

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

JULY 2021



five corridors
project

fivecorridorsproject.org

FAIR / SQUARE

ABOUT THIS DOCUMENT

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

fairsq.org

Design by www.NickPurserDesign.com

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

Assessment against the Five Corridors indicators:

7. Access to grievance mechanisms, provision of remedy and accountability

- 7.1** Do workers irrespective of their presence in the country or legal status have access to free or affordable grievance / dispute resolution mechanisms in cases of abusive/fraudulent recruitment? _____ 81
- 7.2** Are grievance mechanism processes accessible in practice, rapid and free of complex administrative procedures? _____ 83
- 7.3** Are workers provided with remedy including compensation as a result of such grievance procedures? _____ 86
- 7.4** Are workers raising grievances and whistleblowers effectively protected from retaliation, including deportation? _____ 87
- 7.5** Are workers provided with free independent legal advice on judicial and non-judicial options to raise grievances and seek remedy? _____ 88
- 7.6** Does the origin state provide effective and timely consular support through its missions to workers who have been subjected to fraudulent or abusive recruitment? _____ 89



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

7. Access to grievance mechanisms, provision of remedy and accountability

"If you are strong, and have courage, you can fight for your rights here." LENIE, 38, FILIPINA FACTORY WORKER IN TAIWAN.

Summary

Filipino migrant workers abroad and returnee migrant workers have access to support and grievance mechanisms. In all but the most serious cases, the Philippines places a strong emphasis on the primacy of mediation to resolve disputes and provide remedy. The Philippines authorities abroad, notably POLO and OWWA, assist migrant workers in dispute resolution and conciliation, and the POEA can exert leverage by threatening to remove the accreditation of foreign employers or recruitment agents who do not engage in mediation in good faith. In 2020, the Philippines senate expanded the use of a Legal Assistance Fund that overseas workers can avail of in cases that are heard in foreign courts. In the Philippines, workers can take cases against Philippines recruitment agents to

the National Labor Relations Commission, and the POEA can provide advice and support on how to do this. Legal aid is available to migrant workers from the Public Attorney's Office, but in practice is limited to the most serious cases. In practice, a very small proportion of aggrieved Filipino migrant workers use the judicial grievance mechanisms available to them. The Philippines' preference for mediation, ingrained in policy and its Single Entry Approach (SenA) partly explains this, but many workers lose their appetite to pursue cases as the length and complexity of the process becomes apparent, and opt for quick financial settlements.

Taiwan's primary grievance mechanism for its foreign workforce is a multi-lingual hotline that allows workers to access support and advice and to formally file complaints against their employers

or their recruitment agents. Data provided to us by the Ministry of Labour indicates that the hotline is well utilised. NGOs had some reservations about the workings of the system but were generally supportive of the system, which they said had improved workers' access to remedy. Numerous migrant workers we spoke to described how they used the hotline to report complaints relating to pay and conditions to the authorities, who responded effectively and facilitated their job transfer. However, it is notable that migrant workers often seek the support of NGOs when filing complaints, and recruitment agents, who are mandated to act in an intermediary role between employers and foreign workers, often attempt to dissuade workers from accessing the hotline. There is also evidence

that a significant proportion of migrant domestic workers do not access grievance mechanisms due to fears that they will lose their jobs. In cases before the courts, migrant workers, including some categories of undocumented workers, are eligible for legal aid. The Taiwanese Legal Aid Foundation provides legal services to thousands of foreign workers every year and has successfully taken cases that resulted in large groups of workers receiving financial compensation for contractual violations such as wage theft. One factor that can hinder workers' ability to access judicial remedies is a failure to provide foreign workers with translators in order that they can articulate their arguments in the requisite detail and follow the proceedings.

Recommendations to the Philippine government:

- Explore with groups such as the ILO the feasibility of video-technology in allowing returnee workers to access judicial and non-judicial grievance mechanisms in destination states.
- Conduct an independent policy review of the Single Entry Approach to assess the effectiveness of mediation and conciliation in providing overseas foreign workers with their right to effective remedy. This review should specifically address the question of whether mediation is, in practice, an obstacle to effective remedy.

- Extend government funding of shelters and legal aid services to foreign workers.
- Ensure that all callers to the 1955 Hotline are clearly informed of their right to submit formal complaints, and conduct a complementary information campaign to inform workers of the circumstances in which they have the right to change employers and the process for doing so.

