



Understanding the International Labour Organization Indicators of Forced Labour

Practical Guide for Taiwan's SMEs



About us

We are a specialist social impact consultancy, focusing on innovations for a responsible economy. We are the proud recipient of the 2022 Innovation Award for Community Innovation of the Year in Portsmouth, UK. Our work is centred on the UN Sustainable Development Goal, SDG 8, on sustainable growth and decent work. Based in England and working internationally in Asia, Africa, Americas and Europe, we come with strong subject matter expertise in international law and standards. In 2022, we have completed projects on forced labour assessment in Southeast Asia and labour exploitation in the UK maritime sector.

www.wbi.org.uk

www.workbetterinnovations.com





Understanding the International Labour Organization Indicators of Forced Labour

Practical Guide for Taiwan's SMEs

Project Team

凌怡華博士 Dr. Bonny Ling

諾菀博格曼 Nora Böggemann

陳炯志博士 Dr. Kenzi Chen

韓寧凱 Nicholas Haggerty

林姝函 Shuhan Lin

鄭晴韻 Ching Wan Cheng

Cartoonist : 陳筱涵 Stellina Chen

Lawyer : 蘇厚安 Andy Su

Advisors : 邱羽凡教授 Prof Yu-Fan Chiu

李駿怡教授 Prof Chun-Yi Lee

Proofreader : 許琬翔 Wan-Hsiang Hsu

Graphic designer : 王蕙瑄 Hui Hsuan Wang

First published in 2022 by

Work Better Innovations

Innovation Space

Halpern House

1 Hampshire Terrace

Portsmouth, PO1 2QF

United Kingdom

Cover illustration :

Cartoonist 陳筱涵 Stellina Chen @toonsbystellina

© Work Better Innovations

All rights reserved

ISBN: 978-1-7392474-2-3

Understanding the International Labour Organization Indicators of Forced Labour

Practical Guide for Taiwan's SMEs

Table of Contents

International Labour Organization Indicators of Forced Labour

Preface	8
#1 Abuse of Vulnerability	13
#2 Deception	27
#3 Restriction of Movement	37
#4 Isolation	45
#5 Physical and Sexual Violence	55
#6 Intimidation and Threats	63
#7 Retention of Identity Documents	73
#8 Withholding of Wages	83
#9 Debt Bondage	95
#10 Abusive Working and Living Conditions	107
#11 Excessive Overtime	117
References	129

Preface

In recent years, the terms “modern slavery,” “forced labour” and “human trafficking” have appeared in Taiwan domestic news and international news about Taiwan with growing frequency. The 2021 Country Report on Human Rights Practices by the U.S. Department of State again made it clear in its reporting section on Taiwan that forced labour occurs primarily in Taiwanese sectors that are reliant on migrant workers, including domestic service, fishing, farming, manufacturing, meat processing and construction.

Forced labour victims can be a person of any nationality, local or foreign. Especially at risk in Taiwan are foreign migrant workers coming from the four countries of origin for the migration corridors to Taiwan: Indonesia, the Philippines, Thailand and Viet Nam.

At the same time, forced labour can be difficult to understand beyond an intuitive and negative reaction. People often think of physical restraints—high fences, locked doors, maybe even chains—and outright physical and sexual violence, alongside confiscation of passports.

But this is not the totality of forced labour. It is estimated that 86% of forced labour cases are found in the private economy, where the chains of slavery past are now manifested in debts, financial insecurity and vulnerability. For this reason, it is key that equal emphasis is given to both components of the international definition of forced labour: (1) threat of a penalty; and (2) involuntariness.

The concept of voluntariness is more than the worker's formal and contractual consent. If the consent was not free or informed and there

is no freedom for the worker to leave the work at any time, it is still involuntary.

The International Labour Organization (ILO) Forced Labour Convention of 1930 (C029)'s definition of forced labour is almost a century old: "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily."

This definition has stood the test of time. Today, the concept of forced labour is folded into the umbrella term "modern slavery," which encompasses both forced labour and forced marriages. We also see forced labour in the definition for trafficking in persons for the purposes of labour exploitation.

The key to using this guidebook on ILO's 11 indicators of forced labour is to understand that forced labour indicators are about risks. Sometimes one indicator is enough to determine that a situation is indeed one of forced labour. In reality, however, it is rarely that simple. A situation of forced labour often brings out overlapping indicators and labour rights violations.

If each labour violation is a black dot on a spectrum, one end of it would be marked with "forced labour" while the opposite end would be marked with "decent work." The forced labour end would be covered with the heaviest concentration of dots to represent the most egregious forms of labour exploitation. The decent work end would be with the least number of dots to represent an employment situation where there is full respect for workers' rights and their ability to claim their rights.



How to Use this Guidebook

While forced labour is at the most extreme end of a continuum of labour abuse and exploitation, there are also labour violations dotting the space between forced labour and decent work. Each dot is an abuse associated with a forced labour indicator, along with the five fundamental principles and rights at work of the ILO on the abolition of child labour, elimination of forced labour, non-discrimination, collective bargaining and occupational health and safety. Each dot can, over time, escalate to become a situation of forced labour, as it interacts with other indicators and exacerbates a worker's vulnerability to abuse.

Taiwan urgently needs to understand what is meant internationally by forced labour risks in supply chains. Already, the U.S. operates an import ban of goods that are believed to be made in whole or in part with forced labour. The import ban is already seen for Taiwan-caught fish, and soon the EU is likely to follow suit with its own forced labour import ban.

In addition to this fast-evolving landscape of local law and international standards, a supply chain that complies with due diligence on forced labour has become a customer requirement for many international brands. Suppliers may be contractually obligated to comply with an individual brand's policy on the protection of migrant workers and to mitigate against the risks of forced labour.

Such requirements on preventing forced labour have become standard for most leading global brands to have corporate-level goals to identify, prevent and remedy forced labour when found. These goals require their

local factories to identify risk of forced labour and to assess how well their management systems prevent forced labour.

This guidebook was prepared by a team with a deep connection to Taiwan. Our project members come from Taipei, Hsinchu, Taichung, Yunlin, Tainan, Kaohsiung and abroad. And we believe, in our Taiwanese core, that not only must we address risks of forced labour in Taiwanese supply chains for the future competitiveness of the domestic economy, but that we must do it because we have to do everything possible to realise a better tomorrow for Taiwan.

We thank our funder and our collaborators for supporting this unique pilot project on forced labour education in Taiwan; and for believing that with more accurate awareness comes more chances at prevention.

Dr. Bonny Ling
Executive Director
Work Better Innovations



STELLINA

Forced Labour | 1
Indicator

Abuse of Vulnerability





International Standards

Certain categories of workers are especially vulnerable to abuse. They can be at a heightened risk of forced labour due to factors such as lack of familiarity with the local language or laws or belonging to a minority religious or ethnic group. Other characteristics that set them apart from the majority population can include, but are not limited to, disability, nationality, refugee status, gender, sexual orientation, or any other protected characteristics.

Workers can also be vulnerable due to low literacy levels and educational attainment that have resulted in social marginalisation and limited educational opportunities. This, in turn, reduces their options in the labour market, increases dependency on an employer and thereby vulnerability to forced labour practices. This is especially true when multiple factors of vulnerability intersect and workers do not only depend on employment but also on housing, food or freedom of movement.

The above-mentioned characteristics show that workers are vulnerable to exploitation when they lack resources, options or knowledge to make informed choices. They are less able to bargain and negotiate over their employment conditions. Typical vulnerable groups in an employment context are: migrant workers, refugees, young adults or students, women, children, people with disabilities, and other minority groups.

Vulnerability can also be more than protected characteristics, but be determined by situational factors. These include workers who lack the ability to change jobs if their visa is attached to a job or employer. Or workers who lack the proper residency and working visas. In such cases,

workers can become reluctant to report an abusive employment situation out of fear to lose their visa to stay in the country or to be deported.

Vulnerability through a lack of job alternatives can also be brought about by external circumstances, such as during Covid when many workers were furloughed, summarily dismissed or had wages withheld (*Forced Labour Indicator #8 on Withholding of Wages*).

One of the most significant factors of vulnerability in the context of forced labour risks is debt bondage, specifically the debts that migrant workers take on for their employment abroad in the form of recruitment fees, recruitment-related costs and illegitimate, unreasonable and undisclosed costs (*Forced Labour Indicator #9 on Debt Bondage*).

To illustrate the significance for businesses to understand who the vulnerable groups in their operations and supply chains are: the UN Guiding Principles on Business and Human Rights (UNGPR) note that businesses must conduct due diligence “in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.”¹

Note : ¹ United Nations, Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights : Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011.

Taiwan Case

36-year-old Grace (pseudonym) from Indonesia originally signed a contract for employment in the industrial sector in Taiwan. When she arrived in Taiwan in 2019, she found herself instead working on a large farm with little rest and few provisions of food. She fell ill and reported her abuse to the 1955 Hotline. With a broker's assistance, she found another job at a metal stamping manufacturer, where she met her partner Lucas (pseudonym) and became pregnant.

With the employer's permission, the two moved out of the dormitory and rented an apartment next to the hospital while they awaited the birth of their child. Grace received the full maternity leave from the employer, a favourable outcome when compared to the plight of many other pregnant migrants.

Some pregnant workers can be made to stand for prolonged times at work, continue to perform heavy-lifting and work late-night overtime shifts. Sometimes, employers do not move pregnant migrants from work that expose them to chemical hazards and toxic substances. Some pregnant workers are forced to take unpaid leave.²

Pregnancy presents a dilemma for some migrant workers, even though migrant workers are also protected by the Act of Gender Equality in Employment against unfair treatment and dismissal on the grounds of pregnancy and maternity. In reality, some brokers leave their maternity leave practices intentionally vague, not informing workers of the

Note: ² Tsao Fu-nien, "Pseudo-single parenting, no safety net, long-distance family—Problems facing working migrant parents and an underground care network," *The Reporter*, 12 September 2022.



Photo/ (© ILO / Mirza A.)

regulations in Taiwan and their rights, to lower potential costs. Migrant workers face risks of losing their jobs and being repatriated to their countries of origin, and without all the information. They can be misled into thinking that they must choose between their baby or their job.

What happened to Jasmine (pseudonym) is a typical example. Lacking understanding of Taiwan law, she consulted a labour broker after realising she was pregnant, and was told that she had to pay a financial penalty and pay for her air ticket home. She was left with little choice of either continuing to work to pay off the debt associated with her recruitment fees and recruitment-related costs or keeping the child and unable to pay off her debt. She chose her job and aborted her pregnancy.³

Note : ³ Nick Aspinwall, "Baby or a job? Stark choice for Taiwan's migrant workers," *Reuters*, 17 December 2019.



Even for those whose employers are supportive and respect the laws that protect the employment rights of women, the right to a family life can be filled with practical challenges of migrant factory work. Grace and Lucas, for instance, struggled with finding childcare, with Lucas working from 8:00 to 21:00 and Grace also doing late-night overtime. Many migrant parents choose to leave their employment and abscond together as a family, referred to as “lose contact” in official terminology to denote their undocumented status, thus entering an employment situation of precarity.

The decision between a job or children and a family life is one that reminds many in Taiwan of a similar dilemma faced by Taiwanese women workers at the start of the island’s transition from agriculture to an industrial economy during the 1950s and 1960s. Many Taiwanese young women entered the workforce and became the critical labour force that drove the growth of small and medium enterprises. Their wages improved household income and uplifted family trajectories. This meant, however, that they were often not able to start families of their own and worked in very harsh working conditions, in scenarios that are common for the women migrant workers in contemporary Taiwan.

Taiwan Analysis

Taiwan's Employment Services Act prohibits employers from discriminating against employees on the basis of a broad list of protected characteristics, including race, class, language, thought, religion, political affiliation, place of origin or birth, gender, sexual orientation, age, marital status and disability. While these align well with international standards, the same list of non-discrimination encompasses a broader remit of protected characteristics that also include appearance, facial features, horoscope or zodiac sign, blood type and past or present membership of any labour union.

Taiwan's Act for Gender Equality in Employment further prohibits discrimination on the basis of sex with regard to hiring, training, salary, welfare benefits, remuneration and other conditions of employment. Taiwan's legal framework of non-discrimination establishes a comprehensive scope of protection for its diverse population. The challenge, however, is in the implementation of laws that prohibit discrimination and seek to protect society's vulnerable members from discrimination and other abuses, at work and also in all aspects of life.

A position of vulnerability for migrant workers in Taiwan can be multifaceted. Due to their social marginalisation and barriers to access to education in their country of origin, they may arrive in Taiwan with low educational attainment and awareness of their legal rights. Their inability to freely change jobs in Taiwan – due to conditions of their visa that tie them to their employer – makes it difficult for them to leave an abusive employer. Workers are often nervous about losing their employment



and being sent back home without paying off the debts (*Forced Labour Indicator #9 Debt Bondage*) that many incurred to pay the recruitment fees and related costs of their employment in Taiwan.

Lack of familiarity with the local language is another contributing factor to the vulnerability of migrant workers in Taiwan. Knowledge of the latest labour policies, ability to fill out forms accurately and sign official documents in full awareness of its meaning all can be impeded by a language barrier, meaning that they are very reliant upon their employers or labour brokers for information. Difficulties in understanding and communication are exacerbated if a migrant worker is living and working in relative isolation (*Forced Labour Indicator #4*), and prevented from seeking outside assistance.

In recent years, abuse of the vulnerability of pregnant migrant workers in Taiwan has received much attention. International human rights law establishes that the state is legally obliged to ensure the health and safety of pregnant women in terms of working conditions and protect maternal health. Under Taiwan's Gender Equality in Employment Act and the Labor Standards Act, pregnant workers can request to adjust work, refuse night shift and maternity leave. The law prohibits employers from dismissing workers arbitrarily on the grounds of pregnancy.

Because most employers and labour brokers have not clearly explained Taiwan's labour protections to migrant workers, either out of a deliberate intent to mislead or their own lack of legal awareness, and workers lacking basic knowledge of their labour rights, pregnant migrant workers are in a position of vulnerability. They frequently are coerced into terminating their employment contracts or pregnancy when their employers or brokers find out about their pregnancy.

