



UNIVERSITY OF GOTHENBURG
SCHOOL OF GLOBAL STUDIES

FORCED LABOR AND THE MIGRATION INDUSTRY

Outsourcing Agencies and Migrant Workers in Malaysia.

Author: Emanuelle Brandström

Supervisor: Anja K. Franck

Master Thesis in Global Studies, 30hp

University of Gothenburg

Date of submission: February 3rd, 2014

ABSTRACT

Over the past decades migration has increased rapidly and during the same period migration has become an increasingly politicized and securitized issue. In the intersection between politically motivated barriers to migration in receiving countries and the continued demand for migration (both on the demand and the supply side) new opportunities have arisen for a *migration industry* – facilitating and controlling migration flows.

The migration industry has been suggested to contribute to forced labor and trafficking amongst migrants and this study focuses on the link between forced labor and the migration industry by devoting particular attention to so called agencies, facilitating migration processes (journey and stay) of migrants. This study is set in Malaysia that during the last decades has become increasingly dependent on migrant workers from neighboring countries due to rapid economic growth. The majority of migrants come to Malaysia through agencies, which increasingly also function as employers who outsource migrants to different countries. Agencies have been suggested to increase migrants' vulnerability for forced labor. The aim of this study is to investigate what role these agencies play in forced labor amongst migrant workers in Malaysia. A second objective has been to contribute migrant workers' own experiences and narratives of how they utilize agencies and its link to forced labor.

In order to investigate this issue a qualitative study was carried out in Malaysia constituting of participatory observations and interviews with migrant workers as well as informants.

The study reveals four different functions in which migrant workers utilize agencies, namely recruitment, to arrange practical and administrative issues regarding the migration to and from Malaysia e.g. transportation, employment, and administrative purposes. The study further found that agencies use several devious and abusive methods, which place migrant workers at risk of forced labor – e.g. withholding salaries, confiscation of passports, and various threats. Further, the study shows that to be employed and outsourced by the agency *decreases* migrants' power of negotiation and *increases* vulnerability for forced labor. In contrast, migrants employed directly by a company are in spite of high vulnerability for exploitation found to have a somewhat stronger power of negotiation compared to workers outsourced by an agency. While previous research handles how the outsourced migrants use agencies, this study further suggests that also migrants employed directly by a company use the agency for administrative purposes. While this causes the migrants to lose a lot of money, I have not found that this would place the workers in forced labor. Finally, the study identifies several contextual aspects in the legal framework in Malaysia that contribute to the risk of migrant workers ending up in forced labor – including the criminalization of migrants and trafficking victims, tying work permits to one specific employer, and providing scant avenues for migrants to seek justice and redress.

Keywords: forced labor, slavery, migration, Malaysia, migration industry, agency

ACKNOWLEDGEMENTS

From the bottom of my heart I want to thank all the migrant workers and other experts in Malaysia who have devoted time and shared their experiences and knowledge. I am also very thankful to the migrants who let me spend time with them and opened up their homes. Thank you so much for letting me in to your lives!

Anja K. Franck – I am so *incredibly* thankful to you for believing in me and letting me come with you to Malaysia. If it were not for you I would not have gained access to the field and the participants in this study. I am further extremely grateful for your *excellent* supervision, support and guidance along the process of this thesis. I have learnt so amazingly much from your guidance and you have inspired me to work hard in order to improve. THANK YOU!

The two interpreters who helped me to translate the interviews but also to set up interviews with other migrant worker have my greatest gratitude. This study would not have been possible without you! Thank you for devoting that time and energy, sometimes even through late nights.

School of Global Studies and all the teachers who I have had the great privilege to meet along my studies – Thank you! I am so grateful to have been allowed to study with you. It has provided me with great knowledge and understanding that I will bring with me in life.

I would like to express my gratitude towards my sister Felicia Brandström and my fiancé Eric Arellano for helping me to improve the English writing of this thesis.

Jenny Mattsson at the Language Support at the School of Social Science, thank you for your help with English academic writing!

ABBREVIATIONS

GDL	Global Division of Labor
ICFTU	International Confederation of Free Trade Unions
ILO	International Labour Organization
ITUC	International Trade Union Confederation
NGO	Non-Governmental Organization
RELA	Ikatan Relawan Rakyat Malaysia (Peoples' Voluntary Corps Malaysia)
TIP	Trafficking in Persons
UNHCR	United Nations High Commissioner for Refugees
USDoS	U.S. Department of State

TABLE OF CONTENT

1 INTRODUCTION	1
1.1 Background	1
1.1.1 Contemporary Forced Labor	1
1.1.2 The link between migration and forced labor.....	2
1.1.3 The Malaysian Case.....	3
1.2 Aim and Research Questions	4
1.3 Delimitations	4
1.4 Outline of the study	5
2 THEORY, DEFINITIONS AND PREVIOUS RESEARCH	6
2.1 Forced Labor	6
2.1.1 Forced Labor.....	6
2.1.2 Trafficking and Smuggling.....	7
2.1.3. Slavery	7
2.1.4. Debt Bondage	8
2.2 Migration	8
2.3 The Migration Industry	9
2.4 Perceptions of Forced Workers	11
3 THE CASE: MALAYSIA	12
3.1 Background to migration	12
3.2 Categories of migrants	12
3.3 Regulations around migration	12
3.3.1 Enforcing immigration law.....	14
3.4 Migration and its link to forced labor	14
3.4.1 The Agencies system	14
3.4.2 The vulnerable position of migrant workers.....	15
4 METHODOLOGY	17
4.1 Interviews	17
4.1.1 Selection.....	17
4.1.2 The interview situation.....	18
4.2 Coding and analysis	20
4.3 Observations	20
4.4 Use of Theory	21
4.5 Validity, Reliability and Generalizability	21
4.6 Ethical considerations	21
5 EMPIRICAL FINDINGS AND ANALYSIS	23
5.1 Agencies' functions during the migration process	23
5.2 Debt and Deception	24
5.2.1 The pressure to earn money	24
5.2.2 Deceptions and low remunerations.....	25
5.2.3 Implications of the debt and low remuneration for the migrant workers	26
5.2.4 Debt Bondage	27
5.3 Confiscation of passport	27
5.4 Threats	29
5.5 Physical Confinement and Physical Abuse	29
5.6 Withholding salary	30
5.7 Employed and outsourced by the agency	30
5.8 Employed by the company	32

5.9 The legal framework	34
6 FINAL DISCUSSION AND CONCLUSIONS	36
6.1 How do migrant workers utilize the agencies and what functions do these agencies have in the migration process (journey and stay)?.....	36
6.2 What experiences do migrant workers in Malaysia have of forced labor situations and how are these linked to agencies?	37
6.3 Are there identifiable contextual factors (such as the legal framework around labor migration) in Malaysia, which contribute to migrants ending up in forced labor situations? If so, what are those factors and how do they contribute?.....	39
6.4 Further research	39
7 BIBLIOGRAPHY	40
8 APPENDICES.....	46
8.1 Appendix 1: Interview guide for migrant workers	46
8.2 Appendix 2: Interview guide for informants	48
8.3 Appendix 3: Presentation of the respondent	49
8.4 Appendix 4: Codes	50

1 INTRODUCTION

1.1 Background

A while ago I watched an on-line speech given by the photographer Lise Kristine.¹ She had traveled around the world to photograph the faces of slaves. Her speech and the faces she showed made a great impression on me. I was familiar with exploitation of labor, horrible working conditions, and bad salaries of workers in many places. Slavery, however, I thought was abolished. The issue of slavery arose my interest and as I read more about it I discovered that slavery and forced labor is not merely a historic phenomenon – but rather something that is very present today and exists in great scope. While we now have the smallest share of the population in history living as slaves (Bales 2012;xxviii), there are in absolute numbers more slaves alive today than what was ever brought to America from Africa during the whole transatlantic slave trade (Bales 2012:9). Slavery touches us all directly and indirectly. Directly since, for example, minerals that might have been mined by slaves constitute parts in our cell phones or other consumer goods. Indirectly in the sense that slaves might have produced the bricks, which built the factory where these products are made (Bales 2012). While reading it became clear that in some sense slaves around the world made my own lifestyle possible. This produced frustration, a determination to learn more, and a longing to maybe even be able to contribute to a change. This thesis is a result of this and it deals with forced labor (which embodies slavery, trafficking and debt bondage) in Malaysia.

Although trafficking (understood as forced labor coupled with movement) for sexual purposes has received the most attention, labor trafficking is a key feature of contemporary forced labor and slavery. In fact, at least one third of the victims of trafficking are exploited in other economic purposes than sexual exploitation (ILO 2012:16-17). The ILO (2005:46) further claims that there is insufficient knowledge of trafficking focusing on labor exploitation. Focus here is therefore directed towards forced labor exploitation and its link to the migration industry.

Migration is not a new phenomenon (Koser 2007); however, according to United Nations' website, migration is increasing in scope, impact and complexity (United Nations n.d.). Currently 3.2 percent of the world's population is estimated to be international migrants (United Nations Department of Economic and Social Affairs n.d.). Migration is further suggested to be heavily linked to forced labor in several ways (ILO 2005; van der Anker & van Liempt 2012). I will thus investigate forced labor in the context of migration.

This study is based on previous research as well as participatory observations and qualitative interviews with migrant workers and informants in Malaysia.

1.1.1 Contemporary Forced Labor

Forced labor is hard to estimate. Because of its illicit character victims are often isolated and become invisible (Bales 2012; Androff 2011). Various way of defining forced labor and slavery produces varied accounts of the number of victims. According to the International Labour Organization (ILO) there are currently 21 million victims of forced labor in the world

¹ TED Talks, Lise Kristine: Photos that bear witness of modern slavery. Last accessed 2013-12-08: http://www.ted.com/talks/lisa_kristine_glimpses_of_modern_day_slavery.html

(ILO 2012:13). Bales, however, estimates there are 27 million slaves (Bales 2012:8-9) although the most recent estimation, made by the Walk Free foundation (2013), states the figure 29.8 million. Regardless of the exact numbers we can conclude that forced labor and slavery today exists in great scope.

Even though forced labor is considered a crime almost everywhere and is mentioned, handled and regulated in a wide range of international conventions and documents, it prevails geographically in some form all over the world: in all continents, almost all countries and every kind of economy (ILO 2005).² Estimations show that a majority of the victims live in Asia (ILO 2012:15-16, 2009a:1; Walk Free Foundation 2013:23), and more specifically Southeast Asia (Bales 2012:9). The region therefore forms an interesting region to study.

1.1.2 The link between migration and forced labor

Forced labor is suggested to be linked heavily to migration (ILO 2005; van der Anker & van Liempt 2012; USDoS 2013). In developing countries this link has partially been explained through the contemporary Global Divisions of Labor (GDL), whereby productive activities are distributed ‘on a world scale’ (Lincoln 2009:130). While this has the potential to increase productivity and growth, critics argue that the chase for profit and competitive advantage through cheap labor also creates a fertile ground for forced labor (O’Brien & Marc 2010), as “[c]heaper labor markets are found in developing nations where policies may not include minimum wage laws, child labor laws, or safety measures to protect workers.” (Lusk & Lucas 2009:51). Workers thus find themselves at risk of exploitation, and, as stated by the ILO (2005:52), “with tremendous competition over costs, there is a real risk that unscrupulous companies at the bottom of the supply chain can use forced labour”. Jobs created in the GDL are often plugged into transnational production systems (O’Brien & Marc 2010) where the mobility of workers is an important factor (Lincoln 2009). Cross-border contract workers, who temporarily leave regions with a surplus of labor to conduct semi- and unskilled work, are a distinct category of migrants within the GDL (ibid.). Migrant workers thus constitute an important part in the GDL – supplying cheap and flexible labor and keeping entire industries afloat. In the Southeast Asian context, where this study is set, manufacturing growth relies heavily on intra-regional and cross-border labor migration (ibid).

Over recent decades migration has increasingly become *securitized* and migrants are often perceived as threats to national security. As a result many countries place high barriers in the way of migration. In the intersection between political motivated restrictions on migration and economic necessities of migration, new opportunities arise for both legal and illegal facilitators of migration – such as agencies, smugglers, and traffickers (Coghlan & Wylie 2012, ILO 2005, Nyberg Sørensen & Gammeltoft-Hansen 2013). These intermediaries are part of an emerging *migration industry*, which make extensive profits of migration (Nyberg

² See: The Abolition of Forced Labour Convention (1957); article 4 of In the Universal Declaration of the Human Rights (1948); article 7 of the International Convention on Economic, Social and Cultural Rights (1966a); article 8 of the International Covenant on Civil and Political Rights (1966b). Many of the crimes committed within the framework of slavery such as torture and arbitrary arrests are also forbidden according to international laws (Free the Slaves 2011). In addition the ILO’s core conventions (often referred to as the Core Labor Standards) include two conventions on forced labor (No 29 and 105). The Core Labor Standards are recognized as fundamental human rights and are, thus, universally applicable (Bormann et al 2010). Consequently, regardless of whether governments have ratified these conventions or not, they are obligated to report on them (Kaye 2001).

Sørensen & Gammeltoft-Hansen 2013). They play a significant role in forced labor by increasing migrant workers' *vulnerability* through various coercive and deceiving methods (ibid.). Vulnerability is according to Bales (2012), the main criterion for whether a person risks slavery or not. While the migration industry is of major importance to contemporary migration it has received little attention from scholars and public policy makers (Nyberg Sørensen & Gammeltoft-Hansen 2013; Lindquist 2010; Spaan & Hillman 2013; Verité 2010), and especially in relation to forced labor (Verité 2010).

1.1.3 The Malaysian Case

In many ways Malaysia is a clear-cut example of the global trends described above. The country aims to maintain competitiveness in a highly competitive global market by attracting Foreign Direct Investments and recruiting of cheap and temporary labor (Fernandez 2008; U.S. Senate Committee on Foreign Relations 2009). The country now relies on low-skilled migrant workers for their labor-intensive sectors to maintain economic growth (Nah 2011; SOMO 2013).

Malaysia is currently the main destination country in Southeast Asia. Migrants in Malaysia come mostly from neighboring countries: Indonesia, the Philippines, Myanmar, Laos, Cambodia, Vietnam, India, Bangladesh, Nepal, Pakistan and Sri Lanka (Kaur 2010; USDoS 2013).³ These migrant workers are often found in a vulnerable position, with few alternative livelihoods in their home country (Bormann et al. 2010). In this study, emphasis is placed upon Burmese migrants in Malaysia. Apart from being a sizable group, empirical accounts of Burmese migrants in Malaysia are rare in academic literature, where emphasis has mostly been placed upon the Indonesian and Bangladeshi migrant groups (Dannecker 2005, 2009, 2013; Lindquist 2010).

Malaysia has further been criticized for its brutal treatment of migrant workers and for neglecting the existence of trafficking in workers (U.S. Committee on Foreign Relations 2009; USDoS 2013; Amnesty International 2010). The U.S. Department of State (USDoS) (2013) has in its annual *Trafficking in Person (TIP) Report* given the Malaysian government severe critic for not fully complying with the minimum standards to eradicate trafficking.

Migrants in Malaysia entering the country legally often use intermediaries – from hereon referred to as *agencies* (Kaur 2010). Such agencies, which have existed previously in Malaysian history (Kaur 2010), were allowed again in 2005 (Ministry of Home Affairs 2014) and have since then made themselves indispensable for employers and now make noticeable profit (Verité 2010). Further, agencies are allowed to employ the workers, outsourcing them to various companies (Ministry of Home Affairs 2014).⁴

There are academic studies highlighting how agencies and the rules under which they operate contribute to abuse and exploitation of migrant worker in Malaysia. However, how agencies

³ In 1989 the official name was changed from Burma to Myanmar by the military regime, however, the name Burma is still widely used. Since the migrants use the name Myanmar, this is the name I will use. However, the term Burmese are still used by the migrant and will, thus, be used in this.

