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„ Foreign Domestic Worker's Struggles and Relationship  
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Hsin-Yu Wang

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## **Chapter I— Introduction**

### **1.1 Brief Introduction and Background**

Taiwan, being recognized by International Labour Organization (ILO) as one of the largest host state of foreign domestic workers among Middle-income Asian countries,<sup>1</sup> has over 25 years of history of receiving foreign workers. Although there has been continuous increasing demands for foreign domestic workers, yet these workers are still not safeguarded by any legal protection. Not applicable to Taiwanese basic labor protection laws, the foreign domestic workers have been suffering from unfair working conditions and human rights abuses in various forms.

The exploitations and suppressions mainly come from three layers: the state, private employment agencies and the employers who hire foreign domestic workers. The state has been deeming foreign workers merely as ‘guest workers’. By establishing a quota system and exerting restrictions on their freedom to transfer work, a strict framework for working has been imposed on foreign workers. Since the public owned foreign workers’ introductory channel still has rather low utilization rate, the stakeholder which in charge of foreign domestic workers is the private employment agency. The agencies provide services in a wide range, from recruiting, management to oversee the foreign domestic workers’ situations. As being in the intermediary position, which has the most information and access to both the employer’s side and the worker’s side. It have given the agencies enough power to control the whole market. Without sufficient preventive measures and legal responsibility, the agencies have fostered discrimination and have conducted direct and indirect human rights abuses towards foreign domestic workers. As for employers, being the superior of domestic workers and living in the same household, they are often the most direct and common perpetrator. Regardless of which layer, it will rely on adequate policy and regulations to avoid and terminate these exploitations and suppressions.

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<sup>1</sup> International Labour Organization, *International labour migration. A rights-based approach*, 29 April 2010, p.97.

Taiwan has signed and voluntarily bonded by several international human rights treaties in recent years, which has spurred more discussion and effort to look into the situation of foreign domestic workers. In most of the research, the sociological angle was taken to see the integration of foreign domestic workers and focus on their relationships with employers. There has been few research concentrating on the role and responsibility of private employment agencies under the Taiwanese context, despite they are an important stakeholder in the issue. Through discovering the private employment agencies' role in the triangular relationship in between the agencies, workers and employers, their direct violations of laws and negative influences on the treatments of foreign domestic workers have been found.

This research aims at highlighting the importance to regulate private employment agencies. Especially under the Taiwanese context, the government has been passively not intervening the foreign labor markets, but relying on private employment agencies to manage their recruited foreign workers. Yet there are no corresponding legal responsibilities for most of the misconducts carried out by private employment agencies, which has led to worker's high vulnerability and a lack of adequate remediation channels. Thus by involving international standards, this research will examine the existing domestic regulations on private employment agencies, and form a discussion on the possibility to increase reasonable responsibilities and corresponding penalties. Also, an analysis of the support and opposition powers in Taiwanese political sphere will be included, to assess and make an overall policy suggestion which could truly contribute to this issue and be realized.

## **1.2 Research Questions and Methodology**

The following is the three main research questions:

- 1) What is the role of recruiting agencies for labor conditions of domestic workers in Taiwan?
- 2) In how far have Taiwanese policies and regulations been dealing with problem of

foreign domestic workers?

- a) Are there any measures or regulations taken to resolve the problems resulting from recruitment agencies?
  - b) Have these policies and regulations been enough for improving foreign domestic workers' conditions? Are they following international suggestions and standards?
- 3) Why are the regulations not effective and who are the actors in the struggle for improving the working conditions?
- a) What are the power relations behind this issue?
  - b) What would be a way forward?

These research questions will be answered with the approach of a policy analysis, with the assistance of inductive method and documentary analysis. By reviewing relevant documentary evidences, the factual situation of private employment agencies' position will be given and disclosed. After identifying the agencies' actual influence on foreign domestic worker's living in Taiwan, the factors of current judicial and political realities will be taken into discussion. By including international suggestions, the dynamics of all the interest players and groups in the issue of foreign domestic workers, a pathway to possible solutions is expected to reveal.

Starting from Chapter II, a broad picture of the overall situation of foreign domestic workers in Taiwan is given, with a brief history of the labor market's gate opening for foreign workers, related laws and restrictions which come along. Then Chapter III and IV goes into a comparison in between domestic regulations and international standards for private employment agencies. It addresses from three angles- the state, private employment agencies, and remediation for abuses and violations. Regardless of partial fulfillment to international expectations, the existing domestic laws still have not effectively solve the exploitation on foreign domestic workers. Numerous human rights abuses still occur frequently, directly or indirectly cause by private employment agencies. These are addressed in Chapter V, with factual evidences from secondary resources including books, journal articles and media pieces. Then Chapter VI digs

more into why the above mentioned issues caused by private employment agencies hasn't been put under regulations. A discussion and analysis of the power relations in between different stakeholders in political arena will be formed, to see what have been and would be the opposition powers of enhancing domestic workers' rights. Lastly, summarizing the above chapters, policy and system reform will be suggested in Chapter VII.

### **1.3 Limitations**

The initial thoughts on this research were to include interviews with Taiwanese NGOs which have been devoted on the issue of foreign domestic workers. The interview was intended to design for collecting their opinions on the role of private employment agencies in the foreign labor market, and whether the agencies have any contributions to human rights abuses that foreign domestic workers have been suffering from. Also hoping to dig deeper into the political barriers and power relations behind the stagnation of the protection of foreign domestic workers, in particular the pressures and oppositions these NGOs have faced while they are doing advocacy and pushing for a change.

Different than expected, it was difficult to find an organization which is willing to take the interview. With only a few NGOs working on this issue, and other civil society organizations being mostly religious groups and regional shelter centers, these organizations have been extremely busy and unwilling to take interviews that did not contain field work. With the failure to convince them to accept interviews, this research has been only based on secondary resources, including media pieces, NGO reports, governmental reports, interviews conducted by other research and books etc. By making analysis based on others' descriptions and records of interviews which relate to abusive situation on foreign domestic workers, it has constrain of having the risk to misinterpret a piece of interview or the situation. Since there are no personal participations in the gather process of these first hand materials, there could be a loss of information which are not chosen to be documented.



To decrease this limitation to its lowest effect, this research tries to include secondary information from all stakeholders and layers. The sources range from media pieces, journal articles, master/PhD student's research, books and reports from NGOs and governments. And has tried to involve voices and angles from all the actors in the issue of foreign domestic workers.

## Chapter II —Domestic Workers in Taiwan

### 2.1 History

Back in the 1990s, there had been a rapid economic growth in Taiwan. The industries transformed from mainly agriculture and heavy industry to largely services. At the same time, an odd phenomenon of the coexistence of high unemployment rate and the lack of manpower in certain industries appeared. It reflected a general refusal of Taiwanese to work in the so called ‘3Ds work’ - dirty, dangerous and demeaning. Industries which had a shortage in workers thus started to illegally hire foreign workers from South East Asia to fill up the gap. It was also the time when women started to gain more power in society. More and more women obtained opportunities to work and devoted themselves in career, which led to an increase of double-income families. Whereas most double-income families cannot balance between child caring, elders caring and work, the demands for domestic workers had also raised.

In order to balance the supply and demand in the blue-collar labor markets, and to end the unprotected situation of illegal workers, the Taiwanese government decided to open its gate for foreign workers in 1992. Correspondingly, the ‘Employment Service Act’ was passed in May 1992, with its fifth chapter dealing with foreign employment.

The permission of accepting foreign workers were however based on a complementarity basis. The government had set up strict threshold and quota system for hiring foreign workers. In the case of domestic workers, the Employment Service Act and its supplemented terms have divided the category of domestic workers further into ‘caregivers’ and ‘domestic helpers’(or as ‘maids’).<sup>2</sup> The employers must be in

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<sup>2</sup> Four sub-categories of domestic workers are given in Legislative Yuan, *The Reviewing Standards and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11 in Paragraph 1 to Article 46 of the Employment Service Act 2007*, Taiwan. Definitions are stated in article 3:

‘2. Housemaid jobs: performing house cleaning, food cooking, taking care of daily lives of members of households, or other related household service tasks..

3. Institutional nursing jobs: taking care of daily lives for accepted disabled persons or patients in the institutions or hospitals stipulated by Article 20 of the Standards.

accordance to certain requirements in order to obtain a quota for foreign worker. Take hiring foreign caregiver for example, the family have to have more than three children or an elder person with specific disabilities that needs 24 hours of care.

Based on law and practice, there is a higher threshold for hiring domestic helpers than caregivers, multiple illegal ways to hire caregivers for the use of housework have thus developed. Some employers counterfeit medical diagnosis of the elders to reach the threshold of hiring caregivers<sup>3</sup>, while some simply ‘borrow’ caregivers from friends or relatives. Most foreign domestic workers have been doing extra work that do not comply with their working contract. Their working content in practice often range from elder caring, children caring, housework to even helping out on the employers’ private businesses.<sup>4</sup> The distinction of caregivers and domestic helpers thus has been blurred in practice. In this piece of research, the author will use the term ‘domestic workers’ to cover foreign workers whom collectively known as doing work including helping housework, taking care of children and/or the elders.

## **2.2 Increasing Demands for Domestic Workers**

Similar to most of the developed countries around the world, Taiwan has been on its way to an aged society. With 12.64% population over 64 years old<sup>5</sup> and ranking as the top ten countries that have the highest increasing dependency ratio in the past 15 years,<sup>6</sup> the demands of elder caring have been increasing rapidly throughout the years.

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4. Family nursing job: taking care of daily lives for disabled persons or patients in households.

5. Outreach nursing jobs: Assigned by employers to the families at the location prescribed by the outreach nursing contract to take care of daily lives of physically and mentally disable persons or patients.’

<sup>3</sup> ‘Barthel Index’ is a scale to measure performance in activities of daily living. Each performance item is rated with a given number of points. Barthel Index is consist of 5 levels, dividing based on the level of reliance for assistance. If the result is the highest two levels of reliance, then the elder is allowed to employ a foreign caregiver.

<sup>4</sup> The places that foreign domestic workers have been request to assist on are with a wide range. From restaurant, egg shops, fields or to other family member’s house.

See Chen-Fen CHEN, *Management or Exploitation? The Survival Strategy of Employer of Family Foreign Care Workers*, Taiwan Society Research Journal, Vol.85, December 2001, p.105-108.

