

Regional Report

June 2010

Vulnerability to Broker-Related Forced Labor among Migrant Workers in Information Technology Manufacturing in Taiwan and Malaysia



HELP WANTED:

Hiring, Human Trafficking
And Modern-Day Slavery in
The Global Economy

A Verité Research and Advocacy Initiative

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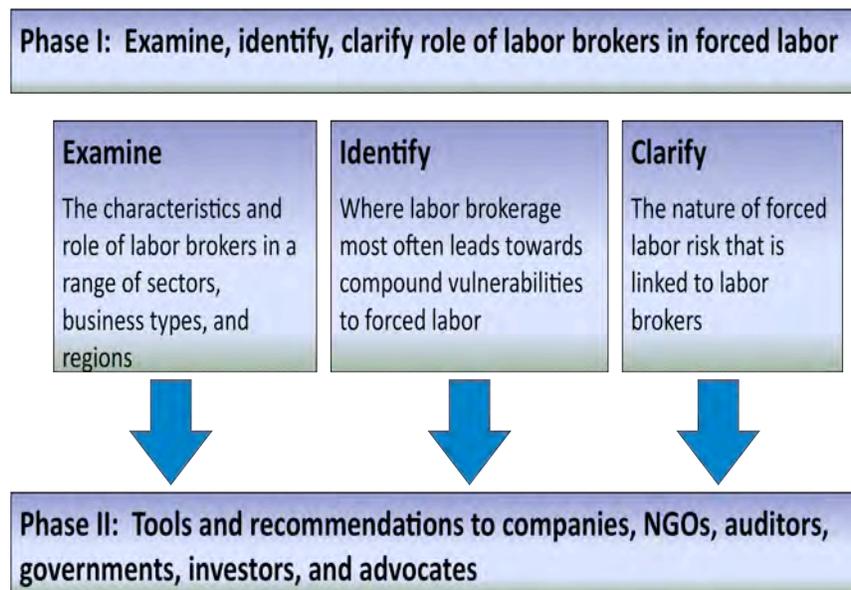
This initiative is being conducted under the supervision of Dan Viederman, Executive Director; Shawn MacDonald, Project Director; and Erin Klett, Project Manager.

In Southeast Asia, Marie Apostol – Director of Verité’s Southeast Asia office –conceptualized the project. Daryll Delgado implemented the field research and reported the results, and Melizel Asuncion conducted the legal review.

Debra Hertz edited the field results. Julie Sobkowicz Brown managed the design and layout of the report.

ABOUT THIS INITIATIVE

This regional research report is a product of Phase I of a multiphase Verité initiative that aims to clarify, publicize, and reduce the risks of exploitation associated with global labor broker practices, as shown below.



In Phase I, in-depth field research examined several migration patterns, including:

- Indian workers (often children) migrating into domestic apparel production, and Indian adults migrating to the Middle East for work in manufacturing, infrastructure and construction;
- Philippine, Nepalese and Indonesian workers migrating into IT manufacturing in Taiwan and Malaysia; and
- Thai, Mexican, and Guatemalan workers migrating for work in the U.S. agricultural sector.

These diverse locales and populations were intended to provide a variety of representational settings to explore the range of structures by which migrant contract workers are brought into situations of forced labor, and the specific role that labor brokers play.

Phase II of the project will provide concrete approaches for the private sector, civil society, government institutions, and investors to address key leverage points and reduce the incidence of modern-day slavery. These

approaches will include a primer, toolkit and policy brief on the intersections between labor brokerage, human trafficking and forced labor. Sign up on Verité’s webpage to receive updates on project outputs and activities.

INTRODUCTION

The phenomenon of trafficking for labor exploitation is importantly played out in the Philippines, which has the second highest rate of employment of its citizens abroad in the world. With some 2,700 Philippine workers leaving daily for jobs abroad and approximately eight million citizens stationed overseas, some have estimated that one in three households in the Philippines has or had a member employed abroad.¹

Malaysia and Taiwan, the two “receiving” countries of Philippine workers of focus for this study, both host substantial numbers of Philippine workers each year. In 2008 there were approximately 200,000 Philippine workers employed in Malaysia;² and 90,000, in Taiwan.³

The conditions of these Philippine workers while abroad are troublesome – one NGO has estimated that one overseas Philippine worker is killed at work each day; while 21 return home in various forms of distress, including having suffered non-payment of wages, or emotional or physical abuse.⁴ Verité’s own work has found all the hallmarks of debt bondage among overseas Philippine workers, including highly leveraged debt in order to finance usurious recruitment fees; deception on the part of labor brokers as to salary and job type; and, while on the job, illegal salary withholdings, compromised freedom of movement, and compulsory overtime.

To illuminate the special situation of foreign contract workers and identify appropriate policy responses, Verité undertook in 2004 and 2005 a project to study both legal protective regimes and on-the-ground practices in seven countries in Asia and the Middle East.⁵ Verité’s findings provided important original research on the practices and processes of labor broker arrangements in particular – including fees charged by brokers and employers and financing schemes entered into to fund the fees – and the ways in which these broker arrangements affected the conditions workers faced upon arrival in a destination country.

The findings from Verité’s 2005 report have been amply bolstered by more current news reports on the plight of Philippine contract workers in Malaysia and Taiwan,⁶ as well as by ongoing independent studies, and Verité audits of IT and other manufacturing facilities in those two countries and elsewhere in the region. Issues related to exploitative labor brokerage practices have consistently been referenced in US Department of State’s Trafficking in Persons (TIP) Report for Taiwan. The TIP Report for 2009 which places Taiwan at a Tier 2, cites it as primarily a destination for men, women, and children trafficked for the purposes of forced labor and commercial sexual exploitation. The report also noted that “trafficking victims are usually workers from rural areas of Vietnam, Thailand, Indonesia, and the Philippines, brought into Taiwan for employment in low-skilled work through various intermediaries – recruitment agencies and brokers.” The Report cites further that, “Many migrant workers are charged job placement and service fees up to the equivalent of USD 14,000, some of which are unlawful, resulting in substantial debt that unscrupulous labor brokers or employers may use as a coercive tool to subject the workers to involuntary servitude... Labor brokers often help employers forcibly deport “problematic” employees, thus allowing the broker to fill the empty quota with a new foreign worker who must pay placement and brokerage fees that may be used to subject them to involuntary servitude.”⁷

This current report builds Verité’s prior work, as well as the work of others. In the pages below, Verité will explore these and other factors related to labor brokers and forced labor in our research.

METHODOLOGY

Research findings were conceptualized and organized according to three main categories: Setting, Employment Lifecycle, and Conclusions (Risks and Root Causes). Researchers explored these topics in rough chronological order, since one naturally leads to the next.

- *Setting* seeks to establish a foundation of knowledge of the sector and workforce under study, as well as the legal and regulatory context for the work. This aspect of the research focused particularly on aspects of the Setting that constitute preconditions for vulnerabilities to forced labor.
- *The Employment Lifecycle* seeks to situate the role of labor brokers vis-a-vis the different stages in the job cycle; mapping how the various stakeholders (brokers, employers, and workers) interact and the circumstances under which a route into forced labor is paved, and exploring the points in the job cycle in which vulnerability peaks and that are well-suited for policy interventions.
- *Conclusions* synthesizes the research on the Setting and Employment Lifecycle and, using the role of labor brokers as a lens and a potential intervention point, articulates some of the root causes of forced labor and the risks of forced labor entailed in various supply chain practices. The ultimate goal is to define the mechanisms and circumstances of labor brokerage that can potentially bind, trap, or enslave a worker.

The research on workers in IT manufacturing in Taiwan and Malaysia for this report was shaped by Verité’s Southeast Asia team’s (Verité SEA’s) long-standing engagement with issues of foreign contract workers and labor brokers in the region. In addition to the 2005 report mentioned above, Verité SEA has initiated on-going consultations with the Taiwanese government, as well as with sending country government entities in Southeast Asia, in their effort to better address problems associated with migrant labor and human trafficking. Verité SEA is currently undertaking a series of in-depth engagements with supplier factories to two major IT brands, developing tools that can be used to assess the performance of labor brokers vis-à-vis labor standards and corporate social responsibility.

The research for this report had two primary thrusts: the first was to synthesize previous and current learning from Verité SEA’s various engagements with Philippine and other contract workers in IT manufacturing in Taiwan and Malaysia regarding the link between labor brokers and modern-day slavery; a process that was supplemented by targeted background research and expert consultations, both to probe for mechanisms of labor brokerage and forced labor that may not have been in Verité’s scope of previous engagement, and to update and fill in the gaps from past efforts. The second primary activity was to use this base of research and engagement as a jumping off point for exploring in more depth the inner working and mechanisms of labor brokers, looking not only at the vulnerabilities to forced labor created by brokers that can be detected by “external” evaluations of the conditions, as experienced by workers; but also by engaging directly with labor brokers to illuminate the rationale behind their decision-making and the incentives – both intentional/direct and inadvertent/indirect – that inform their behavior.

To this end, Verité SEA performed a thorough review of past Verité studies, facility audit reports, and labor broker audit reports; as well as an inventory and review of related media and NGO reports. Extensive legal reviews were undertaken for both sending and receiving countries, and a comparative assessment of the Illegal Recruitment Act and the Philippine Anti-Trafficking Law was conducted. The purpose of the comparative assessment was to explore various avenues for prosecution of broker-related labor exploitation, and to determine whether and how outcomes from prosecution via illegal recruitment and trafficking are different.

The Verité SEA team conducted targeted interviews with 21 Philippine contract workers in Taiwan, as well as interviews with another 105 Philippine workers in Taiwan in conjunction with social audits of IT manufacturing facilities. Interviews were conducted with 79 contract workers in Malaysia, all in conjunction with social audits of

IT facilities.⁸ Two Philippines-based brokers that deploy Philippine workers were interviewed, as well as eight Taiwan-based employers of Philippine contract workers. A set of consultations with government officials was also performed, including three officials from the Philippine Overseas Employment Agency, three officials from the Manila Economic and Cultural Affairs Office, and six officials from the Taiwan Council of Labor Affairs.

In a forward-looking vein, Verité SEA has additionally begun to explore and identify alternatives to current broker schemes, including an assessment of the Philippine Overseas Employment Authority's (POEA) Direct Hiring Program – a program under which workers can be placed in jobs in other countries directly through the Philippine government.

Demographics of the survey population -- Taiwan

This section discusses the methodology employed in Taiwan. The methodology employed in Malaysia is discussed in a separate Malaysia section, later in the report.

The population subject of the research in Taiwan, whose recruitment and employment experiences and first-hand accounts are the basis findings and discussions, were/are all employed or are currently aspiring for employment in various production occupations in the electrical and electronic equipment (EEE) industry. They are production workers handling (or applying for) positions below supervisory levels.

Description of various production occupations

Assemblers - place and solder components on circuit boards, or assemble and connect the various parts of electronic devices.

Semiconductor processors - initiate and control the many automated steps in the process of manufacturing integrated circuits or computer chips.

Electrical and electronic equipment assemblers - responsible for putting together products such as computers and appliances, telecommunications equipment, and even missile control systems. Other, less skilled assemblers often work on a production line, attaching one or a few parts and continually repeating the same operation. . Increasingly, as production work becomes more automated, assemblers and other production workers are monitoring the machinery that actually does the assembly work.

Inspectors, testers, sorters, samplers, and weighers - use sophisticated testing machinery to ensure that devices operate as designed

Source: Bureau of Labor Statistics, U.S. Department of Labor. <http://www.bls.gov/oco/cg/cgs010.htm#employ>

The respondents may be categorized into three groups: (1) currently employed electronics factory workers in Taiwan, interviewed during audits conducted onsite in the last two years, as well as during separate data gathering activities outside the facility audits; (2) first-time applicants for electronics factories in Taiwan, interviewed in the Philippines at various employment agency offices; (3) returned factory workers from Taiwan, interviewed in the Philippines at various employment agency offices and other locations.

Respondents ranged in age from 22 to 37 years old. However, the majority were under 30, as placement agencies have a cut-off age of 35 for applicants to electronics manufacturing factories. Among the workers interviewed in

Taiwan, there was a balanced ratio of male to female workers. Among the applicants (aspiring workers), there were noticeably more men. In two placement agencies observed, job advertisements for electronics facilities in Taiwan were specifically for males.

Most of the interviewees are college graduates and usually have computer-related degrees; others have high school diplomas and some college-level education.

Of all applicants (aspiring workers) interviewed, only two reported being married or having children. The rest were all single, although a number did report that they were seeking work abroad in order to help and contribute to their immediate families. All respondents were proficient in the English language. None of them spoke Chinese.

Only a few of the respondents came from the capital, Metro Manila. Most respondents came from various Philippine provinces: from as far south as Cagayan de Oro and Iligan, to Cebu, Bohol, Leyte, and towards central Philippine provinces like Cavite, Batangas, and north of the capital, Bulacan; and even as far north as Pangasinan, Baguio and Isabella. While in Metro Manila, aspiring workers stayed with friends, or with persons who introduced them to the job, or in rented rooms through the facilitation of the person who recruited them from the province.

In terms of previous employment, the aspiring worker-respondents reported various backgrounds. Some of them had previously worked in electronics facilities located in Philippine export processing zones, others had experiences as contractual (6-month, short-term contract) employees in private companies, and still others were currently employed as call center agents. From among the workers interviewed in Taiwan, there were similarly varied types of work experiences reported. Some of the workers had already worked in production and manufacturing factories in Taiwan, and were already considered returnees to Taiwan. At least two female workers were licensed schoolteachers in the Philippines before they worked as machine operators in Taiwan. Only a few reported not having had any work experience prior to application for work overseas.



As stated above, the demographics of workers interviewed in Malaysia are discussed in the Malaysia section of this report.

THE SETTING

Elements of Setting discussed below (Sector, Workforce, Brokers) relate both to Malaysia and Taiwan. Workers' experiences of recruitment and on-the-job practices are then discussed in separate Taiwan and Malaysia sections.

The Sector

Geography of the Product

The electrical and electronics manufacturing industry can be categorized into service industries engaged in electrical and electronic product applications, and industries that manufacture electrical and electronic products. Based on commodity trade data provided by the ILO, in terms of the geographical distribution of and trading

patterns in the industry, there are tight interdependencies that exist between and among countries. This, as the ILO cites, is clearly brought about by dynamic changes in the forces of production and consumption.⁹

According to the WTO, the three commodity categories that best reflect trading patterns in the electrical and electronics industry are:

1. electronic data processing and office equipment (SITC division 75);
2. telecommunications equipment (SITC division 76); and
3. integrated circuits and electronic components (SITC group 776).¹⁰

There are currently four main groups of industry players:

- ⇒ a select group of large Original Equipment Manufacturers (OEMs);
- ⇒ several Original Design Manufacturers (ODMs);
- ⇒ several Contract Manufacturers or providers of Electronic Manufacturing Services (CM/EMS providers); and
- ⇒ thousands of smaller suppliers of cables, switches etc. and assemblers.

Brand names such as Apple, Hewlett Packard, IBM/Lenovo, etc. are **OEMs**, the traditional origins of which are in North America, Western Europe, Japan and the Republic of Korea. For OEMs such as these, manufacturing is no longer the central or singularly most essential activity, although they are closely involved with the ODMs and CMs on which they rely for manufacturing.

The **ODMs** design and manufacture whole products such as laptop computers for the OEMs, and are mainly based in Taiwan, with extensive production facilities in mainland China.

The **CMs/EMS providers** supply sub-assemblies to, and assemble systems for, the OEMs. The largest CMs have their origin in North America and in Taiwan. In the last ten years there has been a mass relocation of production to “low cost geographies,” particularly China. And because the OEMs have outsourced their most labor intensive activities, some CMs can now be comparable in size, or are bigger than, the OEMs.

The shift of labor intensive activities to “low cost geographies” is an apparent trend, although this is seen more commonly in the computer industry than it is in the mobile phone industry. The ILO report further mentions that “the trend also varies by continent. North American OEMs have embraced this model with enthusiasm; in Europe the picture is mixed; in Japan and the Republic of Korea subcontracting to ODMs and CMs is comparatively rare. Moreover, within each industry and each continent there are important differences by company (related, inter alia, to their product mix).”¹¹

Major Players in Information Technology

- **OEMs:** HP, Dell, Toshiba, Sony, Lenovo, Apple, etc.
- **ODMs:** Acer, BenQ – also OBM; Quanta, Asustek, Compal
- **CM/EMS providers:** Selectron, Flextronics, Jabil Circuit, Celestica, Foxconn, Sanmina-SCI
- **Suppliers**
- **Assemblers**

Source: *The production of electronic components for the IT industries: Changing labour force requirements in a global economy*. ILO, 2007

Production demands and trading activities are certainly very critical variants in the employment trends in this industry. In countries like China and Taiwan, which account for most of the production in this industry, and where the large number of smaller producers is located, employment trends are increasing, while the opposite can be said for countries where the large, traditional producers are located.

Studies suggest that productivity enhancements are responsible for some of the decline in employment among the major producers¹², coupled with inflation and the struggle in value of the United States dollar against other currencies.¹³ However, these employment trends, vis-à-vis export patterns, also indicate that there has been a shift in production from “flat export” countries to “export growth” countries. And one discussion arises, as the ILO report points out: “In that case, how does this observation align with perceptions of increased outsourcing of component manufacture by producers of finished products?”¹⁴ More importantly, perhaps, what are the cluster of social and labor issues that arise (or have arisen) as a result of these changes and movements? These questions will be discussed in subsequent sections of this report.

OEMs outsource manufacturing requirements in order to achieve the following:

1. Reduce time-to-market, time-to-volume
2. Lower operating costs, investment, etc.
3. Improve inventory management
4. Access leading technology, etc.
5. Produce on a global scale using parallel production facilities
6. Focus on core competencies
7. Organise supply chain
8. Enhance purchasing power

Source: *The production of electronic components for the IT industries: Changing labour force requirements in a global economy.* ILO, 2007.

Employment trends in the industry are, naturally, driven by production demands and trading activities. Employment trends go down in countries where the large, traditional producers are located. On the contrary, in Taiwan and Malaysia, where a growing number of smaller producers are located, employment trends increase. This set-up creates thousands of lower-skill, lower-paid jobs that locals do not usually go for, thus explaining the massive movement of foreign workers from poorer neighboring countries in the same low-cost geographies, to fulfill these labor requirements. This huge demand for foreign contract workers consequently raises demand for labor broker services, both in receiving countries like Taiwan and Malaysia, as well as in labor sending countries like the Philippines.

Taiwan

Taiwan’s electronic and equipment industry (EEE) plays a critical role in the supply chains of international information and communications companies and is the most important sector of the Taiwanese economy.¹⁵ Taiwan is primary an original equipment/design manufacturing (OEM/ODM) base for leading brand name suppliers like Sony, IBM/Lenovo, Dell Computer and Hewlett-Packard (HP).¹⁶ Taiwan’s involvement in OEMs and ODMs has made it become the largest supply partners of the world’s major ICT lead firms.



Malaysia

Malaysia’s electronics industry specializes in the manufacture of a wide range of semiconductor devices, high-end consumer electronic and information and communication technology (ICT) products.¹⁷ Malaysia imports foreign-made components and employs foreign workers to assemble electronic goods for export. Electronics products are 40 percent of Malaysia’s exports.



The Lifecycle of Production

The IT industry is characterized by intense competition. Product life cycles are becoming shorter and shorter. This accounts for the current structure of the electrical and electronics manufacturing industry: The very nature of the industry requires speed in innovation and production. Technologies develop and change very fast; encouraging, thus, those that are equally fast in acquiring significant chunks of the market. OEM companies, for their part, encourage this competition by working with many partners, suppliers and manufacturers in different countries. This has resulted in the supply chains becoming more complex, and more and more global. This same environment has also made it possible, and easy, for new players to provide competition to established brands. This has resulted in the turnover of certain units from one established brand to another, newer entity: for example the acquisition of IBM's PC business by Lenovo, or the acquisition of Siemens' mobile devices division by BenQ.

Such tough competition in the industry bodes well for consumers, who enjoy an almost non-stop supply of new products to the market. Available products continue to evolve, becoming faster, handier, more powerful, and, eventually, cheaper.¹⁸ The impact of such movements in the industry on the labor sector has not been so favorable, however.



Issues Identified

The trend in international subcontracting and the intense competition it encourages has been the subject of much criticism from labor groups. International trade unions and other worker advocates have observed that this industry structure enables OEMs to avoid accountability for industrial accidents, illnesses and injuries that result from poor health and safety practices. Moreover, as the move of manufacturing to low cost geographies continues to encourage stiff competition among countries, implementation of international legal and industry labor standards can become lax. The ILO has observed that

flexibility and innovation have become the keys to survival in modern industry. Producers who wish to remain competitive reduce cycle times for design, manufacture and delivery. They try to pass on to suppliers the uncertainty that they encounter in the market place. Rapid technological advance and steadily falling prices make it unprofitable to keep significant stocks as these become quickly obsolete. Orders are placed late, requiring a good deal of flexibility by all involved, including workers. This model creates slow periods of production, when there are few orders to fill, as well as very heavy periods... In sum, this encourages the hiring of workers on temporary contracts and the use of excessive overtime to complete an order on time.¹⁹

Other issues – apart from health and safety, excessive work hours, employment security – that have surfaced, and have been attributed to international subcontracting and the industry setup in low cost geographies, are an eroding of rights to freedom of association and collective bargaining, systemic wage and overtime violations, and compromised freedom of movement.

It is worth noting, however, that among available studies dealing with work conditions in electronics factories, the issue of exploitative broker systems in conjunction with situations constituting forced, bonded, or involuntary labor has not been explored in much depth. This is at odds with the findings of Verité and others, that broker-facilitated debt-induced forced labor is very much an issue of concern in the industry.

Taiwan is fast becoming the largest employer country in the electrical and electronic equipment (EEE) industry. The industry manpower base is made up largely of foreign contract workers, coming from Vietnam, Thailand, Indonesia, Malaysia, and the Philippines. The highest number of migrant workers in Taiwan are found in the electrical and electronics manufacturing industry.²² In Taiwan, Philippine workers are usually found in the electronics, metal works, and semiconductor industries. In electronics facilities in Taiwan, almost all Philippine workers are categorized as production workers, with their employment handled through intermediaries in both the Philippines and Taiwan.

Malaysia

The electronics industry is also the leading sector in Malaysia's manufacturing sector. In 2008, the industry created employment opportunities for 296,870 people. The industry manpower base is also comprised largely of foreign contract workers, coming from mainland China, Thailand, and Indonesia, as well as Nepal. Philippine workers usually occupy highly technical professional positions. The slowdown in global trade sharply reduced Malaysia's electronics exports, however, and 45,000 electronics workers were laid off in the first three months of 2009.²³

Seasonal Movement of the Workforce

Seasonality does not seem to be a very significant element in this particular sector. Although there are low and peak production periods, the practice is for factories to cut or extend work hours, instead of hiring additional hands.



It is perhaps worth noting, though, that Philippine migrant workers to Taiwan are usually given two-year contracts, with the possibility of one year extensions; after which workers have to return to the Philippines and reapply, if they wish to return to work in Taiwan.

Some workers have reported that among the assurances given to them by their recruitment and placement agents in the Philippines is the certainty of extension or renewal. Most workers would prefer a longer contract, rather than a shorter one, especially if they have debts to settle in the Philippines. Consequently, workers would also be willing to pay more for a longer contract.

Two workers reported that, in order for their contracts to be renewed, their agent in the Philippines had to pay supervisors in the facility. This transaction was done through the Taiwan broker, and the cost was, in turn, passed on to the worker as an additional broker fee.

THE BROKERS

Employers in Taiwan typically rely on the services of labor brokers in Taiwan and placement agencies in the Philippines to fill their labor requirements, usually within a given time period. In the Philippines, these employment intermediaries are rarely labeled as “brokers”. Rather, they are known variously as:

- ⇒ Private Employment Agencies,
- ⇒ Private Recruitment Agencies,
- ⇒ Manpower Agencies, and
- ⇒ Manpower Cooperatives

In Taiwan, middlemen in recruitment, hiring and employment are referred to as labor brokers, or sometimes as foreign worker coordinators.

Some employers in Malaysia work directly with labor brokers in sending countries, while others go through licensed Malaysian brokers. These labor brokers are sometimes requested to provide direct-hire FCWs; that is, their services are limited to providing companies the labor requirement. At other times, their services include hiring the workers and subcontracting their labor out to the factory, or managing subcontracted FCWs on factory premises.

Philippines-Based Brokers: The Sending Country Intermediaries

In the Philippines, employment agencies/brokers are responsible for the often enormous and tedious process of recruiting, processing, and deploying Philippine workers abroad. The Philippine Overseas Employment Administration (POEA) was formed to handle all the aspects of overseas employment, but even at its inception, the private sector’s involvement in negotiating the deployment of OFWs was already encouraged. “What the private sector has done for the recruitment of Filipinos for the past 40 years is to serve as the backbone of the OFW success in being able to work in more than 100 countries all over the world,” claims Lito Soriano, executive director of the Federated Association of Manpower Exporters (FAME).²⁴

Private Employment Agency associations also cite that the PEAs deploy 97 percent of OFWs every year; and that 99 percent of employers in receiving countries are private in nature, and conduct recruitment and hiring activities directly with private labor brokers, whereas there are only a few countries that have government-to-government arrangements with the POEA.²⁵



In the Philippines, Private Employment Agencies are, by law, required to do the following:

1. Select medically and technically qualified recruits
2. Assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of the license
3. Assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations;
4. Guarantee compliance with the existing labor and social legislations of the Philippines and of the country of employment of the recruited workers;
5. Assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement;
6. Negotiate for the best terms and conditions of employment;
7. Disclose the full terms and conditions of employment to the applicant workers;
8. Deploy at least 100 workers to its new markets within one year from the issuance of its license;
9. Provide orientation on recruitment procedures, terms and conditions and other relevant information to its workers and provide facilities therefore; and
10. Repatriate the deployed workers and their personal belongings when the need arises.

In practice, however, very few employment agencies abide by these regulations. Items number 6 and 7, for example, are commonly violated: In many cases, workers end up in facilities that require them to render excessive overtime work hours, restrict their freedom of movement, and provide insufficient meals and substandard living quarters. In many cases, the terms and conditions agreed to by workers, as presented to them by the recruitment agents in the Philippines, are inconsistent with the actual conditions at the facility or dormitory. Many workers

have told Verité that, as early on in the process as the submission of application forms, they are promised high wages and opportunities to earn even more from overtime work; but the deductions, the fact that mandatory overtime hours are considered as regular hours, and other practices are never fully disclosed. (See the Case Study on Exploitative Sending County Broker Practices.)

Philippine employment agencies typically seek out job orders aggressively and pair up with local brokers in sending countries. Then, in conjunction with the sending country brokers, they may even “court” employers – striving to provide extra services beyond the specifications of the job order so as to secure continued job orders or assurances that the employers will put all their labor requirements in the brokers’ hands.²⁶ At the recruitment phase, Philippine employment agencies, eager to please their counterpart brokers and the employers in receiving countries, and to multiply their profits, also engage in practices that often contravene regulations – such as not disclosing the full terms and conditions of work, and shifting the economic burden of fulfilling the job order specifications to the applicants and recruits.

Despite very explicit legal limits on broker fees, the employment agencies in the Philippines have managed to establish market prices/fees in excess of the legal limits by as much as 700 percent. (See the succeeding section on Fees for a detailed discussion of amounts charged to workers.) Agencies justify these costs by providing seemingly necessary and indispensable services to workers, and they themselves oftentimes provide workers with the means of financing the cost of securing job abroad by:

- (1) directly providing loans, although usually at high rates of interest and with payments deducted from workers’ monthly salaries (see the Case Study on Returning Worker, attached);
- (2) introducing and endorsing workers to loan agents/centers (which are usually attached or linked in some way to the employment agency), and facilitating the process of securing loans; and
- (3) counseling/advising workers on how/where to look for financing.

While awaiting deployment, Philippine employment agents may also provide workers an advance in order for workers to finance the cost of living in Metro Manila; or they may provide board and lodging for the workers, the cost of which is sometimes charged to the worker later on, or included in the broker fee charged to the workers. In other cases, advances are provided by brokers to workers as an income-smoother, allowing workers to provide for their families in the recruitment and deployment period. (See succeeding section on Financing for detailed discussion of broker schemes and measures that place and keep workers in debt.)

Philippine PEAs also offer to negotiate for rehiring/extension of contracts, although workers claim that they have to pay their brokers/agencies an additional fee to secure an extension. In addition to these services, PEAs also provide workers with the means to remit their earnings back to the Philippines.

Although Philippine labor brokers are required by law to “Assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement”, many brokers do not sustain any relationship with the workers after deployment. When the workers are deployed to Taiwan, the Taiwan brokers are supposed to have full accountability and responsibility over the foreign workers. Many workers in Taiwan have reported to Verité, however, that they rarely see or communicate with their Philippine-based brokers throughout their employment. In many cases, after workers are deployed, the only tie that binds them to the Philippines-based brokers is the signed agreement on loan payment for broker fees.



In some factories audited by Verité, workers who found the work conditions to be contrary to what was promised reported that they were not able to contact their brokers in the Philippines to complain to or seek support. It is very common to hear of distressed workers being repatriated without their complaints being provided recourse on-site at the factory, and upon returning home finding that the employment agency that deployed them from the Philippines is no longer in operation.

In terms of oversight and the role of government, in an earlier study²⁷, Verité characterized overseas employment in the Philippines as a state-managed system, wherein the State not only regulates private brokers but also engages in recruitment and placement of workers in countries with which the country has bilateral labor agreements, e.g., the Republic of Korea, and more recently Taiwan and Japan. Despite these agreements, however, the government continues to have an implicit policy of minimizing the deployment of workers on a government-to-government basis, so as not to hamper the business of the private employment agencies.²⁸ In an interview with the POEA, for instance, it was indicated that while efforts are there to enhance the existing Special Hiring Program for Taiwan, the government is careful not to make this a precedent for other countries where Philippine workers are deployed by private employment agencies.²⁹

There is a handful of associations of employment agencies in the Philippines. Among these, the biggest is the Philippine Association of Service Exporters, Inc. (PASEI), with 780 members and affiliates. Its website declares that “PASEI members deploy more than seventy percent (70%) of the total manpower placements by the Philippines to over 100 countries worldwide.”³⁰

In a Verité survey conducted among seven companies in Taiwan, all employers reported that they value the services of labor brokers, particularly when it comes to dealing with government processes and procedures for hiring foreign workers. The employers deemed labor brokers necessary for the following reasons:

In the Philippines:

1. Their assistance in the processing of visa and travel documents of hired workers, and in meeting other sending country requirements.
2. Their capacity to create a bigger pool of applicants.
3. Their expertise in handling Philippine government requirements.

In Taiwan:

1. The relationship that brokers have with the government, and with particular people in the CLA. (According to employers, this relationship facilitates securing the ‘right’ number of workers: agents who know the right people in government can facilitate securing higher quotas.)
2. The brokers’ long experience with application processes and government requirements.
3. Their expertise in documents processing.
4. Their capacity to pool applicants.
5. Their capacity for on-site management, including:
 - a. Establishing communication lines with workers.
 - b. Translation of factory documents.
 - c. Facilitating medical exam requirements.
 - d. Facilitating alien residence certificates and contract renewals.
 - e. Assistance in worker training (for new production processes).
 - f. Managing workers’ concerns.

Taiwan Brokers: The Receiving Country Intermediaries

Services to Employers

Taiwan currently *requires* its employers to hire foreign workers through brokers. The brokering system is thus mandatory, and quite lucrative: According to the Taipei Association of Manpower Agencies, brokering jobs for workers is a TWD 180 million (USD 5.6 million) annual business. Brokers have alleged in media/NGO reports³² and during Verité interviews that some Taiwan-based employers demand kickbacks or cuts for hiring foreign workers, and NGOs and migrant advocates have also alleged that some government officials also get payoffs from brokers.³³ Allegations of kickbacks and payoffs, as well as the sheer magnitude of the business, are significant when examining the conditions of the worker in the system, whose service fees to the broker are the only legal income that the broker makes. Thus it is the worker who is indirectly underwriting these kickbacks and payoffs.

