150	RM 100	RM 300	RM 200
W17	RM 200	RM 100	RM 200 – 300	RM 100
W18	RM 200	RM 100	RM 300	RM 100
W19	RM 150	RM 50	RM 300	RM 100
Average spending	RM 176	RM 89,50	RM 282	RM 147

Complaint/ grievance mechanism

Fifteen workers said that complaints can be made through the human resources department. It is not possible to file an anonymous complaint because the worker should go the HR officer in person. Four workers added that complaints could also be filed with the supervisor. Four workers were not aware of any complaint mechanism. Two workers reported that the HR department seems to be too ‘pro-employer’. Two other workers added that the HR department is very irresponsible when it comes to solving worker problems.

Workers raised the issue of low salaries and overtime payment with the HR department. They demanded a salary increment and payment of overtime hours. This was a joint action of migrant and local workers. Migrant workers also lodged a complaint with the agency about these issues. In reaction to this complaint, the agency threatened to send the workers back to Burma. After being threatened by the agency, migrant workers filed a complaint at the police station. So far, the police haven’t given any follow up to this complaint.

Occupational health and safety

The interviewed workers didn't report major occupational health and safety issues. The workers said they are not being exposed to toxic chemicals or fumes. Also, the factory provides the workers with all necessary protective equipment. Almost all workers are satisfied with the temperature in the factory. Three workers reported that it is sometimes too cold.

Sickness and injuries

There is a panel clinic on site. If workers are sick or injured they have to ask the line leader for permission to go to the clinic. Workers have to cover the medical costs themselves. The interviewed workers said they are not entitled to any paid sick leaves.

Disciplinary measures

Workers are not supposed to talk about non-work related subjects during their shifts. If they do, the line leader or supervisor will scold the workers. One of the interviewed workers added that it is very shameful being scolded in front of the other workers. If workers get late or are absent from work they will usually get a warning from the HR department. Also, the factory may inform the agency.

CSR code of conduct

All interviewed workers, except for one, said that there is a code of conduct. Fourteen workers said that they do not understand what is in the code of conduct. One worker said that the code of conduct is specifically designed for local workers. Three other workers said the code of conduct doesn't talk about workers' rights.

5.3.4 LIVING CONDITIONS

Accommodation is provided by the agency. All interviewed workers share a house with 10 to 12 colleagues. Four workers live in a house with one bathroom. The other workers share a bathroom with five or six other workers. The workers are responsible for cleaning the house. Overall, workers are satisfied with the accommodation and its facilities. One worker said that the area is not safe though. It takes workers 15 minutes to get to the factory. Transport is not provided; workers have to walk to the factory.

Freedom of movement

Workers are free to go wherever they want on their day-off. There is no curfew imposed in the workers' accommodation. Two workers said the agency had threatened to send them back to Burma when they raised a complaint about low wages and non-payment of overtime hours.

5.4 COMPANY PROFILE SMK ELECTRONICS (MALAYSIA) SDN BHD.

SMK ELECTRONICS	
Name	SMK Electronics (Malaysia) SDN BHD.
Parent company	SMK Corporation Japan
Type of products produced by the company	Remote controls for various electronic products (TV, DVD/VCD, air conditioner, projector, vehicles etc.)
Clients	Sony, Sharp, Toshiba and Mitsubishi.
Work force	1100 employees ¹⁴⁵
Number of migrant workers among the workforce	700 ¹⁴⁶
Origin countries of migrant workers	Burma, and executives from China and Japan.
Interviewed workers	18

5.4.1 WORKFORCE

SMK Electronics Malaysia (hereafter referred to as SMK) is a producer of remote controls. Its clients include SONY, Sharp, Toshiba and Mitsubishi. Most migrant workers at SMK come from Burma. Local workers and Chinese and Japanese executives are employed on permanent contracts. All Burmese workers are employed on temporary contracts. All interviewed workers had a three-year contract. This contract had been extended with one year for fourteen of the interviewed workers. Male production workers are employed as operators, drivers and store keepers. Female workers are employed as operators.

5.4.2 RECRUITMENT PROCESS

All interviewed workers were recruited in Burma. All interviewed workers signed a contract with their Burmese agency in Burma. The contract was written in Burmese and English. None of the interviewed workers received a copy of their contract. Upon arrival in Malaysia the workers were transferred to a Malaysian outsourcing agency. The workers didn't sign a contract with their Malaysian agency.

Recruitment costs

Out of the eighteen interviewed workers, fourteen had to take a loan with friends, relatives or acquaintances in order to be able to pay for the costs needed to travel to Malaysia. These include transport, accommodation and food costs. Six workers need to repay this loan with an interest rate which ranges from 10 to 20%. In addition, all but one worker took a loan with the recruitment agency to pay for the recruitment fee. These loans range from MYR 2000 to MYR 4600. This amount is to be paid back via salary deductions. The interviewed workers did not know if the agency applies an interest rate and if so what percentage is used.

Medical screening and pregnancy test

Before travelling to Malaysia all interviewed workers had to undergo a medical screening, including a pregnancy test. The contract signed in Burma included a clause which said workers may not get pregnant

¹⁴⁵ The interviewed workers indicated that SMK's work force consists of around 1100 workers. SMK, however, in a reaction to SONY states that they employ 850 workers. The discrepancy between these numbers could be explained by the fact that the company does not consider workers that are supplied by the outsourcing agency as its own employees.

¹⁴⁶ In its reaction to SONY, SMK stated that they employ around 60 migrant workers. The discrepancy between the number of migrant workers as indicated by the interviewed workers and the number mentioned by the company could be explained by the fact that the company does not consider workers that are supplied by the outsourcing agency as its own employees.

during their employment term. The costs of this medical screening range from MYR 65 to MYR 100 and have to be paid by the worker. Some of the workers had to undergo the medical screening twice.