⁴ It should be noted that various sources differ in what year agencies were allowed in Malaysia and what year they were allowed to become the employer of the migrant workers.

link specifically to forced labor has received less attention. Further, previous studies which focus upon how agencies are used by migrant workers and how they contribute to abuse, have focused upon migrant workers who have entered the country legally as outsourced workers. To my knowledge there are no studies investigating migrants who enter or stay in Malaysia under different conditions – such as those employed directly by a company as a regular or irregular migrant worker, and we thus know little about what role the agency plays in a possible situation of forced labor within this context. Moreover, while there are several Non-Governmental Organization (NGO) reports describing how migrants themselves use and experience the agency system and its link to forced labor in Malaysia – the body of academic literature generally lacks the migrants’ own perspectives and narrative on these matters.

1.2 Aim and Research Questions

In light of the above, the overall aim of this thesis is to investigate the link between forced labor and the migration industry in Malaysia – devoting particular attention to the role of *agencies* in the migration process as well as for forced labor. Given the general lack of migrants’ own narratives in academic work around these matters, a second objective of the study is to contribute the stories of migrant workers themselves. These aims give rise to the following key question:

What role do agencies play in the existence of forced labor amongst migrant workers in Malaysia?

To answer this question I will investigate the following sub-questions:

1. How do migrant workers utilize the agencies and what functions do these agencies have in the migration process (journey and stay)?
2. What experiences do migrant workers in Malaysia have of forced labor situations and how are these linked to agencies?
3. Are there identifiable contextual factors (such as the legal framework around labor migration) in Malaysia, which contribute to migrants ending up in forced labor situations? If so, what are those factors and how do they contribute?

1.3 Delimitations

This study focuses on legal agencies and, consequently, not on smugglers, even if the respondents call them both *agencies*. I am aware of that this line can be blurry because the legal recruitment agencies can carry out illegal method, and that migrants themselves might not perceive an ‘illegal’ smuggler as illicit (Nyberg Sørensen & Gammeltoft-Hansen 2013). However, to narrow the scope of this study I investigate agencies that go under a legal cover and help migrants to enter Malaysia legally.

This study does not investigate forced labor for sexual exploitation.

1.4 Outline of the study

This thesis will start by outlining theories, previous research as well as clarifying concepts used. First, the concepts forced labor, trafficking, slavery, and debt bondage will be clarified. Thereafter, migration and the migration industry, particularly agencies, will be accounted for. Malaysia's labor migration and the context within which it exist will be described, and previous research about the agency and its role in forced labor amongst the migrants in Malaysia will be outlined. Thereafter, the empirical findings of this study will be presented. The finishing parts of this thesis will discuss and conclude the results found in this study.

2 THEORY, DEFINITIONS AND PREVIOUS RESEARCH

This section will account for theories, previous research, as well as definitions and understandings of various concepts used in this thesis. First, forced labor in various forms will be discussed and defined. Secondly, migration and its link to forced labor will be discussed as well as the migration industry, especially agencies, which are important actors within this industry. Finally, perceptions of forced workers will be briefly discussed.

2.1 Forced Labor

There is often some confusion about the definition of *forced labor* (ILO 2005:5), which is in close connection with concepts like *trafficking*, *slavery*, and *debt bondage*. While these terms refer to somewhat different phenomenon, they are overlapping and intertwine, and there is no real consensus around how they are understood. I will, thus, start by outlining the definitions of these different concepts, how they relate to each other, and how they will be used in this thesis.

2.1.1 Forced Labor

The most widespread and generally accepted definition of forced labor is formulated by the ILO in the Forced Labour Convention, 1930 (No.29) article 2:1:

“...the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Forced labor is thus determined by the relationship between an employer and another person, and two elements need to be involved for forced labor to take place: *menace* of penalty and that the work is *involuntary* (ILO 2005:5-6). Forced labor is consequently not defined by low wages, poor working conditions, the type of activity performed, or by a person's inability to leave his employment due to economic necessities or lack of other employment alternatives (ibid.).

According to the ILO (2005:5-6) the characteristics of *involuntary work* refer to the form and subject of consent, the possibility of revoking freely given consent, and the role of external constraints, or indirect coercion. The *menace* can take multiple forms: penal sanctions, loss of rights or privileges, or of psychological nature. The ILO (ibid.) gives several different examples of menace and lack of consent. In this thesis I have been open for all sorts of menace and signs of involuntary work. However, I have paid extra attention to menace and involuntary aspects taking form as physical violence, threats of various kinds (especially reporting to authorities), risk of becoming an irregular migrant worker, physical confinement, retention of identity papers and work permits, and false promises regarding the employment. These forms of menace and lack of consent are all mentioned by the ILO (ibid.).

2.1.2 Trafficking and Smuggling

Trafficking is strongly linked to movement and is, thus, of great importance to this study carried out amongst migrants. Trafficking, as a term, is highly contested (van der Anker & van Liempt 2012; Plant 2009) and, below I therefore outline and clarify how it is understood in this thesis.

The most widely accepted definition of trafficking is stated by the United Nations (2000, article 3a):

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Trafficking, thus, includes the whole process of recruitment, transportation, transfer and harboring, and addresses actions with the purpose of exploitation.

There is an ongoing debate about the link between forced labor and trafficking (Plant 2009). The ILO (2005) claims that trafficking and forced labor is closely linked to each other, however, forced labor amongst migrants in the destination country is not necessarily a result of trafficking, and not only migrants are subjected to forced labor.

Since both trafficking and smuggling relate to movement of people, the distinction between these concepts needs to be discussed. Lusk and Lucas (2009) as well as Koser (2007) suggest that smuggling is *voluntarily* while in trafficking it is *involuntary*. However, the ILO (2005) and Kaye (2001) argue that the lines between smuggling and trafficking are blurred; forced labor can be an indirect outcome of smuggling as migrants often migrate voluntarily, but end up in forced labor along the way.

In this thesis I will use the United Nations definition of trafficking as cited above.⁵ Hence, it relates to some kind of movement and exploitation. Aware of the blurred line between trafficking and smuggling I will use smuggling for those situations where the migrants voluntarily have paid someone to bring them illegally across borders, and where the relationship ends after reaching the destination. Trafficking will be used for situations where the movement includes labor exploitation in the destination country.

2.1.3. Slavery

Similarly to forced labor and trafficking, there is no agreed global definition on slavery (Androff 2011). One definition is made by the United Nations in the Slavery Convention: *“Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”* (United Nations 1926, article 1:1) This includes a strong emphasis on the *ownership*. Bales (2012) however, argues that today, since slavery is

⁵ Article 3a in United Nations’ Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime.

illegal everywhere, there is no longer any legal ownership. Instead, the buyer gains control over another person and violence is used to maintain this control. He, thus, suggests the term *slaveholder* is preferred rather than *slaveowner*. He therefore offers the following definition of slavery: “[...] *the total control of one person by another for the purpose of economic exploitation [...] someone controlled by violence and denied all of their personal freedom to make money for someone else.*” (Bales 2012:6)

With such a definition there are, I suggest, clear overlaps between the concept slavery and forced labor. As will be clarified below, I will however use the term forced labor as an umbrella concept – also including slavery as defined here by Bales.

2.1.4. Debt Bondage

Another commonly used term is debt bondage, defined by the United Nations (1956) as:

"[...] the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined".

There is a difference between bonded labor and situations where workers accept credit fixed to a specific sum with reasonable interest rate, and then repay that credit by working. In debt bondage these securities do not exist and the bonded laborer is left to the mercy of the creditor. The laborer can be forced to work extensive hours seven days a week and for no or low wage, and the creditor often increases the interest rate and adds extra charges (Kaye 2001). Furthermore, debt bondage can be passed down to the next generation (Lusk & Lucas 2009).

2.1.5. The use of concepts in this thesis

Even if there are different views of the exact relationship between forced labor and the other terms we can conclude that they are closely linked to each other. In this paper I will use forced labor as an umbrella-concept including activities such as slavery, trafficking and debt bondage. I do this since these activities all have characteristics of menace and involuntary work, which are the core characteristics of forced labor.

I have chosen to use forced labor because I find that it has the clearest definitions, with two main criteria: *involuntary work* and *menace*. I recognize that the terms slavery, trafficking and debt bondage are used very similarly and overlap by various authors and organizations. Given that the literature deals with these concepts in an overlapping manner, I have utilized literature that can help further the understanding of what I am about to investigate regardless of the term they use.

2.2 Migration

Migration is a large field of research, and this thesis investigates forced labor in the context of temporary migration, which is the most prominent form of migration in Asia. Since the 90s,

due to fast economic growth in some Asian countries coupled with reduced fertility rates, there has been an increasing demand for foreign labor, causing migration *within* Asia to grow. Particularly from less developed countries with massive labor surplus to rapid growing new industrializing countries (Castles & Miller 2009). In receiving countries many of these migrants are, for the most part, wanted to perform difficult, dirty and/or dangerous jobs – also known as ‘3D jobs’ (O’Brien & Marc 2010; Koser 2007; Castles & Miller 2009).

In migration literature a distinction is often made between *regular* and *irregular* migrants.⁶ However, these categories are blurry and the distinction between them is unclear. Further, migrants often move between these legal statuses (Koser 2007). Nonetheless, this distinction gives us a framework for understanding various factors within migration. Migration is further categorized as *voluntary* or *forced* by factors such as conflict, environmental issues, and persecution. People move for political reasons (often refugees), economic reasons (often labor migrants), or social reasons (mostly women and children joining their husbands/fathers abroad) (ibid.).

Given that international migration is becoming increasingly commercialized (Nyberg Sørensen & Gammeltoft-Hansen 2013) and labor is increasingly commoditized (Plant 2012) it becomes increasingly important to further investigate the actors involved in this process. In the following section the migration industry, particularly agencies, will therefore be examined.

2.3 The Migration Industry

In recent times, there has been a growing *politicization* and *securitization* of migration – whereby migration is increasingly viewed as an issue of national security, in particular in relation to irregular migration (Castle & Miller 2009; Koser 2007). As a response, many countries impose higher barriers toward both regular and irregular migration. These barriers combined with the need for migration, both on the supply and demand side, create new economic opportunities for the emerging *migration industry*, facilitating and controlling migration (Coghlan & Wylie 2012, ILO 2005, Nyberg Sørensen & Gammeltoft-Hansen 2013).

The migration industry is not a new phenomenon (Hernández-León 2013; Bosma, van Nederveen Meerkerk, & Sarkar 2012), however, neo-liberal governance and migration restrictions open new frontiers for a commoditization of migration (Hernández-León 2013). The migration industry capitalizes both on migrants’ desire to move, as well as on the governments’ struggle to manage migration flows – and can thus both facilitate and control the migration (Nyberg Sørensen & Gammeltoft-Hansen 2013). According to Nyberg Sørensen & Gammeltoft-Hansen (2013) the migration industry involves five main, partly overlapping, sets of actors. First, transnational companies offering migration management services to contracting governments outsourcing traditional state functions, such as incarceration,

⁶ Another common terminology is legal and illegal, however, the terminology “illegal” is criticized for denying people their humanity and associating the migrant as a criminal without rights. Other terminology used are ‘undocumented’ or ‘unauthorized’ migrants. (Koser 2007). I will use the terminology regular and irregular in this thesis. The respondents in this study often used the terms ‘illegal’ or ‘undocumented’ to describe their own irregular status. Even so, if not directly quoting or paraphrasing them, I will translate this terminology into regular and irregular.

deportation, and border surveillance (Hernández-León 2013; Betts 2013). Second, migrants who themselves manage to commercialize their transnational knowledge and network to provide services for other migrants. Third, NGOs, humanitarian organizations and migration associations, social movements, faith based organizations and migration networks. In contrast to the other actors, this group, also called the ‘rescue industry’, is not mainly driven by economic gain (Nyberg Sørensen & Gammeltoft-Hansen, 2013). Fourth, clandestine actors such as smuggling networks, transnational criminal organizations, and traffickers. The fifth group, the actors in focused in this study, are the agencies and companies that facilitate access to migration (ibid.). This group often both facilitates and control migration by assisting, as well as selecting and managing migrant workers (Hernández-León 2013). Facilitators, such as agencies and smugglers, charge (often high) fees to provide the knowledge and infrastructure needed to circumvent obstacles and barriers for migration (Hernández-León 2013; Bosma et al. 2012).

2.3.1 Agencies

Intermediaries, which facilitate and control migrant workers during the migration process, have several names: labor brokers (Kaur 2012; Castle & Miller 2009), employment agency (Bormann et al. 2010), labor agency, or labor intermediaries (Bosma et al. 2012), to name a few. The official term in Malaysia is *outsourcing company* (see e.g. Ministry of Home Affairs 2014), however, since the respondents use the term *agency* this is the term I will adopt in this thesis.

Agencies play an important role for labor trafficking in both ends of the chain, particularly in Asian migration (Castles & Millers 2009). Migrants’ lack of information about jobs offered abroad and their dependency upon private intermediaries are major factors behind forced labor (ILO 2005; Belser & Andrees 2009). Labor trafficking is often carried out under legal cover through actors such as agencies – often legally registered but operating on the borders of trafficking and crime (ILO 2005). It is suggested that it is hard to distinguish legal and illegal actors and practices (Castle & Miller 2009, Plant 2012; Coghlan & Wylie 2012; ILO 2009b) and Plant (2012) states that the line between lawful and unlawful brokerage practices is a particularly grey area. He further argues that there are:

“[...] quite persuasive arguments that migrant workers with a perfectly legal status in a destination country, with apparently lawful employment contracts, can become caught up in a trafficking situation through a spiral of deception practices that lock them into a form of modern debt bondage.”

(Plant 2012:22)

Plant (2012) describes the migration process has become costly, which increases migrants’ vulnerability for forced labor. The migrant workers often accumulate considerable debt in order to pay the agency for recruitment, airfares, visas etc (Plant 2012; ILO 2005), and these costs are key factors behind forced labor (Plant 2012; Andrees & Belser 2009). There is significant evidence that migrant workers are recruited in their home countries with one understanding of the jobs and payments, however, upon arrival they receive a contract with completely different conditions. When the wages are lower than expected and often deducted with various charges migrant workers frequently find themselves in situations equal to or approximating debt bondage (Plant 2012; ILO 2005). Moreover, the agencies are known to

withhold passports, withhold salaries, lock in workers, and squeeze migrants for several months' pay (Nyberg Sørensen & Gammeltoft-Hansen, 2013).

2.4 Perceptions of Forced Workers

This section will briefly discuss perceptions of the forced workers, and further how I intend to perceive and approach the migrant workers in this thesis.

Victims of trafficking are often treated as 'migration criminals' rather than 'victims of human rights violations' (van der Anker & van Liempt 2012). While it is important to identify victims of forced labor and trafficking, criticism has been raised against viewing forced workers as merely 'victims' rather than as agents (Rogalty 2008; van der Anker & van Liempt 2012; Warren 2012) as those subjected to forced labor do not necessarily view themselves as victims without power but rather as autonomous agents (Warren 2012; Quirk 2007). Similarly, Spaan and Hillmann (2013) argue that migrants should not be understood as passive victims in the interplay with the migration industry. In this thesis I have therefore been cautious of perceiving the migrant workers as active actors in the interplay with the migration industry, rather than passive victims.

Aradau, as referred to in Coghlan and Wylie (2012), identifies two different discourses in relation to trafficking. *The politics of pity* places the victims as blameless sufferers, robbed of all agency, whose difficulties are the result of deception, coercion, and exploitation, and therefore *undeserved* (e.g. trafficking victims). This is contrasted with those whose plight is understood as their own making and, thus, *deserving* (i.e. migrant entering through smuggling). The competing discourse, *the politics of risks*, views trafficking primarily as organized crimes, threatening the sovereignty of the state – and thus requires further securitization of the state. However, Coghlan and Wylie (2012) argue that the experience of the migration is so complex it is impossible to make divisions such as trafficking and smuggled that would implicate 'deserving' and 'undeserving' migrants. Instead they suggest that there is a continuum of exploitation – from the freedom of legal residence and employment rights to a deceived, exploited and coerced state of trafficking.

This study investigates in what ways the migrants have utilized agencies operating under legal cover. It is therefore of significance to know if the migrant worker has used such an agency or a smuggler to enter Malaysia. However, I do not make any connotations of *deserving* or *undeserving* based on this distinction. Although, in the case of Malaysia irregular migrants are, as we will see, rarely identified as victims of forced labor; rather they are perceived as *deserving* and treated as criminals.