Taiwan-based employers tell Verité that the Taiwan-based brokers are essential for moving paperwork through the government system. In Taiwan, companies wishing to hire foreign workers are required to secure a hiring permit from the Council of Labor Affairs (CLA). The number of foreign contract workers that the company can hire is regulated by the CLA, and has to be in proportion to the number of local workers employed by the company. At this pre-recruitment phase, labor brokers are already very much present. Taiwan labor brokers have a foreign worker quota allocation from the company/employer.

According to Verité interviews with employers, it takes anywhere from six to eleven months from the time an

Excerpts of a Contract of Labor Broker Services for W_k Company³¹

Pre-recruitment

- ⇒ Receive and process labor requirements from the company regarding the number of workers, qualifications, and date of employment, among other requirements;
- ⇒ Coordinate and communicate W_k hiring requirements to counterpart recruitment agencies in the Philippines, including ensuring the availability of at least four candidates for every job order forwarded.

Recruitment Proper

- ⇒ Provide logistic arrangements for W_k interviews in the Philippines;
- ⇒ Assist W_k and provide translation services for the interviews in the Philippines.
- ⇒ Upon Arrival of Candidates in Taiwan, arrange for airport pick-up and receive workers at the airport;
- ⇒ Organize Taiwan documentation requirements upon arrival, including processing of the Alien Residence Certificate and medical examinations;
- ⇒ Orient workers on the terms and conditions of employment at W_k, as well as the company's conditions of employment;
- ⇒ Arrange accommodation in a W_k-approved dormitory for the designated facility;
- ⇒ Assist workers in opening of bank accounts;
- ⇒ Collect workers' passports for safekeeping.

Post Recruitment

- ⇒ Provide translation services for production and various communication requirements;
- ⇒ Continuous communication of company policies through weekly dormitory meetings;
- ⇒ Provide counseling support for foreign contract workers;
- ⇒ Management and enforcement of dormitory disciplinary policies in coordination with W_k HR;
- ⇒ Provide assistance in organizing activities for foreign contract workers;
- ⇒ Provide assistance in attending to medical requirements of foreign workers;
- ⇒ Arrange for renewal of Alien Residence Certificates and medical examination requirements;
- ⇒ Provide assistance in tax filing and the processing of tax refunds;
- ⇒ Assist in repatriation and corresponding documentary requirements for foreign contract workers, including escort to the airport on departure.

employer submits a request for a labor quota (a quota for hiring foreign contract workers) to the time that the employer receives the documents and is able to begin recruiting. During this process the employer must receive approval from the Bureau of Industrial Development; and a certificate of manpower demand from the Council of Labor Affairs (CLA); and approval from the local government – at the province or county level – for hiring foreign contract workers. The procedures are complicated, and employers told Verité that brokers “know how to get the application to the top of the pile.”

The recruitment process is initiated as soon as a foreign worker requirement request is received by a Taiwan-based broker from a particular Taiwan-based company facility. The Taiwan-based labor broker with a valid quota allocation is then requested to process, initiate and facilitate foreign worker recruitment. In many cases, one Taiwan-based employer may work with multiple Taiwan-based labor brokers. Sometimes these Taiwan-based labor brokers have a collective manpower pooling system facilitated by counterpart agents in the sending country, such as the Philippines. The workers who are processed for recruitment come from a pool of applicants who have been pre-selected from this collective manpower pool.

Supervision of the foreign worker is technically the responsibility of the employer, since the labor relationship is created between the worker and the employer; but a typical brokerage contract will include a comprehensive range of services such as managing the living arrangements and transportation of workers to and from the worksite; and providing for medical exams, counseling, consultation and translation. Employers also expect brokers to handle workers who exhibit poor performance. This arrangement between the employer and the broker places the worker in the vulnerable situation of having to “submit” to a labor broker when in fact the broker is outside the ambit of the employer-employee relationship. The contract between the broker and the foreign worker does not reflect the extent of intrusion that is allowed to a labor broker – from dictating where the worker will sleep or what s/he will eat to whether s/he should be disciplined for some labor infraction.

In factories where broker representatives have a contract to manage foreign workers, representatives usually have an office within the facility’s premises. Broker representatives mediate and coordinate for both management and workers. They speak the workers’ language; may also function as supervisors in dormitories/hostels; and may police workers’ behavior, imposing disciplinary measures.

In cases where there is more than one Taiwan-based labor broker in operation, each broker will have representatives on-site. For example, in one particular factory audited by Verité that sources its workers from three different labor brokers, each of the three brokers has an assigned dormitory to manage. The labor brokers are tasked to manage the workers’ conduct in each respective company-provided dormitory, as well as to implement the company’s disciplinary measures.

The broker is often designated to facilitate the withholding of forced savings, as indicated in the company’s contract with labor brokers: “helping the employer (THE COMPANY) to get contract worker’s bank account from the bank, however the employer will keep the worker’s passbook and chop (visa)”, and “every 3 months, take the employees savings passbook to the bank to check the record and show the record to workers.” (See the case study on the Taiwan employer-broker relationship).

Taiwan-based brokers have made themselves essential and indispensable in the industry, as they are able to fulfill job orders for employers quickly. Brokers are also able to shield employers from the tedious, bureaucratic processes of securing quotas, processing travel documents, securing work permits; and even of managing foreign workers. Because brokers offer employers the very attractive option of not having to deal directly with the complexities and complications of bringing in and managing foreign employees; employers can thus focus instead on managing results and output, and fulfilling orders of brands.

Services to Workers

For workers, in receiving countries, brokers usually provide the following services:

- ⇒ process work permits
- ⇒ receive workers at the airport
- ⇒ arrange for living quarters, dormitories, apartments
- ⇒ provide orientation on the job, the place
- ⇒ arrange for work permit requirements such as medical exams, pregnancy exams, etc.
- ⇒ provide translation services
- ⇒ arrange for workers' banking, remittance needs
- ⇒ introduce to employers
- ⇒ coordinate, mediate between workers and employers
- ⇒ arrange for hospitalization, repatriation, etc
- ⇒ negotiate for extension of contracts (for a fee)
- ⇒ collect and release workers' pay
- ⇒ arrange for loan payments to Philippines-based brokers

In many ways, the brokers in receiving countries can serve as the workers' only anchor, from whom they derive some sense of security and stability in a foreign country, as one worker related in an interview. They can also have immense power over the workers, especially since the brokers usually keep the workers' passports and have the means to have the workers' work permits cancelled, and have the workers repatriated.

The Taiwan-based brokers also facilitate the opening of workers' salary accounts. This, in practice, can have the very problematic result of granting these brokers access to the workers' accounts. (See more details in Payment, below.) In one factory in Taiwan, the brokers were found to have accessed workers' accounts to withdraw money from the accounts without the workers' permission or knowledge. It was found, further, that the employer knew about this broker practice, and workers alleged that management staff provided workers' account records to the brokers. (See case study, attached).³⁴

Amazingly, employers do not typically pay Taiwan-based brokers for their services; instead, brokers' earnings are derived solely from service fees charged to workers, even though the bulk of the broker's services are being provided to the employer. This seems a problematic arrangement, since the primary task of the broker is to manage the migrants on behalf of the employers.³⁵

Since 1994, the government of the Philippines has been pushing for direct employer hiring for Philippine workers, as one way of reducing costs to the worker. See the Appendix for a discussion of the Special Hiring Program for Taiwan (SHPT) currently in place

Role of Labor Brokers in IT Employment in Malaysia

The facilities/factories under study in Malaysia worked directly with sending country brokers, who also have offices in Malaysia and, in some cases, on-site. These labor brokers are sometimes requested to provide direct-hire foreign contract workers (FCWs), and sometimes to continue working with subcontracted FCWs on factory premises.³⁶ The terms of engagement between the company and the labor broker is, in practice, enshrined in a supplier's agreement, often outlining the obligations and responsibilities of the labor broker.

For example, the service contract of Company C with the labor brokers who manage its Indonesian and Nepalese subcontracted workers indicates the following as the obligations and responsibilities of the labor brokers:

1. Labor broker is responsible for supplying support services to the workers;
2. Labor broker is solely responsible for paying the workers' salaries and benefits, given that subcontracted workers are considered employees of the labor broker;
3. Labor broker ensures that levies, working visas, and Foreign Workers Compensation fees are paid;

4. Labor broker, likewise, shoulders meal allowances, uniform fees, accommodation, transportation, medical and other pertinent expenses; and
5. Labor broker ensures the completion of all medical examinations and other legal documentary requirements needed by the subcontracted worker.

Companies in Malaysia often have longstanding relationships with their labor brokers. Still, some have due diligence processes in place that regulate the selection and monitoring of labor brokers for both direct-hire and subcontracted FCWs. Company C, for example, has a procedure in place that starts with a screening that takes into account the following criteria:

1. Legality of the enterprise (via assessment of government issued permits and licenses);
2. Financial viability;
3. Track record and references;
4. References from Immigration and Embassies; and
5. Feedback from foreign contract workers.

Likewise, the company takes into account compliance with the EICC Code of Conduct as part of the terms of conditions of their engagement with its labor brokers, and its contract agreement on labor outsourcing includes a clause allowing the company to audit its brokers for compliance with EICC standards.

Unfortunately, such written and documented procedures are up to the “due diligence” of each IT company; and many do not screen or monitor the performance of their labor brokers.

THE EMPLOYMENT LIFECYCLE FOR PHILIPPINE WORKERS IN TAIWAN

Recruitment, Hiring, and Transport: Paths into Entrapment and Forced Labor

Recruitment

As discussed in Sector above, it is crucial for producers who wish to remain competitive to reduce cycle times for design, manufacture and delivery. The ILO has observed that producers “try to pass on to suppliers the uncertainty that they encounter in the market place,” as factors like rapid technological advance and steadily falling prices result to stocks becoming unprofitable. When orders are placed, the pressure to deliver can be very intense, and everyone involved in the design, production and delivery has to be flexible. The demand for flexibility falls especially heavily on production workers: As the ILO also observes, “this model ... encourages the hiring of workers on temporary contracts and the use of excessive overtime to complete an order on time.”³⁷

Job orders from employers in receiving countries are usually forwarded to their local brokers, who then communicate the job specifications to the Philippine employment agencies. The Philippine agencies publicize the available job through various means, including:

- ⇒ ads in various media (radio, newspapers, flyers, posters, TV, websites);
- ⇒ the Philippines Overseas Employment Agency (POEA);
- ⇒ provincial agents whom they hire to go to poor communities far from major cities; and
- ⇒ job fairs.

In some cases, Philippines-based brokers are associated with religious organizations, and brokers or agents recruit through and among church members. Many employment agencies merely put up posters and streamers outside their offices. There is a popular district in Manila called Malate, where many employment agencies have offices. Those seeking overseas employment usually just go to this district and move from agency to agency, submitting applications.

Applicants are usually required to show academic/school credentials, training certificates, and proof of previous employment. Some applicants are required to undergo skills- and language training, from which brokers usually earn/take a cut. The review of documentary requirements is also usually coupled with interviews

Some workers reported that, in reality, anyone – even those without the necessary qualifications – as long as they are willing and able to pay the placement and broker fees, is usually able to get a job.

The usual job information provided includes expected salaries, step-by-step application procedures, documents required, and working and living conditions. Rarely is other information – for example regarding recruitment fees, arrangements for paying the fees, and possible sources of financing – provided in the initial information campaign. Workers reported to Verité that the high salaries and the short amount of time it would take to process application and travel documents are what attract them to the prospect of submitting their applications.

Workers are also usually told positive things about the working and living conditions abroad. For workers coming from poor communities in remote Philippine provinces, apart from the opportunity to earn a living, overseas work is seen as an opportunity to expand their horizons. Workers have the idea that being a worker abroad is more “glamorous” than laboring as an agricultural worker in their province or as a factory worker in the Philippines. Lack of employment opportunities in the Philippines is another big push factor. Thus most workers recruited by agencies are already “sold” on the idea of working abroad before they begin the recruitment process.

Recruitment fees are usually revealed toward the latter part of the recruitment process. Along with this information, workers are guided/led to sources of financing and are assured that, for as long as the worker is

willing, the broker will find the means to help the worker finance the cost. At this point in the process, workers are typically more than willing to do whatever it takes to leave the country and start employment.

Workers report that during initial orientation, the agents would usually share to them success stories of other applicants whom they have deployed. According to the workers, the usual statement from the employment agency is this: *Kung gusto n'yong makaahon sa buhay at matupad ang inyong pangarap, magtiwala kayo sa amin* (“If you want to improve your lot in life and realize your dreams, you have to trust us.”).

Only a few workers interviewed by Verité attempted to verify the credibility of the information provided by the brokers or the status of the employment agency itself. Most of the agencies in operation do have POEA licenses and have their own websites, on which they advertise their services and show their success rate, in terms of number of deployments. The POEA’s website also lists the accredited and registered brokers, as well as brokers who have received awards from the POEA. However, in practice, these are not reliable indicators of the credibility of an agency or its claims. Many workers are aware that some agencies receiving awards from the POEA are also the subject of complaints from workers.

Recruitment Fees

Fees Charged by Philippines-Based Brokers

In theory, only the placement fee and the Overseas Workers Welfare Administration (OWWA) medicare fee for PHP 900 (USD 20) are the costs that should be borne by the potential migrant worker desiring to work overseas; but workers usually end up paying so much more. Many employment agencies require unnecessary skills training, testing, and certification even for those applicants who have had prior work experience in the same industry. According to the workers, for these tests and certification, they are charged PHP 3,500 to 5,000 (USD 76 to 109). Workers are also required to have their medical exams performed by agency-accredited clinics, for which they are charged up to PHP 4,000 (USD 87). The placement fee in many agencies deploying for Taiwan is PHP 140,000 (USD 3,046) plus a surety bond of PHP 2,800 (USD 61). A few charge as much as 175,000 (USD 3,808).

In one factory, for instance, workers secured their jobs through various employment agencies, but all of them reported similar overcharging practices. They reported paying their brokers in the Philippines amounts much higher than what was indicated in the Foreign Worker’s Affidavit which they presented at the POEA for approval, prior to their departure to Taiwan. The amount reflected in the Affidavit – about PHP 20,000 to 25,000 (USD 435 to 544) – is only 20 to 25 percent of the actual amount they paid their middlemen and brokers. All workers also reported being instructed by the broker to not disclose to the POEA official the actual amount paid, if they wished for their intention to work overseas to be fulfilled. In another factory, workers reported paying PHP 90,000 to 104,000 (USD 1,958 to 2,263). All agencies were duly licensed and accredited by the POEA.

Most workers settle recruitment fees either by making a down payment and paying the balance in installments, or through regular salary deductions once the worker has been hired. Very few workers are able to make full upfront payment or payment in cash, and those who do usually secure loans from family, friends, or lending agencies they are personally acquainted with; or sell family property of value in order to come up with the amount charged.

The mechanisms of financing fees typically serve to compound issues of vulnerability. The government has not passed any law that would lower the cost of emigration or implement a mechanism for the worker to access credit at reasonable rates. Workers, who generally cannot access credit through banks and other reputable financial institutions, end up applying for loans facilitated by recruiting agencies at usurious rates. Workers also fall prey to the “fly now, pay later” scheme where the placement application are processed even without payment of placement fees. The fees are later deducted from the migrant worker’s salary, a system under which workers can be easily abused and charged excessively. On some occasions, private recruitment agencies make arrangements with the employer such that the entire salary of the migrant worker is withheld for a certain period of time to pay for one fee or another.

Another ploy used by private recruitment agencies involves the practice of instructing workers to sign blank sheets of paper which will be subsequently filled to make it appear that the migrant worker signed a promissory note to the recruitment agency. In this case, the recruitment agency can make it appear that deductions made are payment for loans (which is allowed by law) rather than placement fees.

Example of Overcharging by a Philippine Broker

G- Placement is the counterpart agency of the Taiwan broker DM. G- Placement is a government-accredited agency, and considered one of the largest, in terms of rate of deployments. In a press release issued by the POEA, Grand Placement was cited as one of the top performing agencies for 2006. The Top Performer award is described as follows by the POEA:

The Top Performer Award is given to agencies that are in active operation since July 2002 and with not more than two adversely decided cases of recruitment violation within the evaluation period. The criteria include compliance with recruitment rules and regulations, deployment, technical capability, responsiveness to workers' welfare on site, and marketing capability. ... Special citations are also given to some of the agencies for their particular achievements in the areas of deployment, foreign exchange generation, marketing, welfare programs and services, technical capability, and sustained efforts in the use of the electronic submission system or the e-Submission.³⁸

G- Placement usually places ads and notices in local media, participates in provincial job fairs, and has representatives in Cebu City and other major Visayan Regions. Most applicants/ workers (interviewed by Verité in 2008 and 2009) who secured their Taiwan job through G- Placement said that they had responded to ads, while others were given referrals by family and friends or heard of G- Placement through job fairs.

All workers reported going through these procedures:

- ⇒ Initial orientation and screening of personal information, which was performed in provincial cities from some.
- ⇒ A second level of processing, performed in Manila, includes screening of documents, aptitude exam, interview, medical exam, passport and visa processing. Applicants also paid a 50% down payment on total fees at this time.
- ⇒ While applications were being processed, applicants were asked to pay a third party PHP 10,000 to 12,000. This money was outside of the agreed-upon fees and no receipt was issued.
- ⇒ Workers waited anywhere from one to ten months for the approval and final job order from the employer in Taiwan.
- ⇒ When all the requirements were in place, and the list of new hires was finalized, workers paid the remaining 50% of the total fees.
- ⇒ Workers then signed the Master Contract, which detailed the terms of employment at the factory in Taiwan.
- ⇒ Workers were specifically instructed not to reveal to the POEA the entire amount they paid the broker, otherwise their deployment schedule would be revoked.
- ⇒ Workers were then made to present their documents at the POEA for approval.
- ⇒ Prior to their departure for Taiwan, workers were oriented about their Taiwan brokers, who were to meet them at the airport and take care of them while they are employed at the factory. They were made to sign an agreement regarding deductions for broker fees in Taiwan.

Even though G- Placement was singled out by the POEA as a Top Performer, the amounts paid by the

workers above far exceeded the legally allowed fee, which should have been around. PHP 25,000 (USD 544). Instead the fees paid by the workers to Grand Placement ranged from PHP 75,000 to 112,000 (USD 1,632 to 2,437). The examples below provide a sense of the types and amounts of fees charged by Grand Placement.

Sample 1 (according to a worker who renewed his application and contract):

In 2003

Broker fee: PHP 60,000 (USD 1,305)
 Medical check: PHP 3,350 (USD 73)
 One-way ticket: PHP 11,000 (USD 239)
 Jacket: 300 (USD 6.53)
 Visa application: 2,000 (USD 44)
TOTAL: PHP 75,600 (USD1,645)

In 2006

Broker: PHP 95,000 (USD 2,067 – paid in two installments)
 Jacket: PHP 600 (USD 13)
 Rush renewal application: PHP 2,000 (USD 44)
TOTAL: PHP 97,600 (USD 2,124)

Sample 2 (according to first-time applicants):

Broker (all-in³⁹): PHP 90,000 to 95,000 (USD 1,958 to 2,067)
 Service fee to Third Party: 10,000 to 12,000 (USD 218 to 261)
 Medical: PHP 4000 to 4800 (USD 87 to 104)
TOTAL: PHP 99,000 to 111,800 (USD 2,154 to 2,433)

Fees Charged by Taiwan-Based Brokers

Taiwan began to aggressively import foreign workers in 1989. Since then, brokers have raised their fees significantly. Presently, the fees are as follows:⁴⁰

| Year | Monthly Rate | Yearly Total |
|------|--------------------------|------------------------|
| 1 | TWD 1,800/month (USD 56) | TWD 21,600 (USD 672) |
| 2 | TWD 1,700/month (USD 53) | TWD 20,400 (USD 634) |
| 3 | TWD 1,500/month (USD 47) | TWD 18,000 (USD 600) |
| | Total | TWD 60,000 (USD 1,865) |

Financing Schemes, Salary Deductions

Many workers interviewed incurred loans with informal moneylenders, or from neighbors and family members, at very low to no interest. Some workers borrowed money through loan agencies recommended by the employment agency. The interest at these loan agencies ranged from three to ten percent per annum. One worker said her father had to sell a farm animal and mortgage their farmland in order to finance her placement and broker fees.

According to the workers, one needs about TWD 3,000 (USD 93) per month, on average, for personal living expenses while in Taiwan. Sometimes, workers end up shelling out even more cash for food, even if deductions for food and accommodations are automatically made on their salaries.

Many workers (interviewed in the Philippines and in Taiwan) said they were endorsed to loan agents attached to the agency. Some workers who had similarly made loans with a loan agent/loan facility provided by the agency reported that, when they got to Taiwan, the amount was the same but the currency was in Taiwan dollars, which is higher by 1.5 times the Philippine currency. The workers said they only learned of this when they arrived in Taiwan and made their first payment. The Taiwan broker who facilitated their loan payments said this was in the agreement workers signed in the Philippines. The workers said they felt they had no choice, even if they clearly remembered that the amount they agreed to pay was in Philippine pesos.

In many cases, the workers are made to sign an agreement in the Philippines, indicating that they agree to be deducted a certain amount of money as installment payments of the worker's loan against either the employment agency itself or a loan facility accredited by the agency. When the worker gets to Taiwan, it is the local Taiwan brokers who usually arrange for the loan payment. There are varying payment schemes, according to workers:

- ⇒ In some instances, workers' salaries are released to the brokers, and the brokers make the deductions – dormitory, taxes, broker fees, loan payments, etc. – before releasing the money to the workers.
- ⇒ In some cases, salaries are deposited directly to the workers' bank accounts and workers pay the monthly installment to the local broker, who then remits the necessary amount to the Philippines-based broker.
- ⇒ In other cases, the Taiwan-based brokers increase their fees, supposedly to include the fees owed to brokers in the Philippines.

Only a few workers reported having to make their own arrangements for the monthly loan payments to their loan agents in the Philippines.

Workers interviewed in Taiwan factories reported that, contrary to what the brokers promised them during recruitment phase, they have not recouped their expenses even though they have been working for more than a year already. They could not even save money because their monthly salary was only about PHP 25, 000 (USD 544). Workers reported that what they earn during the entire first year up to the first half of the second year is only for payment of loans and fees; and only after that can they start earning a little bit for themselves and their families. Some workers said that they wanted to break their contract and leave after the first half of the contract period, however, they would have to pay about PHP 44, 000 (USD 957) for “break contract” charges and for return airfare.

Many workers have reported repaying significantly more than the borrowed amount. The workers reported that interest and insurance usually compounds the borrowed amount; and they often did not understand that this would be the case. Only when they were in Taiwan did it become apparent that they were trapped into having to work excessive overtime in order to pay back their loans. In a startling example of lack of financial literacy and awareness of payment terms, several workers commented to Verité that they were not sure if they had overpaid their loans, but that they suspected this to be the case because after a year of being employed, they had not recouped the cost of securing their jobs yet.

News reports, as well as worker advocates, have pointed to this labor broker system as causing situations of trafficking for labor into Taiwan. The Council of Labor Affairs allows Taiwan brokers to charge the worker's first month's salary as the Taiwan-based broker's fee, but the real situation is that “some migrant workers use the first three months of their salary to pay their brokers. Some even pay up to 20 months of their salary... Many brokers also ‘detain’ the migrant workers’ identification cards on the pretext that this is a safeguard to prevent them from running away.”⁴¹

Contract Substitution

It is common practice for Philippine workers bound for foreign employment to be required to sign one contract prior to departure, and another contract upon arrival at the factory. Many workers have reported signing multiple contracts, among which there are significant differences in terms and conditions. Typically workers first sign the standard contract provided by the POEA, and then this contract is supplanted by a different contract containing less favorable terms when they arrive in Taiwan. (See the appendix for a sample POEA standard contract.) In many cases, terms and conditions pertaining to work hours and wage rates can vary significantly. In some cases, workers have been summarily transferred to jobsites other than the ones indicated in the contract. In one case, workers wound up being employed in a completely different facility from the one listed on the contract they signed in the Philippines.

Contracts signed in the Philippines are usually in English, and the terms are explained to the workers during the orientation, which may be done by a representative of the company or by the Taiwan broker. In many instances, these orientation sessions are conducted through a video conference.

Visas and Work Permits

Visas and work permits are processed by the Taiwan-based brokers. The fees for these documents are charged to workers, and are either covered by the amount the worker pays in the Philippines or are charged separately by the Taiwan-based brokers. It is common for brokers to inflate these fees.

In the case of Taiwan, the visa is usually valid for two years, and may be extended for another year.

Predeparture Measures and Delays in Deployment

Philippine workers bound for overseas employment are required to attend a POEA-accredited Pre Departure Orientation Seminar (PDOS) before leaving abroad. The following topics are discussed during the seminar:

- ⇒ Requirements for migrant workers, e.g., health requirements, physical fitness;
- ⇒ The features of a standard employment contract;
- ⇒ Travel tips, airport procedures and protocols;
- ⇒ What to do upon arrival at the country of employment;
- ⇒ Violations and offenses that could affect overseas employment;
- ⇒ What to do in case of a contract violation by the employer; and
- ⇒ Benefits from membership in the Overseas Workers Welfare Administration (OWWA), such as credit and social programs offered by OWWA.

Workers are usually told that, after the PDOS, they would be able to leave right away. However, many workers have reported delays and long waiting periods. This is particularly difficult for workers who hail from provinces far away from Manila, and especially those who have no families to stay with in the city. Workers have recounted to Verité having to borrow money again from moneylenders or being voluntarily lent money by their brokers, for their expenses in Manila while waiting for deployment. This is added to the already large loans that workers have incurred for payment of placement fees. Workers reported that no sufficient explanation was provided by the agents, except to say that the delays were unexpected and that they would eventually be deployed if they would just be patient.

Workers reported that the long, sometimes uncertain or indefinite, waiting period is very difficult for them and their families to deal with. Some workers reported having to lie to their families, not letting them know that they

are still in the Philippines, out of embarrassment. Some workers said they were tempted to withdraw their application and start the process with another employment agency, but that by then it was too late already and the agency would not return to them their money.

Overall workers reported to Verité that at this point in the recruitment and hiring process, they felt they had no choice but to wait and to subject themselves to the “support” and control of the agents. By the time the workers were deployed, many workers had already incurred more loans, and were generally in a position where they felt they had to accept whatever work conditions they were met with in Taiwan.

Transport

The transportation process is not an issue of concern with regard to Philippine workers deployed to Taiwan electronics facilities, other than that they are overcharged for airfare. The procedure is standardized. Workers board the plane at international terminals in Manila and are met at the airport by Taiwan-based brokers. From the airport, they are usually brought to a hospital/medical facility for a check-up and medical clearance, and then to their hostels/dormitories; right after which they are brought to the factory to meet the employer and to commence their employment.

On the Job: Mechanisms of Coercion and Subjugation/Enslavement of Philippine Workers in Taiwan

Once they arrive in Taiwan, workers enter the “switch” phase of the recruitment and hiring “bait and switch” scheme: contracts are substituted and/or supplemental clauses are added that reduce workers’ leverage and compensation; and deductions and withholdings are put in place that further whittle away workers’ take-home earnings, such that they soon find themselves in situations where working excessive overtime hours is the only way to stay afloat and begin to pay off recruitment debt.

Added to this scenario are clear and extensive restrictions on workers’ freedom of movement – passports are withheld; it is difficult if not impossible to leave the factory during the work hours, or to obtain leave from an overtime shift even if it is the worker’s day of rest; and broker representatives live in the dormitories with workers, where they are responsible for “discipline” and enforcement of curfews.

Reception and Job Assignment

Upon arrival at the airport, the Philippine workers are received by the Philippine recruitment agent’s counterpart broker in Taiwan. At the airport, the workers’ papers – passports, visas, etc. – are immediately submitted to a CLA desk located near the arrivals section. The broker (or broker representative) then helps facilitate the processing of the Alien Registration Card (ARC) for the workers.

After this procedure, the workers are then brought to a medical facility for the mandatory medical testing. After this, the workers are brought to their temporary residences – hostels, dormitories, apartments – where the workers are given provisions such as mattresses and comforters, toiletries, slippers, and other basic necessities. The workers are typically charged TWD 2,500 to 3,000 (USD 77 to 93) for these items.

The workers are then briefed on the rules and regulations of the company. In some companies, workers are given a written exam on company regulations. The brokers orient and prepare the workers for these exams. The brokers also prepare the contracts and supplemental agreements for the worker to sign.

Upon arrival at the factory, the workers are usually oriented further on the job and its entitlements, on company policies and regulations, and on violations and penalties. In some instances there is a formal, factory-sponsored orientation during the first few days at the factory. In most cases, however, these sessions are handled by the broker.

Full and detailed information about workers' legal status in the destination country, as well as the contact information for the nearest consulate, are usually not provided by either the broker or the employer. There are, however, NGOs that distribute flyers and brochures containing this information at the airport. Many workers have reported gaining important information from these flyers.

It is also common for employers and/or brokers to have workers sign so-called supplemental agreements – sets of agreements, provisions, terms attached to the ones indicated in the contract that the workers signed in the Philippines and submitted to the government agencies – before workers commence employment with the facility.

Supplemental Agreements

In many of the factories audited by Verite, the additional terms and conditions of these supplemental agreements were usually not favorable for the workers. In two factories (one located in Lungtan, the other in Taoyuan) employing Philippine workers, for instance, the following provisions were appended to the first contract signed by the workers:

Employment Commitment – which includes provisions such as:

6 – “I agree that the employer for safekeeping shall keep my passport and chop (visa) until termination of the employment contract upon departure”

#8 – “I agree to pay my medical check up (including first entry in Taiwan and once every six months”

Provision #6 effectively keeps the workers tied to the company and restricts their movement. For provision # 8, the law only requires workers to cover two medical examinations on the first year of employment (upon arrival and six months later) and one medical examination for the second year of employment; for a total of three medical examinations for a two-year contract. The supplementary contract provision here requires workers to cover four medical examinations.

Overseas Contract Worker (OCW) Supplementary Employment Agreement – which includes the following provision:

2 – It is my sole willingness to accept the terms and conditions, compensation and benefits package of my employment with the company. Shall I have anything in opposition to these, I shall accept immediate termination of employment contract with the company and waive whatever claims I may have.

This provision clearly deters workers from raising concerns and deters them from seeking redress, given that the alternative to non-acceptance of the compensation terms and conditions is contract termination.

OCW Fee Deduction Agreement, which indicates that the worker “understands and agrees to pay monthly and other fees required in employment related documents during employment to Taiwan”, and that the factory will deduct the fees indicated from the workers monthly salary,

and that in case the worker's monthly salary is not enough, the worker "agree that the factory deduct unpaid balance from the savings fund."

Although there were no reported incidences of unwarranted deductions from this particular facility, the deduction agreements between the company and the worker do not indicate the specific amount to be deducted.

OCW Monthly Savings Agreement – wherein workers acknowledge that the factory can deduct TWD 3000 (USD 93) from the worker's payroll account that and transfer it to a savings account until the contract expires, and that the worker cannot withdraw or close the savings account without the company's approval.

Based on interviews with workers and the Taiwan-based brokers, the employer keeps the workers' bankbooks and "chops" (or visas). The law in Taiwan prohibits forced savings, unless there is consent from workers. However, if workers agree to a savings mechanism, the workers should be able to stop this agreement at any time and should be allowed to withdraw from and close the savings account at anytime. In factories with similar supplemental provisions to that indicated above, it was commonly found that workers are provided no means to refuse this savings agreement.

