



Temporary agency work in the electronics sector

Discriminatory practices against agency workers

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About this paper

SOMO has written this briefing paper to put the issue of temporary agency workers on the corporate responsibility agenda of electronics companies. Injustice experienced by these workers stands out in SOMO's research as one of the most distressing issues we have encountered. We have conducted numerous interviews with workers in electronics factories in countries like Thailand and the Philippines. We always end the interview by asking workers what would be the one thing that would improve their lives the most. Surprisingly, these young workers – mostly women – do not want Prince Charming to sweep them away on a white horse; or to win the lottery. Instead, they all answer: 'I wish to become a permanent worker directly hired by the electronics company I work for.'

The reason for wanting this is clear; there are huge inequalities between the directly hired permanent workers and the workers who are temporarily hired via a third party. These workers do not have the same benefits and wages; they do not have the same rights; and they do not have the same opportunities.

In stark contrast, the electronics companies SOMO has engaged with over the last few years say, in general, that there is no issue here. They say that temporary agency workers do have the same rights and are treated in the same way as the permanent workers in their factories. They tell us that wages and benefits are the same. But on what basis do they say this? To what extent is this checked, and do they consider this their responsibility? At the same time, companies deny having any influence, telling us: 'The wage level is up to the labour agencies as we cannot dictate the salaries.'

This paper will provide an overview of the current state of affairs concerning temporary agency work and will serve as a basis for discussion. The different positions of stakeholders are examined and we share four detailed case studies showing discriminatory practices in four different countries. The focus lies on the discriminatory impact of temporary agency work (TAW).

Methodology

For this briefing paper, we have used desk research and findings from earlier published reports by makeITfair and SOMO as input.¹

We have also gathered contributions from workers' rights organisations: CEREAL (Mexico); CIVIDEP (India); GoodElectronics Thailand network; and WAC (the Workers' Assistance Centre from the Philippines).

SOMO also interviewed nine electronics brands and two audit companies, mainly in late 2011: IBM, HP, Philips, RIM, Nokia, Samsung, Dell, Sony Mobile Communications, Motorola Mobility, and the audit companies SGS and Verité.

What is the trend?

It has become widespread practice in the electronics industry to use temporary agency workers to fill previously permanent and direct positions. Increasingly, workers provided by agencies are used to fill 'core' jobs, but they are not given any opportunity to transition to direct permanent employment. In a growing number of instances, entire workforces are provided by temporary work agencies.²

Many Human Resources (HR) activities are increasingly outsourced to global firms such as Adecco and Manpower. This makes it possible for employers to focus on their core business, relying on the agencies to take care of the administrative and legal responsibilities of hiring workers. Companies want a flexible workforce to improve their competitiveness and to be able to respond to business cycle fluctuations. The cost of downsizing is lower when temporary agency workers are engaged, because ending a contract with an agency is often less costly than terminating an employment relationship.

What are the concerns?

First of all, temporary agency workers are in a constant state of job insecurity because they are never guaranteed consistent employment. It is one of the forms of precarious work; non-standard employment that is paid less than equivalent permanent workers, is less secure and offers less protection. Due to the excessive use of agency workers and the trend of replacing regular employees by temporary agency workers, the employment situation for large groups of workers in many countries is deteriorating. Legally mandated benefits (e.g. medical care, health insurance, maternity leave etc.) are often circumvented. There is significantly lower compensation for these workers, and their rights to organise and their collective bargaining rights are being undermined.

makeITfair

SOMO is part of makeITfair. makeITfair's priorities for 2010-2012 include: production, e-waste, extractives, mobile network operators and public procurers. The campaign is calling for: a living wage for workers who produce electronics goods; freedom of association; and improved rights for contract labour and other short-term labour arrangements.

Definitions

As there is often confusion about the use of the terms, we will define the focus of this paper in more detail. According to the International Labour Organization (ILO),³ temporary agency employment involves a situation where a worker is employed by the temporary work agency, and then hired out to perform his/her work at (and under the supervision of) the user company. The relevant labour contract is of limited or unspecified duration, with no guarantee of continuation. The user company pays fees to the agency, and the agency pays the wages.⁴

The global leading employment agencies are Adecco, Kelly Services, Manpower, Randstad, USG People and Vedior. In 2010, 10.4 million agency workers in full-time equivalents were employed by agencies like these across the globe.⁵ Other terms often used for agency are labour brokers or labour service providers. The work is called 'dispatched labour', 'agency labour', 'contracted labour' or 'sub-contracted labour'. The workers are usually called (temporary) agency workers, contract workers or dispatched workers.⁶

The user or hiring company is called the 'principal company', in legal terms. In this briefing paper, 'the company' refers to the hiring or user company.

To be clear, in some countries, agency workers can become 'regular' workers of the agency and many electronics companies still contract temporary workers directly. Trainees are also hired directly but student workers are employed via third parties.

