

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

JULY 2021



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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:

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.
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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 seafarers.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 seafarers 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, Tatcee 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, Verité, (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 Torre, (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. Loai 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).

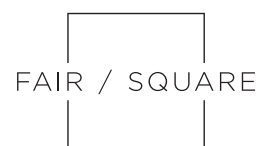
169. Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020).

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