Agreement of Computation Method on OCW's Penalty for Breach of Contract, which indicates that workers will be subjected to a breach of contract penalty of TWD 2,000 (USD 62) multiplied by the number of months the worker has been employed in the facility (for a maximum of 12 months) as compensation for the company's loss under the following terms :

100% - violation of company/dorm rules and regulations

Self termination

Poor work performance

Other reasons that cause great loss to the company

Penalty computation based on decision of the company:

50% - Penalty computation based on decision of the company

30% - Penalty computation based on decision of the company

This provision potentially poses a risk to workers' freedom of movement and renders workers vulnerable to being subjected to involuntary servitude. The combination of this contract provision with the practices of Taiwan-based brokers in relation to the implementation of the dormitory disciplinary policy as a measure to control workers freedom of movement, poses serious risk of abuse among workers in this factory. Further, the practice of requiring workers to sign a supplementary agreement, provisions of which are not compliant with the terms agreed in government-sanctioned contracts, contributes greatly to workers being subjected to conditions of involuntary labor.

The practice of asking workers to sign supplemental agreements poses another significant risks to workers in the sense that these signed documents would be treated by the Taiwan labor court and justice system as acceptable forms of consent from workers, even if the terms or stipulated agreements do not comply with the law or regulations. The signed agreements can and may be used to the detriment of the legal rights of the workers. At the very least, supplemental contracts should offer terms that are at least as favorable as those in the original contracts signed by workers.

Freedom of Movement

All IT factories in Taiwan are set up in such a way that workers have to go through several persons of authority – line leaders, supervisors, HR/personnel offices, and guards – before they can leave the factory premises. In practice, although not always written in policy, workers in the electronics facilities are not free to leave the factory premises during work hours. Even if the work hours fall on a day of rest – meaning the work is supposed to be purely voluntary – the worker still has to go through the standard procedures before being allowed to leave.

The procedures for securing leave permits can be unnecessarily protracted, requiring the approval of at least three factory personnel, and leave is usually granted only for urgent reasons. Although overtime work is usually supposed to be voluntary, in practice, almost all workers and supervisors interviewed said that workers have to secure approval and a permit to not do overtime. Workers have commonly reported that, even on a rest day, they must have a very strong reason to not work overtime if they have been assigned to work an overtime shift. Workers said they have to produce a medical certificate in order to be considered excused from working overtime. Refusing to do overtime work for reasons other than sickness can be used by supervisors against workers during performance evaluations, workers said.

Workers in the electronics facilities have an especially hard time leaving the factory because of the nature of the work. In “clean rooms”, in particular, workers have to undergo a tedious process of taking off, piece by piece, the safety gear and lab uniforms before they can step out of the clean room. Returning to the “clean room” also takes time, as the workers have to put back on the required personal protective equipment (PPE) and uniforms. In some factories, toilet use was regulated because of the amount of time that is “lost” every time a worker has to leave the production area.

Brokers or employers usually withhold or restrict access to workers’ passports and require workers to obtain broker’s or management’s permission before accessing their passports.

Living conditions also oftentimes pose restrictions on freedom of movement. Philippine workers live either within the factory compound or in areas close to the factory. They are housed in dormitory or apartment-type housing facilities, with basic amenities. A broker representative usually resides in the building and oversees the workers in their living quarters. Curfews are imposed in the dormitories; and workers are usually not allowed to receive guests, even on days when they are not working.

All the above-stated restrictions have the result of a systematic policy to deter workers from exercising their freedom of movement.

Financial Penalties

It is a common practice in factories for management to impose financial penalties for voluntary or involuntary termination of the contract. A “break contract fee” is levied, and workers also forfeit the return airfare, savings and tax refunds if they resign before the end of their contract. In one factory audited by Verité, for instance, management imposes a penalty of TWD 20,000 (USD 622) for workers that opt for early termination of their contract, including workers who become pregnant.

In some cases, workers whose contracts were involuntarily terminated because of economic reasons still were forced to pay for their return airfare using the savings deducted from their monthly salary, and were unable to collect their tax refunds.

Many of the workers endure poor work conditions and abusive supervisors, and have no choice but to consent to working excessive overtime hours for fear of forfeiting their return airfare, forced savings and tax refunds. Moreover, many of them still owe money in the Philippines and cannot afford not to finish their contract.

Deductions and Withholdings

It is a common practice in Taiwan-based factories employing foreign workers to subject workers to deductions, withholdings and fines, as well as certain methods of payment that compound indebtedness and compel workers to stay at the factory, despite poor and abusive conditions.

From numerous reports, it seems that the following items are the usual and automatic monthly deductions from the worker's salary:

- ⇒ room and board – TWD 4,000 (USD 124)
- ⇒ broker's service fees – TWD 1,800 (USD 56)
- ⇒ tax – TWD 2,376 (USD 74)
- ⇒ health insurance – TWD 225 (USD 7)
- ⇒ labor insurance – TWD 215 (USD 6.68)

Total deductions in a month may amount to TWD 8,616 (USD 268). It should be noted that, under Philippine law, the foreign employer should provide free food or compensatory allowance and free suitable housing. The arrangement in Taiwan, wherein room and board form part of the worker's wages, obviously runs counter to this standard.

In addition to these deductions, Taiwan regulations allow employers to implement a system of forced/compulsory savings, wherein employers deduct up to 30 percent of a foreign worker's salary and place it in a bank account in the worker's name. The worker has no access to the account.⁴² It may be assumed that access will be allowed only before the worker goes home. This is a system that everybody knows and refers to as "runaway insurance" – as it is used as a means to guarantee against the worker's premature termination of his or her contract or transfer to another factory. In most cases, these savings are returned to the workers at the end of the contract; and in some factories, workers are provided means to check the amount representing the savings they have accumulated. In many factories, however, employers also cover the workers' airfare by withholding part of the workers' wages or taking it out of their savings.

The US Department of State's 2009 Trafficking in Persons report on Taiwan observes that foreign workers are forced into such savings arrangement upon arrival in Taiwan and they are often sent home if they object. The money is not returned if the worker ends work early due to abuse or exploitation, thereby deterring workers from seeking assistance.⁴³ These findings have been echoed by workers in Taiwan interviewed by Verité.

These deductions, forced savings, and forfeiture clauses are not always detailed in the original contracts that workers sign prior to commencing their employment. Rather they are usually indicated in supplementary agreements that workers sign upon arrival in the factory. (See previous section on Supplemental Agreements.) In one factory, for instance, the workers reported to Verité that they signed supplementary agreements indicating, among other things, a factory savings deduction of TWD 5,000 (USD 155) from their salary, and that they should compensate the employer TWD 20,000 (USD 622) for breaking their contract. In other factories audited by Verité, the amount of TWD 3,000 to 5,000 (USD 93 to 155) was deducted from the salary of foreign contract workers. The facility held the workers' passbooks and bank account information, which gave the factory the authority to withdraw from workers' savings accounts. In one factory, workers complained that brokers/employers were able to make unwarranted withdrawals from their accounts.

In the face of these deductions and compulsory savings, the worker must still contend with repaying the loan taken to cover the placement fees paid to the private recruitment agency in the Philippines. As discussed above,

Bait and Switch: Supplemental Agreement Demands Forced Savings and Access to Bank Accounts

In one factory, workers reported to Verité that the Taiwan-based broker representative informed them that some terms indicated in the contracts they signed in the Philippines would no longer apply. In particular, the deduction scheme was changed such that, over the course of the three year contract, an additional TWD 20,700 (USD 644) would be withheld from each worker's salary; and arrangements were made to deduct these fees automatically from workers' bank accounts. The workers said that they felt they had no choice but to consent to the changes. Some of the workers reported the discrepancy to the auditors of a client brand during one factory audit. The brokers were made to explain in clearer terms to the workers the reasons for the increase in fees, they even presented a breakdown of the fees. The reason given to the Philippine workers for this revised deduction scheme was that the brokers cover the workers' medical exams (four in all, for the three-year contract), alien residency certificate annual renewal, and return ticket to the Philippines. However, the workers said that the services provided by this broker did not differ from the services provided by another broker to other workers, and the other broker had kept the original fee schedule in place.

Workers reported, and upon inspection by auditors their passbooks also indicated, that unauthorized deductions were made on their accounts by the brokers. These unauthorized deductions ranged from TWD 2,240 (USD 70) to as much as TWD 9,000 (USD 280). The workers were outraged that their own personal accounts were not as secure as the brokers had promised. They said that if the brokers could "steal" from them in this manner, then they (brokers) could be capable of doing them more harm. The workers said they felt that they had been betrayed, that they did not know whom to trust. Many of the workers felt helpless and were afraid to make a complete report to auditors for fear of reprisal from management and brokers, and for fear of losing their job and not being able to settle their debts. Those who were already about to finish their contracts were more expressive of their anger and said that they were ready to lose their jobs, since they had already settled their debts and had a few more months to the end of their contract.

the Philippine placement fees can range as high as PHP 70 to 120,000 (USD 1,523 to 2,611). Without overtime, actual wages in cash that a migrant worker receives could well be between TWD 2000 to 4000 (USD 62 -124) a month. Given the high fees that a foreign worker has to bear, it has been generally recognized that it will take a foreign worker about 12 to 18 months to pay off placement-fee debt. If the worker's contract is terminated prematurely, s/he will be forced to return home saddled with debts and with neither income nor savings. One recent report on this subject observes: "Because the workers in debt have no freedom to choose their employers, they either put up with unfair treatment or become "runaway workers", who often take the blame for rising criminal activities."⁴⁴

Methods of Payment

Workers are paid a basic monthly salary, usually consistent with the legal minimum wage rate. In some factories, after the deductions and bonuses are applied, the pay is deposited directly to workers' bank accounts. In other factories, the practice is to release the workers' pay to the brokers and it is the brokers that either issue the pay to the workers or deposit the amount to the workers' bank accounts.

In some cases, workers are levied unclear charges for housing, entertainment, food, medical costs, insurance payments; which are all lumped together with deductions for brokers' services.

Not all factories provide workers pay slips written in a language workers understand. In some, the practice is to post on the bulletin board a sample pay slip written in a language workers understand. A common complaint from workers is that they do not understand how their wages were calculated, especially with multiple deductions and calculations for overtime pay.

Gender Discrimination

In many factories, workers and Taiwan labor brokers interviewed reported that only single women are hired. Foreign workers interviewed likewise reported that a pregnancy test is part of the regular medical examination, and that they signed a supplemental contract in the Philippines stipulating that they will be repatriated if they get pregnant.

It should be noted that Taiwan law prohibits dismissal of workers on the basis of pregnancy, and allows pregnant foreign workers to continue working, with full entitlement to medical and maternity benefits as guaranteed by the Labor Standards and National Health Insurance Law. The foreign worker is however required to send back their children to their respective home country, as the child has no legal status in Taiwan.

Fear and Violence – Actual or Threatened

In TRXXX a factory audited in 2008, some workers who decided to report factory violations of a client’s code of conduct reported being threatened by the brokers of deportation or denunciation to the authorities. These workers complained mainly of excessive broker fees, unwarranted deductions from their accounts, excessive overtime, bad food at the factory, lack of freedom of movement in the factory and the dormitory.

In general, workers feel that the brokers/employers withholding of passport and of the “runaway deposit” are an implicit threat.

Other Exploitative Practices - Work Hours

A common observation across factories is that workweeks exceed 60 total hours at several times of the year, particularly during peak production months. In many instances, factories do not provide one day off in seven for an entire month (or months) and have no policy on voluntary overtime.

One worker reported that, in September 2009, foreign workers were told that the factory would be cutting jobs and that only those willing to work from October to December for 12 hours/day, seven days a week, would be retained. He said that he opted to stay because he still had debts to settle and his children are starting school next term. However, after a month of working the schedule, he said that he wants to leave and not finish his contract anymore. This would, however, entail paying for a break-contract-fee and forfeiting the return airfare and tax refunds.

Return and Reintegration

All returnees (popularly referred to as “ex-Taiwan” workers) interviewed at the POEA and at an employment agency called Mission Way said that, as soon as they returned to the Philippines, they started applying for new jobs in Taiwan at employment agencies and at the POEA. Three workers who just arrived in July 2009 said that they have not even seen their families or gone home to their provinces in southern Philippines, as they were worried about not having jobs after their savings have run out. They said that they were also uncomfortable about returning home with no clear “exit plan”, that is, a means to secure their next job abroad.

Two workers interviewed at the POEA have been back for only a month and were eager to start the process of applying for work in Taiwan again, now that they know what broker practices to avoid. The workers were employed in a facility that produces CDs. They were among the workers who were not able to avail of a contract extension for a third year because the factory decided to cut jobs. One of them said he was only barely able to

settle the debt he incurred two years ago when he was first recruited for the job in Taiwan. After a month of inquiring at the POEA and looking for brokers that do not charge as much as their old brokers did, the two workers said that they were willing to go through the same process, pay the same or higher fees, just to be employed again. These two workers are from the northern part of the Philippines. In October, their region was severely affected by strong typhoons that destroyed crops, farms, and people's homes. These factors, according to the workers, are also pushing them to engage with employment agencies again, despite their earlier misgivings about their practices.

THE EMPLOYMENT LIFE CYCLE OF FOREIGN CONTRACT WORKERS IN MALAYSIA

Methodology

Verité's original research focus was on Philippine workers going into the IT sector in Malaysia – to serve as a counter-point to those going from the Philippines to Taiwan. However this focus was broadened during the course of the project in order to tell the story of brokerage more fully in Malaysia. The situation of brokering in Malaysia is more complex than in Taiwan, primarily because it is connected to even more industries. Also, while Philippine workers comprise a large percentage of the IT workforce in Taiwan, they are a minority in Malaysian IT factories. In order to focus on possible solutions to the broker problem in Malaysia's prominent IT sector, we felt the need to understand brokering of other Asian workers. Therefore, we have included other Asian migrants (Indonesians and Nepalese) in our research and analysis. We have also included some information on the experiences of Philippine male victims of labor trafficking to Malaysia (with and without broker facilitation) into this report, in order to show similarities and differences between problems in the IT sector and other sectors in Malaysia.

The data used in this report was gathered from workers over the course of Verité audits in Malaysia from June 2008 to June 2009. In particular, information from three companies, named as Companies A, B and C, is profiled herein.

Interviews were conducted with representatives from each company's Human Resources Department in charge of staffing and employee relations, and with labor brokers (when relevant) employed by the company for its labor requirements.

Likewise, Verité conducted interviews with foreign contract workers (FCWs) in each facility, carefully selected by the audit team to reflect such considerations as gender ratio, countries of origin, status of employment and employer, and years of service. Information here derives from interviews with 79 workers.

Verité also reviewed documents that described each company's personnel policies and procedures for recruitment, selection, hiring, training, performance and grievance management, discipline and termination, wages and benefits, and rewards and bonuses for FCWs; as well as contracts with labor brokers, payroll documents, personnel files, and employment contracts.

Malaysian IT companies hire FCWs in significant numbers, from such countries as Vietnam, Sri Lanka, Bangladesh and Nepal. These FCWs work alongside Malaysian nationals. Indonesian nationals comprise the largest portion of FCWs in Malaysia. In the factories audited by Verité, Indonesians typically comprised around 35 percent of the workforce.

Often, companies employ two types of FCWs:

1. Direct Hire: FCWs that are hired through a labor broker based in their respective countries of origin, and while in Malaysia, work directly for and are paid by the company;
2. Subcontracted: FCWS that are hired through a labor broker in their respective countries of origin,

but while working for the company, are instead paid by the Malaysia-based satellite or partner office/agency of the labor broker.

Recruitment, Hiring, and Transport: Paths into Entrapment and Forced Labor

Selection and Monitoring of Labor Brokers

The facilities/factories under study secured the services of labor brokers based in the various sending countries from which FCWs originated. These labor brokers are sometimes requested to provide direct-hire FCWs, and sometimes to continue working with subcontracted FCWs on factory premises. (See definitions of direct hire and subcontracted above.) The terms of engagement between the company and the labor broker is, in practice, enshrined in a supplier's agreement, often outlining the obligations and responsibilities of the labor broker.

For example, the service contract of Company C with the labor brokers who manage its Indonesian and Nepalese subcontracted workers indicate the following as the obligations and responsibilities of the labor brokers:

1. Labor broker is responsible for supplying support services to the workers;
2. Labor broker is solely responsible for paying the workers' salaries and benefits, given that subcontracted workers are considered employees of the labor broker;
3. Labor broker ensures that levies, working visas, and Foreign Workers Compensation fees are paid;
4. Labor broker, likewise, shoulders meal allowances, uniform fees, accommodation, transportation, medical and other pertinent expenses; and
5. Labor broker ensures the completion of all medical examinations and other legal documentary requirements needed by the subcontracted worker.

Companies in Malaysia often have longstanding relationships with their labor brokers. Some have due diligence processes in place that regulate the selection and monitoring of labor brokers for both direct-hire and subcontracted FCWs. Company C, for example, has a procedure in place that starts with a screening that takes into account the following criteria:

1. Legality of the enterprise (via assessment of government issued permits and licenses);
2. Financial viability;
3. Track record and references;
4. References from Immigration and Embassies; and
5. Feedback from foreign contract workers.

Likewise, the company takes into account compliance with the EICC Code of Conduct as part of the terms of conditions of their engagement with its labor brokers, and its contract agreement on labor outsourcing includes a clause allowing the company to audit its brokers for compliance with EICC standards.

Unfortunately, such written and documented procedures are up to the "due diligence" of each IT company; and many do not screen or monitor the performance of their labor brokers.

The Recruitment Process

In Malaysia, the recruitment process of FCWs effectively begins when a company issues demand letters to its labor brokers. The working terms and conditions of the employment are usually delineated in these letters. The table below outlines the working terms and conditions found in the demand letters of Company A and C for both subcontracted and direct-hire FCWs.

Table III: Working Terms and Conditions of Direct-Hire and Subcontracted FCWs at the company

| Working Terms and Conditions | Company A | Company C | |
|--|--|---|--|
| | All FCWs | Subcontracted FCWs | Direct-Hire FCWs |
| <i>Duration of contract</i> | Two years and extendible | Two years and extendible | Two years and extendible |
| <i>Work hours per week</i> | 8 hours per day, 6 days a week (totalling 48 hours per week) | 48 hours per week | 44 hours per week |
| <i>Basic salary</i> | RM 15.00 per day | RM 468.00 (USD\$138.05) ⁴⁵ per month | RM 450.00 (USD\$132.74) per month |
| <i>Shift allowance (for night shift)</i> | RM 3.00 per day | RM 2.00 (USD\$ 0.59) per day | RM 107.00 (USD\$32) per month for all crew / two shift pattern |
| <i>Attendance allowance</i> | RM 60.00 per month | RM 52.00 (USD\$15.33) per month | RM 50.00 (USD\$14.75) per month |
| <i>Transport</i> | Provided | Provided | Provided |
| <i>Accommodations</i> | Provided | Provided | Provided |
| <i>Return air ticket</i> | Provided upon completion of contract | Provided upon completion of contract | Provided upon completion of contract |
| <i>Bonus</i> | N/A | One month basic salary | N/A |
| <i>Annual leave</i> | | Eight days per annum | 11 days per annum |
| <i>Wage payment system</i> | N/A | Monthly / bank deposit | Monthly / bank deposit |
| <i>Meal allowance</i> | N/A | RM 2.00 (USD\$ 0.59) per day | RM16.50 (USD\$ 4.87) per month |
| <i>Medical allowance</i> | N/A | Provided | Provided |
| <i>Clean room allowance</i> | N/A | MYR 2.00 (USD\$ 0.59) per day | MYR 57.00-78.00 (USD\$ 16.81 – 23) per month |
| <i>Levy and PLKS</i> | RM 1,200 + RM60 + 50 | N/A | N/A |
| <i>Levy Subsidized</i> | RM 100 per annum | N/A | N/A |
| <i>Monthly Deduction</i> | RM 100 per month x 12 months = RM 1,200 (USD\$ 353.98) | N/A | N/A |

Based on the table above, workers should expect to receive a monthly salary of around RM 520.00 (USD 153.39), exclusive of any overtime. Demand letters often do not include overtime rates or deductions to the workers' salaries. This proves problematic to workers, as will be detailed below.

Experiences of Indonesian FCWs Regarding Recruitment, Fees and Financing

Recruitment

The process for recruitment of Indonesian FCWs is somewhat standardized. The table below indicates examples of typical roles and responsibilities of a company and its labor broker, who is charged with hiring Indonesian FCWs. In the case of Indonesian direct-hire FCWs, the company has a higher level of participation into the recruitment practices of its brokers.

Responsibilities of Employers and Labor Brokers in the Recruitment Process of Indonesian FCWs

| Government Procedure/Requirement | The Company | Malaysia-based Labor Broker for Indonesian Subcontracted FCWs | Labor Broker or Recruitment Agent in Indonesia for both Direct-Hire and Subcontracted FCWs | |
|--|---|--|---|---|
| <p>Recruitment Agreement</p> <p>Job Order/Demand Letter</p> <p>Draft of Work Contract approved by the Malaysian Embassy /Consulate in Indonesia</p> | <p>Issues Demand Letter to Labor Broker</p> | | | |
| <p>Letter of Placement Permit</p> <p>Provision of information to the province, city or regency office of the National Chamber of Placement and Protection of Workers (<i>Badan Nasional Penempatan Dan Perlindungan Tenaga Kerja Indonesia or BNP2TKI</i>)</p> | | <p>Advertises job requirement in Indonesia through postings at appointed recruitment agencies, and/or through accredited freelance recruiters;</p> <p>Issues letters authorizing recruiters/agents to recruit workers</p> <p>And/or contacts recruiters/agents about requirements and issues</p> | <p><i>For Indonesian Direct-Hire FCWs:</i></p> <p>Advertises job requirement in Indonesia through postings at appointed recruitment agencies, and/or accredited freelance recruiters;</p> <p>And/or contacts recruiters/agents about requirement and issues;</p> <p>And/or orients workers on job requirements</p> | <p><i>For Indonesian Subcontracted FCWs:</i></p> <p>Recruits workers from specified areas indicated in Authorization Letter</p> <p>Uses sub-agents to recruit workers</p> <p>Orients workers on job requirements</p> |
| <p>Orientation, registration, and selection of worker</p> <p>Issuance of placement agreement from the regency office of the BNP2TKI – P2TKIS (Labor Agency)</p> | <p>Company representatives participate in the briefing by giving a company presentation outlining the business of the company and its working environment</p> <p><i>For Indonesian</i></p> | <p>Malaysian labor brokers, or representatives from the Indonesian labor brokers/recruitment agents present the compensation package.</p> | <p><i>For all Indonesian FCWs:</i></p> <p>Organizes a briefing for all interested applicants, Conducts rudimentary exams</p> <p>Informs the selected applicants</p> | |

| | | | |
|--|--|--|-------------|
| | Direct-Hire FCWs: Conducts applicant interviews and informs agents of selected workers | | accordingly |
|--|--|--|-------------|

Recruitment Fees

Recruitment agents based in Indonesia collect placement fees from workers in exchange for various services related to the processing of documentary requirements for the deployment of workers to Malaysia. The legal definition of placement fees in Indonesia includes the following items:

- ⇒ payment for medical check-up;
- ⇒ passport application and processing;
- ⇒ foreign workers' ID card;
- ⇒ visa processing;
- ⇒ government insurance;
- ⇒ government taxes;
- ⇒ local transportation from the office of recruitment to various destinations in the conduct of processing any or all requirements;
- ⇒ a pre-departure orientation;
- ⇒ forward air ticket, board, and lodging during the course of documents/requirement processing; and finally
- ⇒ the labor broker/recruitment agent fee.

To begin, below is the breakdown of the actual fixed costs as stipulated in *The Directorate General of Education and Placement of FCWs Decree No. KEP-651/DP2TKLN/XI/2004* on the cost structure for the Indonesian FCW to Malaysia.

Fixed Costs for Indonesian Nationals Recruited for Work in Malaysia

| Fixed Cost | Amount (in Indonesian Rupiah) | Amount (in US dollars) ⁴⁶ |
|---|-------------------------------|--------------------------------------|
| Passport | IDR 110,000 | USD 11.66 |
| Medical Check up | IDR 225,000 | USD 23.86 |
| Visa | IDR 60,000 | USD 6.36 |
| Insurance | IDR 400,000 | USD 42.41 |
| Education and Protection Fee (per Government Regulation number 92/2000) | IDR 150,000 | USD 15.90 |
| Total Fixed cost | IDR 945,000 | USD 100.17 |

Based on Verité interviews with the *Badan Nasional Penempatan Dan Perlindungan Tenaga Kerja Indonesia (BNP2TKI)*, or the National Chamber of Placement and Protection of Workers, aside from the fixed costs, the following components included in the legally mandated placement fee fluctuate according to current market rates:

- local transportation from the office of recruitment to various destinations in the conduct of processing any or all requirements;
- pre-departure orientation;
- forward air ticket;

- board and lodging; and
- the company fee.

Fluctuations are based on the actual costs incurred for tickets, meals, and transportation. During the interview, management reported that the fluctuation of this cost structure has also been taken into consideration by the BNP2TKI officer.

Below is the list of legally mandated costs included in the placement fee that fluctuate according to current rates: (estimates are provided)

Fluctuating Costs for Indonesian Nationals Recruited for Work in Malaysia

| Fluctuating, Non-fixed Cost: | Amount (in Indonesian Rupiah) | Amount (in US Dollars) |
|---|----------------------------------|--------------------------|
| Local Transport | IDR 250,000 - 300,000 | USD 26.5 – 31.8 |
| Work orientation briefing | IDR 60,000 | USD 6.36 |
| Meal and lodging (5 days X IDR 70.000) | IDR 350,000 - 500,000 | USD 37.1 – 53 |
| Flight ticket for departure only (USD\$ 80) | IDR 800,000 - 1,000,000 | USD 84.8 – 106 |
| Final Preparation cost | IDR 50,000 | USD 5.3 |
| Agent fee | IDR 300,000 - 400,000 | USD 31.8 – 42.4 |
| Company fee | IDR 1,600,000 | USD 169.6 |
| Total Fluctuating Cost | IDR 3,400,000 - 4,900,000 | USD 360.4 – 519.4 |

However, despite the fluctuations of non-fixed costs according to their destination countries, the Ministry of Manpower and Transmigration Decree of Indonesia has set parameters around these non-fixed costs. The cost structure of FCW placement to Malaysia is regulated by *Director General of Placement and Protection of Foreign Contract Worker (PPTKLN) Number B. 1744/DP2TKLN/PP/X/2002*, which was issued on 24 October 2002. The cost stated in the regulation, adding both fixed and non-fixed costs, is capped at IDR 4,800,000 or USD 508.8.

Verité’s assessment of Company C found that workers had paid fees ranging from IDR 5.00 Million to IDR 8.970 Million. These fees differ according to the point-of-origin (the province in Indonesia the FCW departed from) as well as according to the labor broker that received the fee. Placement fees exceeded the legal limit by IDR 1.376 Million (USD 145.86) to IDR 2.432 Million (USD 257.79).

Importantly, Verité’s research did not find evidence of overcharging of workers who were direct hires; rather, the overcharging was concentrated among subcontracted workers.

Financing

FCWs often take out loans from the labor brokers themselves to pay for the placement fee. These in-house loans are touted as a “better” alternative to loan sharks or other financing institutions. Workers reported to Verité that these loans are often preferred since no collateral is required and there is less paperwork. Loan agreements are signed with the labor broker before the visa of the worker is even processed.

Verité research detected a profound absence of formal and transparent procedures for the processing of loans and the deduction of loan payments from workers’ salaries. In some cases, loan agreements did not clearly specify the principal amount and interest rates of the loan. Companies typically have agreements with labor brokers to deduct loan payments from workers’ salaries. But some companies audited by Verité had not obtained authorization from workers for these deductions, nor did they have a formal agreement with the labor broker regarding how the deductions were to be facilitated.

Some workers reported to Verité, and Verité later confirmed, that deductions from their salaries exceeded what was owed in loan payments.

Experiences of Nepalese FCWs Regarding Recruitment, Fees and Financing

Recruitment

The recruitment process for Nepalese workers starts with the issuance of the following documents by the overseas employer:

1. Demand Letter, listing categories and number of positions, monthly salary, period of contract, working hours and holidays;
2. Power of Attorney authorizing the Nepalese agent to act on their behalf;
3. Specimen copy of the employment contract that must include wages and other benefits like food, accommodation, transportation, leave, medical facilities, insurance and air passage, etc.; and
4. Attested copy of visa advice/consular letter/entry permit/certificate of no-objection.

Once the Ministry of Labor of Nepal has granted approval, the agents advertise the vacancies in newspapers providing information such as the nature and level of job, the number of people required, and the pay scale.

Interviews with the labor supplier and workers revealed that, in practice, recruitment agents collect NPR 5,000 – 10,000 (USD 67.74 – 135.48) from interested applicants. This amount is deducted from Placement Fees if applicant is successfully selected. It is also refundable if not selected. The amount is forfeited if working visa has been issued but worker does not depart. The applicant submits the following required documents:

1. photocopy of passport,
2. eight photos, and
3. medical certificate.
- 4.

Before the selection is made, FCWs undergo a medical checkup that includes a test for HIV, where a positive result disqualifies the applicant. This policy may be considered anticipatory, since FCWs that are found to have any of a number of contagious diseases are made to repatriate. Still, on top of this, the Malaysian government requires FCWs to undergo a medical examination within one month after arrival.

Employees are then selected and interviewed in the presence of a representative of the Government of Nepal as well as of the foreign employer. Successful applicants are notified by the Placement Agent.

Once the selection has been made, the successful candidates' passports are sent for visa processing. Once the formalities are completed, the Department of Labor must sign the final approval papers. Once the final approval is received from the department, the migrant worker identification card is issued and presented to the Labor Desk at the airport when the worker flies to the destination of employment.

Recruitment Fees

Labor brokers and recruitment agents in Nepal collect placement fees from workers for various services rendered in the processing of required documents for the deployment of workers to Malaysia. The legal definition of placement fees in Nepal include:

- ⇒ payment for medical check-up,
- ⇒ passport application and processing,
- ⇒ visa application,
- ⇒ insurance,
- ⇒ government tax or labor ministry charge,
- ⇒ language training,
- ⇒ forward air ticket,
- ⇒ airport fees,

- ⇒ transportation, and
- ⇒ placement fees.

As per the Foreign Employment Act, Nepalese migrant workers are expected to pay 25 percent of one month's salary as a service fee to the employment agency in Nepal. However, Art. 24 (1) of the Nepal Foreign Employment Act allows the broker to charge workers so-called promotional expenses, defined as the expenditures made by the license holder (i.e. the labor broker) toward obtaining necessary documents, as well as other related expenses incurred within or outside the country for the purpose of responding to job orders. The law is silent on the maximum amount that can be charged for promotional expenses.

Malaysian law limits the amount of placement fee that can be levied against workers from the sending country. According to the Malaysian Private Employment Agents Act, the placement fee cannot be more than 25 percent of the worker's initial month's pay.

Interviews with workers indicated that placement fees ranged from NPR 85,000 to NPR 120,000. These were all observed to exceed the legal and acceptable limits. In fact, some placement fees were observed to exceed the legal and acceptable limit by almost 100 percent.

Employment Agreements and Contracts

Contracts of Indonesian and Nepalese workers reviewed by Verité often lacked critical information, for example the following:

- ⇒ worker's date of birth;
- ⇒ terms and conditions regarding safekeeping and possession of identity documents;
- ⇒ terms and conditions of termination and renewal of employment;
- ⇒ detailed list of salary deductions; and
- ⇒ estimates of minimum and maximum net pay for each month.

Employment contracts are in English. No copies of the employment agreement were kept in the workers' personnel files.

Contract Substitution

There are strong indications that workers are drawn into signing substandard employment contracts through a process known as "contract substitution."

