

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

JULY 2021



ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations and Humanity United. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United or OSF.

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Cover photograph: Migrant workers calling for reforms to Taiwan's recruitment and employment system, Taipei 2017. © NurPhoto / Getty Images

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Acronyms

| | |
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| BLA: | Bilateral Labour Agreement |
| CMA: | Center for Migrant Advocacy |
| DOLE: | Department of Labour and Employment |
| ILO: | International Labour Organization |
| IOM: | International Organization for Migration |
| MECO: | Manila Economic and Cultural Office |
| MOU: | Memorandum of Understanding |
| OLTCC: | Overseas Landbased Tripartite Consultative Council |
| OWWA: | Overseas Workers Welfare Administration |
| PILMAT: | Philippines Manpower Agencies Accredited to Taiwan |
| POEA: | Philippines Overseas Employment Administration |
| POLO: | Philippines Overseas Labour Office |
| PRA: | Private Recruitment Agency |
| RBA: | Responsible Business Alliance |
| TLAF: | Taiwan Legal Aid Foundation |
| TIWA: | Taiwan International Workers' Association |
| YMFU: | Yilan Migrant Fishermen Union |

Overview

An **overview** of fair recruitment in the Philippines-Taiwan labour migration corridor

The archipelago of the Philippines and the island state of Taiwan both straddle the South China Sea and the Pacific Ocean, and there is a steady flow of migration from the Philippines to its wealthier neighbour to the north.

Taiwan's use of foreign labour to address labor shortages and the societal impact of an ageing and increasingly prosperous population began in the late 1980s and more than 700,000 workers from Thailand, Philippines, Indonesia, Vietnam are currently employed there, out of a Taiwanese labor force of 12 million. The Philippines accounts for 150,000 of Taiwan's foreign workforce. The vast majority work either in manufacturing, which accounts for approximately 60% of its foreign workforce,

and domestic work and caregiving, which collectively account for 36%.¹ In addition, some 20,000 foreign workers are employed in Taiwan's distant water fishing sector. These workers do not live or work in Taiwan (and have no permission to do so) but rather on Taiwanese-registered ships that operate in international waters.

Mass migration from the Philippines began in earnest in the 1970s when it positioned itself as one of the primary suppliers of labour to the oil-rich Arab Gulf states. In 2019 it had an overseas foreign workforce of 2.2 million, with more than half of its workers employed in the Middle East. The money that Filipino workers send home in remittances (US \$30.1 billion in 2019) accounts for 9% of the country's GDP.

1. As Taiwanese academic Pei Chia-Lian notes, "the distinction between the categories of 'caretaker' and 'domestic helper' is ambiguous" and she uses the term 'domestic worker'. See Pei Chia-Lian, "Global Cinderellas: Migrant Domesticity and Newly Rich Employers in Taiwan," (Duke University Press, 2006), p.8. Taiwan's Ministry of Labour records state that as of the end of December 2019, there were 718,058 foreign workers in Taiwan. These workers are heavily concentrated in two main economic sectors - manufacturing (61% of foreign workers) and caregiving (36%) with smaller numbers in construction (1.6%), agriculture, forestry, fishery and animal husbandry (1.7%) and domestic service (0.25%). Taiwan Ministry of Labor, "On Protection of the Rights for Foreign Workers in Taiwan," (January, 2020), p. 1.

In the same way as the Philippines economy is heavily reliant on remittances from its emigrants, so Taiwan's high-income economy relies on immigrants to support its vital manufacturing sector, including its resource-intensive electronics sector.

This economic interdependence can yield significant benefits for the Filipino migrant workers recruited to work in Taiwan. The Philippines is frequently held up as the origin state that does more than any other to protect its overseas workers, and Taiwan has earned a reputation as a progressive, rights-respecting state. Both countries have robust legal and regulatory frameworks to manage the recruitment and employment of foreign workers, and when these systems function as they have been designed, the positive outcomes for workers are evident.

One Filipino migrant worker we spoke to, for example, told us that she had bought a rice mill and a shop in the Philippines with the money she had earned working in Taiwanese factories. Positive worker outcomes are most likely in Taiwan's electronics sector, where image-sensitive international companies adhere to codes of conduct, which include the 'employer pays' principle on recruitment fees, and which also apply to their suppliers.

However, many workers and numerous experts interviewed for this project described exploitative or illegal working conditions, and some - particularly those in the country's distant water fishing sector - spoke of abuses that indicate serious gaps in protection for foreign workers. "There are captains who turn into devils when they don't get what they want," one Filipino fisherman told us. In September 2020, the US Department of Labor added Taiwan's distant water fishing sector to its list of goods produced by forced labor for the first time. The report pointedly notes the prominent role of Taiwanese recruitment agents in what it described as "numerous incidents of forced labor ... reported on Taiwan-flagged fishing vessels." One 39-year old domestic worker told us how overwork and verbal abuse led her to consider jumping out of a window to escape from her Taiwanese employers. She was able to transfer employers but she still spends most of her salary repaying debts, including the 100,000 Pesos (US \$2,085) she paid to get her job in Taiwan.

Domestic workers constitute nearly 50% of Filipino workers overseas and it is their mistreatment abroad that has arguably shaped the protective dimensions of Philippines migration policy in relation to placement fees, standard employment contracts and bilateral labour agreements. However, our research indicates that, as is the case in other countries, domestic workers are particularly vulnerable to abuse in Taiwan. One of the gendered aspects of migration is that women are more likely to work in their employers' homes, where they are more vulnerable to abuses. The abuses may not be as widespread or as severe as in the Gulf states of the Middle East, but they are a matter of serious concern, and can partly be attributed to the fact that they are not covered by Taiwan's Labour Law. This failure to provide the most fundamental legal protections to domestic workers is emblematic of the problems that remain in this migration corridor.

The Philippines and Taiwan perform creditably in many of the key areas relating to fair recruitment. The Philippines has deployed significant resources and has implemented an impressive domestic and overseas bureaucracy to protect its overseas workers, and Taiwan for its part has laws and mechanisms that can be effective in extricating workers from abuse and exploitation, and has taken steps to ensure that migrant workers can change employers. Yet many thousands of workers are still falling through regulatory cracks and enduring serious abuses as a result.

Almost all of the workers we spoke to in the course of this project had paid significant sums of money to secure jobs in Taiwan, with the exception being electronics workers employed by firms following strict "employer pays" recruitment fee policies. Every year, the recruitment sector in Taiwan earns approximately US \$484 million in fully legal monthly service fees from its foreign workers, but many of these recruitment agents appear to primarily serve the interests of Taiwanese employers, to the detriment of the foreign workers whom they are also supposed to represent.

The following addresses the key recruitment-related issues driving positive and negative worker outcomes for Filipino workers in Taiwan.

Market dominated by private recruitment agents

The overwhelming majority of the deployment of workers out of the Philippines and of the foreign employment into Taiwan is handled by government licensed private sector recruitment agents. There has been no significant commitment by either government to models that enable employers to avoid the use of recruitment agents on one or both ends of the migration corridor.

The Taiwanese government has enabled employers to recruit foreign workers directly since 2007 with the aim of providing “multiple channels to hire foreigners” but Taiwanese government data shows that the number of workers recruited via its direct hire system, which cuts out Taiwanese recruitment agents, accounted for only 2.6% of foreign workers in Taiwan in 2019, and the rate of direct hires has been declining since 2016. Since 1999, a Special Hiring Program for Taiwan (SHPT) has enabled Taiwanese employers to hire Filipino workers without having to use a Filipino recruitment agency, but fewer than 1% of the total number of Filipino workers recruited into Taiwan have been hired through the SHPT since the start of 2015. Likewise, the Philippines has a government agency that has authority to directly recruit Filipino workers for deployment overseas (the Philippines Overseas Employment Agency), but the proportion of workers it deploys overseas is insignificant. Whereas Taiwan pays slightly more than lip service to its direct hiring process, the Philippines’ explicitly recognises “the significant contribution of recruitment and manning agencies” as “partners of the state in the protection of Filipino migrant workers and the promotion of their welfare” in the preamble to its key piece of legislation on the regulation and protection of its overseas workers. The reality is that both states delegate power and authority to facilitate recruitment to their private sectors, and both use licensing systems to determine who can operate and how they operate, with a view to ensuring workers’ rights are protected in the recruitment process.

The ILO has described the Philippines as having “the most well developed apparatus on labour migration in Asia” and there is consensus among a wide range of stakeholders that the Philippines has a particularly

impressive legal and regulatory framework. The Philippines Overseas Employment Agency (POEA) licenses and regulates recruitment agencies, and it is also responsible for promoting overseas deployment of Filipino workers, and overseeing domestic anti-illegal recruitment initiatives. The POEA also generates significant amounts of revenue for the state from application and license fees, and fines and penalties. The Philippines has detailed guidelines to regulate the recruitment of both land-based workers and seafarers, and these guidelines cover all stages of the recruitment process in detail, and minimum employment standards that are implemented via POEA standard employment contracts. The guidelines include details of who can (and cannot) obtain a license to recruit for overseas work, as well as stringent financial requirements designed to ensure the financial probity of the sector. An innovative dimension of the Philippines’ licensing system is its accreditation of foreign recruitment agents and employers. The Philippines has no jurisdiction over these entities, but (on paper at least) it exercises a degree of extraterritorial control over them by only permitting the Philippines-based agencies it licenses to do business with foreign entities whom it has accredited.

Taiwan also has parallel sets of laws and regulations; one that covers the recruitment and employment of foreign workers in its manufacturing, domestic work and its domestic fisheries sector, overseen by Taiwan’s Ministry of Labour, and a separate and quite different set of laws and regulations for its distant water fishing sector, overseen by its Fisheries Agency. The Ministry of Labour provides operational permits to private employment service institutions - the agencies that recruit foreign workers into manufacturing, domestic work, or its domestic fisheries sector (as distinct from its Distant Water Fishing sector). The Fisheries Agencies authorizes entities to act as recruitment agents for the distant water fisheries sector. Both systems are managed via detailed regulations on the issuance of these licenses to recruit, the imposition of fines, and the suspension or cancellation of permits and authorizations.

There is no reason why the use of private recruitment agencies cannot result in positive outcomes for the workers whom they recruit for employment. The Philippines approach to enforcement appears to have been effective in limiting the role of unlicensed agents, for example, and in contrast to many other

origin states (including the three other origin states in this study), the Philippines does not appear to have a significant problem with unlicensed sub-agents. We have not been able to secure data from the POEA to explain or fully substantiate this claim, but none of the stakeholders we consulted described sub-agents as a significant problem and all of the workers we spoke to (other than those hired directly through the POEA) used the services of registered agents. The reduction in the number of sub-agents is a significant achievement and owes much to the strong licensing system allied to targeted inter-agency campaigns that have made use of strong laws on illegal recruitment, and national information campaigns targeted at the regions from where the majority of Filipino overseas workers hail. The Philippines has demonstrated that it is possible to effectively target resources to effectively mitigate issues in the recruitment process that leaves migrant workers vulnerable to abuses abroad. Former government officials and experts from intergovernmental bodies both highlighted a lack of inspection and oversight capacity as a problem, albeit one that is less pronounced in the Philippines than in other origin states. However, the problems in recruitment in both the Philippines and Taiwan go beyond the issue of resources and in many respects are rooted in a deeper structural problems: both states have undermined their efforts to protect recruited workers by permitting their respective recruitment sectors to charge workers - rather than employers - fees for their services, and by failing to provide incentives to ethical actors to enter the market.

Recruitment Fees and other Disincentives to Fair Recruitment

Recruitment agents in the Philippines are prohibited from charging placement fees for their services to domestic workers, seafarers and workers going to countries that themselves prohibit placement fees. For other classes of workers, they may charge workers a placement fee equivalent to one month's salary. Taiwan prohibits its recruitment agents from charging migrant workers placement fees, but they are allowed to charge migrant workers monthly service fees for the duration of a foreign workers' stay in the country - US \$2,025 every three years. On average, Filipino workers pay US \$675 per year to Taiwanese recruitment agents. With 157,487

Filipino workers in Taiwan this accounts to US \$106 million in service fees annually. (By way of comparison Filipino workers in Taiwan sent home US \$597 million in remittances in 2019.)

In reality recruitment agents in the Philippines and Taiwan are able to make many workers pay the costs of their recruitment, and in some cases, far more than the costs of recruitment. The Philippines recruitment sector is quite open about its desire to continue charging workers' placement fees, and agencies continue to use loopholes in the law to pass recruitment costs onto workers, by over-charging workers for mandatory training, medical and accommodation costs, or working in tandem with lending agencies who charge high-rates of interest on loans. Experts say that the prohibition on domestic workers paying placement fees has had little to no effect - domestic workers pay as much in fees as other categories of workers and it is telling that that the country's handful of ethical recruiters do not deploy domestic workers despite it being the sector where they are not - on paper at least - at a comparative disadvantage. Workers for their part regard the payment of fees as standard practice and the authorities allow the practice to go on unchecked, apparently content that there is no widespread violation of the letter of the law.

By 2015 Taiwan had gained such notoriety for high recruitment fees that NGOs arranged a meeting with representatives of the country's recruitment sector and secured a commitment from them to address the issue. However, civil society groups in Taiwan and the Philippines told us that there have been minimal improvements since then and Taiwanese recruitment agents told us that many Taiwanese employers continue to ask for kickback payments from recruitment agents, and that some Taiwanese recruitment agencies demand fees from other recruitment agencies when workers transfer from one agency to another. "All of the expenses will inevitably be shouldered by migrant workers", one NGO director told us. Greenpeace told us that the fees charged to workers in the distant water fishing sector were so high that many foreign fishermen spent between 6 and 8 months repaying debts before they could earn. The Taiwan International Workers Association credited the Philippines' laws and regulations with keeping fees lower for Filipinos than those paid by workers from Vietnam, Indonesia and Thailand, but it is clear that many workers continue to pay to secure jobs in

Taiwan, and many go into debt to do so. Despite the well-documented link between recruitment debt and workplace abuse and exploitation, the authorities in the Philippines and Taiwan appear to lack the requisite political will to tackle the issue. In November 2020, the government of Taiwan issued a stern public response to public demands from the Indonesian government that Taiwanese employers meet the costs of recruiting Indonesian workers, stating that Taiwan would consider hiring workers elsewhere. Taiwan said that the issue should have been discussed within the private confines of a Taiwan-Indonesia Labor Conference, but it is telling that a relatively uncontroversial demand - that Taiwanese employers who want to recruit foreign workers for low-paid work should pay the costs associated with that process - provoked such a stern response.

Since the ‘employer pays’ principle is the cornerstone of ethical recruitment models, the failure to address the pervasiveness of recruitment fees in this migration corridor serves as the prime disincentive to the entry of ethical actors into the recruitment business. However, it is not the only way in which ethical actors are at a distinct comparative disadvantage.

The POEA introduced what it now describes as a “hard-to-enter, easy-to-go” policy to the Philippines in 2002, with the aim being to make it difficult for new entrants to get into the sector, and easy for the POEA to strip the licenses from violators of the regulations. The policy appears to have had the effect of blocking new, ethical actors from entry. The director of the ILO’s FAIR project in the Philippines, told us that the POEA Rules and Regulations had had the effect of disincentivizing ethical recruitment, with reference to the regulation that requires new recruitment agents to have identified new markets and received job orders prior to the issue of their license. The ILO’s 2017 Working Paper on the Philippines’ recruitment sector noted that this “creates a “catch-22” situation where prospective agencies have to develop a market for Filipino workers as non-licensees” and that it arguably placed prospective agents in the position of having to recruit illegally, as the term is understood in Philippines law. The result is that prospective new agents are encouraged to buy pre-existing licenses, circumventing the entry requirements altogether. A further disincentive to ethical recruitment is the volume-driven business model that the POEA

encourages through its annual performance awards which are weighted heavily in favour of deployment and reduces the administrative burden (and associated oversight) of agencies that deploy large numbers of workers abroad. Ethical recruitment agencies in the Philippines told us that they generally avoid recruitment for the domestic work sector, despite it accounting for more than 50% of the entire overseas recruitment and the ban on placement fees, which on paper at least levels the playing field for a no-fees recruiter.

Taiwan also performs poorly in relation to its incentivization of ethical recruitment despite having instituted an innovative ranking scheme for its recruitment agencies whereby the Ministry of Labour (and the Fisheries Agency for the distant water fishing sector) gives licensed agents rankings of A, B or C, and publishes the rankings on its website. However, Taiwanese recruitment agents told us that the system is largely based on the provision of documentation and civil society groups agreed that the system as it is currently constituted does not provide useful information on the performance of Taiwanese recruitment agencies with regard to workers’ rights. It is notable that ethical recruitment practices - where they exist in Taiwan - appear to be rooted in the efforts of private sector initiatives such as the Responsible Business Alliance, or the high standards, and associated auditing, demanded by individual companies with rights-sensitive customer bases.

Grievance Mechanisms

As noted above, there is a high probability that a Filipino migrant worker in Taiwan will have paid a considerable sum of money to a recruitment agent in the Philippines, and that they will also be paying Taiwanese agents ongoing monthly service fees. Taiwan also allows its courts to enforce the repayment of loans that Filipino workers take out in the Philippines to secure jobs in Taiwan. The Taiwanese Legal Aid Foundation (TLAF) has represented hundreds of workers who have challenged Taiwanese court orders sought by Taiwanese lending agencies that effectively buy workers debt from Philippines-based lending agencies. The TLAF told us that they have been successful in many cases, arguing that the interest on these loans - which they said can

be up to 50% - is excessive. However, even in successful cases Taiwan's courts do not contest the legitimacy of the original loan, only the interest rates attached to it. The practice of selling workers' debt appears to be limited to Filipino workers in Taiwan, and while it is relatively widespread it is not standard practice. Nonetheless it exemplifies how migrant workers are actually vulnerable to abuse and exploitation in this corridor because of the actions of recruitment agents (and lending agents) operating legally and *within* the terms of their government licenses.

However, this issue also highlights an area where the Taiwanese and the Philippines authorities perform well in relation to many other states - grievance mechanisms and access to remedy.

In 2015, Taiwan amended its Legal Aid Act, which is already open to anyone who is legally resident in Taiwan, to enable free legal assistance to be provided to workers who are undocumented. The amendment notes that individuals who "lost their residency due to incidents not imputed to themselves" can avail of legal aid. The Taiwan Legal Aid Foundation provides legal assistance to between 2,000 and 3,000 foreign workers every year. In 2017, it secured damages totalling NT \$36 million (US \$1.25 million) for 347 Vietnamese domestic workers in a case relating to salary deductions totalling NT \$200 million. The system is not flawless and the TLAF told us that they had lobbied the Judicial Yuan to take steps to ensure that migrant workers' access to justice is not compromised by a failure to take account of their need to be able to communicate effectively (a failing that typically relates to the failure of judges and prosecutors to avail of translation services rather than a failure to provide those services). Nonetheless, Taiwan provides migrant workers, including some undocumented workers, with access to justice and remedy. The role of the Philippines' overseas bureaucracy has also played a notably positive role in relation to access to remedy. While some civil society organisations have criticised the performance of diplomatic missions, the Philippines' capacity to provide assistance and support to aggrieved workers abroad is nevertheless significantly greater than most other origin states. The Philippines has a raft of ministries and agencies involved in the protection of its overseas workers, and these are spearheaded by Philippines Overseas Labour Offices. There are 34 of these around the world - 11 in Asia, 13 in the Middle east,

7 in Europe and 3 in the Americas. The offices are headed by a Labor Attaché and include representatives from the Department of Foreign Affairs and the Overseas Worker Welfare Administration. In Taiwan, Filipino workers can also avail of the quasi-governmental Manila Economic and Cultural Office (MECO) which works closely with POLO offices in Taiwan and MECO has worked in close coordination with the Taiwanese Legal Aid Foundation to ensure that Filipino workers have been able to access judicial remedies. A former Philippines government official, who worked overseas in migrant worker protection and who was generally critical of the authorities' performance on worker protection, told us that in his experience, any failings at an operations level within its overseas bureaucracy did not relate to any lack of commitment to worker protection.

Taiwan also performs notably well in relation to ensuring that workers whose contractual rights have been violated can change jobs, using a non-judicial grievance mechanism - a workers' hotline - to trigger the process that allows workers to legally find new employment in Taiwan.

Taiwan's Ministry of Labour set up its 1955 Hotline - a 24-hour "consultation and protection hotline" for foreign workers - in 2009. Civil society groups in Taiwan retain some concerns about its effectiveness, but generally concur with the views of senior officials from Taiwan and the Philippines that the hotline has opened up a direct line between foreign workers and the Taiwanese authorities, and that this has been beneficial in relation to workers' access to remedy and their ability to change employers. From the beginning of 2015 until the end of June 2020, the hotline received a total of 133,111 complaints about a range of issues, including problems with salaries and contracts. When the 1955 hotline receives complaints, they designate the case to the municipal Labour Bureau who will notify the employer and the recruitment agent and ask them to negotiate with the employee. Calls to the hotline can also result in cases being reported to criminal investigating authorities - 42 possible trafficking cases were reported to investigators between 2015 and 2020 as a result of calls made to the hotline.

Numerous workers we spoke to told us that the 1955 Hotline had enabled them to report problems to the authorities, the result of which was their being granted

the right to transfer employers. It is not possible to determine what proportion of calls to the hotline result in positive outcomes for workers, but sufficient evidence exists to suggest that a properly formulated complaint often results in the authorities taking action to extricate the foreign worker from exploitative or abusive employment situations. We were unable to secure any data from the Taiwanese authorities to show that they impose meaningful criminal or administrative sanctions on either the Taiwanese employers or the recruitment agents responsible, but they can get workers out of those situations and into shelters where they can seek alternative employment.

The relative success of the 1955 Hotline should also be set in the context of the fact that one of the positive aspects of its set up is its bypassing of Taiwanese recruitment agents, who are supposed to act as intermediaries between employers and their foreign workers, but who too often in reality obstruct migrant workers' efforts to seek remedy or change employers in the case of abusive working conditions or contractual violations.

Job Mobility

Taiwan appears to allow some degree of job mobility for its migrant workforce in practice, but workers' rights to change employers remain restricted by a tied visa system. Since 2008, migrant workers have had the right to change employers before the end of their contracts, with the agreement of the worker, and the current and prospective new employer. The government stated that this reform was intended "to secure [the] occupational interests of the foreign laborers" and to "enable the employers in need of manpower supplies to gain immediate support", which indicates that the Taiwanese government regards it as economically beneficial to provide its foreign workers with some degree of job mobility. As the Ministry of Labour put it, they have a "prohibition in principle, approval under exception" policy. According to data provided to us by the Ministry of Labour, between the start of 2015 and the end of June 2020, there were a total of 459,017 applications to change employers and 427,326 of these applications

were successful. This corresponds to an approximate annual average of 78,000 migrants changing employers every year, about 10% of the migrant workers in the country, and an overall successful application rate of 93%. One Taiwanese recruitment agent, which has deployed nearly 20,000 migrant workers in Taiwan's manufacturing sector, told us that migrant workers were able to make successful appeals for job transfers in the middle of their contracts, and used this to negotiate better terms and conditions. She also told us that resignation rates had increased in recent years, and that workers who came in on "no-fee" policies, such as those in some companies in the electronics sector were more likely to resign. This was expressed as a complaint, but laws that restrict employers' powers often uphold workers' rights, as is the case here.

Several NGOs told us that while workers have the right to change jobs in the cases of abuses, in practice recruitment agents often prevent workers who have complained from finding new employers. In an illustrative example of the problem, one Filipino worker who had been employed in Taiwan's electronics sector told us that it had taken him and his colleagues two years to figure out how to gather the evidence they needed and make a complaint. They had complained as a group about inadequate housing and contractual violations including illegal salary deductions, and he told us that their recruitment agent had repeatedly attempted to block their efforts to complain saying that their treatment was normal and taking the side of the employer in negotiations.

Nonetheless, it is apparent that migrant workers who end up in abusive working conditions are in many cases able to change jobs in Taiwan. Taiwan's grievance mechanisms play a positive role in that process, but this only serves to highlight the problems associated with tied visa schemes. Taiwan's enforcement of its tied visa scheme appears to be fairly lax in practice, which has created a situation of de facto job mobility, but too many workers are still trapped in abusive and exploitative situations because people often have to complain in order to change employers, and not all workers are willing to take that risk.

Priority recommendations to strengthen efforts to ensure fair recruitment.

The Philippine authorities should:

- **Ratify** the ILO Private Employment Convention and in keeping with its requirement that workers should not pay recruitment fees, amend the Republic Act 10022 to bring Philippine law in line with the ‘employer pays’ principle and in such a way that it is consistent with the ILO’s definition of recruitment fees and related costs.
- **Institute** an ethical recruitment framework into the licensing and regulatory machinery of the Department of Labor and the POEA, such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- **Set up** an inspectorate or task force, similar to the Task Force Against Illegal Recruitment, that is independent of the Department of Labour and Employment. The inspectorate should have a mandate to accept and investigate complaints and to proactively inspect licensed recruitment agents for all forms of illegal recruitment as outlined in Section 5 of the Republic Act 10022.
- **Conduct** an independent policy review of the Single Entry Approach to assess the effectiveness of mediation and conciliation in providing overseas foreign workers with their right to effective remedy. This review should specifically address the question of whether mediation is, in practice, an obstacle to effective remedy.

The Taiwanese authorities should:

- **Amend** legislation to ensure that all foreign workers in Taiwan, including domestic workers, enjoy the protection of the Labour Standards Act.
- **Bring** the Distant Water Fishing sector under the regulatory authority of the Ministry of Labour and ensure that all workers in that sector enjoy fundamental rights and protections comparable to foreign workers employed in other sectors in Taiwan.
- **Institute** an ethical recruitment framework into licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- **Set up** an inspectorate or task force dedicated to the protection of foreign workers that has a mandate to accept and investigate complaints and to conduct random inspections in the sectors in which foreign workers are employed (including the distant water fishing sector), as well as to inspect private employment institutions that recruit foreign workers. Civil society groups and other expert stakeholders should be consulted on the precise mandate of any such inspectorate, which should at a minimum address issues such as recruitment fee payment and contractual issues.
- **Amend** the Employment Service Act and introduce language to the Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members to make employers liable for all costs associated with hiring private employment institutions to recruit workers, and to explicitly prohibit the charging of monthly service fees to migrant workers.

Methodology

Project Aims

The aim of this research was to test the performance of the governments of the Philippines and Taiwan against a set of 44 indicators that cover nine areas of government policy. The indicators examine laws, policies and government practices in relation to recruitment and to evaluate their effect on outcomes for migrant workers:

1. National migration policy (7 indicators)
2. Legal and regulatory framework (5 indicators)
3. Bilateral arrangements (5 indicators)
4. Licensing, registration and certification schemes (5 indicators)
5. Machinery to implement and enforce regulation (4 indicators)
6. Measures to prevent fraudulent and abusive recruitment (5 indicators)
7. Enforcement, access to grievance mechanisms and remedies (6 indicators)
8. Measures to provide accurate information to workers (5 indicators)
9. Freedom of association (2 indicators)

The indicators are anchored in existing international standards, in particular the ILO General Principles and Operational Guidelines on Fair Recruitment. Full details of each indicator, and how they are derived from ILO and other standards, is provided in the Five Corridors methodology.

Researchers were tasked to take account of the following considerations, in addition to relevant laws and formal policies:

- **The object and purpose of laws and policies:** What stated and unstated goal/s does the government have with regard to this intervention? Goals could include economic development, increasing remittances, migration management, protection of human rights, national security, immigration control etc.
- **The implementation of laws and policies:** What does the government do in practical terms to implement this measure? For example: financial

and personnel commitment made to the policy; levels of professionalism and responsiveness of state institutions; whether key institutions have the appropriate mandate and authority; whether independent institutions scrutinise and report on performance; and whether there is transparency in the way the government carries out this measure.

- **The effects and outcomes of laws and policies:** What is the effect of the government's intervention on migrant workers? In particular, to what degree does it ensure fair recruitment?

Sources of Information

In order to assess laws, policies and practices in the Philippines and Taiwan against the indicators, we conducted a thorough review of secondary source material, and sought information and perspectives from a wide range of individuals directly involved in, affected by or knowledgeable about the regulation of migration and recruitment in these corridors. In total we carried out 70 in-depth individual interviews, and held a workshop discussion in Taiwan.

Legal and policy frameworks, and secondary sources:

We conducted a thorough review of secondary sources, including books, NGO reports, peer-reviewed academic journals, and newspaper articles and a full analysis of relevant laws and policies in the Philippines and Taiwan.

Key stakeholders and experts in migration processes:

We interviewed a wide range of stakeholders and experts either remotely or in person, including NGOs working on migrant workers' rights, trade union representatives, academics, think-tanks, journalists, lawyers, recruitment agencies, and representatives of intergovernmental organisations such as the ILO and the IOM. We explained to interviewees our preference of attributing all comments to named individuals, but offered them the option of withholding their names. The vast majority of interviewees agreed to be quoted directly. The organisations we consulted included the Centre for Migrant Advocacy, Migrant Forum Asia, Sentro (Sentro

ng mga Nagkakaisa at Progresibong Manggagawa), Migrante, the Scalabrini Migration Centre, the Institute for Labour Studies (the ILS is a government-funded research institute linked to the Department of Labour and Employment), Human Rights Watch, New Bloom, Rerum Novarum, New Thing, the Taiwan International Workers Association, Greenpeace, Serve The People, Migrant Workers' Concern Desk, Taiwan Association for Human Rights, the Taiwan Legal Aid Foundation, the International Labour Organisation, and the International Organization for Migration. The individuals we consulted included academics Dr Mi Zhou, Dr Isabelle Cheng and Dr Bonny Ling, numerous figures from the recruitment industry in Taiwan and the Philippines, including ethical recruitment agencies, the Fair Hiring Initiative, and the former president of PILMAT, the association of Taiwan-sending recruitment agencies in the Philippines. We also spoke to several representatives of Verité, the Responsible Business Alliance, and NXP Semiconductors, who are involved in a direct hiring program with the Philippines Overseas Employment Agency.

Governments: In Taiwan we met with the Vice-Minister of Labour and senior members of his staff, including the Deputy Director of the Workforce Development Agency, the Director General of the Fisheries Agency, and Taiwan's Minister without Portfolio. Both the Ministry of Labour and the Fisheries Agency supplied written responses to follow-up requests for information sent by letter in July 2020. We sent a follow up letter to the Ministry of Labour in October 2020 and also wrote to them in April 2021 outlining the report's key findings and recommendations. In May 2021 FairSquare received a written response from the Taiwanese authorities that arrived as this report was in the final stage of production. We have included information from this response in the report and published the response from the Taiwanese authorities in full on the Five Corridors Project website.

We were also able to meet with numerous Philippines officials in Taiwan, where we met a Philippines Labour Attache from the Philippines Overseas Labour Office (POLO) in Kaohsiung, and several members of the POLO-affiliated Manila Economic and Cultural Office (MECO). In the Philippines, we held preliminary meetings with the Philippines Overseas Employment Administration in November 2019, but were unable to secure follow up

meetings with the POEA, or other key agencies such as the Overseas Worker Welfare Administration (OWWA). We sent formal letters to the administrators of these agencies in July 2020 and October 2020, requesting interviews and/or responses to questions in writing. We sent the Department of Labour and Employment (the overarching Ministry of which the POEA and OWWA are agencies) a summary of the report's key findings and recommendations in April 2021. We received no response to any of this correspondence. In order to best reflect the Philippines' authorities' perspectives on their efforts to ensure fair recruitment we have had to rely on the insights of individuals with extensive knowledge of government policy.

Migrant workers: We spoke to migrant workers to help us understand better recruitment and migration processes from workers' perspectives, and to provide us with insights into how particular measures work in practice. Our interviews with migrant workers were not designed to provide representative samples of workers, and we did not attempt to carry out large-scale quantitative surveys of migrant workers. We intended to interview workers in person, in a mixture of group and individual interviews. We envisaged these interviews taking place both in the Philippines - around commonly frequented sites for recruitment, such as key government buildings and hubs for recruitment agency offices - and Taiwan, near to work, accommodation and leisure sites for migrant workers. The Covid-19 pandemic largely prevented us from carrying out interviews in this way, apart from a small number conducted prior to March 2020. As a result we elected to carry out remote interviews. We interviewed 25 Filipino migrant workers by telephone in the course of this research, 21 one-to-one interviews and one group interview of four workers. The workers we interviewed were all in Taiwan at the time of the interview, although some were recent arrivals and some had been in the country for several years. We secured interviews by approaching workers who had approached the My Labor Matters platform on Facebook, which is a website run by Verite that "aims to reach Filipino migrant workers, to empower them with information and resources that would help them make better decisions and informed choices." We explained the purpose of our research and asked if they would be willing to describe their experience of recruitment from the Philippines to Taiwan. The interviewees included workers from all three sectors in which foreign

workers are permitted to work in Taiwan - domestic work, manufacturing and fisheries (both domestic and distant-water). The group interview we conducted was arranged with the assistance of NXP Semiconductors, whom we had previously met and interviewed in person in Kaohsiung.

We used interview questionnaires structured around the recruitment process, including questions on the experiences of workers with regard to:

- Their decision to migrate;
- Introduction to and interaction with recruitment agents and officials;
- Payment of fees and exposure to debt, where applicable;

- Pre-departure experience, including contract processes and any orientation programmes;
- Arrival and working in the destination country;
- Getting support if something goes wrong; and
- Returning home after migration.

We explained the purpose of the interview and the wider project in advance and secured the express consent of all of the individuals we spoke to to use the information they provided to us for the purpose of the project. Where we have cited worker comments directly, we have opted to withhold workers' names or any other identifying details, referencing only their age, gender, and the sector in which they are employed in Taiwan.



Prospective migrant workers study job adverts, Manila. © Cheryl Ravelo / Alamy

Recruitment pathways: How Taiwanese employers hire Filipino workers

This is a brief description and analysis of the dominant model of recruitment in this migration corridor, which involves recruitment agencies on both ends, and a quasi government-to-government recruitment model designed for Taiwan’s manufacturers, some of whom also adhere to the “employer pays” principle in relation to recruitment fees.²

Pathway 1: Recruitment agents

This is by far the most dominant model of recruitment in this migration corridor and into Taiwan generally. It likely accounts for more than 95 percent of the recruitment of foreign workers into Taiwan. In this model, a Taiwanese employer uses the services of a licensed recruitment agent - known as private employment institutions - to recruit foreign workers on their behalf, and that Taiwanese agent liaises with a recruitment agency in the Philippines, which then sources the worker and arranges their emigration to Taiwan.

The **process** is as follows. Licensed recruitment agents help Taiwanese employers apply for employment permits for foreign workers from the Taiwanese Ministry of Labour. They submit these employment permits to the Philippines Overseas Labour Office (POLO) along with details of the jobs and the salaries being offered and copies of the employment contracts they intend to offer foreign workers. If everything is in order, the Philippines authorities issue the requisite number of job orders to the Taiwanese recruitment agent.

The Taiwanese agent then takes the accredited job orders to a recruitment agent in the Philippines. The agent in the Philippines posts the job advertisements, vet applicants, and assists successful applicants to obtain the documentation, training, medical examinations, and pre-departure orientations they require to work overseas. When Filipino workers arrive in Taiwan, they maintain a contractual relationship with Taiwanese recruitment agents, to whom they pay a monthly service fee in return for mediation services (when disputes arise with employers, for example) and for assistance with administrative tasks.

2. We have not included a description of the recruitment process for Taiwan’s Distant Water Fishing sector on account of its complexity and the myriad ways in which Taiwanese distant water fishing operators can hire workers, as detailed in the body of the report.

The **fee structure** for this model is supposed to work as follows.

- The Taiwanese employers pay the Taiwanese recruitment agent for the services they render, and pay many of the costs associated with the workers' recruitment - return air-fares, transportation from airport to job sites, a POEA processing fee; an OWWA membership fee; and any additional trade test or assessment costs.
- The Filipino worker pays the Philippines recruitment agent a placement fee equal to 1 month's salary (domestic workers and seafarers pay no placement fee in which case the foreign employer ultimately pays this cost), and separately will also pay documentation costs, and medical and training costs.
- The Filipino workers also have to pay monthly service fees to Taiwanese recruitment agents, which amount to over a three-year period.

In reality, many Taiwanese employers refuse to pay the full costs of recruitment or demand kickback payments from Taiwanese recruitment agents. To recoup their running costs and ensure there is a profit margin for every worker they recruit, these fees are passed on to Philippines recruitment agents, who pass them on to workers, often via inflated training and medical costs or usurious interest payments on loans offered by lending agents with links to the recruitment sector. However, this is not always the case. High income companies (often in Taiwan's electronics sector) that adhere to the "employer pays" principle outlined in codes of conduct such as the Responsible Business Alliance are far more likely to pay the full costs of workers' recruitment and commit to reimbursing any fees that workers have assumed in the course of their recruitment.

Pathway 2: The Philippines' special hiring program for Taiwan

This model of recruitment has been available to Taiwanese manufacturers since the Philippines and Taiwan signed a 2001 Memorandum of Understanding that outlined the various roles and responsibilities of the government entities tasked with facilitating the Special Hiring Program for Taiwan. It eliminates Philippines recruitment agents from the recruitment process and can dramatically reduce the fees that workers pay to secure jobs in Taiwan.

