

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

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ABOUT THIS DOCUMENT

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

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



A meeting of a domestic worker union, Taipei. © Lennon Ying-Dah Wong / Flickr

9. Freedom of association

“The NGOs and the Ministries have been invited to the meeting, but not the foreign workers’ unions. The Domestic Workers Union wants to join but they are not allowed to. Workers’ perspectives are excluded from the meeting.”

LENNON YING-DA WONG, SERVE THE PEOPLE, TAIWAN.

Summary

Filipino workers have the right to form and join trade unions and to strike and collectively bargain. These rights are laid out in detail in the Philippines’ labour code. The rights of freedom association, assembly and expression are protected under the constitution and the Supreme Court has issued rulings affirming these rights. The ILO Committee of Experts has criticised the Philippines’ circumscription of the right of foreign workers to freedom of association as well as provisions in the Labor Code that could be interpreted as unduly restricting the right to strike. There are approximately 600 national trade unions, representing 39 million workers. The human rights situation in the Philippines has deteriorated significantly in recent years and this has included attacks on trade unionists. International trade

union groups have described a systematic pattern of violence and assassinations targeting labour and human rights defenders and defamatory campaigns designed to characterise critics of the government as communists or terrorists. There is no trade union in the Philippines that specifically represents the interests of its 2 million overseas foreign workers. Despite the practical difficulties associated with representing workers overseas, there have been moves to implement such a system, in large part due to the advocacy of domestic workers organisations.

Taiwan’s constitution protects the rights to freedom of assembly and association and its Labour Union Act grants all workers the right to organize and join labour unions. Prior to Taiwan’s transition to democratic rule in the 1990s, labour unions had strong links with the government and it was not until

May 2000 that the authorities formally recognized the country's first truly independent trade union confederation. In 2011, Taiwan amended provisions of the Labour Union Act that prevented foreign workers from setting up trade unions. Since this reform, two labour unions in Taiwan have been established by and for migrant workers: the Yilan Migrant Fishermen Union was established in 2013, and the Taoyuan Domestic Caretaker Union was established in 2017. The Yilan Migrant Fishermen

Union (YMFU) was very active in a campaign for justice following the death of several foreign fishermen in the south of the country, and there have been allegations that its work led to harassment and intimidation of its leaders. In 2021, a third trade union for foreign workers, the Keelung Migrant Fishermen's Union, attained legal status despite geographical restrictions placed on membership, which hampered its efforts to enlist members.

Recommendations to the Philippine government:

- Facilitate civil society groups and trade unions in setting up a domestic organisation to represent and lobby for the rights of its overseas workers.
- Implement the recommendations of the ILO Commission on Freedom of Association at the 108th session of the International Labour Conference in 2019, including that the Philippines “immediately and effectively undertake investigations into the allegations of violence in relation to members of workers’ organizations with a view to establishing the facts, determining culpability and punishing the perpetrators.”

Recommendations to the government of Taiwan:

- Initiate a thorough investigation into allegations of harassment and intimidation of senior figures within the Yilan Migrant Fishermen Union.
- Include provisions in the Labour Union Act that explicitly prohibit the obstruction or hindrance of trade union

activity and criminalize the harassment or intimidation of individuals engaged in trade union activity.

9.1 Do workers have the legal right to form and join unions, and can they strike and collectively bargain?

Philippines

The Philippines constitution protects the right of freedom of association, assembly and expression. The Philippines Supreme Court has affirmed these rights and issued guidance on the scope and content of these rights.⁵⁴⁴

The Labor Code states that it is state policy to: “promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes”; “promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development”; and “foster the free and voluntary organization of a strong and united labor movement”.⁵⁴⁵ The law explicitly recognises the right of private sector workers, “to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining.”⁵⁴⁶ In

543. The Constitution of the Republic of the Philippines, 1987. Article III, section 4 “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.” Section 8 “The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.”

544. See ‘Call for inputs for the issues for consideration during a half-day general discussion in preparation for a General Comment on Article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights’, *Commission on Human Rights of the Philippines*, (18 March 2019)

545. The Labor Code of the Philippines, Presidential Decree No. 442 of 1974, article 218 (a),(b),(c). Note there are two versions of the Labor Code online: a version on the DOLE website and an amended and renumbered version available at https://mfbr.com.ph/wp-content/uploads/Labor_Code_of_the_Philippines_2016_fulltext_DOLE-Edition.pdf References in this report are to the amended and renumbered version.

