

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

JULY 2021



five corridors
project

fivecorridorsproject.org

FAIR / SQUARE

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.

fairsq.org

Design by www.NickPurserDesign.com

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:

4. Licensing, registration and certification schemes

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

4. Licensing, registration and certification schemes

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

Summary

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

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

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

Recommendations to the Philippine government:

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

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

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

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

Recommendations to the government of Taiwan:

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

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

Philippines

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Taiwan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Philippines

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

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

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

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

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

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

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

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

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

216. Distant Water Fisheries Act, article 7.

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

218. Distant Water Fisheries Act, article 42.

219. Distant Water Fisheries Act, article 42.

220. Distant Water Fisheries Act, article 42.

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

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

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

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

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

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

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

Taiwan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Philippines

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

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

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

All of these factors are prevalent in the Philippines.

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

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

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

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

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

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

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

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

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

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

Volume and quality of deployment: **30**

Technical capability: **30**

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

Industry leadership and marketing performance: **15**

Social awareness and responsibility: **5**

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

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

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

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

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

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

247. POEA Revised Rules and Regulations, section 233.

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

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

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

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

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

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

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

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

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

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

Taiwan

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

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

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

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

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

Philippines

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Taiwan

Taiwanese law makes no provision for joint or several liability.

262. Rule VII, Section 3.

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

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

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

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

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

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

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

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

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

Supported by Open Society Foundations and Humanity United

**OPEN SOCIETY
FOUNDATIONS**



Produced by FairSquare



fairsq.org