<sup>5</sup> Taiwan's Ministry of the Interior, ‘Monthly Bulletin of Interior Statistics’. Available from: <http://sowf.moi.gov.tw/stat/month/list.htm> (Last accessed: 3 April 2016)

<sup>6</sup> United Nations, Department of Economic and Social Affairs, Population Division, *2015 World Population Ageing* (2015), ST/ESA/SER.A/390, p.32.

Originate from Taiwanese tradition and culture, the concept of 'xiao dao', so as to filial piety, and attachment to lands and homes are deeply rooted. This has manifested in the survey of elder's ideal way of living: around 65.7% have chosen 'living with children' as the best option, while only 1.4% show the willingness to live in nursery houses.<sup>7</sup> Most of the elders have been living with the lifestyle which meets their expectations, according to another survey in 2013, 66.3% elders over 65 years old have been living with their children.<sup>8</sup> As majority of families in Taiwan are doubled-income, with limited capacity taking care of their elders, hiring foreign domestic workers has thus become a compromise, permitting the possibility to satisfy the needs of both family and elders.

Foreign domestic workers not only have filled the gap of the lack of manpower in the elder caring labor market, it also have provided a lower-cost option. According to the statistics from Taiwan Ministry of Labor, the amount of foreign domestic workers that Taiwan has received has sharply increased throughout the years. From the increase of an average 50 thousand workers each year in between 1992 and 1996, to a more abate but stable increase of 10 thousand each year from 1997 to today (See graphic 2-1 and form 2-1). Up to 2015, the total number to foreign domestic workers is 224,356, which amounts to almost 1% of the Taiwanese population.<sup>9</sup>

The state origins of foreign workers are from six country in East Asia, which are Indonesia, Thailand, Vietnam, Philippines, Malaysia and Mongolia. The majority of domestic workers come from Indonesia, account for around 80%, whereas the Pilipino and Vietnamese origin comprise 14% and 13% respectively.<sup>10</sup> Accord with the female dominant nature of domestic work<sup>11</sup>, the situation in Taiwan is no exception. For

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<sup>7</sup> Taiwan's Ministry of Health and Welfare, *Report of the Senior Citizen Condition Survey 2013*, Oct 2014, p.2-3.

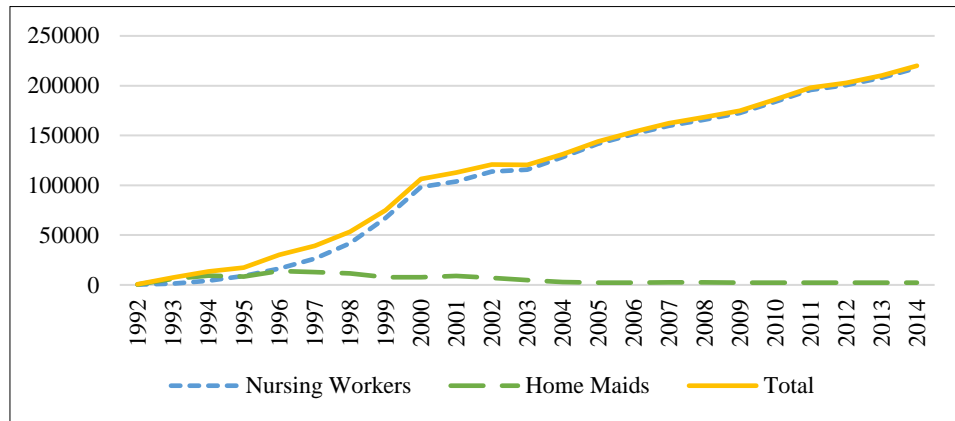
<sup>8</sup> *ibid.*, p.4.

<sup>9</sup> The entire population in Taiwan is 23,508,362 based on governmental data in June 2016.

<sup>10</sup> Ministry of Labor Republic of China (Taiwan), *Yearly Bulletin, Foreign Workers, Foreign Workers in Productive Industries and Social Welfare by Nationality*, 2015.

<sup>11</sup> International Labour Office Geneva, *Domestic workers across the world: Global and regional*

instance in 2014, women comprise the overwhelming 99 percent within domestic workers.<sup>12</sup>



Graphic 2-1: Amount of Domestic Workers 1992-2014<sup>13</sup>

	Nursing Workers	Home-Maids	Total
<b>2011</b>	195,726	2,128	197,854
<b>2012</b>	200,530	2,164	202,694
<b>2013</b>	208,081	2,134	210,215
<b>2014</b>	217,858	2,153	220,011
<b>2015</b>	222,328	2,028	224,356

Form 2-1: Detailed Amount of Domestic Workers 2011-2015<sup>14</sup>

### 2.3 Labor Standard Act

The Labor Standard Act in Taiwan includes all the basic labor standards required by law, including minimum wages, working hours, retirement and occupational hazards etc. Most of its terms and regulations are align with the baselines of international human

statistics and the extent of legal protection, 2013, p.21.

<sup>12</sup> *ibid.* With the total number of 220,011 domestic workers in 2014, there were 1,774 male and 218,237 within.

<sup>13</sup> Ministry of Labor Republic of China (Taiwan), Yearly Bulletin, Foreign Workers, *Foreign Workers in Productive Industries and Social Welfare by Various Type*, 2015. Available at: <http://english.mol.gov.tw/6387/6440/?Page=1&PageSize=20> (Last accessed: 29 July 2016)

<sup>14</sup> *ibid.*

rights standards.

“The Act shall apply to all forms of employee-employer relationships. However, this principle shall not apply, if the application of the Act would genuinely cause undue hardship to the business entities involved due to the factors relating to the types of management, the administration system and the characteristic of work involved .....”<sup>15</sup>

According to the Taiwanese Ministry of Labor, due to the ‘special nature’ characteristic of domestic work and the difficulty to define the working hours, it was being ruled out of Labor Standard Act. In Taiwan’s current existing laws, there has been a lack of regulations providing protections for domestic workers.

### **2.3.1 Low Salary**

In the Labor Standard Act, it regulates that even if the wages depend on the contract mutually agreed upon between the employers and employees, but it should not be lower than the minimum wage.<sup>16</sup> The domestic workers however apply to a separate amount of basic wages, depending on the negotiations between Taiwan and the sending countries. The salary of foreign domestic workers remains stagnant at NT\$15,840<sup>17</sup> for a lengthy period of time, which equals to the amount of basic wages for all workers in Taiwan back in 1997. Whereas the general minimum wage applies to the Labor Standard Act increased almost every year, to NT\$ 20,008<sup>18</sup> per month in July 2014, the wages of domestic workers remain unchanged.<sup>19</sup>

In 2015, with the continuous protest and pressure given by the sending countries, the minimum wages for domestic workers was finally altered after 18 years. The Taiwanese government was initially reluctant. Yet after the Indonesian and Filipino government

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<sup>15</sup> Legislative Yuan, *Labor Standard Act* 2015 (Taiwan), Article 3.

<sup>16</sup> Legislative Yuan, *Labor Standard Act* 2015 (Taiwan), Article 21.

<sup>17</sup> Equals to € 428.1, as €1 equals to around NT\$ 37 based on the exchange rate in April 2016.

<sup>18</sup> Equals to € 544.81.

<sup>19</sup> Ministry of Labor Republic of China(Taiwan), Labor Theme, Labor Standards, *Adjustment of Basic Wage*, 2015. Available from: <http://english.mol.gov.tw/6386/6394/6402/23308/> (Last accessed: April 9, 2016)

announced a joint raise of wages on the sending side in July 2015 to NT\$ 17,500 per month<sup>20</sup>; in addition to the threat from Indonesian government to stop sending pit domestic workers to Taiwan<sup>21</sup>; Taiwanese government eventually gave in and agreed to raise the wages to a reasonable extent. By the end of August 2015, a consensus was reached with the increase to NT\$ 17,000<sup>22</sup> per month. Despite an increase of salary, it still has a gap to the minimum wages in the Labor Standard Act.

### 2.3.2 Unregulated Working Hours

The Taiwanese government surveyed the employers every year on how they manage foreign workers, and the difficulties that they have been facing. In the 2015 report, it shows a rather low percentage for the foreign domestic workers to have a fix amount of working hours on the contract, with only 17.9%. Their average working time per day is 9.8 hours; as for those without a clear indication of working time, with the average is 10.2 hours per day.<sup>23</sup> Nevertheless, in another official governmental survey which interviewed over 1,000 foreign workers, it revealed the result of an average 17.8 hours of work for the domestic workers per day. And there are 215 interviewees claimed that they have to work for 24 hours.<sup>24</sup>

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<sup>20</sup> Manila Economic and Cultural Office (Philippine Representative Office in Taiwan), *Indonesia, Philippines asked to hold off on salary demands*. Available from: <http://www.meco.org.tw/indonesia,-philippines-asked-to-hold-off-on-salary-demands.html> (Last accessed: April 9, 2016)

<sup>21</sup> The China Post, 'Indonesia to gradually stop sending domestic workers', February 28, 2015. Available from: <http://www.chinapost.com.tw/taiwan/national/national-news/2015/02/28/429924/Indonesia-to.htm> (Last accessed: April 9, 2016)

<sup>22</sup> Equals to € 459.46, as €1 equals to around NT\$ 37 based on the exchange rate in April 2016.

<sup>23</sup> Ministry of Labor, *2015 The management and utilization of foreign workers Survey Result*, form 2, 21 January 2016. Available from: <http://www.mol.gov.tw/announcement/2099/24512/>. (Last accessed: 15 April 2016)

<sup>24</sup> The research '2012 foreigner's satisfaction to the living environment in Taiwan' was authorized by the Taiwanese Research, Development and Evaluation Commission under Executive Yuan, to be conducted by Shih-Hsin University. The result was published by the working group in the university, and was being reported in the media. Nevertheless, the government did not officially published the result on their website and said the survey cannot represent the government's position. It is so far the only governmental authorized survey which interviewed foreign workers.

See Central News Agency, 'Survey : foreign maids have to work almost 18 hours per day', 14 April 2013. Available from: <http://www.cna.com.tw/news/firstnews/201304140073-1.aspx> (Last accessed: 15 April 2016)

## **2.4 Employment Service Act**

The Employment Service Act, which was enacted in 1992 with the opening to foreign workers, has reaffirmed the non-applicability of domestic workers on Labor Standard Act. Indicating that based on various needs of different families, the working time and conditions should be negotiated on an individual basis. The Employment Service Act solely addressed the qualifications and processes for employing foreign domestic workers, and with more detailed indications in ‘The Reviewing Standards and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11 in Paragraph 1 to Article 46 of the Employment Service Act’.