546. Labor Code, article 253.

relation to public sector workers, the law distinguishes between public sector workers “established under the Corporation Code” and “all other employees in the civil service”, giving the former group the right to “have the right to organize and to bargain collectively with their respective employers” and the latter to “have the right to form associations for purposes not contrary to law.”⁵⁴⁷

The Labour Law proceeds to frame collective bargaining not only as a right but as a duty and one that applies even in the absence of a formal collective bargaining agreement.⁵⁴⁸

“The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purposes of negotiating an agreement with respect to wages, hours of work, and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements.”⁵⁴⁹

In relation to strikes, the law states that this right, which applies only to “legitimate labor organizations”, shall “continue to be recognized and respected.”⁵⁵⁰ The Labor Code states that “no union members or union organizers may be arrested or detained for union activities, without previous consultations with the Secretary of Labor.”⁵⁵¹

The ILO Committee of Experts has criticised the Philippines’ circumscription of the right of foreign workers to freedom of association as being inconsistent with article 2 of ILO Convention 87, and has urged it to amend its labor code “to grant the right to organize to all workers residing in the Philippines.”⁵⁵² The Committee has also criticized provisions in the Labor Code that could be interpreted as allowing penal sanctions to be imposed against a worker for having carried out a

peaceful strike, “even if non-compliant with bargaining or notice requirements.”⁵⁵³

Approximately 600 national trade unions, industrial federations and plant-level unions from private and public sectors are registered in the Philippines, although they represent less than 10% of the workforce, which numbers approximately 39 million.⁵⁵⁴

In relation to Filipino migrant workers overseas, despite the large numbers of workers who travel overseas and their financial contribution to the Philippines economy, there is no trade union to specifically address their interests. A representative of the Philippines trade union Sentro, which organizes industrial and sectoral unions in the country and takes an active role in migrant worker protection, told us that there are significant challenges involved in setting up a trade union organisation that specifically represents overseas foreign workers, most notably the practical difficulties of organizing members who reside in so many different countries around the world.⁵⁵⁵ Sentro nonetheless said they are planning to set up a Philippines-based union for overseas foreign workers that will manage its work abroad in different countries. Sentro noted that the push for unionization and organisation was coming from the domestic worker sector.⁵⁵⁶

Tripartism is enshrined as a state policy in the constitution and in the Labor Code, which states that “workers and employers shall, as far as practicable, be represented in decision and policy-making bodies of the government.”⁵⁵⁷ The Overseas Workers Welfare Administration and the Philippines Overseas Employment Agency are considered as tripartite policy-making bodies. The Overseas Landbased Tripartite Consultative Council is one of the Philippines Industry Tripartite Councils, which are consultative bodies.⁵⁵⁸ According to the Memorandum of Agreement that set it up in 2013, it acts “as an advisory body to the

547. Labor Code articles 254, 253.

548. Labour Code, article 262.

549. Labor Code, article 263.

550. Labor Code, Article 263.

551. Labor Code, Article 266.

552. ILO, *Committee of Experts report*, (2019), p. 132. The ILO criticized articles 284 of the Labor Code which states: “All aliens, natural or juridical, as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, That aliens working in the country with valid permits issued by the Department of Labor and Employment, may exercise the right to self-organization and join or assist labor organizations of their own choosing for purposes of collective bargaining: Provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers. (As amended by Section 29, Republic Act No. 6715, March 1989, 21)”

553. ILO, *Committee of Experts report*, (2019), p. 132.

554. See “*Workers’ and Employers’ Organizations in the Philippines*”, ILO website.

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

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

557. Labor Code, article 290. The Constitution of the Republic of the Philippines, 1987, Article XIII, Section 3.

558. For details see website of *Philippines Migrants Rights Watch*, (4 June 2013).

Secretary of Labor and Employment in terms of policies and programs affecting labor and employment in the overseas employment sector.” Numerous workers’ rights organisations are represented on the OLTCC, including the Center for Migrant Advocacy.⁵⁵⁹