Recommendations to the government of Taiwan:

- Ensure that all foreign workers who avail of legal aid have access to qualified translators in all interactions with their legal representatives and during court proceedings.

7.1 Do workers irrespective of their presence in the country or legal status have access to free or affordable grievance / dispute resolution mechanisms in cases of abusive/ fraudulent recruitment?

Philippines

Filipino migrant workers have access to free grievance mechanisms during their deployment overseas and upon their return to the Philippines.

The Philippines authorities overseas, notably the Philippines Overseas Labour Office (POLO), the Overseas

Worker Welfare Association (OWWA) and the Department of Foreign Affairs assist migrant workers in dispute resolution and conciliation, and in the filing of civil or criminal complaints against foreign employers or recruitment agents. One of OWWA's main roles is its administration of a Welfare Fund, which is partly made up of mandatory membership fees that all overseas workers have to pay. Filipino workers overseas can avail of the fund in cases where they wish to pursue a labor case against their overseas employer.⁴⁴⁵

The Philippines places a heavy emphasis on the importance of conciliation and mediation and all civil cases are first processed in line with its Single Entry Approach (SEnA), which is a 30-day mandatory conciliation-mediation that “seeks to provide a speedy, impartial, inexpensive, and accessible settlement services for unresolved grievances and complaints arising from employer-employee relations.”⁴⁴⁶ The SEnA reflects stated POEA policy “to strengthen conciliation and mediation as primary modes of dispute resolution.”⁴⁴⁷

The POEA is a domestic agency of the DOLE, but it has leverage to facilitate effective conciliation and to enforce compensation payments since it has the power to remove the accreditation of foreign employers and suspend or revoke the licenses of Filipino recruitment agents.⁴⁴⁸

In cases of “illegal recruitment”, which is to say alleged criminal offences that carry heavy prison sentences akin to human trafficking offences, the POEA provides free legal assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counseling during preliminary investigations and hearings.⁴⁴⁹

At a regional level in the Philippines, the quasi-judicial National Labor Relations Commission (NLRC) deals with civil cases, including disputes between Filipino workers

and their foreign employers or Filipino recruitment agents, in what it describes as “economically-viable dispute settlement machinery.”⁴⁵⁰ Workers who win their cases have their lawyers’ fees deducted from their settlement, but workers who lose cases are liable for costs, and workers also have to pay some indirect costs, such as transport and food and photocopying costs. Workers’ rights groups told us that the main deterrent to workers taking cases is not cost, but rather the length of time that cases take to resolve.⁴⁵¹

Although not a formal grievance mechanism, the Philippines has also put in place measures to prevent disputes and to ensure easy communication between migrant workers overseas and their Philippines recruitment agencies, by requiring that all recruitment agents maintain a Facebook account.⁴⁵²

Taiwan

Taiwan provides migrant workers with access to a 24-hour consultation and protection hotline. In cases where workers want to bring civil or criminal complaints against their employers, recruitment agents, or lending agencies, Taiwan provides free legal aid.⁴⁵³

In 2009, Taiwan’s Ministry of Labour set up a 24-hour “consultation and protection hotline” for foreign workers. The 1955 Hotline, as it is known, provides free advice services to foreign workers in their own languages and also allows them to make formal complaints against abusive employers or recruitment agents.⁴⁵⁴

In relation to access to the judicial system, Taiwan’s Legal Aid Act states that anyone who is legally resident in Taiwan has access to legal aid.⁴⁵⁵ 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

445. Republic Act 10801, Overseas Workers Welfare Administration Act, (27 July 2015), Section 4.

446. See the website of the National Conciliation and Mediation Board at <https://ncmb.gov.ph/single-entry-approach-sena/>

447. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016. Rule 1.

448. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, section 141. “Unjustified failure by the licensed recruitment agencies, principal/employer or an Overseas Filipino Workers the approved settlement shall warrant suspension from participation in the overseas employment program, until compliance with or satisfaction of the approved settlement.”

449. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, section 75. Revised POEA Rules and Regulations for Landbased Workers, section 78.

450. See website of the National Labor Relations Commission <https://nlrc.dole.gov.ph/About> and Center for Migrant Advocacy, “Access To Justice, Part 1: Money Claims”, (2015).