Not only can they be inaccurately informed about legal protections against discrimination against women on the grounds of maternity at the workplace (*Forced Labour Indicator # 2 Deception*), but migrant pregnant workers may be further intimidated against carrying the pregnancy to full term if they are threatened with job insecurity and repatriation to their countries of origin (*Forced Labour Indicator #6*).

The abuse of the vulnerability of pregnant migrant workers in Taiwan is statistically reflected in the number of complaints received during the year 2020-2021 by Taiwan's Ministry of Labor's 1955 Hotline for reporting migrant employment abuses or lodging complaints in Taiwan. Of the 226 total complaints received from this period related to a woman migrant worker's pregnancy, more than 60 percent of reported cases resulted in the women having left — or were waiting to leave — Taiwan or the women had agreed to withdraw their complaints.⁴

These cases reflect wider structural problems of abuse of migrant workers' vulnerability (*Forced Labour Indicator #1*) due to the language barrier and their lack of knowledge of relevant labour laws and regulations in Taiwan that prevent them from seeking remedy.

Beyond the factors of pregnancy and language barriers, abuse of vulnerability can be the overlapping of different factors. For instance, migrant workers in Taiwan rely on work visas tied to their employers, meaning that job mobility is not automatic. Many migrant workers are reluctant to report abuses because they fear losing their right to stay and work in Taiwan.

Note : ⁴ Tsao Fu-nien, "Hidden family portraits: Migrant parents' struggles with starting a family, from mountains, export processing zones to local communities," *The Reporter*, 12 September 2022.



Furthermore, another common factor of vulnerability for migrant workers is debt bondage. Most migrant workers to Taiwan, coming from Indonesia, the Philippines, Thailand and Viet Nam, pay recruitment fees and recruitment-related costs, as well as potentially illegal, unreasonable, and undisclosed fees (*Forced Labour Indicator #9 Debt Bondage*) for their jobs in Taiwan.

The Employer Pays Principle, whereby employers bear all the costs of recruitment, has not yet enjoyed widespread uptake among employers in Taiwan. Migrant workers, when faced with an abusive working environment, often mention their inability to fully repay the debts associated with their recruitment to Taiwan as one of the reasons for not reporting and accepting work with high forced labour risks.

All these above-mentioned examples are challenges faced by migrant workers in Taiwan. Abuse of vulnerability needs to be holistically understood to include all characteristics that could set migrant workers apart from the majority population. These include all the characteristic under international labour standards that prohibit any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, and such other distinction, exclusion or preference, as well as other characteristics specifically included in Taiwan's domestic legal framework.



What Taiwanese SMEs should look out for :

Forced Labour Indicator #1 Abuse of Vulnerability

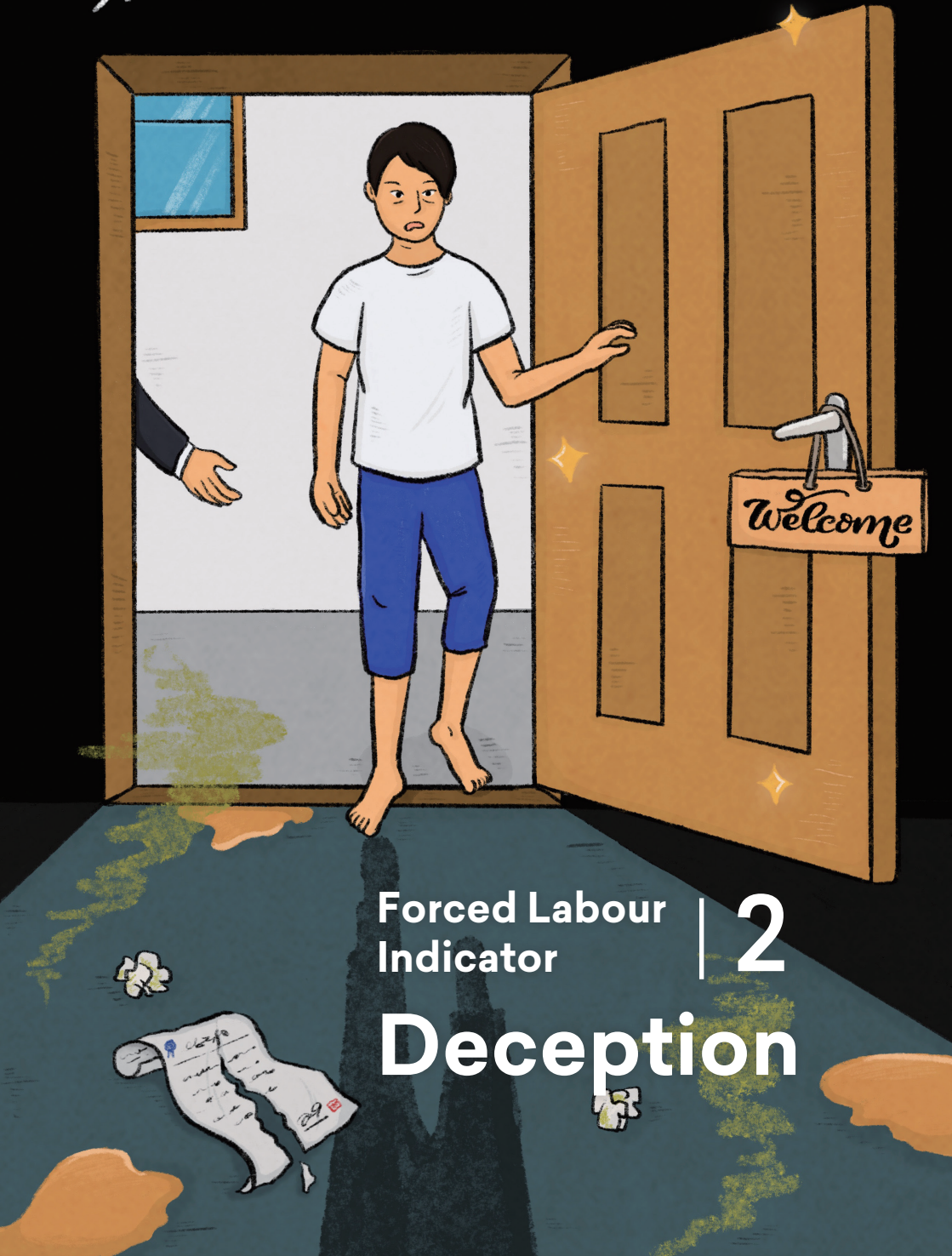
- There are patterns of workers being recruited or assigned to particular jobs because they belong to a minority group or a particular social group in their countries of origin or destination.
- Workers are abused on account of their vulnerability, owing to language barriers, gender, age, disability, sexual orientation, or any other protected characteristic.
- Workers are trapped in some type of private relationships with employers, labour recruiters or brokers, such as debt or pregnancy.
- Workers heavily depend on others—like their employer, labour recruiter or broker—to meet their basic needs, such as work, food, and housing.
- Workers heavily depend on others for their immigration status. This can include help to complete their immigration paperwork or with the administrative procedures of immigration.



- Workers by means of entrenched life circumstances lack meaningful options to make a decent income; for instance, they are fleeing conflict, natural disaster, displacement or persecution.



STELLINA



Forced Labour | 2
Indicator

Deception

International Standards

The forced labour indicator of deception relates to the employer's failure to deliver what has been promised by agreement with the worker at the time when he or she accepts the employment offer. Based on false information and taking advantage of the worker's trust in other people, deception can lure workers into an employment situation that can become much worse than they had signed up for – abusive and exploitative.

The workers can feel trapped by an employment situation they had not agreed to, but feel nonetheless trapped by its terms because they cannot easily escape and seek redress, particularly if they are in a new country where they cannot speak the local language (*Forced Labour Indicator #1 Abuse of Vulnerability and Indicator #4 Isolation*).

Deception is not only false promises regarding working conditions and wages, but it can also be unmet expectations in housing and living conditions, location, migration status or the actual employer. Deception often intersects with other forced labour indicators. For instance, when deception is used to lure workers to travel abroad for employment, their foreign status and unfamiliarity with the society in their country of destination can make them more vulnerable to abuse (*Forced Labour Indicator #1*). Their unmet expectations can involve being confronted with exploitative working and living conditions (*Forced Labour Indicator #10*).

Because promises of employment can be made either verbally or in writing – or, sometimes by a written contract that is substituted or written in a language that the worker does not understand – deceptive practices can be hard to prove. While workers who are confronted with different

employment conditions than what was agreed upon can be negatively labelled by employers as disputing over wages, deception needs to be understood from the workers' point of view to assess what they know or do not know.

It means they would not have accepted a job voluntarily had they known the full reality of the employment conditions or believed that they could leave the job easily. Migrant workers not speaking the language of their country of employment may be easily deceived into the belief that they will be deported if they dare to complain to the authorities.

Deception needs to be understood in the context of the elimination of all forms of forced labour in international labour standards. No one can give his or her free and informed consent to work in a situation of forced labour. Regardless if deception was used or not, workers in a forced labour situation are not at fault.

This is an important point to highlight. With or without the element of deception, forced labour is involuntary labour by its very definition. It is fundamentally irrelevant whether the victim of forced labour was deceived but had originally consented to undertake the employment in the first place. It is the responsibility of the employer to create an environment free of forced labour.



Taiwan Case

Wiwin, 20, is from Indonesia. It was only after she came to Taiwan she discovered that the contract she signed in Indonesia had stated that she would work in a tofu processing factory. The agent in Taiwan, however, had said her job was caring for the elderly in the domestic care sector.

Because legal factory workers have to follow Taiwan's Labor Standards Act, the basic salary and overtime pay are more expensive for the employer, so the agent applied in the category of care workers, reducing the monthly salary to NT\$17,100, with no labour insurance or work injury protection. The factory is full of hot and boiling soy milk and prominent open flames. The factory does not prepare any gloves and protective gear for workers (*Forced Labour Indicator #10 Abusive Working and Living Conditions*).

Wiwin's contract was fraudulent. The job that the Indonesian agency said was false, and the factory job she was deceived into was exploitative. Her working hours changed from starting at 8:00 in the morning to 17:00 in the afternoon to 4:00 or 5:00 in the morning to 23:00 and 24:00 at night. At first, there was the promise of overtime pay, but after arriving in Taiwan, not only was there no overtime pay, she also did not receive vacation days — only Taiwanese colleagues were entitled to vacation.

Wiwin complained to her labour broker in Taiwan, but the broker said she would have to go back to Indonesia if she did not comply. Wiwin remembered the debt owed by her family in order to send her abroad, so she continued to work to repay the debt despite the full reality of her employment (*Forced Labour Indicator #9 Debt Bondage*).⁵



Photo/ freepik.com

Note : ⁵ The Storm Media, "Migrant Workers' Record of Injury No. 4: Broken Fingers and Stumps! Even Documented Migrant Workers are Victims of Unreported Occupational Injuries, How Can the Ministry of Labor Overcome the Gap of Non-Reporting," 30 June 2020.

Taiwan Analysis

Deception is the false promise of decent work made to a person. It is used to lure people into situations that they would likely not agree to if they knew the full circumstances of their employment — circumstances that may include abuse and exploitation. When migrant workers apply for jobs in Taiwan, they often encounter false advertisements in their country of origin, such as false claims of a high salary, or high overtime pay, to lure migrant workers to work abroad.

It can be made in writing but also verbally, so they might be hard to prove, they all violate the forced labour indicator of deception. Even if contracts were made in the workers' country of origin, documents could be substituted before the workers arrive in Taiwan so that the contracts no longer align with those originally promised.

Taiwan's Employment Services Act, Article 5(2) prohibits employers from making false advertising or disclosures during recruitment or employment; and the same prohibition against false advertisements or disclosures applies to private employment service institutions or any labour broker in Article 40(2). In addition, failure to properly inform workers of the true nature of their working and living conditions, such as having to work in a high temperature environment or frequently carry heavy objects (*Forced Labour indicator #10 Abusive Working and Living Conditions*) also places the migrant workers at an increased risk of forced labour.

Deception often intersects with other forced labour indicators, leaving migrant workers in inescapable situations, most often with heavy debts (*Forced Labour Indicator #9 Debt Bondage*). Due to these debts that migrant workers in Taiwan often carry, in addition to the limited time window for them to transfer jobs (two months), these factors only heighten migrant workers' fears of not being able to successfully transfer to jobs with better employment conditions.

This means that even if the workers were originally misled and the employment conditions differ significantly from those first promised in their country of origin, migrant workers can be nonetheless reluctant to report the deception. Even with the dedicated Ministry of Labor's 1955 Hotline for reporting migrant employment abuses in Taiwan, migrant workers may still not be willing to report.



What Taiwanese SMEs should look out for :

Forced Labour Indicator #2 Deception

- Workers complain about their employment being different to what they had expected; these differences can be in terms of working conditions and wages, job type, location, housing or living conditions, actual employers, as well as other related factors such as expectation of migration status.
- Workers are misled and do not understand the legal context in which they live and work, such as their lack of knowledge on immigration law, national taxes, local customs or cost of living.
- Workers speak of false promises about their working conditions and wages and of their disappointment over the gap.
- Workers mention that they would not have taken the job had they known the reality of the work involved and the associated conditions.
- While many workers would still accept an employment option, if they believed that this was the only opportunity for them to earn and support

- their families, forced labour is, by definition, unfree labour. This means, even if they were not deceived about their exploitative labour conditions, there is no scenario under international labour standards that would make it permissible for anyone to freely enter into a forced labour situation.



Forced Labour | 3
Indicator

Restriction of Movement



International Standards

When workers are not free to leave work premises, move freely on their way to and from work, or spend their free time unsupervised, they are at serious risk of being engaged in forced labour. The goal of restricting movement is to keep workers from escaping their situation of labour exploitation. It often goes along with keeping workers in isolation (*Forced Labour Indicator #4 on Isolation*).