5.4.3 WORKING CONDITIONS

Wages

Promised wages range from MYR 750 to MYR 1200. The workers signed a contract in Burma in which the promised amount was included. However, none of the interviewed workers received a copy of the contract and they thus have no proof of what was promised to them. Actual monthly wages differ considerably from what was promised. Average monthly wages vary from MYR 500 to MYR 650. In one case, the worker only receives a salary which is half of what was promised to her (see table 1). Workers are paid MYR 4 per hour for overtime work. Deductions, MYR 10 a month, are made for accommodation and utilities and to repay the recruitment fee.

Table 3: How do workers spend their wages?

HOW DO YOU SPEND YOUR WAGES?	FOOD	TRANSPORT	SENDING HOME	OTHER
W1	RM 200	RM 50	RM 300	RM 50
W2	RM 150	-	RM 300	RM 100
W3	RM 200	-	RM 300	RM 100
W4	RM 150	RM 50	RM 300	RM 50
W5	RM 200	RM 100	RM 200	RM 50
W6	RM 200	RM 50	RM 300	RM 100
W7	RM 100	RM 100	RM 300	RM 100
W8	RM 250	-	RM 300	-
W9	RM 200	-	RM 300	RM 150
W10	RM 150	RM 100	RM 300	RM 50
W11	RM 200	RM 100	RM 200	RM 100
W12	RM 100	-	RM 400	RM 100 – 150
W13	RM 250	-	RM 350	RM 50
W14	RM 100	RM 50	RM 300	RM 100
W15	RM 200	RM 100	RM 300	-
W16	RM 250	-	RM 300	RM 50 - 100
W17	RM 100	-	RM 300	RM 150
W18	RM 200	-	RM 300	RM 200
Average spending	RM 178	RM 39	RM 297	RM 86

Working hours

There are two shifts: a morning shift, from 8 AM to 8 PM, and a night shift, from 8 PM to 8 AM. All interviewed workers work twelve hours a day on Monday – Thursday (this includes two half-hour breaks). On Fridays workers work ten hours and on Saturdays eight hours. Local workers work eight to ten hours a day, five days a week and mainly work in the morning shift.

Freedom of association

None of the interviewed workers were aware about their right to organise and hence none of the interviewed workers are member of a trade union. Five workers indicated that if there was a trade union that would defend the rights of migrant workers, the factory would surely not allow the workers to join it.

Complaint/ grievance mechanism

Thirteen workers said the factory has a complaint box where workers can submit complaints anonymously. In addition complaints can be made in person through the supervisor or HR department. Five workers were not aware about the possibility to file complaints anonymously (via the complaint box). None of the interviewed workers had ever filed a complaint. Two workers said that they could not make use of the complaint box because they cannot write English or Bahasa. Another worker feared getting into trouble for putting a complaint in the complaint box.

Occupational health and safety

Workers are required to do standing work during their entire shift. They are exposed to toxic fumes and chemicals during the process of lead welding. Interviewed workers reported that they suffer from allergic reaction (thirteen workers) and often get coughs (nine workers). The factory only provides workers with gloves. Masks are not provided.

Overall, workers are satisfied with the temperature and ventilation in the factory. However, seven workers indicated that the temperature is not consistent; sometimes it is freezing cold and other times it is too hot. Two workers reported that management turns down the air conditioning on Saturdays because there are less workers on Saturday (usually local workers don't work on Saturdays, migrant workers do).

Sickness and injuries

If a worker is sick, salary will be deducted for the days that the worker is absent. Workers have to pay for medical costs if they get injured during work. There is no medical facility on site. Workers have a health insurance which covers basic hospitalization. Workers pay for the health insurance themselves. The costs of this insurance are MYR 200 a year. One worker noted that some workers had to pay for hospitalization in spite of having a health insurance because the nearest medical facility is not covered by the health insurance.

Workers have to undergo an annual medical check-up. Costs of this medical check-up are MYR 200 which should be paid by the worker. The annual medical check-up includes a pregnancy test. If it is discovered that a worker is pregnant, she would be immediately send back to Burma.

Disciplinary measures

If workers come late or if they are absent the factory will inform the agency. The agency will deduct part of the worker's salary, also when the reason for absenteeism is sickness. Seven workers reported that workers get scolded by the line leaders and supervisors if they come late or if they have been absent. In some cases workers are humiliated in front of the other workers.

CSR Code of conduct

All interviewed workers, except for one, said that they didn't know if the company had a CSR code of conduct. One worker said she knew the company has a code of conduct but she doesn't know what is in the code.

5.4.4 LIVING CONDITIONS

Accommodation is provided by the agency. It takes workers around 15 minutes to get from their accommodation to the factory by bus. Transport is provided by the factory. All interviewed workers share a house with ten to twelve co-workers. These ten to twelve workers share one bathroom. The workers

themselves are responsible for keeping the house clean. Overall, workers are satisfied with their accommodation and facilities. Four workers reported that the access to water is not consistent however.

Freedom of movement

Workers are free to go where they want on their off-days. There is no curfew imposed in the workers' accommodation. Four workers said their passport is being held by the agency.

5.5 CONCLUSIONS

Migrant workers of all three factories had to incur high costs in order to be able to live and work in Malaysia. All workers had to pay a recruitment fee to the recruitment agency. To pay this recruitment fee workers took loans with friends, family relatives or with the outsourcing agency, mostly with high interest rates. Because of the low wages, it takes workers several years to repay these loans.

All workers signed a contract with the recruitment agency in their country of origin but none of the workers received a copy of this contract. Workers at two factories (Takahata and Omron) signed another contract with the outsourcing agency in Malaysia. Omron workers received a copy of this contract while workers at Takahata did not. The second contract was written in English. Because the workers do not read English they are not able to understand the content of the contract.