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

452. Philippine Overseas Employment Administration, Memorandum Circular No. 1, Series of 24) ,201 February 2015).

453. Legal Aid Act, 2004.

454. See website of Taiwan’s Ministry of Labour <https://english.mol.gov.tw/homeinfo/6458/6556/6567/>

455. Legal Aid Act, article 14.

residency due to incidents not imputed to themselves” can avail of legal aid.⁴⁵⁶ The Taiwanese government funds the Taiwan Legal Aid Foundation and they provide legal assistance to between 2,000 and 3,000 foreign workers every year.⁴⁵⁷ The Ministry of Labour told us that it subsidizes each local government in setting up foreign labor advisory service centers, and that these centers can assist with legal costs and provide referrals for legal aid.

7.2 Are grievance mechanism processes accessible in practice, rapid and free of complex administrative procedures?

Philippines

The Philippines provides grievance mechanisms to workers abroad, and to those who have returned to the Philippines. A variety of government agencies are involved in providing workers with access to remedy, and the Philippines devotes significant resources to ensuring that complaints are resolved by mediation and settlement agreements, and without recourse to judicial mechanisms.

With regard to workers overseas, in 2015, the Philippines issued a Joint Manual of Operations to the various agencies and ministries concerned, and those agencies now have very clear guidance on their various roles and responsibilities in different circumstances.⁴⁵⁸ When, for example, a vulnerable worker presents them with a request for assistance in relation to a contract violation, the Joint Manual explains POLO’s role: provide information to the worker and ensure he/she is informed of her rights; call on the employer and recruitment agencies concerned to arrange conciliation meetings; draw up a settlement agreement (attested by OWWA welfare officer or Labor Attaché; ask the recruitment agency to remind the employer of his/her contractual obligations in cases where conciliation fails; and remind the foreign recruitment agency and the employer of their joint and several liability.

The manual states that POLO should recommend to POEA that foreign employers and recruitment agencies be disqualified from the Overseas Employment Program in cases where they have failed to cooperate and it states that workers who can no longer legally stay in the country during their cases, can authorize Philippines authorities to pursue his or her claims.⁴⁵⁹

The Center for Migrant Worker Advocacy in the Philippines, which has considerable experience in assisting workers in accessing remedies and has written a series of policy papers on overseas workers’ access to justice, told us that the most significant problem that Filipino workers faced in Taiwan is that they are often unable for practical reasons to wait for the formal complaint process to run its course, and as a consequence accept relatively paltry sums in settlement agreements.⁴⁶⁰

Hussain Macarambon of the ILO’s FAIR Recruitment initiative offered a similar assessment and told us that in response to this problem, which afflicts Philippines workers in many destination states, the ILO were piloting a project that allowed Filipino workers to give video testimony in civil cases initiated in Hong Kong.⁴⁶¹

The conclusion of settlement agreements based on the mediation process in Taiwan, or indeed in any other foreign country, does not preclude Filipino workers from pursuing complaints upon their return to Taiwan under the joint and several liability provisions in the Migrant Worker Overseas Act.⁴⁶² The process for filing a complaint with the NLRC is compulsory arbitration, followed by the submission of position papers, where the parties lay out their arguments. The NLRC then has 90 days to hear and decide the claim and financial damages must be paid within 30 days of the judgment.

The CMA told us that in cases where mediation had taken place formally (i.e. based on the Single Entry Approach) the workers had less chance of success with their complaint due to language in SENa complaints to the effect that all settlements should be regarded as full and final.⁴⁶³

456. Legal Aid Act, article 14.

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

458. Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas, (18 August 2015).

459. Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas, (18 August 2015), p. 18. According to the Center for Migrant Advocacy, the Philippines authorities abroad do not always follow the formal procedures laid out in the guidelines, and often take a country-specific approach. In Taiwan, for example, mediation first takes place through the quasi-governmental body MECO. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020).