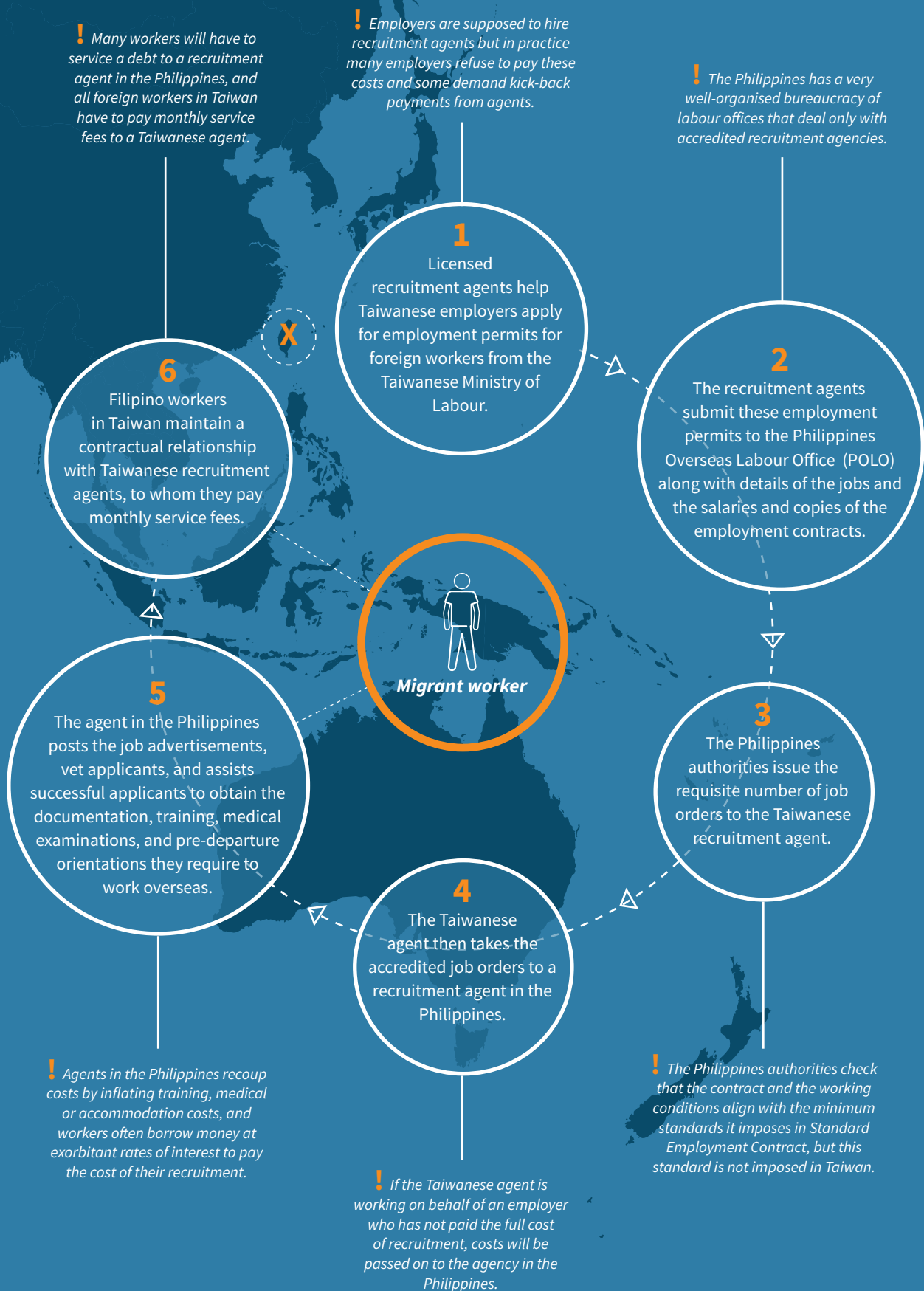
The **process** is as follows. A Taiwanese manufacturer applies to the Taiwanese Ministry of Labour for a permit to hire foreign workers. If the authorities grant the employer a quota of employment permits for foreign workers, the employer then engages directly with the Philippines authorities, who in effect serve as the agents of recruitment. The Manila Economic and Cultural Office (MECO), a quasi-governmental body of the Philippines with offices in Taipei, Kaohsiung, and Taichung assists Taiwanese firms and connects them to the Philippines Overseas Employment Agency (POEA). The POEA advertises positions on its website, and arranges for interviews and exams, as required. The Taiwanese companies send representatives to Manila to conduct interviews at POEA offices. Successful applicants sign a POEA-approved contract with the Taiwanese company, and the Taipei Economic and Cultural Office (TECO) in Manila (a Taiwanese government entity) provides the workers with their working visa. Once in Taiwan, many employers can still require that their foreign workers use the services of Taiwanese recruitment agents, who act as mediators and assist with administrative tasks.

The fee structure for this model works as follows. Workers pay no placement fees, but they typically bear the cost of travel to Manila and their medical and documentation costs, as well as their air-fares to Taiwan. Companies that adhere to "employer pays" principles will refund workers all of these costs upon production of receipts. If the employer is using the services of Taiwanese recruitment agents, the agency will charge workers a monthly service fee. Employers who adhere to "employer pays" principles will bear this cost themselves, meaning the worker effectively pays nothing in recruitment fees to secure his or her job in Taiwan.

This model can have a significant impact on the recruitment fees that Filipino workers pay to get jobs in Taiwan, especially when the companies involved are also strictly adhering to the "employer pays" principle. However, there has been very limited uptake of the SHPT with the overwhelming majority of workers preferring to use private recruitment agencies at both ends of the migration corridor. According to data provided to us by the Taiwanese Ministry of Labour, a total of 1889 Filipino workers - less than 1 percent of the total number of Filipino workers recruited into Taiwan - have been hired through the SHPT since the start of 2015.³

3. Ministry of Labour data provided to FairSquare Projects (26 August 2020).

A simplified impression of a typical recruitment process for a Filipino worker employed in Taiwan



Assessment against the Five Corridors indicators:

1. National migration policy

- 1.1** Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies? _____ 21
- 1.2** *Origin state:* Does the government restrict countries that some or all workers can migrate to?
Destination state: Does the government place restrictions or bans on immigration from certain countries? _____ 23
- 1.3** Does the government have a stated or observed preference/tendency towards government-to-government recruitment agreements? _____ 24
- 1.4** Does the government take gender and gender identity into account when formulating and implementing migration policy? _____ 26
- 1.5** *Origin:* Does the government significantly regulate the process for a worker to obtain a visa to migrate? (i.e. does the worker need multiple permissions at different levels of the state to migrate?)
Destination: Does the government significantly regulate the process for an employer to obtain a visa to hire a worker? (i.e. does the employer need multiple permissions at different levels of the state to recruit?) _____ 27
- 1.6** Do national laws allow all categories of migrant workers the ability to change jobs within the destination country? _____ 28
- 1.7** Do destination country laws offer migrant workers a pathway to long term residency and/or citizenship? _____ 29

1. National migration policy

“Exclusionary and alienating expediency is achieved by coordinated policy tools that disqualify caregivers [in Taiwan] from naturalisation, restrict their residency, family life, mobility, and employment” DR ISABELLE CHENG

Summary

The Philippines migration policy reflects its position as a provider of labour to wealthier states around the world, notably in the Middle East. Domestic poverty, underemployment and competition with other labour-sending states provide the social, economic and political context to the evolution of its migration policies. Although never explicitly stated, it is clear that it is government policy to continue to use private recruitment agencies to facilitate the overwhelming majority of its emigration. There is a clear tension between policies that on the one hand promote the overseas deployment of its nationals, and on the other hand seek to enhance their protection. The state’s economic dependence on remittances and the fact that more than half of its overseas workers are employed in states where protection is demonstrably weak and falls short of the Philippines’ own legal requirements suggests this tension will not be resolved any time soon. Nonetheless, the Philippines has consistently sought to increase protection through progressive policies and has done so with a gender-sensitive approach that has gone beyond bans on deployment and has addressed the specific vulnerabilities of its overseas domestic workers.

Taiwan’s migration policy reflects its rapidly ageing population, for whom care workers are required,

and its efforts to support its manufacturing sector with a reliable low-cost labour force. It has sought to balance economic imperatives with the principle of safeguarding jobs for Taiwan nationals, while at the same time seeking to convince the Taiwanese population of the economic benefits of migration. Although it has had government to government recruitment schemes in place for more than two decades, and it declares its policy is to offer Taiwanese employers choice in how they recruit, the recruitment of foreign nationals is overwhelmingly dominated by its private recruitment agencies, in large part because of the practical difficulties associated with these direct hiring models. Taiwanese scholars have offered strong and persuasive criticism of a lack of gender-sensitivity in policies aimed at its migrant workforce, with domestic workers excluded from the protection offered by the labour law. The Taiwanese authorities have adopted a “prohibition in principle, approval under exception” approach to job mobility. According to Ministry of Labour data, 93% of migrant worker job transfer applications are approved. There are clear legal restrictions on job mobility and recruitment agents and employers often conspire to prevent workers from leaving their jobs even when they have a right to do so. Serious obstacles remain for migrant workers who want to change employers, but Taiwan has been relatively successful in providing a degree of job mobility to its foreign workers.

Recommendations to the Philippine government:

- Work with its government partners in Taiwan to encourage more Taiwan-based companies to use the Special Hiring Program for Taiwan.
- Conduct a feasibility study into the viability of upscaling the government’s capacity to recruit workers directly and of replicating the Special Hiring Program for Taiwan in other countries that employ significant numbers of Filipino workers.

- Conduct and publish an independent and detailed review of Philippine migration policy that will provide a fact-based analysis of the extent to which migrant worker welfare is prioritised over the country’s economic development.

Recommendations to the government of Taiwan:

- Remove all legal restrictions on workers changing employers before the ends of their contracts.

- **Conduct a formal, independent review of Taiwan’s national migration policy in relation to its foreign workforce. The review should solicit views from a wide range of stakeholders and should address issues including gender-sensitivity, the impact of foreign workers’ job mobility, the current complexity of the direct hiring process, and the potential and feasibility of increasing the rate of workers hired via direct hiring or government to government recruitment models.**
- **Provide Taiwan’s International Review Committee, composed of international human rights experts, with a detailed assessment of Taiwan’s treatment of its foreign workers in its next self-review process, with a view to soliciting authoritative and expert recommendations on how to ensure that Taiwan’s migration policy is consistent with the international human rights treaties it has made part of its domestic law.**

1.1 Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies?

Philippines

Philippine labour migration policy was initially formulated in the 1970s, when the Philippines began to provide labour to the booming construction sectors of the Middle East.⁴ Policies envisioned by then President Marcos were focused on promoting overseas employment as well as ensuring the best possible terms and conditions of employment.⁵ The protection aspect of policy became increasingly important as destinations

diversified and more women began to migrate for work, often in domestic work.⁶

The 1995 Migrant Workers Act remains the most significant piece of legislation in the Philippines modern history of migration.⁷ It outlines two key pillars of the state’s migration policy as follows: “the state does not promote overseas employment as a means to sustain economic growth and achieve national development”; and “the existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated.”⁸ The Philippines has twice amended the Migrant Workers Act; in 2007 it passed the Republic Act 9422 specifically to strengthen the regulatory function of the Philippines Overseas Employment Agency, and in 2009 it passed the Republic Act 10022.⁹

Experts agree that the Philippines has sophisticated policies and legislation on overseas employment, but despite the policy that the fundamental rights of its migrant workers shall be assured, there has always been an unresolved tension between the economic imperative to secure remittances and the desire to protect its nationals abroad.¹⁰ This is evident, for example, in the executive order that set up the Philippines Overseas Employment Agency in 1982: it states that the POEA’s mandate is to initiate “a systematic program of promoting ... the overseas employment of Filipino workers,” but at the same time it has a mandate to “protect their rights to fair and equitable employment practices.”¹¹ Successive governments have handled this tension differently.¹²

The head of the Scalabrini Migration Centre in Manila told us that the Philippines had generally regarded the protection of its nationals as a critical factor in its migration policy, but that economic forces - the vast

4. See among others Graziano Battistella, “Philippine Migration Policy: Dilemma of a Crisis,” *Sojourn: Journal of Social Issues in Southeast Asia*, Vol. 14, No. 1 (April 1999), pp. 248-229 and Maruja M.B. Asis, “The Philippines: Beyond Labor Migration, Toward Development and (Possibly) Return,” *Migration Information Source*, (12 July 2017).

5. See Graziano Battistella, “Philippine Migration Policy: Dilemma of a Crisis,” *Sojourn: Journal of Social Issues in Southeast Asia*, Vol. 14, No. 1 (April 1999), p 30.

6. Maruja M.B. Asis, “The Philippines: Beyond Labor Migration, Toward Development and (Possibly) Return,” *Migration Information Source*, (July 2017 ,12).

7. Republic Act No. 1995) 8042) also known as Migrant Workers and Overseas Filipinos Act of 1995.

8. Migrant Workers and Overseas Filipinos Act of 1995, section 2 (c).

9. Republic Act No. 2007) 9422) and Republic Act No. 2009) 10022).

10. Mi Zhou, “Fair Share? International recruitment in the Philippines,” *ILO Working Paper*, (2017), p. 9., https://www.ilo.org/wcmsp5/groups/public/---ed_protect/--protrav/---migrant/documents/publication/wcms_585891.pdf

11. Executive Order No. 797, Reorganizing the Ministry of Labor and Employment, creating the Philippine Overseas Employment Administration, and for other purposes, May 1982 ,1, sec 4(c).

12. Maruja M.B. Asis, “The Philippines: Beyond Labor Migration, Toward Development and (Possibly) Return,” *Migration Information Source*, (July 2017 ,12). Asis notes, for example, that President Gloria Macapagal-Arroyo (2010 - 2001) shifted the focus away from protection and towards the goal of sending 1 million workers overseas every year, whereas President Benigno Aquino III (2016 - 2010) declared protection abroad and jobs at home to be the priority.

number of workers competing for a limited number of foreign employment opportunities and the competition among origin states - have militated against the principles outlined in policy and hindered their implementation in practice.¹³ Graziano Battistella has argued that the actual aim of migration policy through the years has been to reduce domestic unemployment and obtain foreign currency through remittances, which he described as a “lifeline” to the economy and one that delayed further reform of its migration policies.¹⁴ There have been further reforms, but cash remittances have been resilient - they grew at an average rate of 16% annually between 1989 and 2008 - and the Philippines economy has become increasingly dependent on them.¹⁵

One migration expert with a government-run research institution told us that in practice government policy is primarily focused on situating itself as a provider of labour, with the Arab Gulf states foremost in its thinking in this regard.¹⁶ The data supports this conclusion. More than half of Filipino overseas workers are in the Arab Gulf states, with 22.4% in Saudi Arabia.¹⁷

Taiwan

The Taiwanese government opened up Taiwan’s job market to foreign workers in October 1989. The late 1980s was a key era of migration transition in Taiwan as the country felt the effects of economic restructuring, globalization, and political liberalization.¹⁸

Taiwan is a high-income country with a very low birth-rate, a rapidly ageing population and an economy based on manufacturing and the export of electronics, machinery, and petrochemicals.¹⁹ These factors are at the root of its

recruitment of foreign workers. A Taiwanese government immigration policy white paper, published in 2013, stated that “after 2000, as Taiwan became an aging society, the increasing demand for nursing personnel led to the number of foreign care workers growing year by year. In recent years, with industry lacking domestic grass-roots workers, the demand for labor has increased significantly.”²⁰ By law, low-paid workers are confined to jobs in certain sectors of the economy - manufacturing, domestic work and caregiving, and fisheries.²¹

The Taiwanese government states that the “guiding principle for the hiring of foreign workers” is outlined in the Employment Service Act, which states: “For the purpose of protecting nationals’ right to work, no employment of foreign worker may jeopardize nationals’ opportunity in employment, their employment terms, economic development or social stability.”²²

Whereas Taiwanese academic Pia-Chia Lian has attributed the increasing use of domestic workers to social pressures that have accompanied demographic shifts, noting that younger generations of Taiwanese women have outsourced “housework, childcare, and the duty of serving parents-in-law,” the use of foreign workers in Taiwan’s manufacturing sector has a more obviously economic rationale.²³

In 2017, for example, Taiwan’s Executive Yuan, in consultation with the Council for Economic Planning and Development, the Ministry of Economic Affairs, and the Council of Labor Affairs made changes to the quota system for hiring foreign workers and stated that the purpose of the changes was “to stimulate the economy, boost new domestic investment, and encourage overseas Taiwanese businesses to return and invest in Taiwan.”²⁴ Taiwan has been attempting, with some success and aided by the US and China trade war, to encourage Taiwanese manufacturing companies

13. Telephone interview with Maruja Asis, Scalabrini Migration Centre, (August 2020, .1). Pre-Covid19 data from the Philippines Statistics Authority supports this. Although the unemployment rate was only %4.5 in October 2019, there were an estimated 5.6 million underemployed persons in October 2019. See Philippines Statistics Authority website at <http://www.psa.gov.ph/content/employment-situation-october2019>.

14. See Graziano Battistella, “Philippine Migration Policy: Dilemma of a Crisis,” *Sojourn: Journal of Social Issues in Southeast Asia*, Vol. 14, No. 1 (April 1999), p 30..

15. “Remittances supporting the Philippines economy”, *Oxford Business Group*, (2016).

16. Telephone interview with Bernard Paul M. Mangulabnan, Institute for Labor Studies, Department of Labor and Employment, (29 July 2020).

17. “Total Number of OFWs Estimated at 2.2 Million,” *Philippines Statistics Authority press release*, (June 2020).

18. “On Protection of the Rights for Foreign Workers in Taiwan”, *Taiwan Ministry of Labor*, (January, 2020) and Ji-Ping Lin, “Tradition and Progress: Taiwan’s Evolving Migration Reality”, *Migration Policy Institute*, (24 January 2012).

19. Wen-Sin Huang, Yen-Ju Lin, Hsien Feng-Lee, “Impact of Population and Workforce Aging on Economic Growth: Case Study of Taiwan,” *Sustainability*, Volume 11 (November 2019). Index Mundi, [Taiwan Economy Profile 2019](https://www.indexmundi.com/taiwan/economy).

20. “Population Policy White Paper: Fewer children, population aging immigration”, *Executive Yuan of the Republic of China*, (July 2013, 12), p.31

21. Employment Service Act, article 46.

22. Employment Service Act, article 42.

23. Pei Chia-Lian, “Global Cinderellas: Migrant Domesticity and Newly Rich Employers in Taiwan,” (Duke University Press, 2006), p.9. This point was also made by Brian Hioe. Telephone interview with Brian Hioe, Editor New Bloom Magazine, (30 July 2020).

24. Ministry of Labor (Department of General Planning), “The Allocation Rate for Foreign Workers for new investment cases and returning overseas Taiwan business investment cases,” (30 March 2017) available at <https://english.mol.gov.tw/homeinfo/7040/7815/>

who had relocated to China to return and to do so it provides them with quotas of foreign workers.²⁵ While there was an increase in the number of foreign workers that returning Taiwanese investors could employ, there was an overall reduction in the hiring quota for the electronic information industry and for major enterprises. The Ministry of Labor stated in 2017 that “if companies increase the number of Taiwan nationals they employ, then they can also adjust the number of foreign workers they employ accordingly.”²⁶ It noted that the purpose of this was to balance economic imperatives with the principle of “safeguarding jobs for Taiwan nationals.” Even as it attempts to lure its companies back from overseas, those companies must employ Taiwanese workers in order to receive quotas to hire foreign workers.

Taiwan’s Vice Minister of Labour said that the country has crafted its migration policies in such a way as to ensure that Taiwanese workers have not felt threatened by the recruitment of foreign workers and that one of the achievements of the government was that it had been successful in convincing the general population of the economic benefits to the country of migration.²⁷

1.2 *Origin state:* Does the government restrict countries that some or all workers can migrate to?

Destination state: Does the government place restrictions or bans on immigration from certain countries?

Philippines

The Migrant Workers Act stated that the Philippines can only deploy Filipino workers overseas in countries

where the rights of Filipino migrant workers are protected.²⁸ The Republic Act 10022 updated the law to include more stringent procedural requirements. The Department of Foreign Affairs must now certify that all receiving countries satisfy the protection requirement and include, as necessary, “the pertinent provisions of the receiving country’s labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers,” and only once it has done so can the POEA allow the deployment of workers to receiving countries which have been certified by the DFA as offering sufficient protection.²⁹ Philippine law also states that “the government, in pursuit of the national interest or when public welfare so requires, may, at any time, terminate or impose a ban on the deployment of migrant workers.”³⁰

Despite the stipulations on protection as a prerequisite for overseas deployment, many Filipino workers work in countries where serious migrant worker abuses are widespread, notably in the Middle East. These abuses have led the Philippines government to initiate bans on deployments to Saudi Arabia and Kuwait and there have been retaliatory bans from destination states unwilling to meet its wage demands.³¹ (There has never been a ban on deployment to Taiwan.) In the most recent example of this, in January 2020, President Duterte announced a ban on workers being deployed to Kuwait after the Philippines National Bureau of Investigation concluded that a Filipina domestic worker had been seriously abused prior to her death.³² The Philippines lifted the ban a month later after Kuwaiti authorities charged the woman’s employers with her murder.³³ NGOs and academics consistently express opposition to bans arguing that they are ineffective and lead to workers migrating through informal channels, rendering them more vulnerable to abuses.³⁴

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25. Cissy Zhou, “Taiwan manufacturers come home from China, as trade war feeds into economic debate at election,” *South China Morning Post*, (January 10, 2020)
 26. “The Allocation Rate for Foreign Workers for new investment cases and returning overseas Taiwan business investment cases”, Taiwan Ministry of Labour news release, (30 March 2017).
 27. Interview with San Quei Lin, Vice-Minister of Labor, Taipei, (18 February 2020).
 28. Migrant Worker Overseas Act, 1995, section 4. The four different ways in which states could demonstrate this commitment to protection; existing labour and social laws protecting the rights of migrant workers; a signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers; the conclusion of a bilateral agreement or arrangement to protect the rights of overseas Filipino workers; or “taking positive, concrete measures to protect the rights of migrant workers.”
 29. Republic Act 10022, section 3.
 30. Migrant Worker Overseas Act, 1995, section 5.
 31. For a discussion on this see Hélène Thiollet, “Immigrants, Markets, Brokers, and States: The Politics of Illiberal Migration Governance in the Arab Gulf”, *International Migration Institute Working Paper*, (November 2019).
 32. Areeb Ullah, “Philippines issues full ban on workers going to Kuwait after violent death of maid”, *Middle East Eye*, (15 January 2020).
 33. Janella Paris, “Philippines lifts deployment ban to Kuwait,” *Rappler*, (14 February 2020).
 34. See Rothna Begum, “Duterte threatens to ban labor migration to the Middle East: Philippines should demand stronger protections for overseas Filipino workers,” *Human Rights Watch*, (26 January 2018). All of the experts we spoke to for this report expressed unequivocal opposition to bans on migration, including representatives from the Scalabrini Migration Centre, the Centre for Migrant Advocacy and Migrant Forum Asia.

In December 2019, the head of Philippines Overseas Labour Office in Geneva wrote to the POEA asking the administration to suspend the deployment of Filipino workers to Poland, due to reports of fees in excess of the legal maximum, contractual violations and other abuses that had left Filipino workers in distress.³⁵ Consequently, the POEA issued a statement warning applicants of the dangers of an apparently bogus recruitment program, which left workers either without jobs or dealing with unscrupulous recruitment agents in Poland.³⁶

Taiwan

There is no restriction on workers who travel to Taiwan for professional work, whereas four south-east Asian states - Thailand, Vietnam, Indonesia and the Philippines - provide almost all of the workers in Taiwan's fisheries, manufacturing, and domestic work sectors (sections 8 to 11 of article 46 of the Employment Service Act), the sectors where the authorities issue work permits for low-paid foreign workers.³⁷ In 2011 Taiwan threatened to suspend the recruitment of Filipino workers over a spat relating to the Philippines' deportation of Taiwanese nationals to China.³⁸ In November 2020 Taiwan's Minister of Labour warned the Indonesian government that it would "consider the possibility of bringing in workers from other countries" in response to Indonesia's public demand that Taiwanese employers pay a larger portion of the costs associated with the recruitment of Indonesian workers, including airfare and passport and visa processing fees.³⁹ At time of writing the issue has yet to be resolved, and it is unclear if the Taiwanese government's anger with the Indonesian government's stance is based on the substance of the demand or the manner in which it was conveyed. What is clear is that the Taiwanese government has twice in recent history used its employment of foreign workers as political leverage over origin states.

1.3 Does the government have a stated or observed preference/tendency towards government-to-government recruitment agreements?

Philippines

The Philippines 1974 Labor Code explicitly prohibited the direct hiring of Filipino workers, which is to say hiring conducted by employers or recruiters in the destination state without the use of recruitment agents in the Philippines.⁴⁰ Filipino migration expert Maruja Asis, who has conducted research in this area, said that the initial rationale of barring direct hiring was to ensure that Philippines-based entities had a stake in the protection of Filipino nationals abroad.⁴¹

The Philippines engages in some government to government recruitment, by which we mean any model of recruitment in which governments on both sides are actively involved in the process of recruitment (not just its administration) and in which private recruitment agencies in either the origin or destination country (or both) have either been removed from that process or are operating under a special licensing scheme.⁴² However, the numbers of workers migrating without the use of private recruitment agents remains insignificant.⁴³

Since 1999, there has also been a Special Hiring Program in Taiwan (SHPT), designed "to protect the welfare and rights of the Filipino workers in Taiwan."⁴⁴ In 2015, the Philippines Department of Labor introduced an updated process called T-IDES (Taiwan International Direct e-recruitment System), designed to make the SHPT more efficient and less expensive. Under the system the POEA facilitates the recruitment process in-house, and OWWA conducts pre-departure orientation for selected candidates.⁴⁵ According to data provided to us by the

35. Ferdinand Patinio, "POLO-Geneva wants OFW deployment to Poland suspended", *Philippine News Agency*, (3 December 2019).

36. POEA Advisory No 6: Recruitment Scheme for Poland, (17 January 2020).

37. Employment Service Act, article 46. Taiwan Ministry of Labor, "On Protection of the Rights for Foreign Workers in Taiwan," (January, 2020).

38. "Taiwan threatens sanctions on Philippines in deportation row", *Radio France International*, (22 February 2011).

39. Chang Hsiung-feng and Evelyn Kao, "Taiwan will not pay Indonesian migrant workers: recruitment costs: MOL", *Focus Taiwan*, (11 November 2020).

40. Philippines Labor Code, 1974, article 18. "Ban on direct-hiring. No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from this provision."

41. Telephone interview with Maruja Asis, Scalabrini Migration Centre, (1 August 2020).

42. For a description of three types of government to government recruitment, see "Government-to-Government Recruitment Benefits & Drawbacks," *Migrant Forum Asia policy brief*, (2015). See also details of International Recruitment Integrity System (IRIS) website on details of IRIS Philippines to Canada project here <https://iris.iom.int/iris-philippines-canada-pilot-project>

43. Mi Zhou, "Fair Share? International recruitment in the Philippines," *ILO Working Paper*, (2017), p 11.

44. See website of Manila Economic and Cultural Office <https://www.meco.org.tw/labor-and-atn/special-hiring-program-for-taiwan>

45. "OFW e-recruitment program speeds up hiring process in Taiwan", *Official Gazette of the Philippines Government*, (28 September 2015).

Taiwanese Ministry of Labour, a total of 1889 Filipino workers - less than 1% of the total number of Filipino workers recruited into Taiwan - have been hired through the SHPT since the start of 2015.⁴⁶

Taiwanese NGO Serve the People noted that the Special Hiring Program for Taiwan does not necessarily mean that Filipino workers will not be required to use the services of recruitment agents in Taiwan.⁴⁷ This was confirmed by a Taiwan-based electronics firm that has used the SHPT to recruit 320 Filipino workers (314 women, 6 men) for its manufacturing plant in Kaohsiung. NXP said that they fly once a year to Manila to interview workers (previously they used an agent in the Philippines), but that they retain the services of recruitment agencies in Taiwan, who serve as interlocutors and mediators between the company and its foreign workers.⁴⁸ NXP workers we interviewed confirmed that they applied directly to the POEA and that no Philippines based recruitment agents were involved at any stage in their recruitment.⁴⁹ (NXP also adheres to industry codes of conduct that commit them to the ‘employer pays’ principle in relation to recruitment fees, meaning that they pay all the costs associated with the recruitment of their foreign workers, as well as the monthly service fees that Taiwanese recruitment agents typically charge to foreign workers. Interviews with NXP employees confirmed this.)⁵⁰

A migration expert from the Department of Labor said that the Philippines government’s preference is to continue to rely on the private sector to organise its outward migration, but declined to speculate on the reasons for this.⁵¹ The data demonstrates the dominance of the private sector. In August 2020, for example, the jobs available on the POEA website were limited to 500 nursing jobs in Germany, and 1700 midwifery and nursing jobs in Saudi Arabia.⁵² Government-run models such as the Special Hiring Program for Taiwan are the exception to the norm.

In what one migration expert described as part of a global trend towards “the privatization of migration,”

private recruitment agents have always been, and look set to remain, the central pillar of the Philippines’ external migration architecture.⁵³

At the time of writing, the POEA has not responded to requests for information on this and other matters.

Taiwan

The Taiwanese government enables employers to recruit foreign workers directly using its Direct Hiring Service Center, which has existed since 2007, with the aim “to provide multiple channels to hire foreigners and reduce the burden of foreigners working in Taiwan.”⁵⁴ Whereas the Special Hiring Program for Taiwan, discussed above, is aimed at the manufacturing sector, applies only to migration from the Philippines, and may still require Taiwanese employers to use the services of a Taiwanese recruitment agent (it is the Philippines recruitment sector that is cut out of the process), Taiwan’s Direct Hiring Service Scheme enables Taiwanese employers to hire Thai, Vietnamese, Filipino, or Indonesian workers directly without using the services of a Taiwanese recruitment agent. Taiwanese government officials said that government policy was to provide Taiwanese employers with as many recruitment options as possible, including the option to hire directly without the use of a recruitment agent.⁵⁵

According to the Taiwanese government’s direct hiring website, more than 150,000 employers have used the direct hiring system.⁵⁶ Data that the Ministry of Labour provided to us shows that the number of workers recruited via the direct hire system has declined rapidly since 2016. Whereas in 2015 and 2016, 26,015 and 25,578 foreign workers, respectively, were recruited directly, the figures fell to 7,082 in 2017, 5,594 in 2018 and 4,565 in 2019. In 2019, direct hires accounted for 2.6% of foreign workers in Taiwan.⁵⁷

The data suggests that the Taiwanese government’s commitment to its direct hiring scheme is lacking. Civil

46. Ministry of Labour data provided to FairSquare Projects (26 August 2020).
47. Interview with Lennon Ying-Dah Wong, Director, Serve the People Association, Taipei, (20 February 2020).
48. Interview with NXP semiconductors, Kaohsiung, (19 February 2020).
49. Group telephone interview with four NXP employees in Kaohsiung, (16 November 2020).
50. Group telephone interview with four NXP employees in Kaohsiung, (16 November 2020).
51. Telephone interview with Bernard Paul M. Mangulabnan, Institute for Labor Studies, Department of Labor and Employment, (29 July 2020).
52. Vacancies can be seen at <http://www.poea.gov.ph/vacancies/vacancies.html> (3 August 2020).
53. Graziano Battistella, “Philippine Migration Policy: Dilemma of a Crisis,” *Sojourn: Journal of Social Issues in Southeast Asia*, Vol. 14, No. 1 (April 1999), p 30.
54. See Direct Hiring Service Centre website <https://dhsc.wda.gov.tw/en/aboutus.html>
55. Comment attributed to Ministry of Labour representative at FairSquare recruitment roundtable, Taipei, (18 February 2020).
56. See Direct Hiring Service Centre website <https://dhsc.wda.gov.tw/en/aboutus.html>
57. Data provided to FairSquare Projects by the Ministry of Labor, (26 August 2020). According to the data, the total number of workers hired by private employment institutions was 169,464.

society organisations in Taiwan also expressed this view and criticised the effectiveness of the current system. A representative of the Taiwan International Workers Association said that the direct hiring system was too complicated and time-consuming for employers and was therefore ineffective.⁵⁸ Philippines NGO Rerum Novarum also pointed to the huge administrative burden for employers and said the system should be made easier and better promoted by the government.⁵⁹

A senior Filipino labour official in Taiwan said that direct hiring systems, although not the preferred choice of employers in Taiwan, had been strategically effective in that it demonstrated to recruitment agencies that their dominance of the sector could not be taken for granted.⁶⁰ Taiwan's Vice-Minister of Labor, while not criticising the direct hiring system, told us that recruitment agents can play a vital role in providing assistance and support to migrant workers, contrasting Taiwan's system with the South Korean government's direct hiring system, which, he said, had led to a high turnover rate of workers.⁶¹

1.4 Does the government take gender and gender identity into account when formulating and implementing migration policy?

Philippines

The Migrant Worker Overseas Act outlines a clear state policy in relation to the gendered aspects of migration: “recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.” The Revised POEA Rules and Regulations affirms that it is the policy of the administration “to provide an effective gender-sensitive mechanism that

can adequately protect and safeguard the rights and interests of Overseas Filipino Workers.”⁶²

Filipino migration experts such as Maruja Asis of the Scalabrini Migration Center pointed to the specific steps that the Philippines has taken to protect its overseas domestic workers as evidence that its migration policy in the Philippines is not only attuned to the specific vulnerabilities of women, but arguably geared towards them.⁶³ In 2006 the Philippines passed the Household Service workers Policy Reform Package, which the Center for Migrant Advocacy, described as an attempt to professionalize domestic work and minimize the specific vulnerabilities of female domestic workers. The reform set the minimum age for domestic workers at 23, required domestic workers to go through a certified training program and a pre-orientation program, obliged employers to meet all costs of deployment (domestic workers do not have to pay any POEA fees, unlike other categories of workers), and set the minimum monthly wage for Filipina domestic workers at US \$400.⁶⁴ The Center for Migrant Advocacy acknowledged the package's intent to protect Filipinas and was in line with years of policy in that regard, but concluded that it “had not been as successful as envisioned.”⁶⁵ The extent to which these measures have been effective in curtailing abuses of Filipino domestic workers is open to question, and they should be set in the context of the broader migration policy to send vast numbers of Filipina domestic workers to the Middle East.

Taiwan

Taiwanese government policy on migration appears to take scant account of the gendered aspects of immigration. In the Ministry of Labor's report on the rights of foreign workers, it states that the rights of pregnant foreign workers are protected under the Gender Equality in Employment Act. However, this act is primarily aimed at Taiwanese nationals, a fact acknowledged by the Ministry of Labor when they state that “Where foreign labors are employed in the sectors governed by the Labor Standard Law, they may [italics added] be entitled to the protection of female labor

58. Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, (1 July 2020).

59. Interview with Rerum Novarum, Taipei, (20 February 2020).

60. Interview with Rustico Dela Fuente, Labor Attache, Philippines Overseas Labor Office, Kaohsiung, (19 February 2020).

61. Interview with San Quei Lin, Vice-Minister of Labor, Taipei, (20 February 2020).

62. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016.

63. Telephone interview with Maruja Asis, Scalabrini Migration Centre, (1 August 2020).

64. “Survey research on the effectiveness of the Household Services Policy Reform Package”, Center for Migrant Advocacy, (July 2011),

65. “Survey research on the effectiveness of the Household Services Policy Reform Package”, Center for Migrant Advocacy, (July 2011),

under the Act.” Domestic workers are not included in the types of work covered by the protection of the Labor Standard Act and civil society groups identify this as one of the reasons they suffer abuse.⁶⁶

Taiwanese academics have been highly critical of immigration policies that they say discriminate against women. Hong Zen-Wang has referred to patriarchal attitudes having a formative role in shaping immigration laws in relation to the issue of Taiwanese nationals marrying foreigners.⁶⁷ Isabelle Cheng’s criticism addresses domestic workers’ exclusion from the Labour Standards Act, as well as other factors that affect male and female workers alike (such as their inability to change employers and the lack of a path to citizenship) and references the now abandoned practice of pregnancy screening, arguing that “exclusionary and alienating expediency is achieved by coordinated policy tools that disqualify these caregivers from naturalisation, restrict their residency, family life, mobility, employment, and, in the past, suspended their fertility.”⁶⁸

1.5 Origin: Does the government significantly regulate the process for a worker to obtain a visa to migrate? (i.e. does the worker need multiple permissions at different levels of the state to migrate?)

Destination: Does the government significantly regulate the process for an employer to obtain a visa to hire a worker? (i.e. does the employer need multiple permissions at different levels of the state to recruit?)

Workers can apply directly for the POEA-issued Overseas Employment Certificate that they need to leave the

country. There is a Direct Hire Assistance Division within the POEA that facilitates this. The burden on prospective migrant workers is the documentation they are required to submit, which includes passport, police clearance, a birth certificate, transcripts and records of school diplomas, department of health certifications, and vocational training certificates, as required.⁶⁹

Maruja Asis of the Scalabrini Migration Centre said that the main benefit to workers of using private recruitment agents was the speed with which they could arrange foreign employment.⁷⁰ Traditionally, only a small fraction of workers have been deployed through direct hire schemes.⁷¹

A 2020 Verité report on Filipino workers in Taiwan’s distant water fisheries sector found initial contracting processes to be complex, and that they could take up to three months. Applicants require a Seaman’s Book, which can only be acquired after successfully completing a Basic Safety Training course, and many prospective migrants lack birth certificates, school records, and passports. Procuring these can be time-consuming and costly, Verite noted.⁷²

Taiwan

In Taiwan, NGOs have pointed to the significant administrative burden associated with its direct hiring program, arguing that it discourages employers from using it, and encourages the use of private recruitment agents, who, once hired, have the right to charge foreign workers monthly fees and in practice regularly charge illegal placement fees.⁷³ To illustrate the complexity of the process, in order just to receive an employment permit to directly hire a foreign worker as a caregiver, the employer must first receive an attestation from a Ministry of Health accredited hospital that their family member requires full-time care, either by dint of infirmity or illness.⁷⁴ This requires either a professional examination or documentation attesting to the person’s

66. Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, July 2020 ,1. “The (labour) law in Taiwan is the Labour Standards Act, and it does not include domestic working industry, and domestic nursing industry. So these workers are working under worse conditions.” See also Chen Betty, Broken laws and unprotected workers: the conditions of foreign workers in Taiwan,” *OpenDemocracy*, July 25, 2017. Labour Standards Act, article 3.

67. Hong Zen-Wang, “Immigration trends and policy changes in Taiwan,” *Asian and Pacific Migration Journal*, (June 2011) p. 170 “Taiwan’s current immigration policy is based on three ideologies: the patriarchal *jus sanguinis* principle, population quality, and national security.”

68. Isabelle Cheng, “We want productive workers, not fertile women: The expediency of employing Southeast Asian caregivers in Taiwan,” *Asia Pacific Viewpoint*, (2020), p. 10.

69. POEA Revised Rules and Regulations, section 50.

70. Telephone interview with Maruja Asis, Scalabrini Migration Centre, (August 2020 ,1).

71. Mi Zhou, “Fair Share? International recruitment in the Philippines,” ILO Working Paper, (2017), p 11.

72. “Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan,” *Verite*, (TBD), p. 30.

73. Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, July 2020 ,1. Interview with Rerum Novarum, Taipei, February 2020 ,20.

74. Information gleaned from Taiwan’s direct hiring website and amalgamation of interviews with NGOs and recruitment agencies.

medical condition. If it is found that there are no Taiwanese workers who can provide the care services, the Ministry of Health will forward the employer's request to the Ministry of Labour. The Workforce Development Agency (part of the MoL) will process the application and grant the employer a permit that enables them to access the online Direct Hiring Service Center - the web portal that facilitates the start of the actual recruitment process.

1.6 Do national laws allow all categories of migrant workers the ability to change jobs within the destination country?

The Ministry of Labour has detailed guidelines on employment transfer regulations and these have been updated regularly since they were introduced in 2003.⁷⁵ The Employment Service Act gives migrant workers in fisheries, manufacturing and domestic work the right to change employers under the following circumstances: when their employers have died or emigrated; (in the case of fishermen) when the vessels they work on have sunk or are in disrepair; when employers have closed or suspended their business or failed to pay wages as agreed in the contract; or "similar circumstances not attributable to the foreign worker."⁷⁶ Since February 2008, migrant workers have also had the right to change employers with the agreement of the worker, the prospective new employer and the old employer.⁷⁷ The authorities amended the Employment Service Act in 2013 to enable migrant workers in caregiving to change employers or to engage in new work during the valid duration of their employment permit for causes not attributable to either the migrant worker or the employer, but crucially this can only happen if the employer applies to the authorities. The government has stated that this limited job mobility is intended to "protect foreign workers' rights" and to "enable the employers in need of manpower supplies to gain immediate support." The Taiwanese government

therefore regards it as economically beneficial to provide its foreign workers with job mobility, although it's not an absolute right. The Taiwanese authorities told us that they adopt a "prohibition in principle, approval under exception" approach to job mobility.

According to data provided to us by the Ministry of Labour, between the start of 2015 and the end of June 2020, there were a total of 459,017 applications to change employers and 427,326 of these applications were successful. This corresponds to an approximate annual average of 78,000 migrants changing employers every year and an overall successful application rate of 93%.