Although we encountered many overlapping problems between directly hired temporary workers and agency workers, this paper focuses on the differences between directly hired employees and those workers who are employed by a third party doing the same work in the same electronics factory.⁷

Table 1

	Directly employed by electronics company	Employed via third party
Temporary/short term	Temporary workers directly hired on temporary labour contracts ('temps', 'contractuals', 'fixed-term workers')	Agency labour on the basis of temporary/short-term contracts ('contract workers', 'agency workers', 'dispatched workers' or 'contractuals')
Permanent/long term	Permanent workers directly hired on permanent contracts ('regular workers', 'fixed' workers)	Agency labour on the basis of unspecified/long-term contracts ('regulars of the agency', 'regular agency workers')

In summary, SOMO distinguishes four types of employment, as shown in table 1. In this briefing paper, the focus lies on the second column.

Legislation

There are considerable differences in the legal status of temporary agency workers in different countries. EU Directive 2008/104/EC on Temporary Agency Work came into effect on 5 December 2011.⁸ It aims to ensure that the principle of equal treatment is applied to temporary agency workers as if they had been recruited directly by the hiring company to occupy the same job, while recognising the agencies as employers and accepting agency work as a new flexible form of working. It is important to note that also the ILO Convention No.181 in principle says that there is considered to be no employment relationship between the temporary agency worker and the user company. The Convention is seen by the industry association of the global employment agencies, the CIETT, as a lobby success. CIETT has been very much involved in the drafting of this ILO Convention which represents, what CIETT calls a 'dramatic u-turn of the ILO position regarding the private employment services industry': from prohibition⁹ to legal recognition and support of the development of the activities of private employment agencies'.¹⁰

In the EU Directive, interestingly, it is exactly specified what should be included in terms of equal treatment. (For example: 'Access to collective facilities': yes; 'Benefit in kind': no.) It is also notable that the user company is required to provide the agency with sufficient up-to-date information on basic pay and employment conditions so that the agency, as the employer, can make sure that the agency workers are getting equal treatment, as if they had been recruited directly to the same job.

In contrast with the ILO Convention and the EU Directive, legislation in Mexico, India and the Philippines does not acknowledge the agencies as employers when it concerns work normally done by regular workers. For example, 'labour-only contracting' is prohibited in the Philippines. In Mexico, it is only allowed in times of unexpected peak production, and in India core jobs in the labour process have to be fulfilled by regular workers (see also the case studies in the paper). However, many low wage countries with manufacturing industries are currently amending their labour laws in favour of the activities of private employment agencies. A very recent example of this is the amendment of the Malaysian Employment Act 1955 which came into effect on April 1st 2012, despite strong protests from trade unions, workers and civil society. With the amendment the employment through agencies is now legitimised.¹¹

What do companies say?

SOMO interviewed nine large electronics companies and two audit companies about agency labour during late 2011 and early 2012. Seven of the companies are members of the Electronic Industry Citizenship Coalition (EICC), a code-based Corporate Social Responsibility (CSR) industry initiative.¹² It should be noted that, in the companies' answers, there is a distinction between: 1) the agencies they hire themselves (for example, Nokia hires a temporary agency to supply workers for its factory; in this case the agency is a direct supplier of Nokia); and 2) the agencies that are hired by their suppliers (for example, HP has contracted Flextronics for a product and Flextronics hires an agency to supply workers). In the latter case, companies said that the terms and conditions of employment of agency labour working for a supplier is the responsibility of the supplier or its subcontractors. The work organisation and the contractual arrangements are up to the supplier, as long as they comply with the EICC code or other codes of conduct mentioned in the supplier requirements.

What became clear during the interviews is that the companies expect the labour agencies to comply with the relevant laws: meaning that minimum wages are paid and the legal overtime premiums are given. As long as this is the case, the company will not interfere with agencies about the terms of employment of the provided workers.

Some of the interviewed companies do audit labour agencies, but only if they are hired by them directly. One of the companies said that labour agencies are subject to the same auditing procedures as all direct suppliers. Another company started to audit their non-production suppliers, such as call centres and temporary labour agencies, in 2011. One of the companies said that they do audit recruitment agencies but without really having defined what can be regarded as non-compliance. Two other companies mentioned checking the payment of proper wages according to the law in this context.

When agencies are hired by their suppliers, some companies try to make sure that their suppliers audit the agencies. Two interviewed companies stated that they audit the relationship between the supplier factory and the agency, and this includes interviews with the labour agency and the agency workers. For example, the agency is asked how they manage their contract labourers and this is checked against the law.

Differences in wages and benefits between regular workers and agency workers are currently not audited. As already mentioned, it is paramount that wages and benefits are paid according to the law. One of the companies said: 'Ideally we check, but it is difficult to do so'. Another company stated that they 'cannot dictate the salaries (of the agency workers). We are asking for the same incentives, but we also cannot dictate the incentives. We check if the minimum wage is paid'. Another company said: 'We encourage suppliers to treat all the workers the same. But we are not demanding this.' Some companies had not really given this any consideration.

On the question of whether agency workers should have the same rights, there was hesitation by one of the companies: 'Tricky question. Normally temps from an agency are cheaper than our fixed workers. The point is what is the meaning [of] the same right?'

