

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

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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

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*.

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 Domestic 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

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. Janelle 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, Verité 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).

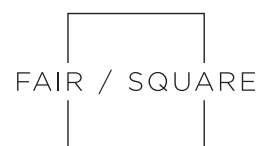
87. Employment Service Act, article 52.

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