One Taiwanese recruitment agent, which has deployed nearly 20,000 migrant workers in Taiwan's manufacturing sector, told us that migrant workers were able to make successful appeals for job transfers in the middle of their contracts, even though this is not permitted by the law, and used this to negotiate better terms and conditions.⁷⁹ She also told us that resignation rates had increased in recent years, and that workers who came in on "no-fee" policies, such as those in some companies in the electronics sector were more likely to resign. We were unable to find evidence to support this claim. According to one migrant worker's rights activist in Taiwan, the recruitment industry has lobbied the government with a view to ensuring that workers are not able to change jobs easily. During a call with a number of rights activists in May 2021, Lennon Ying-Dah Wong told us that the Covid19 pandemic and the limitations it has placed on foreign recruitment has led many workers to transfer sectors from domestic work into the manufacturing sector, but that in response to pressure from the recruitment sector, the Ministry of Labour had placed more restrictions on these cross-sector transfers.

An expert on conditions for Filipino workers in Taiwan told us that lack of job mobility was not the most critical factor in migrant worker abuses.⁸⁰ Taiwanese NGO Serve the People also told us that it was very common for migrant workers to change employers, while noting that it is not always straightforward - unclear complaints

75. "Directions of the Employment Transfer Regulations and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11, Paragraph 1, Article 46 of the Employment Services Act," Ministry of Labour, (25 September 2003).

76. Employment Service Act, article 59.

77. Taiwan Ministry of Labor, "On Protection of the Rights for Foreign Workers in Taiwan", (January, 2020). The procedure for foreign workers transferring to a new employer was deregulated and amended on 27 February 2008.

78. "Foreign laborers are able to transfer to a new employer with the agreement of the original employer", Bureau of Employment and Vocational Training news release, (12 November 2007). Reference to "protecting workers rights" is not in news release but rather in Taiwan Ministry of Labor, "On Protection of the Rights for Foreign Workers in Taiwan" report.

79. Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020).

80. Telephone interview, name withheld, (1 October 2020).

processes, the withholding of documentation, and collusion between employers and recruitment agents are some of the factors that can prevent workers from exercising their right to leave employment.⁸¹ A Filipino worker at a shelter in Taipei said that it had taken him and 20 colleagues nearly 2 years to collect the evidence they required to legally leave their employer and that their recruitment agent had obstructed their efforts to leave: “they always backed the company in negotiations.”⁸² The Taiwan International Workers Association also said workers faced serious challenges in collecting the evidence they needed to change employers legally and drew a link between this and the number of workers who run away from their employers and work illegally. Serve the People told us that when NGOs get involved in cases, transfers are almost always granted and that in cases where serious abuses were apparent, the authorities were generally responsive.

The situation is different in Taiwan’s distant water fisheries sector, where there are three distinct recruitment models: distant water fisheries operators can directly employ foreign crew members overseas; operators can commission a Taiwanese agent to employ foreign crew members; or operators can commission a Taiwanese agent to employ foreign crew members using the services of a foreign recruitment agency.⁸³ Two of the recruitment models above require the involvement of Taiwanese recruitment agents and while the law empowers these agents to arrange for workers to change

employers, it also prohibits workers from transferring from one recruitment agent to another.⁸⁴ Workers are therefore bound, in most cases, to their agents. A 2020 Verité report on the Distant Water Fisheries sector found recruitment agents to be “deeply embedded” in the recruitment of migrant fishers and in a telling statistic, all of the 77 workers they interviewed in the course of their research were hired through recruitment agencies.⁸⁵

1.7 Do destination country laws offer migrant workers a pathway to long term residency and/or citizenship?

Taiwan

Foreigners can apply for permanent residency in Taiwan, but low-paid migrant workers are denied a pathway to citizenship by the eligibility requirements, which only apply to professional workers and explicitly exclude low-paid foreign workers i.e. those employed under the terms of article 46 of the Employment Service Act.⁸⁶ The Employment Service Act states that foreign workers must leave the country after either 12 or 14 years.⁸⁷ Numerous representatives of civil society highlighted the disenfranchisement of migrant workers as a contributory factor to the ongoing failures of the government to protect them.

81. Interview with Lennon Ying-Dah Wong, Director, Serve the People Association, Taipei, February 2020, 20.

82. Interview with L.P., Filipino migrant worker shelter, Taipei, February 2020, 20.

83. Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members, article 5.

84. Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members, Article 16. “Unless otherwise provided in these Regulations, any foreign crew member employed by one agent shall not be transferred to other agent.”

85. “Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan,” *Verité*, (TBD), p. 30.

86. “[Instructions for Foreigners to Apply for Permanent Residency](#)” Ministry of Interior National Immigration Agency (26 February 2019).

87. Employment Service Act, article 52.

Assessment against the Five Corridors indicators:

2. Legal and regulatory framework relating to fair recruitment

- 2.1** Has the government ratified core international human rights and core/relevant labour conventions and enshrined them in domestic law? Does it meaningfully engage with UN and ILO oversight bodies? _____ 32
- 2.2** Are there national fair recruitment laws and policies? Does legislation address the entire spectrum of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment and return to the country of origin. Is legislation reviewed and evaluated? _____ 33
- 2.3** Are all workers (formal, informal, regardless of category) covered by relevant legislation? _____ 36
- 2.4** Are workers' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? _____ 37
- 2.5** *Origin state:* Are recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?
Destination state: Are employers' and recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? _____ 38

2. Legal and regulatory framework relating to fair recruitment

“The recruitment industry in Taiwan is well established and it has strong political connections so it would need a lot of political will to challenge it.” FANG CHUN, ATTORNEY AT TAIWAN LEGAL AID FOUNDATION.

Summary

The Philippines has ratified all key international conventions relating to migrant workers' rights and it engages fully with both the UN and the ILO systems. Its decision not to ratify the Private Employment Convention largely reflects the opposition of its private recruitment agencies to the abolition of recruitment fees and indicates that, despite a healthy working relationship between the private sector, workers' organisations and the government, it is the private sector's views on this issue that take primacy. Notwithstanding the failure to abolish recruitment fees for all workers (domestic workers are exempted from paying fees) the Philippines legal and regulatory framework is focused on ensuring that workers are recruited fairly and work to the terms outlined in standard employment contracts aimed at protecting their labour rights abroad. The Philippines has laws and regulations to address the plight of undocumented workers and its response to the Covid19 pandemic has demonstrated that a workers' irregular status does not exclude them from the ambit of the state's protection. One obvious shortcoming in the laws and guidelines on fair recruitment is that there is less detail in the regulations on the recruitment of Filipino seafarers relative to the regulations for landbased workers, but taken as a whole its legal and regulatory framework is impressively detailed and robust.

Taiwan has been excluded from the UN system since 1971, but it ratified the international bill of rights in 2009 and has granted them the status of domestic legislation, and put mechanisms in place for their implementation. Taiwan has two

distinct regulatory frameworks that address the roles and responsibilities of the entities that can recruit foreign workers on behalf of its employers. The Ministry of Labour has regulatory oversight over the framework that regulates manufacturing, domestic work and coastal fisheries. The Fisheries Agency oversees the other, which regulates Taiwan's Distant Water Fishing sector. The Ministry of Labour regularly amends its laws and regulations pertaining to the recruitment of foreign workers, and conducts policy impact assessments. There appears to be far less appraisal and evaluation of the laws in the distant water fishing sector. No laws or policies outline Taiwan's expectations on the legislation on recruitment processes in the states from which it sources its migrant workers. Domestic workers remain excluded from the Labour Standards Act despite the existence of a draft law that would limit their working hours. The government has justified the failure to provide them with the protection of labour laws by stating that “their duties, work hours and rest hours are clearly different from workers of business entities, making it hard to draw a clear line between what is work and what is not.” Undocumented workers are also excluded from labour law, but have access to legal aid in certain circumstances. Civil society organisations and the recruitment sector are encouraged to engage with the authorities on policies relating to recruitment, but civil society views this engagement as superficial and despite some positive reforms, the authorities have resisted long-standing calls for the abolition of private recruitment agencies and for labour law protection to be extended to domestic workers.

Recommendations to the Philippine government:

- Ratify the ILO Private Employment Convention and in keeping with its requirement that workers should not pay recruitment fees, amend the Republic Act 10022 to bring Philippine law in line with the ‘employer pays’ principle and in such a way that it is consistent with the ILO’s definition of recruitment fees and related costs.

Recommendations to the government of Taiwan:

- Commit to the principles of the ILO Private Employment Agencies Convention, 1997 (No. 181) and amend the Employment Service Act and other relevant legislation to make employers of foreign workers in all sectors liable for all costs associated with hiring private employment institutions to recruit workers, including the monthly service fees charged to workers.
- Amend legislation to ensure that all foreign workers in Taiwan, including domestic workers, enjoy the protection of the Labour Standards Act.
- Bring the Distant Water Fishing sector under the regulatory authority of the Ministry of Labour and ensure that all workers in that sector enjoy fundamental rights and protections comparable to foreign workers employed in other sectors in Taiwan.

2.1 Has the government ratified core international human rights and core/ relevant labour conventions and enshrined them in domestic law? Does it meaningfully engage with UN and ILO oversight bodies?

Philippines

It is Philippines state policy to ratify conventions that protect the rights of its overseas workers. The Republic Act 10022 obliges the government to “continuously monitor international conventions, adopt/be signatory to and ratify those that guarantee protection to our migrant workers.”⁸⁸ The Philippine Constitution of 1987 “adopts the generally accepted principles of international law as part of the law of the land.”⁸⁹

The Philippines is a State Party to all of the key human rights conventions, including the Convention on the Rights of All Migrant Workers and Members of Their Families, and the core labour conventions of the ILO. It has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.⁹⁰

In 2012, the Philippines was the second country to ratify the ILO Domestic Workers Convention (No. 189), but it has not ratified the Private Employment Agencies Convention (No. 181).⁹¹ The Philippines actively engaged in the formulation and development of the UN Global Compact for Safe, Orderly and Regular Migration and was a leading voice in promoting the adoption of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.⁹²

Civil society groups have in the past accused the government of paying lip service to its treaty commitments, but in recent years UN Committees have offered measured praise of the Philippines’ engagement with treaty processes and adherence to its obligations.⁹³

88. Republic Act No. 10022, Rule I, Section 1(a).

89. The 1987 Constitution of the Republic of the Philippines, section 2, article 2.

90. The Philippines record on UN treaty ratification can be seen at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx The Philippines record on ILO treaty ratification can be seen at <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11001:0::NO>

91. See International Labor Organization, “Ratifications of C181 - Private Employment Agencies Convention, 1997 (No. 181)”.

92. Association of Southeast Asian Nations (ASEAN), “ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers”, (10 May 2012). “General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants”, United Nations news release, (19 December 2018). “The representative of the Philippines was among the overwhelming majority of those supporting the Assembly’s endorsement of the Global Compact. The notion that migration is bad has been defeated with facts, not frightful fantasies of job losses, he declared, stressing that migration is a shared responsibility of sending, receiving and transit countries and no one State can address it alone.”

93. “Philippine Migrants Rights Groups’ Written Replies to the List of Issues Relating to the Consideration of the Initial Report of the Philippines”, *Center for Migrant Advocacy*, (March 2009), p. 10.

The UN Committee on the Rights of All Migrant Workers and Members of Their Families, for example, has commended “high-level political will by the State party to respond to the needs of migrant workers abroad.”⁹⁴ The ILO Committee of Experts commended the Philippines for its hosting of a visit of ILO labour experts in 2017, while noting “deep concern” over ongoing violations of trade unions rights.⁹⁵

Legal scholars have noted that human rights treaties can be used as a source of actionable legal rights to challenge the constitutionality or legality of state action in the Philippines.⁹⁶ In practice, civil society organisations working on migrant rights use them as leverage in their advocacy efforts with the government. One prominent Philippines NGO said that civil society generally regarded Philippines’ international commitments as important in terms of promoting dialogue with the authorities on key issues and principles relating to the rights of migrant workers.⁹⁷

Taiwan

In 1971 Taiwan (formally titled the Republic of China) lost the seat of China in the United Nations to the People’s Republic of China (PRC). Taiwan has since been excluded from the UN system, including its human rights treaty regime. It nevertheless ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2009. Taiwan’s attempt to deposit the instruments of ratification with the UN was rejected, but it has committed itself, via implementation acts, to following the covenants by granting them the status of domestic legislation and putting mechanisms in place for their implementation.⁹⁸

Taiwan has developed its own oversight procedure called a “self-made international review process”, which copies the UN official reporting system. Taiwanese government reports to a group of international experts,

the International Review Committee, which visits Taiwan and conducts the review meetings following the report. The Committee is composed of international human rights experts, including former UN officials. The review process leads to Concluding Observations and Recommendations that the government then addresses.⁹⁹ The Committee’s 2017 report specifically addresses the “labour and human rights abuses inflicted on the foreign workers” in Taiwan’s fishing industry.¹⁰⁰

Taiwanese trade unions have in the past been able to attend and participate in ILO Labour Conferences, even though Taiwan is not a member of the ILO, but in recent years, and seemingly as a result of Chinese pressure, they have been excluded.¹⁰¹

2.2 Are there national fair recruitment laws and policies? Does legislation address the entire spectrum of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment and return to the country of origin. Is legislation reviewed and evaluated?

Philippines

The Executive Order that set up the Philippines Overseas Employment Administration in 1982 stated that: “the Administration shall formulate and undertake ... a systematic program of promoting and monitoring the overseas employment of Filipino workers taking into consideration domestic manpower requirements, and to protect their rights to fair and equitable employment practices.”¹⁰² The 1987 Reorganization Act of the Philippines Overseas Employment Administration

94. “Concluding observations on the second periodic report of the Philippines,” *Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*, UN Doc CMW/C/PHL/CO/2, 2 May 2014).

95. “Application of International Labor Standards, 2019: Report of the Committee of Experts on the Application of Conventions and Recommendations”, *International Labor Organization*, (2019), p. 131.

96. Ingo Venzke and Li-Ann Thio, “The Internal Effects of ASEAN External Relations,” (Cambridge University Press, 2016) pp. 141-140.

97. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

98. For a detailed discussion of Taiwan’s Implementation Acts and its history of engagement with the human rights system see Jerome A. Cohen, William P. Alford, and Chang-Fa Lo eds., “Taiwan and International Human Rights: A Story of Transformation”, (Springer Press, 2019).

99. “Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants – Concluding Observations and Recommendations adopted by the International Review Committee in Taipei,” *Covenant Watch*, (20 January 2017).

100. “Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants – Concluding Observations and Recommendations adopted by the International Review Committee in Taipei,” *Covenant Watch*, (20 January 2017).

101. See Scarlett Chai and Lilian Wu, “Taiwan suffers new setback in trying to attend ILO conference”, *Focus Taiwan*, (3 June 2017).

102. Executive Order No. 797, (May 1982).

gave the POEA the power to “Regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system.”¹⁰³

There is a robust legislative framework on fair recruitment, which has been regularly updated, and detailed rules for private recruitment agents. The Migrant Worker Overseas Act of 1995 has been amended twice, first in 2006 and again in 2010.¹⁰⁴ The preamble to the 2010 amendment (the Republic Act No. 1022) formally recognises “the significant contribution of recruitment and manning agencies” in what it calls a partnership with the state aimed at the protection of Filipino migrant workers and the promotion of their welfare.”¹⁰⁵

In 2016 the POEA issued Revised Rules and Regulations Governing the Recruitment and Employment of Landbased Filipino Workers, and a broadly similar set of rules and regulations for seabased workers.¹⁰⁶ These run to 71 pages and 88 pages respectively and they cover all stages of the recruitment process. (Land based overseas workers have typically outnumbered seabased workers by a ratio of approximately four to one.)¹⁰⁷

The POEA Rules and Regulations for Landbased Workers provide detailed guidelines on job advertisements, stating that only licensed agents with approved job orders can advertise vacancies and that advertisements should include details of the POEA agents, skills and qualifications required, the number of positions available and the net salary after foreign tax.¹⁰⁸ The corresponding regulation for seafarers is substantively similar although there is no requirement for any salary details to be advertised.¹⁰⁹

Land based workers must undergo a skills test in a government accredited testing centre, and it is the

responsibility of recruitment agents to ensure that the test corresponds to the position for which workers have applied.¹¹⁰ There is no such requirement for seafarers.

With regard to the departure and arrival of workers, land based workers must present an Overseas Employment Certificate to immigration officers before leaving the country. The POEA issues these certificates to workers after they have signed their employment contracts and paid administrative fees and mandatory membership fees to the Overseas Worker Welfare Administration.¹¹¹ Before signing a contract, workers must attend a Pre-Employment Orientation Seminar and a Pre-Departure Orientation Seminar, and in the case of domestic workers, a Comprehensive Pre-Departure Education Program.¹¹² Again, the requirement is less stringent for seafarers. Regulations stipulate there is a process for clearance in lieu of issuance of an Overseas Employment Certificate.¹¹³ The regulations mandate pre-employment and pre-departure orientation seminars (addressed in more detail in section 8 of this report).¹¹⁴

The POEA mandates minimum employment standards via POEA standard employment contracts that outline details of pay, including benefits and allowances and overtime, working hours and vacations, duration of employment, contract termination and settlement of disputes. The contract stipulates that employers must provide free transportation from and back to the point of hire (or off-setting benefits) and free inland transportation at the job site (or off-setting benefits).¹¹⁵ For seafarers, the rules and regulations are again less detailed and less stringent.¹¹⁶ Accordingly, the POEA standard employment contract for seafarers is far less detailed and prescriptive than the POEA standard employment for various skills.¹¹⁷ It includes no details on

103. Executive Order No. 247, (July 1987).

104. Republic Act No. 2006 ,9422.

105. Republic Act No. 2010 ,1022.

106. Philippines Overseas Employment Administration, “Revised Rules and Governing the Recruitment and Employment of Landbased Filipino Workers of 2016,” available here <http://www.poea.gov.ph/laws&rules/files/Revised20%POEA20%Rules20%And20%Regulations.pdf>; Philippines Overseas Employment Administration, “2016 Revised Rules and Governing the Recruitment and Employment of Seafarers,” available here <http://www.poea.gov.ph/laws&rules/files/20%2016Rules20%Seabased.pdf>

107. Philippines Overseas Employment Agency Overseas Employment Statistics By Type of Hiring, 2006 to 2018, available at <http://www.poea.gov.ph/ofwstat/compendium/deployment2018-202006%51.pdf>

108. POEA Revised Rules and Regulations for Landbased Workers, rule VIII.

109. POEA Revised Rules and Regulations for Seafarers, rule VII.

110. POEA Revised Rules and Regulations for Landbased Workers, rule VI.

111. POEA Revised Rules and Regulations for Landbased Workers, rule IX.

112. POEA Revised Rules and Regulations for Landbased Workers, rule II, sections 117 - 118

113. POEA Revised Rules and Regulations for Seafarers, rule IX.

114. POEA Revised Rules and Regulations for Seafarers, rule II, section 4. To obtain a license to recruit seafarers, prospective agencies must formally undertake to “Provide orientation to the seafarers on recruitment procedures, terms and conditions and other relevant information to its seafarers, and provide the necessary facilities for the purpose”

115. POEA Revised Rules and Regulations for Landbased Workers, section 135.

116. POEA Revised Rules and Regulations for Seafarers, section 115.

117. Standard employment contract for various skills can be seen here http://www.poea.gov.ph/files/sec_various_new.pdf and the corresponding contract for seafarers can be seen here <http://www.poea.gov.ph/memorandumcirculars/4/2013.pdf>

transportation costs, or on maximum working hours (8 hours per day, six days per week in the employment for various skills contract), and provisions on employee's rights to terminate the contract in cases of "serious insult by the employer or his representative, inhuman and unbearable treatment" are absent from the seafarers contract.

The UN Committee on the Rights of All Migrant Workers and Members of Their Families has praised what it called a "multitude of programmes and support structures for overseas Filipino workers, covering all stages of the migration process."¹¹⁸ An ILO paper on the Philippines' recruitment sector described the country as having "the most well developed apparatus on labour migration in Asia."¹¹⁹ Academics, activists and government officials told us they concurred with that assessment.¹²⁰

Taiwan

Taiwan government policy on immigration does not specifically address the issue of fair recruitment, but it has passed legislation to license and regulate the conduct of the Taiwanese agencies (referred to in the law as 'private employment institutions') that recruit the overwhelming majority of its migrant workers.

Where foreign workers are concerned, there are two distinct regulatory frameworks. The Employment Service Act (and the associated Regulations for Permission and Supervision of Private Employment Service Institutions) outlines the role and legal responsibilities of the agencies that recruit foreign workers into manufacturing, domestic work, or its domestic fisheries sector (as distinct from its Distant Water Fishing sector). These regulations are overseen by the Ministry of Labor. The Act for Distant Water Fisheries (and the Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members), regulates the conduct of the entities that can recruit foreign workers for Taiwan's Distant Water Fishing Sector. It is overseen by the Fisheries Agency, which is an agency of the Council of Agriculture.

Taiwanese recruitment agents facilitate the recruitment of foreign workers into the country, they do not send Taiwanese workers abroad, and the laws above make no reference to the recruitment processes in origin states. The regulatory framework for recruitment is based on a system of licensing and outlines proscribed conduct that can lead to licenses being suspended, revoked or not approved, or, in more serious cases, criminal sanctions.

There is no prescriptive legislation or guidance on advertising, information dissemination, or worker selection and no explicit laws or policies that state that the countries from which Taiwan recruits its migrant workers have fair recruitment laws and policies.

Taiwan regularly reviews and amends legislation that addresses the recruitment and employment of foreign workers. In 2014, the Ministry of Labour updated the Employment Service Act to provide for harsher sanctions for recruitment agents engaged in abusive practices¹²¹ In 2016 it eliminated the requirement that foreign laborers leave the country for one day upon expiration of their employment permit and then re-enter the country to work, and introduced a provision to allow foreign laborers to request leave to visit family in their native country during the term of their employment permit, and requiring employers to grant such requests.¹²²

Less attention appears to be given to reform of laws governing workers in the Distant Water Fishing sector. A 2020 report by Greenpeace into abuses in this sector - its third since 2016 - stated that Taiwan has largely overlooked the rights of migrant fishers in the reform of its fisheries policies.¹²³

In response to a query about its appraisal and evaluation of the effectiveness of its laws and regulations, the Ministry of Labour told us that the Employment Service Act has been amended 17 times since its enactment in 1992 and that the Regulations for Permission and Supervision of Private Employment Services Institution have been amended 13 times. They said that: "All amendments, whether proposed by the Ministry or the

118. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, "Concluding observations on the second periodic report of the Philippines," UN Doc CMW/C/PHL/CO/2, (May 2, 2014).

119. Mi Zhou, "Fair Share? International recruitment in the Philippines," ILO Working Paper, (2017), p. 9.

120. Interviewees who spoke of the Philippines impressive legal and regulatory framework included Hussain Macarambon, International Labour Organisation, Mauruja Asis, Scalabrini Migration Centre, Carlos Conde, Human Rights Watch, Ellene Sana, Center for Migrant Advocacy, Tatsee Macabuag, Migrant Forum Asia, Bernard Paul M. Mangulabnan, Institute for Labor Studies.

121. "Report on Protection of the Rights for Foreign Workers in Taiwan," Taiwan Ministry of Labor, (2020), p. 9.

122. "Employment Services Act amendments strengthen labor rights," Executive Yuan Department of Information Services, (15 November 2016).

123. "Choppy Waters: Forced labour and illegal fishing in Taiwan's Distant Water Fisheries", Greenpeace, (March 2020), p. 30.

legislature, must undergo policy impact assessments and be discussed article by article during the Examination. If amendments are to be proposed by the Ministry, the Ministry will first analyze the current implementation and problems, identify possible solutions to the problems, and evaluate the necessity, goals, and benefits of the amendments. Whether the amendments have an impact on human rights will also be determined before the amendment process is initiated.”¹²⁴

In response to a similar question about the laws and regulations in the distant water fishing sector, the Fisheries Agency told us that “the management on the protection of the rights and benefits of foreign crew employed overseas has been continually reviewed and advanced by the Human Rights Protection Task Force of the Executive Yuan.”¹²⁵

2.3 Are all workers (formal, informal, regardless of category) covered by relevant legislation?

Philippines

The Migrant Workers Overseas Act of 1995 outlines that it is state policy to protect documented and undocumented workers overseas: “it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.”¹²⁶ The Republic Act 10022 includes the same provisions and adds a definition of undocumented workers.¹²⁷

Philippines law empowers the authorities abroad to regularise the status of undocumented workers in

Migrant Workers and Other Overseas Filipinos Resource Centers (MWOFRFC), set up in countries where there are large numbers of Filipino workers.¹²⁸ A 2015 statement from then Labor and Employment Secretary stated that MWOFRFC facilities were solely for female migrant Filipinos in distress, but that separate Centers for males were to be established, “as may be allowable by the rules and regulations of the host government, and subject to availability of funds.”¹²⁹ The Philippines authorities have not at the time of writing responded to requests for information on the work of its Migrant Workers and Overseas Filipinos Resource Centers.

In April 2020, the Department of Labor announced that documented and undocumented workers, whether landbased or seabased, would be eligible for financial aid if they had experienced ‘job displacement’ as a result of their host state’s response to the covid19 pandemic.¹³⁰

Taiwan

Foreign domestic workers in Taiwan are excluded from the protection of the Labour Standards Act.¹³¹ The Taiwanese International Workers Association told us that the workplace exploitation that they endure is in large part related to this exclusion, since there are no limitations on their working hours.¹³² A representative of Migrant Workers Concern Desk told us that Taiwan’s domestic workers are the most vulnerable category of workers due to the circumstances of their employment.¹³³ A government-commissioned report in 2012 found average working hours of 17 hours per day.¹³⁴ Migrant domestic workers we spoke to told us of chronic overwork and of being denied any days off work.¹³⁵ The Taiwanese Ministry of Labour has explained that the government’s decision to exclude domestic workers from the Labour Standards Act is because “their duties, work hours and rest hours are clearly different from workers of business entities, making it hard to draw a clear line between what is work and what is not.”¹³⁶

124. Letter from the Ministry of Labour to FairSquare projects (26 August 2020).

125. Letter from the Fishers Agency to FairSquare Projects (21 August 2020).

126. Migrant Workers and Overseas Filipinos Act of 1995, section 2(e).

127. Republic Act 10022, section 1.

128. Migrant Workers and Overseas Filipinos Act of 1995, section 18.

129. “MWOFRFC is central hub for welfare and assistance to migrant Filipinos, says Baldoz”, Department of Labor and Employment, (18 August 2015).

130. Philippines Department of Labor Order No. 212, “Prescribing guidelines on the provision of financial assistance for displaced landbased and seabased Filipino workers due to the corona virus disease” (9 April 2020).

131. Article 3 of the Labour Standards Act lists the professions and sectors to which the law applies. Workers in manufacturing and fishing are covered by the law, but domestic work and caregiving are not.

132. Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, (1 July 2020).

133. Telephone interview with Leoni Pascual Ngo, Migrant Workers Concern Desk, (27 June 2020).

134. The report is referenced in Davina Tham, “No rest for domestic helpers”, *Taipei Times*, (25 December 2019).

135. Telephone interviews with CG and FB, (August 2020).

136. “The Ministry of Labor Endeavors to Protect the Rights of Domestic Workers through Pragmatic Approaches”, *Taiwan Ministry of Labour news release* (1 August 2014).

In 2014, the Ministry of Labour issued a statement saying that it had finished drafting a “Domestic Workers Protection Act” that would give domestic workers one day off every week and would include provisions on the termination of work contract, wage standards, working hours and the filing of complaints.¹³⁷ The act has yet to pass through the Executive Yuan. The Ministry of Labour told us that they “place great attention on the labor rights of migrant domestic workers” but added that “nevertheless, the situations of the family employers with members diagnosed with disabilities should also be taken into consideration and addressed for prudent and comprehensive assessments.”

Taiwan has an estimated 50,000 undocumented workers.¹³⁸ Manufacturing and fisheries workers who become undocumented are excluded from the protection of Taiwan’s Labor Standards Act and the Ministry of Labour ‘Report on the Protection of Foreign Migrant Workers in Taiwan’ makes no reference to protective measures for undocumented workers. On the contrary it refers to the steps it has taken “to deter and severely punish foreigners working illegally.”¹³⁹ The Employment Service Act empowers the Ministry of Labour to annul the employment permit of foreign workers who have been “unjustifiably absent from his/her work and not in contact for three days.”¹⁴⁰ The Ministry of Labour told us that they had revoked the permits of 189 foreign workers for this reason between the start of 2015 and the end of July 2020.¹⁴¹

Taiwan’s Legal Aid Act states that anyone who is legally resident in Taiwan has access to legal aid.¹⁴² In 2015, amendments were made to the law that enabled free legal assistance to be provided to workers who are undocumented. The amendment notes that individuals who “lost their residency due to incidents not imputed to themselves” can avail of legal aid.¹⁴³ The Taiwanese government funds the Taiwan Legal Aid Foundation and they provide legal assistance to between 2,000 and 3,000 foreign workers every year.

2.4 Are workers’ organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?

Philippines

The Philippines constitution states that workers “shall ... participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.”¹⁴⁴ The Overseas Landbased Tripartite Consultative Council (OLTCC) serves “as a forum through which labour, management and government regularly come together to address issues and concerns involving land-based overseas foreign workers”¹⁴⁵

The Center for Migrant Advocacy, one of the Philippines’ most influential migrant workers’ rights NGO and a member of the OLTCC, described the relationship between the government and civil society as constructive and referred to open lines of communication with both the government and the private sector, which enabled information sharing to take place formally as well as informally.¹⁴⁶ NGOs are cognisant of legislative development and actively seek to influence laws - they do not generally wait for the government to consult them. The CMA drew attention to NGO consultation and involvement - ongoing at time of writing - in the drafting of a revised Standard Employment Contract for domestic workers as an example of the positive relationship between government, the private sector and civil society.¹⁴⁷ A representative of Philippines trade union Sentro told us that the authorities’ willingness to engage with trade unions and NGOs was to a large extent dependent on the attitude of those in charge of the relevant agencies - notably the POEA and OWWA - at any moment in time. The Sentro representative told us that there is generally

137. “The Ministry of Labor Endeavors to Protect the Rights of Domestic Workers through Pragmatic Approaches”, *Taiwan Ministry of Labour news release* (1 August 2014).

138. This figure is regularly repeated by NGOs and in the media, but there is no formal record of the actual numbers.

139. “Report on Protection of the Rights for Foreign Workers in Taiwan,” *Taiwan Ministry of Labour*, (2020), p. 9.

140. Employment Service Act, article 72.

141. Letter from the Ministry of Labour to FairSquare projects (26 August 2020).

142. Legal Aid Act, article 14.

143. Legal Aid Act, article 14.

144. The 1987 Constitution of the Republic of the Philippines, Article xiii, section 3.

145. Asis, Maruja M.B., Go, Stella P., “An Assessment of the Philippine Overseas Employment Administration’s (POEA) Agency Performance Awards”, *International Labor Organization*, (2014), pp. 81-80

146. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020). Marie Apostol offered a similar view. Telephone interview with Marie Apostol, Fair Hiring Initiative, (23 June 2020).

147. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

a willingness to listen to civil society organisations but that it is not clear the extent to which their views are taken on board and criticised the government for not properly consulting them on reforms to legislation.¹⁴⁸

Taiwan

The Employment Service Act states that the Ministry of Labour “may invite representatives of labor, employers, and governmental officials, together with scholars and experts, to review and consult matters regarding employment services and employment promotion.” It furthermore states that “among the representatives, labor, employers, and scholars and experts shall be no less than one half of the participants.”

The Taiwanese authorities told us they have set up a ‘human rights team for migrant workers’ with the team members comprising experts, scholars, and representatives of NGOs. The Ministry of Labour leads the team and the Council of Agriculture, the Ministry of the Interior, and the Ministry of Health and Welfare are the co-organizers. Meetings are held at least every six months to discuss issues relating to the rights of migrant workers and fishermen. Non-governmental organisations told us that the government engaged with civil society, but were generally skeptical of the extent to which their views were taken on board. Taiwanese NGO New Thing criticised the lack of transparency and suggested the government exaggerated the extent of its engagement with civil society.¹⁴⁹ The Taiwanese International Workers Association described genuine engagement as rare. They said that the government would often proceed with legislative changes without informing civil society, and on occasions when there was engagement, civil society groups were generally outnumbered by private sector organisations, including recruitment agents.¹⁵⁰ Greenpeace offered a similarly skeptical assessment of the Fisheries Agency engagement with civil society groups working on the Distant Water Fishing sector, saying that they were one of the organisations that participated in regular working group sessions with the Fisheries Agency, but suggesting that the meetings largely served as an end in themselves

rather than a genuine attempt from the government to take on board the views and insights of civil society.¹⁵¹

Taiwanese media has reported that the authorities excluded the Yilan Migrant Fishing Union from Legislative Yuan meetings tasked with preparing reports concerning human trafficking in Taiwan and that the YMFU and another trade union for migrant workers, the National Home-based Workers Union, did not receive invites to a Ministry of Labour meeting on a structure of payments system proposed by recruitment agents.¹⁵² The editor of New Bloom Magazine drew attention to the weak historical role of the organised labour movement in Taiwan.¹⁵³

2.5 Origin state: Are recruiters’ organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? Destination state: Are employers’ and recruiters’ organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?

Philippines

In addition to non-governmental organizations, trade unions, workers associations, the Republic Act 10022 recognises the “significant contribution of recruitment and manning agencies” as “partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare.”¹⁵⁴

The Revised POEA Rules and Regulations stipulate that the government will “pursue, with the active participation of the private sector, the creation of an environment conducive to the overseas employment program.”¹⁵⁵

148. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).

149. Interview with Kevin Chen, New-thing, Taipei, (12 February 2020).

150. Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, (1 July 2020).

151. Telephone interview with Lisa Tsai, Peiyu Chen, Greenpeace Taiwan, (7 July 2020).

152. Andi Kao, “Attacks against the Yilan Migrant Fishermen Union force the resignation of union president,” New Bloom Magazine, (March 2019 ,11).

153. Telephone interview with Brian Hioe, Editor New Bloom Magazine, (30 July 2020).

154. Republic Act 10022, section 1(h).

155. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, Part I, Rule I, 11.

Scholars, activists and experts on the recruitment sector uniformly characterise the Philippines' recruitment sector as a powerful and influential political actor.¹⁵⁶ A member of civil society described the Philippines Manpower Agencies Accredited to Taiwan (PILMAT) as one of the most well-organised and politically connected recruitment industry bodies in the Philippines.¹⁵⁷ Marc Capistrano, director of no-fee ethical recruitment firm Staffhouse told us that he does not get actively involved in policy discussions, but will provide input when requested.¹⁵⁸

The ability of the recruitment sector to shape government policy was most recently evident in the influence it brought to bear to prevent the Philippines from ratifying the ILO Private Employment Convention No. 181. A May 2016 policy position paper from the Centre for Migrant Advocacy noted that then POEA Administrator Hans Cacdac indicated that the Philippines was in favour of ratification and on track to do so.¹⁵⁹ Article 7 of the Convention states that “private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers” and ratification would have bound the Philippines to enforce a prohibition on fees.¹⁶⁰

There has always been what Mi Zhou describes as strong resistance to any policy of fee abolition from the private sector, which regards charging fees to workers as a commercial necessity.¹⁶¹ The Philippine Association of Service Exporters has argued that abolishing fees would be detrimental to individual agencies and to the Philippines, which would become less competitive than other labour-sending countries.

One labor migration expert in the Philippines, with experience working in government and with intergovernmental agencies told us that the recruitment industry in the Philippines wields significant influence, due to its wealth and its organization, and that it is able to bring pressure to bear on the government and

policy-making.¹⁶² A retired government official we spoke to provided an example of how recruitment agencies can bring their influence to bear at a more operational, corridor level, telling us that recruitment agencies in the Philippines and Hong Kong had successfully lobbied to stymie efforts to more strictly audit the performance of agencies recruiting Filipino workers into Hong Kong.¹⁶³

Taiwan

In October 2019, representatives from Taiwan's recruitment sector associations met with the Ministry of Labour with a view to discussing the prohibition on placement fees.¹⁶⁴ Well-sourced media accounts of the meeting reported that it was arranged at the behest of the recruitment sector and stems from their concerns that their inability to charge workers placement fees at the end of their three-year contract left them “unable to compete with illegal labor brokers who take advantage of migrant workers.”¹⁶⁵

Civil society groups in Taiwan told us that the recruitment agency wields significant influence. In 2016, Taiwanese politician Lin Shu-Fen said in a legislative meeting in parliament that she had been threatened by recruitment agencies for promoting reforms to protect migrant workers' rights (specifically the reform that means foreign workers are no longer required to leave the country after their 3-year contracts expire).¹⁶⁶ Taiwanese recruitment agents told us that the government consults senior figures in the industry whenever it is considering amending laws or regulations.¹⁶⁷ They told us that the government communicates directly with recruitment sector associations who pass on information to individual agencies, and agencies can then relay their opinions to the Ministry of Labour within seven to ten days.¹⁶⁸ “It's common for recruitment agencies to interact with the Ministry of Labour”, one agent told us citing a recent engagement to prevent outbreaks of Covid-19 in migrant worker accommodation such as the one that occurred in Singapore.¹⁶⁹

156. Marie Apostol of the Fair Hiring Initiative, Ellene Sana of Centre for Migrant Advocacy and Daryll Delgado of Verité were among those interviewed who concurred with this characterisation.

157. Telephone interview with Daryll Delgado, Verite, (2 July 2020).

158. Interview with Marc Capistrano, Staffhouse International, (4 February 2020).

159. “A Call for Ratification: Philippine Labor Migration and the ILO Private Employment Agencies Convention, 1997 (c. 181)”, *Center for Migrant Advocacy*, (May 2016), p. 13.

160. ILO Private Employment Agencies Convention, 1997 (No. 181), article 1(7).

161. Mi Zhou, “Fair Share? International recruitment in the Philippines,” *ILO Working Paper*, (2017), p. 30.

162. Telephone interview with unnamed labour migration expert, (27 August 2020).

163. Telephone interview with Jalilo Dela Tore, (14 January 2021).

164. Andi Kao, “Ministry of Labor Forum on Labor Brokers Criticised by Migrant Workers' Groups”, *New Bloom*, (10 October 2019).

165. Andi Kao, “Ministry of Labor Forum on Labor Brokers Criticised by Migrant Workers' Groups”, *New Bloom*, (10 October 2019).

166. Loa lok-sin, “Foreign workers reform bill passes first reading”, *Taipei Times*, (23 June 2016).

167. Telephone interview with recruitment agent SC, (2 July 2020). Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020).

168. Telephone interview with recruitment agent SC, (2 July 2020). Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020).

169. Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020).

Assessment against the Five Corridors indicators:

3. Bilateral labour arrangements

- 3.1** Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them? _____ 41
- 3.2** Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices? _____ 42
- 3.3** Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards? _____ 42
- 3.4** Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps? _____ 44
- 3.5** Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms? _____ 44

3. Bilateral labour arrangements

“The Philippines has made efforts to convene joint oversight committees but these have often been constrained by factors outside our control such as the incessant volatility of political environments abroad, or the intransigence or lack of interest of our foreign counterparts to enter into Bilateral Labour Agreements.” BERNARD PAUL M. MANGULABNAN, INSTITUTE OF LABOUR STUDIES, PHILIPPINES.