All interviewed workers had to undergo a medical screening before travelling to Malaysia, this screening includes a pregnancy test. Workers may not get pregnant during their employment term and are frequently reminded about this prohibition by their outsourcing agency. Outsourcing agencies interfere in worker's personal lives by warning them not to enter into relationships with male co-workers.

Workers at all three factories said that their wages turned out to be much lower than what was promised to them during the recruitment process. Several workers (nine) indicated that they only earn half of what they were promised to earn. Other workers receive around two-third of the promised wage. Workers at Takahata and SMK did not receive a copy of their contracts, leaving them without any proof of what has been promised to them.

Migrant workers at Takahata and Omron work twelve hours a day and six days a week, resulting in a working week of 72 hours. This is illegal, as the Employment Act from 1955 and the Industrial Act from 1967 stipulated a maximum working day of 8 hours (and not more than 10 hours if spread out over a period of time) and a maximum working week of 48 hours. A regular working week for migrant workers at SMK consists of 66 hours. Interviewed workers at Takahata and Omron said that it is very difficult to refuse overtime work. Workers at Takahata and SMK reported that they are exposed to toxic fumes and chemicals and that, as a consequence, they often get coughs (Takahata and SMK workers) and allergic reactions (SMK workers).

Workers at the three factories said that they may receive warnings and/or have part of their salary deducted if they come late or if they miss a day of work.

None of the interviewed workers are a member of a trade union and many of them were not even aware about their right to join a trade union. Interviewed workers at SMK reported that if there would be a trade union that defends the rights of migrant workers, the factory would surely not allow the workers to join it.

SMK is the only factory that offers its workers the possibility to file complaints anonymously by providing a complaint box. Some workers, however, said they could not use this mechanism as they cannot write English or Bahasa. The other two factories only allow for complaints to be lodged personally, either through the supervisor or through the HR department. Several interviewed workers testified that they feared getting into trouble if they would lodge a complaint with the factory or with the outsourcing agency. Workers at Omron who raised the issue of low salaries and correct payment of overtime hours were threatened by their outsourcing agency to be send back to their country of origin. Workers at Takahata and SMK testified that their passports are being held by the outsourcing agency. Takahata confirmed that passports are being held to prevent any possibility of workers running away.

Buyers' reactions

A draft version of the factory profiles was sent to all identified buyers, eleven in total. All of these brands are implicated with serious labour rights and human rights violations in their supply chains. These include charging exorbitant recruitment fees leading to debt bondage; restricted freedom of movement because of the retention of passports; excessive working hours and low wages. None of the workers are member of a trade union that could defend their rights nor do the researched factories have adequate grievance mechanisms through which workers can voice their concerns anonymously. Workers do not dare to speak up about the harsh conditions they suffer out of fear of being sent back to their home country.

These are serious human rights violations, nonetheless only six buyers (Denso, Hitachi, Samsung, Sharp, SONY and Toshiba) responded to the draft profile sent by SOMO. Of these six buyers, Denso¹⁴⁷ and Samsung¹⁴⁸ merely responded that they did not have any relationship with the factories in question. However, workers at these factories stated that the products they make are destined for Denso and Samsung (amongst others). SOMO thus believes that while these factories may not be first-tier suppliers, they are likely to be part of Denso and Samsung's supply chains. Both companies did not respond to SOMO's request to give information about their policies regarding migrant workers. Denso stated that this is considered as confidential information.

SONY, Toshiba and Hitachi indicated in their responses that they contacted their suppliers and that they were further investigating the situation. SONY wrote that it would request for necessary corrective actions in case it would find any non-compliances of the SONY Supplier Code of Conduct.¹⁴⁹

Toshiba wrote that it had asked it suppliers to give clarification on SOMO's findings and that they were awaiting a response from the supplier.¹⁵⁰ Other than that, SOMO did not receive any information from Toshiba. Hitachi informed SOMO that they started an inquiry with their supplier after receiving SOMO's findings.¹⁵¹ This included a visit to the supplier.

Sharp responded¹⁵² that it was investigating the situation at its supplier. The company also sent its 'Supply Chain Deployment Guidebook'. The company indicated that this policy applies to all workers at all suppliers, including migrant workers. This policy document specifies that situations where workers are

¹⁴⁷ Denso, email to SOMO in response to review request, 16 November 2012.

¹⁴⁸ Samsung, email to SOMO in response to review request 22 November 2012.

¹⁴⁹ Sony, email to SOMO in response to review request, 28 November 2012.

¹⁵⁰ Toshiba, email to SOMO in response to review request, 28 November 2012.

¹⁵¹ Hitachi, emails to SOMO in response to review request, 27 November and 28 December 2012.

¹⁵² Sharp, email to SOMO in response to review request, 28 November 2012.

obliged to deposit identification cards/ passports/ work permits cards with their employers are regarded as forced labour.¹⁵³

JVC, TOTO, Amtek, Panasonic and Mitsubishi did not respond to SOMO's review request.

¹⁵³ Sharp Corporation, "SHARP Supply-Chain CSR Deployment Guidebook [Tutorial of CSR Items]", April 2007
< <http://sharp-world.com/corporate/eco/supplier/csr/index.html> >

6. CSR GUIDELINES AND COMPANY RESPONSES

6.1 CORPORATE SOCIAL RESPONSIBILITY

Current international and national legislation largely fails to protect migrant workers, and Malaysia, as this report shows, is no exception. The company profiles in this research show persistent underpayment of migrant workers – not only well below the wages they were promised at recruitment, but also below Malaysia’s poverty/minimum wage line of 800 RM. Malaysia introduced a minimum wage for the first time on 1 May 2012,¹⁵⁴ and although employers have to review their pay structures to comply with the new legislation, the precise impact of the new law on existing (weaker) labour standards in EPZs are unclear.