Workers may be physically prevented from leaving while they are at the workplace, at their living quarters, or during their commute. While this may happen through physical restraints like locked doors, or being physically guarded, often it may be that workers do not have genuine freedom of movement without obvious signs.

Workers may feel that they are under such intense monitoring, like through surveillance cameras or regular phone calls, that they do not have substantive freedom of movement. Migrant workers sometimes are not allowed to leave countries where they work, or require exit visas approved by their employer, or they are tied to employer-sponsored accommodation.

While some restrictions of movement are permitted and seen as reasonable to protect the health, safety and security of the workers, these restrictions cannot be imposed discriminatorily, such as restrictions that only apply to some workers and not others. International labour standards prohibit any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, and such other distinction, exclusion or preference.⁶

Restrictions also cannot be enforced with threats, violence (*Forced Labour Indicator #6 Intimidation and Threats*) or against the will of workers.

Freedom of movement is not absolute. For instance, a worker may need to request permission to attend a medical appointment. Workers operating hazardous machinery may be required to stay in their place for their own safety. However, these restrictions must be necessary and applied in a proportionate manner—meaning that these restrictions cannot be too broad to affect more workers and longer than is necessary.

Taiwan Case

Following a June 2021 cluster of Covid-19 cases at an electronics manufacturer in Miaoli County, Taiwan's Central Epidemic Command Centre (CECC) set up a temporary communication centre and tested workers and contacts on site and from nearby factories. 471 people tested positive, of whom 71 were Taiwan nationals and 400 were foreign nationals.

In response to the outbreak, on 6 June, the Miaoli County government imposed a curfew on migrant workers. The curfew prohibited worker movements outside of travel to and from work via employer or labour broker provided transportation. Workers were prohibited from doing their own shopping, which was to be carried out on their behalf by designated personnel. Local police were ordered to increase their compliance work and enforcement checks on streets.

Note : ⁶ International Labour Organization, Discrimination (Employment and Occupation) Convention (C111), 1958, Article 1.



Many migrant workers were forced by employers or labour brokers to move to temporary accommodations, sometimes in other cities, to reduce overcrowding in their dormitories. At times, personal materials of migrant workers were packed up without their permission and thrown haphazardly outside of their dormitories, while they underwent quarantine or temporary assignment to other accommodations.

While the curfew tied migrant workers to their dormitories and workplaces, their Taiwanese counterparts in the same workplaces enjoyed freedom of movement. Movement restrictions only applied to migrant workers, even though Taiwanese and migrant workers worked together in the same factories.

In July 2022, the Control Yuan Taiwan's government ombudsman office, announced that the Miaoli County government's movement restrictions on migrant workers were a violation of the human rights of affected workers. The Control Yuan issued corrective measures, stating that the movement restrictions were introduced without legal basis. Their finding further stated that the Miaoli County government attempted to evade responsibility by issuing erroneous interpretations of the law that resulted in discriminatory treatment against migrant workers.⁷

Note : ⁷ The Control Yuan of the Republic of China (Taiwan), "Migrant Workers were Discriminated against during the pandemic; Control Yuan issues Corrective Measures against the Miaoli County Government's Ban on Migrant Workers' Movement Restrictions," 28 July 2022.



Photo/ Daniel M Shih

Taiwan Analysis

Article 302 of Taiwan's Criminal Code states that "any person who without authority takes another into custody or by other illegal means deprives him of his freedom of movement shall be sentenced to imprisonment for not more than five years, short-term imprisonment, or a fine of not more than nine thousand dollars."

Movement restrictions for migrant workers have been normalised to a point where many workers do not feel that they have genuine freedom of movement. Workers can be tied to an employer-sponsored accommodation and without the option to find their own housing.

A widespread practice in dormitory management relies on a system in which migrant workers are physically prevented from leaving their accommodation past a curfew. Workers must respect these curfews or risk



having penalties deducted from their monthly pay. They may be guarded by building operators or security personnel whose primary focus is to prevent workers' escape from their workplace, accommodation, or means of transport.

Even if workers could choose to live in private accommodation, they could be called back by their employers to a dormitory or risk facing major penalties that could lead to dismissal. During Taiwan's June 2021 Covid outbreak, semiconductor manufacturer ASE told its workers living in private rentals that they must move back to their dormitories or be given a demerit and risk dismissal. Measures further restricted workers to movement only to and from work. The workers could not do their own shopping.⁸

The use of surveillance equipment, while they could serve a legitimate security function, could also have the potential to exacerbate worker perception that they are always being monitored. It is important to note that if workers do not have genuine freedom of movement or feel that their movement is under strict surveillance, then this would serve as a serious risk of forced labour.

Employers and labour brokers, who believe movement restrictions are necessary to prevent their workers from absconding, must find ways to lower the risk of forced labour in their operations by bringing about a genuine respect for workers' freedom of movement.

Note : ⁸ Helen Davidson, "Taiwan factory forces migrant workers back into dormitories amid Covid outbreak," *The Guardian*, 11 June 2021.



What Taiwanese SMEs should look out for :

Forced Labour Indicator #3 Restriction of Movement

- Workers prohibited from leaving worksites.
- Workers locked up or otherwise guarded at work or at their accommodation.
- Constant surveillance and control of workers' movement inside and outside of the workplace. This can be camera surveillance or a requirement to immediately respond to phone calls or face a penalty.
- Workers are picked up and dropped off between work and their accommodation, escorted by someone in a security capacity.
- Workers are tied to accommodation provided by employers or labour agents without any choice of an alternative arrangement.

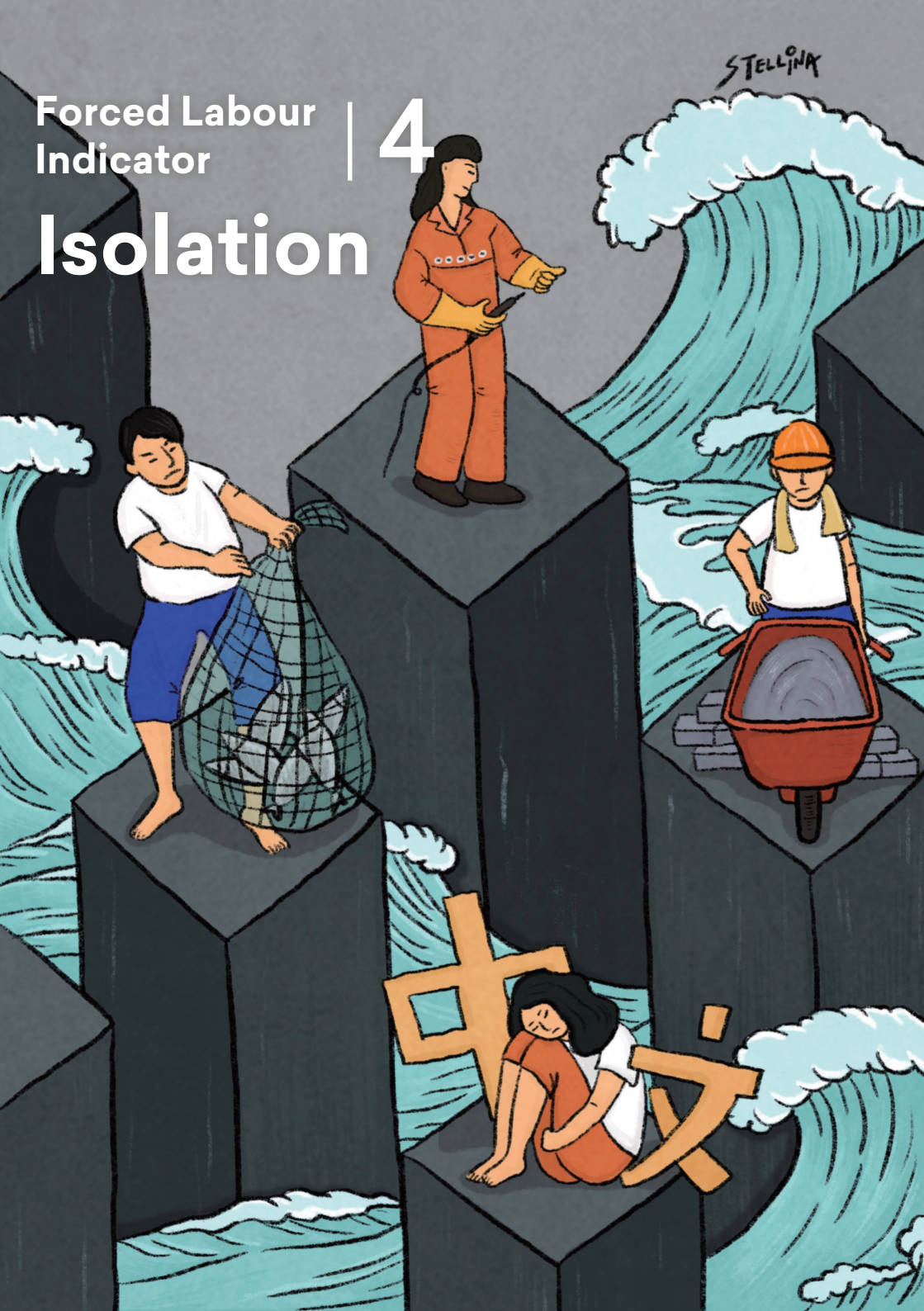


Forced Labour
Indicator

| 4

Isolation

STELLINK



International Standards

Isolation as a forced labour indicator is more than physical isolation. While remoteness and a worker's physical isolation is what most readily comes to mind, isolation as a forced labour indicator encompasses more than the physical aspects of separation. In addition to individuals working or living in remote locations, they could experience isolation in the context of being deprived of meaningful contact with the outside world. The workplace can also be part of an illicit business operation, resulting in either no governmental knowledge of or with state participation in its activities.

Isolation can also be linguistic, due to language differences that make communication with others difficult. Inability to communicate, in turn, can exacerbate feelings of cultural isolation or loneliness, of being surrounded by people of very different social backgrounds with whom integration is not possible.

Workers unable to readily contact others are in effect prevented from seeking help and finding ways to escape a potentially exploitative situation. At the workplace, their mobile phones may be confiscated for extended periods as a form of administrative penalty, therefore depriving them of opportunities to contact their families and others.

As with restriction of movement (*Forced Labour Indicator #3*), isolation is not always overt and visible. Sometimes the barrier to making contact with the outside world is fear (in addition to the reasons described above). Isolation in itself is not a strong and definitive indicator of forced labour, but it is often coupled with other indicators and can raise alarm of abuses in workers' employment situation.

Taiwan Case

In January 2022, Taiwan media exposed a case of labour exploitation, involving international students studying at the Chung Chou University of Science and Technology. The private university recruited students from Uganda by giving false promises to the students concerning their studies in Taiwan (*Forced Labour Indicator #2 Deception*).

Students were misled and coerced to work in labour intense manufacturing jobs instead of subject related internships. Students had been promised that their lectures would be delivered in English and that proficiency in Chinese was not required. University recruiters had also communicated the availability of scholarships to help students with their financial burden and that the internships, apart from offering further support towards their living costs, would be to obtain first-hand technical experience.

Upon the students' arrival in Taiwan and beginning their studies at the Chung Chou University of Science and Technology, they quickly discovered that their lessons were offered only in Chinese. Their study materials were presented either completely in Chinese or, at best, a mixture of Chinese and English. For the international students without any proficiency in the Chinese language, it was impossible for them to understand the curriculum.

Students were required by the labour brokers to work in labour-intensive manufacturing factories. They worked overtime in dirty, dangerous and difficult environments and received inadequate wages for their efforts.

The university repeatedly threatened to expel the students from their dormitories and studies if they failed to repay their tuition debts (*Forced*



Labour Indicator #9 Debt Bondage). One of the students, G, described her ordeal: "I cannot bear the pressure anymore. No one can help me. I am so lonely, and there is this extreme mental pressure. I have learnt nothing from the lessons. From morning to afternoon, I barely have anything to eat because I do not have any money. At night, I just wanted to die." She, however, did not want to worry her family in Uganda and never told them about her situation.⁹

G further reported her helplessness and desperation. For her and the other students it was nearly impossible to lodge a complaint as they did not know how and barely spoke a word of Chinese. The university that had a duty of care towards its students turned out to be the exploiter of their labour, and it was unrealistic to expect the university to self-report its malpractices and those of the factories and labour brokers that the university had collaborated with in this scheme to labour inspectors.

In January 2022, *The Reporter*, an independent Taiwanese media outlet, exposed these stories of the labour exploitation of Ugandan students and brought their plight to public attention. This led to official investigations. In October 2022, the Changhua District Prosecutors' Office filed criminal charges against ten individuals involved in this case of labour exploitation, prosecuting them on charges of offenses under Taiwan's Human Trafficking Prevention Act, the Criminal Code and the Personal Data Protection Act.¹⁰

Note : ⁹ Will Yang, "African Student Comes to Taiwan to Study, Only to Become Bonded Labourer by Debt for Four Years: International Student Recruitment by Private Universities in Disorder," *The Reporter*, 9 January 2022.

¹⁰ Taiwan Changhua District Prosecutor's Office, "Press Release: Defendants in the Human Trafficking of Ugandan Students Investigated and Prosecuted on Charges under the Human Trafficking Prevention Act and Other Laws," 14 October 2022.



Photo/ Daniel M Shih

Taiwan Analysis

Migrant workers in Taiwan can face physical isolation if their workplace or accommodation is remote. While isolation is most typically represented by migrant fishers in Taiwan's distant water fishing fleet, who are away at sea for prolonged periods and without means of communication with their families, migrant workers in the productive industry also experience isolation. They can also be deprived of means to be in regular communication with their family if, for instance, the confiscation of their phones is a penalty for workplace infractions, such as being late to start work or late in returning past the curfew of their employer-sponsored dormitory.



They can be deprived of contact with the outside world due to linguistic isolation. Migrant workers in Taiwan come from Indonesia, the Philippines, Thailand, and Vietnam. Many do not understand Chinese upon their arrival in Taiwan.