3 THE CASE: MALAYSIA

3.1 Background to migration

Migration to Malaysia has been strongly associated with the country's rapid economic development and export-oriented industrialization (Nah 2011; Chin 2010). Malaysia's manufacturing sector constitutes the biggest bulk of the economy and this sector has been heavily dependent on foreign investments from Multinational Corporations (SOMO 2013). Malaysia has attracted these foreign businesses through low-cost wages, low levels of unionization, and weak labor rights – e.g. through so-called Free Industrial Zones (ibid.). Due to significant labor shortages the government authorized massive recruitment of foreign workers from neighboring countries in the 1980s, and Malaysia became increasingly dependent on a foreign workforce as a result of continued economic growth (Nah 2011, 2012). Today, this sector as well as most of Malaysia's labor market is dependent on the cheap labor that the migrant workers provide for continued economic growth (Kaur 2012) – as almost a third of Malaysia's total workforce is made up of migrant workers (ILO & Australian Aid 2013:1).

3.2 Categories of migrants

Estimations of the scope of migrants currently in Malaysia vary slightly, however, the ILO and Australian Aid (2013:1) states, referring to estimations made by the Malaysian government, that there are approximately 1.8 million documented migrants. These migrants are mainly employed in low-skilled and labor-intensive jobs (ibid.).

However, there is also an estimated 2 million irregular migrants in the country (ILO & Australian Aid 2013). There are several reasons why migrants are irregular in Malaysia such as entering the country unlawfully or overstaying the visa (Kaur 2008; Kanapathy 2008). Nah (2011) further suggests that there are structural reasons, such as visa regulations and incoherence in migration policies.⁷

Malaysia also receives refugees from Myanmar and other neighboring countries. However, refugees lack formal status in Malaysia and are, thus, not allowed work permit. This makes refugees vulnerable for forced labor (USDoS 2013). Nah (2011) states that Malaysia mostly treats refugees in very harsh manners. Malaysian law makes no distinction between irregular migrants, and refugees or asylum seekers (Amnesty International 2010; UNHCR 2014; Refugees International 2007) and, consequently, they are usually treated the same (Nah 2011).

3.3 Regulations around migration

In Malaysia a hierarchy of rights prevails (Nah 2012), where different regulations apply to high-skilled and low-skilled migrants (Nah 2012; Kaur 2010). The migrant workforce is

⁷ To exemplify, a change in validity of immigration passes from six to three years made many legal migrants irregular overnight (Nah 2011).

meant to be temporary and is therefore not meant to integrate into the Malaysian society (Gurowitz 2000; Garcés-Mascareñas 2008; Nah 2012). Thus, there are several regulations to ensure they do not stay. Low-skilled migrants, also called foreign contract workers, need a work permit or visit pass that are issued for a specific time period, although, it can be renewed up to a maximum of five years (Kaur 2010; Nah 2012). After the completion of the contract the worker is obliged to return home to their country of origin (Kaur 2012). Further, recruitment policies in Malaysia tie migrant workers to a specific location and employer; thus, if they change employer they obtain irregular status (Kaur 2012; Nah 2012; Garcés-Mascareñas 2008; Kanapathy 2008; Verité 2010; Robertson 2008).

Foreign workers are only allowed to be recruited from specific nationalities and to specific sectors, namely: manufacturing, construction, service, plantation, and agriculture (Ministry of Home Affairs 2014; Nah 2012). Migrant's nationality and gender determines where they are allowed to work (Ministry of Home Affairs 2014).⁸ Further, they must be aged 18-45 years and are not allowed to earn more than 1200 ringgit/month (378USD) (Nah 2012).⁹ Moreover, the workers must pass a mandatory medical check before departure, upon arrival in Malaysia, and to renew the visa (*ibid.*).

In Malaysia it is punishable to be an irregular immigrant; they risk fines, detention, incarceration and caning (Nah 2011, 2012; Kaur 2008, 2010, 2012; Amnesty International 2010; Hedman 2008).¹⁰ Moreover, hiring (Chin 2010) or assisting (Spaan & Hillmann 2013) irregular migrants is considered a crime punishable with fines, caning and detention.

In Malaysia the majority of migrant workers are recruited through outsourcing agencies (Kaur 2008; Garcés-Mascareñas 2008). These agencies exist in both the sending country and in Malaysia (Kanapathy 2008) and arranges job placement in Malaysia, airfare, required medical examination and all official documents (Verité 2010). In 2006, 270 agencies were licensed in Malaysia, however, since 2009 no new licenses are issued (Devadason & Meng 2013).

Foreign workers often have low remuneration due to low wages, inadequate or no payment of overtime, delayed or non-payment of wages, and deductions (Bormann et al. 2010; SOMO 2013). The deductions are made as monthly charges of renewal of working permits, mistakes, sick leave, and charges for food and rent (Amnesty International 2010). Since January 2013 the immigration and employment authorization fees (levies) are placed on the foreign worker instead of the employer (USDoS 2013). Around the same time a minimum wage was introduced; although, the application to migrant workers was deferred until December 2013 (ILO & Australian Aid 2013).

⁸ Both male and female worker from Thailand, Cambodia, Myanmar, Laos, Vietnam, Kazakhstan, Nepal, Pakistan, Sri Lanka, Turkmenistan, and Uzbekistan are allowed to work in all the sectors (manufacturing, construction, service, plantation, and agriculture). From the Philippines only male workers are allowed to work within these sectors. Workers from India are allowed to work only in the service sector (restaurants only), construction sector (high tension cables), agricultural sector, and plantation sector. From Indonesia female workers are allowed in all the sectors, while male workers are allowed to work in all sectors except the manufacturing sector (Home of Foreign Affairs 2014a).

⁹ Throughout this thesis currency have been converted using www.xe.com.

¹⁰ The detention centers have been reported to have very poor standard (Amnesty International 2010), and abuses of violence, even resulting in death, have been reported (Refugees International 2007; Gurowitz 2000).

3.3.1 Enforcing immigration law

In Malaysia, the Immigration Department is responsible for the implementation of foreign labor policy and handles foreign labor recruitment (Kaur 2012:249). In upholding the enforcement of immigration law the Immigration Department is assisted by the police and the civilian volunteer organization called RELA (Kaur 2008).¹¹ RELA was formed in 1972 to join the state in the war against irregular migrants. Since 2005 (Hedman 2008), volunteers joining RELA are allowed to bear arms, stop, search and demand documents, as well as arrest and enter houses or premises without a warrant (Kaur 2012; Hedman 2008; Robertson 2008). RELA volunteers receive a monetary reward for each irregular migrant worker they bring in (Bormann et al. 2010; Hedman 2008; ITUC 2010) and it has been reported that they destroy migrants' identity card to justify raids (Kaur 2012) and use unnecessary violence (ITUC 2010; Nah 2012). Additionally, RELA personnel are granted immunity from prosecution in relation to their conducts (Kaur 2012). Both the police and RELA-volunteers have been reported to regularly mistreat and abuse migrant workers as well as extorting them for money (Franck forthcoming a; Amnesty International 2010).

Operations to arrest, detain and deport irregular migrants appear through out the year as part of regular activities of law enforcement and as *public crackdowns* (Nah 2011). The public crackdowns comprise different phases, including an *amnesty phase* in which the government allows irregular migrants to depart from Malaysia. The 6P program, launched in 2011, is a recent operation against irregular immigration (Nah 2011, 2012). Nah (2011) further describes that efforts against irregular migration in Malaysia are aimed towards the migrants, and insufficient attention has been paid to the institutions, processes and actors stimulating and contributing to irregular migration such as smuggling networks, dishonest recruitment agencies, corruption and production of fake documents (ibid.).

3.4 Migration and its link to forced labor

3.4.1 The Agencies system

Migrant workers, both regular and irregular, comprise an overwhelming amount of the victims of forced labor in Malaysia (USDoS 2013) and agencies are suggested to be one contributing factor (ibid; Kaur 2012; Humantrafficking.org 2007; SOMO 2013).

Agencies are increasingly becoming employers of migrant workers (Kaur 2010, 2012; USDoS 2013). It is suggested that when the daily employer in general is without responsibility for the exploitative practices, vulnerability of forced labor is increased (USDoS 2013). As a result of being the employer, agencies move the worker to a new workplace if the demand for labor changes (Bormann et al. 2010; Amnesty International 2010). Workers employed by the outsourcing agencies have a further decrease of rights since they fall outside collective bargaining agreements (SOMO 2013), are prohibited to join the union (Kaur 2008; ILO & Australian Aid 2013; SOMO 2013; Bormann et al. 2010), and are often excluded from the bonuses and allowances (Bormann et al. 2010).

Migrant workers regularly pay high fees to the agency in the sending country. In order to pay these fees the workers and their families often borrow money (often with a high interest), sell

¹¹ RELA is the Malaysian Peoples' Voluntary Corps, in Malay called the *Ikatan Relawan Rakyat Malaysia*.

land and other assets (Nah 2011), or mortgage their land (Bormann et al. 2010). It is suggested that the pressure to pay back the money force the workers to submit to violations of rights (Nah 2012; Bormann et al. 2010; Amnesty International 2010) and to work under conditions they did not agree to (Kaur 2010). Further, the debt makes it hard for the workers to return home (Amnesty International 2010). It is thus suggested that these fees cause many workers to find themselves in a situation akin to debt bondage (Kaur 2012; Amnesty International 2010; Verité 2010; Bormann et al. 2010; USDoS 2013).

Migrants are often recruited on a basis of deceptions, causing them to become victims of trafficking (Amnesty International 2010). During the recruitment process some workers receive contracts (Bormann et al. 2010), while others do not (Amnesty International 2010). The contracts have been reported to sometimes be in English, resulting in a limited understanding by the migrants (Bormann et al. 2010). Further, contracts have been signed in situations where the migrants feel forced to sign (*ibid.*), or the original contract is substituted with an altered agreement (Verité 2010). Upon arrival migrant workers frequently experience that contracts and promises made by agents in their home country are untrue and not respected by the agencies in Malaysia (Garcés-Mascareñas 2008; Amnesty International 2010; Verité 2010) regarding what type of work they will perform, conditions, terms, and salaries (Amnesty International 2010). Furthermore, deductions, often calculated in a way unintelligible for the workers (Bormann et al. 2010; Verité 2010), are in fact often overcharging migrants (Verité 2010). It is argued that these deceptions, coupled with debt, further increase a situation where migrants are forced to stay and work in conditions they did not agree to (Garcés-Mascareñas 2008; Amnesty International 2010; USDoS 2013).

Furthermore, agencies regularly confiscate foreign workers' passports (Nah 2012; Kaur 2010, 2012; Garcés-Mascareñas 2008; Hedman 2008; Bormann et al. 2010; USDoS 2013; Amnesty International 2010; Verité 2010). Without passport migrants risk being caught by RELA or the police (Kaur 2010; Amnesty International 2010) and are therefore scared to contact authorities when treated wrongfully (ITUC 2010; Amnesty International 2010; Humantrafficking.org 2007). Keeping someone's passport to prevent him/her from leaving is a way of placing the worker in forced labor (ILO 2005; Kaur 2012; Garcés-Mascareñas 2008; Amnesty International 2010).

Additionally, the USDoS (2013) states in the TIP-report that agencies use methods indicative of forced labor such as restriction of movement, threats of reporting to the authorities towards migrants and withholding of wages to subject the migrants to forced labor.

As stated in the introduction, while the reports and literature describe how agencies are used when foreign workers migrate legally to Malaysia and are outsourced by the agency, I have not found any research or reports describing if and how migrants, in particularly irregular migrants, employed directly by a company utilize agencies and if this has any implications for forced labor.

3.4.2 The vulnerable position of migrant workers

According to Bales (2012), vulnerability is the main criterion to whether a person ends up in slavery. In this section I will therefore elaborate a few aspects that contribute to vulnerability of the migrant worker.

The legal status of the migrant worker plays a noticeable role in the vulnerability of the worker. According to Nah (2011) irregular migrants are particularly vulnerable and subjected to forced labor and abuse. However, the irregular migrant workers simultaneously gain flexibility with the possibility of leaving work, and can maximize, even double, their incomes (Nah 2011; Kanapathy 2008). Garcés-Mascreñas (2008) similarly suggests, referring to several Malaysian scholars, that having legal status increases risk of exploitation by employer. She claims that since irregular workers are not bound to a particular employer they can, to a larger extent, negotiate or improve their conditions and salaries.

Even though Malaysia has an anti-trafficking law providing victims with protection, the country is criticized for having an inadequate system for identifying and protecting victims of trafficking (USDoS 2013). Instead, victims are criminalized (Kaur 2012) and often remain unidentified. They therefore risk to be placed in detention centers and deported (USDoS 2013). Migrant workers are covered by the immigration laws and entitled to some minimum conditions (Amnesty International 2010). The Employment Act further provides an avenue for filing complaints for the migrants (Robertson 2008). However, Kaur (2010) suggest that a complicated and poorly coordinated governmental and legislative system makes it almost impossible for the exploited migrant workers to seek redress and justice, resulting in marginalization and vulnerability of the migrant worker.

Nah (2011) states that since the work permit is tied to one employer, migrant workers that experience violations of right have no legal possibility to change job; instead, their only choice is to stay and submit to the violations, unless they 'run away' and, consequently, become irregular.¹² Moreover, if the migrants would complain, they risk that their employer cancel their work permit or terminate the employment, which immediately result in irregular status for the worker (Nah 2011, 2012; Hedman 2008; Garcés-Mascreñas 2008). In fact, there are numerous cases when the migrant workers are fired when filing a complaint, resulting in irregular status (Robertson 2008; Nah 2012).

Moreover, Amnesty International (2010) reports cases when the detainees were prosecuted and convicted without a lawyer, no opportunity to speak for themselves, and no information that they had the right to appeal.

Hence, migrants being exploited and subjected to forced labor have weak or no legal avenue to seek redress.

¹² 'To 'run away' is an expression frequently used by the respondent when describing that they escaped or left their employment before the contract fulfilled without notifying the agencies or their manager. Since this is the general expression used amongst the interviewees, it will be used in this thesis.

4 METHODOLOGY

As stated in the introduction, this thesis aim to investigate the link between forced labor and the migration industry, more specifically agencies, in Malaysia. The study approaches this mainly from the migrants' experiences and narratives. Since a qualitative research design is recommended when the study aim to understand “[...] *the social world through an examination of the interpretation of that world by its participants*” (Bryman 2008:366) I have carried out a qualitative study in Malaysia.

In April 2013 I was given the opportunity to accompany my supervisor Anja Franck, during her fieldwork to the city George Town in northern Malaysia. Through her I was able to step into a field that would otherwise have taken a long time to approach and access. Thus, I had the chance to meet, spend time with, live with and interview migrant workers, predominantly from Myanmar, in Malaysia. Some of these migrants I met several times and became better acquainted, while others I only met once for an interview.

4.1 Interviews

4.1.1 Selection

In this study, interviewees were purposefully selected, which means they were chosen to be able to answer the research questions in the best way (Bryman 2008; Creswell 2009). Since this study aims to contribute the migrants' narratives and perspectives, they compose the main part of the interviewees. In this thesis I refer to these migrant workers as *respondents* – a term used when the researcher is interested in the interviewees' perspectives, thoughts, and understandings of a phenomena (Esaiasson, Gilljam, Oscarsson & Wängnerud 2007). Further, I carried out interviews with three *informants*, defined as ‘witnesses’ contributing information (ibid.)

The respondents

The criterion to select respondents was merely that they had immigrated to Malaysia to work. Since I, at the time, had limited understanding of how the migrant workers used agencies, I found that I could not make a narrower selection without risking to miss important experiences, perspectives and information. Through my supervisor's network in Malaysia I was able to establish contact with two interpreters – who, in turn, were important links to establish contacts with migrant workers. Since Franck's research has been carried out amongst Burmese migrants I mainly had the opportunity to meet with and interview Burmese migrants – although one of the respondents was from Bangladesh. In the following chapters, I have chosen to specify the nationality of the Bangladeshi respondents only when it has been information or experiences that clearly differs from the migrants from Myanmar or are specific for migrants from Bangladesh. While contacts and part of the selection of whom to interview was facilitated through my supervisor's networks, the interviews conducted were used following my own interview guide and focus of research (see below).