For these wages, migrant workers typically have to work much longer hours than local workers. Unpaid overtime tends to be compulsory. Salary deductions are made for accommodation and to pay back loans for recruitment fees. Many workers face a debt burden of three to even eight or nine months’ wages, often to be paid back at exorbitant interest rates of up to 20 per cent. The literature and other research findings corroborate that these are widespread issues in the Malaysian labour market.

The Business for Social Responsibility (BSR) initiative – a consultancy organisation whose mission is to help business advance to more sustainable models - and the labour standards audit firm Verité have issued several reports on the issues migrant workers face and the steps to be taken to mitigate these.¹⁵⁵ Verité bases its findings on thousands of interviews with migrant workers and highlights the precarious conditions that migrant workers face, such as:

- crippling indebtedness to meet exorbitant recruitment fees,
- the withholding of passports to tie migrants to an employer,
- excessive working hours at (below) subsistence wages that leave workers desperate for not being able to pay off their debts or sending money home,
- abhorrent housing conditions,
- discrimination and abuse, and
- fear of deportation.

These findings are corroborated by the field research commissioned by SOMO for this report.

Verité links the substandard working and living conditions to the employment structure, which makes the outsourcing company the legal employer and shows how this leads to a lack of knowledge on the part of the production facility management where the workers are employed with regard to payments, disciplinary measures, fee deductions, etc. In the review process that SOMO carried out to verify the results of the field research, the first corporate review of the Takahata company profile (the company sent two reviews) was sent by the production company Takahata but written by the outsourcing agency concerned, which is a case in point.

¹⁵⁴ See BBC News ‘Malaysia introduces minimum wage for the first time’. <http://www.bbc.co.uk/news/business-17903906>

¹⁵⁵ Verité. The Electronics sector in Malaysia: A case study in Migrant Workers’ Risk of Forced Labor, White Paper, May 2012, BSR, International Labour Migration: A Responsible Role for Business, BSR, October 2008, BSR, Migrant Workers Management Toolkit: A Global Framework, BSR, September 2010

6.1.1 A NEED FOR TAILOR-MADE APPROACHES

Migrant workers facing exploitative working conditions in the supply chains of the big brand names sourcing from Malaysian suppliers have limited rights and protections under the law, while their precarious position limits their scope to exercise these rights and/or seek legal redress. They are under constant threat of detention and deportation. In this legal vacuum it is important that companies will take appropriate steps to make sure that migrant workers in their facilities as well as workers of companies in their supply chain are adequately protected and compensated, working under good labour conditions and not subjected to exorbitant recruitment fees.

To improve the plight of migrants, it is imperative that those making use of their services, including employment agencies, production companies and end users, prioritise improving their working and living conditions, both in policy and practice, by developing an integrated approach. There is an urgent need for policies, audits and information by both the production company as well as the brand companies for which they are producing.

A starting point to address these problems is the improvement of the corporate codes of conduct and monitoring and audit systems that the big brand names in the global electronics industry sourcing from Malaysian companies have in place. With the right mechanisms for monitoring and verification in place, they could address not only excesses such as debt bondage and human trafficking, but also violations of decent work standards, such as inadequate wages, unpaid overtime, wage deductions, health and safety standards and the right to organise and engage in collective bargaining.

Employers wishing to move in this direction should be aware that current efforts being taken by the brand companies as well as their first suppliers are inadequate to deal with the risks that migrant workers face.¹⁵⁶ For example, with migrant workers being primarily employed by outsourcing agencies, “it is critical for the brands to recognize that a facility audit will not actually assess the actual employer of most foreign contract workers”.¹⁵⁷

BSR PROPOSES A THREE-STEP PROCESS FOR COMPANIES WISHING TO DEVELOP A RESPONSIBLE APPROACH TO MIGRANT LABOUR, IN WHICH THEY ADVISE COMPANIES TO:¹⁵⁸

Educate yourself: Gain a more complete understanding of the use of migrant labour within your supply chains, including migrant workers’ countries of origin, recruitment process and terms of employment. Conduct a risk assessment of your supply chains examining the use of migrant labour within them.

Engage with your suppliers: Develop policies that help ensure the protection of migrant workers in your supply chains and engage directly with your contractors on training and verification.

Expand your influence: Actively engage with relevant stakeholders to influence the key systemic issues leading to the continued vulnerability of migrant workers.

BSR offers a Migrant Worker Management Toolkit¹⁵⁹ for managing workers and protecting rights. The framework provides a step-by-step approach to address a range of issues, from an assessment of the legal framework aimed at defining company policies that will supplement national laws to addressing the “protection gaps” for workers. The latter includes advice on recruitment policies and practices, contracts and recruitment

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ BSR. International Labour Migration: A Responsible Role for Business, BSR, October 2008

¹⁵⁹ BSR. Migrant Workers Management Toolkit: A Global Framework, BSR, September 2010

fees, orientation programmes (pre-departure and post-arrival), living conditions, medical examinations, grievances and working with civil society organisations.

6.1.2 EFFORTS OF THE ELECTRONICS SECTOR AND INDIVIDUAL COMPANIES ON MIGRANT WORKERS

As it is, most of the brand names within the international electronics sector still lack specific policies aimed at improving the situation for and working conditions of migrant workers. At best, they are in the early stages of taking tailor-made measures and steps. To date, only one brand company in the electronics sector, Apple, appears to have a specific clause in its code of conduct on migrant workers, related to recruitment fees.

At the round table for the electronics industry and civil society organisations, organized by makeITfair and GoodElectronics in 2009,¹⁶⁰ several industry participants commented that they do not distinguish between local and migrant workers so no specific policies and programs were needed. Civil society organisations stressed that the distinction between local and migrant workers needs to be made as migrant workers are highly vulnerable and have less access to legal protection. At the round table industry representatives mentioned that there was a need to better understand migrant labour issues and to learn from better labour practices.