Many migrants speak of living parallel lives, largely excluded from mainstream life in Taiwan by language, culture, and discrimination. Their work environments — factories, construction sites, farms, fishing boats, and the domestic sphere — are removed from that of the typical high-waged work in Taiwan. Many speak, too, of feeling invisible to Taiwanese society, despite their large presence and importance to the domestic economy.

The universal feelings of loneliness and culture shock on living as a migrant are exacerbated by policies that prevent most migrants from establishing long term roots in Taiwan. Though Taiwan's government has recently amended its immigration laws to allow migrant workers a path towards permanent residency as a way to forestall domestic labour shortage associated with a declining population, a high salary threshold over the pay that most migrant workers receive in Taiwan means that, in practice, the vast majority of migrant workers will not be able to access this path to make Taiwan their permanent home.

Workers can be prevented from seeking help and finding ways to escape a potentially exploitative situation, where linguistic isolation acts to reinforce their feeling of loneliness and isolation. The feeling of loneliness can also obstruct migrant workers' access to remedy.

They may not have access to a phone to call the Ministry of Labor's 1955 Hotline for reporting migrant employment abuses or lodging complaints in Taiwan or simply do not know about the hotline. One Ugandan student in the cited case above spoke of her extreme and unbearable loneliness, leading to thoughts of self-harm.

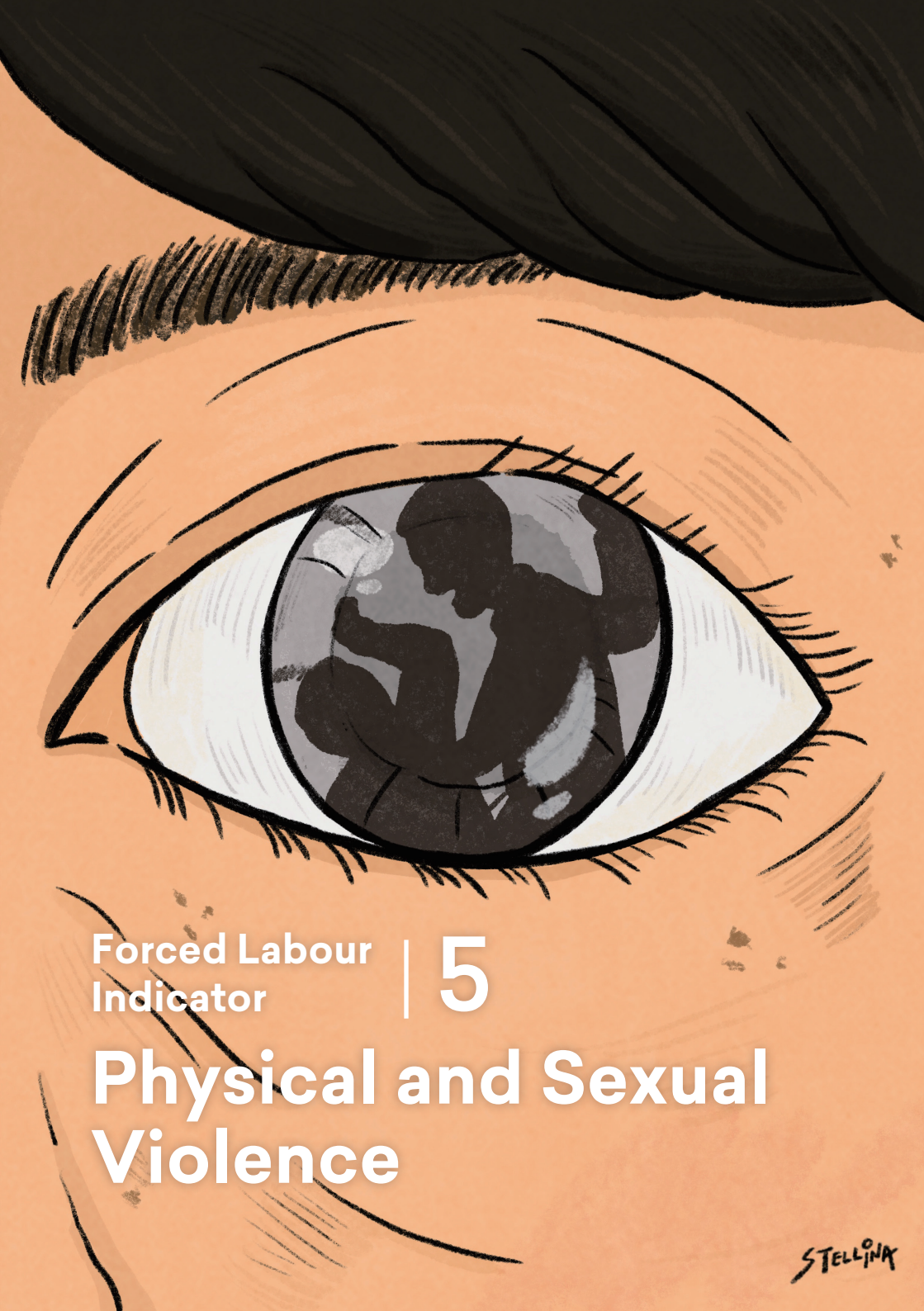
As with restriction of movement (*Forced Labour Indicator #3*), the isolation that migrant workers feel in Taiwan may not always be visible. It can be fear of speaking of the heavy debts that they must undertake before starting their employment in Taiwan (*Forced Labour Indicator #9 Debt Bondage*) or fear of being seen as out of line by their Taiwanese employers or labour brokers. While isolation in itself is not definitive of a forced labour situation, it can serve as a warning that there are other indicators of forced labour happening that, if all taken together, would indicate an exploitative employment situation.



What Taiwanese SMEs should look out for :

Forced Labour Indicator #4 Isolation

- Workers live or work in very remote areas, where it is difficult to reach (i.e. at sea, outside the city in very rural areas).
- Workers are denied contact with the outside world.
- Workers are not allowed to or are simply not able to communicate with their families or use the internet.
- Workers whose means of communication are confiscated at the workplace as an administrative penalty.
- Workers are not allowed to interact with other workers or the local community.
- Workers are unable to communicate with the local community due to language barriers and feel a sense of cultural isolation or loneliness.



Forced Labour | 5
Indicator

Physical and Sexual Violence

STELLINA



International Standards

The use of physical and sexual violence against a worker is a strong indicator for forced labour. It is a criminal act against the security and dignity of persons. Violence is never acceptable as a disciplinary measure or as a method to coerce a person to work.

While physical abduction and kidnapping is at the very extreme end of the broad spectrum, violence can include forcing a worker to undertake additional work in addition to their agreed tasks, to perform sexual acts with an employer or person in power, touching workers inappropriately, administering drugs or alcohol to make them more submissive, or using actual physical violence on them or individuals close to them as a form of coercion and to induce fear.

Scenarios of violence in a forced labour situation are various. It can occur when workers are physically beaten when they resist demands from employers. It can also be if they are forced to consume certain foods against their will under the menace of penalty. It can be that they are subjected to a violent act if they do not meet expected performance quotas.

Migrant worker women are especially vulnerable to sexual violence by being forced, drugged or deceived into unwanted sexual contact with their employers or labour brokers, but male workers are also victims of sexual assault.

Physical and sexual violence can also be used as a disciplinary measure for workers to undertake work in which they have been deceived (*Forced*

Labour Indicator #2 Deception) and have not contractually agreed to as part of their employment conditions. Furthermore, violence can be a form of penalty meted out to workers when they do not reach their production quota. It can be a form of intimidation and threat presented to a third person (*Forced Labour Indicator #6*), who may either directly witness the violence or subsequently hear of the violence committed against others.

Taiwan Case

In 2017 a factory owner based in Taoyuan hired a young migrant worker as a manufacturing technician. She lived in a dormitory next to the factory. Throughout 2018, the worker was subjected to multiple occasions of unwanted sexual contact at her dormitory by her employer.

The first sexual assault occurred in January 2018 when the woman was waiting in the dormitory for her labour broker to attend a medical appointment. The second time happened in April 2018 when the employer broke into her room while the migrant woman was on the phone with her mother. She was subjected to prolonged sexual touching without consent. The third time occurred in the same month when the employer assaulted her while she was having her meal at the dormitory. After this incident, the woman reported the assaults to the police.

When the case reached the Taoyuan District Court of first instance, the employer alleged the migrant woman accused him of sexual assault out of dissatisfaction over her wage. The employer further alleged that the case was an attempt for her to change her employer. The court, however, ruled against the employer and sentenced him to two years of



imprisonment. After the conviction, the employer reached a settlement with the assaulted victim. The appeal court later commuted the sentence to a fine instead of imprisonment.¹¹

Taiwan Analysis

Violence is a strong indicator of forced labour. Violence meets the threshold of work that is defined by international standards as forced labour, meaning that workers carry out such work involuntarily and under a menace of penalty.

Physical and sexual violence is prohibited by Taiwanese law. A violent act constitutes the offence of causing Injury if it causes harm to one's physical or psychological functions, or injuries. Article 221 of the Criminal Code stipulates that a person who by threats, violence, intimidation, inducing hypnosis, or other means against the will of another person leading to a sexual intercourse with such person shall be sentenced to imprisonment between three to ten years.

On physical violence, Article 277 of the Criminal Code states that a person who causes injury to another shall be sentenced to imprisonment for not more than five years, short-term imprisonment, or a fine of not more than NT\$500,000 (about US\$15,500). If death results from the violent act, the offender can be sentenced to life imprisonment; in the case of serious physical injuries, the offender can be imprisoned for three to ten years.

Physical and sexual violence against a worker is a strong indicator of forced labour and is never acceptable. Yet migrant workers in Taiwan are victims of violence, for instance, when they are being forced into performing excessive overtime with physical shoves and blows on fishing vessels or in factories.

The power inequality between employers and migrant workers in Taiwan is a serious obstacle for victims' access to justice. Without access to justice, workers remain silent or flee, often trailed by worries of problems arising from an early termination of their employment contract, unpaid debts, and a lengthy and complex criminal trial.

The absence of active, physical resistance does not make a sexual act consensual. Some may be too afraid of losing their employment to react when faced with sexual assault, but lack of physical or verbal resistance is not consent. Employers should always keep in mind that every single migrant worker has the inalienable rights of non-discrimination in international human rights law and is protected by the relevant provisions in Taiwanese law.

Note : ¹¹ China Times, "Boss groped young female migrant worker in her dormitory; she cried that she is a worker," 22 November 2020.



What Taiwanese SMEs should look out for :

Forced Labour Indicator #5 Physical and Sexual Violence

- Workers are subjected to physical or sexual violence or threats of violence.
- Workers are noticeably intimidated and change their behaviour in the presence of persons in positions of power.
- Workers do not speak up because they fear violence in their workplace or accommodation, i.e. existing “grievance channels” are not used.
- Workers seem accustomed to a climate of violence or threats of violence.
- Workers are accompanied or surrounded by individuals they fear.
- Workers are under the influence of drugs or alcohol at work which they have been forced or felt compelled to take.
- Workers have witnessed or shared stories of others being subjected to violence, and this makes themselves more careful, obedient or “compliant” with rules.

Forced Labour
Indicator

| 6



Intimidation and Threats

STELLINA

International Standards

The forced labour indicator of intimidation and threats is closely linked to the previous indicator of physical and sexual violence against workers. Intimidation and threats must be evaluated from the worker's perspective (What might feel intimidating or threatening for them?) and consider specific aspects of the individual's circumstances and what makes them vulnerable (*Forced Labour Indicator #1 Abuse of Vulnerability*).

Vulnerability needs to be broadly understood. Factors that make a worker more vulnerable to abuse include individual characteristics, such as gender, religious beliefs, age, sexual orientation, cultural background, education attainment, disability or social and economic status, or circumstances of the worker's employment. For example, a worker lacking documentation to legally work can fear threat of denunciation to authorities and deportation. Similarly, a worker who is pregnant or in need of specialist medical care can particularly fear losing access to healthcare.

In a forced labour situation, threats will be made to warn workers against something that is worse than they are currently already experiencing. The aim is to prevent them from leaving an abusive working situation. Common threats can be warnings of loss of wage as a disciplinary measure or access to privileges, housing or deteriorating working or living conditions (*Forced Labour Indicator #10 Abusive Working and Living Conditions*).

Threats can be directed at the safety and dignity of the worker – or to his or her family or colleagues. Intimidation and threats also encompass verbal abuse, insults, psychological coercion and tactics of blackmail. These can be frequent insults and manipulation to undermine the worker's confidence and to publicly humiliate him or her as a form of exerting control.

Taiwan Case

During the pandemic in 2021, a number of Taiwan chipmakers were reported to have discriminately restricted the movement of migrant workers from Southeast Asia and threatened them with various forms of mistreatment into complying with the movement restrictions.¹²

Some labour brokers reportedly threatened workers with the immediate cremation of their bodies should they die from Covid-19. The brokers also intimidated the workers that in the event of their deaths, their families would not only not have the final chance to see their bodies, but the financial security provided by the workers' remittances home would be cut.

Such threats of cremation would have been especially feared by Taiwan's Muslim migrant workers from Indonesia because, under Islamic rites, cremation of the deceased's body is not allowed. Other forms of intimidation centred on having migrant workers bear the costs of pandemic control, such as paying for their own quarantine fees and medical treatment in case they or any of their colleagues with whom they have been in contact fall ill from Covid.

Note : ¹² Nicola Smith and John Liu, "Taiwan chipmakers keep workers 'imprisoned' in factories to keep up with global pandemic demand," *The Telegraph*, 25 June 2021.



Some tech firms reportedly threatened migrant workers with not only medical costs or financial penalties, but also holding employees personally and legally liable for potential damages suffered by the company, including to its business image, in the case of them falling ill with Covid and bringing about a cluster infection in the factory.

There were reports that some technology firms asked migrant workers to sign documents accepting financial liability if they break a company-imposed lockdown and become sick with Covid.