During the fieldwork I strived for a balance between male and female respondents; however, I had limited access to female interviewees. Thus, out of nine respondents only three were female. The respondents are 20-31 years old and most of them have experience of coming to Malaysia through an agency – although a couple of them entered the country through smugglers. Nonetheless, all of the respondents have some form of experience with an agency.

Further, some of the respondents have been in Malaysia several times and for many years, while other has recently arrived for the first time. For more detailed information about the respondent see appendix 3.

I aimed to interview as many respondents as possible during my stay in Malaysia. Thus, I did not determine the amount of nine respondents in advance; it was instead the quantity I managed to acquire while in Malaysia. However, even though each story is unique, themes and patterns of how agencies were used and their role in forced labor were similar between interviews and therefore, to some level, saturation was reached.

The informants

In order to deepen the understanding of the respondents' experiences and to be able to place these experiences within a larger context, I carried out interviews with three different informants with different knowledge and perspectives of agencies and forced labor amongst migrant workers in Malaysia. The informants were selected based on *intensity*, i.e. based on their expertise and experience (see Esaiasson et al. 2007). The first informant was employed by an NGO in Malaysia working with labor rights amongst migrants in the country and giving shelter to abused and trafficked women, amongst other things. She could contribute with knowledge from experience of working with issues related to the aim of this study from a civil society perspective. The second informant was a Ph.D. student in Malaysia who has spent a considerable amount of time living with migrants and conducting research amongst migrant workers. She contributed with knowledge regarding how the migration system works in the region, the role and use of agencies, and migrant workers' specific situation in Malaysia. The third and last informant was a human rights lawyer working in Malaysia. He contributed with specific knowledge regarding the regulations and legislation of the migration process, the labor market and the agency system. In the following chapters I refer to them as informants, however, when their expertise is of particular importance to the information they have provided I have chosen to write out which informant I refer to.

4.1.2 The interview situation

Qualitative interviews are recommended to use when the study is interested in the interviewees' point of view (Bryman 2008). During the fieldwork I carried out semi-structured interviews using an interview guide – however the content of the interview varied some depending on the interviewees' answers and the time we had available for an interview. Thus, the order of the questions may have varied, different follow-up questions were asked, and the wordings of the questions changed depending on the interviewee. However, the interview guide helped ensure that I covered the questions during the interview.

The interview guide used for the respondents focused on the recruitment processes from the sending country to Malaysia, and their stay in the country, with special attention to the situation as a migrant worker and the role and use of agencies. The interview guide for the informants was focused on their specific expertise and knowledge in relation to the purpose of this study. Both respondents and informants were asked specifically about the forms of menace and lack of consent, previously described to be of extra focus in this study.

In order to become acquainted the interviewee and to 'warm up' the interview situation, I started the interviews by asking some shorter questions about the respondents, such as their age. I then moved on to questions related to the purpose of the thesis. Before asking more

detailed and narrower questions, I asked more open-ended questions, where the interviewees would be able to answer with what they wanted to say in their own words (see Esaiasson et al. 2007). This to avoid steering the interviews and the interviewees too much. With the informants this worked well and I could ask both open-ended and narrower questions. However, I found that the respondents had a hard time to comprehend and answer the more open-ended questions. For example, if I asked the respondent to describe how they came to Malaysia to open up for them to describe the whole process of their recruitment and migration to the country, the answer could simply be “boat”. Further, they frequently stated that they did not understand these questions. I therefore started to ask more specific and narrow questions to the respondents; which I found worked well. Furthermore, I realized that some questions were asked in a language that was too complex and/or academic; thus, I simplified my language, which made the interviews easier.

This study is of a hermeneutic character, which means it is based on interpretations of the world and the phenomenon investigated. People give meaning to various acts and phenomenon, and interpret it in different ways (Gilje & Grimen 2007). Thus, in this study I have made interpretations of the empirical material, which in itself are interpretations of the world made by the interviewees (see *ibid*; Bryman 2008). We all have different pre-understandings shaping how we interpret things; various languages, terminologies, beliefs, perceptions, ideas, and previous experiences shape how we understand and interpret the world. Thus, the interviewees as well as myself have different pre-understandings of the world and can interpret the world differently. An example of this is that one interviewee, when asked if he had ever experienced violence from an agency or an employer, answered ‘no’. However, later outside the interview he told a story how his employer recently had thrown a watermelon on him in anger. Either the interviewee forgot the incident during the interview or he simply did not interpret it as abuse of violence. In order to ensure that I had understood the interviewees accurately and that they had understood my questions I triangulated by asking the same thing in various ways. Several times this gave information of great value. Further, I sometimes summarized what I had heard and asked them to confirm if I had understood it correctly. Moreover, spending time and living with the migrants also increased the reliability of the empirical material since that gave me an opportunity to make observations that could confirm or oppose things said in the interviews.

It is recommended to carry out interviews in a quiet and calm environment (Esaiasson et al. 2007; Bryman 2008). However, I conducted interviews whenever and wherever I was given an opportunity, therefore, the interviews took place in a variety of places: in the interviewees’ homes, at restaurants, food courts, malls and cafes. Hence, some places were quiet and calm while others were noisy and lively; however, with the benefit of being environments familiar for the interviewees (see Creswell 2009). Nonetheless, the often loud environments could sometimes make it hard to hear. I tried to solve this by asking them to repeat if there was something I did not hear.

Moreover, the interviews were carried out with one respondent at a time, however, two of my respondents, a married couple, were interviewed together.

Since interviews were carried out when an opportunity arose, the interviews are of various lengths, depending on the time available for the interviewee. The migrants often worked long hours with few breaks or free days, so the interviews often took place during lunch breaks or late nights after they had finished work. Consequently, some interviews had to be cut short and I then had to select questions from the interview guide. In one case, I had the opportunity to ask a respondent some follow-up questions over Facebook after returning to Sweden.

As mentioned above, I had two different interpreters who helped translate the interviews with the respondents. Even though the communication, and possibly also the interpretations, now had one extra link, this was a necessity since I do not speak the language of the respondents. Both the interpreters were themselves migrant workers and were thus also interviewed as respondents for the study. The interpreters had experience of the migration process and stay in Malaysia and could then easily grasp what the respondents said.

In spite of the benefits of recording interviews, only a few were recorded for the reason that the migrants were often afraid and could have been uncomfortable to be recorded. Instead I took careful notes. The interpreters were used to the fact that the interviewer takes notes and made pauses in their interpretations in order for me to write. If the recorder were used the interviewee had always given her/his consent.

4.2 Coding and analysis

In Sweden the interviews were transcribed carefully; those recorded were transcribed verbatim. One of these interviews I processed further before coding, by ‘cleaning up’ and taking away things irrelevant for this study. I further rewrote and summarized parts to make it easier to comprehend and understand during the coding process. I then read through the transcriptions in its entirety before I started to code the material. Since I wanted the respondents narratives to lead the process of analysis, I used categories and themes that emerged from their interviews and became clearer while reading the transcriptions. However, I believe it was unavoidable that the previous research and reports studied and described in chapter 2 and 3 also affected what codes I saw in the material. Especially since the literature had been part of shaping what questions I asked during the interviews. In order to be faithful to the respondents’ narratives, I carefully went through their material to let their answers be part of shaping the codes. This said, I also consciously used the menace and indicators of involuntary work (being the characteristics of forced labor) described by the ILO (2005), as codes. After coding the transcription of the respondents, I coded the informants’ interviews, mainly with the same code. The choice to start with the respondents was made since I wanted the migrants’ experiences and narratives to be the ground for the analysis, where the informants contributed to a greater understanding of these experiences. For more information about the codes used see appendix 4. After coding the material I started to write my analysis.

4.3 Observations

I had the opportunity to spend time with some of the migrants. Together with Franck, I also stayed several evenings in an apartment where some of the migrants lived, and one night we also stayed over in the flat. This gave me the possibility to get a glimpse of their everyday lives, how they handle issues such as the police and RELA, and to talk to them about their work and the agency etc. In this way I could create a better understanding of their situation, put the information and experiences described in the interviews in a better context, as well as confirm or question things said in the interviews. During my stay in Malaysia I took notes of things that I saw or heard that I found to be of interest for this thesis.

4.4 Use of Theory

This study is inductive, which means that it is producing theory rather than testing a theory (see Creswell 2009). Several times the study confirms finding from previous research; however, the aim is not to try if these findings are correct. The thesis is therefore of an explorative nature with an objective to contribute to the existing research with new perspectives, narratives and findings.

The literature used in this thesis is mainly articles of academic research, as well as books and chapters. Several reports from NGOs have been used to help create a pre-understanding of the role and functions of agencies. Further, sources from international institutions such as the ILO and the United Nations have been used – primarily reports and various conventions. To some extent a number of websites has been used for information, for example the Malaysian Ministry of Home Affairs.

4.5 Validity, Reliability and Generalizability

There are different views of how validity and reliability should be understood in a qualitative study (see Esaiasson et al. 2007; Creswell 2009; Bryman 2008). However, in short validity refers to if we actually investigate what we say we do and, thus, if there are any systemic errors in our research. Reliability refers to how well we use the tools we have to “measure” (Esaiasson et al. 2007). In many aspects this has been discussed above; however, in this section I will however further elaborate these topics.

I found it hard, especially in the beginning, to understand the dialect of the migrants’ and/or interpreters’ English. Thus, there was a risk of misunderstandings. However, I asked them to repeat or to clarify when I did not understand.

In some cases, there were other people present during the interview. This might have affected the answers if they did not want their friends to know specific details. However, I often found their answers to include information that could have been sensitive, and as far as I could tell they did not seem disturbed by their presence. Most of the interviews were however carried out without bystanders.

By constantly comparing the answers given by the respondents to the information given by the informants, previous research and report, and knowledge gained during the observation, arguably raise the reliability of the study. This is further strengthened by the possibility to ask the migrants questions of things I did not understand while spending time with them.

This study only describes the role of the agency in forced labor amongst migrants in Malaysia. It does not make claims to go outside the realm of this context.

4.6 Ethical considerations

The migrants are all in a vulnerable position risking to be caught by RELA or the police, especially those with irregular status. I always feared placing the migrants in further danger by drawing attention to us with my presence, and by not knowing the regulations and the more “hidden codes” in this context. An example of this was when I was carrying out an

interview late at night very visible on a food court by a table placed outdoors. During the interview more migrants came and sat with us, curious to see what was happening. This could draw even more attention to us from the police or RELA. For a while it was unclear if it was still safe for the migrants, but they said it was ok. Suddenly, our interpreter said that we had to stop and go because it could be dangerous. I do not know what changed, however, the migrants who live there suddenly felt it was no longer safe. I tried to use common sense to not place them in danger, however, I relied mostly on the migrants' judgments of what was safe for them or not. Further, there was a risk that they took risks to accommodate us as guests; that they went out more in open with us because they wanted to help us. For example, one migrant wanted to follow us home after we had decided to abort the interview at the food court due to safety issues, even though it was safe for us but dangerous for him to walk home. However, we managed to convince him to hurry home on his moped instead of walking us home. During my stay in Malaysia there was often a discussion regarding safety with the migrants.

Because of their vulnerable situation I have chosen to keep all the respondents anonymous. Even though the chances that some former employer or agency would read this thesis are limited, I have taken extra precautions to not even call them "respondent 1" and "respondent 2" etc in the following chapter to eliminate the risk that someone would be able to identify them and then obtain more information about the respondent. Since it is illegal to assist an irregular migrant in Malaysia I have chosen to keep the informants anonymous as well, even though they, to my knowledge, are not doing anything unlawful. However, I do not want to risk their safety or raise any suspicions regarding their work amongst migrants.

As described above, migrant often work long hours and the interviews were mainly carried out during late nights or during their lunch breaks. The migrants we stayed with often came home very late and had to go to work early the next morning. Thus, I was concerned that my interviews would cause them to be even more sleep deprived and tired. To exemplify, one of our interpreters sometimes could interpret during his four hour lunch break, and then continue with another interview when he came home around midnight for a couple of hours. Since he had to be at work again the next morning he had little sleep and rest.

Esaiasson et al. (2007) emphasizes the importance of that those participating in a study give their consent. Thus, I started all the interviews by explaining in short what I was investigating to make sure that they understood what the study was about.

5 EMPIRICAL FINDINGS AND ANALYSIS

In this chapter I will present the empirical findings. First, four various ways in which the migrant workers described how they utilized agencies will be presented. Second, the agencies' role in forced labor situations will be analyzed. This will be done by investigating the migrants' experiences of how agencies use various forms of menaces and coercion, described to be the characteristics of forced labor by the ILO (2005). Further, this will be investigated by exploring whether the use of agencies and their link to forced labor vary depending on whether the migrant workers are employed directly by an employer/company or are outsourced by an agency. Finally, in what way the contextual framework in Malaysia might facilitate the agencies in extracting forced labor will be analyzed.

5.1 Agencies' functions during the migration process

The respondents in this study used agencies in various ways during their migration process. Through the interviews, four main, but overlapping, functions were described. It should be noted, however, that the functions of the agency during the migration process is often found in a 'grey area' and the rules of engagement have also changed over time (see above). That is, while the law may require a certain handling of migrant workers (during different times periods) – in reality the agency may operate quite differently. What is described here is therefore the respondents' own experiences of agencies and how they operate.

The first function of the agencies found was for **recruitment** and, second, to arrange practical and administrative issues regarding the **migration to and from Malaysia** e.g. transportation. There is one agency in the sending country and one agency in Malaysia collaborating to bring workers over to companies in Malaysia. The agency in Malaysia sends a request for migrant workers on behalf of a Malaysian company to the agency in the migrants' home country. When the potential migrant has decided to which country he/she wants to go, they have to pay an agency fee in the sending country. This fee includes costs for the flight ticket, passport, working permit and other expenses. The agency in Malaysia then has to inform the local government in order to receive an approval to issue a work permit. To enter Malaysia legally as a foreign worker, the migrant needs to have a valid passport, a work permit stating the employer, a contract that can be understood by the Malaysian authorities, a passed comprehensive health exam, and an endorsement from the Malaysian government. In most cases the migrant worker received a contract from the agency, while some were merely given verbal promises. The workers are then sent to Malaysia, where another agency awaits them at the airport and brings them to a place where they can stay (respondent and informant interviews, Malaysia 2013). However, one respondent described how he had to wait for the agency for three nights at the airport before they picked him up. The duration before they started to work varied amongst the respondents. One respondent pointed out that the agency in the sending country has no control over what happens in Malaysia.

The agencies' third function is the role as **an employer in Malaysia** – outsourcing labor to companies in need of workers. The agencies in Malaysia arrange for accommodation at a hostel, bus transportation to and from work, and other things needed.

The fourth function is **administration** in which the agency handles paperwork during their stay in Malaysia. When a worker needed a passport, or to obtain or renew a working permit,

they and/or their employer turned to an agency to issue the papers in exchange for an agency fee. One respondent described that “[t]he managers/bosses in Malaysia they don’t know how to do passports and visas so they too have to pay to an agency if they want to get a worker. They have to pay a lot of money.” Thus, also the companies are dependent on the agencies for these administrative issues. While regular migrant workers who migrated legally into the country to be outsourced by an agency used the former three functions described above, this fourth function was also utilized by migrant workers (including irregular migrants), who were employed directly by a company. The respondents’ experiences revealed that they often moved in and out of regular legal status. During the times of irregular status, workers often used agencies, mainly through an employer, to obtain a passport and work permit in order to become regular. Several of the respondents used the agency for administrative purposes during the 6P amnesty period. However, sometimes the workers chose to stay irregular and, thus, did not use the agencies for administrative purposes.