Summary

The Philippines commitment to bilateral labour agreements is evident in the number of agreements it has signed, the bureaucratic machinery that exists to facilitate their drafting and their implementation and in its drafting of model Memorandums of Agreement and Understanding in 2018. However, despite ambitious and creditable aims, the Philippines efforts to enshrine rights protection through BLAs has been hampered by its lack of leverage over destination states. The body of BLAs signed by the Philippines are replete with references to ethical recruitment, but the vast majority of these agreements are non-binding MOUs, with weak or non-existent implementation or monitoring mechanisms. There are exceptions to this, but the force and the content of the Philippines BLAs are contingent on the destination state’s respect for labour rights. In practice, BLAs serve largely as a

tool to facilitate labour migration, or as a crude form of leverage whereby negotiation focuses on threats to annul agreements and halt deployment rather than constructive negotiations aimed at enhancing the terms of rights protection within agreements. Crucially, there is little to no evidence that BLAs have been effective in improving protection for Filipino migrant workers.

Taiwan’s bilateral labour agreements are deliberately brief and abstract and are aimed at regulating cooperation on migration, not as instruments for negotiating migrant workers’ rights. Taiwan and the Philippines have signed three bilateral agreements, all of which pertain to the Special Hiring Program for Taiwan. Discussions on workers’ rights take place annually within technical working groups, but these discussions bear no relation to the three BLAs, which are high-level and facilitative.

Recommendations to the Philippine government:

- In all future negotiations on bilateral agreements, press destination states to sign binding Memorandums of Agreement that are public, and commit both countries to protect workers’ fundamental human rights and labour rights throughout the duration of their recruitment, employment and return. These agreements should explicitly bind both states to enforce the ‘employer pays’ principle in relation to recruitment fees, and should include oversight and dispute resolution mechanisms that include participation of key stakeholders including worker organisations.
- Ensure that Taiwan signs a binding labour agreement with any country that intends to provide it with foreign workers. Civil society and other key stakeholders from both countries should

be involved in the drafting of these agreements, which should be public, and should commit both countries to protect workers’ fundamental human rights and labour rights throughout the duration of their recruitment, employment and return. These agreements should explicitly bind both states to enforce the ‘employer pays’ principle in relation to recruitment fees, and should include oversight and dispute resolution mechanisms.

3.1 Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them?

Philippines

The Philippines has signed a total of 27 Memorandums of Understanding and 11 Memorandums of Agreement with 20 countries, and 3 Canadian provinces. Bilateral

labor agreements are considered as public documents, and some are available online. The Philippines has signed three Memorandums of Understanding with Taiwan; in 1999, 2001 and 2003.¹⁷⁰

Taiwan

Taiwan's bilateral labour agreements with the Philippines, Indonesia, Vietnam and Indonesia are all in the form of Memorandums of Understanding. They are publicly accessible online.

3.2 Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices?

Philippines

Whereas bilateral labor agreements are public documents, the minutes or proceedings of the negotiations, are protected by diplomatic secrecy and confidentiality. Bernard Mangulabnan's study of the Philippines bilateral labor agreements involved a study of Joint Committee Meeting documents and he told us that there was clear evidence that the Philippines incorporated human rights and labour rights into its negotiations and discussions, and that these negotiations had resulted in positive outcomes for Filipino migrant workers, noting that it was through these negotiations that the Philippines persuaded the Jordanian government to provide workers with contracts in a language they could understand.¹⁷¹

In Mangulabnan and Aquino's 2019 study of the Philippines bilateral labor agreements "key informant interviewees" stated that there are "non-negotiable" elements of the model MOA: pre-departure orientation,

medical check-up, travel clearance, prohibition from confiscation of passports and mobile phones, provision of social insurance, and standard employment contract. These are not human or labour rights *per se*, but they contribute to the realisation of rights.¹⁷² However, these provisions only exist within the MOA, they are absent from the less detailed and non-binding MOUs that the Philippines tends to favour.

Taiwan

There is no evidence that Taiwan prioritises fair recruitment in the drafting of its MOUs. The Ministry of Labour told us that "there is no need to discuss labor rights through bilateral agreements" on the basis that "the labor conditions of migrant workers are subject to the same labor laws and regulations as those of Taiwanese nationals."

3.3 Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards?

Philippines

The Philippines' bilateral labour agreements (BLA) come either in the form of Memorandums of Understanding (MOU) or Memorandums of Agreement (MOA). According to the Department of Labor, the MOA format is used "when the agreement describes in detail the specific responsibilities of, add actions to be taken by each of the parties, with the view to the accomplishment of their goals" and it "creates legally binding rights and obligations."¹⁷³ An MOU, by contrast, "is used where the parties have agreements on general principles of cooperation" and describe "broad concepts of mutual understanding, goals and plans shared by the parties." MOUs do not have the legal force of MOAs.

It is beyond the scope of this project to study all of these documents in detail, but a brief comparison of two of

170. <http://www.poea.gov.ph/laborinfo/BLB.html> The POEA separately notes five bilateral agreements for seafarers (Cyprus, Denmark, Japan, Liberia, Netherlands) at <http://www.poea.gov.ph/laborinfo/bSB.html> Email from Bernard Mangulabnan, (13 August 2020).

171. The text of the agreement does not make any reference to this requirement, but article 6 does state that contracts should be verified by the Philippines Overseas Labour Office. Principles and Controls for Regulating Deployment and Employment of Filipino Domestic Workers Between Government of the Hashemite Kingdom of Jordan and the Republic of the Philippines, 2012.

172. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 11.

173. Philippines Department of Labor, Administrative Order No. 246, "The Philippine Bilateral Labor Agreement Process: Guidelines and Procedures," (2018).

the Philippines bilateral labor agreements that have been held up as exemplary - one with New Zealand in 2008, and one with Saudi Arabia in 2012 - demonstrates the extent to which the force and the content of the Philippines BLAs are contingent on the destination state's respect for labour rights.¹⁷⁴

The 2008 Memorandum of Agreement on Labour Cooperation with New Zealand is binding, states that it is in "accordance with universal principles of international instruments on labour and employment," and references the ILO Declaration on Fundamental Principles and Rights at Work.¹⁷⁵ In 2012, the Philippines signed an "Agreement on Domestic Worker Recruitment" with Saudi Arabia.¹⁷⁶ Although the title would suggest that it is binding, an examination of the text reveals it to have the character of an MOU.¹⁷⁷ The agreement provides for standard employment contracts and commits both parties to ethical recruitment, but it makes no reference to human rights or labor standards.

In response to government concerns about the effectiveness of its bilateral agreements, the Department of Labor issued model MOUs and MOAs in March 2018.¹⁷⁸ These provide the "standard template for new generation of MOAs and MOUs that would be negotiated by the DOLE with countries of destination." According to the Department of Labor there will be flexibility to edit some contents "depending on the context of the country that is being dealt with."¹⁷⁹ Nonetheless, they provide us with a clear insight into Philippines government policy on the content of bilateral labour agreements.

Neither the model MOA nor the model MOU refer to internationally recognised human rights and labour standards. The MOA states that it is the obligation of the destination state authorities to ensure workers either retain their passports or deposit them with the Philippines embassy. It also states that Filipino workers abroad should have the right to have and use mobile phones to communicate with their families, and that confiscation of their phones should be prohibited. Destination states are also obliged to take steps to ensure adherence to labor contracts, in particular with regard to working hours, and to provide legal assistance to workers in the event of violations of labor contracts.¹⁸⁰ The model MOU contains no such details or obligations. A paragraph on workers' rights protection states simply that "both participants will promote the welfare of Filipino workers employed in [destination state] and protect their rights in accordance with the laws and regulations of both countries."¹⁸¹

It is notable that while the official title of the MOA refers to its purpose as "the Protection and Employment of Filipino Workers", the MOU makes no reference to protection and refers only to "labor cooperation."

In 2012, one Philippines migration expert noted in a study on the Philippines' use of BLAs that "the increasing focus on agreements [MOAs] intended to facilitate labour admission, with few provisions on labour conditions, indicates that the tension between increasing labour export and increasing protection present in the national legislation is also felt in the bilateral approach."¹⁸² The

174. Bernard Mangulabnan of the Institute for Labor Studies referred to the New Zealand agreement as an example of a BLA that had advanced Filipino migrant workers' rights. Correspondence from Bernard Mangulabnan, (August 2020, 13). A representative of Migrant Forum Asia, while skeptical about the effectiveness of bilateral labor agreements generally, referenced the Saudi Arabian agreement as evidence of an agreement that had had a broadly positive impact. Telephone interview with Tatcee Macabuag, Migrant Forum Asia, (23 July 2020.)

175. Memorandum of Agreement on Labour Cooperation Between the Government of New Zealand and the Government of the Republic of the Philippines, (4 November, 2008).

176. Agreement on Domestic Worker Recruitment Between the Ministry of Labor of the Kingdom of Saudi Arabia and the Department of Labor and Employment of the Republic of the Philippines, (19 May 2013).

177. Whereas the New Zealand MOA committed both parties to a detailed process for dispute resolution, including - if necessary - Ministerial discussions and consultations, the agreement with Saudi Arabia states that any dispute "shall be settled amicably...through diplomatic channels."

178. Telephone interview with Bernard Paul M. Mangulabnan, Institute for Labor Studies, Department of Labor and Employment, (July 2020, 29). Mangulabnan attributed the drafting of the model agreements to Philippines government concerns over the death of Filipina domestic worker Joanna Demafelis in Kuwait in February 2018. Also see Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 2. "In light of the high-profile reported cases of maltreatment of Filipino migrant domestic workers, there is a growing clamor from various stakeholders to review all labor agreements entered by the Philippines with countries of destination. A number of congressional inquiries were called on the first quarter of 2018 to shed light as to how the Department concludes agreements, how BLAs are actually implemented, and whether BLAs contribute to the general development outcomes of the country. These made a general review of BLAs not only topical but also urgent and imperative."

179. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 11.

180. Philippines Department of Labor, Administrative Order No. 246, "The Philippine Bilateral Labor Agreement Process: Guidelines and Procedures," (2018), Annex A: "Memorandum of Agreement on the Protection and Employment of Filipino Workers between the Government of the Republic of the Philippines and the Government of []."

181. Philippines Department of Labor, Administrative Order No. 246, "The Philippine Bilateral Labor Agreement Process: Guidelines and Procedures," (2018), Annex B: "Memorandum of Understanding on Labor Cooperation between the Government of the Republic of the Philippines and the Government of []."

182. Graziano Battistella, "Multi-level Policy Approach in the Governance of Labour Migration: Considerations From the Philippine Experience," *Asian Journal of Social Science*, Vol. 40, No. 4, Special Focus: Migrant Workers Between States: In Search of Exit and Integration Strategies in South East Asia (2012), p. 436.

evidence suggests this assessment holds true today.¹⁸³ A Department of Labor official, who conducted an extensive study into the effectiveness of the Philippines' bilateral agreements and "their role in mitigating the negative effects of overseas migration" told us that the Philippines had sought to tailor the content of its BLAs to the specific needs of the destination state, but acknowledged that its record on labour rights had been inconsistent.¹⁸⁴ A representative of the Philippines trade union Sentro drew attention to the lack of any bilateral agreement with Hong Kong, and told us that a bilateral agreement could be useful in enhancing protection for Filipino workers there.¹⁸⁵

Taiwan

Taiwan has signed Memorandums of Understanding with the Philippines, Indonesia, Vietnam and Thailand. These agreements make no reference to internationally recognised human rights and labour standards. A representative of the Ministry of Labour told us that Taiwan viewed its bilateral agreements as a means of regulating cooperation, not protecting rights. He said that Taiwan respected its international human rights commitment by signing up to multilateral human rights agreements and enshrining their provisions in domestic law.¹⁸⁶

3.4 Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps?

Philippines

Mangulabnan and Aquino note that the primary concern of the Philippines' BLAs is the curbing

and prevention of irregular migration between the Philippines and the countries of destination.¹⁸⁷ However, the majority of BLAs have explicit provisions relating to increased bilateral cooperation on ethical recruitment, placement, standardization of employment contracts, and involvement of Philippine Overseas Labor Office (POLO) in the verification of workers' contracts and information dissemination.¹⁸⁸ According to their study, mentions of ethical recruitment "figure heavily" in all BLAs signed with countries in the Middle East and North Africa and the majority of BLAs with those states explicitly state that foreign employers have to pay the direct costs of recruitment and placement of overseas Filipino workers and that there are sanctions for not abiding.¹⁸⁹

Taiwan

Taiwan's bilateral agreements contain no references to fair recruitment.

3.5 Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms?

Philippines

According to Mangulabnan and Aquino's study, almost all of the Philippines' BLAs make provision for a Joint Committee, composed of authorized representatives of both Parties. Their role is to implement the agreement, operationalize its provisions and settle disputes arising from the implementation.¹⁹⁰ The study also notes that a "diversity of contexts and political motives" provides immense challenges to DOLE in relation to implementation, monitoring, evaluation, and follow-up.¹⁹¹

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183. This is not only true of the Philippines, see Sophie Henderson, Richa Shivakoti and Matt Withers, "A Critical Analysis of the Migration Ban Lifecycle for Women Domestic Workers in the Indo-Pacific Region", *The Centre for the Study of Global Human Movement*, (June 2020 ,30).
184. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 2. Telephone interview with Bernard Paul M. Mangulabnan, Institute for Labor Studies, Department of Labor and Employment, (July 2020 ,29).
185. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).
186. Interview with Paul Yu-Kuo Su, Deputy Director, Cross-Border Workforce Management Division, Ministry of Labor, (17 January 2020).
187. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 11.
188. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 11.
189. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 21.
190. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 28.
191. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 2.

The Philippines commitment to oversight is evident in the fact that the Department of Labor has a Bilateral Labour Agreement Committee, and within that sits an Oversight Committee, whose role is to “implement the negotiated BLA and observe timeline and performance parameters.” These committees are to be headed by the senior official involved in the Joint Committee Meetings in any country.

However, a content analysis of records made available to the Institute of Labor Studies researchers revealed that out of the ten countries in the Middle East and North Africa with whom the Philippines has signed BLAs, only three (Qatar, Saudi Arabia, and the UAE) have held any Joint Committee meeting.¹⁹² It is not clear the extent to which this relates to the power imbalances between origin and destination states but in discussions about bilateral agreements migration experts and labour officials in the Philippines referenced origin states lack of leverage as an important overarching factor that hinders the effectiveness of BLAs as a means of protecting migrant workers.¹⁹³ Academic research supports this, although notes that the Philippines exercises more leverage than other destination states in this regard.¹⁹⁴ Mangalumba and Aquino refer pointedly to “the intransigence or lack of interest of foreign counterparts to enter into BLAs” in the section of their paper on joint committees.¹⁹⁵

Taiwan

An official from the Ministry of Labor in Taiwan said that the content of MOUs were deliberately “brief and abstract” in order to regulate collaboration. The most recent of the three MOUs between Taiwan and the Philippines was signed in 2003. It provides for implementation of the Special Hiring Program for Taiwan “through a process of regular and continuing consultations between appropriate authorities of both sides with the end view of coming out with a mutually acceptable system, procedures and mechanism.”¹⁹⁶

According to Mangulabnan and Aquino’s study, Taiwan and the Philippines have held seven joint committee meetings. These appear to be a reference to what a Philippines Labour Attache in Taiwan described as annual technical working group sessions. He told us that the bilateral agreements served as a “reference point” for these meetings, but the topics discussed in these meetings are not covered by the scope of the BLAs. In 2019, for example, issues discussed included “medical expenses, fishery worker hiring fees, jobs at Taiwanese dairy farms, and caregiver training.”¹⁹⁷ As such, the progress made in these discussions is not directly related to issues addressed in the MOUs.

192. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, “A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation,” *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 28.

193. Telephone interview with Tatcee Macabuag, Migrant Forum Asia, (23 July 2020.) Telephone interview with Bernard Paul M. Mangulabnan, Institute for Labor Studies, Department of Labor and Employment, (29 July 2020).

194. Graziano Battistella, «Multi-level Policy Approach in the Governance of Labour Migration: Considerations from the Philippine experience,» *Asian Journal of Social Science*, Volume 2021) ,40), pp. 446 - 419.

195. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, “A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation,” *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 28.

196. Memorandum of Understanding on Special Hiring Program for Taiwan between the Taipei Economic and Cultural Office in the Philippines and the Manila Economic and Cultural Office in Taipei, (2003).

197. Chang Hsiung-feng and Ko Lin, “Taiwan, Philippines discuss key issues at labor meeting in Taipei,” *Focus Taiwan*, (28 October 2019).

Assessment against the Five Corridors indicators:

4. Licensing, registration and certification schemes

- 4.1** Is the system comprehensive? Does it apply to recruitment for all kinds of work? _____ 48
- 4.2** Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers? _____ 50
- 4.3** *Origin state:* Are worker and recruiter organizations consulted on the design and implementation of these schemes?
Destination state: Are worker, recruiter and employer organizations consulted on the design and implementation of these schemes? _____ 52
- 4.4** Does the government put in place measures that incentivise ethical recruitment practices? _____ 52
- 4.5** Are employers and recruiters jointly liable/accountable for respecting workers' rights in the legislative and regulatory regime governing recruitment? _____ 54

4. Licensing, registration and certification schemes

“I didn’t look for an agency...my sister gave my name to someone who was looking for people, and then they gave my name to the agency in the Philippines. I didn’t check if it was licensed, my sister knows some people who got jobs in Taiwan with them.” JOHN FROM THE PHILIPPINES, 40, MACHINE OPERATOR IN TAIWAN.

Summary

The Philippines regulates its recruitment sector via a comprehensive and innovative licensing regime that enables the Philippines to not only regulate Philippines-based recruitment agents, but also to exert a degree of control over the conduct of foreign recruitment agents and employers. The Philippines has detailed rules and regulations on the issuance, renewal and suspension and cancellation of licenses, and requires that recruitment agents deposit funds to compensate workers whose rights are violated at any stage in the process. It only permits the Philippines-based agencies to whom it has issued licenses to do business with foreign entities whom it has accredited. The licensing system is transparent, but the huge demand for overseas jobs places enormous power in the hands of recruitment agents. In addition to the serious problems with enforcement and implementation addressed in section 5, the effectiveness of the licensing system is undermined by countervailing laws and policies that serve to disincentive ethical actors from entering the sector: the Philippines continues to allow recruitment agents to charge placement fees, seriously disadvantaging agents who operate an employer-pays policy; regulations contribute to the perpetuation of volume-based business models; and ethical actors seeking to enter the sector must demonstrate proof of their marketing capability prior to the issuance of any license, a requirement that arguably encourages practices that the law classifies as illegal recruitment. In addition to these systemic flaws, new entrants to the market can circumvent regulations by buying pre-existing licenses, and it is not clear how effective

the authorities’ measures to tackle this practice have been. Thus, despite strong regulations, the sector remains overwhelmingly dominated by the same actors and unethical practices are widespread. The Philippines is one of the few origin states to have a system of joint liability for employers and recruitment agencies, but it is not clear if it has made any substantial impact and recruitment agents and civil society alike are skeptical of its effectiveness.

Taiwan has a similarly comprehensive licensing system built into its legal and regulatory framework and, as is the case in the Philippines, broadly similar systems to license agents who recruit for land based work and seabased work. Although it is less detailed and less broad in its scope, the licensing system effectively operates in the same way as in the Philippines: a detailed and relatively demanding set of requirements to receive a license to recruit, and suspension or cancellation of licenses in line with proscribed conduct that includes contract violations and other violations of workers’ rights. Taiwan operates a broker assessment service that gives recruitment agents an A, B, or C ranking, but its effectiveness has been the subject of strong and persuasive criticism, and it currently gives no indication of the performance of recruitment agents and the extent to which they respect workers’ rights. Taiwan does not permit the charging of placement fees and has reformed laws to prevent recruitment agents from charging workers a placement fee every three years, but the practice continues. In large part due to weak enforcement, there is no evidence that the checks and balances built into the licensing system have been effective in protecting workers’ rights.

Recommendations to the Philippine government:

- Institute an ethical recruitment framework into the licensing and regulatory machinery of the

Department of Labor and the POEA, such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives

for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.

- Amend the POEA awards system: make it open to agencies that deploy fewer than 1000 workers, change the scoring system to reward ethical recruitment agencies, and remove volume of deployment as a scoring criteria.
- Further strengthen regulations to end the practice of re-selling POEA licenses to new entrants.
- Enable prospective new agencies to obtain a license without having already identified new markets and received job orders.

Recommendations to the government of Taiwan:

- Institute an ethical recruitment framework into licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- Significantly reform the Ministry of Labour's broker assessment service to ensure it accurately assesses and transparently reports on private employment institutions' efforts to ensure worker protection, including fee payment and responsiveness to worker grievances. Periodic random audits and inspections by a specialised inspectorate, which should include worker interviews, should complement a broader self-assessment process.

4.1 Is the system comprehensive? Does it apply to recruitment for all kinds of work?

Philippines

Private recruitment agencies have been a key component of Philippines' migration policy since the 1970s. In 1986, the Reorganization Act of the Philippines Overseas Employment Administration gave the POEA the mandate to "regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system."¹⁹⁸

At the time of writing there are 1224 licensed recruitment agencies in the Philippines, 829 for land based work (known as private employment agencies) and 395 for seabased work (known as manning agencies).¹⁹⁹

It is considered "illegal recruitment", which is a criminal offence punishable by a mandatory prison sentence, to engage in recruitment-related activity without a POEA license.²⁰⁰ The process for securing and renewing licenses is outlined in a detailed set of regulations, which also include details on the imposition of fines, reprimands, and the suspension or cancellation of POEA licenses.²⁰¹ There are two parallel and substantively similar sets of rules and regulations; one for land based work and one for seabased work. In tandem, they comprise a comprehensive licensing system underpinned by clear and detailed rules and processes.

The POEA rules and regulations include, among other things, details of the following: who can (and cannot) obtain a license to recruit for overseas work; stringent financial requirements, including proof of assets, license fees, and the depositing of 1 million Pesos (approximately US \$20,000) into an escrow account; the progression of the status of licenses, from provisional to regular; the process for the renewal of licenses; details on the POEA's oversight and investigatory powers; and the penalties it can impose in cases of non-compliance.²⁰² Compensation - a key element of workers' right to remedy - is built into the licensing system, since the funds that recruitment agents must pay into escrow prior to the issuance of its license are for "valid and

198. Executive Order No. 247, "Reorganization Act of the Philippines Overseas Employment Administration," (24 July 1986).

199. See POEA website at <http://poea.gov.ph/cgi-bin/agList.asp?mode=actLB>

200. Republic Act 10022, sections 5. "Illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority." Section 6 provides for sanctions.

201. See POEA Revised Rules and Regulations for Landbased Workers (2016) and POEA Revised Rules and Regulations for Seafarers (2016).

202. See POEA Revised Rules and Regulations for Landbased Workers (2016) and POEA Revised Rules and Regulations for Seafarers (2016).

legal claims arising from contracts of employment,” and licensed agents are then subject to mandatory conciliation when complaints arise.²⁰³

The POEA’s licensing system also extends to foreign recruitment agents and employers, who must have POEA accreditation to recruit or hire Filipino workers. To obtain a license, agents must also demonstrate “proof of marketing capability” which is to say they must already have secured an approved manpower request or job order, approved by the Philippines authorities in the destination state, for a minimum of 100 workers. For the sebased system the requirement is 50 crew order requests. Crucially, these orders must refer to what the POEA calls “new markets.”²⁰⁴

An innovative dimension of the Philippines’ licensing system is its accreditation of foreign recruitment agents and employers. The Philippines has no jurisdiction over these entities, but on paper at least it has the capacity to exercise a degree of extraterritorial control over them by only permitting the Philippines-based agencies it licenses to do business with foreign entities whom it has accredited.

Foreign recruitment agencies, for example, must provide documentation that includes a manpower request from the foreign employer and copies of master employment contracts and they have to deposit US \$50,000 into an escrow account.²⁰⁵ The POEA or the Philippines Overseas Labour Office can then issue them an accreditation certificate which is valid for four years. The regulations detail the circumstances in which the POEA can suspend accreditation of foreign employers or recruitment agents, for example, when there is “deliberate violation of the principal [recruitment agent]/employer with its contractual obligations to its hired Overseas Filipino Workers.”²⁰⁶ A former government official told us that the system did not in practice provide the Philippines authorities with any significant control over foreign agencies and employers, noting that the system could blacklist named agencies and employers, but that the Philippines had no ability to prevent offenders from simply changing their names and reapplying for accreditation.²⁰⁷

The POEA has full jurisdiction to assess administrative violations of its rules and regulations and to impose administrative sanctions.²⁰⁸ Serious offences, such as knowingly deploying a minor or processing false job orders can result in the cancellation of a recruitment agent’s license.²⁰⁹ Less serious offences can result in suspensions, reprimands and fines. The POEA has the power to permanently disqualify foreign recruitment agents and employers.²¹¹

Taiwan

Private recruitment agencies have facilitated the overwhelming majority of immigration for work into Taiwan since it began bringing migrant workers into the country to address labour shortages in the late 1980s. As is the case with the Philippines, Taiwan operates a licensing system to regulate the conduct of these agencies. It effectively has two licensing systems built into its two parallel regulatory frameworks. Both systems are managed via detailed regulations on the issuance, suspension and cancellation of licenses, and the imposition of fines.

The Ministry of Labour provides operational permits to private employment service institutions - the agencies that recruit foreign workers into manufacturing, domestic work, or its domestic fisheries sector (as distinct from its Distant Water Fishing sector) - and the licensing system is regulated via the ‘Regulations on the Permission and Administration of Private Employment Services Institutions’. The Fisheries Agencies authorizes entities to act as recruitment agents for the distant water fisheries sector. The Act for Distant Water Fisheries (and the Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members) outlines the licensing system for the entities that can recruit foreign workers for Taiwan’s distant water fishing sector. Fisheries operators as well as recruitment agents can obtain licenses to recruit workers for the distant water fishing sector. To obtain a license (known as an ‘Operation Permit’) to run a recruitment agency (known as private employment service institutions), prospective agents must, among other things, have a prescribed number

203. POEA Rules and Regulations for Landbased Workers (2016), sections 9 and 139. The funds placed in escrow are also used to pay administrative fines.

204. Full details of documentary requirements, fees, and procedures for landbased and sebased sectors are available here <http://www.poea.gov.ph/services/recruiters/Issuance20%of20%New20%License20%of20%Recruitment20%Agencies.pdf>

205. POEA Revised Rules and Regulations for Landbased Workers (2016), section 95.

206. POEA Revised Rules and Regulations for Landbased Workers (2016), section 101. The regulations for accreditation of foreign recruitment agencies and employers in the sebased sector are slightly more detailed. POEA Revised Rules and Regulations for Seafarers (2016), section 105 - 91.

207. Telephone interview with Jalilo Dela Torre, (14 January 2021).

208. POEA Revised Rules and Regulations for Landbased Workers (2016), sections 138 and 141. POEA Revised Rules and Regulations for Seafarers (2016), section 118.

209. POEA Revised Rules and Regulations for Landbased Workers (2016), section 143. POEA Revised Rules and Regulations for Seafarers (2016), section 123.

210. POEA Revised Rules and Regulations for Landbased Workers (2016), section 143. POEA Revised Rules and Regulations for Seafarers (2016), section 123.

211. POEA Revised Rules and Regulations for Landbased Workers (2016), section 144. POEA Revised Rules and Regulations for Seafarers (2016), section 127.

of qualified persons on staff, provide proof of capital assets and a bank-issued guaranty letter of security, and submit an organizational charter and a business plan.²¹² Regulations outline conditions under which the authorities can deny preliminary permits or permit renewals or revoke permits.²¹³ Any agency that commissions or unauthorizes individuals or accepts commissions to arrange for foreigners to work in Taiwan, or any agency that requests or accepts placement fees from foreign workers can have their operational permit revoked.²¹⁴ Anyone who engages in recruitment related business without a permit can be fined between NT\$60,000 and NT\$1,500,000.²¹⁵

Only Taiwanese nationals or Taiwanese-registered businesses or associations can act as recruitment agents for the distant water fishing sector.²¹⁶ To receive authorization to do so they must submit, among other things, a guarantee bond and a business plan guarantee bonds, a business plan, but the requirements are less stringent than for private employment institutions.²¹⁷ The Distant Water Fisheries Act provides for significant financial penalties (between NT\$4 million and NT\$20 million) for any person who recruits for the sector without authorization.²¹⁸ Agents that violate the rights of distant water fisheries operators or workers may be disqualified and have their guarantee bond confiscated.²¹⁹ Hiring foreign crew members abroad without authorization or violating the rights of foreign crew members can result in distant fisheries operators, who can act as agents, having their fishing license suspended.²²⁰

4.2 Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers?

Philippines

The POEA website contains an easily accessible record of all licensed and formerly licensed recruitment agencies.²²¹ Each record includes the name of the official representative of the company, contact details, and information on the status of their license - valid or invalid. In cases where the license is invalid, the site provides information on the period of its validity and a basic explanation for its invalidity - ‘cancelled’, ‘delisted’, ‘denied renewal’, ‘preventive suspension’, and ‘forever banned’ are some of the reasons provided. The site does not provide any more detail than this.

The website also provides information on licensing for agencies and registration for prospective OFWs, with links to lists of requirements, documents and processes.²²²

OFWs can also verify the status of recruitment agencies in person at the Public Information and Assistance Center in Manila.²²³ According to an ILO paper on the Philippines’ recruitment sector, prospective migrant workers’ awareness of licensing and other “regulatory and commercial realities of the recruitment business” is generally low.²²⁴ This lack of awareness is not confined to the Philippines. In 2018, the ILO and the ITUC launched a ‘Recruitment Advisor’ website encouraging workers to provide ratings and feedback on their recruitment agents.²²⁵

A representative of Philippines trade union Sentro told us that prospective migrant workers often rely on referrals from friends and family, and will often simply go with the agency that will let them “fly now and pay later” on the basis that they want to get into employment as soon as possible.²²⁶

Many of the migrant workers we spoke to told us that they looked at the POEA website to check if their recruitment agent was accredited. One Filipino

212. Regulations on the Permission and Administration of Private Employment Services Institutions, articles 12 ,11 ,5 and 14.

213. Regulations on the Permission and Administration of Private Employment Services Institutions, articles 15 and 31.

214. Regulations on the Permission and Administration of Private Employment Services Institutions, article 31.

215. Regulations on the Permission and Administration of Private Employment Services Institutions, articles 66 ,65 and 67 read in conjunction with article 40.

216. Distant Water Fisheries Act, article 7.

217. Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members, article 9.

218. Distant Water Fisheries Act, article 42.

219. Distant Water Fisheries Act, article 42.

220. Distant Water Fisheries Act, article 42.

221. Philippine Overseas Employment Administration, “Status of Recruitment Agencies”, available at <http://poea.gov.ph/cgi-bin/aglist.asp>

222. Philippine Overseas Employment Administration, “Services and Information for Licensed Recruitment Agencies”, available at <http://poea.gov.ph/services/recruiters.html> and “Services and Information for OFWs”, available at <http://poea.gov.ph/services/workers.html>

223. Philippine Overseas Employment Administration website, “Verification of License of Agencies and Job Orders”, available at <http://www.poea.gov.ph/services/workers/Verification20%of20%License.pdf>

224. Mi Zhou, “Fair Share? International recruitment in the Philippines,” *ILO Working Paper*, (2017), p. 49.

225. “ITUC launches migrant worker ‘recruitment advisor’ platform,” *International Trade Unions Confederation news release*, (4 April 2018). “The Recruitment Advisor, developed by the ITUC with support from the [ILO Fair Recruitment initiative](#), lists thousands of agencies in Nepal, Philippines, Indonesia, Qatar, Saudi Arabia, Hong Kong, Malaysia, Singapore, and other countries.”

226. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).

agricultural worker told us that he did not think to check the POEA website and an electronics sector worker told us she felt no need to check because she used the same agency as her sister, but while our sample does not allow for generalisations, it suggests a general awareness of the importance of using licensed agencies and the means of checking.²²⁷

Taiwan

In what it describes as an attempt to “enhance the service quality” of recruitment agents, the Ministry of Labour gives licensed agents rankings of A, B or C and publishes the rankings on its website.²²⁸ The Fisheries Agency operates a similar ranking system for the agents licensed to recruit workers for the distant water fisheries sector.²²⁹

The Ministry of Labour told us that agencies’ results are based on the Directions for Service Quality Evaluation on Private Employment Service Institutions - one of the few Taiwanese government documents not available online - and that recruitment agencies are assessed on “quality management, disciplinary actions, customer service, and other services.”²³⁰ A senior Ministry of Labour official told us that the evaluation system was part of their efforts to “guide the market in a better direction.”²³¹ The Ministry of Labour also told us that “an impartial public survey researching institute is in charge of the evaluation on service satisfaction to ensure that foreigners’ opinions towards the service quality of the private employment institutions can be precisely reflected in the assessment results.” It also implicitly acknowledged that the system could be improved, and told us that it had “plans to establish higher assessment indicators and evaluation methods beyond the current assessment system” and that a feasibility study was under way.

Recruitment agents and civil society organizations told us that, in their view, the system does not provide any useful indication into the performance of individual agencies. Two representatives of one

Taiwanese recruitment agency told us that in order to get an A ranking, it suffices to provide the relevant documentation demanded by the authorities.²³² A third Taiwanese recruitment agent told us that the failure to conduct worker interviews as standard was a key shortcoming and compared the system unfavourably to private sector assessment models, such as those conducted by members of the Responsible Business Alliance, which he said always include worker interviews.²³³ Another recruitment agent told us the system was simply part of the process of being a recruitment agent but was scathing in his assessment of its effectiveness as a tool for rating agencies’ performance.²³⁴

Rerum Novarum told us simply that the system was not effective.²³⁵ The Taiwan International Workers’ Associations has been publicly critical of the system and organised protests against its ineffectiveness, saying that the system is “not helpful to know how good or bad a brokerage company is” and that while it takes into account recruitment agents’ performance on worker complaints, the system is set up in such a way that it “overlooks individual complaints that are not formally reported and relies on the testimony of workers who may be afraid to speak out against their broker.”²³⁶ Serve The People noted that the system had potential, but told us that it did not in its current form serve the interests of migrant workers and that it did not provide useful information on the performance - good or bad - of Taiwanese recruitment agencies.²³⁷ Serve The People also told us that while it was theoretically possible for workers to change their recruitment agent, they were not aware of any instances where this had happened.

A representative from the Fishermen’s Service Centre in Kaohsiung, the home port of the distant water fisheries sector, said that the main problem in this sector lay with the foreign recruitment agents, singling out Indonesia for a notably bad record, and that he had advised the government to enact some sort of system that allowed Taiwanese employers to vet foreign recruitment agents.²³⁸

227. Telephone interviews with JC and JF, (24 and 26 August 2020).

228. Regulations for Permission and Supervision of Private Employment Services Institution, article 13.

229. Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members, article 18.

230. Letter from Ministry of Labour to FairSquare Projects, (26 August 2020).

231. Interview with Paul Yu-Kuo Su, Deputy Director, Cross-Border Workforce Management Division, (17 January 2020).

232. Interview with May-God Human Resources, Taipei City (18 February 2020).

233. Telephone interview with Champion Manpower Service, (30 September 2020).

234. Telephone interview with Shuoting Chen, Bingbing Manpower Intermediary Limited Company, (2 July 2020).

235. Interview with Rerum Novarum, Taipei, (20 February 2020).

236. Nick Aspinwall, “Taiwan Labor Ministry’s Brokerage Evaluation Sparks Concern”, *The News Lens*, (27 April 2018).

237. Whatsapp message from Lennon Ying-Dah Wong, Serve The People, (18 August 2020).

238. Telephone interview with Reverend Chen, Presbyterian Church (PCT) Seamen’s/Fishermen’s Service Centre, Kaohsiung, (17 July 2020).

4.3 *Origin state: Are worker and recruiter organizations consulted on the design and implementation of these schemes?*

Destination state: Are worker, recruiter and employer organizations consulted on the design and implementation of these schemes?

The licensing systems in operation in Philippines and Taiwan are enshrined in law and serve as the primary regulatory mechanism for the countries' recruitment agencies. As such the answer to this question directly mirrors 2.4.

4.4 Does the government put in place measures that incentivise ethical recruitment practices?

Philippines

Numerous experts on the recruitment sector pointed to a failure to incentivize ethical recruitment as a serious problem. As an Open Working Group on Labour Migration and Recruitment policy paper notes, “there is no official definition of “ethical recruitment,” but the term is used broadly to describe those recruitment agencies that do not charge fees to workers—a cornerstone of ethical recruitment practices—and that adhere to codes of conduct that strive to protect workers in the recruitment process and throughout the supply chain.”²³⁹

The paper notes that, generally speaking, the adoption of ethical standards in the sector has been low, and attributes this to: the vast number of workers seeking foreign employment; business models based on a high

turnover of workers rather than high rates of worker retention; the inability of ethical actors to compete with agencies that exploit workers by passing fees on to workers, not employers.²⁴⁰

All of these factors are prevalent in the Philippines.

Marie Apostol of the Fair Hiring Initiative told us that the Philippines' strong regulatory framework was seriously undermined by a system that made it extremely difficult for ethical actors to enter the market and compete.²⁴¹ The most obvious example of the Philippines *disincentivizing* ethical recruitment is the fact that it continues to allow recruitment agents to charge placement fees for all overseas workers, with the exception of domestic workers. As noted by Mi Zhou the Philippines “has contributed to an expectation on the part of the principal/employers that they can reduce their costs by passing them onto workers.”²⁴²

The POEA introduced what it now describes as a “hard-to-enter, easy-to-go” policy in 2002, with the aim being to make it difficult for new entrants to get into the sector, easy for licensed agencies to operate, and easy for violators of the regulations to have their licenses removed.²⁴³ Subsequent reports from the POEA note that the success of the policy is demonstrated by a reduction in the percentage increase of new licensees, relative to the previous year, and an increase in license cancellations.²⁴⁴ The policy appears to have had the effect of blocking ethical actors from entry. Hussain Macarambon, the director of the ILO's FAIR project in the Philippines, told us that the POEA Rules and Regulations were a key factor in the failure to incentivize ethical recruitment, referencing the law that requires new recruitment agents to have identified new markets and received job orders prior to the issue of their license.²⁴⁵ The ILO's 2017 Working Paper on the Philippines' recruitment sector noted that this “creates a “catch-22” situation where prospective agencies have to develop a market for Filipino workers as non-licensees” and that it arguably placed prospective

239. “Ethical Recruitment: a policy paper”, *Open Working Group on Labour Migration and Recruitment*, (2017).

240. *Ethical Recruitment: a policy paper*, *Open Working Group on Labour Migration and Recruitment*, (2017).

241. Telephone interview with Marie Apostol, Fair Hiring Initiative, (23 June 2020).

242. Mi Zhou, “Fair Share? International recruitment in the Philippines,” *ILO Working Paper*, (2017), p. 45.

243. “*POEA Annual Report 2002*”, Philippines Overseas Employment Agency, (2002). The policy was not initially referred to as ‘hard-to-enter, easy-to-go’ but quickly earned this moniker.

244. See, for example, “*POEA Annual Report 2004*”, Philippines Overseas Employment Agency, (2004) at p. 4 “Pursuant to the difficult to enter and easy to go policy on licensing system, only %35 of those who applied for new license was approved or a total of 92 licenses. This was lower than the %38 approval rating in 2003. In contrast, the number of licensed agencies cancelled increased by %163.2 to 50 in 2004 from 19 in 2003.”