Taiwan Analysis

Article 305 of the Criminal Code of Taiwan prohibits the act of a person threatening to cause injury to the life, body, freedom, reputation, or property of another and thereby endangers his or her safety. Such an act is punishable by imprisonment for not more than two years, short-term imprisonment, or a fine under NT\$9,000 (about US\$280).

Article 304 addresses the criminal act of using violence or threats to cause or obstruct a person from carrying out an act, which is punishable by the same as the above, except a potentially longer prison sentence of three years instead of two.

Intimidation and threats frequently take place along with physical and sexual violence (*Forced Labour Indicator #5*) and contribute to an atmosphere of fear for the workers. This speaks to the presence of the menace of penalty in the definition of forced labour under International Labour Organization's Convention No. 29 of 1930.

In recent years in Taiwan, public awareness has grown of the physical violence, intimidation and threats faced by migrant fishers working in Taiwan's distant-water fishing fleet. Cases of extreme violence aboard fishing vessels with a connection to Taiwan are the product of a high-pressure environment where fishers can be victims of physical violence, accompanied by scolding and verbal abuse from the captain and his crew.

The isolation as experienced by the migrant fishers (*Forced Labour Indicator #4*) due to distance from shore and a language barrier with the crew means that routine intimidation and threats take on additional elements of fear and coercion.

Intimidation and threats must be evaluated from the worker's perspective and consider specific aspects of the individual's vulnerability (*Forced Labour Indicator #1 Abuse of Vulnerability*). Undocumented migrant workers fear denunciation to immigration authorities and subsequent repatriations. This fear, however, can also extend to migrant workers with documentation in Taiwan.

According to the Employment Service Act, Article 56, the employer shall report in writing to the local authority, immigration agency and the police within three days of the event that a foreign employee is absent from the workplace and not in contact for three consecutive days. Once being registered as having lost contact with the employers, migrant workers face grave risks of arrest, forced detention, fines and deportation.

While the possibility exists for migrant workers who have been falsely accused of having lost contact with their employers in Taiwan to appeal, in reality it is difficult for reported migrant workers to revoke the official



registration of their abscondment. Some of these reasons include migrant workers' unfamiliarity with Taiwanese legal framework, inadequate awareness of their labour rights and the fear of having to bear high legal costs.

These examples of barriers to migrant workers' access to justice mean that, in reality, Article 56 can be readily misused by an unscrupulous employer as a way to coerce workers into compliance with restriction of movement (*Forced Labour Indicator #3*) and any other employment conditions that had not been agreed with the workers.

It is important for Taiwanese employers and labour brokers to note that threats of denunciation, such as the remark "I will report you to the immigration agency if you don't follow my instructions" and any such threat to the worker's right to freedom of thought, conscience and religion may indicate a situation of forced labour.



Photo/ freepik.com



What Taiwanese SMEs should look out for :

Because intimidation and threats frequently happen in conjunction with the previous indicator of physical and sexual violence against workers to create a climate of fear, guidance here can overlap with Forced Labour Indicator #5.

Forced Labour Indicator #6 Intimidation and Threats

- Workers are verbally abused (called names, insulted and undermined) at their workplace in front of others.
- Workers are threatened with reporting to local authorities against their will, loss of wage, decreasing standards in working and living conditions if they do not do as instructed.
- Workers are threatened with the safety of their colleagues or family members.
- Workers are threatened with physical or sexual violence or they witness acts of violence carried out against others who have complained about their working or living situation.
- Workers are noticeably intimidated and change their behaviour in the presence of persons in positions of power.

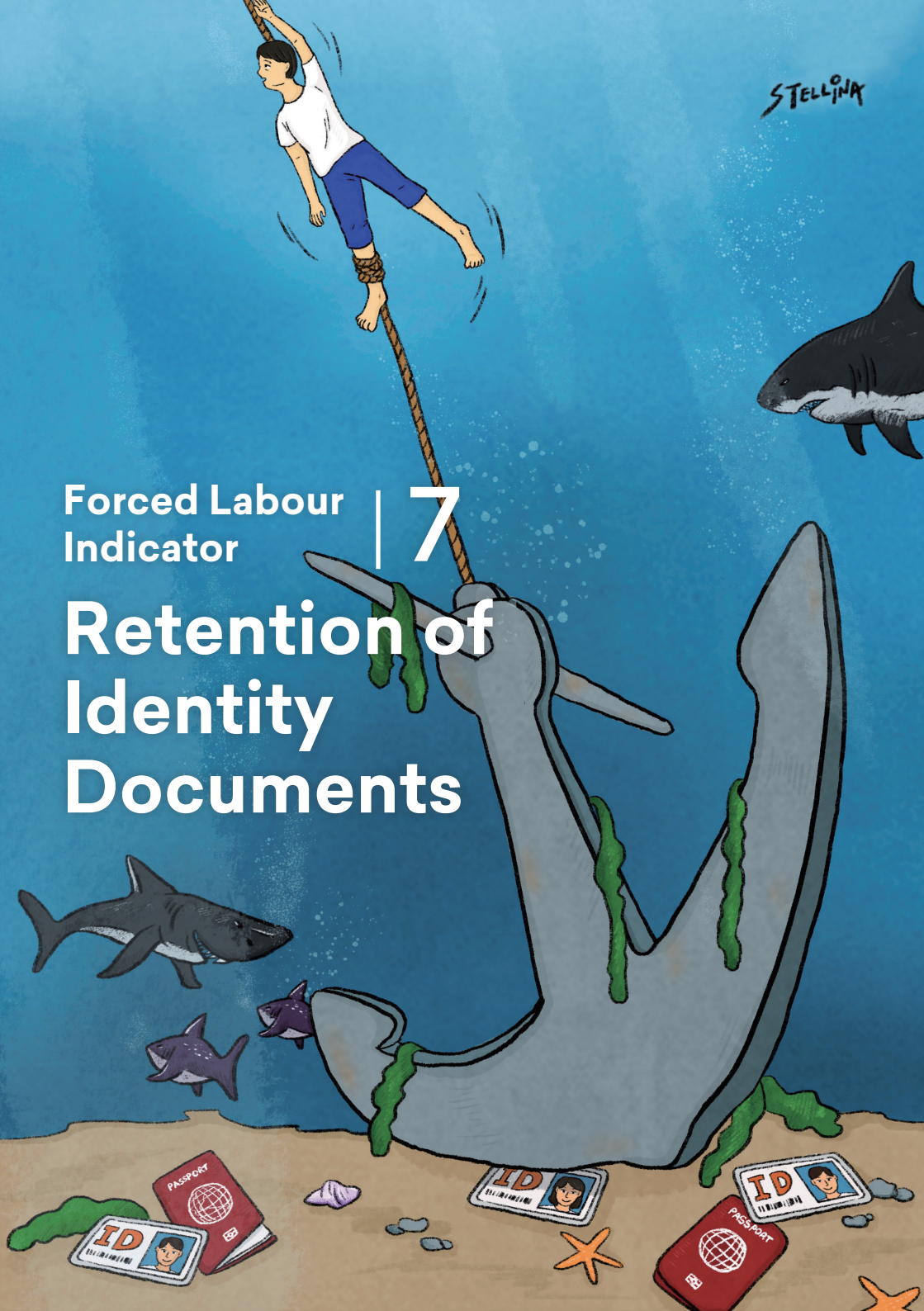


- Workers do not speak up, even in front of third parties (such as auditors) because they fear violence in their workplace or accommodation.
- Workers seem accustomed to a climate of violence or threats of violence.
- Workers are accompanied or surrounded by individuals they fear.

STELLINA

Forced Labour | 7
Indicator

Retention of Identity Documents





International Standards

The retention of workers' identity documents by employers or labour recruiters can create a situation or make workers feel that they cannot leave their jobs without losing access to these important personal documents. In so doing, retained identity documents are a way of control and serve to deter workers from leaving before the end of their contract.

When workers are required to hand over important personal documents or possessions to their employers and recruiters, especially if no copies or proof of receipt are given, they may feel they are tied to their current job and they are not easily able to access essential services and may be hesitant to seek help from authorities or civil society.

In some countries and operating contexts, the retention of passports or identity cards is common practice that is understood to be "normal." Some people involved might not know better and have no intention to restrict people's freedom, but some of those in power use possession of personal documents as a mechanism to prevent workers from leaving their job easily. An example might be when employers fear losing out on recruiting and training costs when new employees leave for a competitor.

Employers and labour recruiters also might cite operational reasons, safeguarding or insurance policies as a reason for this practice. None of these reasons justifies the retention of personal documents against a person's will and without establishing safeguards to ensure they will always have free access.

Another example that overlaps with the problematic practice of debt bondage is when passports are retained to force the repayment of a loan granted to a worker and as a means to ensure they do not leave without repaying (*Forced Labour Indicator #9*).

While the practice does not automatically indicate a forced labour situation, it nonetheless effectively restricts workers' freedom of movement (*Forced Labour Indicator #3*). For this reason, it must be viewed as a potential flag and other indicators checked because the practice can exacerbate workers' dependency on their employers and increase the risk of abuse of their vulnerability (*Forced Labour Indicator #1*).

Should employers need to have access to the identity documents of their workers, they should only store copies and be clear about the procedure and reasons. Workers should have access to storage facilities that they can freely access, where their identity documents can be kept securely and safely.

Taiwan Case

In 2020, fish caught by Taiwanese distant-water vessels were included, for the first time, in the List of Goods Produced by Child Labor or Forced Labor by the U.S. Department of Labor. The following year, Taiwan's oversight body, the Control Yuan, released an investigation report on the labour rights and slavery-like working conditions of the fishers who work in Taiwan's distant-water fishery sector.

The report referenced the Ministry of Labor's primary data that from 2017 to 2019, during which migrant fishermen filed 1,522 complaints against



their labour recruitment agencies through the Ministry of Labor's 1955 Hotline for reporting migrant employment abuses in Taiwan. The retention of their identity documents featured as one of migrant fishers' main complaints.

For example, in 2020, the Yilan District Prosecutor investigated a case of human trafficking. The victim, a Vietnamese fisherman, was illegally placed into cleaning, seafood cooking, slaughtering and packaging work from December 2019 to March 2020 at a seafood processing plant. To exert control over the fisherman and ensure that he complied with the instructions of his employers, his labour agent retained his passport.

In addition, after finding out that the fisherman had reported his labour abuse to the 1955 Hotline, the labour broker threatened him against filing another complaint (*Forced Labour Indicator #6 Intimidation and Threats*). The exploitation of the Vietnamese fisher continued. From December 2019 and January 2020, he only received some NT\$20,000 each month (about US\$630), which is below the statutory minimum wage for Taiwan. For February and March 2020, his wages were completely withheld (*Forced Labour Indicator #8*).¹³

Greenpeace released the report "Seabound: The Journey to Modern Slavery on the High Seas" in 2019. The report pointed out that 34

Note : ¹³ The Control Yuan of the Republic of China (Taiwan), "Investigation Report" (on Taiwan-caught Fish and List of Goods Produced by Child Labor or Forced Labor by the U.S. Department of Labor), 5 May 2021.

Indonesian fishermen had complaints against 13 distant-water fishing vessels, including five that were Taiwanese-registered or with a connection to Taiwan, such as the flag-of-convenience vessels Da Wang and Jinchun 12 that operate with Taiwanese investment and are reported to be involved in human trafficking.

Aboard these five Taiwanese distant-water fishing vessels, the retention of identity documents reportedly was a recurring practice that took place alongside recruitment practices of deception (*Forced Labour Indicator #2*), physical violence (*Forced Labour Indicator #5*), withholding of wages (*Forced Labour Indicator #8*) and excessive overtime (*Forced Labour Indicator #11*).

In September 2022, the U.S. Department of Labor released its updated List of Goods Produced by Child Labor or Forced Labor. Taiwan's distant-water fish remain on this list. The U.S. Department of Labor hopes to use the list to increase public awareness of forced and child labor in various countries and hopes that enterprises and governments will face up to the problem and crack down on illegal practices and labour exploitation.

Government departments and law enforcement officers of various countries can also use ILO's forced labour indicators to identify and address forced labour risks in business activities.



Taiwan Analysis

Article 57(1) of Taiwan's Employment Service Act prohibits employers from illegally withholding the passports or residence certificates of migrant workers or embezzling their belongings, against the will of the workers. Similar prohibition extends to labour brokers. Article 40(1) of the same Act states that no labour agency and brokers, in the process of providing employment services, can withhold any job applicant's national identification card, work certificate or any other certifying document against the applicant's free consent.

Violations of either article by an employer or a labour agency or broker would incur a financial penalty of between NT\$60,000 and NT\$300,000 (about US\$2,000 and US\$9,500) under Article 67(1) of the Employment Service Act.

While Taiwanese law is clear in that the arbitrary confiscation of worker identity documents is not permissible and subject to penalty, in reality the issue of the worker's consent to part with their identity documents by giving them to their employers or labour brokers is customarily accepted and less clear in reality.

Many migrant workers sign a written agreement with their employers to hand over their passports for the declared purpose of safekeeping, as a testament that the practice was not done against their will. The agreement purports to give their free consent for their passports to be retained by their employers. Many agreements stipulate that the passport is to be returned to the worker when they return to their country of origin for a visit or at the end of their employment.

In such cases, even though Taiwanese law does not specify the conditions under which employers may be legally permitted to retain identification documents of their workers, the use of these agreements is a customary practice that allows, in reality, for the retention of identification documents to take place, outside of clear, legally-defined parameters that establish the responsibilities and expectations of either party.

In principle, the employer, by signing the agreement, accepts the responsibility to hold migrant worker's personal documents for safekeeping. But the criteria by which employers must allow employees free and direct access to their personal documents are not clear.

The element of free access for migrant workers to his or her identity document is key to this indicator, where both parties have supposedly agreed to the arrangement. Although the most widely known cases of forced labour involving the retention of identity documents occur in Taiwan's distant-water fisheries, such practices can also take place in other sectors, including in industry.

In the factory setting if lockers are provided for the workers to have secured storage, workers must have free and direct access to the lockers without any intimidation or threat of imposed penalties (*Forced Labour Indicator #6*) or limitation of time or frequency.