5.2 Debt and Deception

5.2.1 The pressure to earn money

The migrant workers interviewed for this study came to Malaysia to earn money. Several of them described the poor alternative livelihoods in their home countries. Some of the respondents described that they came to Malaysia because their families had financial problems. All of the respondents sent money home to their families – to their spouse and children, their parents, or their spouse’s parents. Several of the respondents had been in Malaysia long enough to have paid off their debts acquired from the agency fee. However, they kept sending money home, either because the family needed money, or to save money for future investments such as a business or a home. One of the respondents stated that his family would now be okay if he did not send money, while only last year the situation was not entirely secure and they would have had to borrow money from others to survive. Another respondent stated that if he could not send home money, his family would manage for two or three month, after which it would be difficult for them. One evening when I encountered some Burmese migrant workers at a food court, one of them explained that he did not want to be in Malaysia; he wanted to be home with his family. However, due to very low salaries he could not feed his family if he lived and worked in Myanmar. He therefore had to migrate to Malaysia to work and send home money. One respondent further explained that he had at one point left the job obtained through the agency, but had a hard time to find a new job as an irregular worker and ended up having “no money and no clothes”. In this situation he was worried about his family. He stated, “*I thought about my family’s problem all the time*”, revealing that there is a strong pressure upon migrants to support their families in Myanmar. This was further confirmed when the respondent stated that he was always scared to be caught and sent to prison – since that would mean that he could no longer be able to support his family. Although, because of the fees to renew his work permit, he chose to stay as an irregular worker in order to be able to send that money home to his family. To conclude, the migrant workers supported their families and/or saved money to be able to build up a future for themselves and their families. If they could not send money home, their family might get financial problems and be forced to borrow from others.

At the same time as the migrants experienced pressure to support their families back home, they were further pressured financially since they were often in debt due to the fee paid to the agency in their home country. According to one informant there are different rates and

systems in different countries of origin. Migrant workers from Myanmar can often borrow all or parts of the money from the agency or pay everything upfront, while Bangladeshi workers have to pay everything upfront to the agency. In cases where the workers borrow money from the agency, money will be deducted monthly from their salaries. The fee paid by the Burmese respondents varied between 1000 and 5000 ringgit (302 and 1508 USD). The great variation might be due to the fact that some of them paid parts of the money in Myanmar and the rest as deductions from their salaries in Malaysia, while others paid the whole amount in Myanmar. According to one informant interviewed the fee in Myanmar to come to Malaysia is usually 3,600 ringgit (1,086 USD). The Bangladeshi respondent, on the other hand, paid 10,000 ringgit (3,016 USD) to his agency in Bangladesh – which was confirmed by an informant interview where it was stated that the agency fee in Bangladesh is usually between 7,000 and 15,000 ringgit (2,112 and 4,525 USD).

One of the respondents, who paid 2,700 ringgit (808 USD) to the agency, explained that this is a lot of money for the migrants and they often have to borrow money from others, mostly family members. This debt further presses the need to make money to send home in order to pay off the debt. One respondent described that loans are taken with different interest rates. According to one informant the migrants often borrow money at a high interest rate. Consequently, the loan might increase if the worker does not receive enough money to send home in order to pay off the loan.

5.2.2 Deceptions and low remunerations

There was a general consensus amongst the respondents that agencies lied to them. All of the respondents who came to Malaysia through an agency, claimed that the agency had made promises which had not been fulfilled. One respondent stated that the agencies ‘talk sweet’ but they ‘do bad things’. Several respondents expressed that the agencies do not care about them; that they deceive them and take their money. As stated above, some of the respondents received contracts in their home countries, while others were just given verbal promises. However, these contracts or promises were ignored and changed once they arrived in Malaysia. These changes (to the disadvantage of the worker) included changes in salaries, working hours, location, what factory they would work in, and what kind of work they would perform. To exemplify, one respondent described that he was promised a salary of at least 750 ringgit (224 USD) per month; however, he only received 275 ringgit (82 USD) once in Malaysia. Another example comes from a worker that was promised eight-hour working days and a salary of 750 ringgit (224 USD) per month; however, in reality he earned 481 ringgit (144 USD) and had twelve-hour working days.

Further, the interviews revealed many questionable circumstances regarding the labor contracts signed before leaving their home country. One of these circumstances concerns the language of the contract – and whether it is actually understood by the migrant workers. One of the respondents described that when they arrived as a group from Myanmar to Malaysia the factory manager explained their new contract at the company and many things differed from the original promises made by the agency in Myanmar. This new contract was in English, even though everyone did not understand the language. There was a Burmese translator there; however, he could not translate everything due to lack of knowledge in English. Similarly, another respondent described that the new agreement he was forced to sign upon arrival in Malaysia was in Malay and that none of the arriving workers could understand it.

The practice of having one contract signed in the home country and then another (new) one in Malaysia was confirmed in an informant interview. This revealed that workers upon arrival sometimes have to sign contracts in another language than that of their own, and that it is common that migrants do not understand the new contract they receive in Malaysia. This seemed to depend on the nationality of the worker and the agency. For Burmese migrant workers it depends on the particular agency. The human rights lawyer interviewed explained that the workers are required to have a contract that can be understood by the *Malaysian authorities*, which is a probable reason for why migrants have to sign a new contract in Malaysia even though they already have a contract from their home countries. However, legally, the contract could probably be voided on the basis that it is falsely signed; that the migrants did not know what they signed and that it was never explained to them. Moreover, two of the respondents were asked if they felt like they had any choice but to sign the new contract in Malaysia, and they both affirmed they felt they did not have a choice. One of them described that the agency threatened them to sign by saying: “*Oh you don’t want to work?! [Then] I call the police!*”

In addition to the new lower salary, migrants’ remuneration is further decreased by several deductions. One of these deductions is for work permits that need to be renewed while in Malaysia. Two respondents stated that they had to renew it every year. Another respondent claimed she had to renew hers after two years, and since her contract was for three years she had no choice other than paying this renewal, which was then deducted from her salary. However, she expressed that the agency made deductions from her salary that was not agreed upon beforehand. This was confirmed by an informant stating that it is often unclear what is being cut from the foreign workers’ salaries. Moreover, informants described that in 2013, the government decided that the levies for working in Malaysia are to be paid by the migrant worker instead of the employer. This was a response to criticisms from employers regarding that the recently launched law of minimum wage would apply also to foreign workers. The migrants’ salaries are thus also deducted with levies to the Malaysian government. One respondent, additionally, stated that he paid income tax 10% to the Myanmar embassy as well. Furthermore, one informant stated that workers recruited and employed by the agency are not entitled to bonuses and other benefits that the workers employed directly by the company are entitled to.

5.2.3 Implications of the debt and low remuneration for the migrant workers

The debt and low remunerations had several implications for the migrant workers. Several respondents described how this created desperation and pressured them to ‘run away’ from their work with the agency in an attempt to receive a higher salary – despite that they then obtained an irregular legal status and risked punishment. On the other hand, another respondent described that some workers who paid half of the money in Myanmar and half in Malaysia through deductions in salary, risked putting their families in danger if they ‘ran away’. He claimed that often the agency cannot find the family in Myanmar, although, sometimes the family has pawned their house and then they could lose their home. However, he claimed that while this was common before it happens less nowadays. Furthermore, the debt creates a great pressure on the migrant workers to stay in Malaysia in order to obtain a salary to pay off the loans. One respondent who had ‘run away’ from his factory faced difficulties to find a new employment and, thus, returned to the factory. The factory manager had already reported him missing to the Immigration Department, as he is obliged to do, and the respondent’s passport and work permit, still in the employer’s possession, was then invalid upon his return. However, the company had recently paid for a renewal of his work

permit. Thus, when the respondent returned the manager locked him in and told him he had to pay for the renewal, as well as a ticket to return to Myanmar, otherwise he would be handed over to the police. The respondent was locked in for a couple of days to make a decision. Finally, the respondent managed to escape. He described that the decision to flee was made because of his debt in Myanmar: “[...] *I paid a fee to the agency. This money is not our own money, we had borrowed from other people. So we have to pay [...] I had decided I cannot go over to Myanmar, I have to stay.*” Arguably, the debt created a great pressure to stay in Malaysia to work in order to send home money to pay of the debt. He further explained that if he had a job in Myanmar he could make approximately 200 ringgit (60 USD) per month; consequently, it will take many years to pay off the debt there.

In sum, the respondents expressed three different responses with regards to the pressure of debt: 1) the necessity to stay in Malaysia and work to be able to send home money, 2) desperation due to low salaries causing them to eventually ‘run away’ and become irregular workers and thus risking legal punishment and deportation, and 3) fear to leave the work obtained through the agency if the family has pawned their property in order to get a loan from the agency. However, the later response seems to not be present to the same extent today.

5.2.4 Debt Bondage

The above provides an illustration of how migrant workers end up in forced labor – in form of debt bondage. The debt is possible to pay off, however, when the workers realized they had been deceived and consequently would not receive the remunerations and conditions they had agreed to, they were not free to leave. Instead they had to stay and pay off their loans.

One respondent described how he felt when he realized he had been deceived: “*We feel we did not want to work but we cannot go back to Myanmar so we had no chance. We had already paid money*”. The debt, in other words, increased vulnerability for the workers making them an easy target for exploitation and forced labor.

One informant further described that if the workers wanted to resign their contract before it has been fulfilled, the agency requires that they pay a fine decided appropriate by the agency itself, the rest of the loan not yet deducted, and the flight ticket home. Since the debt creates difficulty to return to Myanmar it is not an option to cancel their contract to return to Myanmar. However, the only other option (except staying with the agency) is to ‘run away’, and, thus, risk punishment and deportation. Hence, the migrants risk both legal (punishment) and economic (deported home even though they are still in debt) menaces as a result of cancelling or escaping their current employment with the agency. Another way to control workers is through the confiscation of passports dealt with in the following section.

5.3 Confiscation of passport

All of the respondents who had been employed by an agency had in the end chosen to ‘run away’ and stay in Malaysia as irregular migrant workers. They stated this was because of the low salaries. The economic pressure created an unsustainable situation for the foreign workers. When asked why ‘running away’ was a better choice, one respondent expressed in a follow-up email: “*They [the agency] paid me 475RM per month. I had to pay 10 percent of my*

salary (income tax) to Myanmar embassy and 125RM to Malaysia for permit. I had to pay every month. My costs [of living] per month were around 150. So how can I send money to my family? I thought that I was better off to run away."¹³

In an attempt to prevent workers from 'running away', in order to escape bad conditions and low remunerations, agencies confiscated their passports and the attached work permit. The respondents who came to Malaysia through an agency described how agencies systematically confiscated their passports upon arrival. Two respondents expressed that their passports were confiscated at the airport in Malaysia, and one of them stated, "*From this time we never saw our passports again.*" One informant estimated that approximately 90 percent of migrant workers in Malaysia have their passports confiscated. Several respondents as well as one informant stated that this is done to prevent the migrant workers from 'running away'. One respondent underpinned this by stating that: "*[...] if they keep our passport we cannot go early [before the contract is fulfilled]*".

As described above, Malaysia has severe punishments for being an irregular migrant: fine, imprisonment, deportation, and caning. One respondent explained that fear of being caught by the police without a passport and go to jail are hindering workers from leaving their employment. One respondent argued that they keep the passport because the agency has not finished deducting the salaries; the longer the workers stay to work the longer the agency can make money on them through deductions. She compared this to her current employer (that she had found on her own and, thus, not through an agency), who did not deduct her salary. She stated that she is free to leave as long as she give them her month notice so they can replace her. One informant suggested that the confiscated passport is used as a bargaining chip whenever a problem arises. This is confirmed by a respondent expressing, "*We cannot do anything because they took our passports*". Thus, the confiscation greatly decreased the negotiation power of the migrant workers and their ability to leave their job without menace.

Respondents claimed there was no way to get their passports back other than fulfilling their contracts and then return to Myanmar. Foreign workers that 'run away' to stay and work elsewhere in Malaysia will therefore become irregular workers. One of the respondents claimed the worker could pay to have the passport back if he/she wanted to quit, while another respondent stated that it would be impossible. However, none of the respondents had paid money to have their passports back themselves.

Most of the respondents who came through an agency eventually escaped from the work and left their passports behind and, thus, obtain irregular status. For example, one respondent described how she because of a pregnancy wanted to resign before the contract ended. Even though she had already paid money for a return ticket when she came to Malaysia and the whole agency fee of 5000 ringgit (1,497 USD), they did not allow her to go. In any case, she then decided to leave her work and left her passport with her manager. However, two respondents managed to leave their work with their passports. One of them could bring the passport because she managed to borrow her passport by lying to the manager and the agency. She also stated that it was possible because she had a good relationships with both the agency and the manager since she had ended-up working as a translator for them. Although, she stated that normally employers and agencies are afraid to lend out the passport since they fear that workers will 'run away'. The other respondent who managed to keep the passport told the

¹³ 475RM equals 142USD; 125RM equals 37USD; and 150RM equals 45USD.

agency that he was going to his home country for one month because his father had passed away. So they gave him his passport. However, since his father had already passed, he decided not to go. Instead, he took his passport and ‘ran away’ with it.

Confiscation of passport is one of the coercive methods of forced labor mentioned by the ILO (2005). This coercive method becomes a reality because of the non-existing or weak legal avenues for migrant workers to seek justice and redress, and the criminalization of irregular migrants. Without passport they risk to be caught by RELA or the police, and face punishment and deportation. They also risk brutal treatment in relation to the arrest. Although, several of the migrants expressed that they mostly fear being deported to Myanmar since they do not have any or few alternative livelihoods and/or debts there. Additionally, several of the migrants described how they repeatedly have to pay money to corrupt police officers and RELA members who systematically asks for money when irregular migrants and refugees are caught in exchange for releasing them.

5.4 Threats

Some respondents described that agencies threatened to report them to the authorities as a way to control them and make them stay. For example, the agency had, as described above, threatened to call the police when one of the respondents had been unwilling to sign the new contract in Malaysia. Denunciation to authorities is one of the menaces used to extract forced labor mentioned by the ILO (2005). However, economic pressure and necessities pushed many of the migrants to escape from their employments in spite of these threats. For some, being exploited and deceived by the agency seemed to be considered a greater risk than the risk of being caught and punished by Malaysian authorities as a result of being an irregular worker.

5.5 Physical Confinement and Physical Abuse

The interviewees were asked about the occurrence of violence towards workers and if they have been locked in by the agency. This seems to exist to a lesser extent. One of the informants stated that some migrants are locked in and can be physically abused. However, another informant stated that she had not heard of migrant being locked in or physically abused.

Amongst the Burmese respondents no one had been locked in by the agency. One of the respondents explained that the agency can lock you into a room for two to three weeks, although, this has not happened to himself. The Bangladeshi respondent, however, described how physical confinement was used to force workers from Bangladesh to accept the lower salary when they arrived in Malaysia. The respondent described how many of the workers, who had been promised a higher salary in Bangladesh, refused to work for the new lower salary. The company then called the agency and said that they had a problem. The agency came and told all the workers to come into an apartment, where they locked them in and did not let anyone out until they had all agreed to work for the new low salary. The respondent was not locked in himself; however, he was there to give food and drinks to his friend who was locked in.

None of the Burmese respondents had been physically abused by an agency; however, the Bangladeshi worker had experienced how physical abuse and threats of physical abuse was used to force the migrants from Bangladesh to work. He arrived in Malaysia with a group of workers who refused to work under the new contract. The agency then assembled all the workers together in an apartment and asked them why they did not want to work. When they answered that the salary was lower than what they were promised the agency beat two of the workers. The respondent described that everyone became scared. After that the agency and someone from the company to which they were outsourced called them into a room one by one and asked if they wanted to work. He stated that everyone, except two workers, were afraid and accepted to work for the lower salary. The two who had refused were transferred to another company. The respondent stated that it was not an option to return to Bangladesh since that would have cost them 3000 ringgit (896 USD).

5.6 Withholding salary

The Bangladeshi worker stated that the agency and the company to which the workers are outsourced sometimes take 50-100 ringgit (15-30 USD) from the salary the first six months. If everything worked fine and the employee is still there after that time, he/she receives the money back. The respondent estimated that only a smaller portion of the agencies do this to prevent workers from 'running away'. Thus, the method seems to not be very widespread. Withholding of wages is described to the ILO (2005) as a form of coercion to extract forced labor.

So far six main methods to place the migrant workers in forced labor have been outlined. We will now move on to analyze what implications various forms of employments have for the use of agencies and their role in forced labor.