Verité found strong evidence of contract substitution. This is a process by which the original, approved employment contract – either before or after arrival in Malaysia – is substituted with another agreement or is altered in such a way that it contains provisions below minimum standard set by the regulatory agencies of both sending and receiving countries. These alterations often pertain to salary, duration of employment, benefits, and job designation.

In some cases, the recruitment agency will ask the prospective FCW to sign numerous documents in one sitting; and the migrant worker will be unaware that s/he is signing two sets of contracts—one fulfilling the minimum standards for overseas employment set by the home country's regulatory agency, and the other containing provisions below the minimum. In this case, the recruitment agency will then submit the contract of employment containing the minimum standard to the home country's regulatory agency; and the other will be placed in a sealed envelope and will be furnished to the migrant immediately before s/he leaves for abroad.

A variation on this scheme is when the prospective FCW is required to sign a number of *pro-forma* contracts of employment that leave blank such items as salary, benefit schedules and meal allowances. The recruitment agency

will then fill in the blanks of one *pro-forma* contract such that provisions meet the minimum standard as required by law; and remaining copies of the signed *pro-forma* contracts of employment will be filled in with provisions below the minimum standard of employment. These second sets of contracts will then be handed over to the migrant worker in a sealed envelope right before departure.

In the receiving country, the employers can further reduce the terms of the contract by coercing migrant workers to sign another contract which is then submitted to the receiving country's labor ministry or regulatory agency. The fact that some receiving countries like Malaysia have no statutory minimum wages (except in the plantation sector) work to the advantage of the employer.

On the Job: Mechanisms of Coercion and Subjugation/Enslavement

Freedom of Movement

Once hired and deployed to Malaysia, FCWs are faced with significant restrictions on their activities. Workers are tied to their employer through their employment permit; they may not seek employment elsewhere. When the employment permit is cancelled or expires, the FCW must return to his/her home country or become undocumented.

Employers often create additional barriers to leaving the workplace. Workers interviewed by Verité reported that, in order to terminate their contracts, they would have to pay their return airfare and settle any outstanding debts or fees owed to the broker.

FCWs are also required to turn over their passports to their employers. In order for workers to be allowed to “borrow” their passports, they often are required to sign a logbook indicating their reasons for doing so. In some companies, workers can only access their passports at the end of the contract. At one company audited by Verité, if workers needed to borrow their passports for reasons such as opening a bank account, they had to be accompanied to the bank by a representative of the company. Another labor agency required workers to give monetary deposits when they borrow their passports.

Workers were also made to put up deposits if they needed to return home for temporary emergencies.

Wages and Benefits

Interviews with subcontracted workers indicated many instances of underpayment or nonpayment of allowances and/or bonuses. Some of the reports from workers include:

- ⇒ Underpayment and delayed payment of wages of up to two months.
- ⇒ Lack of understanding of wages and deductions.
- ⇒ Underpayment for overtime work

Verité also found evidence of overtime violations.

Workers interviewed reported that the terms of the employment contracts are inconsistent with what were verbally promised to them when the workers were being recruited in their home countries, and the contracts include compulsory overtime. Workers also reported that their contractual wages are different (less than) what they were promised in their home countries.

Other Exploitative Practices

Malaysian law requires repatriation of foreign contract workers who become pregnant. Interviews with labor suppliers of subcontracted workers indicated that pregnant workers are repatriated and are made to shoulder their return fare and pay the balance of the foreign worker levy.

Interviews with subcontracted workers revealed that some perceive discrepancies in the working terms and conditions (e.g., benefits, hostels, medical benefits, meal allowances) between direct-hire foreign contract workers and subcontracted workers.

CONCLUSION

There is no industry more dynamic and global than that of electrical and electronics manufacturing. There is very intense competition among Original Equipment Manufacturers (OEMs); and necessarily tight interdependencies exist among countries where the product design, assembly, and manufacture take place. Production demands and the shift of labor-intensive activities to lower-cost geographies have likewise created new labor force trends and requirements, as seen in other industries where there is heavy outsourcing of component manufacture by producers of finished products.

Production and manufacturing hubs like Taiwan and Malaysia play critical roles in the supply chains of leading brand names. The electronics industry manpower base in both Taiwan and Malaysia is made up largely of foreign contract workers from neighboring Asian countries. Taiwan, in particular, has become the biggest supply partner of the world's major industry players, and is fast becoming its largest employer. Although the recent slowdown in global trade has resulted to massive layoffs in the first quarter of 2009 in Taiwan, reports reveal that employment has begun to increase again in the last quarter.

In the last twenty years, labor and migration laws of sending and receiving countries have also evolved, in response to the changes in labor force demands, in this as well as in other global industries. In both Taiwan and Malaysia, labor brokers play very big roles in the supply of the industry's labor force requirements. Until recently, employers in Taiwan and Malaysia could only source foreign workers for their companies through government-accredited labor brokers. Currently, even with the option of direct-hiring for employers, labor brokers continue to play very big roles in the recruitment, hiring, and management of foreign contract workers.

In both Taiwan and Malaysia, labor brokerage remains big business. In both countries, employers have traditionally relied on labor brokers to supply their need for and manage their currently-employed foreign contract workers. Interviews with employers reveal that labor brokers have made themselves indispensable to employers. Employers are convinced that government processes and requirements are more complex than they really are. Employers are convinced that brokers are and will always be necessary for the success of their operations/production which rest largely on a manpower base made up of foreign workers.

Brokers claim that only they have the expertise, the influence over, and the long-standing relationships with key labor officials to carry out the requirements of the employers. Over the years, since Taiwan employers started hiring foreign workers, brokers have managed to raise the amount of broker fees they charge to both workers and employers. In Taiwan, many brokers do not charge employers at all, which could only mean that the foreign recruits/workers carry the cost of the brokers' business operations.

Philippine, Indonesian, and Nepalese workers bound for work in IT factories in Taiwan and Malaysia frequently pay recruitment fees in excess of legal limits. In Malaysia, Verité research indicates that subcontracted workers

(as opposed to direct-hire workers) are at particular risk in this regard. Almost all workers interviewed by Verité for this report did not have the financial means to fund placement fees and thus had to resort to making loans, under which many were subjected to onerous financing schemes. The terms of payment demanded by lenders, many of whom are associated with the brokers, can and do place workers in situations of highly leveraged debt. Additional fees charged by brokers in the receiving countries further compound the financial burden of workers. Once employed, workers need to work overtime in order to repay their debts, and send money for their families who rely on their monthly remittances.

Labor brokers and employers practice contract substitution, whereby the terms of employment are changed over the course of the recruitment and hiring process. Once on the job, workers find employment conditions to be different from what they were promised.

Workers are also charged by employers an anti-runaway insurance/forced savings from workers, and this adds to the workers' financial burden. This practice, in conjunction with the withholding of workers' passports by brokers or employers, effectively ties workers to their jobs even when the conditions and terms of the job are unfavorable or contrary to what was promised to them. In Malaysia, workers are tied to their jobs by the law, which obligates them to remain with their sponsoring employer or become undocumented. Freedom of movement is further curtailed through the withholding of passports, the requirement to put up a deposit for temporary emergency trips home, and the requirement that workers must pay their own return airfare and pay any recruitment debt in full if they wish to terminate their contract early. Other factors, such as the global economic downturn, have left workers even more vulnerable – for example, in the case cited above of workers who were forced to make a choice whether to forfeit their jobs and be “laid off” and sent home or agree to work 12 hour days, seven days a week, from October through December 2009.

Most of the Philippine workers bound for Taiwan come from poor communities, or belong to lower income classes. Most of them are desperate for work. Most are heads of families. The prospect of work abroad, in an industry such as the electronics, is deemed valuable, even glamorous. For workers who come from calamity areas in the Philippines, factors such as strong typhoons, floods which destroy properties and livelihoods, render them even more vulnerable. For aspiring workers, the need to earn and start employment becomes more urgent; they consent to financing schemes that will allow them to leave and start working at the soonest possible time. For those who are employed, the impetus to earn and send more money home becomes stronger as well; and can make them vulnerable to exploitative practices such as excessive overtime.

Workers consent to paying excessive broker fees out of need, and out of being misled. They agree to work in the facilities where they end up in because these are represented as good worksites. They continue to work there even after being subjected to exploitative practices because they are tied to their jobs by their contracts, and because of the debts they had incurred back home. More tragic is the fact that once workers return home – even after having experienced the deception and exploitation first-hand – many are so desperate for work, and with little or no savings, that they opt to return to Taiwan for second and third tours as foreign contract workers. Thus in a strange way, the foreign contract work system – either intentionally or by chance – incentivizes a revolving door of recruitment and indebtedness: In the case of Philippine workers in Taiwan, workers typically return home just barely in the black, exploited significantly but not enough to keep them from going back in the face of their dependent families and no job opportunities at home. So even workers who know full well that they will arrive in Taiwan indebted, at the mercy of unscrupulous brokers, and forced to work overtime; still choose to go back. This must suit employers very well, as they can avail themselves of a more and more experienced foreign contract workforce for the same price.

Employers and brokers are both culpable in the exploitation of the foreign contract workforce. For their part, employers – based on the key performance indicators against which the performance of their brokers are assessed – make very stringent demands on brokers. Based on the survey conducted among employers, it was revealed that brokers are required to fulfill job orders – supply labor – in two weeks to a month's time, and employers require a pool of applicants that contains 300 percent more than the actual manpower need. In order to respond to such

demands, competing brokers have had to come up with strategies and have established practices that often circumvent legal, or industry code standard regulations. Brokers advertise the jobs by promising high wages, and superior work and living conditions, in order to attract as many applicants as they can, for manpower pooling requirements. Some brokers also claim that employers expect to be treated to “full service” including air transportation, hotel accommodations, and other related services the cost of which is often passed on to applicants and recruits.

Despite EICC standards and brand audits/monitoring, there is nothing to stop companies from using labor brokers. Labor laws and regulations can and have been also circumvented. Brokers do not disclose the actual full amount of fees until late in the recruitment phase. Workers are instructed to present documents that do not reflect the actual amounts paid.

To a certain extent, in sending countries, labor brokers/private employment agencies continue to enjoy the support of states whose economic policies encourage labor exportation. Laws regulating fees are in place, but these are routinely violated or circumvented. The actual fees charged to workers in sending countries still commonly exceed legal limits. Laws requiring contracts to be signed on pre-departure, and be approved by sending country overseas employment authorities, are circumvented with the practice of making workers sign supplemental agreements. The terms in these supplemental agreements can be contradictory to the terms in the contract signed in sending countries.

Direct hiring programs have been developed between sending and receiving countries (i.e., Philippines and Taiwan), and implemented by a few employers, most still choose to employ the services of labor brokers. However, there is a distrust of government initiatives – employers and workers interviewed expressed concern that that this program would be slow and inefficient, and subject to corruption. Employers continue to depend heavily on their labor brokers, with whom they have had long-standing relationships. In the Philippines, the SHP, which can be a very viable option for workers, is limited in scope; may be unprepared for bulky transactions, large job orders. Currently, the service is available only for employers seeking to rehire currently employed FCWs whose contracts are about to expire. There is also a concern among NGOs that the special/direct hiring program contravenes provisions in the Migrant Workers’ Act, particularly the joint and solidary liability of recruiter and employer, since the state (as represented by the POEA) in this case cannot be sued. Furthermore, the sending country does not have any legal jurisdiction outside its territory and the host country does not always assume full responsibility unless migrant workers are permanent residents or become citizens.

APPENDIX A: CASE STUDIES OF PHILIPPINE WORKERS IN TAIWAN

Case Study 1: Philippine Worker Deceived About Recruitment Fee

After graduating from a four-year computer school in Pangasinan in a northern province of the Philippines, Benny tried looking for work in Baguio City, one of the major cities in the north, about three hours from home. Apart from odd jobs, however, he found no work that could sustain him and his family.

Benny's father had passed away when he was very young, leaving his mother in charge of Benny and a younger brother. His mother tended a small rice farm which she had inherited from her family, but it was difficult to get by, even though she used micro-loans from relatives, neighbors, and loan-sharks who charged 20 percent interest.

Benny said that he was eager to start working right after college, so that he could become the family's main breadwinner. His mother asked him to pay for his younger brother's school, so they both would have college degrees. At that time, his brother only had one more year to go before high school graduation. Benny knew he had to find a job fast.

Benny's friend in Baguio informed him about the job in Taiwan. This friend had met a recruiter at a job fair in Baguio and had been told that an agency in Manila was looking to hire hundreds of workers from the Philippines as soon as possible. His friend said the recruiter told him to bring his personal documents and academic records to Manila so these could be processed immediately.

The passport application would also be done in Manila. Benny asked his friend if he had to pay to be pre-screened, as Benny had heard of fake agencies and illegal recruiters that charged very high fees for jobs that did not even exist. But the friend said that no payments were charged for initial screening and that, in fact, only documents were needed now and the actual screening would be done in Manila. Benny went home and lost no time in putting together his documents. His family was very excited about the prospect of Benny working abroad. With the little money that Benny earned from the temporary jobs he held in Baguio, he joined his friend and they both went to Manila to apply to the agency.

Benny and his friend checked out the name and address of the agency in Manila, and noted the agency's website was very professional-looking. The website also indicated that the agency was Philippine Overseas Employment Agency (POEA)-accredited. There was even a banner on the website that said "stop illegal recruitment", which convinced Benny that the recruiter was legitimate.

The agency was called MIT, and its office turned out to be a tiny apartment in Quezon City. At the agency they were made to fill out forms and take a written test, and then

they were oriented about the job in Taiwan, how much they were to earn, and on the next application steps of passport processing and clearances, a pre-deployment orientation seminar (PDOS), and certification from the Philippine Overseas Employment Agency (POEA). They were told that within two weeks they would be deployed for Taiwan.

Benny and his friend were told that all costs related to the processing of their employment and travel documents would be taken care of by the agency and only those whose departure was confirmed were to pay the service fees and the cost for putting their documents together. That same day, the applicants were informed who among them had passed the screening. Those who did were asked to pay 25 thousand pesos up front, for which they were given receipts. They were told that the rest of the amount – 70 thousand pesos – could be paid once they had started receiving their salary in Taiwan. The agency told them that their Taiwan partner-brokers will facilitate the

procedures for payment. Benny made the calculation and was convinced that the amount would be easy to repay once he started earning Taiwan dollars.

Benny did not have 25 thousand pesos, so he asked his mother in Pangasinan to obtain a loan for at least 15 thousand pesos. Benny made the first payment and was told that all he had to do now was wait until the paperwork was complete. In about a week, Benny and the others were called back to the agency and signed additional forms, and what looked to Benny like contracts. In one document, the signatory certified that no more than 25 thousand pesos was paid to the agency. They also attended a pre-departure orientation seminar, just days before they left. On the day they left, at the office, they signed agreements pertaining to payment of the remaining 75 thousand pesos. They were also given identical jackets to wear, and were briefed on airport procedures and on what to do when they got to Taiwan.

In Taiwan, Benny learned that the 75 thousand Philippine pesos they owed the agency, which they were to pay in monthly installments, was converted to 75 thousand Taiwan dollars. Benny said that they could not complain since they were already employed at the factory, but needed to work hard to earn back all the money they paid to get their jobs. Benny noticed that the salary issued to them by their Taiwanese brokers was almost only half of what he was expecting to earn from the factory. He eventually understood that this was because the brokers deducted the monthly broker fees, the workers' dormitory and meals, and other expenses which he wasn't clear about. Benny said that they were fortunate that on their first year on the job, there were opportunities to work overtime, which earned him enough to make the monthly loan payments and send a small amount back home, after all the deductions made from his salary. Benny related that he had very little to live on, and said that without overtime work and additional pay, he would not have anything left at all. It was a good thing, he said, that the factory also deducted a forced savings component from their salary. He was also told that the tax being deducted from his pay was going to be refunded to him in full when he finished his contract.

Benny related that life in Taiwan was very difficult, especially the first year. He missed home. The work was hard. He had to be in the factory for 12 hours every day for 6, sometimes 7 days a week. The overtime work was mandatory. Benny said he almost wanted to quit and just return home. But he would not have been able to do that as his passport was in the possession of the Taiwanese brokers. Moreover, quitting before the expiration of the contract would mean that he would forfeit his savings and the tax refunds.

Benny said that by the time he was done paying the money he loaned the agency (NT\$3,500/month for 21 months) his contract was almost up. He was told that he needed to pay an additional 20 thousand pesos for his contract to be extended for another year. Benny said that he felt he had no choice but to agree to this setup as he did not want to go home empty-handed. Moreover, his brother had just started college, and Benny was responsible for his brother's tuition and expenses. Besides, Benny figured that the longer he stayed in the factory, the higher his tax refund and forced savings. So Benny agreed and he was extended for another ten months.

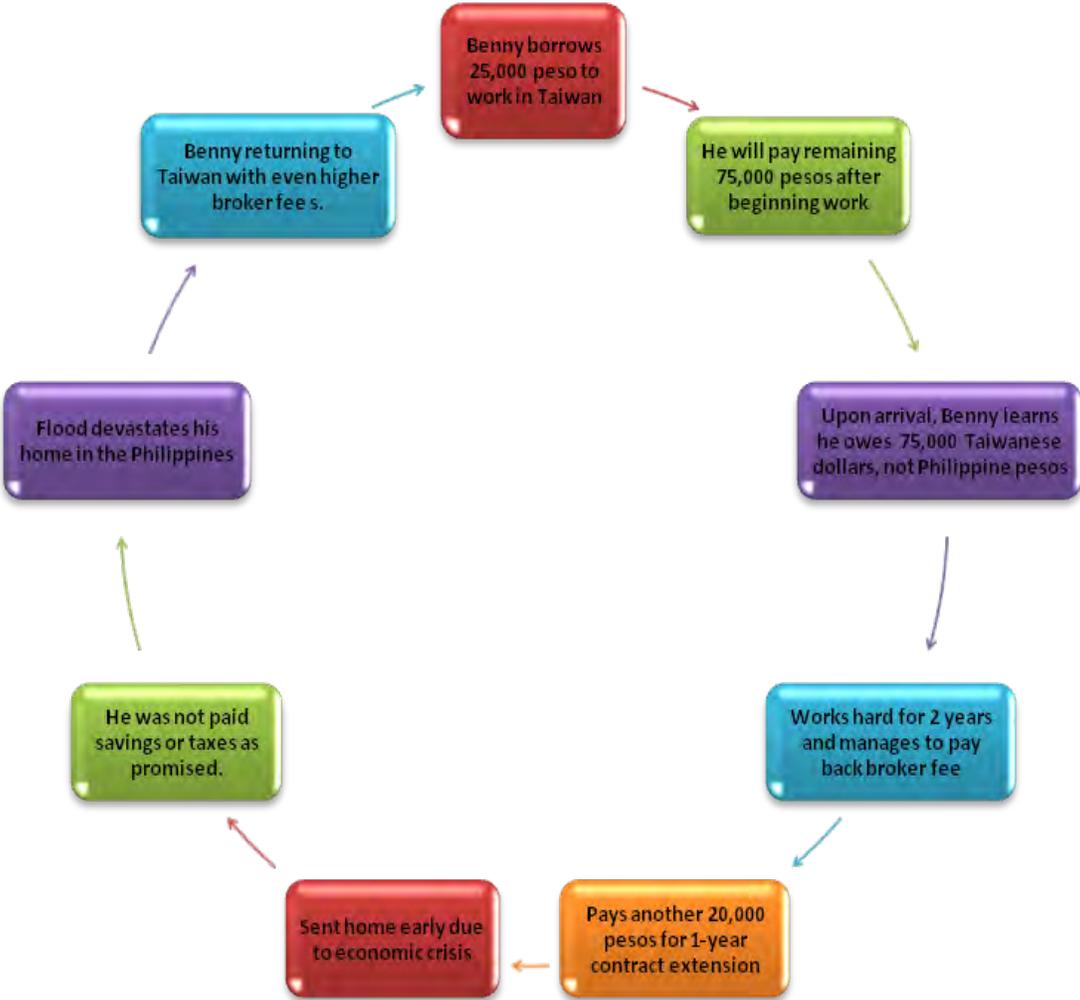
Earlier this year, however, the Taiwanese factory announced that because of the global economic downturn, the workers' contracts would be terminated, as the factory could no longer afford to keep the same number of employees. The management decided that those who were on extension had to cut their term short, as it would have been more problematic if the newly hired were to be terminated, considering that they still had debts to settle. Benny and others like him who were on extension had no choice but to comply. They tried to get back the 20 thousand pesos they paid their agents but were not able to. Moreover, they learned that the savings they had been looking forward to was used to purchase their return tickets to the Philippines. When they left, they were told their tax refunds were not ready, but as soon as the company was ready to release their tax refunds the amount would be returned to them through the brokers in Taiwan and the agency in the Philippines.

Benny has been back in the Philippines for six months, and has still has not received his tax refund. His brother had to quit school due to lack of funds. Benny is currently applying for work in Taiwan again. He submitted all requirements and has been selected for deployment by another agency, but the fee, at 125 to 130 thousand pesos, is even higher than last time. He put his application on hold because he was very hesitant to incur that level of

debt. Benny is exploring placement options at the POEA, which would cost significantly lower, but there is no guarantee he would be selected for work overseas. Besides, he said that the POE's application system did not seem clear to him. He said he would be willing to wait and go through a longer process if it would mean no more broker fees.

On October 9th, however, Benny's home town was severely hit by the typhoon and his entire house was flooded. His new recruiter called him and promised to help him and his family recover from the loss and damages brought about by the flood. Benny was also promised that the agency will find ways for him to come up with the amount required, so that Benny can be on his way to Taiwan immediately. Benny said that as much as he would like to avoid having to go through placement agencies and loan centers again, he has no other choice. Benny said that as soon as his family is settled, he would go to Manila and report to the agency so his hiring and travel papers could be processed immediately.

Benny's cycle of entrapment:



Case Study 2: Philippine Broker, MW Manpower Services, Inc.

MW Manpower Services, Inc., established on June 15, 1995, provides skilled and unskilled manpower for foreign clients in Asia, Australia and Canada. MW describes itself as a professional human resource and development company that sources, screens, selects, processes and deploys competent Filipino manpower to any part of the world. For prospective employers, MW promises: “What you need, we shall provide. Right people, for the right job.”

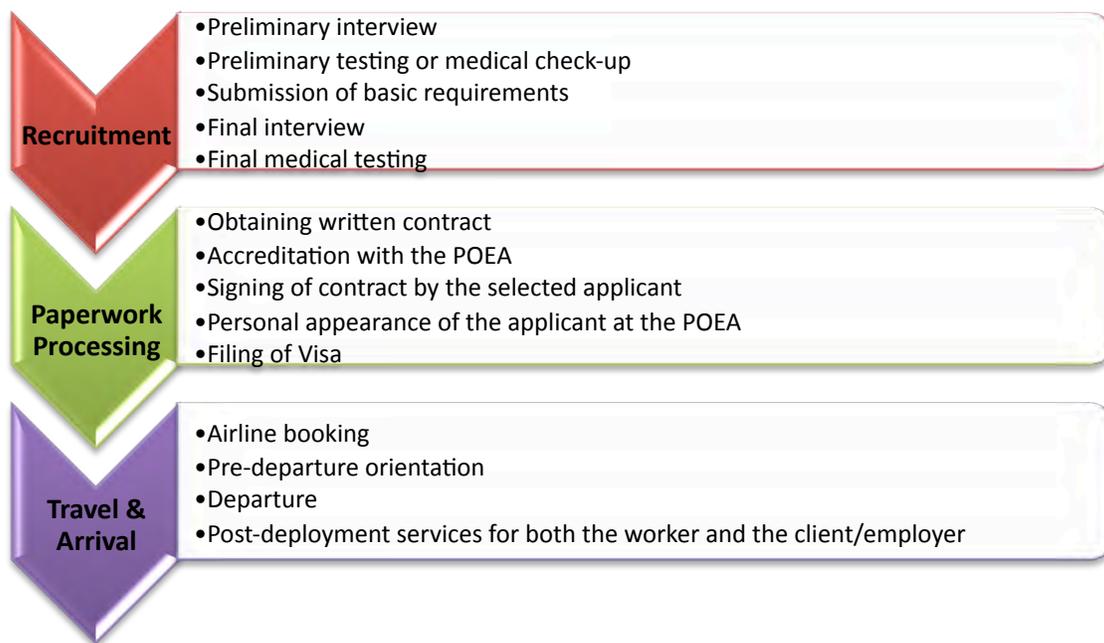
Since its inception, MW has received numerous awards and recognition from different associations and institutions in the Philippines including the Top Performer Award from the Philippine Overseas Employment Administration (POEA) in 2006.

On its website, MW states: "We only select physically and mentally fit workers from our pool of qualified applicants so that even the most urgent and tough requirements of our clients are directly satisfied. We also develop ways and programs that motivate and encourage applicants to upgrade their performance and competence."

MW offers extensive services for workers and employers during recruitment, prior to worker deployment, and once the worker arrives at the worksite, as shown in the following table.

| Workers | Employers |
|---|---|
| <p><i>Recruitment & Processing</i></p> <ul style="list-style-type: none"> • Mobilization, sourcing, pooling of applicants based on customer specifications • Preliminary screening and testing prior to final selection by the principal or employer • Medical and trade test • Document processing with the POEA and the embassy of the country of destination <p><i>Pre-Deployment</i></p> <ul style="list-style-type: none"> • Pre-and-Post final interview orientation and meetings • Pre-departure seminar • In-house training for domestic helpers and caretakers <p><i>Post-Deployment</i></p> <ul style="list-style-type: none"> • On-site mediation and grievance handling in cases of a misunderstanding between the worker and employer. | <ul style="list-style-type: none"> • Accommodation, assistance, and travel arrangement for the principal and employer representatives • Email and video services • Assistance during the interview with the prospective worker. • Company representatives coordinate all requirements of the principal/client, from the date of arrival until the departure from the Philippines. • On-site client servicing – A company representative periodically visits the job site to assess other possible services that the company can offer. |

To recruit workers, MW relies on the Provincial Recruitment Authority (PRA), newspaper ads, site sourcing, and referral from deployed workers. The path workers take with MW through the recruitment process is shown below, from preliminary interview to arrival.



In its first year of business, MW became a leading manpower agent for Taiwan, partnering with various Taiwanese brokers hiring skilled factory workers and caretakers. By 2000, MW was accredited with 50 brokers/principals, and had already deployed over 2,000 workers to different clients. In 2006, it became one of the POEA awardees as Top Performer for the year 2003-2005. It also received the National Product Quality Excellence, Seal of Product Quality, Philippine Brilliance Awards for Products & Services, from other government bodies.

However, MW's reputation began to unravel in 2007, when 59 overseas Filipino workers (OFWs) in Taiwan accused MW of illegal recruiting practices. Six of the 59 workers decided to return to the Philippines to file and pursue the case against MW. They brought copies of the 59 worker affidavits submitted to the Manila Economic and Cultural Office (MECO) in Taiwan.

Path to Entrapment

According to the worker affidavits, Masinog, the manager of MW, repeatedly told the workers, "If you want to rise from poverty and realize your dreams, trust us." She used this phrase particularly when encouraging workers to pay MW's high application fees.

The workers had applied at MW in late 2005 and early 2006. As applicants, they were promised rewarding jobs at a facility called Quanta Display, Inc. in Taiwan. The workers were charged an average placement fee of P140, 000 (USD 3,022).⁴⁷

In the affidavit, workers also noted that written exams and interviews were held in a room at the Pan Pacific Hotel in Manila, an expensive hotel which gave MW credibility and convinced them it was a legitimate business. The workers also said that the POEA website listed MW as an agency in good standing and with

a license valid until March 2008. Moreover, MW was number 18 in the POEA's top 20 Agency Performance Awardees in 2005. The workers said they saw no reason not to trust MW.

Fees

MW charged large fees at each step of the recruitment cycle, beginning with the application form, which cost P20 (USD 0.43). The placement fee, they were told, was P140, 000 (USD 3,022) plus a surety bond of P2,800 (USD 60.44). “Take it or leave it,” Masin-og told them during their first briefing. Those who passed the application exam were referred by Masin-og for a medical check-up that cost P3,500 (USD 75.54). After the medical tests, workers were allowed to sign the contract, even if they had not fully paid the placement fee. Those who could not afford the placement fee were referred to Global Lending Inc., and reminded that all fees must be fully paid before departure.

The 59 workers cited in the lawsuit said that they had already noticed irregularities during MW's pre-departure procedures. Workers said that those who agreed to pay their fees on an installment basis were not issued official receipts. Instead, their payments were listed in a blue record book and a brown envelope containing the workers' records and personal documents. Some of the workers were told that they would be issued a receipt only upon full payment of the placement fee. Others reported that they were merely given a telephone number they could call to keep track of their payments.

Those who paid their placement fee and surety bond in full were issued receipts for only P25, 344 (USD 547.03) instead of the P142,800 (USD 3,082.24) they had actually paid. The lower amount corresponds to the standard placement fee set by the POEA, the workers wrote in their affidavits.

Misrepresentation, deception

Masin-og allegedly promised the workers that they could easily recoup their expenses, including the fees they had paid, in less than six months because they would be working in a good company which would allow them to work overtime with good pay.

On their first day in Taiwan, however, during the company debriefing regarding working conditions and salaries, the workers were surprised to find the contract terms much different from what was Magsin-og promised. For starters, the workers realized that they were not employed by Quanta Display, as promised, but by another company called AU Optronics. The workers were further told that their monthly expected salary was only about P25, 000 (USD 539.61), even with overtime work--much lower than MW's promised salary. In terms of housing, twenty workers were packed in what appeared to be a “container van.”

In June 2006, the workers called the MW manager to complain. They also went to the Manila Economic and Cultural Office (MECO) to report MW. Masin-og went to Taiwan in August 2006, and allegedly gave the workers three options:

1. they could return to the Philippines and receive a 50 percent refund of their placement fee;
2. they could accept a loan of 9000 NT dollars without interest provided they signed a waiver stating they would not file any claim or complaint regarding the placement fee and the dormitories; and
3. For those who paid through E-cash or the lending agency, MW would make arrangements with the owner of the Global Lending Inc. to give them a grace period of three months, during which they would be required to pay only the interest charges.

The workers refused all three options as unacceptable. Although all 59 workers in Taiwan wanted to return to the Philippines, some opted to endure the hard work and meager salary so they could continue sending money home to their families. Others could not raise the money for airfare. The six workers that did return to the Philippines had to pay a fee for breaking their two-year contract with the company of about P44, 000 (\$949.71). Those who stayed on were not able to recoup their expenses, even after working for more than a year.

The 59 OFWs, meanwhile, opted to file illegal recruitment and overcharging complaints against MW at the POEA. The POEA advised the workers to also file criminal charges against MW at the Department of Justice.

MW had been slapped with a previous complaint of illegal recruitment in 2005, when several nursing aides had applied under another manpower agency, DGLF Agency to work abroad. Since DGLF already had several unresolved complaints with the POEA and could not process papers itself, it asked MW to do so in its name. The nursing aides came back after a year of working as janitors and nannies to elderly people in their host countries, earning far lower than what they had been promised. They asked for reimbursement of the broker’s fee they paid amounting to P60,000 each (USD 1,089.13 based on the average exchange rate of USD 1:P55.09 for 2005). They also paid P80,000 (USD 1,427.55 based on the average exchange rate of USD 1:P56.04 for 2004) each as placement fee. Eventually, MW and the nursing aides arrived at a settlement.

Two years after the case of the 59 workers was filed, MW is back in business. In August of 2009, Verité conducted interviews with MW, which remains one of the largest manpower agencies in the country serving the Taiwanese market. Aspiring workers, selected applicants, rejected applicants, ‘ex-Taiwan’ applicants were interviewed. MW staff was also interviewed but only provided information from their website. According to some workers interviewed, MW's placement fees charged have gone down by 50%, although others said that the other 50% is now included in fees the Taiwanese brokers charge to workers in Taiwan.