As mentioned above, the acceptance of foreign domestic workers are based on a complementarity basis. In Article 42 of Employment Service Act, it stated distinctly the prioritization of national’s work rights to the foreign workers: “For the purpose of protecting nationals’ right to work, no employment of foreign worker may jeopardize nationals’ opportunity in employment, their employment terms, economic development or social stability.”<sup>25</sup> Based on this principle, instead of having a free and open market for foreign domestic workers, the market is based on quotas and limitations on the freedom to work. And since the private employment agencies are the ones who have access to both the demand and supply ends, this has become an opportunity for the agencies to gain the power to have a grasp of the market.

### **2.4.1 The Recruitment Process**

The process of hiring a foreign domestic worker is rather complex, the employers must be in accordance with the certain qualifications. Employers who intend to employ foreign family nursing workers must have elders with the following conditions in the house:

“1. Persons with one of items listed in the special grave physical or

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<sup>25</sup> Legislative Yuan, *Employment Service Act* 2015 (Taiwan), Article 42.



mental diseases.

2. After a professional team evaluation conducted by a medical institution, persons under the age of eighty who are determined as requiring all-day care

3. Over-80-year-old people considered to be severely dependent upon nursing services with a professional assessment by the teams of medical institutions.

4. Over-85-year-old people considered to be mildly dependent upon nursing services with a professional assessment by the teams of medical institutions.”<sup>26</sup>

The measurement standard, as mentioned in previous sub-chapter, will be depending on the Barthel Index. As for those who wants to hire housemaids, either the family has to have triplets or multiparous children under the age of three; or have several elders and children in the house.<sup>27</sup>

Due to the complementarity characteristic of foreign workers, the employers have to proof that they have attempted to find eligible Taiwanese for this work vacancy, but no proper candidates were found. Then can the employer be qualified for the application of the foreign workers.<sup>28</sup> The employers could either go through the application procedures by themselves, or seek for the assistance from employment agencies. While there are some possibilities to directly hire foreign domestic workers from the sending countries, employers in general still find it more convenient to turn to private recruiters who have networks abroad and who are familiar with immigration procedures. The employment agencies thus dominantly control the market, which led to unbalanced power relations.

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<sup>26</sup> Legislative Yuan, *The Reviewing Standards and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11 in Paragraph 1 to Article 46 of the Employment Service Act 2007* (Taiwan), Article 22.

<sup>27</sup> The family must have more than “16 points”, which calculated from the number of elders and children in the family. The law has given different age groups certain points. For instance, one children in between 1 and 2 years old; an elder between 80 and 90 years old; could get 6 points each. See Legislative Yuan, *The Reviewing Standards and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11 in Paragraph 1 to Article 46 of the Employment Service Act 2007*, Article 10.

<sup>28</sup> “[...] there are valid reasons that the native caregiver recommended by the long-term care centre of municipal government and county (city) government cannot offer the demanded requirements, the employer can go to the Central Competent Authority for applying for a foreign caregiver.” Regulations on the Permission and Administration of the Employment of Foreign Workers, Article 2, 12 and 12-1.

After the approvals are given by the government, the employers ought to form a contract specifying the working content with a fixed hiring duration not longer than 3 years<sup>29</sup>. The working contract with description of working content would be given to the employment agencies in the sending countries. If the foreign domestic worker agrees upon the working conditions and signs the contract, the employer and domestic workers would be matched. Nevertheless, throughout the process, the domestic workers do not have any chances to negotiate or raise any doubts on the working content. And in most cases, not until they arrive in Taiwan do they realize that the workloads are excessively more than what has stated on the contract.

#### **2.4.2 Limitation on Freedom to Work**

As mentioned above, the foreign domestic workers barely have opportunities to sit at the negotiation table to claim their rights and request for better working conditions. Based on current Taiwanese regulations, foreign workers do not have the right to freely transfer to other employers except for some strictly defined circumstances. Therefore the moment that foreign domestic workers decide to sign the contract in their home country, they are bound and restricted to the employer who they signed the contract with.

According to Article 53 in Employment Service Act, “foreign worker who has been employed to engage in work as referred to in ‘Subparagraphs 8 to 11<sup>30</sup> of Paragraph 1 of Article 46’ may not shift to a new employer or new work.”<sup>31</sup> The transfer is only allowed under very limited circumstances.<sup>32</sup> Whereas paragraph 4 seemingly gives a

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<sup>29</sup> Legislative Yuan, *Employment Service Act* 2015 (Taiwan), Article 46 and 52.

<sup>30</sup> The subparagraph 9 in article 46 is the category of ‘Household assistant and nursing work.’

<sup>31</sup> Legislative Yuan, *Employment Service Act* 2015 (Taiwan), Article 53.

<sup>32</sup> When one of the following circumstances has arisen or existed, the foreign worker employed to work as referred to in *Subparagraphs 8 to 11 of Paragraph 1 of Article 46* may shift to work for a new employer or to engage in new work upon the authorization of the central competent authority:  
1. His/her original employer or the one who was intended to be taken care of by the employed foreign worker has deceased or emigrated;  
.....

wider possibility that the transformation is possible when there are “other similar circumstances not attributable to the employed foreign worker”. In reality, few domestic workers have taken this clause and successfully demand for work transition.

The transition of domestic work and re-matching has been difficult due to various reasons. First of all, most workers do not have the access to the limited amount of legal qualified employers, they have to rely on their private employment agency to assist them finding new employer. Yet the agencies in general have a passive attitude for re-matching, leading to rare successful cases for transferring to new work. As the working conditions of foreign workers cannot improved, not wanting to be sent home, they have no choice but ‘run-away’ in order to continue to work in Taiwan. It not only lead to a high run-away rates, but also prompt foreign worker’s easy acceptance on illegal work and being vulnerable to exploit.

Besides the restrictions on freedom to work, the duration of the working period is also regulated. Each time the domestic workers could only stay and work in Taiwan for a maximum of three years,<sup>33</sup> with the total duration not exceeding twelve years.<sup>34</sup> A large number of foreign workers thus have to either fake or borrow a new identity to continue their work in Taiwan, which is sometimes known and encouraged by their employers and private employment agencies.

## **2.5 Guest workers and a Lack of Protection**

All these situations have reflected the ‘guest worker’ position of the foreign workers

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3. The discontinuation of the work caused in the fact that his/her original employer has wind up the factory, suspended the business, or failed to pay the wage/salary pursuant to the employment contract resulting in the termination thereof;

4. Other than the above, similar circumstances not attributable to the employed foreign worker.

<sup>33</sup> Legislative Yuan, *Employment Service Act* 2015 (Taiwan), Article 52.

The norms in the Taiwanese domestic work market is to form a two year contract. If the employer is satisfied with the domestic worker, and the latter is willing to continue working, an extra year contract will agreed and signed. After three years, the continuation of working as domestic workers would be allowed with a departure from Taiwan for at least one day.

<sup>34</sup> *ibid.*

under Taiwanese policies, it is also a common immigration policy direction in Asia.<sup>35</sup> The high density and racial homogeneous in Asian countries has in general led to a rather strong resistance of allowing the blue collar-workers to immigrate and obtain citizenships. Barred by the citizenship of the host country, as the ‘disenfranchised class’, the blue-collar workers are often suppressed and incapable of organizing effectively for self-defense. It is often the case for them that “Departure is only a normal option; deportation, a continuous practical threat”.<sup>36</sup>

One of the main cause of the poor treatments on foreign domestic workers in Asia is the exclusion from domestic labor legislations.<sup>37</sup> As previously mentioned, Taiwan also has been refusing to place foreign domestic workers under legal protections. Throughout the years, there have been various civil movements and legislative attempts to either include the domestic workers to Labor Standard Act, or to legislate a separated Act for domestic workers. But not until recent years have there been some small steps forward, which will be discussed in detail later in Chapter VI.

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<sup>35</sup> Douglas S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino, *Worlds in Motion: Understanding International Migration at the End of the Millennium*, London, Oxford Clarendon Press, 1999.

<sup>36</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, New York, Basic Books, 1983, Chapter 2.

<sup>37</sup> Philippa Smales, *The right to Unite: A handbook on domestic worker rights across Asia*, Thailand, Asia Pacific Forum on Women, Law and Development, 2010, p.13 and 21.

### **Chapter III — Roles and Responsibilities of Foreign Workers Employment**

#### **Agencies**

While most people consider the majority human rights abuses and legal responsibility lies on employers who hire domestic workers, the private employment agency has in fact also played a role on directly and indirectly influencing the working situation of migrant domestic workers. The agency not only serves as a bridge or platform which enables both employers and workers to find their ideal job counterparts, it also affects heavily on the employer's attitude towards how to treat foreign domestic workers. And their power over the market has enabled them to directly cause harm to the foreign domestic workers.

Under the Taiwanese context, the employment agencies have an overall grasp at the conditions on both sides- the employers and the workers. The regulation and policy have posed special tasks on the agencies to oversee their recruited workers, including suggestions to regularly visit the workers and provide them with remediation channels etc. And these tasks are the main reasons for the legally allowed 'service fees' charging. Nevertheless, it is interesting to observe from the implementation of agencies in practice that these tasks are de facto not fulfilled. A question mark over the government's policy on 'laissez-faire' is thus placed.

In the early 1990s, before the market was officially opened to foreign workers, the manufacturing industries were unable to find sufficient workers. There had been a tendency to hire illegal foreign workers to fill the gap. In order to control the disorder, the 'Employment Service Act' was enacted in May 1992, which gave private employment agencies the right to import and manage foreign workers.

In the first few years after the acceptance of foreign workers, the employers had been scrambled for hiring foreign workers. Without clear knowledge of the employing procedure, the demands for entrusting the private employment agencies had been immense. In a short period of time, over 300 employment agencies had established in

between 1992 and 1994. Most of the employment agencies only provided the service of finding suitable foreign workers and assistance to run through all the administrative procedures. There had been few agencies giving any attention on facilitating the foreign workers to accommodate to the new environment or to manage the foreign workers. Still, extremely high placement and service fees were charged from foreign workers, leading to extremely exploitive conditions.

Under the continuous growing demands for foreign workers, more and more private employment agencies have been established. From 1992 to 2016, a total of 3,600 private employment agencies have registered.<sup>38</sup> With some being suspended their business licenses and some being automatically eliminated from the market, there are only 1,472 private employment agencies still remain in 2016.<sup>39</sup> This excessive number has led the government came up with new policies to ensure the order of the market, which include the restriction on limited amount of service fees can be charged by agencies<sup>40</sup>. Also, a regular assessment of private employment agencies has begun since 2007.