5.7 Employed and outsourced by the agency

As described above, agencies are allowed to employ migrant workers in order to outsource them to different companies. If the workers are outsourced by an agency they could ask for a transfer to another company in case they are dissatisfied with their current situation. Several of the respondents mentioned this as the only positive thing using an agency, and it was used and perceived as a bargaining chip. However, there were also examples of this being misused. One respondent described how a friend of hers was sent to different companies in various cities against her will as the demand for labor changed. In other cases, the transfer was not necessarily happening even if the worker asked for it. Another respondent described how a friend of his had been beaten by the agency when he, for a second time, asked for a transfer. He further stated that when he himself asked for a transfer the agency said they would contact him about that, but they never did. This negotiation chip toward the agencies might, thus, be more a feeling of increased space of maneuver than any actual power of negotiation over salaries, working conditions and access to passport. However, the salary might change with the new company, which would indicate some power of negotiation.

The employment with the agency clearly weakened the negotiation power of the workers in the sense that they could not negotiate with the company for which they worked. One respondent described that when workers complain to the company they are outsourced to, their only response is that their company never made any contract with the workers about their salary and that they should go back and talk to their agency (which were their employer). Similarly, another respondent stated that the company to which they were outsourced refers them to the agency if they complain, saying, “*You are not my worker. You are the agency’s worker*”. Hence, the workers could not negotiate anything regarding their work with the company they actually work for.

The migrants thus have to turn to the agency to negotiate the working conditions etc. However, the respondents expressed a feeling of having no power of negotiation towards the agency either, and that the agency were indifferent to their situations. Two respondents expressed that if there is a conflict between a worker and the company, the agency always sides with the company. If a “[...] *problem happens between the employee and the employer* [the company for which they work] *the agency never cover the employee.*” Hence, their experience was that the agency did not defend or fight for the workers’ rights; rather it teamed up with the company in case of a conflict. One respondent described that when he arrived to Malaysia the factory manager explained the new deal and salary. He further states, “[...] *the agency was not there. They did not do anything for us. They would not care even if we reported to them.*” Another respondent stated, “*We just know that our agency is lying to us but we cannot do anything.*” A third respondent expressed:

“After we’ve come here [to Malaysia] if they pay us different [from what they had promised] we cannot complain about anything because we have already arrived here. If you want to complain about anything they don’t care. They don’t care. We have already arrived here. If you want to complain about anything they don’t care. They don’t care.”

This quote reveals a feeling of not being able to do anything about the situation while in Malaysia, even though they have been wronged. This aligns with one of the informants who claimed that agencies only care about their profits and not about the well-being, health, or safety of the migrants, nor their working conditions. One respondent described that when they realized they had been deceived by the agency, he and some other workers that arrived at the same time sought advice from some other Burmese workers who had been at the factory longer. The more experienced migrant workers explained to them that there was nothing they could do, and that they had tried themselves when they arrived without receiving justice. The Bangladeshi worker described how he told the electronic factory he worked for that his original contract had a higher salary and that he did not want to work for such a low salary. They then answered, “*You will never go to Bangladesh because your contract is three years*” and, further, that he had to pay 2,500-3,000 ringgit (474-896 USD) to return to Bangladesh. After refusing to work for three days he turned to his agency to complain, however, they just answered him that he was crazy.

Above we have seen various means in which the agency poses the migrant workers in a forced labor situation. To be employed by the agency further implicates a weak power of negotiation to deal with the deceptions and frauds they have been subjected to. The migrants describe how they have limited possibility to change their situation when employed by the agency, and are therefore forced to continue to work under these conditions.

5.8 Employed by the company

After investigating the effects of employment with the agency, it is interesting to make a comparison to the experiences the respondents have of being employed directly by a company (thus, not outsourced by an agency). In this section we will 1) compare the negotiation power of a migrant worker outsourced by an agency to those employed directly by a company, 2) investigate in what way the workers employed directly by a company utilize the agency, and 3) if the agency contribute to forced labor amongst these migrant workers.

Without the agency the respondents had all changed employers several times and stated that they could resign from their current employment if they wanted to. These respondents mainly had irregular status when they changed jobs, however, there is also an example of how a regular worker changed work and then tried to get a new work permit connected to the new employer. It should be noted that some of the respondents explicitly expressed that they did not want to resign because they were happy with their current employer. It also seemed like they had been able to gradually work their way up towards better salaries and conditions through the possibility of movement. The respondents further expressed that they could negotiate with and complain to their current employer if they found something unsatisfactory or unfair. In contrast, one respondent stated that if he resigned his employer would be very angry and would not sign any paperwork that would allow him to work somewhere else. Since his work permit is tied to his employer, he would then become irregular. The freedom of movement and the ability to ‘work their ways upwards’ indicates a stronger power of negotiation amongst the migrants employed by a company compare to those outsourced by an agency.

However, these migrant workers were still highly vulnerable in several ways. As described above, those with irregular legal status risked to be caught by RELA or the police and, thus, risked to be treated harshly, legally punished, and/or extorted of money by corruption enforcers of the law. Further, the respondents described situations where their employer had deceived them of their salaries, deducted money for passports they never delivered, and threatening to report them to the authorities. One respondent, now working in a restaurant, described that his manager promised him 1,400 ringgit (418 USD) per month for 26 days per month and twelve-hour working days. However, in reality he had to work 28 days per month and fourteen-hour working days for the same salary. He worked at two different restaurants for the same employer; 9am to 6pm at the first restaurant, and then 6pm to approximately 11.30 pm at the second restaurant. He had no breaks and, thus, ate when there was time. This sometimes resulted in that he did not eat lunch until around 4pm. Another respondent who worked at a restaurant also described how he worked long hours from 9am to late evening, approximately 11 pm, with a four-hour break in the middle of the day. Furthermore, he did not have any days off during the time of the fieldwork for this study, although he had been promised to maybe have some days off during the coming month. While spending time and staying with migrant workers that were employed direct by a company, it became clear that they were constantly tired from long hours, little rest and few days off. They often started early in the morning and finished late in the evening, resulting in very little sleep.

Amongst the migrant workers with a passport, it varied if the worker or the employer had the passport. There were cases when the employer had confiscated their passport, which can lead to a forced labor situation. However, some of the workers were able to access their passport if they ask their employer for it. The human rights lawyer interviewed stated that it would not be illegal to keep someone else’s passport for security as long as that person can access it.

Hence, if the workers can access their passport even though their employer keeps it that would not be considered forced labor.

As described above, the respondents used agencies during their stay in Malaysia also for administrative purposes – such as issuing work permits and passports. Workers, both regular and irregular, that were employed directly by the company utilize the agency in this manner. These workers described how they paid a fee for a passport and/or work permit. In several cases the employer had offered to split the cost of a passport and work permit with the worker. Their own part was then deducted from their salaries; something they seemed to think was fair and good. Although, one respondent described that his employer had promised to split the costs for a new passport, but when he had paid his share the manager claimed he had never promised to split the costs and deducted his salary for the other half as well. The respondent claimed he could not do anything about this; he just had to accept it.

The respondents described how both agencies and employers, often in cooperation with each other, deceived them – by taking their money to issue a passport and work permit without actually delivering these documents. One respondent interviewed, for example, described how he while working in a car factory, had paid his employer in total 5,000 ringgit (1,494 USD) to issue a passport and work permit. However, he never received a work permit. He thus asked for his passport and money back. He had the passport back but not the money. As a way out, he then paid his employer's wife and she went to the Immigration Department and fixed a passport and work permit. Similarly, another respondent described how she, during the 6P amnesty period, paid a deposit to an agency and her employer (allegedly) gave her passport to the agency to issue a work permit. The employer deducted her salary with 400 ringgit (120 USD) per month (in total 2,500 ringgit (747 USD)) to pay the cost, however, she never received a work permit. According to her employer she had failed the mandatory medical test, however, he could not state which part she had failed. Even though a work permit was never issued, she never received her money back. By the time she had her passport back, the 6P amnesty period was over and she could no longer apply. Her employer was dealing with the agency and the respondent thought that they might have coupled up to deceive her of her money. She stated that she could not go to the medical center to ask them since she cannot speak the language. A third respondent described how his employer deducted his salary to renew his passport and work permit; however, he never received it either. He claimed that the agency and his employer at the time were collaborating to deceive him and that the employer might never have given the money to the agency. He went to the agency himself to ask, however, they stated that they did not know; something the respondent did not believe at all. He tried to have his passport back but did not succeed. These testimonials reveal that agencies, in this administrative function, as well as employers deceive the workers employed directly by a company by taking their money without providing the passport or other documents. This conclusion was further confirmed by an informant interview.

An unusual story came from one of the respondents who had managed to 'run away' and still keep her passport. After leaving her former employer she had approached another agency and asked them to issue a new work permit for her with them as the employer – however, she wanted to find a company to work for on her own. They agreed on this and she paid them some fees from what she had managed to save. She then found a company that she enjoys working for. She is not 'tied to' the new company and they do not deduct her salary. Thus, this respondent who had her own passport and some capital manage to increase her negotiation power and use the agency for her freedom.

While the above stories reveal that migrants employed directly by a company are still vulnerable to exploitation, these workers seemed to have a somewhat stronger power of negotiation. Many of them, both regular and irregular workers, had managed to ‘work their way upwards’ towards better salaries and conditions. Interestingly, the irregular workers seemed to be less vulnerable to forced labor since their employer could not confiscate their passports and/or threaten them that they would lose their regular legal status as a menace.

The testimonials above have shown that the agency are used by both regular and irregular migrant workers employed directly by a company for administrative purposes, and further, that the agency as well as the employers deceive them. While this caused workers to lose a lot of money and possibly lose their regular legal status, I have not found that this cause the workers to end up in forced labor.

5.9 The legal framework

In Malaysia there is no or very few legal avenues for migrant workers to seek justice. One informant described the situation as follows:

“[...] you don’t have a place to voice your unfairness about how you have been treated. If the agent tells you something you cannot say ‘no’ or you cannot say ‘this is not fair to me’. You cannot say anything. You don’t have a place to voice your concern. And there is too much power with the agent to decide everything for them [the workers].”

Another informant, the human rights lawyer, stated that when caught and facing trial, migrants merely received what he described as something resembling a trial. He described that there are a lot of cases where irregular migrant workers are not represented. Whereas if you are a citizen you can, as of last year, request for a government paid lawyer to represent you. A right not extended to non-citizens. Further, the informant stated that it is questionable whether migrants even understand the proceedings in the trial because of poor knowledge in English and Malay, and there are few interpreters available. He asserted that most migrants facing trial are told to plead guilty in hope that the court will be more lenient and give a shorter sentence since they do not take up the court’s time. The informant, further, claimed that if the migrants do not have their papers, they are an ‘open shot’. Thus, many of the migrants facing trial plead guilty, plea for lenience and ask for the minimum sentence.

Furthermore, one worker stated that if a migrant worker have been wronged and go to the police they would not do anything since he/she is a foreigner and their employer is local. The respondent claimed that if the police would come, the employer would just give him some food and drinks and then he would leave. Thus, corruption is further weakening the legal possibility to seek redress amongst the workers.

As described earlier, in Malaysia the work permit is tied to an employer and, thus, migrants cannot change employer in a legal way while in Malaysia. According to the informant above, if the foreign worker stops working for a specific employer, he/she has to go back to their country of origin and start the whole migration process all over again. Further, he asserted that it is hard for the migrant to complain when the work permit is tied to a specific employer. The worker always risks that the agency will cancel their employment, which would result in irregular status. Consequently, if there are grievances with the employer the worker has a very limited possibility to complain. The informant further stated that even if the migrant worker

managed to win a case, the net result would still be that the work permit is cancelled and that they have to return home. He claimed that migrant workers' debt prevents them from returning home and, thus, they stay and end up tolerating very bad conditions and cannot complain. He stated, "[...] *if you have a good employer that's not a problem. If you have a bad employer you have to continue working for that employer and there is no way that you can change your situation. So to me that is forced labor.*" This is confirmed by one of the respondents stating that if the employer would give the worker a lower salary, she/he cannot do anything since the work permit is tied to the employer.

The testimonials above reveal clear examples of how victims of trafficking are not protected but rather criminalized. None of the respondents' stories reveal any form of protection or legal justice from authorities. Instead, several of the respondents describe how they fear the authorities. Some have been caught by the police and even legally punished. While I was in Malaysia I further witnessed how the migrants tried to avoid encounters with the police to avoid an arrest.

The criminalization of irregular migrant coupled with weak legal avenues for foreign workers create a context within which the law, tying the work permits to one specific employer, can become a tool of coercion to force migrant workers to work under conditions they have not agreed to. The law clearly results in increased vulnerability and decreased power of negotiation for migrant worker towards their employer (often the agency). Migrant workers thus become trapped in a forced labor situation since they are not free to leave without risking menace in the form of legal punishment, as a result of the criminalization of trafficking victims.

6 FINAL DISCUSSION AND CONCLUSIONS

The overall aim of this thesis has been to investigate the link between forced labor and the migration industry in Malaysia – by devoting particular attention to the role of agencies. A second objective has been to contribute the narratives and experiences of migrant workers in Malaysia. The following conclusions and discussion is structured around the research questions raised in the introduction: **What role do agencies play in the existence of forced labor amongst migrant workers in Malaysia?**

To answer this question I will investigate the following sub-questions:

1. How do migrant workers utilize the agencies and what functions do these agencies have in the migration process (journey and stay)?
2. What experiences do migrant workers in Malaysia have of forced labor situations and how are these linked to agencies?
3. Are there identifiable contextual factors (such as the legal framework around labor migration) in Malaysia, which contribute to migrants ending up in forced labor situations? If so, what are those factors and how do they contribute?

6.1 How do migrant workers utilize the agencies and what functions do these agencies have in the migration process (journey and stay)?

During this study four main functions of the agency for migrant workers has been outlined. These functions are overlapping and not always easily separated, however, it still suggests various ways in which migrant workers utilized the agencies. These functions were 1) recruitment, 2) facilitating the migration to and from Malaysia, 3) employment, and 4) administration in Malaysia.

It has been documented in previous research (Nah 2011, 2012; Kaur 2010, 2012; Garcés-Mascareñas 2008), in NGO reports (Verité 2010; SOMO 2013; Bormann et al. 2010; Amnesty International 2010), as well as by the USDoS (2013) that regular migrants, who migrate to Malaysia in order to be outsourced, utilize agencies. However, this study further suggests that also migrants, both regular and irregular, that are directly employed by a company utilize the agency for administrative purposes, such as issuing passport and work permits – especially during amnesty periods. How irregular migrants in particular use agencies have, to my knowledge, never been handled in the previous literature. However, as described above, irregular migrants also use agencies, usually through an employer, in order to obtain regular status. The only situation where a migrant worker would never be in contact with an agency was if he/she would enter Malaysia illegally through a smuggler and continues to work in Malaysia as an irregular worker without attempting to obtain regular legal status. However, all the respondents in this study have had some contact with an agency utilizing at least one of the four functions described above.

The respondents expressed that they experience a low power of negotiation towards the agency. However, it is important to point out that all of the respondents' stories reveal how they were constantly negotiating with the agency in various ways, or made a conscious choice to 'run away'. Thus, the workers are not mere passive victims of abuse, rather they are active in the negotiation process, weighing their options, and for the most part use the agency in a conscious and active manner. This corresponds with Spaan and Hillman (2013) arguing that migrants should not be perceived as passive victims in the interplay with the migration industry – in this case the agencies.

6.2 What experiences do migrant workers in Malaysia have of forced labor situations and how are these linked to agencies?

In correspondence with previous research and documentations made by NGOs, the interviewees describe how agencies use several methods to extract forced labor; a situation that is *involuntary* and where the migrant risk *menace* if they leave.

The experiences of the interviewees in this study reveal that the agency extract fees which place the migrants in debt. This created a situation of forced labor in the form of debt bondage. The agency further used various methods to deceive the workers of their salaries and conditions promised in the sending country, which further increased the situation of debt bondage. This correlates with previous literature and is described to be the case globally (Plant 2012; ILO 2005) as well as in Malaysia (Kaur 2012; Nah 2011, 2012; Amnesty International 2010; Verité 2010; Bormann 2010; USDoS 2013). This further aligns with Plant (2012), who states that trafficking victims often experience a costly migration process. This costly migration process can be understood in the light of a larger commercialization of the migration process where the agencies constitutes one part in a greater emerging migration industry, making noticeable profits on the migrants.