EICC labour policy audits

The end users sourcing from Malaysia, including from the production companies reviewed by SOMO for the purposes of this research, include big brand names such as HP, Dell, Apple, Philips and AMD, Foxconn, Flextronics, Jabil and STM. These companies are united in the Electronics Industry Citizen Coalition (EICC), ‘a coalition of the world’s leading electronics companies working together to improve efficiency and social, ethical, and environmental responsibility in the global supply chain’¹⁶¹ (membership: 72, end 2012).

The EICC has been engaging in the drafting of a code of conduct, which it encourages its members to adopt and implement. The EICC has several active working groups and task forces,¹⁶² but these do not include a separate working group on migrant workers. Some members feel this is a missed opportunity. Desta Raines¹⁶³ from Apple commented that “we would like to see migrant labor collectively addressed but to date the EICC has not focused on this as a topic or working group.”

However, to “eliminate any ambiguity”¹⁶⁴ and to enable “members and auditors to more specifically cover migrant issues in discussions with suppliers (including labor agencies) and during audits”¹⁶⁵, the EICC has included migrant workers in the introduction to labour section of the EICC code, which now reads: “Participants are committed to uphold the human rights of workers, and to treat them with dignity and

¹⁶⁰ MakeITfair & GoodElectronics. Round Table for the Electronics Industry and Civil Society Organisations. Improving Labour Standards in the Global Electronics Industry. Defining Strategies that Work, May 7-8, 2009. Amsterdam. Retrieved from http://goodelectronics.org/publications-en/Publication_3116

¹⁶¹ EICC. About us. Retrieved from http://www.eicc.info/about_us.shtml

¹⁶² Ibid.

¹⁶³ Email correspondence with Desta Raines, Labor and Human Rights Manager, Supplier Responsibility at Apple, November 28, 2012

¹⁶⁴ This was done in the last update of the EICC code which can be retrieved from http://www.eicc.info/eicc_code.shtml

¹⁶⁵ Email correspondence with Wendy Dittmer, Director Strategic Communications EICC, December 6, 2012

respect as understood by the international community. This applies to all workers including temporary, *migrant* [emphasis added], student, contract, direct employees, and any other type of worker.”

In 2011, the EICC piloted a labour agency audit protocol to help identify issues related to the hiring and treatment of migrant workers. Two EICC member companies conducted 6 labour agency pilots in China and two in Malaysia.¹⁶⁶ The EICC presents this audit protocol as a way to help identify issues relating to the hiring and treatment of outsourced workers, in recognition of the fact that “hiring workers through a third party can lead to discrepancies between the benefits allocated to workers directly hired by a company and those employed via agencies as well as increased vulnerability of the agency-employed workers to human rights violations, such as a lack of freedom of association or discrimination”.¹⁶⁷ This audit protocol may be adapted to help identify issues relating to the hiring and treatment of migrant workers specifically.

To this end, the EICC has updated the Code interpretation document, that facilities can use in preparation for an audit, to specifically cover migrant workers. The document, which has not been released at the time of writing, refers specifically to labour agents and brokers to be included in audits and should meet the same conditions as placed on the facility audited, including full implementation of all labour requirements of the EICC Code. The interpretation document speaks out against human trafficking and forced, bonded (including debt bondage) and indentured labour. EICC auditees are obliged to verify that labour agents meet the EICC requirements on freely chosen labour. The document also stipulates that migrant workers be informed of key employment terms in their own language prior to leaving their home region. Workers should not be required to surrender passports or work permits as a condition of employment, and the text identifies excessive fees charged to workers as unacceptable. Auditees must make recruitment practices, including a list of labour agents and their fees, available to customers and other relevant parties. Workers should not be required to pay fees, deposits or debt repayments for their employment. This is however further specified with if any costs or fees are deducted this should conform legal requirements, actual incurred services or good practice. “Under no circumstances shall fees be excessive fees”. What excessive fees would be is not specifically stated. In correspondence about the fees, the EICC mentions¹⁶⁸ that ‘excessive fees are ones that could lead a worker into debt bondage’.

The EICC will be working with BSR on mapping the UN Guiding Principles on Business and Human Rights and hopes to thus identify further gaps in content or process that touch on migrant workers concerns.

At the time of writing, the additions to the EICC Code interpretation document are very recent. It remains to be seen what the impact will be. Much will depend on how the different stakeholders – auditing firms, brand companies and production factories - take this up. However, with the express inclusion of migrant workers in their code interpretation document, the EICC has taken an encouraging step. Further adaptations of the audit protocol and the code of conduct and their implementation in practice would be significant further steps.

¹⁶⁶ EICC (2012), EICC annual report 2011, EICC, 2012, p. 22, retrieved from <http://www.eicc.info/documents/2011EICCANNUALREPORTFINAL4.pdf>

¹⁶⁷ Ibid.

¹⁶⁸ Email correspondence with Wendy Dittmer, January 8, 2013

EICC member actions

While at the time of writing (end 2012) the internal EICC debate has yet to crystallise into meaningful changes to the audit program, most of the EICC's individual members (and others) have also yet to develop tailored approaches to include migrant workers in policies and practices,

There are some positive exceptions. Two companies have begun including migrant workers in their monitoring and training activities; Apple and HP. Philips has also let SOMO know that they have taken up the issue in their factory in Malaysia and are adapting their policies on migrant labour and are taking action on several problems they have identified.

Apple

Apple mentions in its 2012 CSR progress report that the company views recruitment fees overcharges as debt-bonded labour which is forbidden by its Code of Conduct. Apple's policy is to limit recruitment fees to the equivalent of one month's net wages and the company requires suppliers to reimburse overpaid fees for all foreign contract workers in its facilities, including for workers not assigned to Apple projects.