245. Telephone interview with Hussain Macarambon, National Project Coordinator for FAIR project in the Philippines, ILO, (13 July 2020). Full details of documentary requirements, fees, and procedures for landbased and seabased sectors are available here <http://www.poea.gov.ph/services/recruiters/Issuance20%of20%New20%License20%of20%Recruitment20%Agencies.pdf>

agents in the position of having to recruit illegally, as the term is understood in Philippines law.²⁴⁶ The paper is also critical of the POEA's promotion of volume-based business models, as demonstrated by the awards it issues to recruitment agents.²⁴⁷ The POEA has issued performance awards since 1984.²⁴⁸ To even qualify for the awards system agencies have to deploy a minimum of 1000 workers overseas.²⁴⁹ The scores they then receive are weighted as follows:

Volume and quality of deployment: **30**

Technical capability: **30**

Compliance with laws, rules and regulations: **20**

Industry leadership and marketing performance: **15**

Social awareness and responsibility: **5**

The POEA defines marketing performance as the agency's accomplishment in generating new employers and additional job orders from its existing employers, which means that 45 points out of a possible 100 relate to the deployment of workers.²⁵⁰ This system of awards offers no incentive whatsoever to a recruitment agency that refuses to charge workers fees for their services. Furthermore, an agency that deploys large numbers of workers and generates new markets could score well overall even if they score badly on 'compliance with laws, rules and regulations', which accounts for only 20% of their total. As a Scalabrini Migration Center report on the POEA's award system noted, "despite the inclusion of a criterion on migrant workers' welfare, deployment has more weight than compliance with laws, welfare programmes and human resource development plans."²⁵¹

The awards are not simply ceremonial - the three different categories of awards are accompanied by a suite of privileges and exemptions. Presidential Award winners, for example, are exempt from the requirement that the Philippines authorities overseas verify the paperwork of their clients abroad, and all awardees are granted license extensions (under law licenses have to

be renewed every four years). Thus, the system in its operation not only rewards volume-driven business models, but it simultaneously reduces its own oversight capacity over the agencies that deploy large volumes of workers overseas.

As the ILO has noted - and as ethical recruitment agents in the Philippines confirmed to us - there is an apparent paradox in that ethical recruitment agencies generally avoid the domestic work sector. Instead, they focus on semi-skilled or skilled workers and deploy them only to employers on whom they have performed some level of due diligence. As such, ethical recruitment agents in the Philippines not only operate in a non-level playing field, but they eschew the country's biggest sector and one in which - theoretically - they can compete due to the ban on placement fees. One recruitment agent told us that the reason for this is simple: they do not believe it is possible for them to run commercially viable and ethical businesses in the sector that accounts for nearly 50% of the Philippines' overseas workers.²⁵³

A second Filipino recruitment agent, who operates a "no fees" policy for the workers he deploys told us that ethical recruitment is not commercially viable in cases where destination states do not ensure that employers pay the full costs of recruitment, and that ethical recruiters are at a clear commercial disadvantage in the Philippines. He told us that recruitment agencies in destination states will often have commercial agreements with numerous recruitment agencies in the Philippines, and that the agencies that make the workers pay their own recruitment fees that are often favoured by the destination state agencies, who can take the workers' money and pass the savings on to their clients (employers in destination states). The ethical agents are not excluded from the market, but it is their competitors who get a reputation for being able to secure overseas jobs quickly and thus paying fees becomes accepted as the cost of doing business effectively.²⁵⁴

246. Mi Zhou, "Fair Share? International recruitment in the Philippines," *ILO Working Paper*, (2017), p. 38. Section 76 of the POEA Rules and Regulations, defines illegal recruitment as "canvassing, enlisting, contracting" as well as "promising or advertising" for employment abroad, whether or not for profit, by a non-licensee.

247. POEA Revised Rules and Regulations, section 233.

248. For a detailed description of the awards and how they operate in practice see Maruja Asis and Stella P. Go "An Assessment of the Philippine Overseas Employment Agency Awards", *Scalabrini Migration Center for the International Labour Organisation Country Office for the Philippines*, (2014).

249. Maruja Asis and Stella P. Go "An Assessment of the Philippine Overseas Employment Agency Awards", *Scalabrini Migration Center for the International Labour Organisation Country Office for the Philippines*, (2014), p. 48.

250. Maruja Asis and Stella P. Go "An Assessment of the Philippine Overseas Employment Agency Awards", *Scalabrini Migration Center for the International Labour Organisation Country Office for the Philippines*, (2014), p. 50. Note that there are three separate awards. The above weighting is for the Presidential Award and the Excellence Award. The weighting for the Top Performer Award is slightly different with 'technical capability' and 'compliance with laws, rules and regulations' each receiving 25 points.

251. Maruja Asis and Stella P. Go "An Assessment of the Philippine Overseas Employment Agency Awards", *Scalabrini Migration Center for the International Labour Organisation Country Office for the Philippines*, (2014), p. 51.

252. Mi Zhou, "Fair Share? International recruitment in the Philippines," *ILO Working Paper*, (2017), p. 38

253. Interview with Marc Capistrano, Staffhouse International, (4 February 2020).

254. Telephone interview with Alfredo Palmieri (8 January 2021).

A central problem with the licensing system appears to be the ease with which licenses can effectively be transferred to third parties. Philippines NGO Migrante told us that it was relatively simple for suspended agencies to buy licenses. Consequently, while ethical actors face severe challenges to entry into the market by adhering to the rules, unethical actors can circumvent the regulations to obtain a license.²⁵⁵ Marie Apostol of the Fair Hiring Initiative, which develops, tests, and promotes global ethical recruitment models, told us that the buying and selling of licenses was a well-known fact and that when she was in the early stages of setting up her ethical recruitment agency, other recruitment agents advised her to simply buy an agency, thereby circumventing the license registration process, which is particularly arduous for new agencies.²⁵⁶ When it became clear that foreign companies, notably ones from Middle Eastern states, were exploiting the loophole to circumvent the law that prohibits foreigners from running recruitment agencies, the POEA introduced more stringent requirements for ownership transfer, but Apostol told us that the practice is still relatively common.²⁵⁷

A former government official, who had attempted without success to introduce more stringent oversight and audit requirements for the recruitment agencies in the Philippines to Hong Kong migration corridor, told us that there needs to be a transformation at policy level in order to facilitate the entrance of a critical number of ethical actors into the recruitment sector.²⁵⁸

The POEA has not at the time of writing responded to requests for interviews or to written requests for information, including its response to these criticisms.

Taiwan

Taiwan's broker assessment service has the potential to serve as a tool to incentivize ethical recruitment, but as noted in section 4.3 currently it does not do so, and it is telling that a Taiwanese recruitment agency who practised what they characterised as fair recruitment

were highly skeptical of the system's effectiveness. They told us that their business model was based on not charging placement fees to workers, and negotiating higher than average wages for them, but they rationalised this as primarily a business decision, based on their desire to maximize their retention rate.²⁵⁹

Recruitment agents in Taiwan are prohibited from charging placement fees to workers, but they are lobbying the government to legalise these charges and they are allowed to charge monthly service fees to workers. As such, the climate does not appear to be one where there is pressure on recruitment agents to act more ethically, but rather it appears that the government is under pressure to implement measures that will make recruitment less fair and less ethical.

One recruitment agent told us that any incentives for recruitment agencies to act ethically were being driven by multinational computing and electronics giants like Apple, not by the government.²⁶⁰ "If the factories are complying with the regulations [private sector codes of conduct], the recruitment agencies don't dare violate the rules," he said, adding that this meant that it would be the employers, not the workers, who would pay all recruitment agency fees. A second recruitment agent told us that despite the rules and regulations in place, it was relatively easy to enter the sector and to stay there, regardless of how unethical your business practices were." As long as you know a few Taiwanese bosses who need migrant workers, you can run the business", he said.²⁶¹

4.5 Are employers and recruiters jointly-liable/accountable for respecting workers' rights in the legislative and regulatory regime governing recruitment?

Philippines

Filipino law has provided for joint liability of recruitment agents since the original 1995 version of the Migrant

255. Telephone interview with Joanna Concepcion, Chairperson, and Ramon Bultron, Deputy Secretary-General, Migrante International, (28 August, 2020).

256. Email from Marie Apostol, The Fair Hiring Initiative, (5 October 2020).

257. Email from Marie Apostol, The Fair Hiring Initiative (5 October 2020).

258. Telephone interview with Jalilo Dela Tore, (14 January 2021).

259. Interview with May-God Human Resources, Taipei City, (18 February 2020).

260. Interview with unnamed recruitment agent (July 2020).

261. Interview with May-God Human Resources, Taipei City, (18 February 2020).

Worker Overseas Act, which states that “the liability of the principal/employer and the recruitment/placement agency on any and all claims under this Rule shall be joint and several.”²⁶² According to the law, joint liability “shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval.” The law states that the performance bond that recruitment agencies file is used when claims or damages are awarded to workers, but the law also states that the Philippines compulsory insurance scheme can be used to settle “money claims arising from employer’s liability which may be awarded or given to the worker in a judgment or settlement of his/her case in the NLRC.”²⁶³

The POEA Rules and Regulations states that prospective recruitment agents must submit as part of their application an undertaking that they will “assume joint and several liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract.”²⁶⁴

In an ILO white paper on recruitment from Asia into the six states of the Gulf Cooperation Council, Ray Jureidini has noted the obvious potential of joint and several liability schemes, while pointing out that they rely heavily on inter-governmental cooperation and require equal commitment from countries of origin and destination.²⁶⁵

Migrant Forum Asia has said that “notwithstanding the noble intention of the law, challenges and difficulties are still encountered in enforcing this joint and several liability of the private recruitment/placement agency with the foreign principal/employer.”²⁶⁶ They pointed to a lengthy legal process that leads workers to settle for small financial settlements rather than wait years for a legal judgment in their favour, the insufficiency of the security for claims, the lack of affordable legal

assistance for workers, and the fact that foreign agents and employers are often not held accountable for the rights violations - the Filipino recruitment agency usually absorbs the loss without pursuing legal action against the employer in foreign courts.²⁶⁷ Recruitment agents we spoke to offered different perspectives on the system. A recruitment agent that deploys Filipino workers to the fisheries sector in Taiwan supported the system and said that her firm had confidence that the workers they deployed overseas were treated in accordance with laws and regulations.²⁶⁸ An ethical recruiter in the Philippines offered a different perspective, telling us that he understood the rationale for the system but that recruiters should be required to do due diligence on their clients and should not be responsible for their ultimate conduct towards their employees. He questioned the system’s effectiveness, saying that “no bad agency became good” because of joint and several liability.²⁶⁹

A Philippines labour migration expert, with experience of working with government and intergovernmental agencies, told us that, while joint and several liability was a popular mechanism with some stakeholders, he sympathised with the criticism of others that it punished Philippines agents for the failings of the justice systems in foreign job markets.²⁷⁰ A former government official acknowledged that the system was not perfect, but told us that it was better that workers have some access to remedy for abuses they endured while working overseas, and that it should in theory encourage recruitment agents in the Philippines to do proper due diligence on their partners overseas.²⁷¹

Taiwan

Taiwanese law makes no provision for joint or several liability.

262. Rule VII, Section 3.

263. Rule VII, Section 3 appears to be in conflict with Rule XVI, Section 2. The compulsory insurance scheme covers: accidental death; permanent total disablement; repatriation costs when employment is terminated without any valid cause; subsistence allowance benefit for migrant workers involved in a case or litigation for the protection of his/her rights in the receiving country; money claims arising from employer’s liability which may be awarded or given to the worker in a judgment or settlement of his or her case in the NLRC; compassionate visit when a migrant worker is hospitalized and has been confined for at least seven (7) consecutive days; medical evacuation; and medical repatriation.

264. POEA Rules and Regulations, Rule II, Section 4, f, 8.

265. See Ray Jureidini, “Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab states corridor”, *ILO White Paper*, (2016), pp. 30-27.

266. “Policy Brief No 11: Joint and Several Liability of Recruitment/Placement Agencies With the Principal/Employer Under Philippine Laws”, Migrant Forum Asia, (2014).

267. Policy Brief No 11: Joint and Several Liability of Recruitment/Placement Agencies With the Principal/Employer Under Philippine Laws”, Migrant Forum Asia, (2014).

268. Interview with JackieLou Cielo, Trioceanic Manning and Shipping, (31 January 2020).

269. Interview with Marc Capistrano, Staffhouse International, (4 February 2020).

270. Telephone interview with unnamed labour migration expert, (27 August 2020).

271. Telephone interview with Jalilo Dela Torre, (14 January 2020).

Assessment against the Five Corridors indicators:

5. Machinery to implement and enforce legislative and regulatory regimes

- 5.1** Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates? _____ 58
- 5.2** Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters? _____ 60
- 5.3** Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment? _____ 63
- 5.4** Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector? _____ 65

5. Machinery to implement and enforce legislative and regulatory regimes

“Problems with migrant recruitment are not seen as systematic and endemic issues of Taiwan’s recruitment sector, but rather as problems that can be resolved with a few high-profile trafficking cases.” DR BONNY LING.

Summary

Numerous ministries and departments of the Philippines government cooperate closely, both at home and abroad, with the aim of protecting workers’ fundamental rights in the recruitment process. Despite overlapping mandates and instances of turfing, processes and mandates are generally clear. The labour inspectorate is not notably understaffed and steps have been taken to improve its training in recent years, but its scrutiny of the country’s recruitment sector is too limited in scope, notably in relation to the failure to interview prospective or returning migrant workers on issues such as fee payments. The Philippines has taken a more robust approach to the criminal prosecution of illegal recruitment, and has had some success in limiting the number of unlicensed sub-agents who operate. Its focus on issues such as unlicensed agents and fake job orders has enhanced protection, although these forms of illegal recruitment still go on. However, the authorities have devoted less attention to the legal prohibition on other forms of illegal recruitment, and consequently the serious and widespread problem of workers being charged fees above the legal maximum remains largely unaddressed. This does not appear to be an issue of resourcing or training. There is scant information on the pervasiveness of corruption in the recruitment sector but high profile cases occur quite regularly and experts agree that it is a serious problem that has a negative impact on migrant worker outcomes.

The vast majority of Taiwan’s migrant workers are subject to the oversight of a relatively well resourced labour inspectorate working under the Ministry of Labour. Workers in its Distant Water Fishing sector are overseen by inspectors from the Fisheries Agency for whom the geographical spread of the Taiwanese-flagged fleet poses a more obvious challenge than resourcing. Criticism of Taiwan’s inspection and enforcement regime focuses on its passivity, and industry and government experts have acknowledged that the initiatives of the private sector in the electronics sector can be more effective in raising standards and eliminating unethical recruitment and working practices than the authorities’ inspections. Taiwan has begun to make use of its anti-trafficking law to prosecute serious abuses in the distant water fishing sector but prosecutions and convictions are rare. Data from the Ministry of Labour and the Fisheries Agency shows a clear preference for the imposition of administrative sanctions over criminal sanctions despite persistent evidence of serious violations of Taiwan’s laws protecting migrant workers and lends credence to criticism that the justice system often does not treat complaints about employers and recruitment agents with the seriousness that they warrant. Corruption is rarely mentioned as an issue, but all experts acknowledge that the recruitment sector has significant power and influence.

Recommendations to the Philippine government:

- Shelve plans to institute a Department of Filipinos Overseas (DFO) and focus on enhancing existing agencies’ coordination and cooperation capacity.
- Set up an inspectorate or task force, similar to the Task Force Against Illegal Recruitment, that is independent of the Department of Labour and Employment. The inspectorate should have a mandate to accept and investigate complaints and to proactively inspect licensed recruitment agents for all forms of illegal recruitment as outlined in Section 5 of the Republic Act 10022.

Recommendations to the government of Taiwan:

- **Set up an inspectorate or task force dedicated to the protection of foreign workers that has a mandate to accept and investigate complaints and to conduct random inspections in the sectors in which foreign workers are employed (including the distant water fishing sector), as well as to inspect private employment institutions that recruit foreign workers. Civil society groups and other expert stakeholders should be consulted on the precise mandate of any such inspectorate, which should at a minimum address issues such as recruitment fee payment and contractual issues.**

5.1 Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates?

Philippines

The Philippines has a raft of ministries and departments with mandates that directly or indirectly relate to the protection of the rights of Filipino migrant workers or the regulation of the country's recruitment sector, including two government agencies that exclusively address overseas employment - the Philippines Overseas Employment Agency (POEA) and the Overseas Workers Welfare Administration (OWWA).

The POEA is an agency of the Department of Labour and Employment (DOLE). It has four core functions: industry

regulation; employment facilitation; workers' protection; and general administration and support.²⁷² It is simultaneously responsible for licensing and regulating private recruitment agencies in the Philippines, promoting overseas deployment of Filipino workers, and overseeing domestic anti-illegal recruitment initiatives (where it also has investigatory powers).²⁷³ In relation to the criminal offence of illegal recruitment, the POEA is mandated to receive complaints and to cooperate with public prosecutors from the Department of Justice in their investigation and prosecution. Other agencies in relation to the receipt of complaints of illegal recruitment, and their investigation and prosecution.²⁷⁴ The Republic Act 10022 also stresses the importance of Local Government Units (LGUs) in tackling illegal recruitment stating that they should work "in partnership with the POEA, other concerned government agencies, and non-government organizations" in the "dissemination of information to their constituents on all aspects of overseas employment."²⁷⁵

The POEA also generates significant amounts of revenue. In the third quarter of 2020, it generated 372 million Pesos (US \$14 million), 80% of which came from application fees, 13% of which came from licensing fees, and 6% of which came from fines and penalties.²⁷⁶

Like the POEA, OWWA is an agency of the Department of Labor and Employment. Its mandated role is to develop and implement welfare programs and services that respond to the needs of Filipino workers overseas and their families, and to administer the trust fund that comes from membership fees (all overseas workers pay US\$25 to become members) and other sources.²⁷⁷

To enhance inter-agency cooperation overseas, the Philippines authorities issued the Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas in 2015. The foreword to the 46-page document reiterates the country's human rights obligations states that its purpose is "the protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and

272. See core functions, mission, values and other information at POEA website <http://www.poea.gov.ph/programs/programs&services.html>

273. See Mi Zhou, "Fair Share? International recruitment in the Philippines," *ILO Working Paper*, (2017), pp. 9 - 11 for a full discussion of the interaction between the various agencies involved in managing migration.

274. Republic Act 10022, Rule 6, Section 4.

275. Republic Act, Section 16.

276. "Quarterly report of revenue and other receipts", Philippines Overseas Employment Agency, (23 November 2020). The remaining %1 came from rental income.

277. See OWWA website <https://owwa.gov.ph/index.php/about-owwa/f-a-q>

freedoms of the Filipino citizen abroad.”²⁷⁸ The manual clearly outlines the various roles and responsibilities of agencies including the Department of Foreign Affairs, the Department of Labor and Employment, the Department of Health, and the Department of Social Welfare and Development as they relate to Filipino workers overseas. Filipinos abroad who have been the victims of illegal recruitment are the responsibility of the Department of Foreign Affairs, for example, whereas the provision of labor services, such as assistance in employment-related complaints, is the responsibility of DOLE or OWWA.²⁷⁹

In July 2019, a draft bill was presented to congress which would consolidate a range of government institutions and offices within one centralised function, the Department of Filipinos Overseas (DFO).²⁸⁰ Under the proposal, the POEA, CFO and ILAB would be subsumed by the DFO, with the OWWA becoming an attached agency of the department.²⁸¹ An explanatory note to the draft bill states that “the absence of a single agency to address foreign employment concerns has made it difficult for the government to focus on the needs and demands of migration in general, and of OFWs in particular”, adding that migrant workers are confused over which agency to contact, and referring to conflict in policy pronouncements and overlapping jurisdictions.²⁸² The House Committee on Government Reorganization and the House Committee on Overseas Workers Affairs jointly approved the bill in November 2019. In March 2020, the bill was ‘one step away from clearing the lower chamber’.²⁸³

Civil society groups have in the past been critical of the authorities failure to coordinate effectively, attributing what they saw as failures to properly regulate recruitment and protect rights abroad to a “lack of coordination among the different agencies involved.”²⁸⁴ The Center for Migrant Advocacy told us that while

“turging” remained an issue and is always likely to pose problems, there have been clear improvements in recent years.²⁸⁵ The CMA cast doubt on the likely effectiveness of the proposed Department for Filipinos Overseas, on the basis that the rationale for the restructuring appears primarily political, rather than a response to poor inter-agency cooperation.²⁸⁶

Representatives of the Philippines Overseas Labour Office (POLO) in Taipei told us that there was an inevitable overlap of functions and assistance, given the range of different agencies involved in worker protection.²⁸⁷ A representative of the Manila Economic and Cultural Office (MECO), a non-governmental entity authorised to perform some consular functions on behalf of Filipino nationals in Taiwan, also told us that overlap of functions was commonplace but not problematic.²⁸⁸

At the time of writing the POEA has not responded to requests for interviews and written requests for information.

Taiwan

Two separate ministries are responsible for the regulation and oversight of Taiwan’s foreign workers. The Ministry of Labor oversees migrant workers in construction, domestic work, manufacturing, and the domestic fisheries sector, whereas the Fisheries Agency oversees migrant workers in the Distant Water Fishing sector. The regulation of this sector poses significant practical challenges in view of the fact that vessels are usually outside Taiwan’s territorial jurisdiction, and many workers do not board vessels in Taiwan. According to data provided to us by the Fisheries Agency, only 37% of approximately 20,000

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278. “Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas”, Department of Foreign Affairs, Department of Labor and Employment, Department of Social Welfare and Development, Department of Health, Overseas Worker Welfare Administration, and Philippines Overseas Employment Agency, (18 August 2015).
279. “Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas”, Department of Foreign Affairs, Department of Labor and Employment, Department of Social Welfare and Development, Department of Health, Overseas Worker Welfare Administration, and Philippines Overseas Employment Agency, (18 August 2015).
280. Charissa Atienza, “House panels approve bill creating OFW department”, *Manila Bulletin*, (26 November 2019).
281. Act Creating the Department of Overseas Filipino Workers, (Received) 1 July 2019, http://www.congress.gov.ph/legisdocs/basic_18/HB00002.pdf
282. “Explanatory note to An Act Creating the Department of Overseas Foreign Workers”, Republic of the Philippines House of Representatives, Eighteenth Congress, First Regular Session, House Bill No. 1) ,2 July 2019).
283. “House approves bill seeking to create new department for overseas Filipinos on second reading”, *CNN*, (4 March 2020).
284. “Philippine Migrants Rights Groups’ Written Replies to the List of Issues Relating to the Consideration of the Initial Report of the Philippines”, Consolidated by the Center for Migrant Advocacy, (March 2009), p. 13
285. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).
286. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).
287. Interview with Dayang Sittie, Kaushar G. Jaafar, and Sabrina Aaron, Philippines Overseas Labor Office, Taipei, (10 December 2019).
288. Interview with Arthur A Abiera Jr., Manila Economic and Cultural Office, Director, Taichung, (10 December 2019).

foreign workers in this sector entered Taiwan to take up their employment. Large numbers board vessels in Singapore (3,177), Mauritius (2,759), and Hong Kong (1,372) but another 5,685 crews board vessels in 54 other foreign ports.²⁸⁹

The US State Department's 2019 Trafficking in Persons report stated that "the separation of purview between the Ministry of Labor (MOL) and the Fisheries Agency (FA), coupled with insufficient inspection protocols, continued to impede efforts to address forced labor on Taiwan-flagged and owned fishing vessels in the highly vulnerable Distant Water Fleet."²⁹⁰ While the 2020 report noted "improved interagency coordination to combat trafficking" it repeated the same concern over the division of responsibility between the Ministry of Labour and the Fisheries Agency with regard to the Distant Water Fishing sector.²⁹¹

Greenpeace told us that it is not the separation of purview per se that is the problem, but rather the fact that whereas the Ministry of Labour is a large ministry with resources and specialist expertise, the Fisheries Agency is small and does not have either the skills or the resources to effectively regulate a sector that presents so many challenges.²⁹²

5.2 Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters?

Philippines

Responsibility for assessing compliance with the administrative regulations surrounding recruitment rests with the POEA and with DOLE.

Qualified labor laws compliance officers (LLCOs) are charged with assessing, validating and monitoring the compliance of licensed recruitment agents.²⁹³ There are a series of regular assessments, that are carried out either by the POEA or Labor Laws Compliance Officers, and spot inspections which the POEA conduct in response to complaints of illegal recruitment.²⁹⁴ The procedures for labour inspections, including recruitment agencies, are laid out in the DOLE's Manual on Labour Laws Compliance System and Procedures for Uniform Implementation.²⁹⁵ The manual also outlines the qualifications, experience, and training that inspectors, who are split into two levels of seniority, require.²⁹⁶ The role of labor inspectors in relation to licensed recruitment agencies is two-fold; firstly they are required to verify that employees in the recruitment sector comply with labor laws as it relates to their own employees, and secondly, they are required to verify that they are compliance with the laws pertaining to the recruitment and deployment of Filipino workers overseas.²⁹⁷

According to the ILO, there are 574 labour inspectors in the Philippines and they are responsible for covering 906,344 domestic establishments that fall under their purview, including the country's recruitment agencies. An ILO technical audit of labour inspection in the Philippines, carried out between 2015 and 2019 pointed to the need to "enhance coverage due to the low number of labour inspectors" and to improve inspector capacity and noted that it provided the Philippines labour inspectorate with training on "legal sufficiency and evidence-gathering during the conduct of inspections."²⁹⁸

289. Data provided to FairSquare Projects by the Fisheries Agency, (21 August 2020).

290. "Trafficking in Persons Report: 2019", *United States State Department*, (June 2019), p. 445.

291. "Trafficking in Persons Report: 2020", *United States State Department*, (June 2020), p. 475.

292. Telephone interview with Peiyu Chen and David Chiu, Greenpeace Taiwan, (22 September 2020).

293. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, Part II, Rule III, Section 31.

294. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, Part II, Rule III, Section 31. "The Assessment shall be conducted prior to the issuance of a license (post qualification assessment), upgrading of provisional license to a regular license, issuance of branch authority, renewal of license and branch authority, and transfer of office. The Assessment shall likewise be conducted once every two(2) years after renewal of license."

295. "Manual on Labour Laws Compliance System and Procedures for Uniform Implementation", *Department of Labor and Employment*, (29 August 2014), p. 11.

296. *Manual on Labour Laws Compliance System and Procedures for Uniform Implementation*, *Department of Labor and Employment*, (29 August 2014), p. 33.

297. *Manual on Labour Laws Compliance System and Procedures for Uniform Implementation*, *Department of Labor and Employment*, (29 August 2014), p. 11.

298. "Building the Capacity of the Philippines Labour Inspectorate", International Labor Organisation factsheet, (2019).

An ILO expert on labor administration and inspections familiar with the labor inspectorate told us that labor law compliance officers in the Philippines have a tendency to focus on recruitment agencies' compliance with Filipino labor law as it applies to their employees rather than the laws and regulations that relate to their clients (migrant workers).²⁹⁹

Recruitment agents in the Philippines told us that they were subjected to annual random inspections of their premises in a manner consistent with the DOLE's manual on inspections. They characterised the inspections as thorough but limited in scope.³⁰⁰ One ethical recruiter repeated the criticism of NGOs that the failure to interview prospective migrant workers is a shortcoming of the inspection process since such interviews would yield valuable information about illegal practices, including the charging of excessive fees above the legal maximum.³⁰¹

One expert on the recruitment sector told us that despite some recent advances, the labour inspectorate remains insufficiently resourced, and poorly trained, that it is reactive rather than proactive, and that it is inconsistent in its response to the complaints it receives from workers.³⁰² A former government official also told us that the key problem was the authorities' reactive approach to problems and noted that the large number of licensed recruitment agencies represented a considerable practical challenge to effective oversight.³⁰³ Human Rights Watch's Philippines researcher, Carlos Conde, told us that enforcement gaps in this sector reflect broader issues of weak governance and ineffective regulation.³⁰⁴ ILO expert René Robert told us that in general all countries' labour inspectorates would benefit from having more inspectors and that simply reaching a target number of inspectors does not speak to the effectiveness of systems or methods. He said that the Philippines was not badly understaffed in relation to other states and highlighted the relative professionalism of its inspectors and the rigour of its systems.³⁰⁵ The POEA did not respond to requests for data on investigations, prosecutions, and the capacity and training of its inspectorate.

According to the US State Department's 2020 Trafficking in Persons report, the POEA filed 1,107 administrative charges against licensed recruitment agencies for disallowed practices resulting in the cancellation of 16 agencies' licenses.³⁰⁶ In 2019, they filed 1,432 administrative charges and cancelled 40 licenses.³⁰⁷

Taiwan

The Ministry of Labour and the Fisheries Agency each have their own labor inspectors.

Where the Ministry of Labour is concerned, authority for labour inspections rests either with Ministry of Labour authorities in six special municipalities - Kaohsiung City, Taipei City, New Taipei City, Taichung City, Tainan, Taoyuan City. In response to a query on the number of inspectors available to oversee the operations of the country's recruitment sector, the Ministry of Labour provided us with detailed data on inspectorate capacity more generally: in August 2020 there were 325 labour inspectors working at local government level, and an additional 175 occupational health and safety inspectors. The Ministry of Labor said that the total number of labor inspectors had "reached 1000" and added that this was "close to the standards for developed countries recommended by the ILO."³⁰⁸ (The response did not elaborate on the source of this ILO recommendation. The ILO's convention on labour inspections states that "the number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate.")³⁰⁹ The Ministry of Labour also told us that it "subsidizes local governments to dispatch foreign workers inspectors who are responsible for visiting and inspecting how the employers treat the hired migrant workers and if the brokers perform their duties."

The Ministry noted that inspectors are responsible for the health and safety of all workers across the country, including those of migrant workers. The data that the Ministry provided on inspections carried out annually since 2015 suggests that the inspectorate is well-

299. Telephone interview with René Robert, International Labor Organisation, Labor Administration and Inspection Specialist, (24 July 2020).

300. Interview with JackieLou Cielo, Tricoceanic Manning and Shipping, (January 2020 ,31). Interview with Marc Capistrano, Staffhouse International, (4 February 2020).

301. Interview with Marc Capistrano, Staffhouse International, (4 February 2020).

302. Telephone interview with Marie Apostol, Fair Hiring Initiative, (22 June 2020).

303. Telephone interview with Jalilo Dela Torre, (14 January 2021).

304. Telephone interview with Carlos Conde, Human Rights Watch Philippines researcher, (19 June 2020).

305. Telephone interview with René Robert, International Labor Organisation, Labor Administration and Inspection Specialist, (24 July 2020).

306. "Trafficking in Persons Report: 2020", (June 2020), p.408.

307. "Trafficking in Persons Report: 2020", (June 2020), p. 408.

308. Data provided to FairSquare Projects by the Ministry of Labor, (26 August 2020). A Taiwanese government report on the protection of migrant workers, updated in 2020, said that in 2018 it added an additional 62 inspectors to the 274 who have been in place since 2000. "Report on Protection of the Rights for Foreign Workers", Ministry of Labour, (January 2020), p. 24.

309. ILO Labour Inspection Convention, 1947 (No. 81), article 10.

resourced. In 2019, for example, the Ministry carried out a total of 40,466 labour standard inspections and 125,798 health and safety inspections, all of which they told us they conducted without notice being given in advance. The number of inspections carried out in response to worker complaints in 2019 was 11,614. It has not been possible to determine how much of this capacity is directed at the migrant worker population.

Information provided to us by the Ministry of Labor included details on the following sanctions applied between 2015 and July 2020: 658 individuals received fines of between NT \$100,000 and \$500,000 (between US \$3,415 and \$ 17,080) for illegally referring foreign workers to work for a third party; and 34 private employment institutions received fines totaling NT \$6.6 million (US \$225,000) for illegally charging fees to foreign workers.³¹⁰ The Ministry told us that in this five year period, they had denied or suspended permits in 277 instances “mostly due to the percentage of foreign workers whose whereabouts were unknown.”³¹¹

Information provided to us by the Fisheries Agency on its inspection capacity notes that it has had a crew interview system in operation since 2018, which involves interviewing workers in the Distant Water Fishing sector about their rights and working conditions when they enter Taiwan’s domestic ports. The number of inspectors increased to ten in 2020, up from six, and they told us that they speak to crews from approximately 80 fishing vessels annually. The Fisheries Agency has inspectors stationed at six foreign ports, although it appears these inspectors are primarily concerned with identifying illegal or unreported fishing, rather than the rights and working conditions of crew members or the terms of their recruitment.³¹² With reference to this data, Greenpeace told us that it confirmed their view that the Fisheries Agency does not have the resources to effectively regulate the sector. They also expressed concerns about the training provided to inspectors, referencing the fact that inspections have in the past conducted inspections but failed to identify very serious human rights abuses that subsequently emerged and were documented by Greenpeace.³¹³

As of July 2020, the Fisheries Agency told us that they had issued the following sanctions: 159 fines totalling NT\$ 18.54 million (US\$633,000) in cases where fisheries operators had employed foreign crews without authorization; eleven fisheries operators have been fined a total of NT\$ 1.75 million (US\$59,000) for violating the rights of foreign crew members; one fine of NT\$ 4 million (US\$136,000) for operating as a recruitment agent without authorization; one revocation of authorization for a private employment institution (the agency received a D grade in its performance review for 2 consecutive years); and three 1-year suspensions from recruiting new crew (for D ratings in their performance reviews).³¹⁴ The Fisheries Agency noted that they had also issued 114 cases of administrative guidance “as warnings, so as to improve the performance of the fisheries operators.” The Fisheries Agency also told us that they had never to date confiscated any agencies guarantee bonds.³¹⁵

Stakeholders offered contrasting views of the effectiveness of Taiwan’s labour inspection regime. A Filipino labour attaché in Taiwan praised the country’s labour inspection system, saying that one call to the Ministry of Labour was sufficient to ensure a spot site inspection.³¹⁶

A Taiwanese NGO that provides support and shelter to migrant workers told us that performance on labour inspections was inconsistent, and that generally inspections were better in the northern cities. He attributed this to the presence of the NGO sector in the north of the country.³¹⁷ Two further NGO said there was an insufficient number of inspectors, and described the approach of the inspectors as overly passive.³¹⁸ A representative of Rerum Novarum described being present on an inspection on fishing boats in 2021 and told us that, among other things, inspectors had provided incorrect information to workers about the services available to them on the 1955 Hotline (addressed in detail in section 7), and that Indonesian translators had misrepresented inspectors’ questions. He described the standard of inspection as poor and said that at one point, an inspector had told an employer to go and buy drinking water in order that they could note in their report that the vessel had sufficient drinking water on board.

310. Data provided to FairSquare Projects by the Ministry of Labor, (26 August 2020).

311. Data provided to FairSquare Projects by the Ministry of Labor, (26 August 2020).

312. Data provided to FairSquare Projects by the Fisheries Agency, (21 August 2020). The Fisheries Agency referred to the role of the inspector as being to “verify the catch”, although added that they also conduct interviews with crew members.

313. Telephone interview with Peiyu Chen and David Chiu, Greenpeace Taiwan, (22 September 2020).

314. Data provided to FairSquare Projects by the Fisheries Agency, (21 August 2020).

315. Data provided to FairSquare Projects by the Fisheries Agency, (21 August 2020).

316. Interview with Rustico Sm. Dela Fuente, Labor Director, Philippine Representative Office in Taiwan, Kaohsiung City, (19 February 2020).

317. Interview with Lennon Ying-Dah Wong, Director, Serve the People Association, Taipei, (20 February 2020).

318. Interview with Rerum Novarum Center, Taipei City, (20 February 2020). Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, (1 July 2020).

A large semiconductor manufacturer in Kaohsiung City told us that Taiwanese labour inspectors did not monitor either their conduct or that of their recruitment agents, and that Apple’s annual audits were far more important in terms of the potential ramifications for their business.³¹⁹ They said that they had terminated a long-standing relationship with one of their recruitment agents because the agent failed to meet the standards imposed by Apple’s supplier code of conduct.³²⁰ A Taiwanese government Minister also referred to the impact of foreign consumers’ demands for abuse-free products, specifically referring to Apple’s stringent demands on worker welfare, and how this had affected labour practices in Taiwan’s electronics sector.³²¹

5.3 Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment?

Philippines

In Philippines law, illegal recruitment is a criminal offence that carries the same penalties as human trafficking and considerable resources have gone into combatting it.³²²

The law empowers POEA or the DOLE to receive criminal complaints and to conduct surveillance, “on their own initiative” of alleged illegal recruitment activities.³²³ It is the job of the POEA to refer cases to the proper Prosecution office for preliminary investigation “after evaluation and proper determination that sufficient evidence exists for illegal recruitment and other related cases.”³²⁴ The other key actor is the National Bureau of Investigation, which is an arm of the Department of Justice and works alongside POEA in investigations into illegal recruitment.

In 2018, DOLE Administrative Order No. 551, created the DOLE Task Force Against Illegal Recruitment “aimed at intensifying its fight to curb such illegal activities to further safeguard the welfare of the Filipino workers from unscrupulous recruiters and syndicates.”³²⁵ The group is headed by the DOLE undersecretary, the POEA is vice-chair, and the heads of the Overseas Worker Welfare Administration and International Labor Affairs Bureau are members. Its operational and law enforcement arm is the Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG).

According to the US State Department’s 2020 Trafficking in Persons report, in 2019, the National Bureau of Investigation and POEA officials recommended 129 cases of alleged illegal recruitment for filing in the courts, as compared to 123 for the previous year.³²⁶ The State Department report praises the Philippines efforts, but also notes that a lack of human and financial resources has hindered anti-trafficking efforts generally, specifically mentioning the lack of a centralized database to track illegal recruitment.³²⁷ The report makes no mention of conviction rates, but a former government official told us that this typically runs at approximately 50%, due to complainants failing to pursue their cases or lack of witnesses.³²⁸

An expert on the Philippines recruitment sector told us that the authorities enforcement record on some aspects of illegal recruitment was strong, notably in relation to fake job orders or unlicensed recruiting, but noted that enforcement was largely confined to these issues and did not address the full gamut of illegal recruitment practices prohibited by law.³²⁹ For example, it is a criminal offence “to charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees”, however this practice remains widespread. A former government official expressed similar views, telling us that there was a narrow focus on unlicensed agents and not enough focus on oversight of licensed agencies.³³⁰

319. Interview with representatives of NXP Semiconductors, Kaohsiung City, (19 February 2020).

320. Interview with representatives of NXP Semiconductors, Kaohsiung City, (19 February 2020).

321. Interview with Lo Ping-Chen, Minister without Portfolio, Taipei, (12 February 2020).

322. Republic Act 10022, section 7. Penalties for illegal recruitment are prison sentences of between 12 and 20 years and fines of between 1 and 2 million pesos (US 40,000 - 20,000\$). The Philippines law on trafficking is Republic Act No. 10364 section 10 of which outlines very similar penalties for individuals convicted of trafficking offences.

323. Republic Act 10022, Rule VI, Sections 3 and 9.

324. Republic Act, Rule VI, Section 4.

325. Ferdinand Patinio, “Task Force vs. illegal recruitment, human trafficking formed,” Philippine News Agency (16 November 2018).

326. “Trafficking in Persons Report: 2020”, (June 2020), p.408.