From the interviews it was clear that the pressure to send home money to support families and pay off debts, combined with deceptions that cause low remunerations, often created desperation, which led migrants to eventually 'run away' from the agency. The interviewees described how agencies, in order to prevent this, confiscated their passports and other documents. This has also previously been described to be a common method amongst agencies in Malaysia (Kaur 2012; Bormann 2010) as well as globally (Nyberg Sørensen & Gammeltoft-Hansen, 2013). Retention of passports and other documents are described as a way to extract forced labor (ILO 2005; Kaur 2012; Garcés-Mascareñas 2008; Amnesty International 2010).

The interviewees further describe how the agencies use threats of denunciation to authorities or of violence, physical confinement, physical abuse, and withholding of salaries as means to force the migrants to work under conditions they have not agreed to. Some of these methods have previously been reported in the TIP report (USDoS 2013).

Plant (2012) has suggests that a situation of trafficking and forced labor can emerge from a situation that started voluntarily. This is clearly the case for the respondents in this study who came to Malaysia through an agency. They all voluntarily came to Malaysia to work through an agency. However, as they arrived in Malaysia deceptions, confiscations, threats, physical confinement and abuse placed them in a situation of exploitation and forced labor. Further, corresponding with what is previously stated by the ILO (2005), the interviewees'

experiences show that agencies can act illegally under a legal cover. The agencies referred to in this study are all legal, however, through both legal and illegal methods they cause the workers to become forced workers.

Migrants using the agency for recruitment and to facilitate the migration process are being outsourced by the agency. This study suggests that the employment with an agency further decrease the migrants' power of negotiation. The interviewees describe how the company they work for have no interest in negotiating with them; instead they refer them to the agency with the motivation that they are the agency's worker. However, when the migrants turn to the agencies, they are described as indifferent to the migrants' problems and concerns, and/or to side with the company. Nonetheless, respondents describe that they can demand a transfer to a new workplace and they seem to perceive this as a bargaining chip. However, testimonials from respondents reveal that this possibility is not always fulfilled. Instead, it is sometimes misused by the agency, which may move workers to a new workplace against their will. It can thus be questioned if this actually constitutes a power of negotiation regarding conditions and salaries or whether it is mainly a feeling of increased space of maneuver. The USDoS (2013) suggests that employment with an agency causes the company to be without responsibilities, resulting in increased vulnerability for forced labor amongst the migrant workers. This is compatible with the finding of this study; the migrants' possibility to negotiate about salaries and conditions decrease since the migrants cannot negotiate directly with the company for which they work, and the agency stay indifferent or sides with the company.

This weakened power of negotiation can be compared to the situation for those employed directly by a company. Even though these workers have been found to still be vulnerable for deceptions regarding conditions and salaries, or risk to be caught by RELA or the police, these workers seem to have a somewhat stronger power of negotiation. The respondents describe how they have changed employers several times and could negotiate with their employers. This freedom of movement seems to have created a possibility to gradually improve their salaries and conditions. While Nah (2011) and Garcés-Mascareñas (2008) state that irregular migrants gain flexibility and can negotiate for better salaries, I suggest that also regular migrant workers employed directly by a company to some extent receive flexibility and power of negotiation compared to those outsourced by an agency, although possibly to a lesser extent.

As stated earlier, there is to my knowledge no literature describing how migrants employed directly with a company use the agency, and consequently the implications on forced labor have not been investigated. This study suggests that agencies, often in cooperation with the their employers, deceive the migrant worker when they use an agency for administrative purposes. Some respondents described how they paid money to issue a (or renew) passport and/or work permit, which were never delivered. While this resulted in that the migrant lost a lot of money and arguably increased their vulnerability, I have not found that this leads to situations of forced labor.

6.3 Are there identifiable contextual factors (such as the legal framework around labor migration) in Malaysia, which contribute to migrants ending up in forced labor situations? If so, what are those factors and how do they contribute?

Kaur (2010) has previously suggested that the weak legal protection and lack of legal avenues of migrant workers result in vulnerability and exploitation. This study confirms these findings and suggests that it has severe implications on the agencies possibility to extract forced labor.

Previous research has suggested that the law tying the work permit to a specific employer results in that workers, whom experience violations of rights, cannot legally change employers (Nah 2011). Further, it is suggested that if migrant workers complain they risk being fired and, thus, end up being arrested since they lose their legal status when their employment is canceled (Nah 2011, 2012; Hedman 2008; Garcés-Masareñas 2008; Robertson 2008; Nah 2012; ITUC 1020; Amnesty International 2010). This study confirms these findings, and further suggests that this legal framework increase vulnerability for forced labor; the migrants have no way to change their situation and are thus forced to stay in a situation they have not agreed to.

Malaysia has been described to criminalize irregular migrants (Kaur 2012) and has further been accused in the U.S. Department of States' TIP report (2013) of having weak protection of trafficking victims. The findings of this study support these statements. Several of the respondents in this study have eventually escaped from a situation of forced labor by 'running away'. But, instead of being granted protection or gaining any legal redress, several respondents have been caught and legally punished as criminals.

This study shows that to further weaken the possibility of legal justice the trials against irregular migrants are carried out without legal presentation, something that previously has been reported by Amnesty International (2010). The study further suggests that the trials are carried out in a language the migrants do not understand, and that they are often encouraged to plead guilty in hope of the court's lenience. Moreover, corrupt police officers are found to decrease the possibility for legal redress for the migrant.

Hence, in the legal framework and the enforcement of the law in Malaysia create a fertile ground for the agency to carry out exploitation and forced labor.

6.4 Further research

As stated in the introduction, academic research, devoted particularly to agencies role in forced labor situations amongst migrants in Malaysia are scarce. In the light of the findings of this thesis agencies emerge as important actors to further investigate in order to further understand migrants' vulnerability for forced labor.

7 BIBLIOGRAPHY

Amnesty International. (2010). *Trapped: The exploitation of migrant workers in Malaysia*. London: Amnesty International Publications.

Andrees, B. & Belser, P. (2009). Introduction. In B. Andrees, & P. Belser (Eds.), *Forced labor: coercion and exploitation in the private economy* (pp.1-13). Boulder, Colo.: Lynne Rienner Publishers.

Androff, D. K. (2011). The problem of contemporary slavery: An international human rights challenge for social work. *International Social Work*, 54(2), 209-222.
doi: <http://dx.doi.org/10.1177/0020872810368395>

Bales, K. (2012). *Disposable people. New slavery in the global economy*. Los Angeles: University of California Press.

Betts, A. (2013). The migration industry in global migration governance. In T. Gammeltoft-Hansen & N. Nyberg Sørensen (Ed). *The Migration Industry and the Commercialization of International Migration*. (pp.45-63). London: Routledge.

Bormann, S., Krishnan, P. & Neune, M. (2010). *Migration in a Digital Age. Migrant Workers in the Malaysian Electronics Industry: Case Studies on Jabil Circuit and Flextronics*. Berlin: WEED – World Economy, Ecology and Development. Accessed 2014-01-31:
http://goodelectronics.org/publications-en/Publication_3638

Bosma, U., van Nederveen Meerkerk, E., & Sarkar, A. (2012). Mediating Labour: An introduction. *International Review of Social History*, 57(S20), 1-15.
doi:10.1017/S0020859012000764

Bryman, A. (2008). *Social research methods*. (3. ed.) Oxford: Oxford University Press.

Castles, S. & Miller, M.J. (2009). *The age of migration: international population movements in the modern world*. (4. ed.) Basingstoke: Palgrave Macmillan

Chin, C. B. N. (2002). The 'host' state and the 'guest' worker in Malaysia: Public management and migrant labour in times of economic prosperity and crisis. *Asia Pacific Business Review*, 8(4), 19-40. doi:10.1080/713999163

Coghlan, D., & Wylie, G. (2012). Speaking with a Forked Tongue: Contrary Political Discourse and the Irish State's Construction of Human Trafficking. In C. van der Anker & I. van Liempt (Eds.), *Human Rights and Migration. Trafficking for forced labour* (pp. 129-144). Basingstoke: Palgrave Macmillan.

Creswell, J.W. (2009). *Research design: qualitative, quantitative, and mixed methods approaches*. (3. ed.) Thousand Oaks, Calif.: Sage.

Dannecker, P. (2005). Bangladeshi Migrant Workers in Malaysia: The Construction of the "Others" in a Multi-Ethnic Context. *Asian Journal of Social Science*, 33(2), 246-267.
doi:10.1163/1568531054930820

- Dannecker, P. (2009). Migrant Visions of Development: A Gendered Approach. *Population, Space and Place*, 15(2), 119-132. doi:10.1002/psp.533
- Dannecker, P. (2013). Rationalities and Images Underlying Labour Migration from Bangladesh to Malaysia. *International Migration*, 55(1), 40-60. doi:10.1111/j.1468-2435.2009.00547.x
- Devadason E. S., & Meng, C. W. (2014). Policies and Laws Regulating Migrant Workers in Malaysia: A Critical Appraisal. *Journal of Contemporary Asia*, 44(1), 19-35. doi: 10.1080/00472336.2013.826420
- Esaisasson, P., Gilljam, M., Oscarsson, H., & Wängnerud, L. (2007). *Metodpraktikan. Konsterna att studera samhälle, individ och marknad*. (3rd ed). Stockholm: Norstedts Juridik AB.
- Fernandez, I. (2008). Recruitment and Placement of Migrant Workers To Malaysia: Inconsistent, Unclear and Deregulated without a Human Rights Approach. In Malaysian Bar Council, & ILO. *Developing a Comprehensive Policy Framework for Migrant Labour; Compilation of Conference Papers and Presentations*. Malaysia National Stakeholder Conference. Jakarta: ILO & Bar Council Malaysia. Accessed 2013-01-31: http://www.ilo.org/jakarta/whatwedo/publications/WCMS_116230/lang--en/index.htm
- Franck, A.K. (Forthcoming a). "First they ask for the passport, then they ask for the money." Migration, fear and everyday corruption in Malaysia. Paper presented at the Migration Studies seminar at the School of Global Studies, University of Gothenburg, the 14th of November 2014.
- Franck, A.K. (Forthcoming b). A(nother) geography of fear: Burmese labor migrants in urban Malaysia. Paper presented at seminar with Gothenburg Center of Globalization and Development, University of Gothenburg, the 10th of September 2013.
- Free the Slaves (2011). *The Congo Report. Slavery in Minerals*. Accessed 2012-12-28: <https://www.freetheslaves.net/SSLPage.aspx?pid=362>
- Garcés-Mascareñas, B. (2008). Old and new labour migration to Malaysia: From colonial times to the present. In M. Schrover, J. van der Leun, L. Lucassen, & C. Quispel (Eds.), *Illegal Migration and Gender in a Global and Historical Perspective*. Amsterdam: Amsterdam University Press.
- Gilje, N., & Grimen, H. (2007). *Samhällsvetenskapernas förutsättningar*. (3rd ed). Göteborg: Bokförlaget Daidalos AB.
- Gurowitz, A. (2000). Migrant Rights and Activism in Malaysia: Opportunities and Constraints. *The Journal of Asian Studies*, 59(4), 863-888. doi:10.2307/2659215
- Hedman, E. E. (2008). Refuge, Governmentality and Citizenship: Capturing 'Illegal Migrants' in Malaysia and Thailand. *Government and Opposition*, 43(2), 358-383. doi:10.1111/j.1477-7053.2008.00258.x

Hernández-Léon, R. (2013). Conceptualizing the migration industry. In T. Gammeltoft-Hansen & N. Nyberg Sørensen (Eds.). *The Migration Industry and the Commercialization of International Migration*. (pp.24-44). London: Routledge.

ILO. (1930). *Forced Labour Convention (No.29)*. Accessed 2013-04-03:
http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029

ILO (1957). *Abolition of Forced Labour Convention (No.105)*. Accessed 2013-06-02:
http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105

ILO. (2005). *A Global Alliance Against Forced Labour*. Geneva: ILO. Accessed 2013-06-03:
<http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>

ILO. (2009a). *Forced Labour: Facts and Figures. The Cost of Coercion: Regional Perspectives*. Geneva: ILO. Accessed 2013-06-01:
http://www.ilo.org/global/resources/WCMS_106243/lang--en/index.htm

ILO. (2009b). *The cost of coercion*. Geneva: ILO. Accessed 2013-11-27:
http://www.ilo.org/declaration/WCMS_106268/lang--en/index.htm

ILO. (2012). *ILO Global Estimation of Forced Labour*. Geneva: ILO. Accessed 2013-06-02:
http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

ILO & Australian Aid. (2013). *Malaysia*. Accessed 2013-10-04:
http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms_218162.pdf

ITUC. (2010). *Internationally Recognised Core Labour Standards in Malaysia*. Report for the WTO General Council review of Trade Policies of Malaysia. Geneva: ITUC.
Accessed 2014-01-31: <http://labordoc.ilo.org/record/429380>

Kanapathy, V. (2008). *Controlling irregular migration: The Malaysian experience*. ILO Asian Regional Programme on Governance of Labour Migration, Working Paper 14. Bangkok: ILO.

Kaur, A. (2008). International Migration and Governance in Malaysia: Policy and Performance.” UNEAC Asia Papers no.22. p. 7f. Accessed 2013-03-19:
www.une.edu.au/asiacentre/PDF/No22.pdf

Kaur, A. (2010). Labour migration in Southeast Asia: migration policies, labour exploitation and regulation. *Journal of the Asia Pacific Economy*, 15(1), 6–19.
doi:10.1080/13547860903488195

Kaur, A. (2012). Labour Brokers in Migration: Understanding Historical and Contemporary Transnational Migration Regimes in Malaya/Malaysia. *International Review of Social History*, 57(S20), 225-252. doi:10.1017/S0020859012000478.

- Kaye, M. (2001). *Forced labour in the 21st century*. Sussex: Anti-slavery International & International Confederation of Free Trade Unions.¹⁴ Accessed 2013-05-27: http://www.antislavery.org/includes/documents/cm_docs/2009/f/forcedlabour.pdf
- Koser, K. (2007). *International migration: a very short introduction*. Oxford: Oxford University Press.
- Lincoln, D. (2009). Labour Migration in the Global Division of Labour: Migrant workers in Mauritius. *International Migration*, 47(4), 129-156. doi:10.1111/j.1468-2435.2008.00506.x
- Lindquist, J. (2010). Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry. *Pacific Affairs*, 83(1), 115-132. doi: <http://dx.doi.org/10.1215/08992363-2009-026>
- Lusk, M., & Lucas, F. (2009). The challenge of human trafficking and contemporary slavery. *Journal of Comparative Social Welfare*, 25(1), 49-57. doi: <http://dx.doi.org/10.1080/17486830802514049>
- Ministry of Home Affairs. (2014). *Service Information*. Accessed 2014-02-02: <http://www.moha.gov.my/index.php/en/bahagian-pa-maklumat-perkhidmatan>
- Nah, A.M. (2011). Legitimizing Violence: The Impact of Public ‘Crackdowns’ on Migrant Workers and Refugees in Malaysia. *Australian Journal of Human Rights*, 17(2), 131-157.
- Nah, A.M. (2012). Globalisation, Sovereignty and Immigration Control: The Hierarchy of Rights for Migrant Workers in Malaysia. *Asian Journal of Social Science*, 40(4), 486–508. doi: 10.1163/15685314-12341244
- Nyberg Sørensen, N, & Gammeltoft-Hansen, T. (2013). Introduction. In T. Gammeltoft-Hansen, T, & N. Nyberg Sørensen (Eds.), *The migration industry and the commercialization of international migration* (pp.1-23). London: Routledge.
- O'Brien, R., & Williams, M. (2010). *Global political economy: evolution and dynamics*. (3. ed.) Basingstoke: Palgrave Macmillan.
- Plant, R. (2009). Forward. In B. Andrees, & Belser, P (Eds.), *Forced labor: coercion and exploitation in the private economy*. Boulder, Colo.: Lynne Rienner Publishers.
- Plant, R. (2012). Trafficking for labour exploitation. Getting the responses right. In A. Quayson, & A. Arhin (Eds.), *Labour migration, human trafficking and multinational corporations: the commodification of illicit flows* (pp. 20-37). London: Routledge.
- Quirk, J. (2007). Trafficked into Slavery. *Journal of Human Rights*, 6(2), 181–207. doi: 10.1080/14754830601084576

¹⁴ In 2006, International Confederation of Free Trade Unions (ICFTU) changed their name to International Trade Union Confederation (ITUC).