In this Chapter and Chapter IV, the Taiwanese regulations will be examine and compare with the international standards. Due to the specialty of Taiwan's international status, a brief explanation of the applicability of international law will be priory discussed. Then a detailed comparison of domestic and international standards will be discussed from three dimensions- the private employment agencies' responsibility, the state's duty and the access to remediation. The responsibility of private employment agencies will be discussed in this Chapter, while the other two dimensions are addressed in the next Chapter.

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<sup>38</sup> Labor Ministry, Private Employment Agencies Database. Available from: <https://agent.wda.gov.tw/agenttext/agent/QryAgent.jsp> (Last accessed: 05 June 2016)

<sup>39</sup> Labor Ministry Statistics Department, *Legal Foreign Worker's Employment Agencies*, March 2016.

<sup>40</sup> It was regulated not until 2001.

### 3.1 Related International Treaties and Conventions

Speaking of labor rights, the first international standard and treaty which come into mind is the International Labor Organization (ILO) conventions. The ILO was established in 1919, as the Universal Declaration of Human Rights (UDHR) adopted in 1948, it has already established over 90 conventions. Consequently, it had served as a principle source for the area of labor rights when the later International bill of human rights<sup>41</sup> were established.<sup>42</sup>

Under the range of discussion in this research, the domestic worker's rights and the regulations upon private employment agencies were given under the International Labour Organization (ILO) conventions and recommendations. The UN treaties do not have such detailed regulations in comparison. Nevertheless, as the cornerstone for the field of human rights, the International bill of rights has also provided a general standards covering the target groups of this research. Coupled with the fact that the two covenants<sup>43</sup> are the few international treaties which had been involved into Taiwanese domestic laws. The two covenants, two of the ILO conventions and the UN Principles for Business and Human Rights will be briefly introduced, then look into detailed comparisons with domestic law in the following paragraphs.

#### 3.1.1 ICCPR & ICESCR

Established in 1966 and enter into force in 1976, the International Covenant on Civil and Political Rights (ICCPR)<sup>44</sup> and International Covenant on Economic, Social and

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<sup>41</sup> Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are being called as 'The International Bill of Human Rights'.

<sup>42</sup> Lejo Sibbel, *ILO Conventions and the Covenant on Economic, Social and Cultural Rights: One Goal, Two Systems*, Friedrich-Ebert-Stiftung Department for Development Policy, Jan 2001, p.53-54.

<sup>43</sup> The two covenants implies the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

<sup>44</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

Cultural Rights (ICESCR)<sup>45</sup> are the most important human rights treaties that covered a wide variety of bill of rights.

It has regulated labor rights on the most basic level, which includes non-discrimination (ICCPR& ICESCR article 2); prohibition on forced or compulsory labor (ICCPR article 8) ;the rights to work (ICESCR article 6); to the enjoyment of just and favorable conditions of work (ICESCR article 7); and to form and join trade unions (ICESCR article 8).

### **3.1.2 ILO Convention No.181: Convention for Private Employment Agencies & Recommendation No.188<sup>46</sup>**

The role and abolition of private employment agencies have been debated over the years, and the attitude of ILO has altered several times. Back in 1933, the Convention No.34 for Fee-Charging Employment Agencies called for a complete abolishment on private employment agencies.<sup>47</sup> But with ineffective implementations, the ILO soften its standpoint and increase the option of a strict regulation on private employment agencies in the 1949 Convention No.96.<sup>48</sup> Then in 1997, ILO gave an explicit recognition on the important role which private employment agencies may play in a well-functioning labor market.<sup>49</sup> The Convention No.181 and Recommendation No.188 were adapted accordingly. There have been 30 countries signed and ratified this convention, and only Japan and Fuji in Asia which have ratified Convention No.188.

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<sup>45</sup> International Covenant on Economic Social and Cultural rights (adopted 16 December 1966, entered into force 3 January 1976) 993, UNTS 3 (ICESCR).

<sup>46</sup> International Labour Organization, C181 - Private Employment Agencies Convention, 1997 (Entry into force: 10 May 2000); ILO Recommendation R188: Private Employment Agencies Recommendation (Recommendation concerning Private Employment Agencies) (85th ILC session Geneva 19 Jun 1997).

<sup>47</sup> International Labour Organization, C34 - Fee-Charging Employment Agencies Convention, 1933 (Entry into force: 18 Oct 1936).

<sup>48</sup> International Labour Organization, C96 - Fee-Charging Employment Agencies Convention (Revised), 1949 (Entry into force: 18 Jul 1951).

<sup>49</sup> Preamble clause, ILO Convention No.181.



### **3.1.3 ILO Convention No.189: Convention on Domestic Workers & Recommendation No.201<sup>50</sup>**

The Domestic Worker's convention was enacted in 2011 and enforced two years later. It aims at specific protections toward domestic workers, and also recognized private employment agencies being an important stakeholder in the issue of domestic workers. Until today, 21 countries over the world has signed and ratified the treaty. Among them, only the Philippines ratified Convention No.189 in Asia.

### **3.1.4 UN Guiding Principle of Business and Human Rights**

Established in 2011, the UN Guiding Principles of Business and Human Rights<sup>51</sup> aims at enhancing the States and corporations' prevention and protection on human rights, with the three pillars<sup>52</sup> in the guidelines:

- State's Duty to Protect: States have the duty to protect against human rights abuses by third parties through effective policies, legislation, regulations and adjudication;
- Corporate's Responsibility to Respect: Companies have the responsibility to follow the regulation of the State and also to avoid infringing on the rights of others and address negative impacts.
- Access to Effective Remedies: A need for greater access to effective remedy for victims of business should be provided.

Traditionally, only states have the duty to positively prevent and protect human rights, including regulating business under a State's own jurisdiction. Nevertheless, due to the rapid evolvement of transnational corporations and the globalization of migrants, the sphere of business has been enlarged. Most of the time the states have been unwilling or

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<sup>50</sup> International Labour Organization, C189 - Domestic Workers Convention, 2011 (Entry into force: 05 Sep 2013); ILO Recommendation R201: Domestic Workers Recommendation (Recommendation concerning Decent Work for Domestic Workers) (100th ILC session Geneva 16 Jun 2011).

<sup>51</sup> United Nations, Guiding Principles of Business and Human Rights, HR/PUB/11/04, June 2011. (herein after UN Business Guiding Principles)

<sup>52</sup> *ibid.*

unable to regulate their own business entities when the abuses occurred abroad or upon non-nationals. The expectations thus come to corporations self-regulations, the avoidance of harm to human rights – is the baseline expectation of all companies.

Recognizing the importance to regulate private employment agencies in order to protect in particular migrants and vulnerable groups, the European Commission have developed a guideline for employment and recruitment agencies. It has address the issue under the UN Business Guiding principles and is global applicable.<sup>53</sup>

### **3.1.5 The Applicability of International treaties on Taiwan**

In 1971, under United Nations resolution 2758<sup>54</sup>, the government of Republic of China had officially lost the legality to represent China.<sup>55</sup> Withdrawing from the United Nations, the Republic of China (Taiwan) has been facing enormous obstacles to be recognized by international community under the ‘One China Policy’<sup>56</sup>. As being isolated from international community, the raising trend of valuing and participating the establishment of various international human rights treaties has very limited impact on Taiwan. Not until the recent 10 years has the Taiwanese government start to make efforts to connect to this trend.

#### **3.1.5.1 United Nations Human Rights Treaties**

As Taiwan was still a member in the United Nations, the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights were signed in 1967. However, the soon banishment from the United Nation obstructed further involvements.

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<sup>53</sup> European Commission, *Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights*, June 2013.

<sup>54</sup> UNGA Res 2758(XXVI) (25 October 1971).

<sup>55</sup> The resolution was passed in October 25, 1971. It recognized the People's Republic of China (PRC) as ‘the only legitimate representative of China to the United Nations’ and expelled ‘the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations.’

<sup>56</sup> As a policy, this means that countries seeking diplomatic relations with the People's Republic of China (PRC) must break official relations with the Republic of China (ROC) and vice versa.

Around early 2000, along with the endeavors of first people-elected president, the Taiwanese government started to form a domestic discussion of joining international human rights treaties. By placing ‘a human rights nation’ as one of the main state orientation, one of the main focus is how the actions of signing treaties will increase international recognition on Taiwan.<sup>57</sup> In addition, taking emphasis on ‘human rights’ can create another distinction in between Taiwan and the ‘autocratic’ and ‘non-democratic’ China.<sup>58</sup> But it had failed due to the disagreements in between ruling and opposition parties within the first president’s term of office.<sup>59</sup> Later in 2009, the second president successfully pushed the ratification of the two covenants. But the UN Secretary General had rejected to deposit the instrument of accession based on the ground that Taiwan is not a UN member state. Notwithstanding the rejections, Taiwan has continuously making attempts to ratify and voluntarily bound by international human rights treaties with the internalization of the treaties. Up until 2015, the attempts were made with the inclusion of the two covenants, The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Child’s Convention, and the Convention on the Rights of Persons.

Due to the decline of United Nations to Taiwan’s treaty ratifications, Taiwan has been unable to join the Universal Periodic Reviews for examining State human rights performances. Taiwanese government thus made efforts to convene its own State Reviews by inviting international experts to examine human rights performances in Taiwan. There have been two State Review Sessions for CEDAW in 2009 and 2014; while the Review for the two Covenants was held in 2013 and expected to have the second one in 2017.<sup>60</sup>

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<sup>57</sup> Executive Yuan, Research, Development and Evaluation Commission, ‘Human Rights Infrastructure-building for a Human Rights State —2002 Human Rights Policy White Paper of the Republic of China (Taiwan)’, February 2002.

<sup>58</sup> Taiwan’s Human Rights Journal, ‘Interview with Yu-Jie Chen: Taiwan and International Human Rights Standards’. Available from: <http://www.taiwanhrj.org/interview/100> (Last accessed: 26 July 2016)

<sup>59</sup> Chen Lung-chu, *The efforts which Taiwan has made to be connected to international human rights systems*, 新世紀智庫論壇, Vol.62, June 2013.