327. “Trafficking in Persons Report: 2020”, (June 2020), p.408.

328. Telephone interview with Jalilo Dela Torre, (14 January 2021).

329. Telephone interview with Marie Apostol, Fair Hiring Initiative, (22 June 2020). Telephone interview with Jalilo Dela Torre, (14 January 2021).

330. Telephone interview with Jalilo Dela Torre, (14 January 2021).

A Philippines recruitment agent told us that unlicensed recruitment agents remained a problem, attributing their existence to the demand from destination states for cheap labour and the abundant supply of Filipino workers looking to leave the country for work and willing to pay to do so. He said that their involvement often led to the types of serious rights abuses that created negative headlines for the industry as a whole and drew attention to the practice of workers being recruited legally into transit states, such as the UAE, from where they are sent on to other countries illegally.³³¹ However, the Philippines approach to enforcement does appear to have been effective to some extent in limiting the role of unlicensed agents. In contrast to many other origin states, including the three other origin states in this study, the Philippines does not appear to have a significant problem with unlicensed sub-agents. We have not been able to secure data from the POEA to explain or fully substantiate this claim, but none of the stakeholders we consulted described sub-agents as a significant problem. The author of the ILO's seminal report into recruitment practices offered the view that the strict licensing requirements, which have shaped business models whereby recruitment agents must have regional offices rather than subcontracting this element out of their work to sub-agents, may also be a significant factor in this achievement.³³² A representative of Philippines trade union Sentro also told us that the authorities' awareness campaigns had been very effective in reducing the number of sub-agents, while noting that illegal recruitment remained a problem.³³³

However, while there appears to have been a successful attempt to root out the most egregious practices and to remove unlicensed actors from the market, there has been no complementary effort to tackle the widespread practice of recruitment agencies charging workers fees in excess of the legal maximum and where charges are filed, they appear to be administrative rather than criminal, limiting the deterrent effect of the regulations.

Taiwan

Although the law provides for criminal prosecutions for offences relating to the recruitment of foreign workers, in practice criminal prosecutions in cases that do not reach the very high threshold of trafficking in persons are rare. A representative of Taiwanese migrant workers' rights NGO, Serve The People, told us that it is increasingly difficult to prosecute criminal abuses of migrant workers, including in relation to recruitment-related activity, and that even obvious cases of trafficking are regarded by the authorities as labour disputes to be resolved rather than instances of criminality to be prosecuted.³³⁴ He provided us with documented evidence of serious abuses in the fishing sector, which left two Filipino workers denied adequate food and without medical care for several months. The Taiwan Legal Aid Foundation told us that judges often regard rights violations of foreign workers not as violations of the law but as disputes that should be resolved through discussion and mediation and not through the courts.³³⁵

The Act for Distant Water Fisheries does not explicitly provide for criminal sanctions against individuals who violate the rights of foreign crew members, either during their recruitment or thereafter, and those workers are not covered by the protection of the Labour Standards Act.³³⁶ In recent years, the authorities have begun to use anti-trafficking legislation - the Human Trafficking Prevention Act - to prosecute offences in the sector. In August 2018, the Yilan District Court sentenced an employment broker to five months' imprisonment for illegally deducting food and lodging fees from the wages of eight foreign fishermen—the first conviction of its kind.³³⁷ In 2019, a Kaohsiung court concluded prosecutions initiated in 2017 against 19 individuals for allegedly subjecting over 80 foreign fishermen to forced labor; seven of the defendants were convicted and sentenced to prison terms ranging from 10 to 18 months.³³⁸

The Ministry of Labour provided us with data indicating that they had passed a total of 42 suspected human trafficking case to the relevant authorities for investigation. The data they provided to us indicated

331. Telephone interview with Alfredo Palmieri, (8 January 2021).

332. Telephone interview with Dr Mi Zhou, Chief Technical Adviser, ILO South East Asia Regional Programme on Labour Migration in the Fishing Sector, (14 December 2020).

333. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).

334. Interview with Lennon Ying-Dah Wong, Director, Serve the People Association, Taipei, (20 February 2020).

335. Telephone interview with Fang Chun, Taiwan Legal Aid Foundation, (10 July 2020).

336. The only criminal acts explicitly proscribed in the Act for Distant Water Fisheries relate to navigation offences, as outlined in article 35.

337. "Trafficking in Persons Report: 2019", United States State Department, (June 2019), p. 445.

338. "Trafficking in Persons Report: 2020", (June 2020), p.408.

that they favour administrative sanctions over criminal prosecutions. For example, the Employment Service Act provides for financial penalties and prison sentences for individuals who illegally refer foreign workers to work for any third party, but while the Ministry of Labour has issued fines to 658 individuals or private employment institutions since 2015, there have been no prison sentences for violators. The Ministry told us that they had “no relevant statistics” in response to a request for information on the number of criminal prosecutions taken against Taiwanese employers for violations of the Labour Standards Act in cases involving foreign workers since 2015.

On January 28, 2021, public prosecutors in Taichung indicted four individuals on charges of human trafficking, violations of the Employment Services Act, and forgery of documents for their role in exploiting Vietnamese migrant workers in Taiwan’s manufacturing sector.³³⁹ Taiwanese recruitment expert Bonny Ling, who wrote about the case, said that it “raises fundamental questions about the system of oversight for the 1,500 labor agencies registered and operating in Taiwan to hire workers from Indonesia, the Philippines, Thailand, and Vietnam” and that any conviction would “be used to exemplify Taiwan’s commitment to combat human trafficking.” She also drew attention to the fact that media coverage of the case had focused on the fact that the woman who ran the recruitment agency at the heart of the allegations was a naturalised Taiwanese of Vietnamese origin. The case and the manner of its reporting, with the heavy emphasis on the foreign ethnicity of the main perpetrator, Ling told us, fed a narrative that the problems associated with recruitment into Taiwan are external and predominantly driven by the unscrupulous interests of actors abroad and not of Taiwan’s making. This creates the perception that problems with migrant recruitment are not seen as endemic or systematic, and that they can be resolved with a few high-profile trafficking cases.³⁴⁰ There is no evidence of racial discrimination in the Taiwanese authorities’ decisions to investigate or prosecute recruitment-related offences.

A former police officer told us that a major problem in the investigation of fraudulent recruitment, and the abuse of migrant workers more generally, was the lack of trained and competent translators.³⁴¹ He said that translators were often foreigners who had married Taiwanese nationals, who have no formal training and no knowledge of the legal terms or processes that are essential to ensuring foreign workers know their rights when interacting with the police.³⁴²

5.4 Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector?

Philippines

The Migrant Worker Overseas Act prohibits any government official or any of his or her relatives (by “consanguinity or affinity”), up to and including great-grandparents, from engaging directly or indirectly in the business of recruitment of migrant workers.³⁴³ Any government official or employee found to be in violation of this will face administrative charges.³⁴⁴

In late 2017 a Filipino Labor Secretary revealed that some POEA employees were illegally inflating their salaries by taking money from recruitment agents in return for the issuance of documentation.³⁴⁵ In February 2018, after a POEA and DOLE fact-finding investigation, the organisations publicly revealed the names of the POEA officials they said had been involved in corruption.³⁴⁶ In November 2019, senior officials at DOLE issued a public statement defending the Labor Secretary in response to a series of allegations that he had been involved in corruption.³⁴⁷

339. Bonny Ling, “Prosecution of a Fraudulent Labor Agency in Taichung: An Insight on the Exploitation of Migrant Workers in Taiwan,” *The News Lens*, (24 February 2021).

340. Telephone interview with Bonny Ling, (28 April 2021).

341. Interview with Peter Chen, former police officer and founder of the Taiwan Judicial Interpreters Association, (15 February 2020).

342. Interview with Peter Chen, former police officer and founder of the Taiwan Judicial Interpreters Association, (15 February 2020).

343. Migrant Workers Overseas Act, Rule V, Section 1.

344. Migrant Workers Overseas Act, Rule V, Section 1.

345. “DOLE, POEA reveal names of corrupt agency officials, illegal recruitment agencies in PH,” *The Filipino Times*, (21 February 2018).

346. “DOLE, POEA reveal names of corrupt agency officials, illegal recruitment agencies in PH,” *The Filipino Times*, (21 February 2018).

347. Ferdinand Patinio, “DOLE execs slam ‘smear drive’ vs. Bello,” *Philippine News Agency*, (21 November 2019).

According to the US State Department's 2019 Trafficking in Persons Report, "despite continued reports of corruption at all levels of government and the government's reported concerns about the involvement of Bureau of Immigration (BI) officers and employees in immigration act violations, such as allowing the illegal departure of minors for overseas work, the government did not convict any officials for complicity in trafficking."³⁴⁸ The 2020 report noted a range of investigations and referrals for prosecutions of officials involved in recruitment-related offences, but no criminal convictions.³⁴⁹

Human Rights Watch's Philippines researcher, Carlos Conde, described corruption in the Philippines as endemic and deep-rooted, and present in all government bureaucracy, not just POEA and DOLE. He drew attention to the widespread use and normalisation of "fixers" to expedite all manner of bureaucratic government procedures, the complexity of which further exacerbates the problem, allowing corruption to thrive.³⁵⁰ Experts on the recruitment sector concurred that corruption is a major problem in recruitment and that it is pervasive throughout the recruitment bureaucracy, and includes the overturning of license revocations, the approval of job orders that do not meet the requirements under Philippines law, and low-level corruption to expedite applications or other processes.³⁵¹ A 2018 report on Filipina domestic workers' access to justice, based on interviews and focus group discussions noted that "the term 'padulas' or 'grease money' emerged from the focused group discussion" with workers claiming that workers who had filed formal complaints with the Philippine authorities needed to be ready to pay bribes "to ease the process of their cases."³⁵²

Taiwan

The government of Taiwan has a comprehensive legal anti-corruption framework, although there are no specific measures to address the recruitment sector specifically nor any instances of officials or individuals employed in the recruitment sector having been investigated or prosecuted for bribery.³⁵³ There are sporadic cases of corruption involving government officials. The most recent case, reported in January 2020, involved a labor inspector found to have been illegally collecting monies totalling NT\$ 1.45 million (US\$48,300). He received a 14-year prison sentence.³⁵⁴

There is a general perception that despite the power of the recruitment industry, its behaviour should not be characterised as corruption, which many stakeholders see as a problem that lies with origin states.³⁵⁵ One academic referred to a culture of nepotism between the Taiwanese authorities and its business community, which enables employers and recruitment agents to skirt accountability and to escape censure.³⁵⁶

In August 2020, the Taiwanese authorities announced an investigation into government agencies for alleged leniency toward two Taiwanese-owned fishing boats accused of abusive labor practices toward migrant fishermen. The investigation stems from Greenpeace allegations of the use of forced labor, including excessive overtime, physical abuse and withholding of wages, against migrant fishermen on several distant-water fishing vessels, including two that are Taiwanese-owned.³⁵⁷

348. "Trafficking in Persons Report: 2019", *United States State Department*, (June 2019), p. 381.

349. "Trafficking in Persons Report: 2020", *United States State Department*, (June 2020), p.407.

350. Telephone interview with Carlos Conde, Human Rights Watch Philippines researcher, (19 June 2020).

351. Telephone interview with Marie Apostol, Fair Hiring Initiative, (22 June 2020).

352. "Migrant domestic workers' access to justice: A study on administrative complaints and money claims," Center for Migrant Advocacy, (2018).

353. See, for example "Taiwan Investment and Business Guide Volume 1 Strategic and Practical Information", (International Business Publications USA: 2012); GAN Integrity, "Taiwan Corruption Report", (September 2020).

354. <https://udn.com/news/story/7321/4298727> mandarin article needs footnoted

355. "From what I have heard, corruption is a problem in the sending countries. There is still corruption in Taiwan, but it happens much less." Interview with Kevin Chen, One-Forty, (6 February 2020).

356. Telephone interview with Dr Isabelle Cheng, University of Portsmouth, (22 June 2020).

357. "Control Yuan probing fishery abuse complaints", *Taipei Times*, (10 August 2020).

Assessment against the Five Corridors indicators:

6. Measures to prevent fraudulent and abusive recruitment

- 6.1** Does the government prohibit the charging of recruitment fees and related costs to workers and jobseekers? _____ 70
- 6.2** Are there laws and/or policies to ensure that the full extent and nature of costs, for instance costs paid by employers to labour recruiters, are transparent to those who pay them? _____ 73
- 6.3** Does the government take measures to ensure that employment contracts are clear and transparent, including an authoritative version in the worker's language, that they receive it in good time and that it contains all relevant terms and conditions, respecting existing collective agreements? Do they use IT to assist in this? _____ 76
- 6.4** Are there effective measures to prevent contract substitution? _____ 77
- 6.5** Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts? _____ 78



Migrant workers calling for reforms to Taiwan's recruitment and employment system, Taipei 2017. © NurPhoto / Getty Images

6. Measures to prevent fraudulent and abusive recruitment

“Excessive fee payment was rampant. Filipino workers had to pay large sums of money in spurious training costs and ended up in a debt trap, working for 6 months or more to pay off their debts before they could remit money to their families.”

FORMER PHILIPPINE GOVERNMENT OVERSEAS OFFICIAL.

Summary

The Philippines prohibits its recruitment agents from charging placement fees to some categories of migrant workers, including domestic workers. In theory, this means that a significant proportion of its overseas workers should not be required to pay placement fees to secure jobs abroad. The regulations on fees are detailed and clear. All migrant workers are required by law to meet some of the administrative costs associated with recruitment. In practice, legal loopholes mean that it is commonplace for Filipino workers to have to pay far in excess of what is required to secure employment abroad, even if they often pay less in fees than workers from other origin states. These

excess charges for training, medical certificates, or temporary food and lodging costs are essentially recruitment fees, and they are exacerbated by the usurious practices of licensed money lenders. The Philippines has detailed and clear regulations on standard employment contracts. It has deployed significant governmental resources overseas in all of the countries to whom it sends workers in significant numbers to mitigate the risk of contract substitution or other contractual irregularities, as well as to ensure the fundamental rights of all its nationals, documented or undocumented. In practice, as the case of Taiwan demonstrates, the Philippines allows destination states to deviate from the terms of the standard employment contract.

Taiwan allows its recruitment agents to charge monthly service fees to its foreign workers. Placement fees are prohibited, but many workers still have to pay these fees, notably upon renewal of 3-year contracts, and the recruitment sector has lobbied the government to legalise placement fees. Regulations on fees in the Distant Water Fishing sector are not as clear, and recent research into the sector notes recruitment fees as one of the main problems affecting workers. Recruitment fees are often a factor in preventing workers from leaving abusive employers. Excessive fees are often a factor in preventing workers from leaving abusive employers. The cost to workers of securing jobs in the manufacturing sector has been high and in part inflated because Taiwanese employers have charged kickback payments to recruitment agents. Industry initiatives, notably in electronics and driven by the most reputation-conscious brands appear to have been partially successful in eradicating this practice and reducing and in some cases eliminating the cost of recruitment for foreign workers, but it is not possible to precisely assess the effectiveness of these initiatives, and the Taiwanese authorities could not claim any credit for any improvement in recruitment practices linked to schemes such as the

Responsible Business Alliance. To compound the negative impact of recruitment fees, Taiwan has not adequately addressed the seemingly widespread practice of forcing workers to sign additional contracts that make provision for illegal salary deductions. These contracts provide a veneer of legality to arrangements that violate the law and this can prevent workers from challenging salary deductions, which is a key complaint. Recruitment agents often work in tandem with employers and against the interests of workers in these contractual disputes. Looking at the issue of recruitment fees from a corridor perspective, what we see in the experience of Filipino workers being recruited to work in Taiwan is a system whereby well-designed laws and regulations on fees and contracts can be critically undermined when the authorities fail to close legal loopholes that allow their recruitment agents to continue to pass inflated recruitment costs onto workers. An emblematic example of this, and one that we have not seen in any other corridor, is the system that allows Taiwanese courts to order deductions from Filipino workers' salaries, based on debt assumed in the Philippines and then sold to Taiwanese lending agencies.

Recommendations to the Philippine government:

- Adopt the ILO's definition of recruitment fees and related costs and mandate that Filipino employment agencies require foreign employers to pay all the costs of recruiting Filipino workers, including training and medical costs.
- Pass legislation that explicitly prohibits Philippine lending agencies from selling migrant worker debt to foreign lending agencies.
- Refuse to allow states that recruit Filipinos for work to make modifications to the POEA standard employment contract that would result in workers being forced into agreeing to different contractual terms than those agreed in the Philippines.

Recommendations to the government of Taiwan:

- Amend the Employment Service Act to make employers liable for all costs associated with hiring private employment institutions to recruit workers, including the monthly service fees charged to workers.
- Prohibit Taiwanese lending agencies from buying debt from foreign lending agencies that have loaned money to migrant workers to finance their recruitment, and deny them the right to seek court orders to make automatic deductions from foreign workers' salaries.
- Pass legislation to explicitly prohibit and meaningfully sanction contract substitution or other practices that lead foreign workers to agree to contractual terms less favourable than those agreed in their home country.

6.1 Does the government prohibit the charging of recruitment fees and related costs to workers and jobseekers?

Philippines

Some categories of migrant workers are required to pay placement fees to secure jobs abroad, and the majority have to pay related costs that include statutory medical and training costs, and accommodation costs. As a whole, Filipino workers continue to pay significant sums of money to secure foreign employment and the fees they pay fall under the ILO's definition of recruitment fees, many of which are not only legal but prescribed by the government.³⁵⁸

Under Filipino labour law, it is permissible for recruitment agents to charge placement fees for their services to some categories of migrant workers. With the exception of domestic workers, seafarers and workers going to countries that “either by law, policy or practice do not allow, directly or indirectly, the charging and collection of recruitment/placement fees” Filipino recruitment agents may charge workers a fee equivalent to one month salary, as specified in their POEA approved contract.³⁵⁹ (Theoretically this should mean that workers are not required to pay placement fees for jobs in many of the Gulf states, including Saudi Arabia, which prohibit the charging of recruitment fees to workers.)³⁶⁰ The POEA Rules and Regulations outline the fee structure.³⁶¹

All workers are required to pay the costs associated with all the personal documentation required (passport, police clearance, school records) as well as a

Department of Health medical examination, and health insurance coverage.³⁶² For seafarers, the regulations are similar, although employers or foreign recruitment agents are also responsible for their medical and training costs.³⁶³

Recruitment agents are required to pay the costs of compulsory insurance. Employers/principals are required to pay: visa costs; work and residence permit costs; return air-fares; transportation from airport to job sites; a POEA processing fee; an OWWA membership fee; and any additional trade test or assessment costs.³⁶⁴

It is a serious criminal offence - ‘illegal recruitment’ - to “charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment”,” to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance”, or to “grant loans to an overseas Filipino worker with interest exceeding eight (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan.”³⁶⁵

The Philippines' largest association of recruitment agents, the Philippines Association of Service Exporters, has argued that charging fees is a commercial necessity for its members.³⁶⁶ A representative of the Philippines Overseas Labour Office in Taiwan told us that reasonable recruitment fees in the Philippines and Taiwan are acceptable.³⁶⁷ Filipino migration experts told us that many recruitment agents privately view fees as a necessity to ensure workers fulfil their contracts, a view repeated by a recruitment agent cited in Mi Zhou's ILO 2017 white paper on the Philippines recruitment sector.³⁶⁸

358. “General Principles and operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs”, International Labour Organisation, (2019).

359. POEA Revised Rules and Regulations, section 51.

360. See Ray Jureidini, “Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab states corridor”, *ILO White Paper*, (2016), p. 9. Jureidini cites Saudi Arabia's 2005 labor law to demonstrate that there is a legal prohibition on fees, albeit one that is not enforced. Article 40: “An employer shall incur the fees pertaining to recruitment of non-Saudi workers, the fees of the residence permit (*iqama*) and work permit together with their renewal and the fines resulting from their delay, as well as the fees pertaining to change of profession, exit and re-entry visas and return tickets to the worker's home country at the end of the relation between the two parties.”

361. Philippines labour code, article 32. POEA Revised Rules and Regulations Governing the Recruitment and Employment of Seafarers, section 49.

362. POEA Revised Rules and Regulations, section 50.

363. POEA Revised Rules and Regulations Governing the Recruitment and Employment of Seafarers, section 50.

364. POEA Revised Rules and Regulations, section 53.

365. Migrant Worker Overseas Act, as amended by Republic Act 10022, section 6.

366. Mi Zhou, “Fair Share? International recruitment in the Philippines,” *ILO Working Paper*, (2017), p. 30.

367. Interview with representative (unnamed) Philippines Overseas Labour Office representative, (December 2019).

368. Telephone interview with Maruja Asis, Scalabrini Migration Centre, (August 2020 ,1).Mi Zhou, “Fair Share? International recruitment in the Philippines,” *ILO Working Paper*, (2017), p. 30.

The Centre for Migrant Advocacy has strongly advocated for fee abolition, arguing that allowing agents to charge placement fees makes it difficult for workers to distinguish between legal and illegal fees, that piecemeal fee regulations produce differential protections for different workers (amounting to discriminatory protections), and that fees hinder ethical actors who do not charge workers any fees from entering the sector.³⁶⁹

Taiwan

Taiwan prohibits private employment service institutions (referred to as recruitment agents henceforward) from charging migrant workers up front placement fees, but they are allowed to charge migrant workers monthly fees for their services.³⁷⁰ The monthly service fees they can charge to migrant workers should be a maximum of NT\$1,800 (US \$60) for each month in the first year, a maximum of NT\$1,700 (US \$57) for each month in the second year and a maximum of NT\$1,500 (US \$50) for each month after the third year.³⁷¹ The Employment Service Act states that workers in the aforementioned provisions may reside in Taiwan for a maximum period of twelve years, or fourteen years in the case of domestic workers and caregivers.³⁷²

Recruitment agents are allowed to charge employers of foreign workers an annual service fee of up to NT\$2000 (US \$67) and a registration fee and placement fee, of either one month's salary (if they earn less than the national average) or four months' salary (if they earn more than the national average).³⁷³ Despite the fact that they provide far more services to employers

than to migrant workers, the total fees that Taiwanese recruitment agents can legally charge migrant workers over the duration of their contract are significantly higher than the fees they can charge their employers.³⁷⁴ Over a period of three years, a recruitment agent can charge a foreign worker in the manufacturing sector fees totalling NT\$60,000 (US \$2,025), while their employer will pay approximately NT\$30,000 (US \$1,012).³⁷⁵

The regulations on fees in the distant water fishing sector are different. The law states that contracts with foreign workers should include details on fees, but does not explicitly state what fees are allowed.³⁷⁶ It explicitly prohibits service fees, but this prohibition aside, there is a lack of clarity on the issue. Greenpeace told us that they had called on the Fisheries Agency to amend and clarify the law.³⁷⁷

It should be noted that recruitment agents in Taiwan often serve as interlocutors between employers and foreign workers. A Filipina worker in the electronics sector told us that recruitment agents are always involved when workers at her company make complaints, even though the company has a Human Resources department and workers are able to communicate with them.³⁷⁸ (The extent to which recruitment agents perform this role effectively is addressed in section 7.)

The manner in which recruitment agents collect their service fees from workers varies, a Taiwanese NGO told us. Some recruitment agents bill their clients, who can pay in convenience stores, others collect their fees in person at factories. In many cases, employers deduct the service fee and send it to the recruitment agents

369. "A Call for Ratification: Philippine Labor Migration and the ILO Private Employment Agencies Convention, 1997 (c. 181)", *Center for Migrant Advocacy*, (2016), p. 4.

370. Standards for Fee-Charging Items and Amounts of the Private Employment Services Institution, article 6 read in conjunction with Employment Service Act article 46.

371. Standards for Fee-Charging Items and Amounts of the Private Employment Services Institution, article 6 read in conjunction with Employment Service Act article 46. This applies to "marine fishing/netting work", domestic and caregiving work, and "work designated by the Central Competent Authority in response to national major construction project(s) or economic social development needs."

372. Article 52, Employment Service Act.

373. For the employers of domestic workers, recruitment agents can charge employers a recruitment and placement fee up to a maximum of %5 of the worker's monthly salary, NT700\$ (US 23\$) for a "vocational psychology-testing fee" and "employment counseling fees" of no more than NT1000\$ (US 38\$) per hour. Standards for Fee-Charging Items and Amounts of the Private Employment Services Institution, articles 3 and 4.

374. The law states that the services that recruitment agents can provide to employers are as follows: "arrange the recruitment of foreigners, immigration, employment renewal and recruitment licenses, work permits, employment permits, employment permit extensions, vacancy replacement, change of employers, conversion of work, change of employment permit matters, and notifying and reporting foreigner's left without permission and contract loss for three consecutive days." The services that they can provide to "employers or foreigners" are: "to take care of the foreigner's living arrangement in the territory of the Republic of China, arrange their entry and departure and health checkups, and report their health examination results to the competent health authorities, including consulting, counseling, and translation." Regulations for Permissions and Supervisions of Private Employment Services Institutions, article 3.

375. For professional positions, including "specialized or technical work," teaching work, and senior management positions in businesses, recruitment agents are permitted to charge workers an up-front "registration fee and placement fee" totalling a maximum of one month's salary, and an annual service fee of no more than NT2000\$ (US 67\$). Standards for Fee-Charging Items and Amounts of the Private Employment Services Institution, article 5, read in conjunction with ESA article 46. Calculation based on minimum monthly wage in Taiwan of NT23,800\$ p[us three years of service fees.

376. Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members, article 13.

377. Telephone interview with Peiyu Chen and David Chiu, Greenpeace Taiwan, (22 September 2020).

378. Telephone interview with LT, electronics sector workers, (26 August 2020).

themselves, and in the fisheries sector, pay is passed from employers to workers via the recruitment agent, who will deduct his or her fee before making payment.³⁷⁹

Many of the firms in Taiwan's electronics sector are members of the Responsible Business Alliance (RBA), a multi-industry coalition, headed up by large electronics companies, dedicated to corporate social responsibility in global supply chains.³⁸⁰ The RBA Code of Conduct requires that members and contractors in its supply chain and subcontractors, including providers of contract labor, pay the costs of their workers' recruitment and reimburse any workers found to have paid recruitment fees.³⁸¹ An RBA representative with knowledge of industry and recruitment practices in Taiwan told us that approximately 90% of RBA members globally have membership status that commits them to "periodic self-evaluations" to ensure conformity with the code. RBA told us that approximately 350 facilities in Taiwan, belonging to members and suppliers, have conducted self-assessments. Independent audits of suppliers are not a strict requirement of membership, but some firms conduct audits of their suppliers. If audits reveal that workers at those sites have paid recruitment fees, this is flagged as a priority finding and will remain on the supplier's file until the fees are reimbursed to the workers. The system works by encouraging suppliers to adhere to the code of conduct, with large firms using their market position and commercial leverage to raise standards. Recruitment agents we spoke to in Taiwan referenced its positive impact in relation to the payment of recruitment fees.

One recruitment agent, most of whose clients are in the electronics industry and many of whom are RBA members, told us that RBA membership had a significant impact on the issue of fees and meant that the 60,000 TWD normally paid by workers was paid by their employers.³⁸² A second recruitment agent, who did not work with RBA members, concurred with this view on workers' not paying monthly service fees.³⁸³ Another said that RBA audits were rigorous and that its auditors did not simply follow a prescribed check-list for which one could prepare, but rather posed challenging

questions.³⁸⁴ It should be noted that the RBA is a private sector initiative and that it has no regulatory authority, nor any coercive powers, and that its audit and self-assessment findings are not public. As such, it is not possible to say with any precision just how effective it has been in raising recruitment standards in Taiwan, but it is clear that it is a model that has the potential to transform recruitment practices for the better. RBA is currently running a Responsible Recruitment Program, which is aimed specifically at the recruitment sector and told us that they have yet to make significant in-roads in Taiwan in relation to that specific initiative, partly because of the impact of the Covid-19 pandemic, but partly because of the difficulty of getting 'buy-in' from the private sector in Taiwan.

Filipino employees of a Dutch electronics company in Kaohsiung, NXP, told us that their employers reimbursed all of the costs of their recruitment, including their domestic and international flight tickets, medical check-up costs, document processing costs.³⁸⁵ Even companies who recruit workers under direct hire systems such as the Special Hiring Program for Taiwan retain the services of Taiwanese recruitment agents although their no-fees policies mean that they pay the workers' monthly service fees.³⁸⁶ The NXP workers we spoke to told us that the company reimbursed them in full after they submitted receipts.³⁸⁷ They also told us that their employers pay the monthly service fees of their Taiwanese recruitment agents. NXP told us that they continue to use the services of Taiwanese recruitment agents, who assist workers with administrative tasks and practical issues that arise and who serve as interlocutors between them and their foreign workers. Workers told us that whereas previous migration experiences had resulted in them paying up to 100,000 Pesos (US \$2080) in recruitment fees, this model had effectively cost them nothing, and had left them free to pay back any loans they had taken out, or remit money straight away without the need to service any debt. In addition to being a prominent member of the RBA, NXP supplies to Apple and is therefore subject to its audit requirements.

379. Instant messaging conversation with Lennon Ying-Dah Wong, Director, Serve the People Association, (22 October 2020).

380. The RBA is open to all industries but it began life as an initiative for the electronics sector and its [2021 Board of Directors](#) is dominated by large tech firms, such as Apple, Google, Dell and NXP.

381. "Practical Guide to Due Diligence on Recruitment Fees in International Supply Chains", *Responsible Business Alliance*, (April 2020).

382. Telephone interview with Champion Manpower Services, (30 September 2020).

383. Interview with May-God Human Resources, Taipei City (18 February 2020).

384. Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020).

385. Group telephone interview with four NXP employees in Kaohsiung, (16 November 2020).

386. Interview with representatives of NXP Semiconductors, Kaohsiung City, (February 2020, 19).

387. Group telephone interview with four NXP employees in Kaohsiung, (16 November 2020).

6.2 Are there laws and/or policies to ensure that the full extent and nature of costs, for instance costs paid by employers to labour recruiters, are transparent to those who pay them?

Philippines

Laws and regulations are clear on recruitment fees and other associated costs. The POEA Rules and Regulations outline the fees that recruitment agents can charge. Workers, with the exceptions noted above, should pay one month's salary as a fee, and meet the costs of their documentation requirements and health insurance; recruitment agents should pay compulsory insurance costs; and either foreign employers or recruitment agents should pay all other costs associated with the recruitment process.³⁸⁸

Agents in the Philippines must disclose the full terms and conditions of employment to candidates and provide them with a copy of the employment contract after they sign it.³⁸⁹

A 2019 ILO paper on recruitment fee definitions praised the Philippines as one of the countries with the most detailed definitions of fees, including an overarching summary description together with a listing of prohibited or regulated fees and costs and cost-sharing arrangements.³⁹⁰

Mi Zhou's ILO white paper on the recruitment sector notes that many recruitment agents "have been creative in passing on recruitment costs from the principal/ employer to the workers by exploiting loopholes in statutory regulation," in particular by charging more than is required for mandatory training and medical costs.³⁹¹ In addition, many migrant workers come from rural parts of the country such as Mindanao and have

to stay in the capital while paperwork is finalised, and some recruitment agents inflate the costs of food and lodging during this period, thereby passing more of the cost of recruitment onto workers. A representative of Philippines trade union Sentro told us that the training costs were simply a means of passing the cost of recruitment onto migrant workers and that the training itself was often redundant. The authorities failure to prohibit these other fees has, they told us, rendered the ban on placement fees for domestic workers ineffective.³⁹² These costs do not violate the letter of the law, but they are inconsistent with its object and purpose in that they enable recruitment agents to burden workers with additional fees.

Civil society groups have a long-standing opposition to fees. In 2009 a coalition of NGOs working on migrant workers' rights said that the "the exaction of exorbitant placement fees" was a major complaint of migrant workers and that workers are "resigned to illegal fees exaction" regarding it as normal practice.³⁹³ A former Philippines government official told us that in his time working for the Philippines government in Hong Kong, "excessive fee payment was rampant", with Filipino workers having to pay large sums of money in spurious training costs and ending up in what he called a "debt trap" - working for 6 months or more to pay off their debts before they could remit money to their families.³⁹⁴ The Center for Migrant Advocacy told us that little has changed since their 2009 report, and that fee collection above the legal maximum remains a serious issue despite the clear regulations in place.³⁹⁵ In December 2019, POLO Geneva advised the POEA to cease overseas deployment of workers to Poland in response to cases where workers were paying fees in excess of 269,000 Pesos (US \$5,548) and signing POEA approved contracts that bore no relation to the work they performed in Poland.³⁹⁶ Ricardo Casco of the International Organization for Migration (IOM) told us that the organization was fully behind the principle that workers should not pay fees - the IOM's International Recruitment Integrity Service (IRIS) accreditation

388. POEA Revised Rules and Regulations, section 51.

389. POEA Revised Rules and Regulations, section 137.

390. "Findings from the global comparative study on the definition of recruitment fees and related costs", *International Labour Organisation*, (November 2018), p. 19.

391. Mi Zhou, "Fair Share? International recruitment in the Philippines," *ILO Working Paper*, (2017), p. 30.

392. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).

393. "Philippine Migrants Rights Groups' Written Replies to the List of Issues Relating to the Consideration of the Initial Report of the Philippines", *Center for Migrant Advocacy - Philippines, Inc.*, (March 2009), p. 13

394. Telephone interview with Jalilo Dela Torre, (14 January 2021).

395. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

396. POEA Advisory No 6: Recruitment Scheme for Poland, (17 January 2020). Ferdinand Patinio, "POLO-Geneva wants OFW deployment to Poland suspended", *Philippine News Agency*, (3 December 2019).

program incorporates a no-fees policy - but noted that there has been a long-standing opposition to this from recruitment agencies in the Philippines.³⁹⁷

Human Rights Watch's Philippines researcher, Carlos Conde told us that in the Philippines there is a general acceptance that it's necessary to pay money to expedite bureaucratic processes and linked this normalisation of low-level corruption to corruption at high-levels within the government.³⁹⁸

Filipino workers in Taiwan we spoke to all reported paying significant sums in recruitment fees for their jobs in Taiwan and for previous overseas jobs in other countries.³⁹⁹ The lowest recruitment fee that any of the workers we spoke to paid was 60,000 Pesos (US \$1,245) and the highest was 200,000 Pesos (US \$4,145). As a general rule, and taking into account that the total number of workers we spoke to precludes any claims of prevalence, workers who had paid more than 100,000 Pesos (US \$2,083) had been in Taiwan for more than five years. The fees that workers who had been recruited more recently had generally paid between 60,000 and 100,000 Pesos (US \$1,250 - US \$2,083).

Workers uniformly regarded fee payment as standard practice. One 35-year old fisherman told us that he didn't know why his recruitment fee was so high (120,000 Pesos, or US \$2,500), but he paid it anyway because his primary concern was securing a job as quickly as possible.⁴⁰⁰ A 38-year old Filipina in the electronics sector didn't question why she paid 20,000 Pesos (US \$417) more than other workers who were recruited at the same time, telling us that she thought it would be futile to ask for an explanation.⁴⁰¹

Taiwan

For the vast majority of Taiwan's migrant workers, the laws outlining the fees that employment agencies can

charge to employers and migrant workers are precise and clear, and all stakeholders we spoke to were aware of the three year limit of NT \$60,000 in service fees. For workers in Taiwan's distant water fishing sector, the regulations on fees are far less clear.

Despite the clarity in the regulations, Taiwan's recruitment agents continue to charge workers fees above the legal maximums, notably in the form of illegal placement fees. In the past this used to happen when workers completed their three-year contracts and had to leave the country and return - recruitment agents would charge the worker a placement fee to extend their contract with their pre-existing employer or find them a new contract with a new employer. Taiwan removed this requirement in 2016, but several NGOs told us that recruitment agents still regularly charge another illegal placement fee.⁴⁰² A Philippines NGO, the Centre for Migrant Advocacy, told us that in some respects, this makes the system worse than in other countries of destination for Filipino workers, where they at least only have to pay one initial placement fee.⁴⁰³ They told us that Taiwan was notorious for exorbitant fee collection on the part of its recruitment agents, to the point where in 2015, there had been a meeting between NGOs and senior figures from the recruitment industry in Taiwan, and a commitment from the Taiwanese recruitment agency representatives to address the issue.⁴⁰⁴ She said there had been minimal improvement since and, as a result, workers in the Philippines typically have to pay more to secure jobs in Taiwan than in many other countries of destination.⁴⁰⁵ The Taiwan International Workers Association concurred that recruitment fees were a serious problem, but noted that Filipino workers were typically less burdened than other foreign workers on account of the Philippines having better laws and regulations than other origin states.⁴⁰⁶ In 2019, Taiwanese recruitment agents lobbied the government to allow them to charge placement fees, citing rising operational costs.⁴⁰⁷

397. Telephone interview with Ricardo Casco, International Organization for Migration, (27 August 2020).

398. Telephone interview with Carlos Conde, Human Rights Watch Philippines researcher, (19 June 2020).

399. Telephone interviews with Filipino migrant workers in Taiwan, (August and September 2020).

400. Telephone interview with RR, fisherman (24 August 2020).

401. Telephone interview with MM, electronics sector worker, (26 August 2020).

402. Interview with Lennon. In 2016, the government deleted a provision in the Employment Service Act that required foreign workers to leave the country for one day after three years of employment (the maximum allowable work permit). Ministry of Labour, Report on protection for the rights of foreign workers in Taiwan, (October 2001, revised January 22 :2020).

403. Telephone interview with Ellene Sana, Centre for Migrant Advocacy, (23 October 2020).

404. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

405. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

406. Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, (1 July 2020). Chen noted that while Filipino workers often had a debt of NT 30,000\$ to repay, other nationalities faced debts of NT\$ 150,000 - 80.

407. "MOL, agencies discuss migrant worker service fees", *Taipei Times*, (5 October 2019).

In a detailed 2020 study on the recruitment of Filipino workers for Taiwan's fishing sector (both domestic and distant water) Verite found that 60 out of the 67 workers they interviewed had paid significant amounts in recruitment fees that went "considerable beyond" the legal limits of both the Philippines and Taiwan.⁴⁰⁸ A Taiwanese government minister told us that while the charging of up-front placement fees is illegal, employers continued to find ways to circumvent regulations and the authorities need to improve their efforts on implementation and enforcement. He recounted a personal experience of speaking to fishing sector workers and the ease with which he found workers who admitted to paying fees in the form of 'deposits' to their employers.⁴⁰⁹ Greenpeace told us that the fees charged to workers in the distant water fishing sector were so high that many foreign fishermen spent between 6 and 8 months repaying debts before they could earn. They said workers in these conditions of debt bondage were unable to terminate contracts and were often subjected to abusive living and working conditions as a result.⁴¹⁰

According to Verité, who have conducted extensive work in Taiwan's manufacturing sector, "across virtually every sector that recruits foreign workers in Taiwan, Taiwanese manpower agencies also require origin country recruitment agents to pay a brokerage fee to fulfill job orders on behalf of clients."⁴¹¹ Serve the People in Taiwan told us they believed that it remained common for some Taiwanese employers to demand kick-back payments from recruitment agencies and that it was common practice for Taiwanese recruitment agencies to demand transfer fees from other recruitment agencies when workers transfer from one agency to another - "all of the expenses will inevitably be shouldered by migrant workers", he said.⁴¹²

A Taiwanese recruitment agent spoke frankly about the issue of kick-backs, telling us that the practice was common and widespread in the manufacturing sector, including in the electronics sector.⁴¹³ He told us that Taiwanese manufacturers typically demanded a payment of NT\$ 1000 per month per worker to fulfill their job orders, and that Taiwanese agents would

typically pass this cost onto recruitment agents in origin states, who would then pass it onto the migrant worker. He said it was not uncommon for Taiwanese manufacturing companies to call around recruitment agents to ask how much they were willing to pay to secure recruitment contracts to supply them with workers. The exception to this practice, he told us, was when the clients were supplying components to reputable electronics companies such as Apple, but he said that kick-backs were the norm in traditional manufacturing and in the second-tier suppliers of the major overseas brands, which are more difficult to police.⁴¹⁴

All experts consulted for this project concurred that foreign workers in Taiwan are routinely burdened with substantial fees that they incur both in origin states and in Taiwan, but these fees have less to do with a lack of transparency than workers' general acceptance that they must pay some fees, and the authorities failure to close legal loopholes that enable agents and lenders to inflate the fees that they pay. The following case is emblematic of the problem.