Refugees International. (2007). *Malaysia: Government Must Stop Abuse of Burmese Refugees and Asylum Seekers*. Accessed 2013-10-15: <http://refugeesinternational.org/policy/field-report/malaysia-government-must-stop-abuse-burmese-refugees-and-asylum-seekers>

Robertson, P.S. (2008). *Migrant Workers in Malaysia – Issues, Concerns and Point for Action*. Commissioned by the Fair Labor Association. Accessed 2014-01-30: http://tp.fairlabor.org/en/migrant-worker-rights-forum/Occasional%20Paper_Migrant%20Workers%20in%20Malaysia.pdf

Rogalty, B. (2008). Migrant Workers in the ILO's Global Alliance Against Forced Labour Report: a critical appraisal. *Third World Quarterly*, 29(7), 1431–1447. doi:10.1080/01436590802386674

SOMO (2013), *Outsourcing Labour. Migrant labour rights in Malaysia's electronics industry*. Accessed 2013-03-11: http://somo.nl/publications-en/Publication_3922/?searchterm=

Spaan, E., & Hillman, F. (2013). *Migration trajectories and migration industry: Theoretical reflections and empirical examples from Asia*. In T. Gammeltoft-Hansen & N. Nyberg Sørensen (Eds.). *The Migration Industry and the Commercialization of International Migration*. (pp.64-86). London: Routledge.

United Nations. (1926). *Slavery Convention*. Geneva. Accessed 2014-01-31: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

United Nations. (1948). *The Universal Declaration of Human Rights*. Accessed 2012-01-04: <http://www.un.org/en/documents/udhr/index.shtml>

United Nations. (1956). *The Supplementary Convention on the Abolition of Slavery and Slave Trade and Institutions and Practices Similar to Slavery*. Geneva. Accessed 2014-01-29: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>

United Nations. (1966a). *International Convention of Economical, Social and Cultural Rights*. Accessed 2013-01-22: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

United Nations. (1966b). *International Convention of Civil and Political Rights*. Accessed 2012-01-04: <http://www2.ohchr.org/english/law/ccpr.htm>

United Nations. (2000). *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime*. Accessed 2014-01-31: http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

United Nations. (n.d.). *International Migration*. Accessed 2014-01-27: <http://www.un.org/en/development/desa/population/theme/international-migration/index.shtml>

- United Nations, Department of Economic and Social Affairs. (n.d.). *Population fact No.2013/2*. Accessed 2014-01-30: <http://esa.un.org/unmigration/wallchart2013.htm>
- UNHCR. (2014). *2014 UNHCR country operation profile - Malaysia*. Accessed 2014-02-01: <http://www.unhcr.org/pages/49e4884c6.html>
- U.S. Department of State. (2013). *Trafficking in Persons Report*. Accessed 2013-09-29: <http://www.state.gov/j/tip/rls/tiprpt/2013/>
- U.S. Senate Committee on Foreign Relations. (2009). *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*. Accessed 2013-09-28: <http://digitalcommons.unl.edu/humtraffdata/19/>
- van der Anker, C., & van Liempt, I. (2012). Introduction: The Wider Context of Trafficking for Forced Labour. In C. van der Anker, & I. Liempt (Eds.), *Human rights and migration: trafficking for forced labour*. Basingstoke: Palgrave Macmillan.
- Verité. (2010). *Vulnerability to broker-related forced labor among migrant workers in information technology manufacturing in Taiwan*. Accessed 2014-01-31: <http://www.verite.org/research/publications>
- Walk Free Foundation. (2013). *The Global Slavery Index 2013*. Accessed 2013-01-31: <http://www.globalslaveryindex.org/report/>
- Warren, K.B. (2012). Troubling the Victim/Trafficker Dichotomy in Efforts to Combat Human Trafficking: The Unintended Consequences of Moralizing Labor Migration. *Indiana Journal of Global Legal Studies*, 19(1), 105-120. doi:10.2979/indjglolegstu.19.1.105

8 APPENDICES

8.1 Appendix 1: Interview guide for migrant workers

I want to investigate the connections between Agencies and Forces Labor. With forced labor I mean that someone is forced to work under coercion of some kind.

INTRODUCTION

Where are you from?

How old are you?

What is your legal status?

Where do you work today?

How is your situation now as a migrant worker?

What is your working hours?

What is your wage? Do you get paid for you work? Do you get what you were promised?

What are your working conditions?

Have you every complained?

What happened? / What would happen if you did?

RECRUITMENT PROCESS

Can you please explain to me how you were recruited?

Were you recruited by an agency? Please describe the process.

What were you promised? Was it fulfilled?

Who had your passport during the recruitment process?

Were there any recruitment fees? How did you cover those?

Did you have any possibility to negotiate your conditions and wage?

IN MALAYSIA

Can you explain to me what your agency does?

Can you explain to me what your employer does?

Have you changed agency since you came to Malaysia? If so, why?

Have you changed employer since you came to Malaysia? If so, why?

What do you think about the agencies?

Are there any benefits of being recruited through an agency? If so, what?

Are there any negative sides of being recruited through an agency? If so, what?

MORE FORCED LABOR INDICATORS

Are you free to leave if you want to? What would happen if you did?

Why do you stay at your job and in Malaysia?

Do you have your own **passport**, VISA and working permit?

If no, does it prohibit you from leaving? What would happen if you do?

Are you in **debt** to employer or agency?

If yes, do you know the term of you loan? Did you understand the terms when you took the loan? Has it changed?

Does the debt prohibit you from leaving? What would happen if you left work?

Have you ever been abused with **violence** at work? Have you ever experienced any threats of violence at work? If yes, what are these threats related to?

Has the agency or the employer ever threatened to **report** you to the authorities? Why?

Have you even been **locked in** or physically hindered to leave work? If so, by whom?

How would your **family** in Myanmar be affected if you left your job?

8.2 Appendix 2: Interview guide for informants

Starting up

How do you work with migrant workers?

Existence of Forced Labour?

Do you see any forms of Forced Labour amongst migrant workers in Malaysia? If so, what forms do you see?

What do you find are the main reasons for Forced Labour amongst migrant workers in Malaysia?

What are the reasons you see for migrant workers to stay at their employments and in Malaysia? (Threats? Debts? Violence? Documentation papers?)

The role of the Agencies

What role does the agencies play in the recruitment process?

What role does the agencies play for the migrant workers when in Malaysia?

How does the agencies affect the working conditions and wages?

Are the agencies in any way affecting the existence if Forced Labour (if any)? If so, in what way?

The NGOs work (only asked to the employee of the NGO)

In what way are you working to help migrant workers?

What are the main challenges in this work?

In what way are you working to prevent Forced Labour?

What needs to be done

What do you think needs to be done for the migrant workers situation to improve?

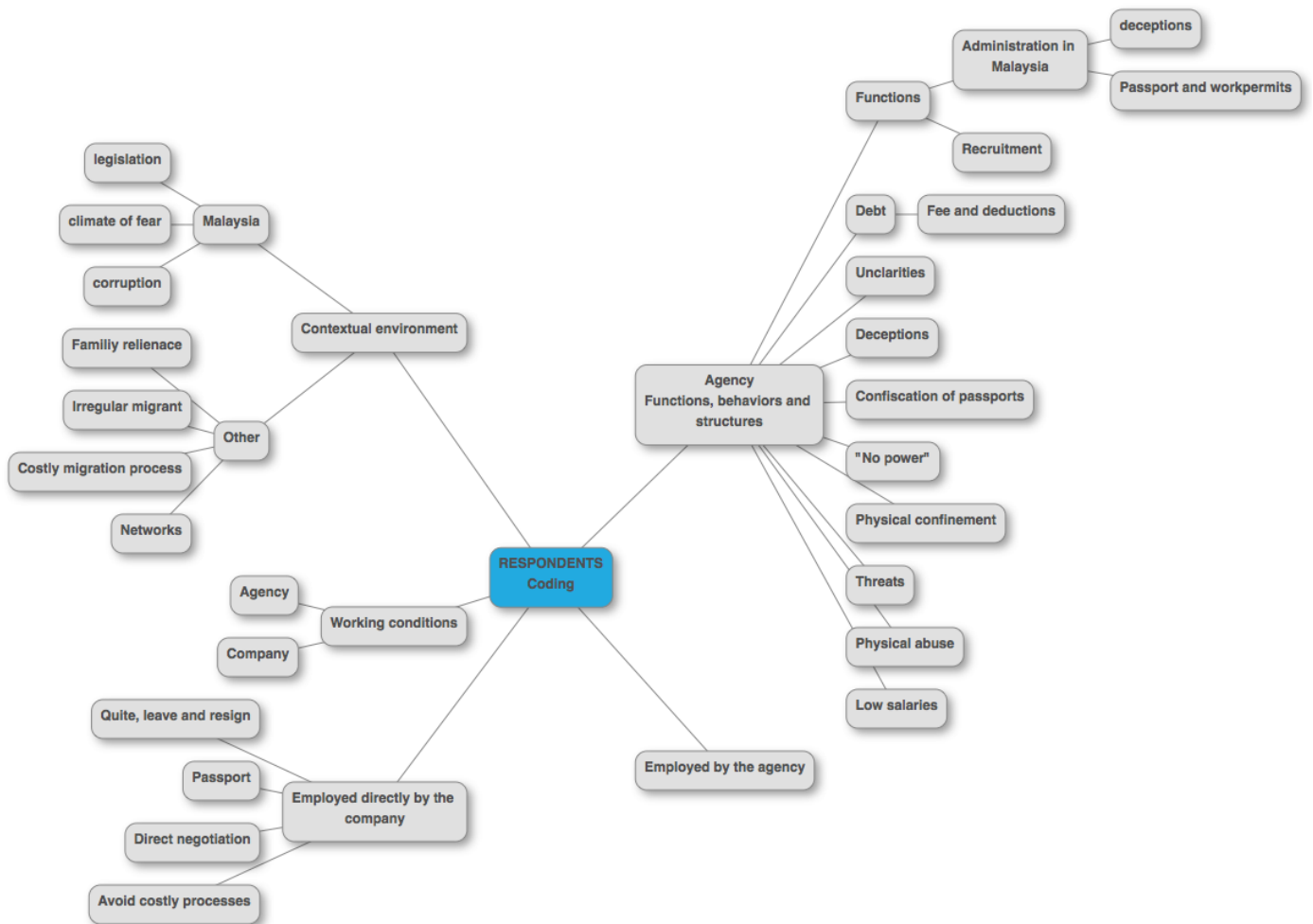
What do you think needs to be done to decrease Forced Labour amongst the migrant workers within the context of Malaysia?

8.3 Appendix 3: Presentation of the respondent

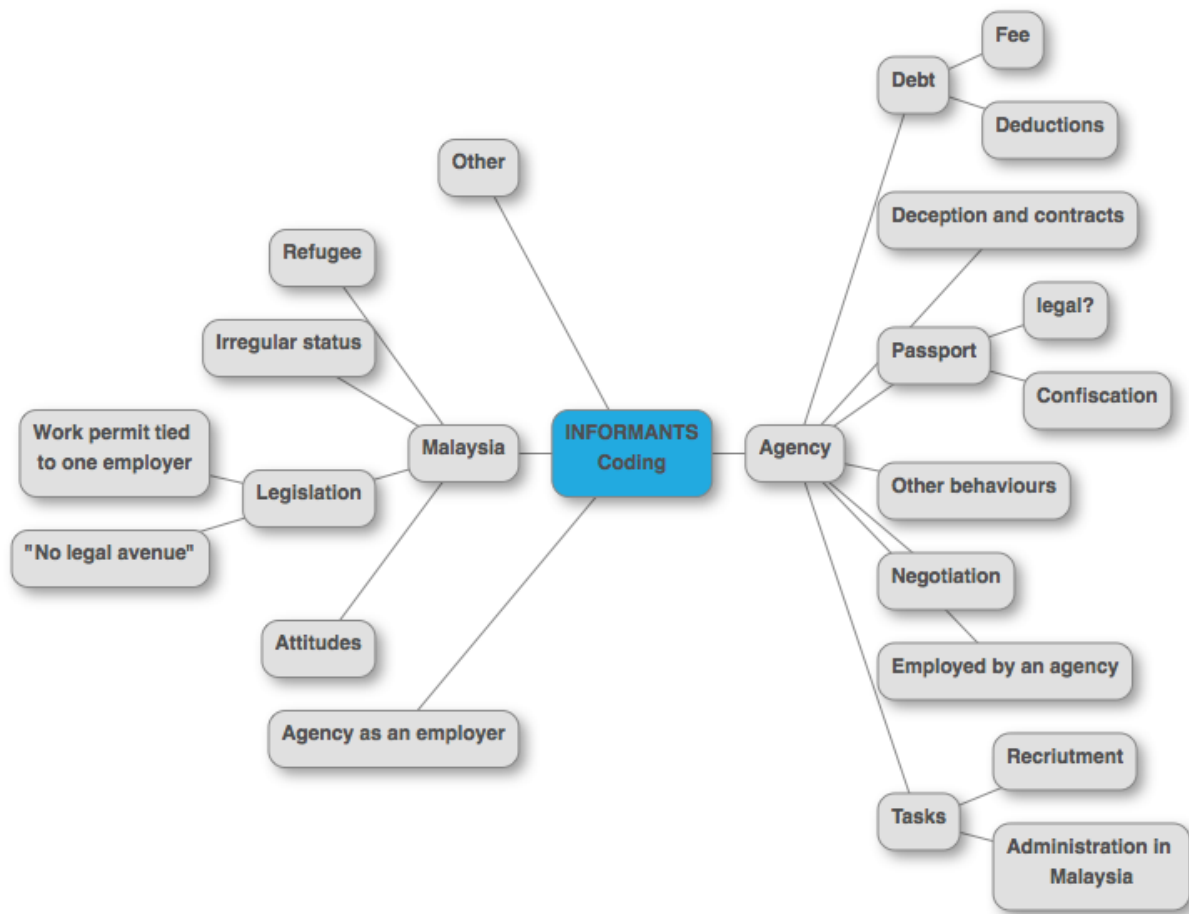
	Gender	Age	Nationality	Ethnicity	Education	Times in Malaysia	Duration in Malaysia	Came to Malaysia through	Family status	Legal status
R1	Male	31 years (born 1982)	Myanmar	Burman	High School (9 years)	3	First time: 2002-2006 Second time: 2007-2008 Third time: from 2010	Agency (second time he had no contract)	Not married, no children.	
R2	Female	25 years	Myanmar	Kayin		1	2.5 years	Smugglers	Married	Irregular: Has passport (through 6P) but no work permit.
R3	Male	Born 1982	Myanmar	Burman	One year at the University	2	First time in 2005. After 4 year he got deported to Myanmar. After 3 months in Myanmar he returned to Malaysia.	First time: Agency. Second time: Visit visa.	Married (to R4 who is pregnant)	UNHCR refugee card holder. Not allowed to work.
R4	Female	28 years (born 1985)	Myanmar	Burman and muslim	Degree in Botanics		10 month	Agency	Married (to R3) and pregnant.	UNHCR refugee status (through her husband R3)
R5	Male	24 years	Myanmar	Burman	Secondary school	1	5 years	Agency	Single	Has passport
R6	Male	20 years	Myanmar	Burman		1	2 years	Smugglers		Regular
R7	Female	37 years	Myanmar	Burman	2 years at the university studying English.	2	First time: 1993-2000 Second time: Since 2009	Agency	Husband and two children in Myanmar.	Regular
R8	Male	29 years (born 1984)	Myanmar	Burman	BA in economics	2	5 years	Agency	Girlfriend. No children.	Irregular
R9	Male		Bangladesh		Two years at the University	1	Since 2006	Agency	Not married and no children.	Regular

8.4 Appendix 4: Codes

The mind maps below show the codes I used. However, they emerged during the process and over time some of them merge and others disappeared if I found them irrelevant. Thus, this map is somewhat simplified, although, it gives an overview of the coding.



Mindmap 1: The codes used while coding the interviews carried out with respondents.



Mind map 2: The codes used while coding the interviews with the informants.