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

461. Telephone interview with Hussain Macarambon, International Labour Organisation, (13 July 2020).

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

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

There was uniform agreement among civil society representatives that only a very small portion of Filipino migrant workers avail of the complaints and grievance mechanisms available to them.⁴⁶⁴ Ellene Sana told us that a variety of factors combined to dissuade workers from pursuing remedy, including their desire not to antagonise their recruitment agent, and the realisation that they may need a lawyer.⁴⁶⁵ Many workers don't take claims in the first place, and those who do often drop or settle cases as the length or the complexity of the process becomes apparent. According to data provided by the National Labour Relations Commission, for the period from 2015 to 2017, 73% of claims filed with the NLRC were resolved through settlements rather than decisions based on the merits of the case. The conclusions of a Centre for Migrant Advocacy report on this issue are striking:

“MDWs [migrant domestic workers] who are able to file cases at POEA and NLRC score the agencies low in terms of providing for a fair procedure. NLRC money claims are disposed through settlements and not through decisions on the merits of the cases. Most respondents of the research also express the ‘hopelessness’ of filing cases since it does not produce resolutions to their benefit. Often, they are forced to settle for lesser amounts of money.”⁴⁶⁶

A 2020 Verite report into the abuse of Filipino workers in Taiwan's distant water fishing sector stated that the burden on workers to make timely complaints and the requirement that they produce documentary proof of their claims often left them unable to bring cases against their employers or recruitment agents, “since the issues often relate to a deliberate lack of transparency, missing payment transaction documentation, and unauthorized deductions and charges.”⁴⁶⁷ None of the 101 workers interviewed for their report had filed complaints with the POEA, and Verite cited the difficulty of the claims process as the main deterrent.⁴⁶⁸ This is despite the fact that almost 90% of workers interviewed paid “significant” amounts in fees (an average of US \$2,250 compared to the legal maximum of US \$237).⁴⁶⁹

Taiwan

Taiwan's Vice-Minister of Labour told us that he regarded the 1955 Hotline as one of the Taiwanese authorities' positive achievements in the realm of migrant worker protection.⁴⁷⁰ A Philippines Labour Attache in Khasiung told us that the hotline was, in addition to strong laws and a robust inspection system, an area where Taiwan performed well in migrant worker protection.⁴⁷¹

One NGO said that the introduction of the 1955 Hotline had led to improvements, saying that it had for the first time opened up a direct line between migrant workers and the Taiwanese authorities, whereas prior to its introduction workers relied on their recruitment agents when they wanted to make complaints.⁴⁷²

Data provided to us by the Ministry of Labour indicated that the hotline receives a significant number of calls. From the beginning of 2015 until the end of June 2020, the hotline received a total of 133,111 complaints about a range of issues, including problems with salaries and contracts.⁴⁷³ When the 1955 hotline receives complaints, they designate the case to the municipal Labour Bureau and they take the employee's passport number in order to locate their employer's address.⁴⁷⁴ When the Labour Bureau receives complaints they notify the employer and the recruitment agent and ask them to negotiate with the employee. Calls to the hotline can also result in cases being reported to criminal investigating authorities - 42 possible trafficking cases were reported to investigators between 2015 and 2020 as a result of calls made to the hotline. Workers can submit complaints directly to the authorities, but the Ministry of Labour data indicates that most tend to use the hotline - only 505 complaints were lodged directly with the Ministry of Labour in the same time period.⁴⁷⁵ The Ministry of Labour told us that in 2020, calls to the hotline resulted in the recovery of wage arrears amounting to NT\$ 116,075 (US \$4,146) and 2,985 migrant workers transferring employers.

464. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (30 June 2020). Telephone interview with Marie Apostol, Fair Hiring Initiative, (22 June 2020).

465. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (23 October 2020).

466. Centre for Migrant Advocacy, “Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims”, (2018).

467. “Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan,” Verité, (2020 draft copy), p. 19.

468. “Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan,” Verité, (2020 draft copy), p. 19.

469. “Recruitment Experiences and Working Conditions of Filipino Migrant Fishers in Taiwan,” Verité, (2020 draft copy), p. 23 - 22.

470. Interview with San Quei Lin, Vice-Minister of Labor, Taipei, (18 February 2020).

471. Interview with Rustico Dela Fuente, Labor Attache, Philippines Overseas Labor Office, Khasiung, (19 February 2020).

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

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

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

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

Civil society actors in Taiwan credit the hotline with having improved migrant workers' access to remedy but told us that the system has some obvious shortcomings, some of which relate to a lack of awareness of its existence or how it works, and some of which relate to the role of recruitment agents in Taiwan.