Case Study 3: The Employer—Broker Relationship and Its Implications on Working Conditions

Sending Country (Philippines) Recruitment Agencies

The hiring of foreign contract workers in the Longtan facility is facilitated by four recruitment agencies in the Philippines. The recruitment agencies and corresponding three Taiwan labor brokers are:

| | Taiwan Labor Brokers | Philippine Recruitment Agencies |
|---|----------------------|---------------------------------|
| 1 | A-V | AU Management Services |
| 2 | D-W | Prime Stars Jopman |
| 3 | CMG | JS Contractor Inc. |

The Philippine recruitment agencies have longstanding relationships with their counterpart brokers in Taiwan. These recruitment agencies are valued for their capability to hire workers directly and for accomplishing tasks without intermediaries or sub-agents. Limits to the placement fees they can charge are based on “acceptable market rates”. The selection and relationship management with recruitment agencies in the Philippines is assumed to be the responsibility of the Taiwan labor brokers. The employer usually has no involvement with the Philippine recruitment agency.

Manpower Pooling and Applicant Selection

The recruitment process begins with Taiwan brokers providing instructions to their Philippine recruitment agencies to collaborate and make arrangements for consolidated manpower pooling in preparation for the scheduled interviews.

Manpower pooling is conducted through ad placement, job fairs, online recruitment and referrals. All workers interviewed confirmed they were directly recruited by the Philippine recruitment agencies from their home provinces, or through walk-in applications, job fair applications, online services of the POEA, and referrals from

family and friends. The applicants are requested to submit a bio-data or resume, a copy of valid identification cards and birth certificate or passport. The qualified candidates from these initial screening activities are invited to report for a scheduled interview.

Labor brokers usually ask their Philippine recruitment agency counterpart to prepare a pool of applicants for the scheduled interviews in the Philippines that is two to three times the number projected for recruitment.

Documents Processing and Pre-departure briefing

Applicants who pass the interviews are informed of the results and scheduled for deployment. They are told about the documentary process requirements as well as total placement fees to be paid, and the schedule for payment. Applicants, at their own expense, are requested to submit their passports and police clearance and medical examination results (the medical examination paper is valid for six months). Applicants are asked to pay at least 20% of the total placement fee in order to start processing their papers. The rest of the placement fees is to be paid in full prior to departure for Taiwan.

Depending on who is the assigned Taiwan labor broker, the applicants' papers are referred to the corresponding Philippine recruitment agent, who will finish processing travel documents.

Workers interviewed during the audit reported they waited between 2 to 8 months before they were deployed to Taiwan. Some reported paying an additional fee for a 2nd visa processing as well as for a 2nd medical examination. Workers interviewed reported that, aside from the standard employment contract as approved by the government, they are asked to sign other documents prior to leaving the Philippines. Most workers report they do not remember the terms stipulated in most of the documents they signed, nor do they have copies of these documents. Auditors note that documents reviewed in this audit did not include agreements signed by workers with their Philippine recruitment agency and was thus unable to assess the validity of the stipulated terms.

Auditors note the practice of asking workers to sign supplemental agreements poses significant risks to workers, as the Taiwan labor court and justice system, generally accepts signed documents as a form of consent from workers, even if the terms or stipulated agreements does not comply with the law or regulations. The signed agreements can and maybe be used either by the Philippine recruitment agency, the Taiwan labor broker or by employer to the detriment of the worker's legal rights.

Further, holding a passport serves as a measure to deter applicants from seeking other employment opportunities. Most of the workers interviewed were unaware neither of the process to collect initial paid fees nor of the process to secure their passport should they change their mind about overseas work.

Receiving Country (Taiwan) Brokers-

This Taiwan electronics company currently uses the services of three (3) Taiwan-based labor brokers to hire foreign contract workers from the Philippines. As stated, the brokers are A-V, D-W and CMG. All have been providing facilitation services to the company for more than 10 years. Among the services provided by the labor brokers, as stipulated in their contract with the company, are the following:

- a. *Pre-recruitment.* In Taiwan, a company must secure a permit from the Council of Labor Affairs (CLA) in order to hire foreign contract workers. The number of foreign contract workers the company can hire is regulated by the CLA, and must be in proportion to the number of local workers employed by the company. Each of the Taiwan labor brokers has a foreign worker quota allocation from the company.

- b. Recruitment Process. The recruitment process is initiated as soon as a foreign worker requirement request is received from a company's facility. The labor broker with a valid quota allocation is then requested to process, initiate and facilitate foreign worker recruitment. The three labor brokers have a collective manpower pooling system and the workers to be processed for recruitment come from the pool of workers that have been pre-selected from this collective pool.
- c. Arrival of candidates. Workers' papers are processed as soon as they arrive in the airport. A representative from each labor broker is usually at the airport to facilitate the processing of the Alien Registration Cards (ARC) at the airport's CLA desk. They then bring the workers to a medical facility for the mandatory medical test after which workers are brought to the dormitory where they are given provisions including a new mattress and comforter, toothbrush, shampoo, slippers, steel cup and laundry soap. The brokers charge the workers NT\$2,800 for these items. The brokers then brief the workers on the rules and regulations of the company, in preparation for the formal company orientation, where workers are made to undergo a written examination to test their understanding of company rules and regulations.

The brokers also prepare the contracts and supplemental agreements, which are then signed by the workers. Most workers report not understanding the consequences of the terms stipulated in the documents they signed. Workers were also given a few schedule of the total amount to be paid to the broker for fees and expenses for a 2 year contract. Auditors noted that the fee schedule provided by brokers to the auditors did not include expenses, whereas the fee schedule provided by the workers included tabulation of expenses as well as dormitory maintenance and utility fees. Auditors noted that, aside from the schedule of fees, all supplemental agreements that the Taiwan brokers as the workers to sign are all company specific agreements.

The workers are not charged for transfer fees as per agreement between the management and the Taiwan brokers.

- d. Post Recruitment. The labor brokers are tasked to manage the workers' conduct in the company-provided dormitory, as well as to implement the company's disciplinary measures, stipulated in the dormitory rules and regulation. Each of the three (3) Taiwan labor brokers has an assigned dormitory to manage.

The broker is also designated to facilitate the withholding of forced savings, as indicated in the company's contract with labor brokers: "helping the employer (THE COMPANY) to get contract worker's bank account from the bank, however the employer will keep the worker's passbook and chop", and "every 3 months, take the employees savings passbook to the bank to check the record and show the record to workers." The bank books are returned to the facility as soon as they have been shown to workers. According to the workers interviewed onsite, their savings funds do not earn interest.

Periodically the company conducts an evaluation of its designated labor brokers based on the following performance parameters:

- a. Recruitment performance including
 - i. Recruitment Processing and how fast are the broker can find workers
 - ii. Ability to control and manage the situation
 - iii. Ability to offer consultation related to laws
 - iv. Ability and responsiveness in processing worker requests for vacation
 - v. Ability and responsiveness in processing terminations

b. Dormitory management including:

- i. Ability to communicate information to workers
- ii. Ability to manage emergency cases and procedures
- iii. How often workers violate the regulations
- iv. What programs, activities and equipment are offered
- v. Maintenance of the dormitory
- vi. The number of supervisors managing the dormitory
- vii. How they discipline workers including measures to limit movement of workers (to go out)
- viii. Cooperation with the facility

The company's evaluation parameters indicate an inclination towards punitive measures to control workers' freedom of movement. In the current system brokers are given a disciplinary function in managing worker conduct in the dormitory. This, coupled with unclear company oversight in reviewing dormitory disciplinary recommendations from the labor brokers, and the emphasis on labor broker performance in relation to discipline of workers in the dormitory, potentially opens avenues for abuse. Further, the questionable competence of dormitory supervisors to provide recommendations on disciplinary actions, contributes to workers' vulnerability. There are no clear mechanisms for feedback, or for any investigation into any disciplinary recommendations made by dormitory supervisors. In implementing the dormitory rules and regulations, the dormitory supervisor of A-V is likewise tasked to collect and account for penalty fees from workers for offenses and violations committed, as well as to submit recommendations for issuance of warning letters to HR.

Apart from implementing dormitory rules and regulations, the dormitory supervisor is also responsible for collecting payment as per the broker's fee schedule as well as the dormitory maintenance and utility fees. Workers reported they are not provided with receipts but are made to sign vouchers and or logbooks to record payments made. Most workers interviewed indicated concern over the power and influence that dormitory supervisors wield in influencing and negatively impacting their employment status with the company, for non-work related reasons.

At the end of the worker's contract, the Taiwan labor brokers cash out the final salary of workers, withdraw the workers savings from the bank and hand over savings to workers.

According to workers who have finished their contracts, they were provided with a manual calculation of their savings and outstanding fees still due to the broker one day before they were scheduled to leave. Outstanding fees due to the brokers were based mainly on the tally from the logbook signed by workers when they make payments during their stay in the facility. No interest was paid on workers' savings. Workers reported that the remaining funds due to them are handed over in the airport in a sealed envelope, just before their flight.

The majority of issues raised by workers in this facility relate to the labor broker's onsite management, especially in the dormitory and the dormitory supervisor's conduct. The workers raised concerns about the facility's practice of endorsing workers' personal funds to the labor broker rather than to the workers themselves prior to departure, as this potentially opens avenues for abuse.

Payment of fees to recruiter/agent

All of the workers interviewed in this facility reported paying a standard rate of PHP 86,000 as placement fee for securing employment at the company. This amount excludes expenses relating to passport processing, police clearance and medical examination which were paid as out of pocket expense for workers. Some working on the 2nd cycle of their contract report paying a "discounted" fee of PHP 80,000.

Table 1: Fees paid as reported by workers (total cash out from workers)

| Item | In PHP | In NT\$ | Remarks |
|---|-------------------|--------------------|---|
| Recruitment / Service Fee and documentary and other travel expenses | 86,000 | 68,800 | |
| Documents and medical fees | | | |
| Passport | 115 | 92 | Paid by workers directly to the Department of Foreign Affairs at cost. |
| Police Clearance | 550 | 440 | Paid by workers directly to the National Bureau of Investigation at cost. |
| Screening Medical Check | 3,500 | 2,800 | Paid by workers to Clinic and is within the reasonable cost range |
| TOTAL FEES CASH OUT FROM WORKERS | Php 90,165 | NT\$ 72,132 | |

Exchange Rate Used: 1 NT\$ = 1.25 Php

Table 2: Legally allowed fees for overseas deployment of Philippine workers to Taiwan, and as stipulated in foreign worker affidavits signed by workers in the Philippines and/or actual costs of direct expenses.

| Item | In Php | In NT\$ | Remarks |
|--|----------|----------|--|
| Recruitment / Service Fee | 21,600 | 17,280 | Based on Taiwan regulation (One month salary) |
| Documents and medical fees | | | |
| Passport | 550 | 440 | Within reasonable cost range |
| Police Clearance | 115 | 92 | Within reasonable cost range |
| Screening Medical Check | 3,500 | 2,800 | Within reasonable cost range |
| Visa | 3,100 | 2,480 | Auditors note this is based on expedited processing fee charged by Taiwanese Embassy in the Philippines and is within regulated cost range |
| Training related expense (Pre-departure Orientation) | 150 | 120 | Within regulated cost range |
| POEA Processing Fees including Medicare, Overseas Workers Welfare Administration (OWWA) Membership | 2,123.50 | 1,698.80 | Within regulated cost range |
| Others : Notary Verification | 500 | 400 | Within range of cost for notary services |
| Transport | | | |
| Air ticket (outbound to Taiwan) | 11,000 | 8,800 | Auditors note airfare is based on usual online rate for one way airfare from the Philippines to Taiwan and within reasonable cost range |
| Travel/Airport Tax | None | None | As per POEA regulation, overseas contract worker are exempted from paying this tax |

| | | | |
|-----------------------------------|--|--|--|
| Air ticket (inbound from Taiwan) | c/o Workers | c/o Workers | To be paid by workers prior to departure |
| Surety Bond | None paid to Philippine recruitment agency | None paid to Philippine recruitment agency | |
| Total Legally Allowed Fees | PHP 42,638.50 | NT\$ 34,110.80 | |

Exchange Rate Used: 1 NT\$ = 1.25 Php

Table 3: Overcharge estimates in placement fees collected from workers:

| | | |
|---|--------------------------|---------------------------|
| Total Fees and expenses reported paid by workers (total cash out (see Table 1 above). | PHP 90,165.00 | NT\$ 72,132.40 |
| Total Legally Allowed Fees (See table 2 above) | PHP 42,638.50 | NT\$ 34,110.80 |
| OVERCHARGE AMOUNT | PHP 47,526.50 | NT\$ 38,021.60 |

It was noted that the current performance standard set by Taiwan labor brokers to their counterpart Philippine recruitment agencies is that placement fees should be within “market rate” and not based on legally regulated fees. It was likewise noted that the company’s human resource management conducts interviews of workers as soon as the workers arrive in the factory, and is therefore aware that fees paid by workers exceed the legal limits. Overcharged amounts paid by workers to their respective Philippine recruitment agency is estimated at Php 47,526.50 (NT 38,021.60), in violation of Philippine legal limits.

Case Study 4: Taiwan Employer’s Onsite Management of Foreign Contract Workers (Supplementary Agreements)

Case Study Background

This data was gathered in April 2009 during an inquiry focused on issues related to freely chosen employment, and the company’s hiring and employment practices. The company audited is currently one of the world’s top suppliers of thin film transistor liquid crystal display panels (TFT-LCDs).

For this inquiry, key management personnel involved in recruitment and management of foreign contract workers, three (3) of the company’s Taiwan labor brokers as well as foreign contract workers from the Philippines, were interviewed. The facility employs a total of 323 foreign contract workers from the Philippines. Twenty-six foreign contract workers were interviewed.

The following issues surfaced regarding the company’s onsite management of foreign contract labor:

1. Involuntary Labor

- a. *Supplemental Agreements*. Aside from the government verified standard contracts, foreign workers are asked to sign supplementary agreements before they commence employment with the facility. Below are some provisions in these supplementary agreements that are not in compliance with regulations and contribute to a situation of involuntary labor.
 - i. *Employment Commitment* –includes the following provisions:

- ⇒ # 6 - I agree that the employer for safekeeping shall keep my passport and chop until termination of the employment contract upon departure”
 - ⇒ #8 - I agree to pay my medical check up (including first entry in Taiwan and once every six months
 - ⇒ Provision # 6 is not in compliance with the requirements of industry Codes of Conduct on prevention of involuntary labor. For provision # 8, the law only requires workers to cover 2 medical examinations on the 1st year of employment (upon arrival and 6 months later) and one medical examination for the 2nd year of employment or a total of 3 medical examinations for a two year contract. The supplementary contract provision requires workers to cover 4 medical examinations.
- ii. *OCW Supplementary Employment Agreement* – includes the following provision:
- ⇒ # 2 – It is my sole willingness to accept the terms and conditions, compensation and benefits package of my employment with the company. Shall I have anything in opposition to these; I shall accept immediate termination of employment contract with the company and waive whatever claims I may have. This provision hinders workers from raising concerns, and from seeking redress.
- iii. *OCW Fee Deduction Agreement* indicates that worker shall “understand and agree to pay monthly and other fees required in employment related documents during employment to Taiwan”, and that AU Optronics will deduct the fees indicated from the workers monthly salary, and that in case the worker’s monthly salary is not enough, the worker “agree that AU Optronics deduct unpaid balance from the savings fund.”

Although there were no reported incidences of unwarranted deductions in this factory, the deduction agreements reviewed did not indicate the exact amount that workers agree to be deducted from their salaries.

- iv. *OCW Monthly Savings Agreement* – wherein workers acknowledge that the factory can deduct NT\$3000 from the worker’s payroll account that will be transferred to a savings account until the contract expires and that the worker cannot withdraw or close the said savings account without the company’s approval.

Based on interviews with workers and Taiwan brokers, the company keeps the workers’ bank books and chops. The law in Taiwan prohibits forced savings, unless there is consent from workers and if workers did agree to a savings mechanism, the workers can stop this agreement at any time and the workers should be allowed to withdraw from and close the savings account at any time. Workers, however, reported they cannot refuse this savings agreement and have no free access to the savings account.

- v. *Agreement of Computation Method on OCW’s Penalty for Breach of Contract* which indicates that workers will be subjected to a breach of contract penalty of NT\$2,000 multiplied by the number of months the worker has been employed in the facility (for a maximum of 12 months) as compensation for the company’s loss under the following terms:
- a. 100% - violation of company/dorm rule and regulation
 - i. Self termination
 - ii. Poor work performance
 - iii. Other reasons that cause great loss to the company
 - iv. Penalty computation based on decision of the company
 - b. 50% - Penalty computation based on decision of the company
 - c. 30% - Penalty computation based on decision of the company

The provisions potentially pose risks to workers' freedom of movement and render workers vulnerable to being subjected to involuntary servitude. The combination of this contract provision with the management's policy and practice of relegating all supervisory and disciplinary functions to the brokers effectively control workers' freedom of movement, and render the workers vulnerable to exploitation.

Other provisions in the supplementary provisions that impact on workers' vulnerability to involuntary servitude:

- vi. *Holding of Passports* – the facility holds the workers passport, as per provisions indicated and described in supplemental agreement.
- vii. *Mandatory Savings* – the facility requires savings of NT\$ 3,000 among workers deposited in a separate passbook in the workers' name.

2. *Anti-Discrimination*. The contract between the worker and the employer states that foreign workers will be sent home if they become pregnant, which is not in conformance with both the law in Taiwan and with anti-discrimination provisions of industry codes of conduct.

3. *Fair Treatment*

a. *Freedom of Movement* – It was noted that various policy provisions in the facility are not compliant with Industry standards/labor regulations in relation to involuntary labor. Some of these policy provisions include:

- i. Dormitory curfews for foreign employees
- ii. Foreign employees not allowed to leave facility on work days, including OT work rendered on day of rest.
- iii. Foreign employees must obtain 3 levels of permission to leave facility on rest days.
- iv. Employees perceive that they only have access to restrooms during scheduled breaks.

b. *Harassment and Grievance Mechanisms* – Various policy provisions in the facility are not compliant with Industry standards/labor regulations in relation to fair treatment. Some of these policy provisions include:

- i. Dormitory supervisor has work-related disciplinary authority over workers for non-work related issues. Most workers interviewed report that their fear of the dormitory supervisors and coordinators comes from the fact that, in their perception, most of the termination and repatriation cases stem from reported violations of dormitory
- ii. Public announcement through posting of names and acts of workers subjected to disciplinary actions.
- iii. Factory signs indicating company rules are not always in a language understood by foreign workers. Foreign workers run the risk of violating a rule they do not understand.

4. *Working Hours* - The current practices as well as policy provisions in the facility are not compliant with Industry standards/labor regulations in relation to Working hours, including:

- a. Weekly working hours occasionally exceeding 60 hours (63 hours – 70 hours)
- b. Lack of a policy to ensure that workweeks do not exceed 60 hours
- c. Occasional situations wherein workers have no day of rest in every seven days (8 days to almost a full month without rest days)
- d. Overtime is not voluntary, and workers will only be allowed to say no to OT if they are sick.

5. *Wages and Benefits* - The current practices as well as policy provisions in the facility are not compliant with Industry standards/labor regulations in relation to wages and benefits, as indicated below:
 - a. Facility makes disciplinary, punitive deductions.
 - b. Basis for performance bonuses is not clear, not well-explained to foreign workers.

6. *Health and Safety* - The current practices and policy provisions in the facility are not compliant with Industry standards/labor regulations in relation to health and safety, including:
 - a. Foreign workers are not able to adequately communicate preventive maintenance procedures to local workers, resulting in safety hazards.
 - b. Not all safety signs are in a language understood by foreign workers.

Case Study 5: How to operate an employment agency with zero placement fees

Filipino Migrant Workers Human Resources International (FMW-HRI) is a labor brokerage firm established by professional Overseas Filipino Workers (OFWs) in the Kingdom of Saudi Arabia (K.S.A.) in early 1996. The employment agency was envisioned by the FMW group to serve as a model for legal and ethical labor placement practices in the Philippines, and to challenge existing agencies to operate without charging any placement fees to applicant workers.

However, initially the intention of the twelve OFWs (Overseas Filipino Workers) who met in Riyadh, was to establish a business enterprise as a means for them, and other OFWs like themselves, to reintegrate – to return to and stay in the Philippines after their stints abroad.

Upon returning to the Philippines, in early 1996, the twelve formed the FMW Group, and organized four business subsidiary units namely; The FMW Group Holdings, Incorporated; The FMW Lending Corporation; The FMW Marketing Corporation; and Patriarca and Associates, Incorporated. (*See Table A for brief description of each business unit.*) The human resources (job placement) agency was not part of the plan.

Table A

| |
|--|
| <ul style="list-style-type: none"> • The FMW Group Holdings, Incorporated – Provided management consulting; and initiated and administered the Group’s business programs. • The FMW Lending Corporation – Was the initial business scheme of the group which served as the financial backbone with a mission to extend its services to small and medium loan financing bodies throughout the Philippines. • The FMW Marketing Corporation – Concentrated on the management of marketing, sales, and purchases, especially of the Group’s industrial projects. • Patriarca and Associates Incorporated – Rendered professional services for the supervision of business institutes. |
|--|

Eventually, however, the group saw that reintegration schemes were not enough. Francisco Aguilar, Jr., one of the twelve who pioneered FMW, shared that, being OFWs themselves, and having gone through difficult situations, they were disheartened at how Filipinos continued to be exploited by labor brokers. Moreover, Aguilar said, they were bothered that even those who have had difficult experiences abroad were still willing to be subjected to

exploitative practices imposed by labor brokers, simply because there were not enough employment opportunities in the country.

Aguilar related that the proliferation of illegal recruiters and the massive number of Filipinos still driven to work abroad motivated the core group to combine their resources and organize the FMW Human Resources International (FMWHRI). The labor brokerage firm then became the youngest of the FMW Group of companies. Mr. Francisco S. Aguilar, Jr., one of the twelve pioneers, headed the firm.

Aguilar, an engineer for 13 years in Riyadh, recalled that he was a college professor in Manila when he decided to leave, partly to escape the volatile political situation in country at the time, and partly to seek better opportunities abroad. He shared that despite his professional and academic background, he was subjected to exploitative practices – mostly to do with contract substitution— by placement agencies in the country. He said that his strongest motivation for returning to the Philippines was to contribute his expertise as an engineer and as a manager to the country. He was most concerned for overseas job applicants from poor communities who were being driven deeper into debt by recruiters charging exorbitant placement fees. He added that this was the reason why he took a risk “entering this dirty business (recruitment).”

Unusual labor broker practices

The first thing that FMWHRI established was a *no-placement-fee* policy, even if placement agencies are allowed to charge workers a certain fee. Mr. Aguilar said that he is bent on illustrating that this is a feasible business plan: to charge employers who need workers, and not the other way around. He said that, proceeding from this critical policy, therefore, his company is committed to do business only with individuals and companies that are willing to carry the cost of employing Filipino workers. For his part, Aguilar said that he commits to provide only the best and most qualified employees. “I do business with the employers, and I take no single centavo from the applicants. I don’t do business with the employers who do not agree to abide by my policy,” he said.

Aguilar said that he screens the employers, not just the applicants. He agrees to work with employers who are not only willing to carry the cost, but can also assure him and the workers that the employer has good employment and management practices. Aguilar requires his clients – potential employers – to make full disclosure of all terms of the employment contract. Aguilar also makes sure that the “Joint and Solidary Liability” (JSL) principle enshrined in the Migrant Workers Act of 1995 is included and observed in every employment contract. The JSL states that the labor recruiter and the foreign employer are jointly and severally responsible for the workers’ welfare. He also personally ensures that every contract signed by the applicant is properly disclosed before workers’ departure.

He also said that FMWHRI requires its clients to provide essential workers’ benefits such as medical insurance, workmen’s compensation, and other fringe benefits including travel documents processing fees, airfare (roundtrip), and adequate board and lodging. Aguilar shared that he has also personally negotiated salary raises for deserving workers.

For the workers’ part, Aguilar also takes measures to ensure that his recruits follow the terms of their labor contract to avoid repatriation. FMWHRI maintains communication lines with its recruits. Workers are encouraged to report employer violations of the contract terms directly to Aguilar, and Aguilar himself mediates between the worker and the employer. He said that, from the very start, employers are made to understand that if a worker no longer wishes to work for them because of contract violations, the employer is contract-bound to repatriate the worker. Similarly, employers who may have complaints about the capabilities of workers deployed to them may demand a replacement, although Aguilar said that this has not yet happened.

Another policy implemented by the FMWHRI is to refrain from deploying workers to countries where labor brokerage is encouraged. He said that, based on his own experience and the experiences of people he is close to, the receiving country laws and practices in regard foreign workers have a lot to do with the poor, exploitative

conditions workers are often subjected to. He added that, he will not deploy the workers even if the employer passes the standards he has set, for as long as the laws of the receiving country are unfavorable to the workers.

FMWHRI targets potential OFWs through advertisements in a specific newspaper, job fairs, and personal recruitment. FMWHRI places job ads in national dailies that are active in the campaign against illegal recruitment. Aguilar himself also periodically travels to provinces to identify potential recruits. Aguilar occasionally covers the transport fare of applicants from the provinces, when they cannot cover the expense.

To qualify for an overseas job, an applicant has to comply with the following requirements:

- ⇒ Passing an occupational skills test (for skilled workers, i.e. engineers, technicians, etc.)
- ⇒ Submission of personal credentials (i.e. birth certificate, passport, diploma, etc.)
- ⇒ Undergoing and passing a medical examination. (Female applicants bound for Kingdom of Saudi Arabia (K.S.A) must undergo a pregnancy test which is included in the medical examination.)
- ⇒ Passing a personal interview (which was occasionally conducted by Mr. Aguilar, Jr.)

Workers pay for the above requirements, except for the interview. Aguilar said that workers who are able to show enough proof of ample training do not need to take occupational skills tests. On the contrary, Aguilar shared that many employment agencies make this a blanket requirement and even charge extra fees for testing.

The processing of qualified applicants' documents takes between 21 to 30 working days. Aguilar said that for very specific job orders, the process can take even longer. He said that he warns his clients about the length of time it will take, and that it is important that the client cooperates with FMWHRI's practices because these are measures he takes to ensure the quality of service he provides to both employers and workers

APPENDIX B: ASSESSMENT OF THE POEA SPECIAL HIRING PROGRAM FOR TAIWAN

In 2008, a memorandum of understanding (MOU) between the governments of Taiwan and the Philippines was signed. The MOU details an alternative recruitment scheme that would allow employers in Taiwan to directly hire overseas Filipino workers (OFWs). This recruitment system is also called the Special Hiring Program for Taiwan (SHPT).

The MOU, signed by officials of the Manila Economic and Cultural Office (MECO) and the Taiwan Economic and Cultural Office (TECO) during the Philippines-Taiwan Third Joint Labor Conference, permits direct hiring of OFWs by Taiwanese employers, without the assistance of Philippine-based brokers and recruitment agencies. Alternatively, through this MOU, the recruitment of OFWs for Taiwan can also be done through the Philippine government rather than through private agencies.

This plan was developed to favor overseas Filipino workers (OFWs), as it eliminates the brokerage fees and allows workers to save as much as NTD100,000 (PHP 144,991). The new hiring guidelines are also meant to make the deployment process of OFWs simpler and reduce red tape for employers and OFWs.

The OFWs that are covered by the SHPT are factory workers, construction workers, household workers, caregivers, caretakers and institutional nursing workers, and fishermen. Based on the guidelines, all professional and skilled OFWs hired through the SHPT will be under the facilitative services of MECO.

Also included under the facilitative services of MECO are distressed OFWs, such as runaway OFWs and those in exploitative situations. MECO conducts information dissemination campaigns and awareness programs to

encourage OFWs who run away from their employers to surrender to MECO, so their possible rehiring and repatriation can be facilitated.

The term ‘runaway OFWs’ commonly refers to workers who have escaped from their employers either because of exploitative conditions or because their contracts have expired. These workers wish to stay in Taiwan, which they accomplish by leaving their employers and going in hiding. Workers typically do this because it is difficult for them to finance reapplication for work in Taiwan.

MECO also assists with immediate repatriation to the Philippines of OFWs who have surrendered or have been detained. Similarly, Filipino workers also have the right to report Taiwanese employers who would confiscate their passport to the CLA, and those employers would be banned from hiring OFWs.

Under the SHPT, disputes between employer and employees will, as much as possible, be resolved on-site through the intervention of capable authorities in Taiwan, mainly the Foreign Workers Counseling Center (FWCC) and in coordination with MECO.

Initial Assessment of the SHPT Systems and Procedures

Manpower Pooling Requirements

Employers require three to four applicants for each post that needs to be filled (meaning, if the employer needs ten workers, they want to be able to select from a pool of 30-40 applicants).

Once the POEA receives a job order (JO), it posts the JO on its website, in Philippine Job Net, and in regional offices (no partnership with LGUs in recruitment, only through Public Employment Service Offices). The manpower registry system then produces a list of applicants for the pool. The employment branch calls applicants for pre-screening, which involves verification of data/documents of chosen applicants. Applicants are then scheduled for interview. The primary source for applicants is the manpower registry through online registration (e-registration). Walk-in applicants are also advised to post applications online.

During an interview with POEA, the server’s capacity to handle the huge volume of applicants was raised as an issue. When new ads are posted on new job orders, the website has been known to degrade when deluged by applicants. Applicants have complained that they cannot enter the system, due to a bandwidth problem. Documentation of one company showed that their recruitment process experienced a low applicant turn-out because the server for e-registration was bogged down.

A staff person has been designated for recruitment and documentation of OFWs hired under the Special Hiring Program for Taiwan, although that staff person also has other responsibilities. The same person handles special hiring programs between the Philippines and other governments (Japan, Korea).

As of the time of this research, the demand is low, so the current structure (three staff persons) is able to easily manage the requirements. The office is in the process of assessing its current worker deployment capacity, to determine the number of staff they would need for the program if demand increases and becomes constant at an increased level. Currently, the program is in the initial phase of implementation; and must be evaluated again before it can become a regular, ongoing program. The government’s moratorium on hiring has been identified as another constraint to adding additional staff, to capacitate the program implementation.

In 2008 there were eight companies participating in the SHPT, and 118 workers were successfully recruited (in 2007- 120 workers; in 2006- 102 workers).

Turnaround Time

Through the broker-assisted system, employers require the pooling and pre-selection of workers to be accomplished within 7-21 days. The process of interviewing workers in sending countries is allotted three to seven days, while the reparation for deployment (contracting, visa processing, etc. – or from the time they are selected to the time they arrive in Taiwan) is expected to be accomplished in one month. The required total cycle time from pre-recruitment to actual deployment is 40 days (lower limit) to 80 days (upper limit).

In comparison, the timeline for the recruitment process via the SHPT for one company observed was:

- ⇒ Preliminary recruitment activities (contacting applicants identified by the MRD registry and scheduling of walk-in applicants, as referred by MRD) July 24-August 3 (nine days)
- ⇒ 430 applicants were pooled during this period
- ⇒ Interviews occurred from August 5-7 (three days)
- ⇒ Post-interview and processing of selected applicants took place from August 8-31 (24 days)
- ⇒ PDOS pre flight briefing occurred the last week of August
- ⇒ Deployment to Taiwan occurred the first week of September

According to POEA, under normal circumstances, the cycle time for post selection activities is two weeks. In this case, the total cycle time from pre-recruitment to actual deployment was 45 days. Given the IT and staff capacity concerns mentioned previously, the POEA is aware that a spike in demand could impact the program's performance on turnaround time.