<sup>60</sup> Ministry of Justice, ‘Human Rights in Taiwan’. Available from: <http://www.humanrights.moj.gov.tw/mp205.html> (Last accessed: 8 July 2016)

Although the four international treaties which Taiwan has endeavored to be bound with did not complete the deposit process of treaties. They are still given the applicability as equal to domestic laws through the Taiwanese legislation. The internalization to domestic laws also shows the Taiwanese government's belief that it is under an obligation to implement four treaties they signed, and has the capacity to do so. It also reveals Taiwan is the proper duty-bearer to respect, protect and fulfil human rights in the territory that it controls.<sup>61</sup>

In addition, given that some clauses have formed *jus cogens* and customary international law, it should constitute a legal binding force to Taiwan.<sup>62</sup> Even if it is not binding on the international level due to the unsuccessful ratifications, the domestication to Taiwanese laws has also created a legal effect. Some Taiwanese scholars also assert that some human rights clauses and protection should have equal status to the Taiwanese Constitution.<sup>63</sup>

### **3.1.5.2 International Labor Organization Conventions**

Trapped in the predicament of international isolation, Taiwan has not been bound by any of the conventions due to the lack of membership in the ILO. Yet some of the Taiwan domestic labor laws have been legislated based on the ILO standards. The Taiwanese Constitutional Court also cited the ILO convention in several decisions<sup>64</sup>, and noted that the law should adapted based on “the provisions of international labor conventions and the overall development of the nation”.<sup>65</sup> This has revealed the value and the benefits of introducing and referring the ILO standards, by recognizing human and labor rights, to

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<sup>61</sup> Tsai, Pei-Lun, *The application of international human rights law to unrecognised entities: the case of Taiwan*, 2015, PhD thesis, University of Nottingham, p.216-228.

<sup>62</sup> Louis Henkin, *International Law: Politics and Values*, Vol. 18: *Developments in International Law*, Dordrecht, Martinus Nijhoff Publishers, 1995.

<sup>63</sup> Wen-Chen Chang, *The convergence of international human rights law and domestic constitution: After the two covenants are implemented in Taiwan*, Taiwan Association for Human Rights Journal, March 2010.

<sup>64</sup> There have been 10 interpretations citing the ILO conventions for various labor issues.

<sup>65</sup> Justices of the Constitutional Court, Judicial Yuan, R.O.C, Interpretation No. 578 (21 May 2004).

pursue social justice as an essence to achieving universal and lasting peace.<sup>66</sup> Some Taiwanese scholars also recognized the applicability of ILO conventions to domestic level, although not legally binding, it applies to the ‘general principle of law’ as the source to cite not domesticized international treaties or conventions.<sup>67</sup>

### 3.2 Definition and Types of Private Employment Agencies

In the ILO Convention No.181 for private employment agencies, the definition of private employment agency is given as providing “services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships”<sup>68</sup> or “consisting of employing workers with a view to making them available to a third party which assigns their tasks and supervises the execution of these tasks”.<sup>69</sup> The private employment agencies for foreign workers, which is the main focus of this research, falls under the prior definition. While the latter definition describes the so called ‘temporary work agencies’ for dispatch workers, which is not covered by this article.

Under Taiwanese law, the private employment agencies are solely defined as businesses that provide services of application processes and matching. In the article 35 of Employment Service Act, the definition is given as:

“Private employment services institution may engage in the following employment services businesses:

1. Job placement or human resources agency businesses;
2. Being entrusted to recruit employee(s);
3. Employment Counseling or psychological tests to be provided in order to assist nationals with the determination of their career development plans; and
4. Other employment services businesses as may be specified by the central competent authority.”

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<sup>66</sup> International Labour Organization, ‘Mission and impact of the ILO’. Available from: <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> (Last accessed: 25 July 2016).

<sup>67</sup> Yao Ming Hsu, *The Legal Applicability of Non-internalized International Treaties and Agreements in Taiwanese Courts*, Judicial Aspiration Vol.104, November 2012, p.25-26.

<sup>68</sup> ILO Convention C 181- Private Employment Agencies Convention (3 June 1997), article 1 (a).

<sup>69</sup> *ibid.*, article 1 (b).

The services specified by the central competent authority can be the following two situations, either commissioned by the employers to arrange the recruitment; or commissioned by the employers or foreign workers to accommodate migrant worker to adapt to the new environment.<sup>70</sup> Compare to the definition of ILO Convention No.181, Taiwan has placed extra expectations on the private employment agencies to provide settlement assistance. And this can be further observed in the “private employment agencies evaluation” given under the domestic law, which will be discussed in the next sub-chapter.

### **3.3 State’s Duty to Protect**

Traditionally, States are the subject under international law which should be responsible of preventing and protecting its citizens and persons within its territory to be inflicted by human rights harm.

As migrants are in particular named for protection under both ILO No.181 and 189 convention, a collaboration between the sending and receiving States are highly recommended.<sup>71</sup> The state has the duty to “provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies”. In particular, penalties should be given to the agencies which committed fraudulent practices and abuses to the migrants.<sup>72</sup>

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<sup>70</sup> Legislative Yuan, *Regulations for Permission and Supervision of Private Employment Services Institution* 2014 (Taiwan), Article 3.

‘The other employment service matters designated by the central competent authorities in Article 35, Section 1, and paragraph 4 of the Act are as follows:

I. Commissioned by the employers to 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.

II. Commissioned by the employers or foreigners 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.’

<sup>71</sup> ILO C181, article 8 (1) and C189, article 8 (3).

<sup>72</sup> ILO C181, article 8 (1) and C189 article 15(1c).

In order to fulfill its duty, a state “shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification”<sup>73</sup>. Through licensing, personal liability and agency responsibility for any misconduct can be ensured. The system should also include the possibility to refuse, cancel or withdraw the business license in case of any malpractices. Except for the penalties for misconduct, regular reports on private employment agencies should be requested. The government can thus have enough information to monitor<sup>74</sup> the activities of private employment agencies, and have an overall grasp of the labor market.<sup>75</sup>

### **3.3.1 Taiwan’s System for registration and evaluation**

The private employment agencies and its branches have to seek permission to obtain business licenses from the central Taiwanese government in order to legally establish. The business license have to be renewed every two years. The government remain its right to refuse, cancel or withdraw the license anytime if the agencies have malpractices, or failed to reach certain level in the yearly conducted evaluation.<sup>76</sup> The evaluation

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<sup>73</sup> ILO C181, article 3(2).

<sup>74</sup> States usually monitor with two alternative ways, conducting a desk audit with private employment agencies’ report upon request or a field audit.

<sup>75</sup> International Labour Office Geneva, *Guide to Private Employment Agencies- Regulations, Monitoring and Enforcement*, 2007, p.13-22.

<sup>76</sup> Legislative Yuan, *Regulations for Permission and Supervision of Private Employment Services Institution* 2014 (Taiwan), article 31.

‘The recognition of the foreign manpower service agency or its employees engaged in employment services business defined in Article 16 with one of the following circumstances will not be endorsed or will be annulled or revoked by the central competent authorities:

I. Failed to comply with the requirements and make corrections in time.

II. Late in applying for recognition renewal.

III. The business license or service permit is annulled or revoked by the mother nation.

IV. Violated Article 16 Section 2.

V. Stated false information or provided forged document in the application filed.

VI. Commissioned to arrange employment services business in violation of Article 45 of this Act, or providing false information or foreigner’s health check report.

VII. Commissioned to arrange employment service business but failed to exercise due diligence that causes the employer violating Article 44 or Article 57 of this Act.

VIII. Commissioned to arrange citizens or foreigners to work in Taiwan, or, introduce residents of Hong Kong or Macau and Mainland China to work in Taiwan but failed to exercise due diligence that causes foreigner’s whereabouts to be unknown and loss of contact.

system for private employment agencies was established in 2003, for the purpose of promoting the quality of services provide by private employment agencies. It is also expected to serve as references when the employers and foreign workers are choosing agencies.

The competent authorities may conduct evaluation of private employment agencies by themselves or consign to related institutions or organization. The results of evaluation would divide the agencies into three rankings: A, B and C.<sup>77</sup> If the private employment agency is being assessed as level C two times in a row, or refused to take the evaluation, its renewal of business license will not be permitted. Also, the agencies are not allowed to establish branches if the latest evaluation is level C.

Quality Management	<ol style="list-style-type: none"> <li>1. Contracts with the employers and workers are agreed and signed in a written form</li> <li>2. Data Collection and Management</li> <li>3. Employee Management<sup>78</sup></li> <li>4. Bilingual Service</li> </ol>
Malpractice	<ol style="list-style-type: none"> <li>1. Illegal Recruitment</li> <li>2. Fees Overcharging</li> <li>3. Illegally hold Properties of Workers</li> </ol>

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IX. Arrange employment services business in violation of the employer's instructions and with the permit and other relevant documents detained.

X. Committed a crime of intimidation, fraud, conversion, or embezzlement in processing employment service business and is found guilty by the courts of the first instance.

XI. Request, contract, or accept fees, wages affidavit, or excessive charges from the foreigners working in Taiwan while process employment service business.

XII. Demand, contract, or deliver illegal profits in processing employment services business.

XIII. Commissions unauthorized individuals or accepts commission to arrange foreigners to work in the R.O.C.

XIV. Received the employment service business related punishment in the mother nation.

XV. Commissioned to arrange local citizens or foreigners to work in Taiwan within two years from the application date; also, the number and ratio of mission foreigners in the country within three months reaches the standards stipulated in Table 2.

XVI. Committed other severe illegal act or obstruction to public interest.

The recognition that is not endorsed or is annulled or revoked by the central competent authorities referring to above must be announced.'

<sup>77</sup> *ibid.*, article 13-1.

<sup>78</sup> Here it implies the employees in the private employment agencies.



	4. Failed to fulfill its duty and cause the employer's violations under law 5. Others
Customer Service	1. Regular Visits to workers and/or employers 2. Providing information 3. Provide Mechanisms for employers and workers to appeal <sup>79</sup> 4. Satisfactions of the employer and worker
Others	1. Airport Services 2. Searching mechanisms for runaway workers

Form 4-1 Evaluation Items<sup>80</sup>

These audits for service quality can often be conducted in two ways, simply a paper-work examination or a field audit. Principally, the evaluations for private employment agencies are done in a paper form. Therefore although some of the mechanisms are established to fulfill the requirements of the Evaluation, they are not in fact being put into practice or utilized.<sup>81</sup> Some inspectors claimed that quite a few mechanisms seem to be mere “Sample Mechanism”, simply copying from one another.<sup>82</sup> Other criticisms include: no substantial improvement suggestions provided, the low credibility of the ‘satisfactory survey’ etc.<sup>83</sup>

Since the business license will be withdrawn if the agencies are given the evaluation of level C, most of the agencies have strived for at least reaching level B<sup>84</sup>, which brought some positive effects on improving the agencies overall. Up to March 2016, there have

<sup>79</sup> The mechanism for foreign workers have to be bilingual. Except for a normal appealing channel, the evaluation also expect a special channel which dealt with emergencies.