New Thing was one of several NGOs that told us that knowledge and use of the 1955 Hotline varies across sectors, with manufacturing and domestic workers using it far more often than those in the fishing sector.⁴⁷⁶ Rerum Novarum told us that the system was particularly helpful for domestic workers, although noted that manufacturing workers were gradually becoming more aware of the system.⁴⁷⁷ The founder of the NGO One-Forty told us that many foreign workers primarily relied on support from their fellow workers, and many didn't call the Hotline because they didn't know how or they didn't think it would be effective.⁴⁷⁸ A Taiwanese government minister told us that when he boarded fishing vessels, some of the foreign workers he spoke to had never heard of the 1955 Hotline.⁴⁷⁹

Serve the People told us that many workers were unaware that their call would not be flagged for follow-up if they did not file a formal complaint.⁴⁸⁰ A second NGO worker who runs a shelter for migrant workers concurred with the assessment that workers don't always understand the difference between a consultation and a complaint - only a formal complaint results in the issuance of a case file number and a possible investigation.⁴⁸¹

One NGO told us that in cases relating to pay, the mediation that is a consequence of workers calling the 1955 Hotline can result in positive outcomes for workers - in cases relating to pay, for example, it can result in workers receiving what they are owed and being granted a work transfer.⁴⁸² However, this doesn't always mean that the recruitment agent will help the worker to find a new employer in Taiwan.

We spoke to numerous Filipino migrant workers in Taiwan who told us of their experience with the 1955 Hotline. Most described a system that can be effective in extricating migrant workers from jobs where they are abused, overworked or underpaid. A 37-year old fisherman told us that Taiwanese police had rescued him from a highly abusive employer after he called the 1955 Hotline to report very serious criminal abuses on board a vessel.⁴⁸³ Most of the cases we documented related to less abusive situations, but it is clear that the 1955 Hotline can be effective if workers are able and confident to call it, and know how to make a complaint when they do. Several workers told us that their complaints, in cases relating to pay, working hours and contract violations, resulted in the authorities investigating and providing a remedy of sorts, typically in the form of back-pay or allowing the worker to transfer jobs.

In Taiwan, the specific role that recruitment agents play, acting as intermediaries between employers and their foreign workers, means that they can obstruct migrant workers' efforts to seek remedy or change employers in the case of abusive working conditions or contractual violations. Several NGOs told us that while workers have the right to change jobs in the cases of abuses, in practice recruitment agents often prevent workers who have complained from finding new employers.⁴⁸⁴ One Filipino worker who had been employed in Taiwan's electronics sector, but who was speaking from a shelter in Taiwan told us that it had taken him and his colleagues two years to figure out how to gather the evidence they needed and make a complaint.⁴⁸⁵ They had complained as a group about inadequate housing and contractual violations including illegal salary deductions, and he told us that their recruitment agent had repeatedly attempted to block their efforts to complain saying that their treatment was normal and taking the side of the employer in negotiations.

It should also be noted that migrant workers' chances of success in the complaint process are greatly increased when they have the support and assistance of NGOs.

476. Interview with New Thing, (February 2020 ,11). Interview with Rerum Novarum, Taipei, (20 February 2020). Interview with Lennon Ying-Dah Wong, Serve the People Association, (20 February 2020).

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

478. Interview with Kevin Chen, One-Forty, (6 February 2020).

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

480. Interview with New Thing, (11 February 2020).

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

482. Interview with New Thing, (11 February 2020).

483. Telephone interview with VA, fisherman, (21 August 2020).

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

485. Interview with L.T., electronics sector worker, Taipei, (20 February 2020).

One 28-year old Filipina who had worked in Taiwan's electronics sector told us that Taiwanese recruitment agents discouraged her from calling the 1955 Hotline to complain about her employer's efforts to force her resignation, warning her that if she did so recruitment agents would be notified of her complaint and she would be identified as a troublemaker, making it difficult for her to find alternative employment. She did not call as a result of this, and only received advice and assistance from a local NGO whom she contacted directly.⁴⁸⁶ A 33-year old electronics worker who said her employer had tried to force her to resign told us how a Taiwanese NGO encouraged her to call the 1955 Hotline and make a complaint that led her to receive NT \$28,000 (US \$1000) in unpaid wages (slightly more than a month's wages) after mediation.⁴⁸⁷ Her Taiwanese recruitment agent, she told us, discouraged her from taking the case to mediation and told her that she was at fault and would therefore lose any case. Recruitment expert Bonny Ling told us that in her view, the unhelpful role that many recruitment agencies play in preventing migrant workers from changing employers stems in part from the fact that they act - and are expected to act - as an external human resources department for Taiwanese employers, rather than as intermediaries between employers and foreign workers.⁴⁸⁸