Taiwan

Taiwan’s constitution protects the rights to freedom of assembly and association.⁵⁶⁰ Taiwan’s Labour Union Act grants all workers the right to organize and join labour unions.⁵⁶¹ The law prohibits employers from discriminating against workers due to their membership of a trade union or their participation in trade union events or activities. It similarly prevents discriminatory treatment against any worker who “requests collective bargaining or participates in related activities concerning collective bargaining” or “who participates in or supports industrial action.”⁵⁶²

The Labour Union Act was first drafted in 1929, but Taiwan did not formally recognize a legal and autonomous trade union until May 2000 when it recognized the Taiwan Confederation of Trade Unions.⁵⁶³ Prior to its transition to democratic rule in the 1990s, labour organisations had strong links to the government, one Taiwanese commentator and writer told us.⁵⁶⁴

In 2011, Taiwan amended the Labour Union Act, removing the requirement that only Taiwanese nationals be eligible for roles as supervisors or directors. A 2020 report from the Ministry of Labour noted that “foreign workers aged 20 or more without the nationality of the Republic of China are eligible for directors and supervisors of a labor union in addition to a sponsor, so as to protect their right to work and form an alliance as well as three rights of labor (Right to organize, right to bargain and right to dispute) which national labors enjoy.”⁵⁶⁵

Since this reform, three labour unions in Taiwan have been established by and for migrant workers: the

Yilan Migrant Fishermen Union was established in 2013, and the Taoyuan Domestic Caretaker Union was established in 2017. In February 2021, the Keelung Migrant Fishermen’s Union was the third trade union to attain legal status, and comprises 100 members working at three harbours in Keelung, on the northern tip of Taiwan.⁵⁶⁶

9.2 Can trade unions operate effectively in practice, are their activities free from disruption and harassment?

Philippines

In its 2019 commentary on the Philippines, the ILO Committee of Experts heard detailed allegations of harassment, intimidation and extrajudicial killings of trade union activists, including the assassination of trade union leader Leonides Dennis Sequeña in June 2019. It said that it “noted with concern the numerous allegations of murders of trade unionists and anti-union violence as well as the allegations regarding the lack of investigation in relation to these allegations.”⁵⁶⁷ Also, in 2019, the International Trade Union Confederation wrote to the Philippines authorities to deplore that they called the “ongoing violence and assassinations targeting labour and human rights defenders in the Philippines,” a campaign which, according to the Nagkaisa Labor Coalition, has resulted in 43 deaths of labour rights defenders during the presidency of Rodrigo Duterte.⁵⁶⁸ In October 2019, Amnesty International reported that police and military forces raided the offices of political party Bayan Muna, women’s alliance Gabriela, and labour group National Federal of Sugar Workers (NFSW) in Bacolod, Negros Occidental.⁵⁶⁹ Amnesty attributed the arrests to government efforts to discredit critics of the government’s human rights abuses by “red tagging” them as fronts for outlawed communist armed groups.⁵⁷⁰ In June 2020, Human Rights Watch described a climate

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

560. The Constitution of the Republic of China (Taiwan), article 14.

561. Labour Union Act, article 4.

562. Labour Union Act, article 35.

563. See “The History of Taiwan Confederation of Trade Unions TCTU”

564. Telephone interview with Brian Hioe, Editor New Bloom Magazine, (30 July 2020).

565. “Report on Protection of the Rights for Foreign Workers in Taiwan,” Taiwan Ministry of Labor, (2020), p. 23.

566. Andi Kao, “Keelung Migrant Fishermen Form Union, Second of its Kind in Taiwan,” *The News Lens*, 22 February 2021.

567. See ILO Committee of Experts consideration of Convention No. 87 (Philippines) at its 108th session.

568. Letter from Ayuba Wabba, ITUC President, to Silvestre H. Bello III, Secretary of Labor and Employment, (June 2019, 5).

569. “Philippines: Concern over raids, mass arrests of activists,” *Amnesty International*, (2 November 2019).