Lack of access to personal identification documents is closely linked to restriction of movement (*Forced Labour Indicator #3*).



Workers may be reluctant to report abuse even if they encounter violence in the workplace, out of the fear of antagonising an employer they cannot escape in a country they cannot leave. Document retention may be used as a means to ensure worker compliance to engage in excessive overtime (*Forced Labour Indicator #11*) or to accept a wage that is lower than what was originally agreed (*Forced Labour Indicator #2 Deception*). In this way, the retention of identity documents, even in cases where agreements for their safekeeping are agreed by both employer and employee, can be a signal for the presence of other forced labour indicators.

In past years, there have been some discussions on amendments to provisions in the Employment Service Act that address the retention of identity documents by employers or labour brokers. These discussions, however, have not yet resulted in concrete changes to the law that would clearly set out the criteria and conditions of free and direct access under which the retention of such documents would be considered to be permissible for the purpose of safekeeping.

In the absence of such legal clarity, employers and labour brokers in Taiwan need to note the asymmetry of power that exists in employment relationships between migrant workers and employers when workers arrive in Taiwan with debts associated with their recruitment fees and recruitment-related costs for their employment abroad (*Forced Labour Indicator #9 Debt Bondage*).



What Taiwanese SMEs should look out for :

Forced Labour Indicator #7 Retention of Identity Documents

- Workers are asked to deposit their identity documents, such as passports, other forms of identification, or qualification certificates with their labour brokers or employers, upon starting or during their employment.
- Workers' requests to see their identity documents and other valuables held by the labour brokers or employers are rejected or delayed.
- Workers are not able to access their documents freely, i.e. they are promised their documents only after they have completed their employment contracts or they have to pay via a wage deduction.

Forced Labour | 8
Indicator

Withholding of Wages



International Standards

Withholding of wages in the context of forced labour is more than the irregular or late payment of wages. Wages that are paid irregularly or late are in themselves not a definitive indication of forced labour, as will be pointed out below. When it is done systematically and deliberately, however, this can point to an employment situation that is abusive and unlawful. It is used as a form of control to keep workers from leaving or changing employers.

Where workers are particularly vulnerable (*Forced Labour Indicator #1 Abuse of Vulnerability*) because they lack options to leave their abusive employer and the financial capacity to forego the payment they are owed, withholding wages can mean they are tied to a job they do not want to stay in. Migrant workers, for instance, may not have job mobility when their work visa is linked to their employer or they feel they have no real alternative employment in their country of destination.

Late or irregular payments can happen, without being intended, due to operational disruptions, lack of effective and established payroll processes, capacity or problems with cash flow. These are challenges particularly faced by small and medium-sized enterprises with tight margins. In certain industries and country contexts, payment of workers at the end of a long-term contract is also permitted, such as for interns at the end of an internship or seasonal workers at the end of a fixed-term contract.

In addition to irregular or delayed payment, another problem associated with the withholding of wages is how deductions are taken from workers' wages, resulting in a net pay that could be much less than

what was agreed or expected (*Forced Labour Indicator #2 Deception*).

Parts of a worker's wage are often deducted by the employer or labour agent for food, transport, housing or to cover disciplinary penalties. This is especially problematic if these deductions have not been contractually agreed and are unreasonable. Deductions cannot be beyond what is legally permitted. It cannot lead to a situation where the net wages received is not enough to ensure a decent living income for workers and their families.

There is a strong link to workers' vulnerability (*Forced Labour indicator #1*), as financially insecure workers are highly dependent on their employer or labour brokers and are not likely to change employers, for fear of jeopardising their chances of eventually receiving their pay.

Withholding of wages can also be closely linked to deceptive practices in recruitment and employment/ payroll (*Forced Labour Indicator #2 Deception*) if workers are not given clear information about all the various wage deductions taken from their pay, preventing them from receiving a full wage.

Taiwan Case

A well-known Taiwanese food manufacturer was investigated in 2016-2017 for reportedly deducting around NT\$1,500 to NT\$4,800 (about US\$55 to US\$150) from each monthly paycheck for three migrant workers who worked in its processing factory. The practice of withholding wages took place for many years, and the circumstances of the three victims shared similarities.



One Indonesian migrant woman was initially recruited to work in the domestic care sector, but was later illegally moved to factory work by her employers who were responsible for the food processing factory (*Forced Labour Indicator #2 Deception*). The labour broker involved knew that the worker was not undertaking domestic care work, as per her contract, but failed to report this discrepancy.

Instead, the broker counted on the migrant worker's lack of familiarity with Taiwanese law (*Forced Labour Indicator #1 Abuse of Vulnerability*) and falsely told her that she must pay NT\$3,000 in order to continue to work in Taiwan. In five years, the labour broker reportedly received a total of NT\$192,000 (about US\$6,000) from the worker under this false pretence.

The second Indonesian migrant worker was deceived by her labour broker when the elderly Taiwanese individual under her care passed. At this time, her labour broker, under the fraudulent declaration of being her employer, reported her to the local authorities as having absconded. The labour broker then moved her into the food processing factory for employment as an undocumented migrant worker. From her gross monthly wage of NT\$21,000 (about US\$660), almost a quarter — NT\$4,800 — was taken out for labour broker fees.

The third worker was a Filipino male migrant who received the regular monthly wage of NT\$26,000 (about US\$820) and paid his labour broker a monthly service fee of NT\$1,800. This case of labour abuse came to light when one of the other migrant workers from Indonesia complained to her family of her employers' discriminatory treatment in pay and deductions, and information of her abuse was conveyed via the Indonesian Economic and Trade Office to Taipei.

In addition to the deductions, the employers withheld the savings of the migrant workers and only helped remit their funds to their families that were over NT\$100,000 (about US\$3,000), claiming that it was to protect the migrant workers' families from spending it all if the whole amount was fully transferred. In doing so, the employers took possession of a deposit that served to prevent the workers from leaving unfavourable employment conditions.

In 2017, the Ciaotou District Prosecutors Office charged the employers and the two labour brokers for criminal offences under Taiwan's Human Trafficking Prevention Act. The Ciaotou District Court found the employers guilty and sentenced the employers to either seven months of imprisonment or a fine of NT\$210,000 (about US\$6,600). One labour broker was put on probation for three years, while the other broker was sentenced to a three-month imprisonment or a fine.¹⁴

In May 2018, the appeal court in Kaohsiung, however, reversed the earlier decision and found the employers not guilty on the grounds that there was no meaningful difference in the wages paid amongst the three migrant workers and when compared with the other migrant workers and Taiwanese workers at the factory. The labour brokers reached an agreement with the victims and settled the case out of the court.¹⁵

Despite the appeal decision, the Kaohsiung City Labor Affairs Department, however, conducted its own investigation and concluded

Note: ¹⁴ Apple Online, "Deduction of wages and exploitation of foreign workers; owner of a well-known food factory sentenced to 7 months in prison," 22 December 2017.

¹⁵ Liberty Times Net, "Persons in charge of a well-known tofu factory involved in the exploitation of foreign workers acquitted in appeal," 17 May 2018.

¹⁶ ETtoday, "Food factory imprisoned migrant workers for 14 Years; Kaohsiung City Labor Affairs Department imposes heavy penalties," 28 February 2017.



that the treatment, including the retention of identity documents (*Forced Labour Indicator #7*), withholding of wages (*Forced Labour Indicator #8*) and employment contrary to what was initially agreed (*Forced Labour Indicator #2 Deception*), indicated that it was a case of human trafficking. The Labor Affairs Bureau imposed an administrative penalty of NT\$1.2 million (about US\$38,000) on the employers and NT\$500,000 (about US\$16,000) on the labour brokers for breaching provisions in the Employment Service Act.¹⁶

Taiwan Analysis

According to Article 22(2) of Taiwan's Labor Standards Act, wages shall be paid in full and directly to the worker, unless otherwise prescribed by applicable statutes or administrative regulations or is agreed to by both the employer and the worker. Where another arrangement is agreed to by both parties, then the provision of Article 22 would not apply.

This caveat then allows for scenarios where workers do not receive their wages in full or directly. Employers and labour brokers can take advantage of a migrant worker's lack of familiarity with Taiwanese law (*Forced Labour Indicator #1 Abuse of Vulnerability*) and then deliberately misinform him or her about deductions to their wages (*Forced Labour Indicator #2 Deception*).

There are various ways that withholding of wages can occur for migrant workers in Taiwan. Some employers institute a scheme of forced savings as a way to prevent the worker from leaving, whereby a worker is forced to save a certain sum a month. This system has no basis in law, but has been reportedly used by some employers to coercively retain workers. This enforced savings is taken directly from the worker's monthly salary,

and then the amount is kept as a deposit that can be withdrawn from the employers when the employment is finished.

The practice of withholding of wages by labour brokers can vary in detail. For instance, one manner is for the legally permissible monthly service fees that is paid to labour brokers to be directly deducted from the monthly pay by the employers. The standard and legally accepted practice in Taiwan are that migrant workers pay monthly service fees to the labour broker.

When migrant workers terminate their employment contract with their employers, labour brokers are supposed to transfer the remaining wage to the workers. Some labour brokers, however, preemptively deduct a fixed amount from this final pay for migrant workers to pay for their return flight, in the case the worker is unable to transfer to another job and must then leave Taiwan.

Another reported method of withholding of wages occurred during Covid when workers bore certain costs associated with epidemiological control, such as the costs of hotel quarantine and Covid testing. During the pandemic, migrant workers, like all visitors to Taiwan, were required to be quarantined at special isolation hotels.

Even though Taiwanese regulations were clear that employers had to pay for both costs associated with disease control – hotel quarantine and Covid tests – some employers nevertheless asked their recruited foreign workers to repay these costs from their wage.

Although payment in-kind does not, in itself, constitute forced labour, such payments can be open to abuses that result in making workers more dependent on their employers. This can increase forced labour



risks. For this reason, it is important that Taiwanese employers note the ILO guidance that there should be legal protections in place to guard against the risk of abuses arising from in-kind payment. Employers should only make in-kind payment deductions from a worker's wage, such as for food and accommodation, if they are appropriate for the personal use and benefit of the worker and that the value of the allowances is fair and reasonable.¹⁷

While the in-kind payment for food and accommodation is recommended to be capped at NT\$5,000 per month in Taiwan, there are reports that the amount migrant workers are paid in-kind in Taiwan does not fully match the amount they were led to believe in their country of origin. Such cases point to the need for in-kind payment to be examined in the specificities of each migration corridor, so that the amount is transparent, predictable and not subject to arbitrary adjustments.

This is important as part of the broader understanding on forced labour risks associated with practices of withholding of wages and how they intersect with other forced labour indicators in the local Taiwanese context.

Note : ¹⁷ International Labour Organization, Protection of Wages Convention (C095), 1949, Article 4.



What Taiwanese SMEs should look out for :

Forced Labour Indicator #8 Withholding of Wages

- Workers are given irregular or delayed pay. This happens over a longer period of time or repeatedly.
- Workers' wages are withheld until they have finished the full term of their contract, and then are paid later or less than what they understood they would earn.
- Workers' wages are withheld entirely.
- Workers' contracts do not clearly set out the agreed remuneration, as well as the method and frequency of payment.
- Workers do not regularly receive their payslip that clearly sets out their gross pay and reasons for the deductions.
- Workers do not have direct access to their earnings due to their lack of control over bank accounts.



- Contracted workers are not directly paid by the company they provide work for. Instead, payments are processed by intermediate employment agencies, which are less visible. When these are also not scrutinised for their ethical employment practices this needs further investigation.
- Several workers submit the same bank details for incoming payment.
- Part of the workers' wages is deducted by their employers or labour brokers and used to cover their food, transport or housing outside the legally permitted limits.
- Workers do not have access to basic information on financial literacy and financial record keeping.

STELLINA



Forced Labour
Indicator

| 9

Debt Bondage



International Standards

A very high risk area of forced labour centres on debt. Debt can be used, by means both legal and illegal, to create and maintain an abusive employment situation. Heavily-indebted workers can feel that they have no option but to accept their working and living conditions, even if the initial agreement of employment differs significantly from the actual situation in the country of destination (*Forced Labour Indicator #2 Deception*).

They are less likely to report labour abuses, even if their identity documents are retained by their employers (*Forced Labour Indicator #7 Retention of Identity Documents*) or they are victims of physical and sexual violence (*Forced Labour Indicator #5*). For this reason, this indicator of debt bondage often goes hand in hand with other forced labour indicators.

Debt-bondage, or bonded labour, is a practice that can take place in various forms. In essence, it means workers are in a situation where they owe another person or entity money, which they are demanded to earn and pay back over an unspecified period of time with their labour. The debt can be imposed by the employer or by another individual, such as a labour broker or recruiter, an informal middle-person with ties to the labour recruiter or an informal loan provider who can easily manipulate the terms and the amount of the loan.

Debt can also be owed by the worker's family or passed between generations, in a pernicious form of intergenerational labour exploitation based on the abuse of vulnerability of socially and economically marginalised populations (*Forced Labour Indicator #1*).

Loans taken out by the worker's family, using collective assets as collateral, can inadvertently make the worker feel less willing to report labour abuses. The worker may fear potential harm inflicted on other family members (*Forced Labour Indicator #6 Intimidation and Threats*) or the familial pressure to succeed and uplift the family from poverty.

For these reasons, international attention has heavily focused on the issue of debts in labour migration, specifically related to debts that are incurred through the following that low-waged migrant workers must pay before their employment abroad:

- **recruitment fees: the costs of matching workers to their employment;**
- **recruitment-related costs: indirect costs in matching workers to their employment abroad but can manifest in associated costs, such as medical tests, training, transportation, etc; and**
- **other illegitimate costs.**¹⁸

The reality is that these fees represent a flawed, unfair recruitment system, where a debt burden is placed on low-waged migrant workers. They must find ways of borrowing these funds in advance and then work under the pressure of paying off these debts. Recruitment, however, is a business cost and should be paid by the employers.