In relation to foreign workers' ability to access judicial remedies, migrant workers seeking legal aid in Taiwan must pass a means test and merit test. They need not provide any documentation to establish they pass the means test, and the merits of their case are assessed in the same way as nationals' cases.⁴⁸⁹

Data from the Taiwanese Legal Aid Foundation (TLAF) shows that in 2017, they provided legal assistance to 2554 foreigners with the Philippines, Indonesia and Vietnam (the three states that send most migrant workers to Taiwan) making up the vast majority of these. The TLAF provided assistance to more Filipinos than to any other nationalities. With regard to the types of cases in which they provided assistance to foreign workers, civil cases, in the form of tort cases (relating to allegations of negligence), labour disputes and "loan

dispute" cases, were the most common, accounting for nearly one third of the cases involving foreigners.

The Taiwan Legal Aid Foundation told us that they had dealt with cases where migrant workers had abandoned legal cases due to the time taken to resolve cases but said that their cases were not dealt with any slower than other cases, and said that Taiwan's legal processes were not unduly lengthy.⁴⁹⁰ They told us that problems often arose due to judges or prosecutors not availing of interpreters that are made available for cases involving migrant workers. This, they told us, can lead to cases where workers with only basic Mandarin are unable to either understand proceedings or participate in them effectively. They told us that they had lobbied the Judicial Yuan to take steps to ensure that migrant workers' access to justice is not compromised by a failure to take account of their need to be able to communicate effectively.⁴⁹¹

The TLAF has also pointed to a lack of interpreters, and to occasional failures on the part of prosecutors and judges to refer foreign workers for legal aid, and noted that they have difficulty providing assistance to migrant workers in the fishing industry.⁴⁹²

7.3 Are workers provided with remedy including compensation as a result of such grievance procedures?

Philippines

The Philippines authorities can assist workers in receiving compensation from employers abroad, via conciliated out of court settlements, negotiated with the assistance of POLO and in line with the Single Entry Approach. Through OWWA, it can assist migrant workers to bring civil and criminal cases abroad, although the likelihood of success in these cases varies considerably and it should be noted that a significant proportion of Filipino workers overseas are in the Gulf states where

486. Telephone interview with JF, electronics sector worker, (23 August 2020).

487. Telephone interview with KL, electronics sector worker, (24 August 2020).

488. Telephone interview with Bonny Ling, Institute for Human Rights and Business research fellow, (26 April 2021).

489. "Taiwan's Legal Aid for Migrant Workers and Immigrants", *Taiwan Legal Aid Foundation*, (2017), available at https://www.laf.org.tw/ifla2018/upload/10/2018/Panel20%Discussion204%B1-Taiwan_Ms.20%Fang-Chun20%Chu.pdf

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

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

492. "Taiwan's Legal Aid for Migrant Workers and Immigrants", *Taiwan Legal Aid Foundation*, (2017).

access to civil or criminal judicial systems is severely curtailed.⁴⁹³

The performance bond that recruitment agencies must place into escrow as part of their POEA license is used to provide financial damages to workers.⁴⁹⁴ However, civil society representatives have criticised the escrow system, noting that workers awarded damages by the NLRC have never received them due to agencies holding insufficient escrow deposit balances. In such cases, the POAE can suspend or cancel the offending agencies' licenses, but this sanction leaves the workers without remedy.⁴⁹⁵

The Center for Migrant Advocacy is the most active Filipino NGO assisting workers in compensation claims and have documented how cases can work in practice. For example, in a case involving eight workers in Saudi Arabia which related to non-payment of wages, salary deductions and abuse, the workers initial interactions with POLO and POEA were unsuccessful. It was only after the workers contacted CMA and a Saudi NGO that they were able to receive legal assistance from the POEA. This led to them winning their labour case in Saudi Arabia and receiving damages but no flight tickets home. Their recruitment agency attempted to make them sign a full and final settlement claim, but they refused, and filed a complaint against their recruitment agency when they returned to the Philippines. After mediation, five of the workers agreed to settle for 50,000 Pesos (US \$1,032). The remaining three workers chose not to settle and the NLRC decided in their favour, awarding them damages of up to 100,000 Pesos (US \$2,064).⁴⁹⁶