The Taiwanese Legal Aid Foundation told us that they represent many Filipino clients in Taiwan who are challenging debt repayments on what appear to be excessive recruitment fees that are being enforced by Taiwanese courts and provided us with documentation that shows how the system works.⁴¹⁵ A Filipino registered lending agent signs a loan agreement (in English and Mandarin) of 100,000 pesos (US\$2,083) with a prospective migrant worker. The agreement includes a 10% "document and processing fee", which is added to the principal, and the loan is charged at an interest rate of 2%. This makes for a total interest rate of nearly 16% over 14 months.⁴¹⁶ The Filipino lender then sells the debt to a Taiwanese lending agent and provides monthly installment slips that the Filipino workers can use to make repayment to the Taiwanese lender at convenience stores in Taiwan. If the worker fails to make installments, the Taiwanese lending agent obtains a court order allowing them to deduct repayments directly from the workers' monthly salary. The Taiwan Legal Aid Foundation told us that this system contributes to the

408. "Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan," Verité,(2020 draft copy), p. 22.

409. Interview with Lo Ping-Chen, Minister Without Portfolio, (12 February 2020).

410. Telephone interview with Peiyu Chen and David Chiu, Greenpeace Taiwan, (22 September 2020).

411. "Barriers to Ethical Recruitment: Action Needed in Taiwan," Verite, (29 October 2018)

412. Instant messaging conversation with Lennon Ying-Dah Wong, Director, Serve the People Association, (22 October 2020).

413. Telephone interview with unnamed Taiwanese recruitment agent, (July 2020).

414. Telephone interview with unnamed Taiwanese recruitment agent, (July 2020).

415. Telephone interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, (10 July 2020).

416. The loan agreement stipulates 14 monthly repayments of 8,274 pesos, amounting to a total of 115,836 pesos.

numbers of workers who abscond from their employers and work illegally in sectors such as agriculture, where pay and conditions can be worse.⁴¹⁷

6.3 Does the government take measures to ensure that employment contracts are clear and transparent, including an authoritative version in the worker’s language, that they receive it in good time and that it contains all relevant terms and conditions, respecting existing collective agreements? Do they use IT to assist in this?

Philippines

The POEA has a standard employment contract, called the Standard Employment Contract for Various Skills, which contains the minimum terms and conditions for employment. It stipulates, among other things, the site of employment, the contract duration, the employee’s position, the basic monthly salary, overtime pay, leave and sick pay, free transportation to the site of employment and return (unless the worker leaves their job before the end of the contract without just cause).⁴¹⁸

Foreign employers can hire workers directly, or foreign recruitment agents can recruit Filipino workers on behalf of foreign employers. Whether it is a direct hire or a recruitment agency hire, the POEA must accredit the entity or individual recruiting the Filipino workers, and as part of that accreditation process, either the foreign recruitment agency or the foreign employer must submit a master employment contract “signed on all pages.”⁴¹⁹ Once a foreign employer or a foreign recruitment agent has an approved POEA job order, they can contact

a licensed recruitment agent in the Philippines to advertise the positions to prospective migrant workers. Agents in the Philippines must disclose the full terms and conditions of employment to candidates and provide them with a copy of the employment contract after they sign it.⁴²¹

A researcher from the Department of Labour Studies told us that technical working groups with the Department of Labor and Employment devote significant attention to the issue of standard employment contracts in discussions over bilateral labour agreements.⁴²²

However, research in Taiwan indicates that the Philippines has undermined its own efforts on standard employment contracts. A Taiwanese recruitment agent and an expert on the recruitment process for Filipinos into Taiwan told us that the Philippines authorities in Taiwan facilitated the signing of addendums to the POEA Standard Employment Contracts and that these additional contracts removed the requirement that employers provide free accommodation and meals.⁴²³ One expert who has experience of dealing with Taiwanese manufacturers told us that Taiwanese employers refused to accept this cost on top of the other costs they are required to pay to hire foreign workers - businesses pay monthly costs per foreign worker, depending on the sector they are in - and that the Philippines authorities assists Taiwanese employers by arranging for Filipino workers to sign these addendums, which negate some of the more favourable terms of the standard employment contract.⁴²⁴

Taiwan

Employers must “execute a labor contract in writing” with foreign workers of fixed duration or duration equal to the duration of the work permit.⁴²⁵ The Labor Standards Act outlines the rights and responsibilities of employers and their employees, including details on wages, working

417. Telephone interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, (10 July 2020).

418. POEA Standard Employment Contract for Various Skills. “Free transportation to the site of employment and in the following cases, free return transportation to the point of origin: a. expiration of the contract; b. termination of the contract by the employer without just cause; c. if the employee is unable to continue to work due to work connected or work aggravated injury of illness; d. force of majeure; and e. in such other cases when contract of employment is terminated through no fault of the employee.”

419. POEA Rules and Regulations Governing Landbased Workers, section 96

420. POEA Rules and Regulations Governing Landbased Workers, section 70 ,68. Approved job orders can only be advertised via licensed recruitment agencies or the POEA.

421. POEA Rules and Regulations Governing Landbased Workers, section 137.

422. Email from Bernard Mangulabnan, Philippines Department of Labor Studies, (21 September 2020).

423. Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020). Telephone interview, name withheld, (October 2020 ,1). POEA Standard Employment Contract

424. Telephone interview, name withheld, (1 October 2020).

425. Employment Service Act, article 46.

hours, leave, and holiday.⁴²⁶ There is no explicit mention of foreign workers and no requirement that foreign workers receive contracts in their own language.

Domestic workers are not covered by the Labour Standards Act so migrant workers from origin states that do not impose a standard contract (such as the Philippines). As detailed in section 2, this leaves them particularly vulnerable to abuse. Migrant Forum Asia has pointed to serious shortcomings in the contracts provided to domestic workers in Taiwan, including the failure to specify working hours and tasks, limited grounds for termination of the contract by the domestic worker and the lack of a rest day.⁴²⁷

In a 2020 report detailing abuses in Taiwan's Distant Water Fishing sector, Greenpeace highlighted contractual irregularities as a factor in worker abuses - in the majority of the cases documented by Greenpeace, workers signed contracts with foreign recruitment agents but did not receive a copy.⁴²⁸

Verite found similarly in their 2020 report - most of the Filipino workers they interviewed in Taiwan did not have a copy of their employment contract and many reported having signed new contracts once they arrived in Taiwan and some reported having signed blank contracts.⁴²⁹

6.4 Are there effective measures to prevent contract substitution?

Philippines

An ethical recruitment agent in the Philippines told us that he was not aware of any specific measures designed to address the issue of contract substitution.⁴³⁰ However, it is clear that the Philippines has regulations in place to mitigate the risk of a practice that takes place outside of their jurisdiction. The POEA has a process in place to ensure that all Filipino workers deployed overseas have signed a contract with their employer or the foreign

recruitment agent (see section 6.3). If this system does not work, for example if the foreign employer or recruitment agency or the employer forces the worker to sign a second contract, they can lose their accreditation to recruit or employ Filipino workers. The POEA has not responded to requests for information on this or any other aspect of their regulation efforts.

One expert on the recruitment sector said that contract substitution - either in terms of fake job orders or jobs where the terms of employment are different from those laid out in the contract - is one of the issues that the Philippines labour inspectorate tends to act upon and investigate, adding that its response to complaints is inconsistent and even in these cases, effective investigation is by no means guaranteed.⁴³¹

Taiwan

Taiwan has no specific measures in place to address contract substitution or contractual irregularities more generally, and key stakeholders told us that these are a serious contributory factor in preventing workers from leaving abusive employers and leaving them in poor living and working conditions, in addition to increasing their vulnerability to debt bondage.

All of the NGOs we spoke to told us that illegal salary deductions were a serious problem and that many of these were based on second contracts that recruitment agents and employers made workers sign, rendering them liable for costs such as air-conditioning and cleaning - recruitment agents in Taiwan are often providers of worker accommodation.⁴³² The People told us that these contracts existed in a "grey area" from a legal perspective and that it was difficult for workers to document evidence of contractual violations.⁴³³ Rerum Novarum told us that workers in fisheries were more likely to be forced to sign second contracts than workers in other sectors, and that they were an effective tool in legitimising exploitative conditions in the eyes of foreign workers.⁴³⁴ One worker in a shelter told us that

426. Labor Standards Act, (1984).

427. "Standardised Contract for Migrant Domestic Workers: Policy Brief No. 1", *Migrant Forum Asia* (no date).

428. "Choppy Waters: Forced Labour and Illegal Fishing in Taiwan's Distant Water Fisheries", *Greenpeace*, (19 March 2020).

429. "Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan," *Verité*, (2020 draft copy), p. 22.

430. Interview with Marc Capistrano, Staffhouse International, (4 February 2020).

431. Telephone interview with Marie Apostol, Fair Hiring Initiative, (22 June 2020).

432. Interview with Lennon Ying-Dah Wong, Director, Serve the People Association, Taipei, (20 February 2020). Interview with Rerum Novarum Center, Taipei City, (20 February 2020). Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, (1 July 2020).

433. Interview with Lennon Ying-Dah Wong, Director, Serve the People Association, Taipei, (20 February 2020).

434. Interview with Rerum Novarum Center, Taipei City, (20 February 2020).

he and his colleagues, who had been working in the electronics sector, received significantly less than their contracted wage due to illegal deductions and showed us photographs of their cramped dormitory. He told us it took them nearly two years to gather the evidence they required to prove that their employer had violated the terms of the contract.⁴³⁵

Verite's 2020 report into the fisheries sector found that "workers were made to sign supplemental agreements, addendums, and new agreements, once in Taiwan" and that some workers were "asked to sign a blank document, with no explanation of what the document was for."⁴³⁶ Some workers interviewed by Verite said that "they had difficulty determining if the terms and conditions signed in Taiwan were the same as those signed in the Philippines." Others said they were asked to sign different employment contracts before leaving the Philippines and told that if they did not, they would be forced to pay all expenses associated with their recruitment.⁴³⁷

6.5 Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts?

Philippines

While the Philippines migration system is to a large extent based on ensuring that the workers it deploys overseas have contracts, the system makes provision for workers who do not have contracts. The law considers a worker who does not have a POEA-approved contract to have irregular or undocumented status.⁴³⁸ The Republic Act 10022 reiterates that it is Philippines state policy that effective mechanisms exist to ensure the rights of Filipino migrant workers to access courts whether they are documented or undocumented.⁴³⁹ Workers without contracts are technically not covered by the Republic Act 10022, but the Philippines has established centers abroad to register workers and bring them under the

purview of the act and grant them the full range of its protection.⁴⁴⁰

The quasi-governmental Manila Economic and Cultural Office arranged for the Taiwan Legal Aid Foundation to provide legal representation to undocumented Filipino workers who had left their employers and worked without permits due to the financial impact of court-ordered salary deductions (addressed in section 6.4). The Taiwan Legal Aid Foundation has successfully challenged some of these court orders, on the basis that the rates of interest being charged to foreign workers were unreasonable.

In April 2020, in response to the impact of the Covid19 pandemic, the Department of Labour and Employment announced that documented and undocumented workers would be eligible for emergency cash assistance for displaced migrant workers.⁴⁴¹

Taiwan

The Labor Standards Act, the Employment Service Act and the Distant Water Fisheries Act, which collectively are the key pieces of legislation that relate to the employment of foreign workers foresee no situations in which employees work without contracts, and outline no specific protection for workers in these situations.

Taiwan's Legal Aid Act states that anyone who is legally resident in Taiwan has access to legal aid.⁴⁴² In 2015, amendments were made to the law that enabled free legal assistance to be provided to workers who are undocumented. The amendment notes that individuals who "lost their residency due to incidents not imputed to themselves" can avail of legal aid.⁴⁴³ The Taiwan Legal Aid Foundation told us that they have often met with resistance from judges and prosecutors when they have attempted to use the Legal Aid Act to provide legal representation to migrant workers.⁴⁴⁴ Nonetheless, they are able to use the reforms to the law to provide legal assistance to undocumented workers.

435. Interview with 'Leo', Filipino migrant worker, Taipei, (26 February 2020).

436. "Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan," Verité,(2020 draft copy), p.24.

437. "Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan," Verité,(2020 draft copy), p.25.

438. Republic Act 10022, section 1.

439. Republic Act 10022, section 2.

440. Republic Act 10022, section 19.

441. Telephone interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, (10 July 2020).

442. Legal Aid Act, article 14.

443. Legal Aid Act, article 14.

444. Telephone interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, (10 July 2020).

Assessment against the Five Corridors indicators:

7. Access to grievance mechanisms, provision of remedy and accountability

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Migrant workers calling for reforms to Taiwan's recruitment and employment system, Taipei 2017. © NurPhoto / Getty

7. Access to grievance mechanisms, provision of remedy and accountability

"If you are strong, and have courage, you can fight for your rights here." LENIE, 38, FILIPINA FACTORY WORKER IN TAIWAN.

Summary

Filipino migrant workers abroad and returnee migrant workers have access to support and grievance mechanisms. In all but the most serious cases, the Philippines places a strong emphasis on the primacy of mediation to resolve disputes and provide remedy. The Philippines authorities abroad, notably POLO and OWWA, assist migrant workers in dispute resolution and conciliation, and the POEA can exert leverage by threatening to remove the accreditation of foreign employers or recruitment agents who do not engage in mediation in good faith. In 2020, the Philippines senate expanded the use of a Legal Assistance Fund that overseas workers can avail of in cases that are heard in foreign courts. In the Philippines, workers can take cases against Philippines recruitment agents to

the National Labor Relations Commission, and the POEA can provide advice and support on how to do this. Legal aid is available to migrant workers from the Public Attorney's Office, but in practice is limited to the most serious cases. In practice, a very small proportion of aggrieved Filipino migrant workers use the judicial grievance mechanisms available to them. The Philippines' preference for mediation, ingrained in policy and its Single Entry Approach (SenA) partly explains this, but many workers lose their appetite to pursue cases as the length and complexity of the process becomes apparent, and opt for quick financial settlements.

Taiwan's primary grievance mechanism for its foreign workforce is a multi-lingual hotline that allows workers to access support and advice and to formally file complaints against their employers

or their recruitment agents. Data provided to us by the Ministry of Labour indicates that the hotline is well utilised. NGOs had some reservations about the workings of the system but were generally supportive of the system, which they said had improved workers' access to remedy. Numerous migrant workers we spoke to described how they used the hotline to report complaints relating to pay and conditions to the authorities, who responded effectively and facilitated their job transfer. However, it is notable that migrant workers often seek the support of NGOs when filing complaints, and recruitment agents, who are mandated to act in an intermediary role between employers and foreign workers, often attempt to dissuade workers from accessing the hotline. There is also evidence

that a significant proportion of migrant domestic workers do not access grievance mechanisms due to fears that they will lose their jobs. In cases before the courts, migrant workers, including some categories of undocumented workers, are eligible for legal aid. The Taiwanese Legal Aid Foundation provides legal services to thousands of foreign workers every year and has successfully taken cases that resulted in large groups of workers receiving financial compensation for contractual violations such as wage theft. One factor that can hinder workers' ability to access judicial remedies is a failure to provide foreign workers with translators in order that they can articulate their arguments in the requisite detail and follow the proceedings.

Recommendations to the Philippine government:

- Explore with groups such as the ILO the feasibility of video-technology in allowing returnee workers to access judicial and non-judicial grievance mechanisms in destination states.
- Conduct an independent policy review of the Single Entry Approach to assess the effectiveness of mediation and conciliation in providing overseas foreign workers with their right to effective remedy. This review should specifically address the question of whether mediation is, in practice, an obstacle to effective remedy.

Recommendations to the government of Taiwan:

- Ensure that all foreign workers who avail of legal aid have access to qualified translators in all interactions with their legal representatives and during court proceedings.

- Extend government funding of shelters and legal aid services to foreign workers.
- Ensure that all callers to the 1955 Hotline are clearly informed of their right to submit formal complaints, and conduct a complementary information campaign to inform workers of the circumstances in which they have the right to change employers and the process for doing so.

7.1 Do workers irrespective of their presence in the country or legal status have access to free or affordable grievance / dispute resolution mechanisms in cases of abusive/ fraudulent recruitment?

Philippines

Filipino migrant workers have access to free grievance mechanisms during their deployment overseas and upon their return to the Philippines.

The Philippines authorities overseas, notably the Philippines Overseas Labour Office (POLO), the Overseas

Worker Welfare Association (OWWA) and the Department of Foreign Affairs assist migrant workers in dispute resolution and conciliation, and in the filing of civil or criminal complaints against foreign employers or recruitment agents. One of OWWA's main roles is its administration of a Welfare Fund, which is partly made up of mandatory membership fees that all overseas workers have to pay. Filipino workers overseas can avail of the fund in cases where they wish to pursue a labor case against their overseas employer.⁴⁴⁵

The Philippines places a heavy emphasis on the importance of conciliation and mediation and all civil cases are first processed in line with its Single Entry Approach (SEnA), which is a 30-day mandatory conciliation-mediation that “seeks to provide a speedy, impartial, inexpensive, and accessible settlement services for unresolved grievances and complaints arising from employer-employee relations.”⁴⁴⁶ The SEnA reflects stated POEA policy “to strengthen conciliation and mediation as primary modes of dispute resolution.”⁴⁴⁷

The POEA is a domestic agency of the DOLE, but it has leverage to facilitate effective conciliation and to enforce compensation payments since it has the power to remove the accreditation of foreign employers and suspend or revoke the licenses of Filipino recruitment agents.⁴⁴⁸

In cases of “illegal recruitment”, which is to say alleged criminal offences that carry heavy prison sentences akin to human trafficking offences, the POEA provides free legal assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counseling during preliminary investigations and hearings.⁴⁴⁹

At a regional level in the Philippines, the quasi-judicial National Labor Relations Commission (NLRC) deals with civil cases, including disputes between Filipino workers

and their foreign employers or Filipino recruitment agents, in what it describes as “economically-viable dispute settlement machinery.”⁴⁵⁰ Workers who win their cases have their lawyers' fees deducted from their settlement, but workers who lose cases are liable for costs, and workers also have to pay some indirect costs, such as transport and food and photocopying costs. Workers' rights groups told us that the main deterrent to workers taking cases is not cost, but rather the length of time that cases take to resolve.⁴⁵¹

Although not a formal grievance mechanism, the Philippines has also put in place measures to prevent disputes and to ensure easy communication between migrant workers overseas and their Philippines recruitment agencies, by requiring that all recruitment agents maintain a Facebook account.⁴⁵²

Taiwan

Taiwan provides migrant workers with access to a 24-hour consultation and protection hotline. In cases where workers want to bring civil or criminal complaints against their employers, recruitment agents, or lending agencies, Taiwan provides free legal aid.⁴⁵³

In 2009, Taiwan's Ministry of Labour set up a 24-hour “consultation and protection hotline” for foreign workers. The 1955 Hotline, as it is known, provides free advice services to foreign workers in their own languages and also allows them to make formal complaints against abusive employers or recruitment agents.⁴⁵⁴

In relation to access to the judicial system, Taiwan's Legal Aid Act states that anyone who is legally resident in Taiwan has access to legal aid.⁴⁵⁵ In 2015, amendments were made to the law that enabled free legal assistance to be provided to workers who are undocumented. The amendment notes that individuals who “lost their

445. Republic Act 10801, Overseas Workers Welfare Administration Act, (27 July 2015), Section 4.

446. See the website of the National Conciliation and Mediation Board at <https://ncmb.gov.ph/single-entry-approach-sena/>

447. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016. Rule 1.

448. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, section 141. “Unjustified failure by the licensed recruitment agencies, principal/employer or an Overseas Filipino Workers the approved settlement shall warrant suspension from participation in the overseas employment program, until compliance with or satisfaction of the approved settlement.”

449. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, section 75. Revised POEA Rules and Regulations for Landbased Workers, section 78.

450. See website of the National Labor Relations Commission <https://nlrc.dole.gov.ph/About> and Center for Migrant Advocacy, “Access To Justice, Part 1: Money Claims”, (2015).

451. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

452. Philippine Overseas Employment Administration, Memorandum Circular No. 1, Series of 24) ,201 February 2015).

453. Legal Aid Act, 2004.

454. See website of Taiwan's Ministry of Labour <https://english.mol.gov.tw/homeinfo/6458/6556/6567/>

455. Legal Aid Act, article 14.

residency due to incidents not imputed to themselves” can avail of legal aid.⁴⁵⁶ The Taiwanese government funds the Taiwan Legal Aid Foundation and they provide legal assistance to between 2,000 and 3,000 foreign workers every year.⁴⁵⁷ The Ministry of Labour told us that it subsidizes each local government in setting up foreign labor advisory service centers, and that these centers can assist with legal costs and provide referrals for legal aid.

7.2 Are grievance mechanism processes accessible in practice, rapid and free of complex administrative procedures?

Philippines

The Philippines provides grievance mechanisms to workers abroad, and to those who have returned to the Philippines. A variety of government agencies are involved in providing workers with access to remedy, and the Philippines devotes significant resources to ensuring that complaints are resolved by mediation and settlement agreements, and without recourse to judicial mechanisms.

With regard to workers overseas, in 2015, the Philippines issued a Joint Manual of Operations to the various agencies and ministries concerned, and those agencies now have very clear guidance on their various roles and responsibilities in different circumstances.⁴⁵⁸ When, for example, a vulnerable worker presents them with a request for assistance in relation to a contract violation, the Joint Manual explains POLO’s role: provide information to the worker and ensure he/she is informed of her rights; call on the employer and recruitment agencies concerned to arrange conciliation meetings; draw up a settlement agreement (attested by OWWA welfare officer or Labor Attaché; ask the recruitment agency to remind the employer of his/her contractual obligations in cases where conciliation fails; and remind the foreign recruitment agency and the employer of their joint and several liability.

The manual states that POLO should recommend to POEA that foreign employers and recruitment agencies be disqualified from the Overseas Employment Program in cases where they have failed to cooperate and it states that workers who can no longer legally stay in the country during their cases, can authorize Philippines authorities to pursue his or her claims.⁴⁵⁹

The Center for Migrant Worker Advocacy in the Philippines, which has considerable experience in assisting workers in accessing remedies and has written a series of policy papers on overseas workers’ access to justice, told us that the most significant problem that Filipino workers faced in Taiwan is that they are often unable for practical reasons to wait for the formal complaint process to run its course, and as a consequence accept relatively paltry sums in settlement agreements.⁴⁶⁰

Hussain Macarambon of the ILO’s FAIR Recruitment initiative offered a similar assessment and told us that in response to this problem, which afflicts Philippines workers in many destination states, the ILO were piloting a project that allowed Filipino workers to give video testimony in civil cases initiated in Hong Kong.⁴⁶¹

The conclusion of settlement agreements based on the mediation process in Taiwan, or indeed in any other foreign country, does not preclude Filipino workers from pursuing complaints upon their return to Taiwan under the joint and several liability provisions in the Migrant Worker Overseas Act.⁴⁶² The process for filing a complaint with the NLRC is compulsory arbitration, followed by the submission of position papers, where the parties lay out their arguments. The NLRC then has 90 days to hear and decide the claim and financial damages must be paid within 30 days of the judgment.

The CMA told us that in cases where mediation had taken place formally (i.e. based on the Single Entry Approach) the workers had less chance of success with their complaint due to language in SENa complaints to the effect that all settlements should be regarded as full and final.⁴⁶³

456. Legal Aid Act, article 14.

457. Telephone interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, (10 July 2020).

458. Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas, (18 August 2015).

459. Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas, (18 August 2015), p. 18. According to the Center for Migrant Advocacy, the Philippines authorities abroad do not always follow the formal procedures laid out in the guidelines, and often take a country-specific approach. In Taiwan, for example, mediation first takes place through the quasi-governmental body MECO. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

460. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

461. Telephone interview with Hussain Macarambon, International Labour Organisation, (13 July 2020).

462. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

463. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

There was uniform agreement among civil society representatives that only a very small portion of Filipino migrant workers avail of the complaints and grievance mechanisms available to them.⁴⁶⁴ Ellene Sana told us that a variety of factors combined to dissuade workers from pursuing remedy, including their desire not to antagonise their recruitment agent, and the realisation that they may need a lawyer.⁴⁶⁵ Many workers don't take claims in the first place, and those who do often drop or settle cases as the length or the complexity of the process becomes apparent. According to data provided by the National Labour Relations Commission, for the period from 2015 to 2017, 73% of claims filed with the NLRC were resolved through settlements rather than decisions based on the merits of the case. The conclusions of a Centre for Migrant Advocacy report on this issue are striking:

“MDWs [migrant domestic workers] who are able to file cases at POEA and NLRC score the agencies low in terms of providing for a fair procedure. NLRC money claims are disposed through settlements and not through decisions on the merits of the cases. Most respondents of the research also express the ‘hopelessness’ of filing cases since it does not produce resolutions to their benefit. Often, they are forced to settle for lesser amounts of money.”⁴⁶⁶

A 2020 Verite report into the abuse of Filipino workers in Taiwan's distant water fishing sector stated that the burden on workers to make timely complaints and the requirement that they produce documentary proof of their claims often left them unable to bring cases against their employers or recruitment agents, “since the issues often relate to a deliberate lack of transparency, missing payment transaction documentation, and unauthorized deductions and charges.”⁴⁶⁷ None of the 101 workers interviewed for their report had filed complaints with the POEA, and Verite cited the difficulty of the claims process as the main deterrent.⁴⁶⁸ This is despite the fact that almost 90% of workers interviewed paid “significant” amounts in fees (an average of US \$2,250 compared to the legal maximum of US \$237).⁴⁶⁹

Taiwan

Taiwan's Vice-Minister of Labour told us that he regarded the 1955 Hotline as one of the Taiwanese authorities' positive achievements in the realm of migrant worker protection.⁴⁷⁰ A Philippines Labour Attache in Khasiung told us that the hotline was, in addition to strong laws and a robust inspection system, an area where Taiwan performed well in migrant worker protection.⁴⁷¹

One NGO said that the introduction of the 1955 Hotline had led to improvements, saying that it had for the first time opened up a direct line between migrant workers and the Taiwanese authorities, whereas prior to its introduction workers relied on their recruitment agents when they wanted to make complaints.⁴⁷²

Data provided to us by the Ministry of Labour indicated that the hotline receives a significant number of calls. From the beginning of 2015 until the end of June 2020, the hotline received a total of 133,111 complaints about a range of issues, including problems with salaries and contracts.⁴⁷³ When the 1955 hotline receives complaints, they designate the case to the municipal Labour Bureau and they take the employee's passport number in order to locate their employer's address.⁴⁷⁴ When the Labour Bureau receives complaints they notify the employer and the recruitment agent and ask them to negotiate with the employee. Calls to the hotline can also result in cases being reported to criminal investigating authorities - 42 possible trafficking cases were reported to investigators between 2015 and 2020 as a result of calls made to the hotline. Workers can submit complaints directly to the authorities, but the Ministry of Labour data indicates that most tend to use the hotline - only 505 complaints were lodged directly with the Ministry of Labour in the same time period.⁴⁷⁵ The Ministry of Labour told us that in 2020, calls to the hotline resulted in the recovery of wage arrears amounting to NT\$ 116,075 (US \$4,146) and 2,985 migrant workers transferring employers.

464. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020). Telephone interview with Marie Apostol, Fair Hiring Initiative, (22 June 2020).

465. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (23 October 2020).

466. Centre for Migrant Advocacy, “Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims”, (2018).

467. “Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan,” *Verité*, (2020 draft copy), p. 19.

468. “Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan,” *Verité*, (2020 draft copy), p. 19.

469. “Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan,” *Verité*, (2020 draft copy), p. 23 - 22.

470. Interview with San Quei Lin, Vice-Minister of Labor, Taipei, (18 February 2020).

471. Interview with Rustico Dela Fuente, Labor Attache, Philippines Overseas Labor Office, Kaohsiung, (19 February 2020).

472. Interview with Rerum Novarum, Taipei, (20 February 2020).

473. Data provided to FairSquare Projects by the Ministry of Labor, (26 August 2020).

474. Interview with Lennon Ying-Dah Wong, Serve the People Association, (20 February 2020).

475. Data provided to FairSquare Projects by the Ministry of Labor, (26 August 2020).

Civil society actors in Taiwan credit the hotline with having improved migrant workers' access to remedy but told us that the system has some obvious shortcomings, some of which relate to a lack of awareness of its existence or how it works, and some of which relate to the role of recruitment agents in Taiwan.

New Thing was one of several NGOs that told us that knowledge and use of the 1955 Hotline varies across sectors, with manufacturing and domestic workers using it far more often than those in the fishing sector.⁴⁷⁶ Rerum Novarum told us that the system was particularly helpful for domestic workers, although noted that manufacturing workers were gradually becoming more aware of the system.⁴⁷⁷ The founder of the NGO One-Forty told us that many foreign workers primarily relied on support from their fellow workers, and many didn't call the Hotline because they didn't know how or they didn't think it would be effective.⁴⁷⁸ A Taiwanese government minister told us that when he boarded fishing vessels, some of the foreign workers he spoke to had never heard of the 1955 Hotline.⁴⁷⁹

Serve the People told us that many workers were unaware that their call would not be flagged for follow-up if they did not file a formal complaint.⁴⁸⁰ A second NGO worker who runs a shelter for migrant workers concurred with the assessment that workers don't always understand the difference between a consultation and a complaint - only a formal complaint results in the issuance of a case file number and a possible investigation.⁴⁸¹

One NGO told us that in cases relating to pay, the mediation that is a consequence of workers calling the 1955 Hotline can result in positive outcomes for workers - in cases relating to pay, for example, it can result in workers receiving what they are owed and being granted a work transfer.⁴⁸² However, this doesn't always mean that the recruitment agent will help the worker to find a new employer in Taiwan.

We spoke to numerous Filipino migrant workers in Taiwan who told us of their experience with the 1955 Hotline. Most described a system that can be effective in extricating migrant workers from jobs where they are abused, overworked or underpaid. A 37-year old fisherman told us that Taiwanese police had rescued him from a highly abusive employer after he called the 1955 Hotline to report very serious criminal abuses on board a vessel.⁴⁸³ Most of the cases we documented related to less abusive situations, but it is clear that the 1955 Hotline can be effective if workers are able and confident to call it, and know how to make a complaint when they do. Several workers told us that their complaints, in cases relating to pay, working hours and contract violations, resulted in the authorities investigating and providing a remedy of sorts, typically in the form of back-pay or allowing the worker to transfer jobs.

In Taiwan, the specific role that recruitment agents play, acting as intermediaries between employers and their foreign workers, means that they can obstruct migrant workers' efforts to seek remedy or change employers in the case of abusive working conditions or contractual violations. Several NGOs told us that while workers have the right to change jobs in the cases of abuses, in practice recruitment agents often prevent workers who have complained from finding new employers.⁴⁸⁴ One Filipino worker who had been employed in Taiwan's electronics sector, but who was speaking from a shelter in Taiwan told us that it had taken him and his colleagues two years to figure out how to gather the evidence they needed and make a complaint.⁴⁸⁵ They had complained as a group about inadequate housing and contractual violations including illegal salary deductions, and he told us that their recruitment agent had repeatedly attempted to block their efforts to complain saying that their treatment was normal and taking the side of the employer in negotiations.

It should also be noted that migrant workers' chances of success in the complaint process are greatly increased when they have the support and assistance of NGOs.

476. Interview with New Thing, (February 2020 ,11). Interview with Rerum Novarum, Taipei, (20 February 2020). Interview with Lennon Ying-Dah Wong, Serve the People Association, (20 February 2020).

477. Interview with Rerum Novarum, Taipei, (20 February 2020).

478. Interview with Kevin Chen, One-Forty, (6 February 2020).

479. Interview with Lo Ping-Chen, Minister Without Portfolio, (12 February 2020).

480. Interview with New Thing, (11 February 2020).

481. Interview with Lennon Ying-Dah Wong, Serve the People Association, (20 February 2020).

482. Interview with New Thing, (11 February 2020).

483. Telephone interview with VA, fisherman, (21 August 2020).

484. Interview with Lennon Ying-Dah Wong, Serve the People Association, (20 February 2020).

485. Interview with L.T., electronics sector worker, Taipei, (20 February 2020).

One 28-year old Filipina who had worked in Taiwan's electronics sector told us that Taiwanese recruitment agents discouraged her from calling the 1955 Hotline to complain about her employer's efforts to force her resignation, warning her that if she did so recruitment agents would be notified of her complaint and she would be identified as a troublemaker, making it difficult for her to find alternative employment. She did not call as a result of this, and only received advice and assistance from a local NGO whom she contacted directly.⁴⁸⁶ A 33-year old electronics worker who said her employer had tried to force her to resign told us how a Taiwanese NGO encouraged her to call the 1955 Hotline and make a complaint that led her to receive NT \$28,000 (US \$1000) in unpaid wages (slightly more than a month's wages) after mediation.⁴⁸⁷ Her Taiwanese recruitment agent, she told us, discouraged her from taking the case to mediation and told her that she was at fault and would therefore lose any case. Recruitment expert Bonny Ling told us that in her view, the unhelpful role that many recruitment agencies play in preventing migrant workers from changing employers stems in part from the fact that they act - and are expected to act - as an external human resources department for Taiwanese employers, rather than as intermediaries between employers and foreign workers.⁴⁸⁸

In relation to foreign workers' ability to access judicial remedies, migrant workers seeking legal aid in Taiwan must pass a means test and merit test. They need not provide any documentation to establish they pass the means test, and the merits of their case are assessed in the same way as nationals' cases.⁴⁸⁹

Data from the Taiwanese Legal Aid Foundation (TLAF) shows that in 2017, they provided legal assistance to 2554 foreigners with the Philippines, Indonesia and Vietnam (the three states that send most migrant workers to Taiwan) making up the vast majority of these. The TLAF provided assistance to more Filipinos than to any other nationalities. With regard to the types of cases in which they provided assistance to foreign workers, civil cases, in the form of tort cases (relating to allegations of negligence), labour disputes and "loan

dispute" cases, were the most common, accounting for nearly one third of the cases involving foreigners.

The Taiwan Legal Aid Foundation told us that they had dealt with cases where migrant workers had abandoned legal cases due to the time taken to resolve cases but said that their cases were not dealt with any slower than other cases, and said that Taiwan's legal processes were not unduly lengthy.⁴⁹⁰ They told us that problems often arose due to judges or prosecutors not availing of interpreters that are made available for cases involving migrant workers. This, they told us, can lead to cases where workers with only basic Mandarin are unable to either understand proceedings or participate in them effectively. They told us that they had lobbied the Judicial Yuan to take steps to ensure that migrant workers' access to justice is not compromised by a failure to take account of their need to be able to communicate effectively.⁴⁹¹

The TLAF has also pointed to a lack of interpreters, and to occasional failures on the part of prosecutors and judges to refer foreign workers for legal aid, and noted that they have difficulty providing assistance to migrant workers in the fishing industry.⁴⁹²

7.3 Are workers provided with remedy including compensation as a result of such grievance procedures?

Philippines

The Philippines authorities can assist workers in receiving compensation from employers abroad, via conciliated out of court settlements, negotiated with the assistance of POLO and in line with the Single Entry Approach. Through OWWA, it can assist migrant workers to bring civil and criminal cases abroad, although the likelihood of success in these cases varies considerably and it should be noted that a significant proportion of Filipino workers overseas are in the Gulf states where

486. Telephone interview with JF, electronics sector worker, (23 August 2020).

487. Telephone interview with KL, electronics sector worker, (24 August 2020).

488. Telephone interview with Bonny Ling, Institute for Human Rights and Business research fellow, (26 April 2021).

489. "Taiwan's Legal Aid for Migrant Workers and Immigrants", *Taiwan Legal Aid Foundation*, (2017), available at https://www.laf.org.tw/ifla2018/upload/10/2018/Panel20%Discussion204%B1-Taiwan_Ms.20%Fang-Chun20%Chu.pdf

490. Telephone interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, (10 July 2020).

491. Telephone interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, (10 July 2020).

492. "Taiwan's Legal Aid for Migrant Workers and Immigrants", *Taiwan Legal Aid Foundation*, (2017).

access to civil or criminal judicial systems is severely curtailed.⁴⁹³

The performance bond that recruitment agencies must place into escrow as part of their POEA license is used to provide financial damages to workers.⁴⁹⁴ However, civil society representatives have criticised the escrow system, noting that workers awarded damages by the NLRC have never received them due to agencies holding insufficient escrow deposit balances. In such cases, the POEA can suspend or cancel the offending agencies' licenses, but this sanction leaves the workers without remedy.⁴⁹⁵

The Center for Migrant Advocacy is the most active Filipino NGO assisting workers in compensation claims and have documented how cases can work in practice. For example, in a case involving eight workers in Saudi Arabia which related to non-payment of wages, salary deductions and abuse, the workers initial interactions with POLO and POEA were unsuccessful. It was only after the workers contacted CMA and a Saudi NGO that they were able to receive legal assistance from the POEA. This led to them winning their labour case in Saudi Arabia and receiving damages but no flight tickets home. Their recruitment agency attempted to make them sign a full and final settlement claim, but they refused, and filed a complaint against their recruitment agency when they returned to the Philippines. After mediation, five of the workers agreed to settle for 50,000 Pesos (US \$1,032). The remaining three workers chose not to settle and the NLRC decided in their favour, awarding them damages of up to 100,000 Pesos (US \$2,064).⁴⁹⁶

The Center for Migrant Advocacy (CMA) told us that cases like this one remain commonplace and that workers who pursue cases at the NLRC often receive rulings in their favour.⁴⁹⁷ However, the CMA, which has conducted detailed research into this issue, also noted that workers often don't receive the settlements awarded to them since "the burden of enforcing the decision falls on the worker."⁴⁹⁸

Taiwan

A Taiwanese NGO told us that compensation for workers is confined to cases where employers are found to have used physical violence.⁴⁹⁹ The Taiwanese Legal Aid Foundation has been able to secure civil damages for migrant workers. In 2017, it secured damages totalling NT \$36 million (US \$1.25 million) for 347 Vietnamese domestic workers in a case relating to salary deductions totalling NT \$200 million (US \$7.1million).⁵⁰⁰ The foundation also took 297 cases against Taiwanese lending agencies charging interest rates of up to 48%. In some of these cases judges found that the interest rates on the loans (but not the loans themselves) constituted "unreasonable exploitation".⁵⁰¹

7.4 Are workers raising grievances and whistleblowers effectively protected from retaliation, including deportation?

Philippines

Workers' rights groups in the Philippines have documented cases where recruitment agencies have threatened and intimidated workers who have raised grievances in order to persuade them to drop cases or accept settlements.⁵⁰² There is however no specific law in place to protect workers who file criminal or administrative complaints from undue or illegal pressure or retaliation.

