

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

JULY 2021



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ABOUT THIS DOCUMENT

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

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



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

6. Measures to prevent fraudulent and abusive recruitment

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

FORMER PHILIPPINE GOVERNMENT OVERSEAS OFFICIAL.

Summary

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

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

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

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

Recommendations to the Philippine government:

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

Recommendations to the government of Taiwan:

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

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

Philippines

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

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

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

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

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

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

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

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

359. POEA Revised Rules and Regulations, section 51.

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

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

362. POEA Revised Rules and Regulations, section 50.

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

364. POEA Revised Rules and Regulations, section 53.

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

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

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

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

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

Taiwan

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

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

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

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

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

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

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

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

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

372. Article 52, Employment Service Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Philippines

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

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

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

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

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

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

388. POEA Revised Rules and Regulations, section 51.

389. POEA Revised Rules and Regulations, section 137.

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

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

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

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

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

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

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

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

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

Filipino workers in Taiwan we spoke to all reported paying significant sums in recruitment fees for their jobs in Taiwan and for previous overseas jobs in other countries.³⁹⁹ The lowest recruitment fee that any of the workers we spoke to paid was 60,000 Pesos (US \$1,245) and the highest was 200,000 Pesos (US \$4,145). As a general rule, and taking into account that the total number of workers we spoke to precludes any claims of prevalence, workers who had paid more than 100,000 Pesos (US \$2,083) had been in Taiwan for more than five years. The fees that workers who had been recruited more recently had generally paid between 60,000 and 100,000 Pesos (US \$1250 - US \$2,083).

Workers uniformly regarded fee payment as standard practice. One 35-year old fisherman told us that he didn't know why his recruitment fee was so high (120,000 Pesos, or US \$2500), but he paid it anyway because his primary concern was securing a job as quickly as possible.⁴⁰⁰ A 38-year old Filipina in the electronics sector didn't question why she paid 20,000 Pesos (US \$417) more than other workers who were recruited at the same time, telling us that she thought it would be futile to ask for an explanation.⁴⁰¹

Taiwan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Philippines

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

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

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

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

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

Taiwan

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

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

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

419. POEA Rules and Regulations Governing Landbased Workers, section 96

420. POEA Rules and Regulations Governing Landbased Workers, section 70 ,68. Approved job orders can only be advertised via licensed recruitment agencies or the POEA.

421. POEA Rules and Regulations Governing Landbased Workers, section 137.

422. Email from Bernard Mangulabnan, Philippines Department of Labor Studies, (21 September 2020).

423. Telephone interview with Golden Brother Recruitment Agency, Taiwan, (3 September 2020). Telephone interview, name withheld, (October 2020 ,1). POEA Standard Employment Contract

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

425. Employment Service Act, article 46.

hours, leave, and holiday.⁴²⁶ There is no explicit mention of foreign workers and no requirement that foreign workers receive contracts in their own language.

Domestic workers are not covered by the Labour Standards Act so migrant workers from origin states that do not impose a standard contract (such as the Philippines). As detailed in section 2, this leaves them particularly vulnerable to abuse. Migrant Forum Asia has pointed to serious shortcomings in the contracts provided to domestic workers in Taiwan, including the failure to specify working hours and tasks, limited grounds for limited grounds for termination of the contract by the domestic worker and the lack of a rest day.⁴²⁷

In a 2020 report detailing abuses in Taiwan's Distant Water Fishing sector, Greenpeace highlighted contractual irregularities as a factor in worker abuses - in the majority of the cases documented by Greenpeace, workers signed contracts with foreign recruitment agents but did not receive a copy.⁴²⁸

Verite found similarly in their 2020 report - most of the Filipino workers they interviewed in Taiwan did not have a copy of their employment contract and many reported having signed new contracts once they arrived in Taiwan and some reported having signed blank contracts.⁴²⁹

6.4 Are there effective measures to prevent contract substitution?

Philippines

An ethical recruitment agent in the Philippines told us that he was not aware of any specific measures designed to address the issue of contract substitution.⁴³⁰ However, it is clear that the Philippines has regulations in place to mitigate the risk of a practice that takes place outside of their jurisdiction. The POEA has a process in place to ensure that all Filipino workers deployed overseas have signed a contract with their employer or the foreign

recruitment agent (see section 6.3). If this system does not work, for example if the foreign employer or recruitment agency or the employer forces the worker to sign a second contract, they can lose their accreditation to recruit or employ Filipino workers. The POEA has not responded to requests for information on this or any other aspect of their regulation efforts.

One expert on the recruitment sector said that contract substitution - either in terms of fake job orders or jobs where the terms of employment are different from those laid out in the contract - is one of the issues that the Philippines labour inspectorate tends to act upon and investigate, adding that its response to complaints is inconsistent and even in these cases, effective investigation is by no means guaranteed.⁴³¹

Taiwan

Taiwan has no specific measures in place to address contract substitution or contractual irregularities more generally, and key stakeholders told us that these are a serious contributory factor in preventing workers from leaving abusive employers and leaving them in poor living and working conditions, in addition to increasing their vulnerability to debt bondage.