The Center for Migrant Advocacy (CMA) told us that cases like this one remain commonplace and that workers who pursue cases at the NLRC often receive rulings in their favour.⁴⁹⁷ However, the CMA, which has conducted detailed research into this issue, also noted that workers often don't receive the settlements awarded to them since "the burden of enforcing the decision falls on the worker."⁴⁹⁸

Taiwan

A Taiwanese NGO told us that compensation for workers is confined to cases where employers are found to have used physical violence.⁴⁹⁹ The Taiwanese Legal Aid Foundation has been able to secure civil damages for migrant workers. In 2017, it secured damages totalling NT \$36 million (US \$1.25 million) for 347 Vietnamese domestic workers in a case relating to salary deductions totalling NT \$200 million (US \$7.1million).⁵⁰⁰ The foundation also took 297 cases against Taiwanese lending agencies charging interest rates of up to 48%. In some of these cases judges found that the interest rates on the loans (but not the loans themselves) constituted "unreasonable exploitation".⁵⁰¹

7.4 Are workers raising grievances and whistleblowers effectively protected from retaliation, including deportation?

Philippines

Workers' rights groups in the Philippines have documented cases where recruitment agencies have threatened and intimidated workers who have raised grievances in order to persuade them to drop cases or accept settlements.⁵⁰² There is however no specific law in place to protect workers who file criminal or administrative complaints from undue or illegal pressure or retaliation.

Taiwan

In 2019, a Taiwanese organisation called the Garden of Hope Foundation surveyed 510 migrant domestic workers (including 400 Filipinas) and found that while 38% of them had been verbally or physically abused by their employers or other members of the

493. See, for example, Andrew Gardner, Silvia Pessoa, Laura Harkness. "Labour Migrants and Access to Justice in Contemporary Qatar", *LSE Middle East Centre*, (2014).

494. Republic Act 10022, section 7.

495. "Access to Justice (Part 1): Money Claims", *Center for Migrant Advocacy*, (2015), p. 8.

496. "Access to Justice (Part 2): What stands in the way and what can be done", *Center for Migrant Advocacy*, (2015), p. 11.

497. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (23 October 2020).

498. "Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims", *Centre for Migrant Advocacy*, (2018).

499. Interview with New Thing, (11 February 2020).

500. "Taiwan's Legal Aid for Migrant Workers and Immigrants," Taiwan Legal Aid Foundation, (2017).

501. "Taiwan's Legal Aid for Migrant Workers and Immigrants," Taiwan Legal Aid Foundation, (2017), and telephone interview with Fang Chun, Taiwan Legal Aid Foundation, (10 July 2020).

502. "Migrant Domestic Workers' Access to Justice: A Study on Administrative Cases and Money Claims", *Centre for Migrant Advocacy*, (2018).

household, less than 50% of them seek help. Of those who did not seek help, 35% said that they were scared of losing their jobs.⁵⁰³ Many of the workers we spoke to had raised complaints, but this statistic suggests that while domestic workers enjoy the same rights to access grievance mechanisms as their counterparts in manufacturing and fisheries, there is a perception among a very significant proportion of migrant workers that the very fact of accessing those mechanisms will lead to retaliation.

Migrant workers in Taiwan cannot be repatriated against their will. If their employers terminate their contracts, they have 60 days to find a new employer. One Taiwanese recruitment agent told us that the fact that migrant workers could not be sent home without their express consent, except in cases where they violated health and safety regulations, was a problem for their industry and left them unable to replace poorly performing workers.⁵⁰⁴ (This is more likely a factor of the quota system for foreign workers - employers can replace foreign workers with Taiwanese workers.) A far greater risk to workers is that their recruitment agents will obstruct their attempts to transfer employers after they complain, either by preventing them from leaving their existing employer or not assisting them to find a new employer.

7.5 Are workers provided with free independent legal advice on judicial and non-judicial options to raise grievances and seek remedy?

Philippines

In 1995, the Migrant Worker Overseas Act provided for the reaction of a Legal Assistance Fund “to provide legal services to migrant workers and overseas Filipinos in distress.” The fund can be used to pay the fees for foreign lawyers hired to represent migrant workers including in litigation.⁵⁰⁵

In February 2020, the Philippines senate voted to amend the law and to expand the use of the Legal Assistance Fund. According to the principal author and sponsor of Senate Bill No. 1233, which provided for the amendments, the aim of the reforms is to advance and improve not only the quality, but also the promptness of the delivery of legal assistance to Filipino workers overseas.⁵⁰⁶ The reform clarifies that workers can avail of assistance from the moment any case is initiated, until the conclusion of the appeals process.