Taiwan

In 2019, a Taiwanese organisation called the Garden of Hope Foundation surveyed 510 migrant domestic workers (including 400 Filipinas) and found that while 38% of them had been verbally or physically abused by their employers or other members of the

493. See, for example, Andrew Gardner, Silvia Pessoa, Laura Harkness. "Labour Migrants and Access to Justice in Contemporary Qatar", *LSE Middle East Centre*, (2014).

494. Republic Act 10022, section 7.

495. "Access to Justice (Part 1): Money Claims", *Center for Migrant Advocacy*, (2015), p. 8.

496. "Access to Justice (Part 2): What stands in the way and what can be done", *Center for Migrant Advocacy*, (2015), p. 11.

497. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (23 October 2020).

498. "Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims", *Centre for Migrant Advocacy*, (2018).

499. Interview with New Thing, (11 February 2020).

500. "Taiwan's Legal Aid for Migrant Workers and Immigrants," Taiwan Legal Aid Foundation, (2017).

501. "Taiwan's Legal Aid for Migrant Workers and Immigrants," Taiwan Legal Aid Foundation, (2017), and telephone interview with Fang Chun, Taiwan Legal Aid Foundation, (10 July 2020).

502. "Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims", *Centre for Migrant Advocacy*, (2018).

household, less than 50% of them seek help. Of those who did not seek help, 35% said that they were scared of losing their jobs.⁵⁰³ Many of the workers we spoke to had raised complaints, but this statistic suggests that while domestic workers enjoy the same rights to access grievance mechanisms as their counterparts in manufacturing and fisheries, there is a perception among a very significant proportion of migrant workers that the very fact of accessing those mechanisms will lead to retaliation.

Migrant workers in Taiwan cannot be repatriated against their will. If their employers terminate their contracts, they have 60 days to find a new employer. One Taiwanese recruitment agent told us that the fact that migrant workers could not be sent home without their express consent, except in cases where they violated health and safety regulations, was a problem for their industry and left them unable to replace poorly performing workers.⁵⁰⁴ (This is more likely a factor of the quota system for foreign workers - employers can replace foreign workers with Taiwanese workers.) A far greater risk to workers is that their recruitment agents will obstruct their attempts to transfer employers after they complain, either by preventing them from leaving their existing employer or not assisting them to find a new employer.

7.5 Are workers provided with free independent legal advice on judicial and non-judicial options to raise grievances and seek remedy?

Philippines

In 1995, the Migrant Worker Overseas Act provided for the reaction of a Legal Assistance Fund “to provide legal services to migrant workers and overseas Filipinos in distress.” The fund can be used to pay the fees for foreign lawyers hired to represent migrant workers including in litigation.⁵⁰⁵

In February 2020, the Philippines senate voted to amend the law and to expand the use of the Legal Assistance Fund. According to the principal author and sponsor of Senate Bill No. 1233, which provided for the amendments, the aim of the reforms is to advance and improve not only the quality, but also the promptness of the delivery of legal assistance to Filipino workers overseas.⁵⁰⁶ The reform clarifies that workers can avail of assistance from the moment any case is initiated, until the conclusion of the appeals process.

Migrant workers who return to the Philippines and pursue claims can avail of legal representation, assistance and counselling from the Public Attorney’s Office in relation to “criminal, civil, labor, administrative and other quasi-judicial cases.”⁵⁰⁷ However, while civil society actors told us that they have seen numerous cases in which the PAO has successfully represented migrant workers, they noted that there is no specific branch of the PAO for overseas workers and that they tend to only offer assistance to workers in serious cases of illegal recruitment and trafficking.⁵⁰⁸

In less serious cases, workers can get legal advice from the POEA’s Legal Assistance Division or from the handful of NGOs that provide advice and support. The Center for Migrant Advocacy told us that NGOs often work closely with the POEA to pressurise recruiters or foreign employers, but acknowledged that NGO involvement in cases is far more likely to result in a positive outcome for workers.⁵⁰⁹ In June 2020, in response to the Covid-19 pandemic, the POEA announced that it was going to “intensify online legal assistance” to Filipino workers overseas.⁵¹⁰

Taiwan

Taiwan’s 1955 Hotline serves as a free resource for workers seeking information on their rights to file complaints and seek remedy. In relation to access to the judicial system, Taiwan’s Legal Aid Act states that anyone who is legally resident in Taiwan has access to legal aid.⁵¹¹ In 2015, amendments were made to the

503. “Foreign worker abuse not reported”, *Taipei Times*, (23 November 2019).

504. Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020).

505. Migrant Worker Overseas Act, sections 24 to 26.

506. “Villanueva: Measure expanding legal assistance fund for overseas Filipinos hurdles 3rd reading”, *Senate of the Philippines press release* (26 February 2020),

507. See ‘Persons Qualified for Legal Assistance’ information on the website of the Public Attorney’s Office at <https://pao.gov.ph/page.php?id=28>

508. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (23 October 2020).

509. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

510. Department of Labor and Employment, news release, “POEA intensifies online legal assistance”, (2 June 2020).

511. Legal Aid Act, article 14.

law that enabled free legal assistance to be provided to workers who are undocumented. The amendment notes that individuals who “lost their residency due to incidents not imputed to themselves” can avail of legal aid.⁵¹² The Taiwanese government funds the Taiwan Legal Aid Foundation and they provide legal assistance to between 2,000 and 3,000 foreign workers every year.⁵¹³

7.6 Does the origin state provide effective and timely consular support through its missions to workers who have been subjected to fraudulent or abusive recruitment?

Philippines

The Philippines has a raft of ministries and agencies involved in the protection of its overseas workers, and these are spearheaded by Philippines Overseas Labour Offices. There are 34 of these around the world - 11 in Asia, 13 in the Middle East, 7 in Europe and 3 in the

Americas. The offices are headed by a Labor Attaché and include representatives from the Department of Foreign Affairs and the Overseas Worker Welfare Administration. The efforts of Philippines consulates have often been praised in comparison to other origin states, though Filipino civil society organisations have criticised some consulates for their provision of support, particularly in Middle Eastern countries where the risk of abuse for workers is particularly high.⁵¹⁴

In Taiwan, Filipino workers can also avail of the quasi-governmental Manila Economic and Cultural Office (MECO) which works closely with POLO offices in Taiwan. The Taiwan Legal Aid Foundation has worked closely with MECO to provide legal assistance to Filipino workers subjected to usurious lending rates on recruitment fees. One expert on the recruitment of Filipino workers in Taiwan compared their situation favourably relative to other foreign workers and attributed this not only to the assistance that the Philippines authorities can provide to their nationals, but also to the pro-active approach of the Philippines authorities and their attempts to build connections with the migrant community.

512. Legal Aid Act, article 14.

513. Telephone interview with Fang Chun, attorney, Taiwan Legal Aid Foundation, (10 July 2020).

514. See for example [Joint Submission of Migrante International \(MI\) and the Asia Pacific Mission for Migrants \(APMM\) to the United Nations Committee on Migrant Workers](#), April 2014. More recently Migrante has [criticised diplomatic missions in the Middle East](#) for their response to the needs of migrant workers during the Covid19- pandemic.

Assessment against the Five Corridors indicators:

8. Information provided to workers

- 8.1** Do government websites contain relevant information regarding fair recruitment policies, legislation, regulation, and processes? Does the government conduct outreach, including publishing “how-to” guides online, public service announcements on radio and/or television; or webinars etc? _____ 91
- 8.2** Does the government carry out effective pre-departure orientations, including providing training regarding workers’ rights and fair recruitment for potential migrants? _____ 92
- 8.3** Does government encourage outreach to workers by employers, workers’ organizations, compliant labour recruiters and civil society groups? _____ 94
- 8.4** Does the government make labour market information publicly available so as to inform decision making by workers, employers and labour recruiters? _____ 94
- 8.5** Does the government collaborate with the ILO and the most representative employers’ and workers’ organizations to provide education and training and /or conduct awarenessraising campaigns? _____ 95

8. Information provided to workers

“I hardly remember the pre-departure briefing. The only thing that really stuck with us were the salaries we were going to receive; we were dazzled by that.” MARISA, 38, FILIPINA ELECTRONICS FACTORY WORKER IN TAIWAN.

Summary

The Philippines provides prospective migrant workers with detailed information on the migration and recruitment process, either online or via outreach. Pre-Departure Orientation Seminars are mandatory and workers cannot leave the country without having completed them. Civil society organisations have criticised the involvement of private recruitment agencies in the delivery of these pre-departure seminars, pointing out the conflict of interest - recruitment agents can be held accountable under the principle of joint and several liability, which serves as a clear disincentive for them to provide information to their clients on their rights abroad. Very few of the migrant workers we spoke to could recall the content of their pre-departure seminars in any detail. Philippines officials abroad have argued in favour of post-arrival orientation seminars and of holding these country-

specific information dissemination sessions once workers have spent several weeks in the country, rather than immediately upon their arrival. The quasi-governmental body MECO provides post-arrival orientation seminars at their offices in Taiwan and travels to large employers to conduct these on-site. The Philippines has partnered with the ILO to pilot post-arrival orientation seminars in Hong Kong and the ILO has offered training to journalists on recruitment and migration and has published, in conjunction with the Philippines National Union of Journalists, a series of media stories describing the reality of life overseas for Filipino migrant workers. Taiwan provides orientation and information dissemination services to foreign workers on their arrival in Taiwan, and the Workforce Development Agency can also arrange for workers to attend more detailed orientation services, which 150,000 participants attend annually.

Recommendations to the Philippine government:

- Complement pre-departure seminars with post-arrival orientation seminars and hold country-specific information dissemination sessions upon workers' arrival and semi-regularly thereafter.
- Exclude private employment agencies from any role in the provision of pre-departure and post-arrival orientation seminars.

8.1 Do government websites contain relevant information regarding fair recruitment policies, legislation, regulation, and processes? Does the government conduct outreach, including publishing “how-to” guides online, public service announcements on radio and/or television; or webinars etc.

Philippines

The Philippines Overseas Employment Administration (POEA) launched its Pre-Employment Orientation Program (PEOP) in February 1993 in order to provide the public with reliable and comprehensive information on working abroad.⁵¹⁵

515. “Campaign Against Illegal Recruitment, Trafficking and Irregular Migration: Trainers’ Manual”, *Joint IOM, POEA report*, (2013), p. 17.

The POEA maintains its own website but its Facebook page provides a more accessible and user-friendly repository of information, with updates and links to information for prospective migrant workers.⁵¹⁶ In 2020, for example, the POEA Facebook page linked to two instructional videos: the first is a short video in Tagalog detailing the experiences and challenges of one overseas worker, the second is an instructional video that shows prospective workers how to access an online Pre-Employment Orientation Seminar.⁵¹⁷ The online seminar has eight modules that address a range of topics related to overseas work. There is a module that contains a list of required fees for pre-departure including placement fee rulings as well as government-mandated fees, another that includes precautionary measures to help workers avoid illegal recruitment, and another that lists the minimum provisions required in the standard overseas employment contract. None of the modules specifically address the issue of workers' rights, but collectively the modules address issues highly relevant to the realisation of rights in the recruitment process.

Significant resources are also devoted to combating illegal recruitment through information dissemination. The Department of Labor and Employment has been working with local government units for more than a decade and holds seminars in regions from where many of the Philippines' overseas workers originate.⁵¹⁸

Taiwan

Taiwan provides very limited information online for its low-paid foreign workers, and there is no dedicated online source of information for its foreign workforce. The Ministry of Labour provides rudimentary information in English on its website, but the prime source of information regarding workers' rights generally is the 1955 Hotline addressed in detail in section 7.⁵¹⁹

8.2 Does the government carry out effective pre-departure orientations, including providing training regarding workers' rights and fair recruitment for potential migrants?

Philippines

Two years after it initiated its Pre-Employment Orientation program, the Philippines made provision for pre-departure programs in law. The Migrant Worker Overseas Act of 1995 mandates the POEA, in consultation with the Department of Foreign Affairs, to "disseminate information on labor and employment conditions, migration realities and other facts, as well as adherence of particular countries to international standards on human and workers rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment."⁵²⁰ The Republic Act 1002, which amended the Migrant Worker Overseas Act in 2009, made formal provision for the POEA to "undertake other programs or resort to other modes of information and dissemination campaigns, such as the conduct of nationwide, comprehensive and sustainable Pre-Employment Orientation Seminars."⁵²¹ It also stated that these seminars shall "discuss topics such as legal modes of hiring for overseas employment, rights, responsibilities and obligations of migrant workers, health issues, prevention and modus operandi of illegal recruitment and gender sensitivity" and that "the POEA shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights."⁵²²

In practice, it is the Overseas Worker Welfare Administration or the Commission on Filipinos Overseas that delivers the mandatory Pre-Departure Orientation Seminar which workers must attend before being given clearance to leave the Philippines to work overseas.⁵²³

516. The POEA/POES Facebook page can be accessed here <https://www.facebook.com/POEA-PEOS206658936026081->

517. The website linking to the seminar can be accessed here <http://peos.poea.gov.ph/>

518. See, for example this story on the Muntlupa regional government's website "Muntlupa to Establish OFW Help Desks, Partners with DOLE, POEA, OWWA, TESDA", (4 March 2020) as a recent example of the authorities work with local government units. The partnership of central government ministries with LGUs has been ongoing for some time, see this story on the DOLE's website "By capacitating LGUs, DOLE brings illegal recruitment-free, human trafficking-free campaign to Regions", (31 August 2011).

519. See "Notice on Work Rights of Foreign Workers in Taiwan" page

520. Migrant Worker Overseas Act, section 14.

521. Republic Act 10022, section 8. For a discussion of the pre-departure seminars' effectiveness prior to 2009 see Centre for Migrant Advocacy, "Statement to the NGO meeting of the UN Committee on the Migrant Workers Convention" (25 November 2008).

522. Republic Act 10022, section 23.

523. See details at the POEA's Pre-Departure Orientation Seminar website <http://pdosph.com/19/07/2018/pdos-pre-departure-orientation-seminar/>

Licensed third parties can also conduct the seminars. Data from the OWWA website for July 2020 shows that of the 114 third-parties who had POEA licenses to conduct these seminars: 99 were recruitment agents; 8 were NGOs; and 7 were industry associations.⁵²⁴

Representatives from the Center for Migrant Advocacy and Verite, which recently published a report on Filipino workers in Taiwan's distant water fishing sector, have both criticised the Philippines pre-departure orientation program. The CMA have said that there is a lack of legal rights education in the orientations and that they offer an exaggeratedly positive depiction of life overseas.⁵²⁵ Verite told us that the interviews they conducted with Filipino fishermen working on Taiwanese vessels revealed a need for pre-departure orientations to address workers' right to remedies.⁵²⁶

An expert on Filipino migration to Taiwan told us that the involvement of recruitment agencies in the delivery of pre-departure seminars was a problem because these agencies rarely provided workers with information on their rights abroad.⁵²⁷ This is not surprising in view of the fact that, under the joint and several liability provisions in Philippines law, it is the agents themselves who could be held liable for any abuses of their clients' rights abroad. According to a 2020 Verite report on abuses in Taiwan's distant water fishing sector, "only a few" of the 101 Filipino fishermen they interviewed reported attending orientation sessions in the Philippines wherein contracts were clearly explained.⁵²⁸

Very few of the migrant workers we spoke to could recall the content of their pre-departure orientations in any detail. Those who did said that the information was largely practical in nature, and focused on lists of do's and don'ts, although one Filipina who was recruited into Taiwan's electronic sector in March 2020 said that the seminar included a description of the various Philippines government agencies abroad who could provide assistance.⁵²⁹

One worker we spoke to said she was too "dazzled" by the salary she believed she would soon be earning to pay any attention to the seminar: a comment that highlighted a general trend among workers we spoke to - their focus was on getting to their country of destination as quickly as possible in order that they could start earning money.⁵³⁰ A Filipino labour attache in Taiwan offered the same view telling us that pre-departure orientation was inherently ineffective in isolation since attendees are too focused on the positive aspects of their forthcoming overseas deployment to pay attention to cautionary information.⁵³¹ She said that pre-departure seminars needed to be complemented by seminars in the destination state, not immediately upon arrival but after workers are settled and have begun to adapt to their new surroundings. The Philippines trade union Sentro has campaigned for the incorporation of post-arrival orientation seminars in Hong Kong and Taiwan and told us that the Philippines authorities have been receptive to the idea.⁵³²

A second labour attache noted that these types of seminars have been taking place for Filipino workers in Taiwan, with MECO providing orientation sessions in their offices for employees of smaller businesses, and on the premises of larger manufacturing companies that employ Filipinos.⁵³³

Taiwan for its part provides orientation and information dissemination services to foreign workers on their arrival in Taiwan. According to the statistics of the Workforce Development Agency, the Taoyuan and Kaohsiung Airport Foreign Workers Service Stations provide more than 230,000 foreign workers' arrival guidance services every year.⁵³⁴ Whereas these services are practical in nature, WDA staff can also arrange for workers to attend more detailed orientation services, which 150,000 participants attend annually, according to the WDA. These orientations include information to make "foreign workers...more aware of their rights and interests and to avoid any violations."⁵³⁵

524. Data available at the OWWA website <https://www.owwa.gov.ph/images/PDOS/PROVIDER/July2020/pdmu.pdf>

525. Centre for Migrant Advocacy, "Report of the Center for Migrant Advocacy for the 3rd Cycle Philippines Universal Periodic Review (UPR) on the situation of Filipino Migrant Worker", (27 May 2017).

526. Telephone interview with Daryll Delgado, Verite, (2 July 2020).

527. Telephone interview with Eden See, (1 October 2020).

528. "Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan," *Verité*, (2020 draft copy) p. 25.

529. Telephone interview with J.F., Taipei, (August 2020).

530. Telephone interview with M.M., Taipei, (August 2020).

531. Interview with Cheryl Daytec-Yangot; Labor Attache, Philippine Overseas Labor Office, Taipei, (24 November 2019).

532. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).

533. Interview with Arthur A Abiera Jr., Manila Economic and Cultural Office, Director, Taichung, (10 December 2019).

534. See Workforce Development Agency website https://www.wda.gov.tw/en/News_Content.aspx?n=8E8FA34452E8DBC2&s=3CCE4A5BFD95F812

535. See Workforce Development Agency website https://www.wda.gov.tw/en/News_Content.aspx?n=8E8FA34452E8DBC2&s=3CCE4A5BFD95F812

8.3 Does government encourage outreach to workers by employers, workers' organizations, compliant labour recruiters and civil society groups

Philippines

According to POEA and IOM literature, the Philippines Pre-Employment Orientation Program “is designed to engage institutional support from local government units (LGUs), Public Employment Service Offices (PESOs), schools, civil society organizations (CSOs) and NGO partners.”⁵³⁶

The Center for Migrant Advocacy is currently engaged in a project to assist regional civil society organizations and representatives of local government units to engage more effectively with prospective overseas workers in ensuring they are fully aware of their rights and the realities of work overseas.⁵³⁷ The project is not funded by the Philippines government but the CMA told us that it enjoys the full support of the key government agencies - the POEA, OWWA and the Department of Foreign Affairs.

Taiwan

The Taiwanese authorities provide support and funding to civil society organisations in Taiwan, including the Taiwanese Legal Aid Foundation and Serve The People, one of the NGOs that is most vocal in its criticism of the protection provided to migrant workers in Taiwan.

8.4 Does the government make labour market information publicly available so as to inform decision making by workers, employers and labour recruiters?

Philippines

A training manual, devised by the POEA and the IOM, and targeted at Filipinos considering pursuing employment abroad, includes a detailed section on labour market assessment and aims to ensure that prospective migrant workers: ask the proper questions when assessing which overseas labour markets are viable options for overseas employment; assess for themselves whether the prospective gains from the jobs they choose abroad offset the risks and challenges they may face; and, learn the current labour market opportunities and global employment forecasts and how to access them. There is no information publicly available on the extent to which the training manual is used in pre-departure seminars and no indication that it is part of the mandatory seminar modules. The manual advises trainers to ensure workers know they should have “access to credible and updated information on job vacancies and employment forecasts” and advise them to access updates from “the POEA website and other official sources.”⁵³⁸

The POEA has a labour market updates page, but it has not been updated since 2015. Prior to 2015, it was regularly updated. In 2014, for example, it included information, for example, on reforms to Canada's Temporary Foreign Worker Program in 2014 and job prospects in the United Arab Emirates in the light of its successful bid to host Expo 2020.⁵³⁹

Taiwan

Taiwan's Directorate General of Budget, Accounting and Statistics regularly publishes detailed statistics on its labour market and its workforce, but the data is raw and eludes easy interpretation or analysis.⁵⁴⁰ It also publishes economic forecasts that are publicized in the media, in view of Taiwan's critical role in electronics and other manufacturing supply chains. These are more likely to be of use to employers and recruitment agencies than to workers.

536. “Campaign Against Illegal Recruitment, Trafficking and Irregular Migration: Trainers' Manual”, IOM and POEA joint publication, (2013), p. 17.

537. Telephone interview with Ellene Sana, Center for Migrant Advocacy (23 October 2020).

538. “Campaign Against Illegal Recruitment, Trafficking and Irregular Migration: Trainers' Manual”, IOM and POEA joint publication, (2013), p. 43.

539. “Canada Cracks Down on Abuse of Temporary Foreign Worker Program,” POEA Market Update, (April 2014), and “Job prospects in UAE for Expo 2020”, POEA Market Update, (March 2014).

540. See website of Directorate General of Budget, Accounting and Statistics at <https://eng.dgbas.gov.tw/mp.asp?mp=2>

8.5 Does the government collaborate with the ILO and the most representative employers' and workers' organizations to provide education and training and/or conduct awareness-raising campaigns?

Philippines

The ILO's Integrated Programme on Fair Recruitment (FAIR) was established in 2015 as a joint operation by the ILO's Fundamental Principles and Rights at Work Branch and its Labour Migration Branch. The Philippines is one of six countries covered in the program and under its auspices, the Department of Labor and Employment signed an agreement with the ILO in 2019 to develop a Post-Arrival Orientation Seminar learning system, which will include "informative videos and assessment tools."⁵⁴¹ The ILO's country director Khaled Hassan cited

the need for country-specific information "starting with their rights, privileges and responsibilities."

A further objective of the ILO's FAIR project is to disseminate global and national knowledge about fair recruitment and labour migration through engagement with the media and as part of that the ILO partnered with the National Union of Journalists of the Philippines offering them training on the issues of labour migration and fair recruitment. In 2018 the collaboration resulted in the publication of an anthology of stories depicting the reality of life for Filipino workers overseas, many of which were published by media outlets in the Philippines and in countries of destination.⁵⁴²

Taiwan

Due to Taiwan's status in international law, it cannot collaborate with the ILO. Collaborations with civil society organisations are noted under 8.4.

541. "DOLE, ILO promote rights-based information through online learning for Overseas Filipino Workers", *ILO Press Release*, (19 July 2019).

542. See 'Fair Perspective: Stories of Filipino migrant workers in the media', *International Labour Organisation and National Union of Philippines Journalists*, (2018).

Assessment against the Five Corridors indicators:

9. Freedom of association

- 9.1 Do workers have the legal right to form and join unions, and can they strike and collectively bargain? _____ 98
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A meeting of a domestic worker union, Taipei. © Lennon Ying-Dah Wong / Flickr

9. Freedom of association

“The NGOs and the Ministries have been invited to the meeting, but not the foreign workers’ unions. The Domestic Workers Union wants to join but they are not allowed to. Workers’ perspectives are excluded from the meeting.”

LENNON YING-DA WONG, SERVE THE PEOPLE, TAIWAN.

Summary

Filipino workers have the right to form and join trade unions and to strike and collectively bargain. These rights are laid out in detail in the Philippines’ labour code. The rights of freedom association, assembly and expression are protected under the constitution and the Supreme Court has issued rulings affirming these rights. The ILO Committee of Experts has criticised the Philippines’ circumscription of the right of foreign workers to freedom of association as well as provisions in the Labor Code that could be interpreted as unduly restricting the right to strike. There are approximately 600 national trade unions, representing 39 million workers. The human rights situation in the Philippines has deteriorated significantly in recent years and this has included attacks on trade unionists. International trade

union groups have described a systematic pattern of violence and assassinations targeting labour and human rights defenders and defamatory campaigns designed to characterise critics of the government as communists or terrorists. There is no trade union in the Philippines that specifically represents the interests of its 2 million overseas foreign workers. Despite the practical difficulties associated with representing workers overseas, there have been moves to implement such a system, in large part due to the advocacy of domestic workers organisations.

Taiwan’s constitution protects the rights to freedom of assembly and association and its Labour Union Act grants all workers the right to organize and join labour unions. Prior to Taiwan’s transition to democratic rule in the 1990s, labour unions had strong links with the government and it was not until

May 2000 that the authorities formally recognized the country's first truly independent trade union confederation. In 2011, Taiwan amended provisions of the Labour Union Act that prevented foreign workers from setting up trade unions. Since this reform, two labour unions in Taiwan have been established by and for migrant workers: the Yilan Migrant Fishermen Union was established in 2013, and the Taoyuan Domestic Caretaker Union was established in 2017. The Yilan Migrant Fishermen

Union (YMFU) was very active in a campaign for justice following the death of several foreign fishermen in the south of the country, and there have been allegations that its work led to harassment and intimidation of its leaders. In 2021, a third trade union for foreign workers, the Keelung Migrant Fishermen's Union, attained legal status despite geographical restrictions placed on membership, which hampered its efforts to enlist members.

Recommendations to the Philippine government:

- Facilitate civil society groups and trade unions in setting up a domestic organisation to represent and lobby for the rights of its overseas workers.
- Implement the recommendations of the ILO Commission on Freedom of Association at the 108th session of the International Labour Conference in 2019, including that the Philippines “immediately and effectively undertake investigations into the allegations of violence in relation to members of workers’ organizations with a view to establishing the facts, determining culpability and punishing the perpetrators.”

Recommendations to the government of Taiwan:

- Initiate a thorough investigation into allegations of harassment and intimidation of senior figures within the Yilan Migrant Fishermen Union.
- Include provisions in the Labour Union Act that explicitly prohibit the obstruction or hindrance of trade union

activity and criminalize the harassment or intimidation of individuals engaged in trade union activity.

9.1 Do workers have the legal right to form and join unions, and can they strike and collectively bargain?

Philippines

The Philippines constitution protects the right of freedom of association, assembly and expression. The Philippines Supreme Court has affirmed these rights and issued guidance on the scope and content of these rights.⁵⁴⁴

The Labor Code states that it is state policy to: “promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes”; “promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development”; and “foster the free and voluntary organization of a strong and united labor movement”.⁵⁴⁵ The law explicitly recognises the right of private sector workers, “to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining.”⁵⁴⁶ In

543. The Constitution of the Republic of the Philippines, 1987. Article III, section 4 “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.” Section 8 “The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.”

544. See ‘Call for inputs for the issues for consideration during a half-day general discussion in preparation for a General Comment on Article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights’, *Commission on Human Rights of the Philippines*, (18 March 2019)

545. The Labor Code of the Philippines, Presidential Decree No. 442 of 1974, article 218 (a),(b),(c). Note there are two versions of the Labor Code online: a version on the DOLE website and an amended and renumbered version available at https://mfbr.com.ph/wp-content/uploads/Labor_Code_of_the_Philippines_2016_fulltext_DOLE-Edition.pdf References in this report are to the amended and renumbered version.

546. Labor Code, article 253.

relation to public sector workers, the law distinguishes between public sector workers “established under the Corporation Code” and “all other employees in the civil service”, giving the former group the right to “have the right to organize and to bargain collectively with their respective employers” and the latter to “have the right to form associations for purposes not contrary to law.”⁵⁴⁷

The Labour Law proceeds to frame collective bargaining not only as a right but as a duty and one that applies even in the absence of a formal collective bargaining agreement.⁵⁴⁸

“The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purposes of negotiating an agreement with respect to wages, hours of work, and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements.”⁵⁴⁹

In relation to strikes, the law states that this right, which applies only to “legitimate labor organizations”, shall “continue to be recognized and respected.”⁵⁵⁰ The Labor Code states that “no union members or union organizers may be arrested or detained for union activities, without previous consultations with the Secretary of Labor.”⁵⁵¹

The ILO Committee of Experts has criticised the Philippines’ circumscription of the right of foreign workers to freedom of association as being inconsistent with article 2 of ILO Convention 87, and has urged it to amend its labor code “to grant the right to organize to all workers residing in the Philippines.”⁵⁵² The Committee has also criticized provisions in the Labor Code that could be interpreted as allowing penal sanctions to be imposed against a worker for having carried out a

peaceful strike, “even if non-compliant with bargaining or notice requirements.”⁵⁵³

Approximately 600 national trade unions, industrial federations and plant-level unions from private and public sectors are registered in the Philippines, although they represent less than 10% of the workforce, which numbers approximately 39 million.⁵⁵⁴

In relation to Filipino migrant workers overseas, despite the large numbers of workers who travel overseas and their financial contribution to the Philippines economy, there is no trade union to specifically address their interests. A representative of the Philippines trade union Sentro, which organizes industrial and sectoral unions in the country and takes an active role in migrant worker protection, told us that there are significant challenges involved in setting up a trade union organisation that specifically represents overseas foreign workers, most notably the practical difficulties of organizing members who reside in so many different countries around the world.⁵⁵⁵ Sentro nonetheless said they are planning to set up a Philippines-based union for overseas foreign workers that will manage its work abroad in different countries. Sentro noted that the push for unionization and organisation was coming from the domestic worker sector.⁵⁵⁶

Tripartism is enshrined as a state policy in the constitution and in the Labor Code, which states that “workers and employers shall, as far as practicable, be represented in decision and policy-making bodies of the government.”⁵⁵⁷ The Overseas Workers Welfare Administration and the Philippines Overseas Employment Agency are considered as tripartite policy-making bodies. The Overseas Landbased Tripartite Consultative Council is one of the Philippines Industry Tripartite Councils, which are consultative bodies.⁵⁵⁸ According to the Memorandum of Agreement that set it up in 2013, it acts “as an advisory body to the

547. Labor Code articles 254, 253.

548. Labour Code, article 262.

549. Labor Code, article 263.

550. Labor Code, Article 263.

551. Labor Code, Article 266.

552. ILO, *Committee of Experts report*, (2019), p. 132. The ILO criticized articles 284 of the Labor Code which states: “All aliens, natural or juridical, as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, That aliens working in the country with valid permits issued by the Department of Labor and Employment, may exercise the right to self-organization and join or assist labor organizations of their own choosing for purposes of collective bargaining: Provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers. (As amended by Section 29, Republic Act No. 6715, March 1989, 21)”

553. ILO, *Committee of Experts report*, (2019), p. 132.

554. See “*Workers and Employers Organizations in the Philippines*”, ILO website.

555. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).

556. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).

557. Labor Code, article 290. The Constitution of the Republic of the Philippines, 1987, Article XIII, Section 3.

558. For details see website of [Philippines Migrants Rights Watch](#), (4 June 2013).

Secretary of Labor and Employment in terms of policies and programs affecting labor and employment in the overseas employment sector.” Numerous workers’ rights organisations are represented on the OLTCC, including the Center for Migrant Advocacy.⁵⁵⁹

Taiwan

Taiwan’s constitution protects the rights to freedom of assembly and association.⁵⁶⁰ Taiwan’s Labour Union Act grants all workers the right to organize and join labour unions.⁵⁶¹ The law prohibits employers from discriminating against workers due to their membership of a trade union or their participation in trade union events or activities. It similarly prevents discriminatory treatment against any worker who “requests collective bargaining or participates in related activities concerning collective bargaining” or “who participates in or supports industrial action.”⁵⁶²

The Labour Union Act was first drafted in 1929, but Taiwan did not formally recognize a legal and autonomous trade union until May 2000 when it recognized the Taiwan Confederation of Trade Unions.⁵⁶³ Prior to its transition to democratic rule in the 1990s, labour organisations had strong links to the government, one Taiwanese commentator and writer told us.⁵⁶⁴

In 2011, Taiwan amended the Labour Union Act, removing the requirement that only Taiwanese nationals be eligible for roles as supervisors or directors. A 2020 report from the Ministry of Labour noted that “foreign workers aged 20 or more without the nationality of the Republic of China are eligible for directors and supervisors of a labor union in addition to a sponsor, so as to protect their right to work and form an alliance as well as three rights of labor (Right to organize, right to bargain and right to dispute) which national labors enjoy.”⁵⁶⁵

Since this reform, three labour unions in Taiwan have been established by and for migrant workers: the

Yilan Migrant Fishermen Union was established in 2013, and the Taoyuan Domestic Caretaker Union was established in 2017. In February 2021, the Keelung Migrant Fishermen’s Union was the third trade union to attain legal status, and comprises 100 members working at three harbours in Keelung, on the northern tip of Taiwan.⁵⁶⁶

9.2 Can trade unions operate effectively in practice, are their activities free from disruption and harassment?

Philippines

In its 2019 commentary on the Philippines, the ILO Committee of Experts heard detailed allegations of harassment, intimidation and extrajudicial killings of trade union activists, including the assassination of trade union leader Leonides Dennis Sequeña in June 2019. It said that it “noted with concern the numerous allegations of murders of trade unionists and anti-union violence as well as the allegations regarding the lack of investigation in relation to these allegations.”⁵⁶⁷ Also, in 2019, the International Trade Union Confederation wrote to the Philippines authorities to deplore that they called the “ongoing violence and assassinations targeting labour and human rights defenders in the Philippines,” a campaign which, according to the Nagkaisa Labor Coalition, has resulted in 43 deaths of labour rights defenders during the presidency of Rodrigo Duterte.⁵⁶⁸ In October 2019, Amnesty International reported that police and military forces raided the offices of political party Bayan Muna, women’s alliance Gabriela, and labour group National Federal of Sugar Workers (NFSW) in Bacolod, Negros Occidental.⁵⁶⁹ Amnesty attributed the arrests to government efforts to discredit critics of the government’s human rights abuses by “red tagging” them as fronts for outlawed communist armed groups.⁵⁷⁰ In June 2020, Human Rights Watch described a climate

559. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

560. The Constitution of the Republic of China (Taiwan), article 14.

561. Labour Union Act, article 4.

562. Labour Union Act, article 35.

563. See “The History of Taiwan Confederation of Trade Unions TCTU”

564. Telephone interview with Brian Hioe, Editor New Bloom Magazine, (30 July 2020).

565. “Report on Protection of the Rights for Foreign Workers in Taiwan,” Taiwan Ministry of Labor, (2020), p. 23.

566. Andi Kao, “Keelung Migrant Fishermen Form Union, Second of its Kind in Taiwan,” *The News Lens*, 22 February 2021.

567. See ILO Committee of Experts consideration of Convention No. 87 (Philippines) at its 108th session.

568. Letter from Ayuba Wabba, ITUC President, to Silvestre H. Bello III, Secretary of Labor and Employment, (June 2019, 5).

569. “Philippines: Concern over raids, mass arrests of activists,” *Amnesty International*, (2 November 2019).

570. Amnesty International, “Philippines: Concern over raids, mass arrests of activists,” (2 November 2019). See also “Philippines: End deadly practice of red-tagging,” *Amnesty International*, (2 November 2020),

of “worsening media freedom and freedom of expression in the Philippines”, with reference to the prosecution for criminal libel of a prominent journalist.⁵⁷¹ The Philippines was ranked among the ten worst countries for workers’ rights in the ITUC’s 2020 Global Rights Index. The ITUC report stated that “in the Philippines, union members were particularly at risk of violence, intimidation and murder,” in 2020.⁵⁷²

Taiwan

Due to Taiwan’s status in international law, the ILO Committee of Experts has never formally assessed its record on fundamental labor rights.⁵⁷³ However an International Trade Union Congress report noted that there are practical impediments to the realisation of these rights. The 2010 report, the only authoritative English-language report on trade union rights in Taiwan notes that, “many categories of workers are banned from joining or forming unions, collective bargaining is not mandatory, and strikes are impeded either in law or in practice by long and complex procedures which involve compulsory dispute resolution mechanisms.”⁵⁷⁴

Taiwanese NGO One-Forty told us that there are few restrictions on freedom of association, assembly and expression and that migrant workers could be vocal in pursuing their rights, something they tended to do with the assistance and support of NGOs rather than trade unions.⁵⁷⁵ Media reports confirm the involvement of numerous Taiwanese NGOs in migrant worker protests from the domestic care, manufacturing and fisheries sectors.⁵⁷⁶ One electronics manufacturer told us that while approximately 60 - 70% of their Taiwanese workforce were trade union members, their Filipino workers chose not to join the union because of language barriers.⁵⁷⁷

Serve the People told us of a recent example that in their view illustrated how the government sought to marginalize trade unions representing the interests of foreign workers, explaining how NGOs and government Ministries had received invites to a meeting to discuss a change to regulations on workers’ rights, while trade unions had not been invited. “Workers’ perspectives are excluded from these meetings,” he said.

In October 2019, one of Taiwan’s two trade unions, the Yilan Migrant Fishermen Union (YMFU) was very active in a campaign for justice that followed the collapse of a bridge and the death of several foreign fishermen in the south of the country. Taiwanese media reported that, as a result of its activism on behalf of victims of the accident and their families, the YMFU secretary general became the subject of harassment, the YMFU president was forced out of his job because of pressure from senior figures in the Taiwanese fishing industry. There were also reports that authorities from states that send workers to Taiwan had advised their nationals not to join the YMFU.⁵⁷⁸

Researcher Andi Kao described numerous challenges associated with the formation in 2021 of Taiwan’s third trade union for foreign workers, the Keelung Migrant Fishermen’s Union, in 2021, including the fact that the union was only allowed to enlist fishermen employed in the port of Keelung, a geographical restriction that hampered the organizing drive and prevented two of the most active leaders of the Indonesian fishermen community from joining the union. “It caused a lot of trouble. Many people left and we had to keep starting all over,” said the KMFU’s Secretary General Mei-hua Lee.⁵⁷⁹

571. “Philippines: Rappler verdict a blow to media freedom,” *Human Rights Watch*, (15 June 2020)

572. “Global Rights Index 2020”, *International Trade Union Confederation*, p.29.

573. Until a change in policy in 2017, Taiwan trade union representatives enjoyed ‘observer’ status at the ILO’s International Labor Conference. Some Taiwanese commentators attribute the change in policy to pressure from China. See Li-chuan Liu Huang, “The International Labor Conference Turns Its Back on Taiwan – and Its Own Principles”, *The Diplomat*, (1 June 2017).

574. “Internationally Recognised Core Labour Standards in Chinese Taipei”, *International Trade Union Confederation*, (July 2010).

575. Interview with Kevin Chen, One-Forty, Taipei, (6 February 2020).

576. James X. Morris, “Taiwan’s Migrant Workers Are Finding Their Voice”, *The Diplomat*, (27 June 2018).

577. Interview with NXP Semiconductors, Kaohsiung, (19 February 2020).

578. Andi Kao, “Attacks Against the Yilan Migrant Fishermen Union Force the Resignation of Union President”, *New Bloom*, (3 November 2019).

579. Andi Kao, “Keelung Migrant Fishermen Form Union, Second of its Kind in Taiwan.” *The News Lens*, (22 February 2021.)

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