Based on the above paragraphs, it is clear that the principle that workers who are doing the same job on the same production line are entitled to receive the same wages and benefits and should have the same rights is not broadly shared among the companies.

Although information regarding workers' contracts and their status, temporary or permanent, needs to be made available to an EICC auditor on site,¹³ this information is not included in the audit report, as brands (members of the EICC) do not ask for this information.¹⁴ In fact, they are unaware that this information is available: 'We do not have anything that gives us the percentages'. This is not the case for all companies. One of the companies told us that they do track the annual pattern to see how much external labour is used from an operational point of view: to make sure they know how much training is needed, whether they have enough supply of labour, and to keep track of the overtime issue. From our research, we can conclude that the ratio of externally temporary hired and directly employed workers does not have the full attention of the companies from a CSR perspective.

What is in the Codes?

EICC Code

In the EICC code, there are no requirements that are specifically related to temporary agency work. In the revised code (Version 4.0 2012), it is added that the labour standard 'applies to all workers including temporary, migrant, student, contract, direct employees, and any other type of worker' but still no specific requirements.

In the EICC audit preparation guide, for auditors involved in the EICC-GeSI Validated Audit Process (VAP),¹⁵ the section on 'freely chosen employment' includes the following: at the start of the audit, the contracts with labour agencies, labour brokers, labour service providers, etc. need to be made available to the auditor on site, as well as the workers' contracts. This makes it possible to collect information about the workers regarding the type of contract and their status, temporary or permanent. The background for collecting this information is to make sure that workers are free to leave their job without penalty, after giving reasonable notice, but also to make sure that workers are not required to pay a deposit upon being hired or to face deductions from their pay.

In the EICC code guidance manual for auditors¹⁶ under wages (A4.2), there is the question: 'Is legal compensation for regular hours paid to all workers?' The term 'all workers' is not further specified, but it can be read as including the sub-contracted workers. Also under the wages section (A4.9), it is more clearly specified: 'If the facility employs indirect workers, do indirect workers receive legally mandated benefits (e.g. medical care, health insurance, maternity leave, etc.) in addition to their wages?' There is no indication that this needs to be checked with workers' interviews (some other issues in the guidance manual start with 'Did the worker interviews reveal [etc]').

This is what is publicly available about agency work related to the EICC code¹⁷ and this is consistent with what the companies said in the interviews: legal compliance concerning the wages is the focus.

Individual company policies

For this briefing paper we checked the codes and CSR policies of the eight largest computer companies and seven mobile phone companies regarding agency labour. This did not include migrant labour, although migrant workers are hired via third parties. As mentioned earlier, the problems of migrant workers are so specific we decided to treat this as a separate issue for another report.

However, we noticed in our research that more and more CSR policies deal with the specific problems facing migrant workers, such as high recruitment fees, unreasonable employment or relocation expenses, and practices that restrict employees' ability to terminate employment, like deposits and handing over of passports or work permits.

Based on our research, we can conclude that the precarious position of agency workers is not recognised as a CSR issue in the sense that it is included in codes of conduct or CSR policies.

An exception is Nokia's global policy on direct agency labour (directly hired by Nokia). This policy determines how a site manages external staff. External temporary labour

is hired through agencies for a maximum time period, normally 12 months. During selection, the agencies are checked for compliance with all applicable labour practices. Once selected, they are subject to Nokia's social audits.¹⁸ Indirect agency labour (hired by suppliers) is not included. Another exception is HP; they have been part of an industry wide initiative in Mexico to conduct third-party assessments on labour agencies (see box Best Practices).

Different policy positions on agency work

Various positions on agency work are presented in different publications. Even within the trade union movement, policy positions differ. In this paragraph, we give an overview of the positions of different organisations. Two positions relate to published policy positions (the new code of the Fair Labour Association (FLA) and the Global Union Principles); and two positions are unpublished: the input of makeITfair and GoodElectronics network for the EICC code revision and the outcome of a discussion held at the EICC stakeholder meeting in Mexico.

To be clear, the latter does not represent positions that have been officially ratified by the EICC members but are merely recommendations made by EICC members and stakeholders.

Best practices

Best practice related to auditing: HP and labour agencies in Guadalajara, Mexico, HP was part of an initiative to stimulate Social and Environmental Responsibility adoption by labour agencies. Partners in the project were Mexico's electronic industry group CANIETI, and training and assessment organisation CADELEC, and EICC members.

In Mexico's electronic industry, the use of labour agencies to hire temporary workers is widespread; some of HP's suppliers use up to 70 percent of temporary contract workers. HP realised that the labour agencies that supply these workers rarely undergo the same audits as their production suppliers, and they recognised the risk that these workers operate without recourse to appropriate social benefits.

In 2009, HP conducted three third-party assessments of labour agencies supplying temporary workers to HP.

The training organisation CADELEC scored the agencies according to the provisions of the EICC code and subsequently gave training to the agencies on the areas in which they did not score well. HP also conducted modified on-site audits of five of their labour agency suppliers.