Migrant workers who return to the Philippines and pursue claims can avail of legal representation, assistance and counselling from the Public Attorney’s Office in relation to “criminal, civil, labor, administrative and other quasi-judicial cases.”⁵⁰⁷ However, while civil society actors told us that they have seen numerous cases in which the PAO has successfully represented migrant workers, they noted that there is no specific branch of the PAO for overseas workers and that they tend to only offer assistance to workers in serious cases of illegal recruitment and trafficking.⁵⁰⁸

In less serious cases, workers can get legal advice from the POEA’s Legal Assistance Division or from the handful of NGOs that provide advice and support. The Center for Migrant Advocacy told us that NGOs often work closely with the POEA to pressurise recruiters or foreign employers, but acknowledged that NGO involvement in cases is far more likely to result in a positive outcome for workers.⁵⁰⁹ In June 2020, in response to the Covid-19 pandemic, the POEA announced that it was going to “intensify online legal assistance” to Filipino workers overseas.⁵¹⁰

Taiwan

Taiwan’s 1955 Hotline serves as a free resource for workers seeking information on their rights to file complaints and seek remedy. In relation to access to the judicial system, Taiwan’s Legal Aid Act states that anyone who is legally resident in Taiwan has access to legal aid.⁵¹¹ In 2015, amendments were made to the

503. “Foreign worker abuse not reported”, *Taipei Times*, (23 November 2019).

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

505. Migrant Worker Overseas Act, sections 24 to 26.

506. “Villanueva: Measure expanding legal assistance fund for overseas Filipinos hurdles 3rd reading”, *Senate of the Philippines press release* (26 February 2020),

507. See ‘Persons Qualified for Legal Assistance’ information on the website of the Public Attorney’s Office at <https://pao.gov.ph/page.php?id=28>

508. Telephone interview with Ellene Sana, Center for Migrant Advocacy, (23 October 2020).

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

510. Department of Labor and Employment, news release, “POEA intensifies online legal assistance”, (2 June 2020).

511. Legal Aid Act, article 14.

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.⁵¹² The Taiwanese government funds the Taiwan Legal Aid Foundation and they provide legal assistance to between 2,000 and 3,000 foreign workers every year.⁵¹³

7.6 Does the origin state provide effective and timely consular support through its missions to workers who have been subjected to fraudulent or abusive recruitment?

Philippines

The Philippines has a raft of ministries and agencies involved in the protection of its overseas workers, and these are spearheaded by Philippines Overseas Labour Offices. There are 34 of these around the world - 11 in Asia, 13 in the Middle East, 7 in Europe and 3 in the

Americas. The offices are headed by a Labor Attaché and include representatives from the Department of Foreign Affairs and the Overseas Worker Welfare Administration. The efforts of Philippines consulates have often been praised in comparison to other origin states, though Filipino civil society organisations have criticised some consulates for their provision of support, particularly in Middle Eastern countries where the risk of abuse for workers is particularly high.⁵¹⁴

In Taiwan, Filipino workers can also avail of the quasi-governmental Manila Economic and Cultural Office (MECO) which works closely with POLO offices in Taiwan. The Taiwan Legal Aid Foundation has worked closely with MECO to provide legal assistance to Filipino workers subjected to usurious lending rates on recruitment fees. One expert on the recruitment of Filipino workers in Taiwan compared their situation favourably relative to other foreign workers and attributed this not only to the assistance that the Philippines authorities can provide to their nationals, but also to the pro-active approach of the Philippines authorities and their attempts to build connections with the migrant community.

512. Legal Aid Act, article 14.

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

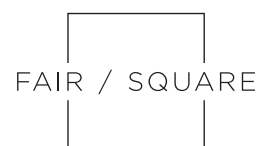
514. See for example [Joint Submission of Migrante International \(MI\) and the Asia Pacific Mission for Migrants \(APMM\) to the United Nations Committee on Migrant Workers](#), April 2014. More recently Migrante has [criticised diplomatic missions in the Middle East](#) for their response to the needs of migrant workers during the Covid19- pandemic.

Supported by Open Society Foundations and Humanity United

**OPEN SOCIETY
FOUNDATIONS**



Produced by FairSquare



fairsq.org