Quality of Applicants

Common selection criteria for employers are the following:

- ⇒ Work experience
- ⇒ Academic qualifications (secondary school)
- ⇒ Basic calculation skills (math)
- ⇒ Basic language skills (English proficiency)

According to the Employment Branch, the SHPT has sufficient names in the database for Operator level applicants. The current need is for qualified applicants to fill higher skilled positions. There is also a need for a national skills registry.

Verité's experience has been that applicants for higher-skilled positions are less vulnerable to abuses than those for operator-level positions. However, when the POEA says it has "enough" names in the database for Operator level applicants, this is only true for the current demand. Concerns have been raised regarding what will occur when there is a spike in demand, especially in light of the IT concerns.

The POEA has no equipment for more modern applicant interviewing systems such as teleconferencing or videoconference.

CSR and Other Program Requirements

Performance Indicators for the SHPT

According to POEA, their target is to have an efficient system to mobilize applicants for recruitment.. However, there are no clearly defined performance indicators as of yet, and standards of performance are also not defined. Because the program for Taiwan has worked with only a few parties to date, much of the current work is being done through a staff with a semi- ad-hoc structure that is able to comply with requests, but it has no clear performance objectives or targets.

Labor Supply

Marketing and promotion is done by Philippine Labor Centers (PLCs). The POEA has no visibility in marketing the efforts of PLCs. There is no formal mechanism to link marketing efforts with POEA capacity.

Verité's general perception from the interviews was that, while marketing is gearing up and is becoming more pro-active, the supply side of the program remains reactive. This may create issues in the program's capacity to supply an increased quantity of quality workers beyond current levels. Efforts to build demand for the SHPT (done by PLCs) may need to be better synchronized with efforts to build the supply of workers (done by POEA) to ensure that expectations built on both ends are realistic and feasible.

Due Diligence for Companies Participating in the SHPT

There are no formal due-diligence mechanisms in place yet for the companies participating in the SHPT, according to the POEA. There are also no social-responsibility indicators for selection of employers participating in the program. Existing due-diligence procedures include interviewing workers who have worked in the facilities regarding their working conditions.

Controls here are critical. A key legal concern is that Article 18 of the Philippine Labor Code places a ban on direct hiring of workers for overseas employment, a provision that has not been repealed, even though there is no mention of this ban in the Migrant Workers' Act.

Under Philippine law, the broker and the principal (employer) are jointly and solidarily liable for any and all claims by workers arising from contractual and legal violations. The performance bond filed with the POEA by a PEA/broker is answerable for all money claims or damages that may be awarded to workers. Absent a PEA/broker in the Philippines, as will be the case in the special hiring program, the question emerges - where does the worker seek redress? A worker can file suit directly against their employer, but to do so, the worker would need to stay in Taiwan, which could entail financial cost and potentially, other forms of suffering that could discourage workers from pursuing such cases. The logic behind the legal requirement that the PEA/broker be jointly liable was to address the cross-border nature of overseas and the litigation constraints. Because the PEA is a Philippine-registered entity, a worker can pursue and file a claim against it even after returning home from their country of employment or the country where the violation occurred.

On the one hand, the presence of strong operational controls (such as a formal due diligence process in approving employer-participants in the program, monitoring of workplace conditions, a hotline for workers, etc) is imperative, to ensure that employers participating in the SHPT can, will, and do meet their contractual obligations to workers.

On the other hand, there is a need to develop (for the long term) legal and structural mechanisms and, (over the short term) other effective procedural mechanisms, to ensure that removing the PEA/broker from the recruitment process does not in any way lessen protections/avenues for redress available to workers.

Equality of Opportunity

The E-registration system generates the names for pre-screening, which is supposed to make the process objective. However, to augment the number in the pool, walk-in applicants are accepted. In the absence of formal mechanisms to ensure nondiscrimination, there are potential risks. The program may need to demonstrate stronger operational controls to screen out discrimination and favoritism in the selection of applicants that go into the manpower pool for specific companies.

Illegal Fees

The system relies on e-registration to guarantee objectivity in the process. The program may need to demonstrate stronger management (training, capacity building) and/or operational controls (policies, procedures, rewards/sanctions) to ensure that ethical and other social compliance risks are screened out; currently, there are no formal mechanisms in place to screen out the risk of illegal fees.

APPENDIX C: PHILIPPINE MEN TRAFFICKED FOR LABOR EXPLOITATION TO MALAYSIA

The information summarized herein derives from a current Verité project studying the trafficking of Philippine men for labor exploitation in the construction, maritime and agricultural sectors in Southeast Asia and beyond. Some generalized findings on trafficking to Malaysia are offered, followed by four case studies.

The Modes and Means of Trafficking, and the Forms of Exploitation Experienced by Trafficked Philippine Men

Verité’s study has found that men are trafficked mainly for labor exploitation. Human trafficking for labor exploitation or forced labor is a crime that results from the presence of three factors: “a suitable target, a motivated offender and the lack of a capable guardian.”⁴⁸ There is a myriad of ways by which Philippine male victims end up in situations of trafficking.

In many cases, the respondents agree to or apply for work in the destination country, or voluntarily enter the country – whether through regular or backdoor channels – where the exploitation takes place, to seek employment.

Most of the victims were initially recruited in their places of origin and brought to Malaysia, where the exploitation took place. Others were already in Malaysia and were transferred within borders into the particular places where exploitation occurred.

Most of the subjects who were recruited in their places of origin had responded to employment opportunities advertised in flyers and in newspapers or to job opportunities promoted or shared with them by friends or acquaintances.

Profile: Impact of Origin on Trafficking Route to Sabah, Malaysia

The mode and means of trafficking to Sabah vary, depending on the trafficked person’s place of origin. Based on the records of Malaysia’s Department of Social Welfare and Development (DSWD), about 80 percent of deportees come from Tawi-tawi (an island province of the Philippines located in the Autonomous Region in Muslim Mindanao (ARMM)); some come from Zamboanga and the islands around it and a few from the central to northern part of the Philippines.

A. Origin: Tawi-tawi and nearby communities

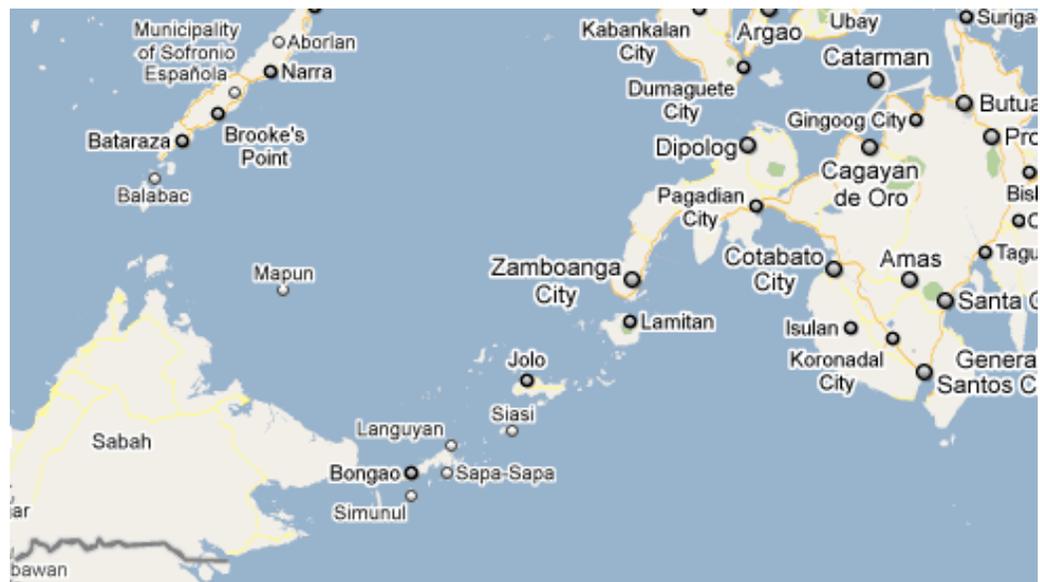
According to the POEA and DSWD directors interviewed, acts of trafficking are difficult to detect and substantiate when the origin is Tawi-tawi or nearby communities. Transportation and entry to Sabah from Tawi-tawi, even by non-passport holders, is relatively easy to accomplish, something that has been done by Tawi-tawi residents voluntarily without facilitation by others, for many generations. The boats used are technically for use in only domestic waters and are generally small, motorized craft that carry about twelve passengers. However, since the implementation of Malaysia’s Immigration Act, and because of the risks involved in crossing borders illegally, there is usually someone who must guarantee the safe transportation and entry of the passengers to Sabah.

Moreover, though most returnees reported they went to Sabah on their own to take chances in finding whatever job they could, on further inquiry, they also reported that there is usually a relative or a close family member who facilitates their employment and who sometimes gains from their assistance. In construction sites and palm oil plantations, the returnees reported that a fellow Tausug who holds a national ID usually recruits them and is in charge of supervising and releasing payments to them. To their knowledge, this person earns a commission for every worker hired and maybe also gets a percentage of their salaries. In some construction sites returnees said they are no longer asked for ‘papers’, especially if the work is only for a short time period.

B. Origin: Zamboanga and nearby communities

Those from Zamboanga and nearby communities usually go to Tawi-tawi on their own, or with a “recruiter” and from there, basically go through the same transportation and transfer procedures that Tawi-tawi residents go through.

The government workers and the returnees interviewed reported that the Tawi-tawi travel transactions are a common knowledge. People generally know which of the domestic boats actually cross sea borders and travel all the way to Sabah. The difficulty for immigration officials lies in the fact that these boats are not legally prohibited from



taking passengers who have no passports, given they are supposedly domestic passengers. However, even when police and POEA suspect that passengers are potentially trafficked or illegally recruited, or intend to enter Sabah illegally, they cannot easily stop passengers from getting into the boats. According to the police and POEA, it is really the border patrols that would be able to intercept these boats. However, they suspect these arrangements may actually also involve the patrols.

C. Origin: Other regions

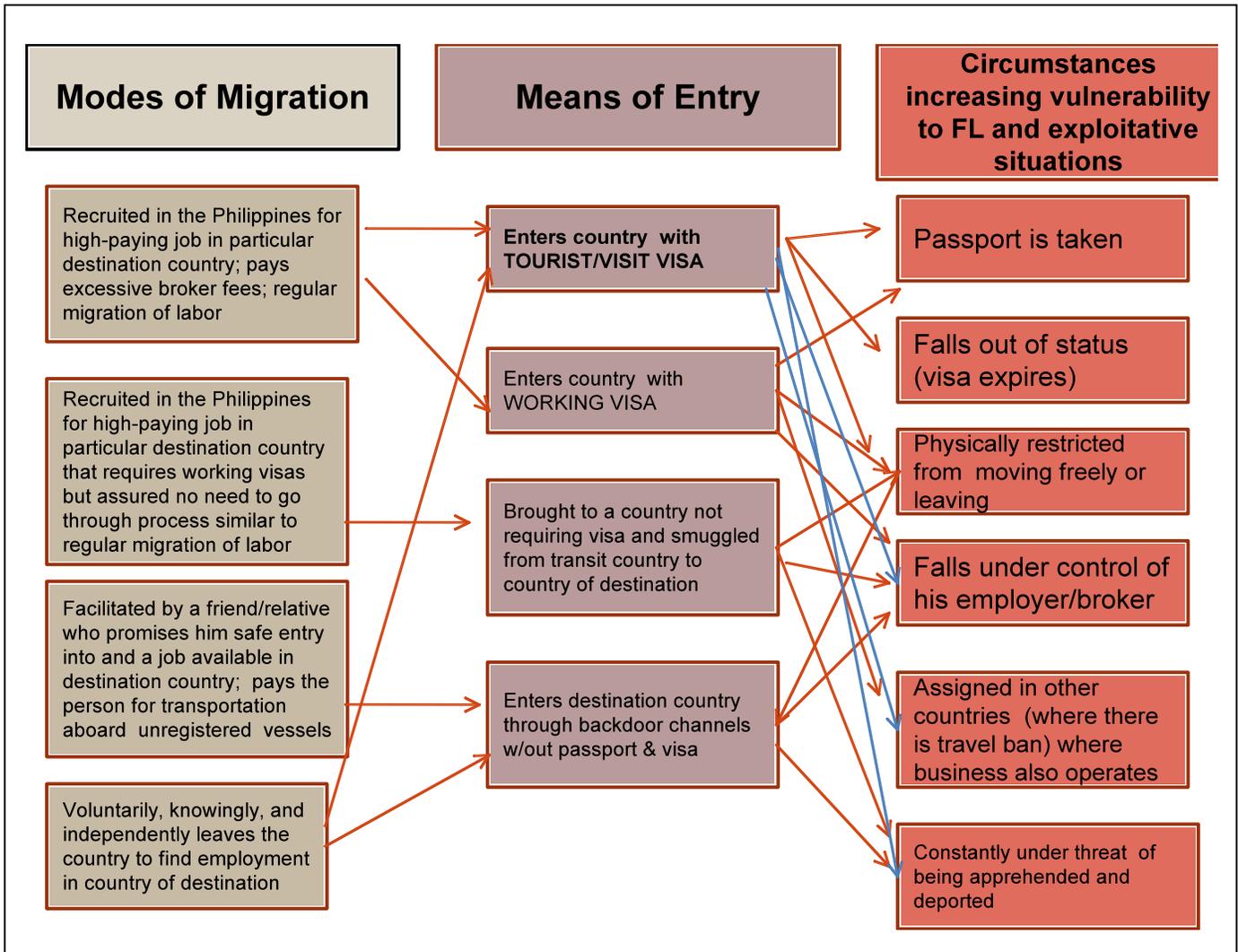
Recruits who are promised work in Sabah are usually brought to Zamboanga, where, if they have no passports, the processing of passports is completed, taking only about 15 days. Once their passports are available, the recruits are either transported from Zamboanga, or are brought to Tawi-tawi, where transportation is much cheaper.

Most recruits from outside the Mindanao regions are promised and are charged for office work in Sabah. At other times, they are often brought to Sabah with no guarantee of a specific job, but are promised that ‘many jobs’ would be waiting for them there. The recruits end up doing whatever job lands in their lap. Men generally end up in construction, where the period of work or length of employment is usually short, wages are low and employers do not usually ask them directly for papers.

At least eleven respondents who went to Sabah on their own, or were initially smuggled across the border, or who had migrated to Sabah with their families when they were children, and eventually sought employment opportunities there, were recruited for work where labor conditions were exploitative.

Notwithstanding the myriad of ways by which male Philippine victims entered Malaysia, almost all of them fell into similar situations of labor exploitation.

Patterns of Migration and Trail of Exploitation



Intermediaries, brokers, facilitators were involved in various stages of the victim's movement, transfer, receipt, and employment.

In most cases, various actors were involved in the process that led to victims' exploitation. Respondents reported being recruited for a job, invited to take part in a venture, or introduced to an employer, by individuals in their places of origin, different from the person who facilitated their departure at the exit points. Moreover, in the destination country, the one who received and harbored them initially usually turned them over to another person who ultimately acted as their employer or handler. (Please see below the Case Study narrating a respondent's experience of being transferred to different handlers.)

Although almost all of the respondents who reported to being subjected to conditions constituting trafficking consented to performing labor in Malaysia, many factors compromised the workers' consent once they left the Philippines:

- ⇒ Deception (mainly through contract substitution)
- ⇒ Threat or menace of penalty because of:
 - Status
 - Debt bondage
- ⇒ Lack of choice, lack of knowledge

Certain recruitment mechanisms were found to contribute to workers' increased vulnerability to forced labor. Deceptive recruitment practices in conjunction with debt bondage and other coercive measures were commonly used by brokers/recruiters and employers to keep migrant workers in situations of exploitation.

Among the most common ways that employers and brokers used to keep workers in forced labor or highly exploitative situations was deceptive recruitment and debt bondage. Under this scheme, brokers/recruiters promised applicants high-paying jobs to encourage them to enter into very costly transactions with brokers. These intermediaries then charged excessive fees to recruited Philippine male workers for the processing of their travel documents to and work permits in Malaysia, as well as for mandatory broker fees. Intermediaries also often advanced the payment for these costs, or provided loans to the workers. Respondents subjected to this scheme agreed to pay back these advances/loans through deductions from their wages, but when the workers were at the workplace, however, they found that conditions were highly exploitative, and not at all consistent with what was agreed upon, but they were trapped already in the situation because they had debts to settle and had to earn back the cost of securing their jobs.

Recruiters also commonly used deceptive means – contract substitution – to keep workers in situations of exploitation: Seventy percent of the subjects in the selected test cases of male trafficking were recruited for jobs in workplaces other than the site where they ended up. For example, two men from Northern Luzon who were recruited to work in hotels in Malaysia ended up in worksites where conditions were very poor. One ended up in an ice plant, the other in a palm plantation. (See below for the case studies.)

Another way by which victims were induced into situations of forced labor was through psychological (non-physical) coercion, including abuse of legal processes – such as the threat of being detained and deported as an undocumented alien. This modus operandi was employed by brokers and handlers/employers across the different workplaces.

Surprisingly, respondents who entered Malaysia with proper travel documents, or those who left the Philippines and went through government authorized overseas employment procedures, were not protected from this threat. Based on respondents' accounts, once their travel documents were withheld from them, either in the guise of being required for further work permit arrangements or as part of broker's or employer's policy, they fell under the full control of the trafficker who could effectively compel them to do anything under the threat of being denounced to the authorities.

The respondents who were undocumented to begin with, such as the Philippine men in Sabah, were found to be the most vulnerable. A common experience shared by the respondents who were in Sabah was of their employers or supervisors initially promising them security from immigration authorities, and even deducting “security fees” from their wages as a condition for agreeing to engage in work, only to be reported to the authorities by these same people (the supervisor or the employer) when it suit them.

Several of the respondents interviewed for this study were actually reported to the authorities by the very persons who had control of their passports. These respondents spent time in deportation prisons, or in detention centers, where conditions were very harsh, and where they were subjected to more abuse. (Please see textboxes below for illustrative case studies).

Actors and perpetrators

Actors involved in the victim’s entry into the exploitative situation were commonly individuals or small groups of three.

The researchers did not find strong evidence of the involvement of organized crime in the trafficking of Philippine men. Interviews indicate that victims were recruited, transferred, harbored, or hired by:

1. Individuals personally known to the victim, acting independently of the person who employs the victim
2. Individuals personally known to the victim, acting under the supervision of/in cooperation with the person who employs the victim
3. A small group – mostly comprised of three recruiters and brokers known to each other; or one main labor broker with a few associates – operating in at least two countries: the country of origin and the country of destination; sometimes with *assistance* from an immigration personnel.
5. At least two small groups of brokers/agencies operating in at least three countries: the countries of origin, transit, and destination.

Trafficking is big business, and there are many actors who, in many ways, benefit from the victim’s exploitation.

| Actors | Benefits/Gains |
|--|---|
| Recruiters Brokers, labor contractors and their ‘associates’ | Get paid for the deployment of the victim |
| Smugglers (who also acted as labor broker, or offered to link victims with broker, labor contractor, employer) | Get paid for smuggling victim into border and for brokering employment |
| Supervisors | Get paid by employer for hiring a crew of undocumented workers, migrant workers Get a cut from workers’ pay Charge workers for ‘security’ fee against apprehension by immigration authorities |
| Employers | Get a cut from workers’ pay Charge workers for ‘security’ fee against apprehension by immigration |

| | |
|---|---|
| | <p>authorities</p> <p>Are guaranteed workers' services (even under exploitative conditions)</p> |
| <p>Immigrations and customs personnel, border patrol guards (who facilitate victims' entry into country where exploitation takes place)</p> | <p>May get a cut from fees paid by victims to/get paid by brokers, recruiters, labor contractors, employers</p> |
| <p>Boarding house owners Lessors</p> | <p>Earn from renting out or leasing their property to trafficked victims.</p> |

Case Studies

Eric, Trafficked Twice to Palm Plantations in Sabah

Eric, a 23 year-old farm worker, was in his hometown in Nueva Viscaya, when he saw and responded to a job ad in a flyer, offering high-paying jobs in Malaysia. Since he knew that an aunt of his was also employed in Malaysia, he was encouraged to consider applying for the job. Apart from his aunt in Malaysia, two uncles were also employed abroad, and a cousin was working in Dubai. Eric said he had always dreamed of becoming as successful as his relatives who were OFWs.

Eric called the number in the flyer and talked to a certain Criselda Roxas who instructed him to meet her in Quiapo, Manila, on March 25, 2008, with the requirements: passport, resume, ID pictures, and PHP 45,000 in cash. Criselda also told him that the work was actually in a plantation in Sabah, but that on the average, workers earn more than PHP 20,000 per month, that meals and accommodation are provided for free, and the workers are given a return ticket to their home countries after the one-year contract. She told him that the amount excluded overtime pay and other monetary benefits that are also provided to workers.

Criselda also told Eric that for as long all his requirements are ready, in a matter of days he would be able to leave for Kota Kinabalu and start his employment right away. Eric then lost no time looking for the required amount and preparing his travel and application documents. He was able to secure a loan with no interest from an uncle of his, after promising his uncle that he would be able to repay the loan in three months.

With all his requirements ready, Eric took a ten-hour bus trip to Manila and met Criselda in Quiapo. Eric said that he thought Criselda was going to take him to an employment agency nearby, instead they headed to Cavite, about 2 and 1/2 hours south of Manila. In Cavite, he met 13 other male recruits for Malaysia. They were all told by Criselda that they were to work in a plantation, where all they had to do was pick palm fruits, and they would be paid more than PHP 20,000; that they were all being hired directly by the plantation owner himself, so that they didn't have to go through brokers and placement agencies.

Of the fourteen of them housed in Cavite, only Eric and another recruit had passports, so they were able to leave ahead of everyone else. They were told that they only needed passports and one-way plane tickets for the meantime, as the working visa would be processed within 3 months from their arrival in Sabah, and their return ticket would be provided by their employer. Eric and his fellow recruit paid an additional PHP 2,000 each, for the transportation to Pampanga, from Cavite. At this point, Eric had already given Criselda PHP 20,000 without having been given a receipt.

En route to the airport in Pampanga, Criselda told them that she knew someone at the airport, and that they should line up in this person's immigrations booth, which Eric and his companion did. At the booth, they told the immigrations officer that they were tourists, as Criselda had instructed, and nothing more was asked of them.

Criselda also told them that her cousin, Lorna Roxas Tolentino along with the employer, Sam Lawrence Peterson, were going to meet them at the airport in Kota Kinabalu and that Eric and his fellow recruit should give the PHP 25,000 to Lorna.

On March 28, 2008, Eric and his friend boarded the Air Asia flight to Kota Kinabalu. At KK, they were met by Lorna and her boyfriend, Sam Lawrence Peterson, who introduced himself to them as Captain Sam. Lorna and Sam took the two workers to a hotel near the Centerpoint mall and later brought them to a restaurant for dinner. Eric said that he and his friend were very impressed by the lavish treatment they were getting. During dinner, they were given an informal orientation on the work they were recruited for. Captain Sam told them that the work is

hard, but that all amenities and necessities would be provided for the workers. Eric and his friend told Captain Sam that they did not mind the hard work, considering that they were going to get paid more than PHP 20,000 a month.

The next day, Lorna asked for the PHP 25,000 from the two workers, and told them that their working papers will be processed as soon as possible. She also took their passports, as this was supposedly going to be needed in processing their working visas. The four of them then traveled to a place called Limbang, in Sarawak, in Sam's ranger. The trip took eight hours in all.

It was already late in the evening when they arrived at Limbang. Sam drove them to a clearing in the middle of a jungle. In that clearing, there was a big house surrounded by a body of water. Sam told them that they were to live in that house while employed in the plantation. The house had five bedrooms, with nine to 12 occupants in each room. The women – just a handful of them – had their own room.

After Eric and his friend were assigned to their sleeping quarters and fed a simple meal, Sam and Lorna left. The workers were then told that they had to be awake at 4:00 a.m. as the work started at 5:00 a.m. and ended at 2:00 p.m. A truck picked up the workers at 4:30 a.m. and brought them to their assigned locations.

The work involved piercing the base of the huge palm fruits off the tree so these would drop to ground, and then dragging the fruits to a road about 50 meters from the trees, to wait for a truck onto which the workers will haul the fruits, for delivery to processing facilities. The weight of each fruit averages 60 kilos. For the first couple of months, two workers are assigned to four hectares of palm trees per day. The quota for two workers is about 150 fruits. One supervisor is assigned to oversee the work of ten workers. Eric said there were hundreds of workers employed at the plantation.

Eric said it took a while before he could adjust to the workload. There were several instances when he had to stay beyond 2:00 p.m. to meet his quota, missing the free truck ride back to the workers' house, and having to walk an hour and a half through the thick jungle, where roads were sometimes slippery.

Eric also narrated that for their meals, they were usually given just a piece of tamban fish and some rice; and although they were fed three times per day, the meals were not enough to sustain them throughout the day. Workers often had to supplement their meals with canned food that they would get on loan from the store in the compound. When the workers could no longer get food from the store, they ate meat from lizards and snakes that they would catch in the forest. Drinking water was also scarce, and delivery was sometimes delayed, so workers collected rainwater and boiled this so that they would have water to drink.

Eric narrated that they were only on their second week of work in the plantation when more than forty Filipino workers went into the management office to demand for their pay. Eric learned that the workers had not gotten paid during their last payday and that it was Sam who was responsible for paying them, since no contracts were signed between the workers and the plantation management. But Sam did not go to the plantation, despite management's instructions for him to go there and explain the situation to the workers and to management. The workers refused to work until Sam paid them. Eventually, the workers decided to leave the plantation altogether when it became apparent to them that there was no guarantee that they were going to get paid. Eric joined the Filipino workers and left the plantation, too. He said that on the day they left, 11 Filipino men recruited by Captain Sam and Lorna arrived at the plantation.

Eric and eight others met up with Lorna and Sam at the town center. They demanded that they get paid the amount promised to them, plus the amount they had paid to the couple for processing their documents. They also told the couple that they no longer wished to work in Sabah and would rather go home. Sam said that he himself had not been paid by the plantation owners, supposedly because of low harvest. This was when it became clear to Eric that Sam was merely a labor contractor and not part-owner of the plantations, as they had been led to believe.

Lorna promised the workers that they would get their pay, but that the workers had to work in another plantation, while their pay from the first plantation was being processed. The group went to KK and stayed there for 3 days before traveling to the other plantation in Tilopid, six hours from KK. Eric reported that the arrangements were a little better in the second plantation. They were told that ‘slashers’ were going to be paid 25RM/day, with 4 workers assigned to 1 hectare per day; while ‘harvesters’ were paid 18RM/day. The living conditions, however, were worse in this second plantation. Food was not provided by the plantation management. The workers were charged 35RM by Lorna, for provisions delivered to the workers’ quarters every week. There was also no potable water, workers merely collected and boiled rainwater. There was likewise no generator or electricity, so workers provided for their own oil lamps.

After a month in the plantation, the workers were told by management that the owner of the plantation wanted to hire them directly, but that Sam refused to let go of them. All of the workers said that they wished to be handled by the management directly. Management then asked for the workers’ passports so the process of applying for their visas could be started. Lorna, however, had stopped going to the plantation for two weeks already. The workers only communicated with Lorna and Sam by phone, and told them about the management’s offer, and that they needed their passports back. Lorna and Sam refused to release the workers’ passports. A few days later, Sam arrived at the plantation with immigrations police. The management tried to intercede for the workers but could not produce proper documentation.

Eric and the other Filipino workers were brought to the Tilopid Prison, where they were kept overnight, and then after cases – for falsification of official documents and for overstaying in Sabah – were filed against them, they were brought to the holding center for deportees in Sandakan. At Sandakan, Eric witnessed how two detainees were beaten by the guards, while some were punished by being made to sit on their heels for several hours, with the head bowed, and their hands behind their backs. Eric also reported that there were two boys who were about 7 or 8 years of age in the same cell as the adults, and that Eric and the other detainees had to take turns taking care of the kids, seeing to it that they were safe and fed properly.

With the help of Eric’s cousin who brought their case to the consul and the Taskforce on Immigration, Eric’s stay at the detention center was cut from eight months to two months and three weeks. After pursuing Lorna and Sam, Eric’s cousin was also only able to recover Eric’s and the other workers’ passports which had fake stamps on them, and the amount of PHP 3,600.

Eric said he would like to file a formal complaint against Criselda, Lorna, and Sam, but that he has no idea how to go about it. Meanwhile, he has to look for a more lucrative employment, in order to start repaying the loan he had made from his uncle.

Nardo at the Ice Plant in Malaysia

Nardo, 41 years old, had been working for a few years as a security guard at the NBI building in Clark, Pampanga when he met Lanie, who was distributing flyers advertising employment for hotel services in Malaysia. Prior to working as a security guard, Nardo had worked in construction and in a rice farm. Lanie told Nardo that he could be a room-keeper in a hotel in Malaysia, with a minimum pay of 12 thousand pesos per month. He was also told that the work would be limited to 8 hours/day, with meals and housing provided for free by the management.

Nardo paid a “processing fee” of 27 thousand pesos to Lanie’s associate, Girlie, two days after he submitted his passport, resume, and application form. He then attended a Pre-departure Orientation Seminar (PDOS) on January 15, 2009, in preparation for his scheduled departure on January 24. However, his departure date was postponed to February 4 and then again to February 23, for reasons that were unclear to Nardo. In the meantime, he lived in the house of Girlie, somewhere in the Pantranco area in Quezon City. Nardo had to help out in the chores in exchange

for being allowed to stay at Girlie's house, even though he had to provide for his own meals. Nardo said he was embarrassed to go to and just wait at his sister's home in Bulacan as he had already told his family and friends that he would be out of the country by January 24.

On February 23, Nardo together with six females recruited supposedly for similar hotel jobs in Malaysia were given their plane tickets and driven to the airport by Girlie and another associate named Del. At the airport, they were instructed by Del to go to the fifth immigrations officer – 'a woman with long hair' – as this officer held a list containing the workers' names and would let them through without any questions. Nardo said that they did as Del told them and went through immigrations smoothly. Nardo and the six girls only had one-way tickets to Kota Kinabalu.

As per Del's briefing, Nardo and his six companions were picked up at the Kota Kinabalu Airport by two Filipino women who took them to a hostel where they were to spend the night. The seven of them each paid 750 pesos to the two women for the night's stay, transport services, and meals. The following day, they were given one-way tickets for Miri, and driven to the airport. At Miri, they were met by a Chinese-Malaysian man who introduced himself as the owner of an employment agency. They were brought to this man's office, where his secretary took the workers' passports. There, they were asked how much they paid Lanie/Girlie in the Philippines, and then were made to sign promissory notes stipulating that the amount of 1,480 MR would be deducted from their wages for the first four months, supposedly for the processing of their working visas in Malaysia.

They were then brought to their temporary quarters – a room which was triple locked from the outside, within what looked like a deserted condominium building. Nardo said that there were many indications that the unit had been used before, as there were still clotheslines and a few personal items left behind. All seven of them slept in the same room, on futons lined up on the floor. They were provided noodle soup packs and eggs for their meals.

For the next seven days after arriving in Malaysia, they were brought from their quarters to the employment agency office every morning. At the office, they were made to line up in front of "guests", who would come to look them over and choose which among them were suitable for whatever job the male "guests" had in mind. Nardo said that the girls became very apprehensive as they were separated from each other. He and the girls consistently texted Lanie, but Lanie just told them to wait and not worry.

On the morning of March 2, Nardo was told to prepare his personal belongings as he was going to be brought to his new work location. Nardo was relieved, but the driver brought him to what turned out to be an ice plant. At 12 noon of that same day, he was instructed to start working. His job entailed lifting 50-kilo-heavy blocks of ice from a platform, fitting them into sacks, and loading them onto trucks. He was given no days off in a week. He lived with the other workers in the compound, where he at least had his own small room, which fitted a single futon but hardly any space around it. Meals consisting of boiled rice and a piece of fish from a sardine can were provided to workers at night. In the morning they had to take care of their own meals.