<sup>80</sup> Listed by the author, reference based on the Service Quality Assessments for Private Employment Agencies on transnational manpower recruitment.

<sup>81</sup> Chung-Hsin Chang, *Influence about Service Quality Evaluation of Private Employment Service Agency on the Management of Foreign Worker's Agency Companies*, National Chung Cheng University, January 2009, p.86-87 and 105.

<sup>82</sup> *ibid.*, p.107.

<sup>83</sup> Ming-Yuan Chung, *Research on International Manpower Service Firm Quality Evaluation System in Taiwan*, National Taipei University, July 2014, p.35

<sup>84</sup> Chung-Hsin Chang (2009), p. 94.

been 36 agencies being repeal license and 416 agencies suspended the license because of not reaching the assessment standards.<sup>85</sup>

	Charging Illegal Fees	Providing Fake Documents	Failed to fulfill its duty and lead to the violation of employers	Illegal Recruitment
2012	23	12	60	73
	12	3	3	9
2013	16	0	64	106
	5	0	2	14
2014	5	14	65	98
	8	6	5	13

Form 4-2:<sup>86</sup> Governmental data of the violations of private employment agencies

Regardless of the implementation of the mechanisms provided by the private employment agencies. This evaluation have revealed the government's intention to not intervene the foreign labor market, but letting the private employment agencies have a general control of its recruited labors. From the evaluation items, it is expected that the agencies have a grasp of the whole picture, from recruitment to settlement. And also depend on the agencies to ensure the foreign workers will not runaway, which equals to a supervision of the foreign worker's condition.

The next sub-chapter will observe the private employment agencies' websites, to see if they have a joint acknowledgment to their business contents as what the government expected. And discuss if the charges of private employment agencies have been reasonable and not exploitive.

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<sup>85</sup> Ministry of Labor Statistics Department, *Legal Foreign Worker's Employment Agencies*, March 2016.

<sup>86</sup> National Immigration Agency, *2014 Combating Human Trafficking Results Report: End Human Trafficking Now*, 2015, p.15.

### 3.4 In Practice: Service Provided by Private Employment Agency and Charges

Principally, private employment agencies are prohibited to charge any fees, according to article 7 of the Convention No.181. Exceptions can be only given with legitimate reasons, for instance “by allowing private employment agencies to collect fees from jobseekers in order to compete with illegal market participants who gain profits through acceptance of bribes.”<sup>87</sup> Also, if the state allows fee charging, a restrictive amount of fees and safeguards for preventing the exploitations on jobseekers must be established. In the Convention No.189 for domestic workers, it gives similar emphasis on the necessity to establish exploitation-prevented safeguards, such as ensuring fees taken by private employment agencies are not deduced from the remuneration of domestic workers. Overall, although options are given for states to decide whether to allow fee-charging, among the 32 countries which have ratified Convention No.181, only one has allowed the fee-charging of private employment agencies.<sup>88</sup>

Taiwan had placed a ban on private employment agencies to charge placement fees in 2004, in order to control the exorbitant fees that had been heavily burdening foreign workers. However, by giving the legality of private employment agencies to charge ‘service fees’, the government still left a door for a possibility to exploit workers.

Regulated by law, the maximum service fees which can be obtained each month are NTD 1,800 for the first year of working, 1,700 for the second year and 1,500 for the third. If the worker successfully extended his or her contract after three years, NTD 1,500 still have to be paid each month for another three years.<sup>89</sup> Altogether with other

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<sup>87</sup> International Labour Office Geneva, *Guide to Private Employment Agencies- Regulations, Monitoring and Enforcement*, 2007, p. 30.

<sup>88</sup> International Confederation of Private Employment Services, *Workers enjoy more protection in countries that have ratified ILO Convention No.181 on private employment agencies*, p.9-10.

The country which still allow private employment agencies to charge fees is Suriname, which was requested to explanations by the ILO. See ILO, ‘Direct Request (CEACR) for Private Employment Agencies Convention (No. 181) (99th ILC session 2010). Available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2308506:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2308506:NO) (Last accessed: 29 July 2016)

<sup>89</sup> Standards for Fee-charging Items and Amounts of the Private Employment Services Institution, article 6.

administrative items that workers have to go through in order to work in Taiwan, the total amount of NTD 7,5000 (approximately equals to EUR 2027) should be paid for the three years period.

<b>Items</b>	<b>Health Insurance</b>	<b>Health Check</b>	<b>Residence Permit</b>	<b>Service Fees</b>	<b>Return Ticket</b>	<b>Total</b>
<b>Fee (NTD)</b>	282	2,000-2,800	3,000 for 3 years	60,000 for 3 years	8,700-10,000	Around 7,5000

Form 3-2: Foreign Workers Service Charge<sup>90</sup>

As for the employer's side, private employment agency are still permitted under law to charge both placement and service fees. But with the total charged amount of NTD 20,000<sup>91</sup>, it has been only 1/4 of what have been charged from the foreign workers. Compare to what foreign workers have paid, logically, it should equal to more services and assistance provided for the foreign workers. Nevertheless, in reality the employers benefit a lot more from private employment agencies than the foreign workers.

The service items of private employment agencies can be categorized as the following three scopes:

- 1) Recruitment: The traditional and common service provide by employment agencies, to recruit and match the employers and workers.
- 2) Arrangement Services: The arrangements usually go hand in hand with the recruitment, which includes the beforehand training sessions, and various assistance for employers or workers after the recruitment and upon foreign workers' arrival.
- 3) Oversea braches: Some Taiwanese Private Employment Agencies might establish an oversea branch, for propose of easier contact and recruiting oversea workers. Training sessions might also be held in the sending countries by Taiwanese agencies

<sup>90</sup> Referencing several website of Taiwanese Private Employment Agency.

<sup>91</sup> Based on Employment Service Act, the limitations of placement fees is the foreign worker's first month wage, and the service fees taken by private employment agencies cannot exceed NTD 2,000.

in order to forge the ‘ideal maids’ or ‘ideal caregivers’.

The recruitment process involves administrative procedure in both Taiwan and in the sending country. For the procedure abroad, the Taiwanese agencies rely on either their cooperative employment agencies abroad or their own oversea branches. The arrangement service items are being valued more by agencies not until recent years, due to the high competitiveness in the employment agency market and the request by Taiwanese government. But viewing from form 3-1, it can be observed that most service items are designed for non-domestic workers, and only upon request by the employers. The private employment agencies do not actively provide any services to foreign domestic workers. And sometimes when the domestic workers seek assistance from the agencies, they are often being ignored.<sup>92</sup>

	Items	Explanation
<b>Recruitment</b>	Quota Application	Assist the employers to go through complicated application procedures in Taiwan
	Working Contract Forming	Seeking approval from sending country
	Worker Selection	With the assistance and collaboration of abroad employment agencies
	Worker's Entry Procedure	Dealing with sending countries procedure and arrange arrival
	Taiwanese Entry Procedure	Including picking up, health check, residence permit application and sending the worker to the employer
<b>Service (optional)</b>	Education Training	Courses for related laws and regulations, safety trainings etc.

<sup>92</sup> Kang, Yueh-Ling, *A Study on Foreign Family Nursing Laborers' Life Adaptation in Taiwan-Indonesia Nursing Laborers for the Example*, National Taichung University of Education, 2010, p.65-66.

<b>Service (optional)</b>	Communication Assistance	Translation and solving disputes between employer and worker.
	Regular Visit	Mostly provided only for foreign workers hired by enterprises or factories
	Other	Departure arrangement, employment extension, medical service, events holding for foreign workers etc.

Form 3-1: Service Items by Private Employment Agency<sup>93</sup>

Despite that private employment agencies have signed contract with both employers and foreign workers, they serve mainly as the secretary of the employers. Besides assisting all recruiting processes, if the employers are not satisfied with the foreign domestic workers, they often contact the agencies to either ‘educate’ the domestic workers, or request for a placement.

The reason behind the tendency to stand on the employer’s side is the competition among agencies. The quota system in Taiwan only allows a limited number of qualified employers to hire foreign workers, the private employment agencies have to gain the authorization from qualified employers in order to have business. The high number of 1,472 employment agencies has triggered fierce competition to attract the employers to sign a contract of mandate. Various illegal commercial rebate provided for the employers have been invented, including cash rebate, providing ‘travel rewards’ or sexual services etc.<sup>94</sup>

Instead of providing services and benefits for foreign workers, the high service fees

<sup>93</sup> Referencing several website of Taiwanese Private Employment Agency.

<sup>94</sup> Pei-Chia Lan, *Global Cinderellas-Migrant Domestic and Newly Rich Employers in Taiwan*, Taipei, Editions du Flaneur, 2008, p.80.-82.

taken from workers have been used for obscure rebates provided for employers. It has highlighted the lack of legitimacy for the government to allow the private employment agencies to charge monthly from foreign workers. In addition, in fact the agency in Taiwan have been obtaining interests from overseas agencies under the table, which has contributed to the high fees charged in sending country for workers who intend to seek jobs in Taiwan. Notwithstanding, there are no intentions from the Taiwanese government to solve this issue, which lead to Taiwan becoming the destination in Asia with the high amount of fee charging.<sup>95</sup>

Taking the into account the recruitment fees taken by the private employment agencies in the sending countries, the sum of debt which foreign workers have to pay are tremendous. The majority of foreign workers have been struggling and exposed more to human rights abuses due to their heavy debts coming from service fees<sup>96</sup>, the Taiwanese government should lower the amount or completely forbid fee-charging from the private employment agencies. And at the same time jointly seek for a solution for the transnational accomplice in between private employment agencies with the sending countries.

### **3.5 The Private Employment Agencies' Responsibility and Duty**

Each profession has its own responsibility and duty of care under law, like lawyers have confidentiality obligations, housing agencies have its duty to investigate on the house which Subject of the transaction etc. The private employment agencies should have no exception. Thus in this sub-chapter, it is aimed to figure out the private employment agencies' responsibility and duty which have been imposed under Taiwanese domestic law and expected from international standards.

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<sup>95</sup> *ibid.*, p.79. It will be further elaborated in Chapter V, 5.1.1.1.