HP addressed some serious issues, including discrimination. The company reported that awareness of these issues on the part of some of HP's production suppliers in Mexico resulted in them reducing their use of contract workers, while others have started hiring contract workers directly. HP continued to work with these suppliers to ensure appropriate practices.¹⁹ There has been some criticism expressed regarding this initiative, as no civil society organisations were involved.

Best practice related to policy: Nike has stated that 90 percent of the workers at its first tier suppliers will have regular contracts.

The position of the FLA

The FLA (since recently also engaged with the electronics sector) revised its Code of Conduct in October 2011²⁰ and included a new code element on 'Employment relationships'. The compliance benchmarks incorporated in the audit system for this section include recruitment, hiring and employment practices when using labour agencies and temporary workers (ER.5 – ER.14). Some of these elements are as follows:

- ❑ Only hiring contract/temporary workers in case of unusually large volume of orders.
- ❑ Not using contract/temporary workers on a regular basis for the long term or multiple short-term contracts, or as regular employment practice.
- ❑ No excessive use of short-term contracts.
- ❑ Contract/temporary workers receive at least the same compensation as regular workers performing the same job functions.
- ❑ The workplace must archive data on workers who are hired on more than one occasion, and those workers are given priority when the company is seeking 'new' permanent employees and their seniority will be acknowledged.

The position of makeITfair and GoodElectronics

The input from makeITfair and GoodElectronics for the EICC code revision was also directed to a new section on employment relationship. Core elements of this input include:

- ❑ Obligations to workers under labour or social security laws shall not be avoided through the (excessive) use of contract/temporary workers.
- ❑ Electronics companies using agency workers shall be responsible for ensuring that the labour agencies comply with all the requirement's relevant codes, laws and regulations. The agency workers shall be considered as the company's employees if the workers supply their labour exclusively to the company that supervises and controls the workers' work directly.
- ❑ Trainees, contract and/or short-term workers should have the same working conditions, rights and benefits as permanent workers and the right to a permanent employment contract after a certain time period. EICC participants and their suppliers shall respect the principle of equal pay for equal work.

The EICC stakeholder meeting in Mexico

Agency labour was already on the EICC's agenda; it was broadly discussed during the EICC stakeholder meeting in Guadalajara, Mexico in April 2010. Some recommendations formulated at this meeting were:

- ❑ To develop a framework by the industry and stakeholders in which it is defined when temporary work needs to become permanent labour linked to legal definitions.
- ❑ To reduce periods of excessive temporary worker use; recognise that, outside of the peak season, companies should agree to an acceptable maximum percentage of temporary workforce; carry out research to substantiate an acceptable percentage (suggestion was a maximum of 30 percent).
- ❑ To increase data transparency on the use of temporary workers (work with academia, unions and non-governmental organisations – NGOs).
- ❑ To develop and communicate the business case for reduced use of temporary work, for example, calculate training or retention costs associated with temporary vs. fixed labour.
- ❑ To ensure training for all recruiting agencies on the Code and how to apply it.
- ❑ To communicate to suppliers the need to stop excessive use of temporary contracts.

Summary of the Global Union Principles on temporary agency labour

All Global Unions agree on a number of key principles. These include:

- ❑ The primary form of employment should be permanent, open-ended and direct.
- ❑ Agency workers should be covered under the same collective bargaining agreement as other workers in the user enterprise.
- ❑ Temporary agency workers should receive equal treatment in all respects.
- ❑ The use of temporary agencies should not increase the gender gap on wages, social protections and conditions.
- ❑ Temporary work agencies must not be used to eliminate permanent and direct employment relationships; and
- ❑ The use of agency workers should never be used to weaken trade unions or to undermine organising or collective bargaining rights.²¹

Case study: Mexico – the illegal use of temporary contracts²²

What is the situation in Mexico related to agency workers?

In 2010, the Mexican electronics industry employed about 400,000 workers. Of these, approximately 60 percent were hired via labour agencies and 40 percent were permanent workers. In Mexico, virtually all temporary contracts are through agencies. 90 percent of the workers who turned to the Mexican labour rights organisation CEREAL for legal help are agency workers (often referred to by CEREAL as ‘sub-contracted workers’).

Why are temporary contracts used in the electronics industry?

Companies say they need a base of temporary labour because of the fluctuation in demand, which leads to periods of peak production. Some companies say ‘temps’ from an agency are cheaper than the fixed workers, while others say that financially there is no big difference between using an agency and hiring yourself directly, since agencies impose charges. It is merely about sourcing out your risks, to evade the severance payments, and not having all the trouble of contracts in-house.²³

What is the problem in Mexico?

The excessive use of agency workers and the repeated use of very short contracts is a growing problem; some companies temporarily sub-contracted over 90 percent of their workers. Those companies exceed the amount that is necessary for peak production; they use agency workers where they should employ permanent workers. There are cases of workers who have worked for the same company for up to seven years continuously,

signing temporary contracts each month, and they were dismissed without a severance payment. The electronics industry treats agency workers differently from workers who have been contracted directly by the company. The agency workers receive less pay while doing similar tasks. This contradicts the principle of ‘equal work, equal pay’. Sub-contracting creates confusion among workers about who is their employer, whether it is the agency or the company. This confusion sometimes leads to a situation where workers cannot demand respect of their rights. 25 percent of the agencies in Mexico still discriminate against people applying for a job, at the time of recruitment. Agencies ask questions like: are you a law student? Do you have lawyers as relatives? Do you belong to a union? Or questions about their sex life and reproductive status.