Apple has expanded its audits in Malaysia and Singapore, and delivered training to 67 human resources managers, covering all Apple supplier facilities in Malaysia and many in Singapore. Apple reports that as a result of these efforts, suppliers reimbursed \$3.3 million in excess foreign contract worker fees, bringing the total to \$6.7 million repaid to workers since 2008. The company adds: "To the best of our knowledge, Apple is the only company in the electronics industry that mandates reimbursement of excessive recruitment fees."

Apple also mentions in its report that the company is educating potential contract workers in Indonesia. No further information could be found on this.

HP

HP¹⁶⁹ is mirroring the BSR guidelines of the Good Practice Guide: Global Migration.¹⁷⁰ They participated in the International Labor Migration project from the BSR and, according to HP itself, adopted the guidelines closely.

HP runs a capacity building program which educates suppliers and help them establish migrant labour management systems to implement the guidelines. HP delivered trainings in 2011 to 19 key suppliers in Malaysia and Singapore. HP's new guidelines for employing migrant workers were shared, and a gap analysis carried out of suppliers in the region was carried out to determine where the guidelines were not being used and taking corrective action would be necessary. In 2012, HP brought an additional 39 supplier factories in Malaysia and Singapore into the program, including many lower tier suppliers.

HP has also fully implemented new EICC audit protocols (VAP 4.0) released in 2012 in its supply chain, which include additional assurance controls to check that facilities are auditing labour agency practices.

¹⁶⁹ Email correspondence with Robert Mitchell, HP Global Program Manager, Supply Chain Social & Environmental Responsibility, on November 29, 2012

¹⁷⁰ BSR. Good Practice Guide: Global Migration. Retrieved from http://migrationlinkages.bsr.org/doc_repository/BSR_Good_Practice_Guide.pdf

Philips¹⁷¹

In correspondence with SOMO, Philips indicated that it investigated migrant labour in its own Malaysian facility and found outstanding issues to be addressed in line with its own General Business Principles. Philips mentions the following improvements; to ensure access to passports, lockers were provided at the hostels for all migrant workers, and workshops for workers regarding their rights concerning their passports were organised. Any recruitment fees charged by employment agents from now on should be directly charged to Philips and not to the migrant workers to ensure that there is no over-charging. Philips has not provided information on what excessive fees would be. Where workers were overcharged they have been reimbursed earlier in 2012 according to Philips. Philips also stressed it has amended policies regarding housing and put in place a risk management audit on vendors with regard to foreign contract workers' guideline compliance prior to hiring and anti-discrimination practices – for example minimum wage implementation.

Other companies investigated by SOMO

SOMO approached the companies mentioned as buyers in the factory profiles underpinning this report as well as several other large brand companies about their policies on migrant workers.

Out of these, a number of companies, including Samsung, Sony, Toshiba¹⁷² and Hitachi failed to respond to the question relating to their policy on migrant workers. JVC, Toto, Amtek, Mitsubishi and Panasonic did not respond at all.

Out of those companies that did reply, several referred to their general CSR policy that could and should deal with migrant labour issues. Hitachi¹⁷³, Sharp,¹⁷⁴ RIM,¹⁷⁵ Dell¹⁷⁶ and Motorola Mobility¹⁷⁷ underlined that their code of conduct should apply equally to local and migrant workers. Motorola Mobility referred in its correspondence, as did several others, to the section in their code on freely chosen employment, which is the same as the section in the EICC code.

The EICC Code states that “forced, bonded (including debt bondage) or indentured labor, involuntary prison labor, slavery or trafficking of persons shall not to be used. This includes transporting, harboring, recruiting, transferring or receiving vulnerable persons by means of threat, force, coercion, abduction or fraud for the purpose of exploitation. All work must be voluntary and workers shall be free to leave work at any time or terminate their employment. Workers must not be required to surrender any government-issued identification, passports, or work permits as a condition of employment. Excessive fees are unacceptable and all fees charged to workers must be disclosed.”¹⁷⁸

¹⁷¹ Email correspondence with Jan-Willem Scheijgrond, Senior Director Health Safety and Environment at Philips, on December 16, 2012

¹⁷² Email correspondence with Tokiko Soma, November 28, 2012

¹⁷³ Email correspondence with Yukako Kinoshita, Manager Corporate Responsibility and EU Policy Research Hitachi Corporate Office, November 27, 2012

¹⁷⁴ Email correspondence with Toru Nakamura, Manager Planning Dept., CSR Promotion Division, Legal Group, November 28, 2012

¹⁷⁵ Email correspondence with Arnie Bawden. Supply Chain social responsibility manager at RIM, on December 12, 2012

¹⁷⁶ Email correspondence with Deborah Albers, Principal Social Strategist at Dell, December 17, 2012

¹⁷⁷ Email correspondence with Chuch Eger, Senior Director Global Regulatory and Issue Management, December 5, 2012

¹⁷⁸ Electronic Industry Citizenship Coalition Code Of Conduct, Version 4.0, 2012. Retrieved from <http://www.eicc.info/documents/EICCCodeofConductEnglish.pdf>

Intel confirms that the EICC risk assessments and 3rd party audit processes “specifically target questions around foreign and migrant workers practices”. The company mentions that their risk assessment and audits address areas around “employment contracts, control of workers documents, recruitment fees, the use of third-party workforce recruiters to provide foreign or migrant workers”.¹⁷⁹

CSR codes of the production companies investigated for this research

SOMO investigated migrant working conditions at three companies, SMK, Takahata and Omron, supplying big brand names, including Amtek, Denso, Hitachi, JVC, Mitsubishi, Panasonic, Samsung, Sharp, Sony, Toshiba and Toto.