<sup>96</sup> *ibid.*

### 3.5.1 ILO Conventions and Recommendations

In the ILO convention No. 181, migrants are in particular named under article 8 of the convention, calling for more awareness to prevent and protect them from abuses while being recruited. The convention reveals non-discrimination as the basic rule in article 5, in order to promote equality of opportunity and treatment in access to employment and occupations.

The responsibilities for private employment agencies are not mentioned specifically in the convention, but it was stated in the ILO Recommendations No.188 as follows:

The private employment agencies

1. Should not knowingly recruit, place or employ workers for job involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind.
2. Inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.
3. Prohibited from drawing up vacancy notices or offers of employment in ways that directly or indirectly result in discrimination.<sup>97</sup>

And has expectations for the private employment agencies to:

1. Promote equality in employment through affirmative action programs.
2. Promote the utilization of proper, fair and efficient selection methods.<sup>98</sup>

The Convention No.189 reaffirms the importance for the private employment agencies to prevent and protect domestic workers from human rights abuses. There are articles in the convention indicating the protections that the private employment agencies might be related to or could share the responsibility of. For instance the right for the domestic workers to enjoy fair terms of employment, the right to have a written contract, including being informed of working terms and conditions; and the prohibition of the retention of worker's documents.<sup>99</sup>

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<sup>97</sup> ILO Recommendation 188 (1997), article 8 and 9.

<sup>98</sup> *ibid.*, article 10 and 13.

<sup>99</sup> International Labour Office Geneva, *Decent work for domestic workers: C189&R201 at a glance*, 2011, p.21-23.



### 3.5.2 UN Guiding Principle of Business and Human Rights

The UN Business Guiding Principles has expended the corporate responsibility to respect human rights, not only the human rights abuses by corporation itself, also its affiliated business partners or customers. In article 13 in the Guiding Principles, it stated:

- “The responsibility to respect human rights requires that business enterprises:
- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
  - (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”

Based on the jurisprudence of national and international courts, the International Commission of Jurists (ICJ) has developed criteria to determine how close the company has to be to the abuses, to enter a zone of legal risk where it could be exposed to legal liability. According to the ICJ, the causation/contribution, knowledge /foreseeability as well as proximity are relevant factors for legal liability.

The definition of contribution requires the company’s conduct to enable, exacerbate or facilitate the abuses committed by the principal. ‘Enables’ is explained as “without the company’s conduct the abuses would not have occurred”; ‘exacerbates’ is defined as “the company’s conduct makes the abuses and the harm worse” and ‘facilitates’ as “the company’s conduct changes the way the abuses are carried out”.<sup>100</sup>

The second element, the knowledge /foreseeability will be established when “a company actively sought to contribute to gross human rights abuses, or simply where it knew that its course of conduct was likely to contribute to such abuses and, even it may not have wanted the abuses to occur, undertook the course of conduct anyway.”<sup>101</sup> Or in some cases, even if the corporation do not have knowledge, the court will rule that the

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<sup>100</sup> International Commission of Jurists, *Corporate Complicity & legal Accountability*, Volume 1, 2008, p. 8-12.

<sup>101</sup> *ibid.*, p.19.

company should have known and should have the knowledge under its reasonably duty of care.

Proximity, as the last element to determine whether the principle perpetrator is in the company's 'sphere of influence'. It can be determined by the closeness of the relationships, and if it will be reasonable for the company to have the duty to protect the person inflicted from harm.

Traditionally private employment agencies have prioritized due diligence with those business partners who could profit the most. Nevertheless, under the second pillar of the responsibility to respect human rights, private employment agencies should screen their cooperative partners with human rights risk assessment. In the context of private employment agencies in receiving countries, such as Taiwan, there are two types of business partners. One is the cooperative overseas recruitment agencies, another is the "customers"- the enterprises or employers that intended to hire workers.

The cross-border recruitment often requires the cooperation of private employment agencies in both sending and receiving countries.<sup>102</sup> Except for the respective laws that agencies should abided by, and the bilateral agreements between countries, the private employment agencies should also have responsibility not to recruit workers from overseas private employment agencies which are known to be abusive or exploitative. Or if the cooperation continues, the company should use its leverage to effect the malpractices.

Special notice should be given when the business partners have a poor record on human rights abuses or there have been seemly risk of adverse human rights incidents.<sup>103</sup> If the

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<sup>102</sup> There are also private employment agencies which will not reply on other overseas private employment agencies, but directly establish braches overseas.

<sup>103</sup> European Commission, *Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights*, June 2013, p.35.

'The prioritization might highlight business partners that:

– Are based in locations where there are known human rights risks, such as a lack of freedom of association for workers or persistent discrimination against women;

private employment agencies have matched workers to jobs with known risks of human rights abuses, the companies might constitute causing or contributing to adverse human rights impacts under principle 13 of the UN Business Guiding Principles.

Nevertheless, it is often difficult to inspect each family given the large number of families as employers; and their possible unwillingness to be intrude in their private spaces to inspect. With the realistic obstacles to have more thorough knowledge of the working conditions in each household, a more reasonable threshold should be established. For instance requiring the private employment agencies to secure the lowest standard of not sending workers to families with a record of abusing domestic workers.

Other possibilities to constitute a contribution of human rights abuse for private employment agencies could be such as: assisting human trafficking, actively affecting employer's human rights abuse on foreign workers etc.

### **3.5.3 Taiwan**

In the 'Regulations for Permission and Supervision of Private Employment Services Institution' and 'Employment Service Act', there are only two clear responsibility stated for private employment agency. For the purpose of ensuring the foreign workers have clear knowledge about their work, it is strictly regulated that written contracts should be formed with signatures between private employment agencies and employers; also amidst the agencies and foreign workers with a translated copy.<sup>104</sup> The second responsibility is to mention detail working content while recruiting workers, which should include wages, working hours, benefits and other labor conditions.<sup>105</sup>

- 
- Have a track record of poor performance on human rights;
  - Operate in sectors that pose particular risks to human right;
  - Are local, smaller or new companies who may lack awareness of human rights issues or the capacity to address them.'

<sup>104</sup> Legislative Yuan, *Regulations for Permission and Supervision of Private Employment Services Institution* 2014 (Taiwan), article 20 and 21.

<sup>105</sup> *ibid.*, article 29.

Other articles under ‘Employment Service Act’ stated passive responsibility that the private employment agencies cannot be violated, which could be categorized into six:

#### 1) Illegal Recruitment

Illegal recruitment may be formed of several ways. So as to the workers might have entered Taiwan with an illegal working status from the beginning, or might have moved from a legal working status to an illegal one throughout his/her stay. The former situation could be trafficking, falsification of documents etc. And the latter situation could be matching runaway workers to employers who do not have quota for foreign worker, which lead to automatic repeal of the worker’s working permit.

#### 2) Disappeared/ Runaway Workers

The agency might face the possibility to close down if there have been certain amount of its recruited workers have disappeared from work.<sup>106</sup> Since the private employment agencies have “failed to exercise due diligence that causes foreigner’s whereabouts to be unknown and loss of contact.”<sup>107</sup> This also have revealed the responsibility which Taiwanese government has imposed on the private employment agencies, to keep track on its recruited workers and make sure they do not runaway.

#### 3) Request Additional Fees

According to law, the private employment agencies could only charge service fees from foreign workers. As mentioned in the previous sub-chapter, the limitations of each year varies, with NTD 1,800, 1,700 and 1,500 each month for the first to third year respectively. It is illegal if the agencies request for other fees in addition to the service fees and necessary insurance fees.

#### 4) Illegally Hold Identity Documents or Property of the Worker

#### 5) Contribute to the Employer’s Violations of Law

When the private employment agencies arrange recruitment but failed to exercise its due diligence and cause the employer violating Article 57 of Employment Service Act, it may lead to the suspension of business license. The due diligence includes not recruiting illegal workers, to legally complete the health examinations required by

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<sup>106</sup> These disappeared workers are usually being called ‘runaway workers’ in Taiwan.

<sup>107</sup> Legislative Yuan, *Regulations for Permission and Supervision of Private Employment Services Institution* 2014 (Taiwan), Article 31, VIII.

law etc.<sup>108</sup>

6) Committed a crime of intimidation, fraud, conversion, or embezzlement

Only when it is find guilty by the courts of the first instance so that this terms will be effective.

From the active and passive responsibility of private employment agencies under Taiwanese law, it can be observed that except for a ban to withhold identity documents and to charge fees higher than legal permitted, there are no other direct or indirect responsibility on the agencies for domestic workers' human rights abuses. Regardless of the high influence of the agencies on the foreign worker's working conditions, they do not have any responsibility regarding this under law. It has led to irresponsible and immoral suggestions to the employers on the treatments of foreign workers, which will be discussed more in Chapter V. The narrowly legislated laws also led to an easy way to find loopholes to neglect the rights of foreign workers to pursue higher business profits.

Taken the above mentioned ILO recommendation No.188, it stated the importance to place responsibility on private employment agency to stop agencies doing direct or indirect human rights abuses to jobseekers with knowledge and foreseeability.<sup>109</sup> But

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<sup>108</sup> Legislative Yuan, *Employment Service Act* 2015 (Taiwan), article 57.

'As for employment of foreign worker(s), employer shall not engage in any of the following:

1. Employing a foreign worker without permit or after the expiration of permit therefore, or a foreign worker that has been permitted to be employed at the same time by a third party;
2. Employing in the name of the employer a foreign worker, but in reality causing that foreign worker to engage in work for a third party;
3. Appointing the employed foreign worker to work that is not within the sphere of the permit;
4. Commanding, without permission therefore, an foreign worker who is employed to engage in the work as referred to in Subparagraphs 8 to 10 of Paragraph 1 of Article 46 to change his/her work place;
5. Failing to arrange for the employed foreign worker to undergo health examinations or failing to submit the health examinations report(s) to the competent health authority in accordance with the applicable laws and regulations;
6. Dismissing or laying off national worker(s) as a result of having employed foreign worker(s) by the employer;
7. Exerting coercion, threat, or any other illegal means upon the employed foreign worker(s) to enforce him/her/them to engage in work contrary to his/her/their free will;
8. Illegally withholding the passport(s)/ residence certificate(s) of foreign worker(s) or embezzling belongings of foreign worker(s); or
9. Having violated, other than the above, the provision(s) of the Act or the regulations promulgated pursuant to the Act.'