Are these contracts legal?²⁴

The majority of workers who seek help from CEREAL (about 2,000 per year) do so because of dismissal within the context of illegal temporary contracts. The law states that temporary contracts are legal when the nature of the job is temporary. This includes production peaks and projects. However, CEREAL estimates that only 5 to 30 percent of workers are hired for production peaks, the remaining is illegal. The repeated use of short contracts is also prohibited by law. In case temporary workers are dismissed before their contracts finishes, these workers are entitled to settlement. According to the Mexican Labour Law (articles 13, 14 and 15), there is an employment relationship with the agency as well as with the factory and therefore they are both responsible for bad practices.

Table 2: Differences between directly employed and agency workers

Workers directly hired by the company	Workers hired via an agency
Each May, the workers receive a percentage of the manufacturing company's profits; these are generally high.	They receive profits from the agency, which normally are low. Sometimes the workers do not receive anything.
Entitlement to six paid vacation days each year.	No paid vacation days, the agency and the factory give rest days only when contracts change.
Once a worker achieves seniority, they acquire several rights. For example: the right to severance pay, seniority bonus and the right to be promoted to a higher position.	They do not acquire seniority.
Their salary is higher.	Their salary is lower for doing the same work compared to direct employees.
They receive the annual bonus from manufacturing companies, which sometimes is higher than is required by law.	They receive the minimum annual bonus from the agency as established by law.

Source: CEREAL, 2010

Cases studies: the illegal serial use of temporary contracts

□ **Lenovo**

According to data from CEREAL, currently the company Lenovo has about 1,000 employees. 65 percent are temporary agency workers throughout the whole year. In CEREAL's view, this has nothing to do with production peaks, but with a much more simple fact: it helps the company to avoid its responsibilities related to respecting labour rights. During the research, CEREAL was able to collect testimonies from employees who have signed five or more temporary contracts in just one year, and from other workers who were hired two years ago and have been signing consecutive temporary contracts to this day. In all these cases, the workers live in fear and anxiety because, at the end of every three month contract, the company can simply dismiss them without severance pay.

□ **Nokia**

In Nokia's factory, based in Reynosa, more than 500 workers are hired by the agency Manpower. Those workers experience extreme job instability, as many work on the basis of seven-day contracts. Nokia replied that this is common practice in Mexico. The Mexican Labour Law has clearly established that serial use of temporary contracts is illegal (Arts. 37 y 39 de la LFT. 1).

What are CEREAL's recommendations?

- First of all, excessive use of temporary employment should be stopped. The percentages of temporary labour has to stop at an acceptable level, which takes into account a degree of flexibility while maintaining the highest possible levels of secure employment (about 30 percent maximum).
- Hiring companies should urgently review practices that are illegal under Mexican law, for example, the serial use of temporary contracts, the improper use of temporary contracts, and requiring workers to sign a resignation letter when they are hired.
- There must be transparency about the percentages of direct versus indirect labour and temporary versus regular contracts.
- There must be research done on the differences between temporary and regular contracts related to the working conditions and the benefits. Audits must include questions on this.
- The ideal situation is permanent contracts directly with the company. Maintain the highest possible levels of direct relationships with the company.
- The reform of the labour law regarding the temporary contracts should offer better protection to workers.

Case study: Thailand²⁵

In October 2011, flooding forced the closure of seven industrial estates in Ayutthaya, Nonthaburi and Pathum Tani in Thailand, causing billions of dollars of damage, disrupting supply chains and putting hundreds of thousands of people temporarily out of work. In December 2011, the first companies announced their permanent closure and plans to move to Cambodia, Vietnam or Indonesia. More than half of the approximately 500,000 workers in the electronics industry in Thailand are agency workers. Just like migrant workers, they are not organised or unionised. Most of them did not receive the compensation pay of 75 percent of their wages that regular workers received during suspension of production. 'Migrants and agency workers were washed away with the floods,' says Suthila Luenkham, programme officer at Arom Phong Pangan Foundation (APPF), an established labour resource organisation, based in Bangkok.

There are no multinational labour agencies active in Thailand. Most of them are Thai nationals owned by (former) government officials or people with strong ties with the government. The contracts that the workers sign usually have a fixed term of two months.

In 2010, several Thai members of the GoodElectronics Network researched the differences between agency workers and regular workers. The differences at one particular company are outlined in table 3. At the time of the research, the company employed approximately 1,600 people directly²⁶, and hired 1,845 people via third parties (seven agencies including the institutions supplying the student interns²⁷). 80 percent of the external hired workers are women. Table 3 compares the benefits between regular company staff and the agency workers.