SMK, Takahata and Omron are all (subsidiaries of) companies of Japanese origin. It has been put forward that in Japanese companies ‘corporate interest in ethics is not strong’ and that ‘there are plenty of cases in which Japanese corporations have not met adequate labor standards’.¹⁸⁰ In that sense, all three companies stand out positively in the sense that they each have corporate social responsibility codes in place.¹⁸¹ However, in the case of Takahata and SMK these are very brief and not very specific. Only Omron appears to have adopted a much more extensive CSR code¹⁸² that seeks to ‘address issues such as human rights, environment, diversity and community relations in a way that draws on OMRON's distinctive strengths’.¹⁸³ Both Takahata and Omron are participants in the UN Global Compact.

None of the codes refer specifically to migrant workers’ rights. However, Omron’s CSR Code contains a number of elements indirectly relevant to the position of migrant workers. On human rights and labour conditions, the Omron Group’s CSR Practice Guidelines say: ‘The Omron Group will not discriminate on the basis of national origin, citizenship, color, race, belief, religion, ancestry, marital status, gender, disabilities, age, sexual orientation, place of birth, social status, or any other basis prohibited by local law’.¹⁸⁴

Omron’s CSR Guidelines state that ‘the Omron Group has a high regard for the ILO Declaration on Fundamental Principles and Rights at Work. This means that we will, in accordance with applicable law, respect freedom of association and the right to collective bargaining, make the recruiting process discrimination-free, and otherwise eliminate unlawful or inappropriate discrimination in the workplace. We also will never be involved in forced, compulsory, or child labour.’¹⁸⁵

The SMK Group Guidelines promise to ‘respect the letter and spirit of all laws, whether domestic or foreign, and of international rules, and behave in a socially responsible manner’ and art. 9 of the SMK-Group Charter for Corporate Behavior says that ‘when the charter is violated, top executives will take the

¹⁷⁹ Email correspondence with Gary Niekerk, Director Corporate Citizenship, November 30, 2012

¹⁸⁰ Tetsuya Ishizuka, *Towards A Solution: Conflict Between Trade and Labor Standards A Japanese Initiative with the Social Accountability 8000*, Monterey Institute of International Studies, 2000. Retrieved from http://www.commercialdiplomacy.org/ma_projects/ma_tetsuya.htm

¹⁸¹ For Takahata, see <http://www.takahata.biz/sustainability/>; for SMK, view http://www.smk.co.jp/ir_e/pdf/Introducing%202009.pdf

¹⁸² The Omron Principles. (2006). Retrieved from <https://www.omron.com/about/corporate/vision/philosophy/> and <https://www.omron.com/about/csr/>

¹⁸³ CSR Policy. Omron. Retrieved from https://www.omron.com/about/csr/omron_csr/activity/activ_policy/

¹⁸⁴ Omron Group CSR Practice Guidelines. p. 12. Retrieved from

http://www.omron.co.in/about/csr/pdf/csr_guideline_w_e.pdf

¹⁸⁵ Ibid. p. 13.

initiative in resolving the problem, endeavoring to clarify its causes and prevent its recurrence, and take necessary action as explain precisely to the society/punish responsible person including themselves'.¹⁸⁶ Omron's Corporate Guidelines underline the need to 'seek the understanding and support of our supply chain partners in conforming to and practicing the Omron Group's CSR policy'.¹⁸⁷

Ideally, this should offer scope for a direct dialogue with these contracting companies on employment conditions and (the lack of) workers' rights for migrants in the electronics sector, including the harmful practices of employment agencies. As migrant workers are not addressed in the policies of these companies and there are no detectable efforts nor activities specifically targeted towards employment agencies efforts in this regard will be low.

¹⁸⁶ SMK-Group Charter for Corporate Behavior, in: Introducing SMK Corporation, p. 7. Retrieved from http://www.smk.co.jp/ir_e/pdf/Introducing%202009.pdf

¹⁸⁷ Omron Group CSR Practice Guidelines. p. 10.

7. CONCLUSION AND RECOMMENDATIONS

SOMO's preliminary investigation, the company profiles and existing research reports show that migrant workers' rights in the electronics industry in Malaysia are seriously violated. Issues range from substandard accommodation, discrimination and bad working conditions - such as overtime, substandard pay, obligatory wage deductions for food and accommodation, and violation of contracts - to steep recruitment fees leading to stifling debts, which can effectively amount to debt bondage.

The Malaysian government has an important role to play in protecting migrant workers' rights by improving their legal rights position and immigration practices and regulating recruitment and outsourcing agencies. Outsourcing agencies themselves and factories directly employing migrant workers are, of course, responsible for their working conditions. But end users, i.e. brands themselves, are ultimately responsible for labour rights violations in their supply chain and bear a central responsibility for what happens in their supply chain.

There are clear violations of codes of conducts of brand companies found, such as withholding passports, excessive fees, working weeks of 72 hours, and contracts that stipulate that workers are not to join labour unions. Although the factory cases presented in this report are concerning a limited amount of buying companies, other research presented in this report show that in fact these practices are widespread in Malaysia.

Although there are some new global initiatives for the electronics industry to deal with migrant issues at the auditing level that may provide steps forward, these still have to prove themselves. And on the whole, at the company level, the current codes of conduct of electronics companies fail to adequately tackle the exploitation of migrant labour.

The complicated employment structures, with labour agencies and brokers in the countries of origin as well as the destination countries, coupled with the vulnerable legal position migrant workers find themselves in, call for more stringent policies and vigilant implementation, monitoring and verification.

When prompted about their policies regarding migrant labour, several of the big brand names indicated that they are taking more targeted action than publicly available information suggests, including paying back excessive recruitment fees and setting up trainings and workshops for (potential) migrant workers. However, as most of these efforts are quite recent and it is unclear how many workers are being reached, it remains to be seen what their effect will be. Replies from several other companies that only refer to their regular policies indicate that quite a substantial group has no tailor-made approach towards migrant workers.