570. Amnesty International, “Philippines: Concern over raids, mass arrests of activists,” (2 November 2019). See also “Philippines: End deadly practice of red-tagging,” *Amnesty International*, (2 November 2020),

of “worsening media freedom and freedom of expression in the Philippines”, with reference to the prosecution for criminal libel of a prominent journalist.⁵⁷¹ The Philippines was ranked among the ten worst countries for workers’ rights in the ITUC’s 2020 Global Rights Index. The ITUC report stated that “in the Philippines, union members were particularly at risk of violence, intimidation and murder,” in 2020.⁵⁷²

Taiwan

Due to Taiwan’s status in international law, the ILO Committee of Experts has never formally assessed its record on fundamental labor rights.⁵⁷³ However an International Trade Union Congress report noted that there are practical impediments to the realisation of these rights. The 2010 report, the only authoritative English-language report on trade union rights in Taiwan notes that, “many categories of workers are banned from joining or forming unions, collective bargaining is not mandatory, and strikes are impeded either in law or in practice by long and complex procedures which involve compulsory dispute resolution mechanisms.”⁵⁷⁴

Taiwanese NGO One-Forty told us that there are few restrictions on freedom of association, assembly and expression and that migrant workers could be vocal in pursuing their rights, something they tended to do with the assistance and support of NGOs rather than trade unions.⁵⁷⁵ Media reports confirm the involvement of numerous Taiwanese NGOs in migrant worker protests from the domestic care, manufacturing and fisheries sectors.⁵⁷⁶ One electronics manufacturer told us that while approximately 60 - 70% of their Taiwanese workforce were trade union members, their Filipino workers chose not to join the union because of language barriers.⁵⁷⁷

Serve the People told us of a recent example that in their view illustrated how the government sought to marginalize trade unions representing the interests of foreign workers, explaining how NGOs and government Ministries had received invites to a meeting to discuss a change to regulations on workers’ rights, while trade unions had not been invited. “Workers’ perspectives are excluded from these meetings,” he said.

In October 2019, one of Taiwan’s two trade unions, the Yilan Migrant Fishermen Union (YMFU) was very active in a campaign for justice that followed the collapse of a bridge and the death of several foreign fishermen in the south of the country. Taiwanese media reported that, as a result of its activism on behalf of victims of the accident and their families, the YMFU secretary general became the subject of harassment, the YMFU president was forced out of his job because of pressure from senior figures in the Taiwanese fishing industry. There were also reports that authorities from states that send workers to Taiwan had advised their nationals not to join the YMFU.⁵⁷⁸

Researcher Andi Kao described numerous challenges associated with the formation in 2021 of Taiwan’s third trade union for foreign workers, the Keelung Migrant Fishermen’s Union, in 2021, including the fact that the union was only allowed to enlist fishermen employed in the port of Keelung, a geographical restriction that hampered the organizing drive and prevented two of the most active leaders of the Indonesian fishermen community from joining the union. “It caused a lot of trouble. Many people left and we had to keep starting all over,” said the KMFU’s Secretary General Mei-hua Lee.⁵⁷⁹

571. “Philippines: Rappler verdict a blow to media freedom,” *Human Rights Watch*, (15 June 2020)

572. “Global Rights Index 2020”, *International Trade Union Confederation*, p.29.

573. Until a change in policy in 2017, Taiwan trade union representatives enjoyed ‘observer’ status at the ILO’s International Labor Conference. Some Taiwanese commentators attribute the change in policy to pressure from China. See Li-chuan Liu Huang, “The International Labor Conference Turns Its Back on Taiwan – and Its Own Principles”, *The Diplomat*, (1 June 2017).

574. “Internationally Recognised Core Labour Standards in Chinese Taipei”, *International Trade Union Confederation*, (July 2010).

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

576. James X. Morris, “Taiwan’s Migrant Workers Are Finding Their Voice”, *The Diplomat*, (27 June 2018).

577. Interview with NXP Semiconductors, Kaohsiung, (19 February 2020).

578. Andi Kao, “Attacks Against the Yilan Migrant Fishermen Union Force the Resignation of Union President”, *New Bloom*, (3 November 2019).

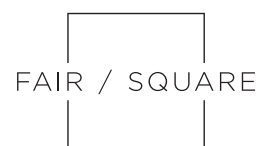
579. Andi Kao, “Keelung Migrant Fishermen Form Union, Second of its Kind in Taiwan,” *The News Lens*, (22 February 2021.)

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