In less than a week, Nardo's hands had become swollen and full of blisters that would not heal since these were always exposed to moisture and cold. At the end of that week, he told his employer that he no longer wished to continue working, but his employer merely told him that he could only leave work when someone from the agency picks him up. He was also warned that if he runs away, he will not get paid and might be picked up by the deportation police. Nardo called his sister in Bulacan to tell her about his situation and to instruct her to go after Lanie, Girlie, and Del, or to report his situation to the authorities or the media.

It took three more weeks before the same driver from the agency came for him to bring him to the airport. Nardo was supposed to collect his pay at around this time. The driver talked to the employer while Nardo waited outside the office with his bags. Nardo said that he saw the employer signing some documents and then giving the driver some cash, which Nardo believed at first to be his pay for the whole month of work. At the airport, the driver handed Nardo a ticket for Kota Kinabalu. When Nardo asked for his pay, the driver merely said that nothing was endorsed to him.

At KK, Nardo was met by the same caretakers of the hostel where he stayed on his first night in KK. Nardo eventually learned that his sister had managed to report his case and that the Commission on Filipinos Overseas (CFO) had gotten wind of it. The CFO in turn sought the assistance of the embassy in Malaysia and of an NGO/Foundation in KK to intercede with the employer and labor broker to allow Nardo to leave the job, and to help repatriate him back to the Philippines.

Danilo, Fisherman in Sabah

Danilo (not his real name) is a 56 year-old fisherman originally from the province of Zamboanga, Philippines. He first came to Sabah 16 years ago on a boat from Tawi-tawi, and entered Sabah through the port of Sandakan. Arriving in Sabah, he did jobs, but his main occupation was fishing and he had been employed exclusively as a fisherman in the last six years. He got the job in Kota Kinabalu through a friend, also a fisherman, who facilitated his application and employment. His friend had been asked by a fishing boat operator to recruit Filipino and Indonesian fishermen for a fishing vessel in Kudat, about 2 hours from Kota Kinabalu. Selected recruits would be paid 800 to 1000 RM per month. This friend offered to help Danilo process his papers, so that Danilo could concentrate on the job and not worry about being apprehended by the immigration police. Danilo signed up and was accepted for the job.

At Kudat, onboard the fishing vessel called ODC, Danilo was told by his employer that those among them who had no passports and work permits would have to pay 450 RM per year. This amount would be deducted from their salary over the course of a year, and this would be done for every year they were employed.

Danilo's employer knew from the beginning that he had no passport, but hired him and the others anyway. The employer even assured them that there would be no need for passports, that they were safe from being inspected and apprehended by the authorities. Danilo believed what the employer said. He had worked in Sabah before without a passport or a work permit, and been able to go home to Zamboanga and return to Sabah a few times, when he had to. He could enter Sabah from the Philippine province of Tawi-tawi through the port in Sandakan without identification or travel documents.

Danilo found the work at sea to be very hard, and the isolation from his family made it almost unbearable. Danilo received very low pay and, after the deductions, he barely had enough for himself, much less for his family. He and the other fishermen were rarely allowed to get off the boat even on the rare occasions when the boat was docked. The boat operator told them that the boat was not being docked so that they would not attract too much attention from immigration authorities. Danilo found this strange, because he was made to understand that the money being deducted from his wages was supposed to go to processing the proper documentation that would protect him from being apprehended, and this would allow him to work freely and legally. He had been told at the beginning of his employment that even if they ever got caught, the employer would use the money to bail them out, and pay for fines.

In February 2009, Danilo noticed their boat's fish catch was steadily declining. Workers were paid even lower than the already small wages they had originally agreed to. At around this time, the employer decided that they should dock at Manawali, off Kudat. Danilo says that he found this decision of the employer's unusual because, prior to this, the employer had been carefully avoiding having to dock. Everybody on the boat knew that there would be inspectors at Manawali and that if they docked there, the boat risked being inspected. Danilo was not worried at first because he knew that he and the other fishermen had religiously been paying a "security" fee every month. When the boat docked at Manawali, however, police immediately boarded the boat. The police found that the workers on the boat did not have proper identification documents, and Danilo along with several others were rounded up and brought to the police station where they tried to explain their situation.

Danilo believes that their employer reported the workers' undocumented status to the immigrations police, leading to their apprehension and eventual imprisonment. The employer also did not bail them out, despite the security fees the workers had been paying through wage deductions. Danilo says that he was fortunate to have been given time to apply for a passport, and he is taking this opportunity to get one so he can continue to work in Sabah legally. Danilo is currently applying for a Philippine passport for the first time.

Ahmed, Construction Worker in Sabah, deported to the Philippines

Ahmed is a 27-year old construction worker who was deported to Zamboanga along with 260 others in March of this year. Prior to his deportation, Ahmed had been in Sabah for 20 years with his family. He had been working in various odd jobs since he was 12 years old. He had worked in 7 different construction sites, and it was his first time to be apprehended and held in a holding/detention center.

Ahmed said that he has never had a passport or an Identification Card, that he has no personal identifying documents whatsoever. He has only had 4 years of education, which he acquired when he was still in Tawi-tawi, before he and his family moved to Sabah. He related that he could only recall very vaguely what their life was in Tawi-tawi, but that they were always poor. His parents decided to move to Sabah to seek livelihood and employment opportunities 20 years ago. They have been there since. None of his family members has a passport or IC either.

Ahmed related that when he was apprehended, he was then working and living in a construction site for an apartment building, about an hour from Kota Kinabalu. It was in Kota Kinabalu where he was recruited and where he had been living with his family for several years. Ahmed said that he secured the job through B___, a fellow-Tausug Muslim known to Ahmed. B___ has been in Sabah for a long time and, unlike Ahmed, he had an Identification Card.

Ahmed, and 21 other undocumented workers, were recruited by B___ as crew for the construction project. B___ was the supervisor/foreman in the construction project and was the only one who had direct connection with the employer, a Chinese-speaking Malaysian. The employer only dealt with B___, did not have to sign any contract with the workers, and did not have to pay the workers directly. B___ recruited the workers, and was responsible for overseeing their work and giving them their pay; as well as for making sure that the job is done. Ahmed said that when B___ recruited them, no contracts were signed, and that all agreements as to pay, work and living conditions, were unwritten. They were moreover assured by B___ that workers would be safe and protected from inspections and apprehension by immigrations police, under B___'s watch.

Ahmed said that in many of the construction projects he had worked in, as in this one, workers are never asked for passports, ICs, or any official documents. He added that in other sites, where workers are required to produce official documents, undocumented workers like himself who have been in Sabah for a long time just produce fake documents which they can quickly get for 50 Malaysian Ringgit. Most of the time, however, the undocumented workers are recruited and managed by an IC-holder like B___, who acts as their broker, recruiter, and employer; and assures them that they are safe to work in the construction site, that workers are under his protection, since "protection money" has already been paid to inspectors. As such, B___ and other like him, dictates how much each worker is to receive as pay, usually deducting an amount from their pay, for their "protection".

Ahmed said that broker-recruiter-employers such as B___ earn much from these arrangements. Ahmed also said that there are a few, mostly Tausugs like himself, who really just facilitate the workers in securing jobs, who really do assist them, and not exploit them for financial gain. Ahmed said that he has worked for other IC-holders

like this before, and that he could compare the manner by which they handle workers, and by how much they pay the workers.

Ahmed recounted that when he and the 21 other workers were caught, the construction project was practically completed, and the workers were already scheduled to collect their last pay. The raid took place at two in the morning, and the supervisor, B___, was unusually nowhere in sight. The workers were sleeping in their bunks, in makeshift huts, within the construction compound. All 22 of them were caught off-guard, and although they tried to explain that they had been assured that they were under the protection of their supervisor, that they had paid to keep their jobs, the immigrations police still rounded them up and took them to the holding center in Sandakan.

While in the holding center, Ahmed and his co-workers were able to make phone calls to their supervisor and their employer, pleading to be bailed out, even with their own wages, which they were still supposed to collect. The supervisor, however, said that it turned out that it would cost too much to pay for each of them, and that the money they worked for was not enough to cover for this transaction. Eventually, after several more attempts, Ahmed and his co-workers were no longer able to contact their supervisor or employer. They also forfeited their pay to their supervisor.

Ahmed said that, because of their apprehension and detention, the supervisor earned a lot of money. Ahmed reported that, on the average, each of the 22 workers were due to collect 400 RM, all of which would have gone to the supervisor already.

Ahmed ended up being detained at the holding center for six months, unable to contact his family. He recounted that the conditions there were very difficult, that people constantly became ill, were sometimes subjected to harsh disciplinary measures. He said that although he was relieved about being able to leave the detention center, being deported to the Philippines, he was worried about being away from his family. He said that he did not know how he would be able to rejoin his family, that he had no means of securing a passport without any personal document or any money. He also said that, if someone would offer to facilitate his return to Sabah at the soonest possible time, without any need for passports, he would take the offer.

Ahmed said that he met someone in the boat who knew another person who could arrange for a return trip to Sabah, and get them jobs there, without any need for passports, and that Ahmed could borrow money from this person in the meantime, and start paying as soon as Ahmed starts his job in Sabah. Ahmed said that if the processing of his passport will take too long, he would surely take this man's offer, so that he would be able to return to his family in Sabah already.

APPENDIX D: LEGAL AND REGULATORY ENVIRONMENT (SENDING AND RECEIVING LOCALES)

The Philippines

The main piece of legislation that governs the recruitment, placement, and protection of Philippine workers seeking jobs abroad is the Republic Act No. 8042 (1995) (*herein* Migrant Workers Act) and it will be the main reference for this section on legal and regulatory environment. The Migrant Workers Act has largely superseded the Philippine Labor Code, as amended, on matters involving overseas employment so the latter will be referenced only when applicable. Administrative issuances, like the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (*herein* Migrant Workers IRR) and POEA Rules and Regulations Governing the Recruitment and Placement of Landbased Overseas Workers (2002) (*herein* POEA Rules) will be cited and discussed when relevant.

Regulating Private Employment Agencies

A private employment agency (PrEA) refers to any person, partnership or corporation licensed by the Secretary of Labor and Employment to engage in the recruitment and placement of workers for overseas employment for a fee, which is charged, directly or indirectly, from the workers, employers or both (Sec. 2, (I), Migrant Workers IRR). Recruitment and placement is defined under the Labor Code as any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not, provided that, any person or entity which in any manner offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement (Art. 13). A principal, on the other hand, refers to a foreign person, partnership or corporation hiring Philippine workers through a licensed agency (Rule II, no. 21, POEA Rules).

Currently, the ban on direct hiring is still in place. Under Article 18 of the Labor Code, it states that, “no employer may hire a Philippine worker for overseas employment except through Boards and entities authorized by the Secretary of Labor.” Only direct hiring by members of the diplomatic corps, international organizations and such other employers are exempted from the ban. Therefore, foreign principals desiring of hiring Philippine workers for overseas employment have to facilitate such hiring through private employment agencies licensed by the POEA for recruitment and placement. This ban against direct hiring is conspicuously absent from the Migrant Workers Act; however, absent a repealing provision, the ban still stands.

Strictly speaking, the direct hiring program instituted by the Philippine government with other governments -- for instance with Taiwan – actually circumvents the standing ban on direct hiring by focusing on re-hires initially and by categorizing workers as “name hires”. Essentially, the government-to-government direct hiring program contravenes the policy against direct hiring of migrant workers.

Qualifying and licensing requirements

Under the POEA Rules (Section 1, Rule, Part II), only those who possess the following qualifications may be permitted to engage in the business of recruitment and placement of Philippine workers:

1. Philippine citizens, partnerships or corporations at least seventy five percent (75%) of the authorized capital stock of which is owned and controlled by Philippine citizens. This means that foreign placement agencies are not allowed to operate in the Philippines.
 - g. A minimum capitalization of Two Million Pesos (P2,000,000.00) in case of a single proprietorship or partnership and a minimum paid-up capital of Two Million Pesos (P2,000,000.00) in case of a corporation; Provided that those with existing licenses shall, within four years from effectivity hereof, increase their capitalization or paid up capital, as the case may be, to Two Million Pesos (P2,000,000.00) at the rate of Two Hundred Fifty Thousand Pesos (P250,000.00) every year.
 - h. Those not otherwise disqualified by law or other government regulations to engage in the recruitment and placement of workers for overseas employment.

Every applicant for license to operate a private employment agency is required to submit a written application together with the following documentary requirements (Section 1, Rule II, Part II, POEA Rules):

1. A certified copy of the Articles of Incorporation or of Partnership duly registered with the Securities and Exchange Commission (SEC), in the case of corporation or partnership or Certificate of Registration of the firm or business name with the Department of Trade and Industry (DTI), in the case of a single proprietorship;
2. Proof of financial capacity: In the case of a single proprietorship or partnership, verified income tax returns of the proprietors or partners for the past two (2) years and a savings account certificate showing a

maintaining balance of not less than P500,000.00, provided that the applicant should submit an authority to examine such bank deposit.

3. In the case of a newly organized corporation, savings account certificate showing a maintaining balance of not less than P500,000.00 with authority to examine the same. For an existing corporation, submission of a verified financial statement, corporate tax returns for the past two (2) years and savings account certificate showing a maintaining balance of not less than P500,000.00 with the corresponding authority to examine such deposit.
4. Proof of marketing capability
 - a. A duly executed Special Power of Attorney and/or a duly concluded Recruitment/Service Agreement;
 - b. Manpower request(s) or visa certification from new employer(s)/principal(s) for not less than one hundred (100) workers; and
 - c. Certification from Pre-Employment Services Office of POEA on the existence of new market.
5. Clearance of all members of the Board of Directors, partner, or proprietor of the applicant agency from the National Bureau of Investigation (NBI) and other government agencies as may be required; appropriate clearance in case of persons with criminal cases; provided that where the member or partner concerned is a foreigner, clearance from his country of origin shall be required.
6. A verified undertaking stating that the applicant:
 - a. Shall select only medically and technically qualified recruits;
 - b. Shall assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of the license;
 - c. Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations;
 - d. Shall guarantee compliance with the existing labor and social legislations of the Philippines and of the country of employment of the recruited workers;
 - e. Shall assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement;
 - f. Shall negotiate for the best terms and conditions of employment;
 - g. Shall disclose the full terms and conditions of employment to the applicant workers;
 - h. Shall deploy at least 100 workers to its new markets within one (1) year from the issuance of its license;
 - i. Shall provide orientation on recruitment procedures, terms and conditions and other relevant information to its workers and provide facilities therefore; and
 - j. Shall repatriate the deployed workers and his personal belongings when the need arises.

For the purpose of compliance with item (1), the agency may require the worker to undergo trade testing and medical examination only after the worker has been pre-qualified for employment.

7. In case of corporation or partnership, verified undertaking by its officers, directors, partners that they will be jointly and severally liable with the company over claims arising from employer-employee relationship.
8. Individual income tax return of the proprietor, partners, stockholders/incorporators, as the case may be, for the past two (2) years.
7. Proof of possession by the sole proprietor, partner or chief executive officer, as the case may be, of a bachelor's degree and three years business experience.
8. List of all officials and personnel involved in the recruitment and placement, together with their appointment, bio-data and two (2) copies of their passport-size pictures as well as their clearances from the National Bureau of Investigation and the Anti-illegal Recruitment Branch of the Administration.
9. Copy of contract of lease or proof of building ownership, indicating the office address, providing for an office space of at least one hundred (100) square meters.

10. Proof of publication of notice of the application with the names of the proprietor, partners, incorporators and officers.
11. Certificate of attendance of owner and/or chief executive officer in a pre-application seminar conducted by the Administration.

Upon approval of the application, the PrEA is required to pay (a) a license fee of P50,000.00, (b) escrow agreement in the amount of 1 million pesos and (c) a surety bond of P100,000.00 from a bonding company acceptable to the POEA and accredited with the Insurance Commission. The bonds and escrow are supposed to answer for all valid and legal claims arising from violations of the conditions of the grant and use of the license and/or accreditation and contracts of employment. They also act as guarantee to compliance with the laws and regulations relating to recruitment and placement.

Terms of the license

Applicants for new license shall be issued a provisional license valid for a limited period of one (1) year within which the applicant should be able to comply with its undertaking to deploy 100 workers to its new principal. The license of a complying agency will be upgraded to a full license which will entitle them to the full validity period of four (4) years from the date of issuance unless sooner canceled, revoked or suspended for violation of applicable Philippine law, POEA rules and other pertinent issuances. The license is valid only at the place/s stated and when used by the licensed person, partnership or corporation. Under Section 15, Rule II, Part II of the POEA Rules, no licensed agency shall conduct any provincial recruitment, job fair or recruitment activities of any form outside of the address stated in the license or approved additional office(s) without first securing prior authority from the POEA.

Administrative Sanctions

The POEA rules do not explicitly state the grounds for the revocation of the license. Instead, it enumerates the grounds for the imposition of administrative sanctions, which are classified into serious, less serious and light, depending on the gravity of the administrative offense. Serious offenses carry with them the penalty of cancellation of license even when they are only first offenses. Less serious offenses may be penalized either by suspension or cancellation of license, depending on the gravity and the number of times the offenses were committed. For these kinds of offenses, the 1st and 2nd offenses will be penalized by suspension of license. For the 1st offense, the suspension is usually 2-6 months, while for the 2nd offense the suspension will be from 6 months and 1 day to 1 year. Third offenses carry with them the penalty of cancellation of license. The classification of offenses and schedule of penalties are shown pictorially below.

The POEA has original and exclusive jurisdiction to hear and decide all cases which are administrative in character, involving or arising out of violations of recruitment rules and regulations including refund of fees collected from workers and violations of the conditions for issuance of license to recruit workers. Any aggrieved person may file a complaint in writing and under oath. Any complaint arising out of recruitment violation or violation of condition of license may be filed with the POEA Adjudication Office or the POEA Regional Centers/ Extension Units exercising territorial jurisdiction over the place where the complainant was recruited at the option of the complainant. The Office with which the complaint was first filed shall take cognizance of the case.

However, the POEA on its own initiative may conduct proceedings based on reports of violation of POEA rules and regulations and other issuances on overseas employment subject to preliminary evaluation. The decision of the POEA on administrative cases is appealable to the Secretary of Labor and Employment, which shall have exclusive jurisdiction to act on appeal or petitions for review. It is difficult to give even a general statement about the effectiveness of the procedure in deterring violators or spurious recruiters because:

- ⇒ Statistics are hard to come by so there are no baselines that can be used to compare whether the sanctions effectively deter recruiters from committing any offense, in a given period of time.

- ⇒ There is mandatory amicable settlement under the POEA procedure so if the complainant agrees to settle the case then the POEA may not even order cancellation of the agency’s license and allow the agency to continue operating. Note that the procedure does not distinguish what kind of cases can be amicably settled.
- ⇒ The more egregious and more commonly committed offenses like contract substitution or withholding of worker’s salaries or remittances, are not considered as serious enough to warrant immediate cancellation of license.
- ⇒ Recruitment agencies, whose licenses were cancelled, can just open anew under another name.

Classification of Offenses and Schedule of Penalties

SERIOUS OFFENSES

Single commission of any of the following acts is penalized by cancellation of license.

| GROUND | PENALTY: CANCELLATION |
|---|------------------------------|
| Deploying underage workers | |
| Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents | |
| Engaging in the recruitment or placement of workers in jobs harmful to public health or morality or to dignity of the country | |
| Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment | |
| Charging or collecting placement fee for deployment to countries where the prevailing system, either by law, policy or practice do not allow the charging or collection of placement and recruitment fees. This provision has an accessory penalty of refunding the placement fee charged or collected from the worker. | |
| Charging or accepting directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment or making a worker pay any amount greater than that actually received by him as a loan or advance. This also includes the order to refund the placement fee or excessive amount charged or collected from the worker. | |

| Less serious offenses | | | |
|---|--|--|---|
| | Cancellation (3rd offense) | Suspension (6 months, 1 day to 1 year) (2nd offense) | Suspension (2-6 months) (1st offense) |
| 1. Charging, imposing or accepting directly or indirectly any amount of money, goods or services or any fee or bond for any purpose whatsoever before employment is obtained for an applicant worker. The penalty shall carry an accessory penalty of refund of the fee charged or collected from the worker in case of non-deployment. | | | |
| 2. Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made | | | |
| 3. Engaging in acts of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment | | | |
| 4. Obstructing or attempting to obstruct inspection by the Secretary, the Administrator or their duly authorized representatives | | | |
| 5. Substituting or altering to the prejudice of the worker, employment contracts approved and verified by the Department from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department | | | |
| 6. Withholding or denying travel or other pertinent documents from workers for reasons other than those authorized under existing laws and regulations. | | | |
| 7. Engaging in recruitment activities in places other than that specified in the license without previous authorization from the Administration | | | |
| 8. Appointing or designating agents, representatives or employees without prior approval from the Administration | | | |
| 9. Falsifying or altering travel documents of applicant worker in relation to recruitment activities | | | |
| 10. Deploying workers whose employment and travel documents were not processed by the Administration or those agencies authorized by it | | | |
| 11. Deploying workers to principals not accredited/registered by the Administration | | | |
| 12. Withholding of workers' salaries or remittances without justifiable reasons or shortchanging of remittances. The penalty shall carry the accessory penalty of immediate release of the salaries or remittances being claimed | | | |
| 13. Allowing persons who are otherwise disqualified to participate in the overseas employment program under existing laws, rules and regulations to participate in the management and operation of the agency | | | |

| | | | |
|---|--|--|--|
| 14. Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, where deployment does not take place without the worker's fault. The penalty shall carry the accessory penalty of immediate refund of expenses incurred by the worker. | | | |
| 15. Failure to comply with the undertaking to provide pre-departure orientation seminars to workers | | | |
| 16. Non-compliance with any other undertaking in connection with the issuance or renewal of the license | | | |

Recruitment and Selection

The advertisement of job vacancies is governed by Rule VII, Part II of the POEA rules. It states that, licensed agencies may advertise for actual job vacancies without prior approval from the Administration if covered by manpower requests of registered/accredited foreign principals and projects. The advertisements shall indicate the following information:

- a. Name, address and POEA license number of the agency;
- b. Work site of prospective principal/project;
- c. Skill categories and qualification standards; and
- d. Number of available positions

Foreign principals/employers who wish to advertise overseas job vacancies may only do so through a POEA-licensed agency or through the POEA. Here, it becomes apparent that the job opening is generally attached to an agency or otherwise to the POEA, therefore the potential migrant worker does not really have any choice of brokers or private employment agency if the priority is to get into a specific job, company or job site.

According to POEA rules and regulations, recruitment documents of foreign principals, employers and projects shall undergo verification and accreditation at the work site prior to registration with POEA for all types of hiring arrangements (private recruitment agencies and the Government Placement Branch of the POEA). The Philippine Overseas Labor Office (POLO) nearest the worksite shall review and verify the recruitment documents, including the master employment contract with the view to establish the existence of the employing person, company or project, its capability to hire workers at the applicable rates and at desirable working conditions that are in conformity with the minimum standards prescribed by the POEA and/or with the labor laws and legislations of the host country.

The following agreements and contracts are subject to POLO verification:

- ⇒ Special Power of Attorney – issued by the principal or employer to the licensed Philippine agency, or recruitment agreement or service agreement;
- ⇒ Master employment contract – which incorporates, among others, the minimum provisions of employment contracts of land based workers.

Applicants may be referred for skills tests and medical examination, to a TESDA⁴⁹-accredited skills-testing center and a DOH⁵⁰-accredited medical clinic, respectively, only after the agency and/or its foreign principal or employer has interviewed the worker and pre-qualified him or her for an existing overseas position duly covered by an approved job order by the POEA. The PrEA shall ensure that the test shall only be for the skill category that the worker has applied for. Likewise, the PrEA shall ensure that the medical examination shall be conducted in accordance with the requirements of the employer.

The POEA rules on fees allow private employment agencies to charge their principals a service fee to cover services rendered in the recruitment, documentation and placement of workers. The **principal** is generally responsible for the payment of the following: (a) visa fee, (b) airfare, (c) POEA processing fee and (d) OWWA⁵¹ membership fee. The POEA rules likewise states that, “except when the prevailing system in the country where worker is to be deployed, either by law, policy of practice, do not allow the charging or collection of placement and recruitment fee, a licensed recruitment agency may charge and collect from its hired migrant worker a placement fee in the amount of one month salary, exclusive of documentation costs” (Rule V, Part II).

Documentation costs to be paid by the Philippine migrant worker shall include, but not limited to expenses for passport, NBI/Police/Barangay clearance, authentication, birth certificate, Medicare, trade test (if necessary), inoculation (when required by receiving country) and medical examination fees. The rule also states that, in the event that the recruitment agency agrees to perform documentation services, the worker shall pay only the actual cost of the document which shall be covered by official receipts. The above-mentioned placement and documentation costs are the only authorized payments that may be collected from a hired worker. No other charges in whatever form, manner or purpose, shall be imposed on and be paid by the worker without prior approval of the POEA. Such fees should be collected from a hired worker only after he has obtained employment through the facilities of the recruitment agency.

The Migrant Workers Act, under section 9, classifies as illegal recruitment the act of (a) charging or accepting directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment or (b) making the worker pay the recruiter or its agents any amount greater than that actually loaned or advanced to him or (c) furnishing or publishing any false notice or information or document in relation to recruitment or employment, when committed by any person whether or not a holder of a license or authority. Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than 6 years and 1 day but not more than 12 years and a fine of P200,000.00 to P500,000.00.

Grounds (A) and (B) above may be instituted with the administrative case for the cancellation of license under the POEA rules (*see* Rule IV, Part VI). There are no express legal safeguards against other types of overcharging by PrEAs but the collection of any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made may be the cause of action for an administrative sanction that may result in the suspension or cancellation of license.

Placement and Pre-departure Measures

Before the job order is approved, the POEA through its Philippine Overseas Labor Office will verify the recruitment documents submitted by the foreign principals or employers. One such documentary requirement is the master employment contract which is defined as the model employment agreement submitted by the foreign principal for verification and approval which contains the terms and conditions of employment of each worker hired by the principal. It incorporates, among others, the minimum provisions of employment contracts of land-based workers, as follows:

- ⇒ Guaranteed wages for regular work hours and overtime pay, which shall not be lower than the prescribed minimum wage in the host country or not lower than the appropriate minimum wage standards set forth in a bilateral agreement or international convention, if applicable, or not lower than the minimum wage in the country, whichever is highest;
- ⇒ Free transportation to and from the worksite, or offsetting benefit;
- ⇒ Free food and accommodation, or offsetting benefit;
- ⇒ Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, mores, practices, company policies and the labor laws and social legislations of the host country;

The 2009 revised sample contract for various skills is attached.

Memorandum Circular No. 7, dated 22 June 2009, amended the grounds for just causes for termination by the employer to include the following:

- ⇒ Serious misconduct
- ⇒ Willful disobedience of employer's lawful orders
- ⇒ Habitual neglect of duties
- ⇒ Absenteeism
- ⇒ Insubordination
- ⇒ Revealing secrets of establishment
- ⇒ Employee violation of customs, traditions and laws of country of employment
- ⇒ Employee violation of contract or agreement

In the preceding just or authorized causes for termination, the worker will have to shoulder the cost of his/her repatriation.

The rules are not clear whether the POEA is required to validate and approve each and every employment contract. It can be assumed that since the only requirement from the foreign principal or employer is the submission of the master employment contract for POLO verification and approval, the POEA will only cross-check the name of the employer with the list of approved job orders and will not bother with checking every signed employment contract prior to the worker's deployment. To be sure, it leaves a lot of room for contract substitution, which is a prevalent problem faced by migrant workers.

Contract substitution is committed when a private recruitment agency or the foreign principal substitutes the POEA approved employment contract with another agreement, or makes alterations in the employment contract which contains provisions below the minimum provisions required by the POEA. It should be noted that Philippine courts consider any contract that are below the standard as invalid. The POEA however allows contract substitution if the succeeding contract contains provisions that are more favorable to the migrant worker. Contract substitution is classified as an act of illegal recruitment, when done even by a licensed PrEA and therefore considered a criminal offense. An administrative case for the suspension or cancellation of license may also be instituted at the same time.

The problem here, however, is that the redress for this kind of violation and all other claims arising from the workers' employment will have to be prosecuted in the Philippines. It simply means that the migrant worker will have to wait until s/he returns (or repatriated) before s/he can prosecute civilly or administratively. By that time, the worker would have either stayed to serve under an unjust/invalid contractual arrangement or pre-terminate the contract, which means repatriating him/herself at his/her own cost.

The full disclosure policy, whereby all parties to contract declare the real terms and conditions of all aspects of the workers' employment, is often not implemented because disclosing the real terms of the contract might in fact discourage potential migrant workers. There are no sanctions imposed on recruitment and placement agencies violating the policy. Further, the pre-departure orientation seminar, that is intended to give the workers the chance to be informed of the employment situation and living conditions in their countries of destination, is inadequate, outdated and irrelevant. The PDOS often follows a general module that often features countries that may or may not be the destination of the attendees. Although the PDOS should be provided by the recruiting agency, it is often the migrant worker who pays the related expenses, including a fee, accommodation and transportation costs. It is imperative that a sample PDOS curriculum or module is obtained for examination. There is no clear sanction for failure to provide PDOS.

On-site Protection/Welfare and Support Services

Under Section 51 of the Migrant Workers IRR, the Welfare Officer, or in his absence the Center Coordinator of the Filipino Resource Center, shall make representations with the employer principal and/or agency as the case may be through conciliation meetings or conferences for the purpose of enforcing contractual obligations concerning migrant workers, which may be on behalf of or against the migrant worker. But in case of contractual breach or violation committed against the worker, it is the National Labor Relations Commission (NLRC) in the Philippines has original and exclusive jurisdiction to hear and decide all claims arising out of employer-employee relationship or by virtue of any law or contract involving Philippine workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. The principal and the recruitment placement agency are jointly and solidarily liable for any and all claims arising from contractual and labor violations. This liability should be incorporated in the contract for overseas employment and is a condition precedent for its approval. The performance bond to be filed by the private recruitment agency is answerable for all money claims or damages that may be awarded to the workers.

The liabilities continue during the entire period or duration of the employment contract and they will not be affected by any substitution, amendment or modification made locally or in a foreign country of said contract. The money claims may be the subject of compromise, amicable settlement or voluntary agreement on money claims inclusive of damages and it should be settled within four (4) months from the approval of the settlement by the appropriate authority, herein, the POEA.

In case of a contractual violation or money claims, the complainant or petitioner files a verified complaint with the National Labor Relations Commission. The name of the respondent, or the party being charged of the violation or against whom money claims are being made, should be clearly specified in the complaint. Within two (2) days from receipt of the assigned case, the Labor Arbiter will issue summons to the parties for a conference for the purpose of amicably settling the case. Should the parties arrive at any amicable agreement as to the whole or any part of the dispute, the agreement shall be reduced to writing and signed by the parties and their respective counsels, if any, before the Labor Arbiter. The settlement will be approved by the Labor Arbiter after being satisfied that it was voluntarily entered into by the parties and after having explained to them the terms and consequences thereof. A compromise agreement duly entered in accordance with the rules will be binding upon the parties and the Order approving it shall have the effect of a judgment rendered by the Labor Arbiter.

If no settlement is arrived at, the Labor Arbiter will order the submission of position papers or memorandum, which should be verified, and should cover only those claims and causes of action raised in the complaint with supporting documents, including affidavits of the parties' respective witnesses. Thereafter, the Labor Arbiter may decide *motu proprio* whether to conduct a formal hearing or trial. Within 90 days from acquiring jurisdiction over the case, the Labor Arbiter should render his/her decision, which should include a brief statement of the facts of the case, issue/s involved, applicable law or rules, conclusions and reasons therefore and specific remedy or relief granted. In cases involving money awards, the decision or order of the Labor Arbiter should contain the amount awarded. It should be noted that the proceedings before the Labor Arbiter should be non-litigious in nature. The Labor Arbiter may avail of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons.