Table 3: Comparing the benefits between regular company staff and the agency workers

No:	Benefit item	Regular workers at the company	The agency workers from the seven agencies working at the company
1	Health insurance	OPD = 800 Baht / time up to 30 times a year. Major surgery = 8,000 Baht and 600 Baht for hospital room	Not provided
2	Health care for parents (legal)	3,000 Baht	Not provided
3	Child birth support	1,000 Baht	Not provided
4	Marriage leave	5 days	Not provided
5	Leave for Buddhist monk ordainment	30 days	Not provided
6	Funeral leave	5 days	Not provided
7	Funeral assistance for family (parents, spouse and children)	6,000 Baht plus 500 for funeral wreath	Not provided
8	Annual party	The annual party is celebrated with both regular and contract workers participating	The annual party is celebrated with both regular and contract workers participating
9	Annual trip	Both regular and contract workers join the annual trip	Both regular and contract workers join the annual trip
10	Transportation allowance	400 Baht per month	10 Bath per day
11	Salary adjustment	10 days	Not provided
12	Dental care	1,000	Not provided
13	Birthday present	Provided	Provided
14	Year end bonus	On average, the bonus is equal to 2.6 months wages plus 5000 Baht	6,000 Baht
15	Annual leave	From 15 to 22 days per year, for workers with more than 6 years seniority	6 days per year
16	Uniform	One shirt per year	One shirt per year
17	Safety shoes	One pair is provided per year	One pair is provided per year
18	Transportation	Air conditioned buses and minivans	Non air conditioned buses and trucks with benches
19	Diligence bonus	700 Baht per month	600 Baht per month
20	Food allowance during normal working hours	16 Baht per day	16 Baht per day
21	Food allowance during overtime	16 Baht per day	16 Baht per day
22	Study allowance for offspring (from Kindergarden to BA)	In 2009, 20 conditioned grants were given, this is not a regular benefit	Not provided

Updated and including the minimum wage increase of April 2012
100 Baht = €2,45 (01-05-2012)

Wage gap at the company

The salaries of the agency workers continuously stay at the level of the minimum wage, while the salaries of the regular workers increase with their seniority. Any raises, holidays or other benefits that the factory give do not apply to the contract workers.

This company has used temporary agency work to undermine organising and collective bargaining rights. In the year 2007, when the workers established a union at this company, the company increased the number of labour agencies supplying contract workers to

11 companies (for then 2,500 workers). The agency workers saw themselves confronted with legal obstacles in organising together, as they were employed under so many different labour supply companies. The agency workers were not allowed to join the established union because their work was classified as that of service providers, which is different from the regular workers who are electronics workers. This is in spite of the fact that the agency workers are doing the same jobs as the regular workers. This leads to a reduction in the bargaining power of the union, as there are fewer regular workers compared to contract workers.

Table 4: Wage gap at the company

No:	Benefit item	Regular workers at the company	The agency workers from the seven agencies working at the company
1	Salary	9,000 - 11,000 Baht per month	300 Baht per day
2	Worker's age	25 - 38 years	20 - 25 years
3	Seniority	6 months - 14 years	2 months - 5 years

(Updated and including the minimum wage increase of April 2012)

Case study: Philippines²⁸

What is the situation?

The use of labour agencies, cooperatives, schools of apprenticeships or Dual Training System are just some types of labour contracting that are widely used in the Philippines. Regular workers are replaced with temporary workers, or so-called 'contractuals', 'casuals', 'trainees', 'apprentices', 'students', 'helpers', 'pieceraters', 'floaters', 'agency workers', 'project employees', 'emergency' or 'seasonal workers'. They are doing the work of regular employees on the basis of short-term contracts, but they never become regular employees. This leads to the denial of the security of tenure and circumventing the provisions and basic rights of regular employment.

In 2006, House Bill 380 – introduced to the House of Representatives by Representative Roseller L. Baringa – asked for an act expanding the liabilities of indirect employers in labour contracting (amending Article 106 of the Labour Code). He formulated the reason for this as follows: 'Workers hired by agencies through the job

contracting scheme are the most underpaid, neglected and oppressed among the country's labour force. Many of them toil endlessly for years in a company they cannot even call their employer. Their hard work is compensated with a chopped wage, already pre-deducted by their hiring agencies. Many of them do not get their legally mandated benefits [...].'²⁹ House Bill 5110, filed in August 2011 to strengthen the workers' security of tenure, states that recent studies indicate that contractuals now outnumber the regulars among Filipino workers.³⁰

What does the law say?

Security of tenure is one of the few legal protections for Filipino workers. While the law recognises contracting and sub-contracting arrangements, it prohibits labour-only contracting. It is considered labour-only contracting when the contractor does not control the performance of the work or does not have substantial capital or investments in the form of tools, equipment, machineries, or work premises, to carry out the work, and when

the employees recruited and placed are performing activities that are usually necessary to the operation of the company, or directly related to the main business of the company. In other words, it is not legitimate when agencies only deploy workers to the company to do the work that regular workers are also doing. The effect of this law (in theory) means that, in the case of finding 'labour-only' contracting, the hiring company will be held responsible for the workers in the same manner and extent as if they were directly employed.³¹

What is the practice?