The recruitment practice, whereby low-waged workers that make up the vast majority of the global manufacturing labour force bear the cost of their international recruitment stands in contrast to high-waged workers

Note : ¹⁸ International Labour Organization, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs*, 2019.



moving for work, where it is standard for their employers to bear the cost of their international recruitment. The International Employer Pays Principle, stating that “No worker should pay for a job - the costs of recruitment should be borne not by the worker but by the employer,” advocates for this change in the international labour migration system that will not embed forced labour risks at the start of a migrant worker’s journey abroad for work.

Reflecting the international Dhaka Principles for Migration with Dignity, adoption of the Employer Pays Principle is fundamental to combat forced labour and the trafficking of migrant workers. It must also be seen in the context of the UN Sustainable Development Goals, where Target 8.7 sets out the global goal to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and in conjunction with Target 10.7 that aims to facilitate orderly, safe, regular and responsible migration and mobility of people.

In recent years, momentum advocating for the responsible recruitment of migrant workers, where their costs of recruitment are fully borne by the employers, has grown with more regulatory attention in various jurisdictions on the import of merchandise made abroad, in whole or in part, with forced labour.

While the most notable example is in the growing use of Withhold Release Orders (WROs) by the U.S. Customs and Border Protection on goods believed to be the products made, in whole or in part, with forced labour, other jurisdictions, such as Canada and the European Union, also have or are planning to institute similar import bans on forced labour goods.

Taiwan Case

A 22-year-old Vietnamese worker decided to go to Taiwan for work to help pay for the expensive treatment of his mother's malignant cancer tumour after his military discharge. He was deep in debt even before entering Taiwan. He had to mortgage family land to cover a US\$6,100 recruitment fee paid to the Vietnamese broker (about NT\$200,000) and a security deposit held by that labour broker against a potential breach of employment contract.

In addition, upon arrival in Taiwan and under the excuse that it was to gain the trust of his future employer, the Taiwanese labour broker retained his passport and residency registration card.

The monthly wage he received in 2016, NT\$20,008 (about US\$650), was the minimum monthly wage. From this amount, he was further deducted a total of NT\$8,000 (equivalent to US\$260) for brokerage fee, accommodation, health insurance and serving the loan he took out back in Viet Nam.

For this reason, not having enough money was the constant, main worry that he and his fellow Vietnamese workers at the same factory shared for many months after his arrival. There was not much left after the deductions, service payments for the loan and remittance to his family. He tolerated mistreatment at the workplace and never complained. He worried that he would be sent back before paying off all the debts.¹⁹

A 2020 policy brief from the International Labour Organization on worker-borne recruitment fees and related costs for Vietnamese migrant workers notes that the average amount of recruitment fees and related



costs for Vietnamese workers going abroad is around US\$6,500, with data showing that women migrants tend to pay slightly more than their male counterparts for their overseas employment.²⁰

Against an average monthly wage of US\$800 for work overseas, a Vietnamese migrant has to work around 8.7 months to recover the cost of labour migration. In situations where the legal ceilings are not respected, for instance as for recruitment-associated costs that are illegitimate, unreasonable and undisclosed, the time of repayment for a Vietnamese migrant worker to recover his or her cost of labour migration can potentially be much longer.

Note : ¹⁹ Mimi Chen, "Survival rules for migrant workers in Taiwan: Be obedient, enslaved and accept all instructions," *The Reporter*, 31 May 2016.

²⁰ International Labour Organization, *ILO Viet Nam Policy Brief 3: Eliminating worker-borne recruitment fees and related costs to prevent forced labour*, 23 August 2020.

Taiwan Analysis

The recruiting and placing of migrant workers from their countries of origin for employment in Taiwan is flawed. Similar to experiences abroad, it does not fully align with international standards on fair and responsible recruitment, particularly as they pertain to the issue of debt bondage as a forced labour risk in the global supply chain.

The main challenge to responsible recruitment, whereby costs of recruitment are borne by Taiwanese employers, is the prevailing, legally-accepted practice of fees borne by migrant workers. This normalises the expectation of workers being indebted before coming to Taiwan and further shifts public support away from the Employer Pays Principle.

The most problematic, but not the only source of misalignment with international standards on fair recruitment, is the imposition of a monthly service fee paid by the migrant workers to their labour brokers in Taiwan. This monthly service fee, between NT\$1,500-1,800 (about US\$50-60), is legally permitted under Article 6 of Taiwan's Standards for Fee-charging Items and Amounts of the Private Employment Services Institution.

The monthly service fee is taken directly out of the worker's monthly wage (*Forced Labour Indicator #8 Withholding of Wages*) to compensate the brokers for their services, mainly seen as language translation and general human resources activities in the management of a foreign workforce. Many enterprises do not have the in-house capacity to manage their foreign workforce and have come to largely rely on labour brokers to undertake this function.



The collection of this monthly service fee from Taiwan's 712,169 migrant workers (as of September 2022) means that this is a very significant and steady revenue stream for Taiwan's labour recruitment industry, with one figure placing this to be as high as about US\$484 million annually.²¹

The monthly service fees provide a good example of the power asymmetry that exists in the employment relationship between the employer and migrant worker in Taiwan.

For instance, where migrant workers would pay around NT\$18,000 to NT\$21,600 a year for service provided by the labour brokers, employers are only charged NT\$2,000 a year for each migrant employee under Article 3 of the same regulation for service from their labour broker. This means employers pay roughly only 10 percent for labour broker service of what migrant workers are expected to pay.

While some may argue that the lower service fee for employers is justifiable on the grounds that employers can be charged a registration and introduction fee that is potentially equivalent to the first month salary of migrant workers, the argument presents a flawed understanding of how fees are levied on the migrant workforce in Taiwan. For instance, registration and introduction fees are expenses required for undertaking job-seeking or recruitment registration and for matching job applicants and employers. These are placement fees and are different in nature from service fees, which is in essence a human resource management surcharge that migrant workers must bear.

Note : ²¹ FairSquare Projects, *The Five Corridors Projects – Corridor 4 Philippines to Taiwan: Fair Recruitment in Review*, July 2021.

The system of making migrant workers pay for their human resource management in the form of a monthly service fee that is directly taken out of their wages is exceptional to Taiwan.

Another type of fees are the extra fees paid by either employers to secure workers or vice versa for workers to secure employment. In Taiwan, these fees refer to fees that either party can pay on an arbitrary basis outside the regulation of permitted fees for workers to extend their contract, transfer between jobs or find new employment. Colloquially they are known as “job purchasing” fees (買工費) that are typically undisclosed and outside of legally permitted channels.

In addition to the above recruitment fees and related costs in Taiwan, there are such costs in the countries of origin, which adds another layer of complexity. An equally important part of pushing for fair and responsible labour recruitment is in the countries of origin.

Recruitment fees is often translated into the Chinese used in Taiwan as “labour brokerage fee” (仲介費) which sometimes is used interchangeably with the term “overseas fee” (海外費) to denote that these fees are collected abroad, in accordance with Article 40(5) of the Employment Service Act that prohibits them from “demanding, agreeing to be paid at a later stage, or accepting fees beyond the prescribed standards or any other unjust interest.”

The translated terminology inadvertently focuses on the role of labour brokers abroad, and this facilitates a portrayal of a flawed recruitment system as a problem outside of Taiwan. This is a convenient perception, as it implies that domestic labour brokers do not cause or contribute to problems of international recruitment associated with their debt bondage. This perception glosses over the possibility that labour brokers in Taiwan collaborate with



and profit from a flawed recruitment system that places migrant workers in debt prior to their employment in Taiwan.

A more accurate translation for recruitment fees and related-costs in Chinese that would better align with the ILO definitions would be “ 招聘費 ” for recruitment fees and “ 招聘相關費用 ” for recruitment-related costs. This shifts the emphasis from the labour brokers abroad to the entire process of international labour recruitment, with the scope to include all processes involved in transnational job placement, whether they are in the countries of origin or in Taiwan.

In recent years, advocacy for the Employer Pays Principle has seen increased traction. While a large part of the momentum is driven by international industry groups, such as the Leadership Group for Responsible Recruitment and the Responsible Business Alliance, Taiwanese SMEs should further note that this landscape is increasingly being determined by regulatory action abroad, as Taiwan's main export markets of the U.S. and Europe place forced labour risks at the forefront of their trade negotiations with Taiwan or supply chain due diligence legislations.

It is therefore important for Taiwanese suppliers to understand that debt bondage as an indicator of forced labour is an area of high risk for the Taiwanese supply chain and that it can manifest in other indicators of forced labour, such as the abuse of vulnerability (*Forced Labour Indicator #1*), deception (*Forced Labour Indicator #2*), withholding of wages (*Forced Labour Indicator #8*) and excessive overtime (*Forced Labour Indicator #11*).



What Taiwanese SMEs should look out for :

Forced Labour Indicator #9 Debt Bondage

- Workers are paying off a debt. The debt can be informal or formal. Informal debts have no clearly agreed and accepted terms and conditions and where the accounting can be easily manipulated by the lender. Formal debt, where interest terms and other conditions are set, can be the loans provided by the labour brokers in the countries of origin or by the employers in Taiwan. They can be via financial service institutions or directly provided by the labour brokers or employers.
- Workers' families in the countries of origin have taken out a loan on the workers behalf, and the workers are remitting wages home to pay off this debt held by their families.
- Workers are charged recruitment fees and recruitment related costs by labour brokers in their countries of origin and in Taiwan.
- Workers continue to pay monthly service fees to their labour brokers in Taiwan.
- The contracted labour brokers or agencies charge recruitment fees and recruitment-related costs from the migrant workers.

Forced Labour | 10 Indicator



Abusive Working and Living Conditions



International Standards

Abusive working and living conditions are described by the International Labour Organization as those that are degrading (humiliating or dirty) or hazardous (difficult or dangerous without adequate protective gear), and in severe breach of domestic labour law.

It is a significant red flag of forced labour, for abusive working and living conditions can be seen as an alarm that workers are coerced and prevented from freely leaving the job. This is because workers in an employment relationship without an element of coercion are unlikely to accept working conditions that are degrading, hazardous, or not in compliance with domestic labour law.

Victims of forced labour may also be subjected to substandard living conditions. For instance, they are made to live in overcrowded and unhealthy conditions without any privacy, and they lack the choice to live elsewhere. While workers may sometimes accept bad conditions because of the lack of any alternative jobs, forced labour victims are likely to endure living conditions that other workers would not freely accept.

Testimonies from forced labour victims frequently centre on abusive working and living conditions. Often they express a significant fear of falling victim to occupational accidents or unsafe living conditions, a worry that was brought to the fore during Covid-19 when their overcrowded and unsanitary dormitories increased the risk of infection.

Abusive working and living conditions can intersect with other indicators, such as deception (*Forced Labour Indicator #2*) in cases where the promised contractual conditions differ significantly from the reality of what is offered; restriction of movement (*Forced Labour Indicator #3*); or physical or sexual violence (*Forced Labour Indicator #5*).

Taiwan Case

In March 2020, a fire broke out in a metal parts factory in Dadu District, Taichung. Three Vietnamese migrant workers perished in the fire because they lived in the dormitory on the upper floor of the factory. The factory had an integrated staff dormitory, and it was constructed from metal iron sheets that rapidly spread the fire. When the fire broke out, the factory owner saw two migrant workers calling for help at the window, but the windows of the dormitory were nailed shut with anti-theft iron panels, preventing firefighters from rescuing the trapped workers.²²

Similar circumstances happened in an earlier reported fire in the dormitory of a solar window film manufacturer in Luzhu District, Taoyuan in December 2017. The company leased a two-floor, iron-sheet clad house as a dormitory for their migrant workers. The ground floor consisted of the warehouse for storing goods and dormitory, and the upper floor housed additional dormitory bedrooms and a living room.



The Taoyuan Fire Department reported the fire started in the living room on the upper floor of the dormitory due to electrical overloading. There were multiple electric appliances on site, including five electric cookers, one electric fan, one electric oven, and an extension cord.

The fire was caused by overloading electrical appliances and materials that were stacked in the dormitory. Prosecutors pointed out that the iron-sheet building where the fire broke out is an illegal structure, with only one entrance and exit on the ground floor and one staircase. The employer did not regularly repair and maintain the electric wiring, make fire escape equipment available or use fire-proof material inside the dormitory. When the fire broke out, six migrant workers were trapped on the upper floor without an escape route. They died of shock, heavy smoke and severe burns. Five migrant workers who were able to escape suffered injuries and burns due to the fire.²³

Note :²³ Liberty Times Net, "6 Dead and 5 Injured in a Fire at Taoyuan's Sican Company's Dormitory," 7 May 2019.

Taiwan Analysis

According to Article 34 of Taiwan's Regulations on the Permission and Administration of the Employment of Foreign Workers, employers applying to hire foreign migrant workers need to prepare and submit a Foreign Workers Living Care Service Plan to the competent local authority within three days of the workers' arrival in Taiwan for inspection. The Plan should cover aspects of the workers' access to a secure and sanitary board and lodging; and guaranteed health and safety provisions (Article 33).

Furthermore, it is stated in a separate regulation called the Foreign Workers Living Care Service Plan Criteria and Benchmarks, that employers are strictly prohibited from accommodating foreign workers in areas where flammable or combustible substances are placed or stored, in the vicinity of machinery and equipment that generate strong vibrations and noise. Housing workers within a manufacturing environment, however, is not strictly prohibited.

The Foreign Workers Living Care Service Plan Criteria and Benchmarks only prohibits workers from being housed in manufacturing environment if it meets certain criteria indicating that it is extremely hazardous, such as being in the proximity of explosive or flammable materials or is a high temperature environment (like kilns or boilers) or is particularly gaseous, vaporous, dusty, noisy or with strong reverberations coming from the running of heavy machinery.

In reality, this means that many employers deem the manufacturing environment to be sufficient to house their migrant workforce, posing significant risks to their health and safety.



Upon their arrival in Taiwan, migrant workers often encounter the problem of poor accommodation. Overcrowded dormitories expose migrant workers to increased risk of contracting infectious diseases, as was shown during Covid-19.