The decision of the Labor Arbiter may be appealed to the National Labor Relations Commission within 10 days from receipt of the decision, order or judgment. The case will be heard by a Division of the NLRC, which is composed of 3 members. The following are the grounds for appeal:

- ⇒ If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter, regional director or duly authorized hearing officer or administrator of the POEA.
- ⇒ If the decision, order or award was secured through fraud or coercion, including graft and corruption.
- ⇒ If made purely on questions of law
- ⇒ If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

A grave cause of concern is the fact that contractual breaches may only be prosecuted after the worker has returned to the Philippines. As mentioned earlier, it would mean that the worker would have either stayed to serve under an unjust/invalid contractual arrangement or pre-terminate the contract, which means repatriating him/herself at his/her own cost. Also, the tediousness and technicality of the procedure more often result in discouraging the worker from pursuing the case. For instance, although workers may appear before the Labor Arbiter without the benefit of counsel, it is actually very difficult for the worker to prepare the position paper or memorandum on his/her own because of the unfamiliar legal language adopted in the procedure. If the cause of action for the breach is non-payment or underpayment of wages, where will the worker get the money to engage the services of counsel? Although the mechanism for redress for contractual breach is available, it does not necessarily translate to effective and just relief. The worker would have suffered numerous violations before s/he can even get home to file the case.

On-site Welfare and Support Services

Currently, the Philippines has 88 embassies, consulates and other Philippine missions, 3 offices of Manila Economic and Cultural Office in Taiwan, 37 Philippine Overseas Labor Offices (POLOs) and 20 Filipino Workers Resource Centers (FWRCs) and they are the primary institutional mechanisms overseas to carry out the policy to protect the rights of the Philippine migrant workers and the promotion of their welfare abroad. These overseas posts and personnel attend to the welfare and consular needs of overseas Filipinos and migrant workers. They receive complaints, facilitate, intervene and represent overseas Filipinos in distress⁵² in the resolution of their cases.

Philippine Overseas Labor Office (POLO) – overseas offices manned by officials from the Department of Labor and Employment (DOLE) tasked to promote deployment of Philippine migrant workers, verify job order request in respective territories and provide assistance to migrant workers in distress

Overseas Worker’s Welfare Administration (OWWA) – an agency likewise attached to the DOLE responsible for protecting the interest and promoting the well-being of Philippine migrant workers, and their families and dependents by providing social welfare services including insurance coverage, legal assistance, placement assistance and remittance services.

Department of Foreign Affairs (DFA) – through its home or foreign posts shall take priority action or make representation with foreign authorities concerned to protect the rights of Philippine migrant workers and other overseas Filipinos. The DFA is likewise mandated to extend immediate assistance including repatriation of distressed or beleaguered Philippine migrant workers and other overseas Filipinos.

Office of Legal Assistant for Migrant Workers (OLAMWA) – an agency attached to the DFA primarily responsible for the provision of an overall coordination of legal assistance services to Philippine migrant workers as well as overseas Filipinos in distress.

Filipino Workers Resource Center (FWRC) – is established in countries where there are at least 20,000 migrant workers. It should provide the following services:

- ⇒ Counseling and legal assistance
- ⇒ Welfare assistance including the procurement of medical and hospitalization services
- ⇒ Information, advisory and programs to promote social integration such as post-arrival orientation, settlement and community networking services and activities for social interaction
- ⇒ Registration of undocumented workers to bring them within the purview of the law
- ⇒ Implementation of the voluntary membership program of OWWA
- ⇒ Human resource development, such as training and skills upgrading
- ⇒ Gender-sensitive programs and activities to assist particular needs of migrant workers
- ⇒ Orientation program for returning workers and other migrants
- ⇒ Monitoring of daily situations, circumstances and activities affecting migrant workers and other overseas Filipinos
- ⇒ Seeing to it that labor and social welfare laws in the host country are fairly applied to migrant workers and other overseas Filipinos, and
- ⇒ Conciliation of disputes arising from employer-employee relationship

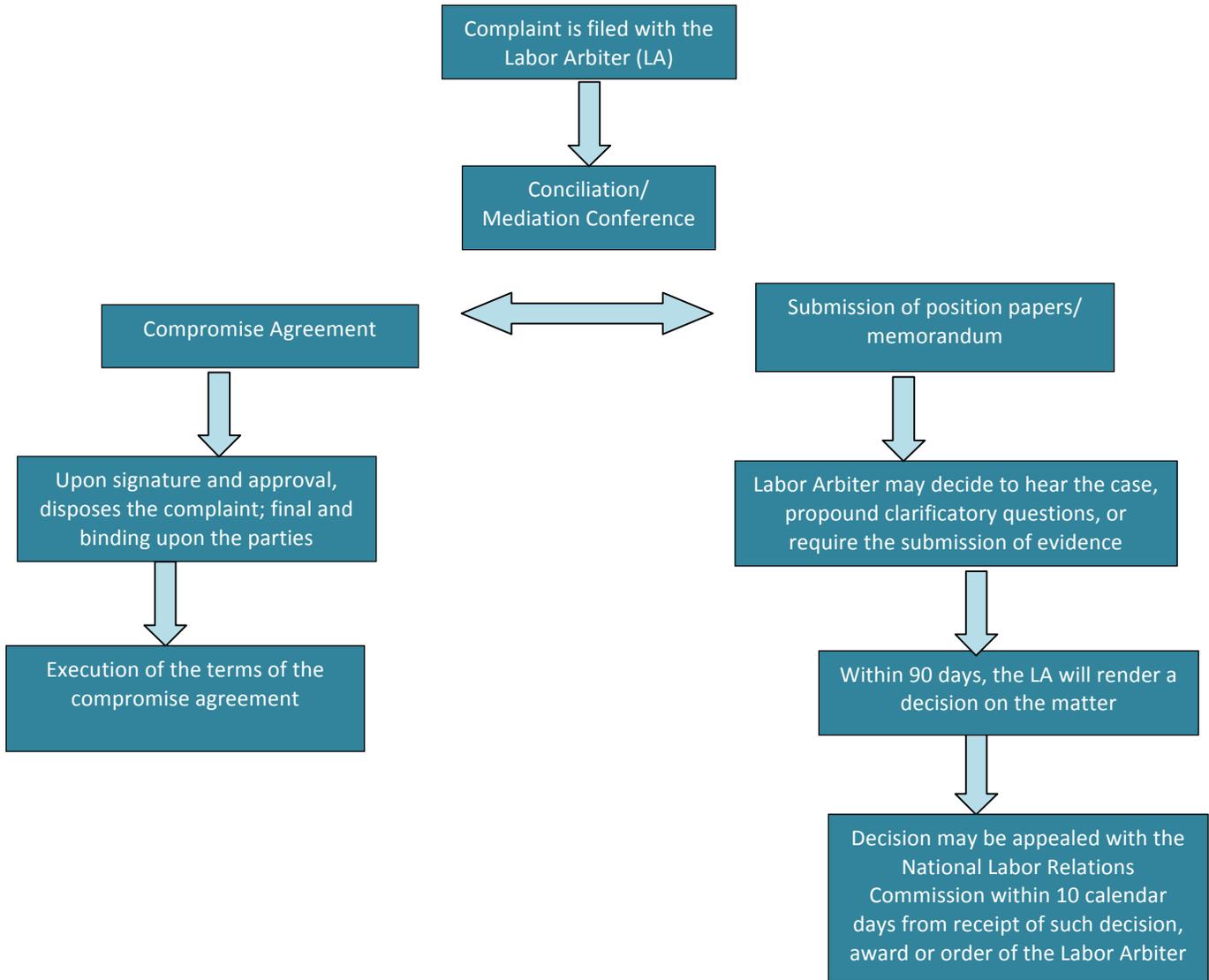
Although the mechanism to provide for welfare and support services to Philippine migrant workers is in place, numerous NGOs argue that,

“The efficient, prompt and adequate delivery of quality on-site service to workers overseas, particularly to those in distress, is severely hampered by the acute lack of embassy personnel. In 2006, there was only one ratio of a POLO/OWWA staff for every 5,712 OFWs in one location, but it was worst in some destination countries where the ratio of POLO/OWWA staff was one for every personnel to OFW ranges 1:5,712 to 1:100,000 OFWs in terms of welfare cases, the number attended by each POLO/OWWA. Conversely, the ratio of POLO/OWWA personnel ranged from a low of to welfare cases is 1:84 to 1: to a high of 6,52486 The lack absence of a standard ratio on the number of POLO-OWWA personnel to per OFWs certainly affects the quality of service to the OFWs.” (*Philippine Migrant Rights Groups’ Written Replies to the List of Issues Relating to the Consideration of the Initial Report of the Philippines to the UN Migrant Workers Committee 2009*, 41)

Repatriation of Workers

Under Section 52 of the Migrant Workers IRR, the repatriation of the worker and the transport of his/her personal effects and belongings is the primary responsibility of the principal or agency which recruited or deployed the worker abroad. All costs attendant thereto should be borne by the principal or the PrEA concerned. This primary responsibility to repatriate entails the obligation on the part of the principal or PrEA to advance the cost of plane fare and to immediately repatriate the worker should the need for it arise, without a prior determination of the cause of the termination of the worker’s employment (Section 53, Migrant Workers IRR). However, after the worker has returned to the country, the principal or agency may recover the cost of repatriation from the worker if the termination of employment was due solely to his/her fault. This responsibility to repatriate should be provided in every contract for overseas employment.

Procedure before the NLRC



Taiwan

The importation of foreign labor to Taiwan started in 1989 “in order to meet the demands of planned construction projects” (Loveband 2003, 2). At that time, labor relations and standards were governed by Labor Standards Law of 1984, which did not extend labor protection to migrant workers. With the continued increase in the number of guest workers in Taiwan, the **Employment Services Law (ESL)** was enacted in May 1992 in order to legalize the engagement of foreign workers. The guest labor system requires employers to hire foreign workers through labor brokers or private employment services agencies, intended for the following sectors: manufacturing, construction, shipping, domestic work and care-giving.

Article 2, ESL defines the employer as the person/s that assign/s or employ/s employees to engage in work. A private employment services agency is an agency established by private individual/s or non-governmental organization/s to provide employment services to the employer. The law has a non-discrimination clause that states, “the employer is prohibited from discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability or past membership in any labor union.

In recruiting or employing foreign workers, the employer is prohibited from engaging in any of the following acts:

- ⇒ Making false advertising or disclosure
- ⇒ Withholding any job applicant or employee’s identification card, work certificate or any other certifying document against his/her free will
- ⇒ Withholding job applicant’s belongings or collecting bond from job applicant or employee
- ⇒ Assigning any job applicant or employee to engage in any work that is in violation of the public orders or decent morals
- ⇒ Submitting false information or fake health examination sample when applying for permit to employ foreign workers or dealing with recruitment, import or management thereof (Article 5, ESL)

Under Article 65, ESL, anyone that commits discriminatory acts against the job applicant or employee or an employer who commits the acts in Subparagraphs 1, 4 or 5 or Paragraph 2 of Article 5, shall be fined therefore an amount of at least three hundred thousand New Taiwan Dollars (TWD 300,000) and at most one million and five hundred thousand New Taiwan Dollars (TWD 1,500,000).

The Central Competent Authority – which refers to the Council of Labor Affairs of the Executive Yuan in the central level – is in charge of, among others, the issuance to applicant employer of permit to employ foreign worker and administration of such employment and the issuance, suspension and termination of permit of private employment services agency that engages in the following agency businesses:

- ⇒ Introducing foreign workers to work within the territory of the Republic of China
- ⇒ Introducing Hong Kong, Macau or Mainland China residents to work in the region of Taiwan or
- ⇒ Introducing nationals to work outside the region of Taiwan

Employers engaging foreign workers into manufacturing, shipping, construction and domestic work are required to pay employment security fees into the specific account for the Employment Security Fund. The Fund is to be utilized for the purposes of processing matters regarding promotion of employment of nationals, enhancement of labor welfare, and handling the employment and administration of foreign workers.

Regulating Private Employment Agencies

Article 34 of the ESL prohibits private employment services agencies (PrEAs) from engaging in employment services businesses without having obtained an operation permit. PrEAs are allowed to engage in the following employment services:

- ⇒ Job placement or human resources agency business
- ⇒ Being entrusted to recruit employees
- ⇒ Employment counseling or psychological tests provided in order to assist nationals with the determination of their career development plans
- ⇒ Other employment services business as may be specified by the Central Competent Authority

PrEAs or brokers are:

- ⇒ Consigned by employers to carry on matters relating to recruitment, bringing-in, resumptive hiring of foreign person employment, as well as application for recruitment certificate, recruitment permission, employment permission, extension of employment permission, replacement, transfer of employer, transfer of job, alteration of employment permission, giving notice when a foreign person has been continuously absent from work without leave for three days and has lost contact.
- ⇒ Consigned by employers to carry on matters for a foreign person working in the Republic of China his/her living management, entry and departure arrangement, medical examination arrangement and the results of medical examination reported to the health competent authorities, counseling, consultation, and translation (Article 3, Regulations on the Permission and Administration of PrEAs [herein PrEA Regulations]).

PrEAs are allowed to collect fees incurred in job placement or human resource agency business but only after the date of employment contract validity (Art. 4, PrEAs Regulations). Any fee that will be collected should be covered by receipts.

The Central Competent Authority is tasked to promulgate the items and amounts of the relevant fees to be charged. In 2009, the legal ceiling for placement fees is TWD28,000.00⁵³. Article 40 enumerates a long list of prohibited acts as regards the processing of employment services business. PrEAs are not allowed to engage in any of the following acts:

- ⇒ Processing agency businesses without having a written contract executed with Employer or Job Applicant in accordance with the applicable laws and regulations;
- ⇒ Making false advertisement(s) or disclosure or violating the specifications as referred to in Paragraph 1 of Article 5 in advertisement(s) or disclosure;
- ⇒ Withholding any Job Applicant's National Identification Card, Work Certificate, or any other certifying document against his/her free will;
- ⇒ Withholding Job Applicant's belongings or collecting bond for job referral services from Job Applicant;
- ⇒ Demanding, agreeing to be paid at a later stage, or accepting fees beyond the prescribed standard or any other unjust interest;
- ⇒ Offering to deliver, agreeing to deliver at a later stage, or delivering unjust interest;
- ⇒ Referring Job Applicant to engage in work that is in violation of public orders or descent morals;
- ⇒ Submitting false information or fake health examination sample(s) when entrusted by Employer in applying for Permit(s) to employ Foreign Worker(s), or dealing with recruitment, introducing, or management of Foreign Worker(s);
- ⇒ Committing threat, fraud, embezzlement, or betrayal when processing Employment Services businesses;
- ⇒ Withholding Employer's authorization document(s) or any other relevant document against his/her free will;

- ⇒ Filling in reporting form(s) as prescribed by Competent Authorities in a manner that is inconsistent with the applicable laws and regulations or filling the same with false information;
- ⇒ Failing to process the registration of alteration regarding business organization, the notice of business suspension, or the application for renewal or re-issuance of certificate(s) in accordance with the applicable laws and regulations;
- ⇒ Failing to disclose the Operation Permit for Private Employment Services Agency, items and table of fees to be charged, or certificate(s) for Professional Employment Services Staff in accordance with the applicable laws and regulations;
- ⇒ Resuming its businesses prior to the expiration of the period in which its Operation Permit was suspended by the Competent Authority(s); or
- ⇒ Failing to exercise due diligence in respect of the entrusted matter(s) when processing Employment Services businesses so as to cause the entrusting Employer to violate the present Act or any Regulation as promulgated in accordance with the present Act.

Anyone who commits the acts specified in subparagraphs 1, 3, 4, 6, or 10 to 15 of Article 40 shall be fined an amount of at least sixty thousand New Taiwan Dollars (TWD 60,000) and at most three hundred thousand New Taiwan Dollars (TWD 300,000). While, the penalty for the act of demanding, agreeing to be paid at a later stage, or accepting fees beyond the prescribed standard or any other unjust interest is a fine equivalent to at least 10 times up to 20 times of the amount that was asked in excess of the prescribed standard (Article 66, ESL). Based on reports, brokers fees can go as high as TWD 60,000 during the 1st 3-year contract period, during which the guest worker will be asked to pay based on the following installment scheme:

Brokers Fees⁵⁴

| Year | Monthly Rate | Yearly Total |
|------|-----------------|--------------|
| 1 | TWD 1,800/month | TWD 21,600 |
| 2 | TWD 1,700/month | TWD 20,400 |
| 3 | TWD 1,500/month | TWD 18,000 |
| | Total | TWD 60,000 |

If prosecuted, then, the labor broker may be asked to pay a fine of as high as TWD 640,000 per offense/count⁵⁵. According to a report, in case of renewal of contract and to the same employer, the worker will need to pay an additional TWD 1,500/month for 3 years (or a total of TWD 45,000). If the worker decided to work for a different employer, the scheme (in the box above) will be applied.

Under Article 20 of the PrEAs Regulations, prior to engaging in recruitment and placement of foreign workers, the broker is required to sign a written contract with the employer concerned. The following terms should be clearly recorded in the written contract:

1. Items and amounts of fees.
2. Ways of collecting fees and refund.
3. Matters relating to damage compensation when foreign persons, residents in Hong Kong or Macao, or persons from the Mainland China fail to report to employer.
4. Matters relating to taking-over, medical examination arrangement and the results of medical examination reported to the health competent authorities of foreign persons, residents in Hong Kong or Macao, or persons from the Mainland China after arrival.
5. Matters relating to deportation, replacement, extension and management of foreign persons, residents in Hong Kong or Macao, or persons from the Mainland China.
6. Matters relating to damage compensation when violating the contract.
7. Other matters required by the central competent authority.

For employers who hire foreign persons to conduct the works referred to in Subparagraphs 9 of house maid work and Subparagraph 10 of family nursing work in Paragraph 1, Article 46 of the Act, their written contract of Paragraph 1 shall be signed by employers personally.

Likewise, Article 21 (PrEAs Regulations) requires brokers to enter into a written contract with the foreign worker who will be engaged in manufacturing, construction, shipping and domestic care, with the following terms:

1. Items of services.
2. Items and amounts of fees.
3. Ways of collecting fees and refund.
4. Other matters required by the central competent authority

For foreign persons who conduct the works referred to in Subparagraphs 9 of house maid work and Subparagraph 10 of family nursing work in Paragraph 1, Article 46 of the Act, their written contract of Paragraph 1 shall be signed by foreign persons personally. The contract prescribed in Paragraph 1 shall be translated into a version easily understood by the foreign person.

Recruitment and Immigration

Under the Regulations on the Permission and Administration of the Employment of Foreign Workers (herein FW Regulations), workers are classified as Class A to Class D foreign workers. Workers who are engaged into manufacturing, construction, shipping and domestic service are classified as Class B Foreign Worker. The entry visa held by the foreign worker shall be deemed as a work permit and valid for a period not longer than 180 days (Article 4, FW Regulations).

In applying for a permit to recruit Class B Foreign Worker(s), an Applicant Employer shall submit the following documents (Art. 16, FW Regulations):

1. Application form(s).
2. Photocopy of the national identity card of the Applicant Employer or the person in charge of the Applicant Company, the certificates of the company registration, business registration, factory registration, and that of the license for specially permitted businesses. The requirement of the photocopy of the certificates of factory registration or that of the license for specially permitted businesses is exempted if so provided for in other laws or regulations.
3. Certificate of the employment demands. But applicants of employing in-house nurses are exempted of this.
4. Name List of the employed domestic workers, where the domestic recruitment was previously conducted. But applicants of employing in-house nurses are exempted from this.
5. Certificates issued by the Municipal City Government or the Counties/Cities Governments with respect to the following matters, provided that the requirement of such certificates, however, is exempted should household assistants or in-house nurses be recruited.
 - a) That reserve of employees' pension has been transmitted to Workers' Retirement Preparation Fund and the Workers' Retirement Pension has been appropriated in accordance with the relevant laws and regulations.
 - b) That payment has been made to the Repayment Fund for Arrear Wage Debts in accordance with the relevant laws and regulations.
 - c) That Labor Insurance Premium Payments have been made in accordance with the relevant laws and regulations.
 - d) That fines for violation(s) of Labor laws and regulations have been paid in accordance with the relevant laws and regulations.
 - e) That the Labor-Management Meetings have been held in accordance with the relevant laws and regulations.
 - f) That no strikes or industrial dispute as defined in Article 10 of The Act in the work place for Class B Foreign Worker(s) to work.

- g) That there appear no concrete factual situations suggesting a probability of shrinkage of business, discontinuance of business, shut-down of factory, or suspension of business.
 - h) That the Applicant Employer has never effected, because of the employment of Class B Foreign Worker(s), any deterioration in domestic workers' working conditions.
6. Disciplinary Plan on the Employed Foreign Workers' Life.
 7. Original of the receipt for examination fee.
 8. Other documents as may be required by the Central Competent Authorities.

The situations specified in Item 6 to 8 of Subparagraph 5 of the Previous Paragraph are limited to the occurrence within two (2) years prior to the date of application.

A civilian-organization Applicant Employer, in addition to the documents as referred to in Subparagraph 1 and Subparagraphs 3 to 8 of Paragraph 1 of this Article, shall also submit the photocopy of the national identity card of the person in charge of such organization and that of the certificate of such organization's registration.

The requirement of the document as referred to in Subparagraph 6 of Paragraph 1 of this Article is exempted where the Foreign Workers so employed are those as referred to in Subparagraph 8 or 11 of Paragraph 1 of Article 46 of The Act.

The disciplinary plan on the employed foreign workers' life should include the following: (a) residential address of the foreign workers, (b) self-established by the employer or consigned to PrEAs for administration and (c) basic information on the disciplinarian. (Article 16-1, FW Regulations)

There is no express restriction against pregnant women from coming to Taiwan to work. What it states in Article 44 is that foreign workers are not allowed to bring his/her family to stay. In case however that the employed female foreign worker or the spouse of the employed male foreign worker gives birth to a child while in China during the term of employment and is able to support the family life, the worker and his/her family may be allowed to stay.

Conditions of Employment

Article 42 of the ESL mandates a protectionist labor policy, which states that no employment of foreign worker may jeopardize Taiwanese nationals' opportunity in employment, their employment terms, economic development or social stability. Only when there insufficient number of national workers may the employer be allowed to recruit foreign workers with a view to filling up such insufficiency (Article 47, ESL).

Hence, foreign workers may not engage in work within the territory of the Republic of China unless his/her employer has obtained a work permit therefore because the grant of the permit to hire foreign workers is supposedly premised on the proof of insufficiency of domestic workers. The law likewise prohibits illegally letting a foreign worker stay and engage in work and illegally referring a foreign worker to work for any third party.

The employer, when employing foreign worker to engage in work in marine fishing/netting work, as household assistant, or in manufacturing and construction projects, is required to execute a labor contract in writing with the employed foreign worker for a fixed duration of two (2) years, extendible for 1 year, per contract. In 2007, the Legislative Yuan amended the Employment Services Law to extend from 6 to 9 years the maximum cumulative time that a foreign worker may work in Taiwan.⁵⁶ Article 42 of the FW Regulations mandates that the employment contract between the employer and the foreign worker be written in Chinese and be translated, as duplicate, into the native language of the foreign worker.

A foreign worker who has not violated any law or regulation during the period covered by his/her employment permit and has departed from the territory of Republic of China (RoC) due to the termination of employment,

expiration of the employment permit or one who has failed the health examinations but accepted medical treatment thereafter at his/her national country and then passed health examinations therein may re-enter Taiwan to engage in work. The foreign worker is however required to leave Taiwan first and then re-enter only upon the execution of a new contract or extension of an old one.

A foreign worker is not allowed to transfer to a new employer or new work, except under the following circumstances:

- ⇒ His/her original employer or the one who was intended to be taken care of by the employed foreign worker has deceased or emigrated
- ⇒ The vessel s/he works on has been seized, sunk or has been under repair so as to compel the discontinuation of work
- ⇒ Discontinuation of work because of factory shut-down, suspension of business or failure to pay the wage/salary pursuant to the employment contract resulting in the termination thereof
- ⇒ Similar circumstances not attributable to the employed foreign worker

Levying Workers' Wages

Article 43 (FW Regulations) is very specific in so far as the method of paying the foreign worker's wages. It is stated that the employer has issue a pay slip (table of wage/salary) indicating in both Chinese and the native language of the worker the following: (a) wage/salary actually received, (b) the items accountable for the wage/salary, (c) the total amount of the wage/salary, (d) the method of paying the wage/salary, (e) the items of expenses incurred and the corresponding amount thereto deducted from the wage that includes the National Health Insurance premium, Labor Insurance premium, income tax and board/lodging.

The said wage/salary, except the expenses incurred and the deductions, should be paid by the employer in full amount by cash and directly to the worker. But when paying by other methods, the employer shall issue relevant evidence documents to the foreign worker and keep a copy for themselves. Suppose the Employer do not pay the said wage/salary as referred to in full amount, the competent authorities may require them to pay in full within limited period.

It appears from this provision that although the preferred method of payment is by cash, the employer is allowed to pay "by other methods" or by kind. In September 2001, the Council of Labor Affairs introduced a policy encouraging employers to charge each guest/foreign worker between TWD2,500 and TWD4,000 per month for lodging and food, exempting those in domestic help and care (Tierney 2007, 219)⁵⁷. Assessing the living arrangements of foreign workers in Taiwan, Tierney (2007, 220) argues that:

While conditions in some of the company dormitories were satisfactory, complaints were voiced regularly about overcrowded and dangerous living conditions...many guest workers had been subjected to curfews and surveillance practices imposed by the employer's security guards and forced to buy groceries directly from the employer's canteen at inflated prices [through the provision of coupons as part of the wage]. Guest workers had no freedom of choice because employers and broker agencies forced them to live in company dormitories as a condition of employment. Workers would have preferred to live in shared accommodations they acquired on their own because these gave them greater autonomy and dignity at a much lower cost.

From numerous reports, it seems that the following items are the usual and automatic monthly deductions from the worker's salary:

- ⇒ room and board – TWD4,000
- ⇒ broker's service fees – TWD1,800
- ⇒ tax – TWD2,376
- ⇒ health insurance – TWD225
- ⇒ labor insurance – TWD215

Total deductions in a month may amount to TWD8,616. It has to be noted at this point that under Philippine law, which is reflected in the 2009 sample contract for various skills, the foreign employer should provide free food or compensatory allowance and free suitable housing. The arrangement in Taiwan, wherein room and board form part of the worker's wages, obviously runs counter to this standard.

In addition to these deductions, Taiwan regulations allow employers to implement a system of forced/compulsory savings where employers deduct up to 30% of a foreign worker's salary to be placed in a bank account in the worker's name but the worker has no access to the account.⁵⁸ It may be assumed that access will be allowed only before the worker goes home. In the 2009 TIP report on Taiwan, it was observed that foreign workers are forced into such an arrangement upon arrival in Taiwan and they are often sent home if they object. The money is not returned if the worker ends work early due to abuse or exploitation, thereby deterring workers from seeking assistance.

Still, in addition to this, the worker will have to contend with paying the placement fees that s/he paid to the private recruitment agency in the Philippines. The Philippine placement fees can go as high as 70-120 thousand. Without overtime, actual wages in cash that a migrant worker receives could well only be between TWD2000-4000 a month.

Given the exorbitant amount of fees that a foreign worker has to bear, it's been generally recognized that it will take a foreign worker about 12-18 months to pay off their debt. If the worker's contract is terminated prematurely, s/he will be forced to return home saddled with debts and with neither income nor savings. In a report, it was argued that most foreign workers in Taiwan spend their first two years paying off the commission. "Because the workers in debt have no freedom to choose their employers, they either put up with unfair treatment or become "runaway workers", who often take the blame for rising criminal activities."⁵⁹

ENDNOTES

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- ⁷US Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report*. June 2009. <<http://www.state.gov/g/tip/rls/tiprpt/2009/>>.
- ⁸In Malaysia, the scope of the research was broadened beyond Philippine workers to include workers from Indonesia and Nepal, in order to facilitate a more robust sample. (Indonesian and Nepalese workers constitute a large number of IT workers in Malaysia; and so to understand brokering in Malaysia it is important to know how brokers deal with workers from these countries in ways similar and different than with Philippine workers.)
- ⁹*The production of electronic components for the IT industries: Changing labour force requirements in a global economy*. Report for discussion at the Tripartite Meeting on the Production of Electronic Components for the IT Industries: Changing Labour Force Requirements in a Global Economy. ILO, Geneva, 2007.
- ¹⁰As defined by the Standard International Trade Classification system (SITC).
- ¹¹Van Liemt, Gijsbert. *Recent developments on Corporate Social Responsibility (CSR) in Information and Communications Technology (ICT) Hardware Manufacturing*. Geneva, International Labour Office, 2007. <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_101059.pdf>. [Retrieved 1 October 2009].
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- ²⁰ Apple, for instance, requires the compliance of its suppliers to standards against forced and bonded labor, and requires specific mechanisms for auditing labor brokers to be in place in each supplier facility.
- ²¹ International Labor Organization. *The Production of Electronic Components for the IT Industries: Changing Labour Force Requirements in a Global Economy*. Report for discussion at the Tripartite Meeting on the Production of Electronic Components for the IT Industries: Changing Labour Force Requirements in a Global Economy. ILO, Geneva, 2007.
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- ²³ “Southeast Asia.” *Migration News*. Volume 15, Number 3. July 2009.
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- ²⁴ Tan, Kimberly Jane T. “Industry leaders nix govt-to-govt deployment of OFWs.” *GMA News*. 20 August 2009.
<<http://www.gmanews.tv/story/170306/industry-leaders-nix-govt-to-govt-deployment-of-ofws>>.
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- ²⁶ This was confirmed by Jun Aguilar, president of Filipino Migrant Workers (FMW) Human Resources International, during an interview conducted in October 2009. The FMW is an organization engaged in and actively advocating for zero-broker-fee placement and deployment of Filipino workers.
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- ²⁹ Conversation with POEA Welfare and Employment Officer, September 2009.
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- ³⁴ Findings from Verite audit conducted in an electronics facility in Taiwan, in 2008.
- ³⁵ In 2008, there was a proposal to amend the contract between the worker and the labor broker. The proposed sample contract is attached to this report. The sample contract has been criticized as (a) institutionalizing the [currently shady] broker system, (b) legalizing monthly broker’s fees, (c) relegating migrant assistance and counseling services to brokers as part of the services that the service fees supposedly covers, (d) making brokers the sole representative of the migrant worker in any labor and legal dispute, even if the broker primarily represents the employers, and (e) making brokers the sole authority to apply for re-entry visa. These proposed terms would have to be examined further.
- ³⁶ Often, IT companies in Malaysia employ two types of FCWs: (1) Direct Hire: FCWs that are hired through a labor broker based in their respective countries of origin, and while in Malaysia, work directly for and are paid by the company; and (2) Subcontracted: FCWs that are hired through a labor broker in their respective countries of origin, but while working for the company, are instead paid by the Malaysia-based satellite or partner office/agency of the labor broker.
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- ⁴⁵USD 1 = RM 3.39 as of November 26, 2009
- ⁴⁶USD 1 = IDR 9.43, as of November 26, 2009
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- ⁴⁸International Labour Organization. *The Cost of Coercion*. 2009.
- ⁴⁹TESDA refers to the Technical Education and Skills Development Authority.
- ⁵⁰DOH stands for Department of Health.
- ⁵¹OWWA refers to the Overseas Workers Welfare Administration. It shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals (Section 23.b(2), Migrant Workers Act).
- ⁵²Overseas Filipinos shall be deemed in distress where they have valid medical, psychological or legal assistance problems requiring treatment, hospitalization, counseling, legal representation or any other kind of intervention with the authorities in the country where they are found.
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