In practice, local and foreign-owned companies violate this law. In the special economic zones, most of the investors choose to hire workers from labour-only agencies, cooperatives and training schools. The Worker's Assistance Centre (WAC) of the Philippines carried out an overview of the agencies and services supplying manpower in the economic zones around Cavite. This shows that global labour agencies are not active in this field.

In the Philippines, workers are often first directly hired by the principal company for five months and then they are transferred to an agency where they repeatedly sign short-term contracts (sometimes by different agencies) and thus become so-called 'regular contractual workers' or regular workers of the agency. It is the company where the work takes place that provides the job assignments, the quotas and the work instructions. In a situation like this, workers filed a case because they were denied security of tenure, the regular night shift premiums, holiday benefits, the 13th month pay and the payment of service incentive leave. The company alleged that the complainants were not their employees but employees of the agency that hired their services and paid their salaries, but this was not accepted by the court.

Another practice that is increasing in the Philippine economic zones is the use of training schools accredited by the Technical Education and Skills Development Authority (TESDA). One of the training schools supplying student workers under the Dual Training System is the National College for Science and

Technology (NCST). During enrolment, the students have to submit their high school records and they have to sign a contract saying that they will spend 1,200 hours in a manufacturing plant as a trainee.

The wages of the trainees are below the minimum wage and they are not given the benefits received by regular employees such as social security benefits. On the contrary, each month Php 600 (€10.7) is deducted automatically from their monthly salary for the tuition fees of the school, on top of the Php 3,000 (€53.4) they have already paid during enrolment. Student workers also have to work eight hours per day and overtime when this is requested of them. WAC received complaints by students that they cannot easily stop the 'training' because they have signed to pay at least 12 months of tuition fees and they cannot get back their school records. Trainees are usually 16 or 17 years old.

WAC learned about one specific department of a company where the cables are cut to length by workers and where all workers are apprentices. This means they are only earning 75 percent of the minimum wage (204 Php or €3.6) and they are not entitled to extra allowances, meal tickets, or transport costs. Meanwhile, regular workers at the same company with eight years of service earn 328 Php (€5.8) per day and 50 Php (€0.9) per overtime hour.

WAC concludes that labour contracting has led to the unfavourable situation of:

- temporary agency workers replacing regular workers;
- denial of social security benefits such as PhilHealth and SSS for most contractual workers;
- further decreasing the already very low wages of workers;
- weakening trade unionism, as workers are strictly not employees of the company they work for;
- agency workers who are not in the position to refuse overtime work during the peak season, which means staying beyond 10 p.m., although the labour code prohibits this as inhumane practice;
- lowering workers' self-esteem.

Case study: Precarious work in India³²

For the study in India, four electronics manufacturers based in Sriperumbudur were selected: Nokia, Salcomp, Flextronics and Foxconn. The workers of these companies were frustrated with the employment system built upon contract labour and trainee systems. The workers said they were not informed about the lengthy process to become a regular employee. The contract labour and trainee systems puts them in an unfair and exploitative position. Workers shared that they arrived at the factories of the multinational companies with the expectation of good salaries and employment benefits, but they are met with low wages and job insecurity.

Manufacturing in Sriperumbudur is characterised by a two-tier system, with directly hired permanent employees who start in the company as trainees, and temporary agency workers (here further called 'contract workers'). The time from starting as a trainee to confirmation as a permanent employee is usually two years, even though their training often lasts less than a month and they do the same work as regular operators. Once a worker has fulfilled the trainee period, there is no obligation for the company to give the worker a permanent status. There is no transparent process for

promotion to become a permanent member of staff. Contract workers are considered as employees of the labour agency which makes it nearly impossible for contract workers to bargain collectively or to join a union.

Table 5 shows the employment status of the workers in the four companies. It reveals that 54 percent of Nokia's workers have a permanent status compared to 40 percent at Flextronics, 45 percent at Foxconn and 20 percent at Salcomp. On average, at these four companies, 60 percent of the workforce faces precarious employment.

Nokia hires agency workers for different processes, but the majority of these contract workers are hired for assembly and warehouse operations, which are in fact core jobs in the labour process of mobile phone manufacturing. Despite this, these contract workers will not become regular workers as stipulated by the India Contract Labour (Regulation and Abolition) Act 1970. This act also states that: 'If a contract labourer works more than 120 days in a company, his employment is supposed to be regularized.' When asked, Nokia did

Table 5: Employment status of workers in the companies

Company	Contract (Agencies)	Trainees	Total
Nokia	2,209 (3)	2,973	11,364
Flextronics	1,020 (4)	0	1,700
Foxconn	2,600 (5)	600	5,800
Salcomp	400 (2)	2,800	4,000

Source: Research CIVIDEP 2011

Table 6: Salary range at the four companies in Indian rupees

Company	Salary range		
	Permanent workers	Contract workers	Trainees
Nokia	6,000 - 11,666	4,400 (25% above min wage)	4,820
Flextronics	5,300 - 6,000	4,130 - 5,500	-
Foxconn	8,000 - 9,100	5,000	5,000
Salcomp	4,600 - 6,000	4,200	4,200

Source: Research CIVIDEP 2011, based on interviews with management of the companies, March-August 2011

100 Indian rupees = € 1,44 (01-05-2012)

Case study: India

not know the average or maximum length that contract workers were engaged at their factories.