All of the NGOs we spoke to told us that illegal salary deductions were a serious problem and that many of these were based on second contracts that recruitment agents and employers made workers sign, rendering them liable for costs such as air-conditioning and cleaning - recruitment agents in Taiwan are often providers of worker accommodation.⁴³² The People told us that these contracts existed in a "grey area" from a legal perspective and that it was difficult for workers to document evidence of contractual violations.⁴³³ Rerum Novarum told us that workers in fisheries were more likely to be forced to sign second contracts than workers in other sectors, and that they were an effective tool in legitimising exploitative conditions in the eyes of foreign workers.⁴³⁴ One worker in a shelter told us that

426. Labor Standards Act, (1984).

427. "Standardised Contract for Migrant Domestic Workers: Policy Brief No. 1", *Migrant Forum Asia* (no date).

428. "Choppy Waters: Forced Labour and Illegal Fishing in Taiwan's Distant Water Fisheries", *Greenpeace*, (19 March 2020).

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

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

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

432. Interview with Lennon Ying-Dah Wong, Director, Serve the People Association, Taipei, (20 February 2020). Interview with Rerum Novarum Center, Taipei City, (20 February 2020). Telephone interview with Xiu-Liang Chen, Taiwan International Workers Association, (1 July 2020).

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

434. Interview with Rerum Novarum Center, Taipei City, (20 February 2020).

he and his colleagues, who had been working in the electronics sector, received significantly less than their contracted wage due to illegal deductions and showed us photographs of their cramped dormitory. He told us it took them nearly two years to gather the evidence they required to prove that their employer had violated the terms of the contract.⁴³⁵

Verite's 2020 report into the fisheries sector found that "workers were made to sign supplemental agreements, addendums, and new agreements, once in Taiwan" and that some workers were "asked to sign a blank document, with no explanation of what the document was for."⁴³⁶ Some workers interviewed by Verite said that "they had difficulty determining if the terms and conditions signed in Taiwan were the same as those signed in the Philippines." Others said they were asked to sign different employment contracts before leaving the Philippines and told that if they did not, they would be forced to pay all expenses associated with their recruitment.⁴³⁷

6.5 Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts?

Philippines

While the Philippines migration system is to a large extent based on ensuring that the workers it deploys overseas have contracts, the system makes provision for workers who do not have contracts. The law considers a worker who does not have a POEA-approved contract to have irregular or undocumented status.⁴³⁸ The Republic Act 10022 reiterates that it is Philippines state policy that effective mechanisms exist to ensure the rights of Filipino migrant workers to access courts whether they are documented or undocumented.⁴³⁹ Workers without contracts are technically not covered by the Republic Act 10022, but the Philippines has established centers abroad to register workers and bring them under the

purview of the act and grant them the full range of its protection.⁴⁴⁰

The quasi-governmental Manila Economic and Cultural Office arranged for the Taiwan Legal Aid Foundation to provide legal representation to undocumented Filipino workers who had left their employers and worked without permits due to the financial impact of court-ordered salary deductions (addressed in section 6.4). The Taiwan Legal Aid Foundation has successfully challenged some of these court orders, on the basis that the rates of interest being charged to foreign workers were unreasonable.

In April 2020, in response to the impact of the Covid19 pandemic, the Department of Labour and Employment announced that documented and undocumented workers would be eligible for emergency cash assistance for displaced migrant workers.⁴⁴¹

Taiwan

The Labor Standards Act, the Employment Service Act and the Distant Water Fisheries Act, which collectively are the key pieces of legislation that relate to the employment of foreign workers foresee no situations in which employees work without contracts, and outline no specific protection for workers in these situations.

Taiwan's Legal Aid Act states that anyone who is legally resident in Taiwan has access to legal aid.⁴⁴² In 2015, amendments were made to the law that enabled free legal assistance to be provided to workers who are undocumented. The amendment notes that individuals who "lost their residency due to incidents not imputed to themselves" can avail of legal aid.⁴⁴³ The Taiwan Legal Aid Foundation told us that they have often met with resistance from judges and prosecutors when they have attempted to use the Legal Aid Act to provide legal representation to migrant workers.⁴⁴⁴ Nonetheless, they are able to use the reforms to the law to provide legal assistance to undocumented workers.

435. Interview with 'Leo', Filipino migrant worker, Taipei, (26 February 2020).

436. "Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan," Verité, (2020 draft copy), p.24.

437. "Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan," Verité, (2020 draft copy), p.25.

438. Republic Act 10022, section 1.

439. Republic Act 10022, section 2.

440. Republic Act 10022, section 19.

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

442. Legal Aid Act, article 14.

443. Legal Aid Act, article 14.

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

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