The Foreign Workers Living Care Service Plan Criteria and Benchmarks also requires employers to provide each foreign worker with at least 3.6 square metres of living area, and have his or her own bed. Even if minimum regulatory requirements are met, health and safety standards for living quarters can remain unfulfilled, as revealed in the above cases of fire accidents.

Taiwan's migrant dormitories frequently have serious fire risks, as a result of co-locating in a manufacturing environment, use of iron sheets for external cladding and barred windows to deter burglary. These secured windows, via iron bar or wood panelling, hamper fire escape and sometimes are deliberately used to prevent migrant workers from escaping (*Forced Labour Indicator #3 Restriction of Movement*). This means often there is only one entrance and exit. In some factory-dormitory buildings, dormitories are locked from within at night, offering no escape in case of a fire.

Furthermore, migrant workers are often required to work or operate equipment without adequate safety equipment or skills, such as not having protective clothing and being exposed to corrosive liquids or operating large cranes without a proper licence.

In 2019, a migrant worker from the Philippines died after an accidental exposure to a highly corrosive liquid, hydrofluoric acid, in a semiconductor component and LED manufacturing factory because she lacked personal protection clothing for her lower torso.²⁴ In addition, if employers falsely recruit migrant workers under the domestic care process and then

send them to work in manufacturing, these workers are not covered by Taiwan's labour insurance and will not be able to receive any compensation in case of their injury or death at work.

Migrant workers to Taiwan face the pressure of being sent back to their country of origin with significant personal debts that they cannot fully repay (*Forced Labour Indicator #9 Debt Bondage*) if they report labour abuses or ask to be transferred to another job. All these are factors that can contribute to why migrant workers remain in abusive working and living conditions and in an employment situation with high forced labour risks.



Photo/ Daniel M Shih

Note : ²⁴ Cat Thomas, "How a Factory Worker Lost Her Life at Taiwan's TynTek, Home to a Culture of Negligence," *Ketagalan Media*, 6 October 2019.



What Taiwanese SMEs should look out for :

Forced Labour Indicator #10 Abusive Working and Living Conditions

- Workers are not provided with safety training before starting work in a language that they understand; and safety notices are not posted in a language they understand.
- Workers who need to operate heavy and dangerous machinery have not received the proper training and/or licence to operate such equipment.
- Workers are not provided with adequate personal protection equipment (PPE, such as gloves, eye shields, helmets, protective clothing, boots, etc) in line with their exposure to occupational health and safety risks in sufficient quantity to cover all working hours; and to have such equipment regularly inspected and replaced.
- Workers are required to accept degrading and difficult working and living conditions, such as overcrowding, substandard, unsanitary or unsuitable premises without the respect for personal privacy. Working and living conditions must have access to clean water and sanitation.

- Workers are tied to accommodation provided by employers or labour agents without any choice of an alternative arrangement or whom they live with.
- Workers do not have access to or know about an effective avenue of raising any concern they have about their working and living conditions.
- Workers are housed in a manufacturing setting that is not safe due to its proximity to flammable or combustible substances or machinery and equipment that generate strong reverberations and noise. These hazards associated with a manufacturing setting can make them substandard living quarters. While Taiwanese law allows workers to be housed within a non-dangerous production environment, employers should consider moving workers' dormitories off the manufacturing site.

STELLINA



Forced Labour
Indicator

| 11

Excessive Overtime





International Standards

Workers in a forced labour situation may be obliged to work excessive hours beyond the limits of what is allowed by national law or their collective agreement. They may be doing overtime hours without having given their consent or with a meaningful option to decline, out of fear of reprisal from their supervisors or employers.

Reprisal, in this context, needs to be broadly understood to encompass not only physical and sexual violence (*Forced Labour Indicator #5*) or intimidation and threats (*Forced Labour Indicator #6*) but also penalties such as dismissals, withholding of wages (*Forced Labour Indicator #8*) or being denied breaks, days off or more favourable working and living conditions.

The issue of overtime is complex. While many migrant workers express a wish to do overtime and increase their base income, it's not easy to draw the line between "voluntary" excessive working hours and a situation of forced labour.

Apart from issues of legality and penalty, this is because many workers decide to do overtime because they earn too low of a wage after deductions and the various ways in which parts of their wage is withheld (*Forced Labour Indicator #8*). They also may not have enough for their own basic needs after servicing the loans they took out to pay their recruitment fees and related costs (*Forced Labour Indicator #9 Debt Bondage*).

In taking this broad view, there are underlying concerns that workers agree to overtime not fully out of voluntariness but because the overlapping of various forced labour indicators on their lack of financial security reflects an abuse of their vulnerability (*Forced Labour Indicator #1 Abuse of Vulnerability*).

Therefore, it is very important to understand that the main criteria to consider for excessive overtime as a forced labour indicator is not whether the workers had volunteered for overtime but whether the overtime undertaken has any component of the following:

- **Overtime exceeds the amount allowed by domestic law;**
- **Overtime was carried out under some form of a menace of penalty, broadly understood to include not only physical violence but also administrative penalties and sanctions; or**
- **Overtime was undertaken for the worker to earn at least the minimum wage.**

This is the “rule of thumb” that the ILO provides for determining whether or not a situation of excessive overtime should be considered forced labor: “if employees have to work more overtime than is allowed under national law, under some form of threat (e.g. of dismissal) or in order to earn at least the minimum wage, this amounts to forced labour.”²⁵

Note : ²⁵ International Labour Organization, “ILO Indicators of Forced Labour,” 2012.



Taiwan Case

During 2019 and 2021, several news reports emerged of workers undertaking excessive hours without receiving proper overtime compensation at a food processing plant in Taiwan. In 2019, 74 Vietnamese migrant workers went on strike to protest the situation where they worked an average of 16 hours a day. Regardless of whether it was a weekday, national holiday or rest day, they hardly received overtime pay.

In addition, their employer reportedly deducted from their wage penalties for faulty production and having a messy environment. Some workers had lost tens of thousands of New Taiwan Dollars to such deductions. The New Taipei City's Labor Affairs Department intervened and mediated in the strike, resulting in an agreement with the employers for compensation. Labour authorities estimated that the employer will need to repay more than NT\$40 million (about US\$1.3 million) in unpaid wages on the month's payday.²⁶

The employers were subsequently investigated by labour inspections and found to have engaged in illegal overtime work, failure to pay overtime pay and keep proper attendance records in accordance with regulations and other problems. Despite the labour investigation and findings of non-compliance, working conditions at the plant had not improved, and another strike took place in January 2021 over the same grievances of excessive overtime.

Migrant workers from Viet Nam again gathered to protest long working hours that sometimes reached as high as 240 hours each month and unsatisfactory living and board conditions. Overtime pays, however, remained undercounted. Working on rest days did not convert into an overtime wage. Raising complaints with employers and labour brokers was futile. Workers also said that the employer would not give them their work schedules until the night before their shift. There were frequent errors in the calculation of their wage and overtime pay.

This protest again was investigated by New Taipei City's Labor Affairs Department, with a migrant workers' organisation holding a meeting between the employer and the striking workers. The employer agreed to pay for the missed overtime compensation, provide the work shift schedule one month in advance and to make improvements to the workers' dormitory.²⁷

Note : ²⁶ Chang Chih-Chi, "Vietnamese migrant workers strike was successful after one day; Company will reimburse overtime pay and pay fines," *coolloud.org.tw*, 3 May 2019.

²⁷ Chang Chih-Chi, "Banned from leaving the factory and owed overtime pay; Migrant workers again strike at the company," *Yahoo! News*, 25 January 2021.



Taiwan Analysis

The problem of forced labour and overtime in Taiwan is complicated in both law and practice.

Overtime is often framed as an employment preference for the migrant workforce in Taiwan. In this narrative, both the migrant workers and employers benefit from a production system built around overtime. For migrant workers, they can earn more to supplement their base monthly wage, while employers can respond to buyers quickly as orders arrive. On the surface, both answers could ring true, but they miss the complexities around how excessive overtime can be an indicator of a forced labour situation in Taiwan.

A key challenge to understand the indicator of excessive overtime in Taiwan relates to the complexity around how overtime hours are permitted by law and how compensation for this is calculated. Excessive overtime can become a matter of necessity if the migrant workers feel that they must undertake excessive working hours in order to earn at least the minimum wage after deductions and servicing their recruitment-fee loans.

These two factors can become an abuse of the workers' position of vulnerability (*Forced Labour Indicator #1*), with the risk of overtime not having been voluntarily undertaken and exceeding the permitted limit under Taiwan's law.

According to Article 30 of Taiwan's Labor Standards Act, regular working hours for employees should not exceed eight hours per day and a total

of 40 hours per week. This does not include overtime. Employers can distribute regular working hours around other workdays, so long as no more than two hours are moved to other workdays and the total working hours per week remain under 48 hours.

Under Article 36, employees must have at least two regular days off every seven days; one of these two days is a regular leave and the other is a rest day. No overtime work can be done on the regular leave day, but employees can agree to work overtime on their rest day. This then counts as part of the total permitted overtime quota.

Article 32 allows for the extension of working hours, but the total cannot exceed 12 hours a day (8 regular working hours plus maximum of 4 overtime hours). On a monthly basis, total overtime cannot exceed 46 hours. This limit, however, can be exceeded in certain circumstances, up to 54 hours a month and 138 hours every three months, meaning that overtime is calculated over a consecutive three-month period by employers.

In principle, there are legal safeguards in Taiwan's Labor Standards Act to prevent excessive overtime arbitrarily imposed on workers without their consent. Article 32 states that employers must obtain consent from the relevant labour union. In situations where there is no labour union, employers must seek the approval of a labour management conference (formal meetings between worker and employer representatives) before the overtime policy can be implemented.

Another safeguard is in the form of prior notification to competent authorities. If the company has 30 or more employees, the overtime policy must be reported to the local labour authority at least one



day before the implementation of the new overtime policy. The same requirement, however, does not exist for enterprises with fewer than 30 employees.

In practice, however, the various layers of complexity concerning overtime hours and their corresponding compensation mean the system is vulnerable to abuse. This is typically seen in reports of miscalculation of overtime pay due to different rules of determining overtime pay. Article 26 of the Labor Standards Act, for instance, sets out a pay scale for overtime based on the following factors:

- **If overtime exceeds two hours;**
- **If overtime falls under scope of Article 32;**
- **If it was due to force majeure; or**
- **If overtime falls on the employees' rest day; if so, then a different scale applies depending on if the total overtime done was under or over two hours.**

Another set of rules apply under Article 39 for regular leave and rest days, national holidays (Article 37) and annual paid leave (Article 38).

The multiple sets of rules means that many migrant workers are not properly informed by their employers or labour brokers of the conditions of overtime work. Many migrants are unaware of their right of overtime compensation, as well as their right to refuse requests to do overtime. Many are required to work on public holidays but without given overtime pay in accordance with legal standards (Article 39).

The difference in pay scale depending on if overtime was done under or over two hours means that there is pressure on the ground from

employers to under-report overtime hours. This is reflected when migrant workers are required to clock-in well after arriving at work and clock-out earlier before finishing work in order to reduce the number of documented working hours for compensation.

Overtime work needs to be understood from the worker's point of voluntariness. As described in Forced Labour Indicator #9 Debt Bondage, most migrant workers arrive in Taiwan with a debt associated with their job placement. For this reason, many do not feel they have a meaningful option to refuse overtime requests, owing to fear of losing their jobs and risk being seen as uncooperative by their employers and potentially coming under disciplinary penalties.

Migrant workers in Taiwan who see parts of their monthly wages being withheld (*Forced Labour Indicator #8 Withholding of Wages*) and who have come to depend on working overtime to earn a sufficient minimum wage may also be unwilling to change jobs and risk not having employment.

In all these ways, in Taiwan and elsewhere, excessive overtime can manifest as a forced labour risk that, in conjunction with other indicators, binds a person to work that is done involuntarily and under the menace of penalty.



What Taiwanese SMEs should look out for :

Forced Labour Indicator #11 Excessive Overtime

- Workers are not getting the day off that they are entitled to by law.
- Workers have been working overtime for a long period and beyond what is permitted by law.
- Workers are asked to clock in later or earlier than their actual hours of work.
- Workers have more than one system of clocking to record their working hours.
- Employers do not control the daily and weekly overtime hours of workers within the requirements of the Labor Standards Act, resulting in serious excessive overtime hours for its workforce.
- Workers have no reasonable rest or meal time during work, which negatively affects their physical and mental health.

- Workers do not receive their overtime pay in accordance with the overtime pay scale as stated in the Labor Standards Act.
- Workers are required to be on call at all times, and this prevents them from getting real or full rest.

References for Further Reading

Ethical Trading Initiative, UK Department for International Development, United Nations Global Compact and Verité. (2018). *Business: It's Time to Act*.

Fair Labor Association. (2017). *Addressing Forced Labor in Supply Chains: Protecting Workers from Unfair Restrictions on their Freedoms at Work*.

Fair Labor Association. (2019). *Forced Labor in Supply Chains: Addressing Risks and Safeguarding Workers' Freedoms*.

International Labour Organization (ILO). (2012). *ILO indicators of Forced Labour*.

International Labour Organization (ILO). (2015). *Combating Forced Labour: A Handbook for Employers and Business*.

International Labour Organization (ILO). (2019). *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs*.

International Labour Organization (ILO). (2020). *ILO Toolkit on Developing National Action Plans on Forced Labour, Tool No.2*.

Klara Skrivankova (Anti-Slavery International and Ethical Trading Initiative). (2017). *Base Code Guidance: Modern Slavery*.

Sedex. (2017). *Guidance on Operational Practice & Indicators of Forced Labour*.

United Nations Global Compact and Verité. (2014). *Addressing the Retention of Identity Documents*.



Work Better Innovations
Innovation Space
Halpern House
1 Hampshire Terrace
Portsmouth PO1 2QF
England, UK

Tel : +44 7984 222216

www.wbi.org.uk

www.workbetterinnovations.com



ISBN:978-1-7392474-2-3