The research showed a significant difference in wage levels between permanent and contract workers. Nokia trainee's contracts include the statement: 'it should be specifically understood that that you [the worker] are not entitled to any benefit available to the regular employees of the company. But it is up to the management to permit you to avail such benefits which they deem fit in your case [...].'

Based on the workers' interviews, contract workers at Nokia were paid a monthly wage between Rs. 3,600 and Rs. 6,000 depending on how long they worked at the company. Salcomp's monthly salaries for contract workers were Rs. 3,400 (instead of 4,200) and for trainees it was only slightly higher. Salaries remain low at Salcomp; a female contract worker earned Rs. 3,600 after working there for two years, while a trainee earned Rs. 4,000 after two years and a permanent worker earned Rs. 5,200 after 3.5 years at the company. The

wage differences between contract workers, trainees and permanent workers violate the 'equal pay for equal work' principle enshrined in Article 39(d) and Article 14 of the Constitution of India, as well as the Equal Remuneration Act of 1976. Although some of the companies claim the contract workers are hired for lower skilled jobs, the interviewed workers noted little or no difference, as they work together on the same assembly lines.

As a result of the research, Nokia decided to look at shortening the training period and improving the circulation of contract workers. Based on the research, it was recommended in the makelTfair report that:

- contract labour and other forms of short-term labour arrangements, including migrant labour, should never be used to undermine workers' rights and working conditions. Contract and/or short-term workers should have the same working conditions, rights and benefits as permanent workers and the right to a permanent employment contract after a certain time period.

Conclusions

This paper has listed many problems regarding temporary agency work, a large body of legislation, and many (overlapping) recommendations formulated by different stakeholders. Identifying the differences, however, leads to notable conclusions.

The ILO convention and the EU directive on temporary agency labour both start from the position that there is considered to be no employment relationship between the temporary agency worker and the user company. This is contested by national labour laws of different countries, for example, the Philippine law; the starting point of this law is that, when the work is supervised by the hiring company and relates to work that regular worker are also doing, then the user company will be held responsible for the workers in the same manner and extent as if they were directly employed. That is also the position of stakeholders from various workers' rights organisations.

Where agency work is accepted as a new flexible form of working, most of the recommendations from different stakeholders, including some companies, speak out against the excessive use of temporary agency workers, and the regular use of agency workers to replace permanent workers.

Another interesting difference is that the EU Directive on temporary agency labour and policy positions from the NGOs and trade unions, as well as India's national law, all support the equal pay for equal work principle regarding temporary agency workers. Codes of Conduct in the electronics sector, however, do not include this principle. Only the new code of the Fair Labour Association does recognise this principle. As it is not included in the codes, it is also not audited.

Frequently labour agencies are audited against the codes, checking whether legally mandated wages and benefits are paid. However, it is not part of these audits to check whether the temporary agency workers have the same wages, the same rights and are treated in the same way as the permanent workers in the same factories. The EU Directive states it is the responsibility of the user company to provide the agency with sufficient up-to-date information on basic pay and employment conditions so that the agency, as employer, can make sure that the agency workers are getting equal treatment.

Our conclusion is that the codes and the audit systems in the electronics industry are not keeping pace with the current mainstream position on equal pay for equal work related to temporary agency workers. This leads to discriminatory practices and deteriorating employment conditions for a very large and increasing group of workers, mostly made up of women.

Recommendations

Therefore, we recommend that the electronics companies should:

- focus on repressing the discriminatory practices by complementing their Codes of Conduct with a section on employment relationships that includes the principle of equal pay for equal work related to temporary (agency) workers;
- adapt the audit systems accordingly;
- gain more insight in the use of temporary labour in their supplier companies to detect excessive use, improper use and illegal use of temporary agency work. Improper use includes the undermining of organising and collective bargaining;
- provide more transparency on the use of temporary agency labour and report on it in their CSR report;
- include in their risk assessments, as part of their due diligence process before investing/sourcing in a country, the laws and practices relating to temporary (agency) labour so that they can detect the abusive use of student workers or trainees and take precautionary measures to avoid exploitation on the basis of precarious work situations.

Endnotes

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- 25 The Thailand case study is based on the publication Labour issues in the Thai electronics industry, On the Spot, GoodElectronics, April 2012. Available at <http://goodelectronics.org/news-en/labour-issues-in-thethai-electronics-industry> and research carried out by members of the Thai GoodElectronics network including labour unions, labour organisations and individuals with the financial assistance of SOMO. The table is compiled by the Union of the company and updated in April 2012.
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- 27 During the floods all the student workers were sent back. Since last month (March 2012) the company is again using students to work in the production floor. Right now the union estimates the number of vocational students (who spend three months soldering) to amount to almost 2000.
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Colophon

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