

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

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ABOUT THIS DOCUMENT

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

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

Assessment against the Five Corridors indicators:

5. Machinery to implement and enforce legislative and regulatory regimes

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

5. Machinery to implement and enforce legislative and regulatory regimes

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

Summary

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

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

Recommendations to the Philippine government:

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

Recommendations to the government of Taiwan:

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

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

Philippines

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

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

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

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

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

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

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

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

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

275. Republic Act, Section 16.

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

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

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

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

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

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

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

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

Taiwan

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

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

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

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

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

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

Philippines

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Taiwan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Philippines

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

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

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

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

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

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

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

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

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

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

324. Republic Act, Rule VI, Section 4.

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

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

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

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

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

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

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

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

Taiwan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Philippines

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

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

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

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

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

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

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

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

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

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

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

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

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

Taiwan

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

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

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

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

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

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

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

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

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

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

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

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

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

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