Our assessment of the policies and practices regarding migrant workers in the facilities researched for the purposes of this report clearly indicates that at the level of the companies contracting to these big brands, there is as yet very little acknowledgement of the particular issues surrounding migrant work, and no comprehensive commitment on the part of these companies to begin working towards improvements for migrant workers.

At the international level, civil society organisations are therefore calling for:
new, comprehensive approaches to improve migrant worker recruitment processes;
decent working standards and conditions for migrants and protection of their rights; and

an integration of the above into wider public policy and corporate social responsibility frameworks.

Such policies should be tailored to local circumstances and be implemented (inter)nationally as well as at the factory level. As outlined in the previous chapter, there are already comprehensive guidelines¹⁸⁸ developed for companies to help them achieve a responsible approach to migrant labour. These require companies, at a minimum, to

educate themselves on the use and treatment of migrant labour within their supply chains; and engage with suppliers to develop policies protecting migrant workers and to monitor compliance.

In addition, SOMO's research findings in the Malaysian electronics industry lead to the following specific recommendations:

- **When sourcing from factories that employ migrant workers indirectly, take steps to ensure they are employed directly** Indirect employment through outsourcing agents lead to unclear responsibilities with regard to labour rights violations and access to justice, which invariably impact negatively on migrant workers' rights and impunity.
- **Ensure that migrant workers are not charged fees for recruitment.** The employer should bear the full costs of recruitment. Although stipulated by Malaysian law, this is violated in practice, leading to debt bondage. Together with other factors, such as recruitment agents deceiving migrants about working conditions and wage levels and withholding passports, this may amount to human trafficking.
- **Explicit integration of an integral approach towards migrant worker issues in corporate codes of conduct and monitoring and auditing.** Time and resources should be dedicated towards developing and implementing a targeted and comprehensive approach, touching on all aspects relevant to migrant workers, their vulnerability and rights protection.
- **Employment policies should not focus on the elimination of migrant work.** This can lead to rights violations in the form of unfair dismissal and discrimination.
- **Companies should act as responsible employers and make sure migrant workers are informed about their rights.** Suppliers (employers) should not condone the levying of recruitment fees for migrant workers, provide adequate pre- and post-departure orientation courses, refrain from compulsory medical testing and ensure sufficient grievance mechanisms. Responsible employers should also inform migrant workers about and respect their right to organize.
- **While companies should inform migrant workers about their legal rights, their own responsibility should extend further to identify and address gaps in the legal protection of workers.** For instance, companies could contract supplier only on the conditions that they refrain from threatening to or ending employment of workers who take out grievances against them or outsourcing agents, and vouch never to contact the immigration services and/or the police in grievance cases.
- **Monitoring and auditing of labour policy should include migrant workers and the contracts stipulating their working conditions and explicitly extend to employment agencies.** Worker confidentiality should be guaranteed by interviewing migrant workers outside factory premises. As part of a comprehensive approach, auditors should work with civil society organisations and trade unions.

¹⁸⁸ BSR. International Labour Migration: A Responsible Role for Business, BSR, October 2008

Whilst this report focuses on the role of brands and companies in protecting migrant workers' rights in their supply chain, the legal framework in force in the sourcing country is crucial in determining the overall rights position and treatment of migrant workers. Companies have used their significant influence in Malaysia's electronics industry in the past to advocate for the liberalisation of labour immigration to demand their labour demands. Instead, companies should advocate for the Malaysian government to:

- **Introduce new and/or reform the existing regulation on outsourcing agents**, ending the system of direct employment of migrant workers by outsourcing agents. Clear rules and responsibilities should be outlined with the aim to ensure the protection of migrant workers' rights.
- **Ensure the protection of migrant workers' rights** to decent and direct remuneration and freedom of association, to freely join a union, and to collective bargaining as local workers. Only legislation specifically banning the discrimination of workers can prevent exploitation and abuse.

Companies should also advocate for the Malaysian government to implement important international human rights principles with regard to migrant workers. In these efforts, companies should follow relevant transparency rules, such as recommended by the Global Reporting Initiative, for instance.

Specifically, the Malaysian government should strengthen the legal frameworks for the protection migrant workers by ratifying and implementing the following:

- **ILO Conventions**, including the Abolition of Forced Labour Convention (no. 105), the Discrimination (Employment and Occupation) Convention, 1958 (no. 111) and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (no. 87), the Migration for Employment Convention (revised), 1949 (no. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (no.143) which establishes measures to ensure equal treatment of migrant workers with nationals.
- **United Nations' Conventions**, notably the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), as well as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,¹⁸⁹ as well as the Protocol to Prevent, Suppress and Punish Trafficking in persons Especially Woman and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air,¹⁹⁰ which would decrease the threats migrants face coming to Malaysia.
- **ASEAN**. Support the work of ASEAN Committee on the Implementation of the ASEAN Declaration on the Promotion and the Protection of the Rights of Migrant Workers (ACMW) to develop mechanisms that provide access to justice for migrants across. These would include, amongst others, interpretation services, legal assistance, temporary shelters and the right of migrants to stay and work during litigation.

It should be noted that ratification of Conventions in itself is not enough. Implementation and monitoring are crucial if the human rights position of migrant workers is to be effectively strengthened.

¹⁸⁹ Amnesty International (2010). p. 12.

¹⁹⁰ FIDH / SUARAM. Undocumented Migrants and Refugees in Malaysia: Raids, Detention and Discrimination (2008). Retrieved from <http://www.fidh.org/IMG/pdf/MalaisieCONJ489eng.pdf> p. 7.



for people everywhere