<sup>109</sup> The private employment agencies "should not knowingly recruit, place or employ workers for job involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory

the Taiwanese law merely place its emphasis on the administrative responsibilities when the agencies do not follow the administrative procedures and lead to the employers' violation of law. Although there is also an agreement of mandate in between foreign workers and private employment agencies, there are no similar articles as article 57 to request responsibility from agencies if they contribute to foreign workers' harm.

It has also shown the incoherence between Taiwanese law and policy. On the one hand, from the definition it has only assigned private employment agencies to have the purpose of recruitment: "providing job placement or human resources businesses" or "being entrusted to recruit employees". But on the other hand, the policy (eg. Private employment agency evaluation) direct against private employment agencies has expected the private employment agency to provide a wide range of arrangement services. The government has transferred the duty that it should bear for overseeing the employment situation on foreign workers to private employment agencies, which include conducting regular checks to ensure no abusive incidents occurred. Nevertheless, the law has not given agencies corresponding legal responsibility and penalties if they did not meet the policy expectations.

With a lack of governmental supervising mechanism for foreign workers, and no solid implementation on the supervising function of private employment agencies. The foreign domestic workers have become invisible victims inside private households. It would be necessary to draw a clear line of private employment agencies responsibility and corresponding penalties. Or the government should establish mechanism to supervise the working treatments of foreign domestic workers.

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treatment of any kind."  
See ILO Recommendation No.188 (1997), article 8.

## **Chapter IV — Remediation to Misconducts**

The States have the duty to establish both judicial and non-judicial mechanisms for remediation of the harms inflicted by corporations.<sup>110</sup> When a private employment agency has caused or contributed to a harm, it also has a responsibility to cease its contribution and provide remediation. The UN Business Guiding Principles also suggests an “operational-level grievance mechanism” which works hand in hand to the states grievance mechanism.

In the case of migrant workers, due to the language barriers and their limited capability to access to help<sup>111</sup>, a special complaint channels should be provided. Since the traditional labor court or judicial procedures have a higher threshold with logistics, financial supports and competence, which might be difficult to reach and utilize by foreign workers. Thus special emphasis should be given to the non-judicial mechanism, the grievance mechanisms.

Another reason of why migrants should be taken in particular special protection is since they might have the fear that complaining may lead to a threat to their working status. Also they “often face additional cultural, social, physical and financial impediments to accessing, using and benefiting from these mechanisms. Particular attention should be given to the rights and specific needs to such groups or populations at each stage of the remedial process: access, procedures and outcome.”<sup>112</sup>

### **4.1 Judicial System**

In most of the court cases, jurisdiction was given to foreign workers as plaintiffs. Nevertheless, the core issue behind is the accessibility to judicial procedures and the practical influence of going on a trial.

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<sup>110</sup> United Nations, Guiding Principles of Business and Human Rights, chapter 3.

<sup>111</sup> In particular in the case of migrant domestic workers, being isolated in their work place (the employer’s household), they often have less access to information and more vulnerable to abuses.

<sup>112</sup> United Nations, Guiding Principles of Business and Human Rights, p.30.

After arriving to a new country, with most of the foreign workers have limited Chinese ability, it is often extremely hard to have access to information. In particular the extremely close and intense nature of domestic work has increased the difficulty to gain information from other compatriots. Even if the foreign domestic workers have certain knowledge of the possibility to file a complaint against their employers or private employment agencies, the intention to launch such action is still relatively low.

In fact, when it comes to accuse the maltreatment that foreign domestic workers have suffered, they are already hesitant to negotiate with their employers and seek for help. Let alone pursuing judicial procedure which requires lots of time and logistics. And as they turn their back against their employers, in most cases they can no longer stay in the original household and work. By staying in the governmental provided “shelter house” while waiting for the results, since the former employment contract has not officially lose its effectiveness, they are still deem as in their “working status”. With no income and not actually working, even if the foreign workers successfully win the trial, their three years of stay under Taiwan regulations is still ticking, without any time compensation. Thus most foreign domestic workers are not willing, and cannot bare this “blank period” of no income and the risk of completely lose the opportunity to stay and work in Taiwan.<sup>113</sup>

There are also cases when the foreign domestic workers go on trial with enough evidence and support from NGOs or other organizations. But they often face language issues. In order to realize a fair trial and social justice, it is essential to provide effective judicial interpretation. The Taiwanese government recognize the importance in one of its reports: “Judicial interpretation is essential in trial proceedings, its function is not only for protecting defendant’s right to defend, it also have tremendous impact on the discovery of truth and the result of the trial.”<sup>114</sup> But in reality, the judicial interpretation

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<sup>113</sup> Chun-Ming Chao, *Under the pincer pliers: the human rights of foreign domestic workers in Taiwan*, National Chengchi University, June 2003, p.18-19.

<sup>114</sup> Control Yuan, *The Control Yuan Investigation Report*, 2014, p.269-270. Available from: <https://www.cy.gov.tw/CYBSBoxSSL/edoc/download/15686> (Last accessed: 26 July 2016)



system in Taiwan has been deficient.

The amount and quality of judicial interpreters in Taiwan has been upsetting. The total number of Vietnamese, Indonesian and Filipino interpreters are 46, 29 and 7 respectively. With 587,940 foreign workers in Taiwan, the number of judicial interpreters is severely skimpy. It has led to interpretations done by other untrained persons and badly affected the trial with fragmented and inaccurate message conveying. The judges at times neglect possible interests and stakeholders, and simply appointed private employment agencies, police or other who have knowledge on the specific language to do interpretation.<sup>115</sup> It would also lower the legitimacy of the decision since foreign workers might not fully understand due to inaccurate interpretation while testimony, which lead to incorrect understandings. Clearly, the current judicial system has not secured the foreign workers right, either as a defendant or a plaintiff, to enjoy a fair trial. There are still more work to be done to complete the foreign worker's access to judicial justice.

#### **4.2 Grievance Mechanisms**

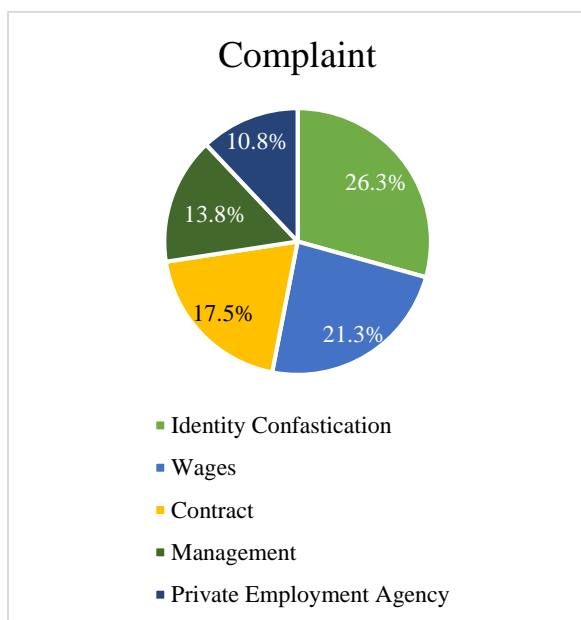
Acknowledge the limitations of judicial procedures, the Taiwanese government eventually establish an official and united grievance mechanism, '1955 Hotline' in July 2009. The Ministry of Labor has integrated several hotlines from different regional government into one, in order to raise the utilization rate and make it easier to memorize for foreign workers. The 24 hours service hotline provides 4 languages: Indonesian, Vietnamese, Thai and English. It serves as a consultation and complaint channel for foreign workers, aiming at securing their rights and benefits. The Ministry of labor stated that the majority of foreign workers have received information about this Hotline through governmental brochures as they arrive in the Taiwanese airport. And the ministry claimed the workers in general have sufficient knowledge about the existence

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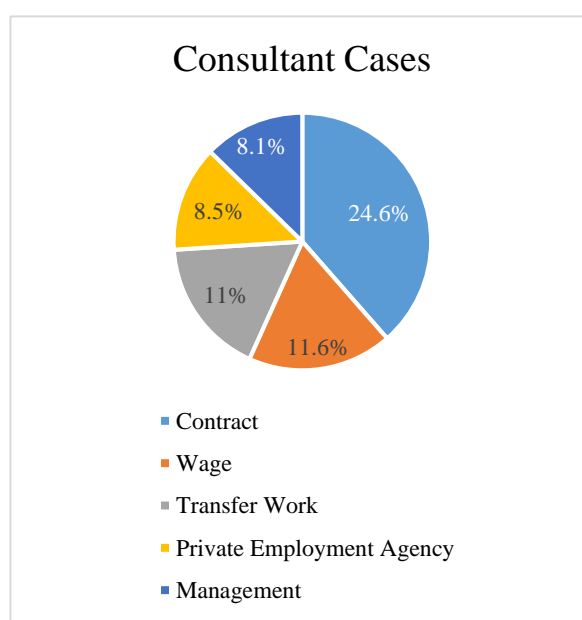
<sup>115</sup> Taiwan Association for Innocence, *Who can interpret for migrant worker's rights?*, 13 October 2013. Available from: [http://www.tafi.org.tw/include\\_print.php?AId=24&AType=research](http://www.tafi.org.tw/include_print.php?AId=24&AType=research) (Last accessed: 12 July 2016); Judicial Reform Foundation, *Apples and oranges: judicial interpreters?*, 25 April 2006. Available from: <https://www.jrf.org.tw/articles/563> (Last accessed: 12 July 2016)

of the hotline, since each year a large amount of calls has been received, for instance in 2015 there had been 194,800 calls in total.

In the statistical data of the 2015 ‘1955 hotline’, 88% of the calls are seeking consultation, while 11% were making complaint of unfair treatments and 1% called for emergency complaints.<sup>116</sup> The content of consultation seeking and complaints can be seen in graph 4-1 and 4-2. After operator receive the calls, considering the characteristic and emergency level, they will hand the case to different competent authorities. Emergent cases would be follow up every hour, while ordinary cases will be pass on to local government and have regular follow up every 10 days.<sup>117</sup>



Graph 4-1: Content for Consultation Seeking<sup>118</sup>



Graph 4-2: Content for Complaint<sup>119</sup>

It is quite surprising that there are only 11% who dialed ‘1955 Hotline’ have been filing complaints for unfair treatments or malpractices. Some research has shown that although most foreign domestic workers indeed have the knowledge about the existence

<sup>116</sup> National Immigration Agency, *2015 Combating Human Trafficking Results Report: End Human Trafficking Now*, 2016, p.19-20.

<sup>117</sup> First Taiwan State Review, *Inquiry Session of ICCPR Review Committee and Governmental Conference Record*, February 2013, p.19-22.

<sup>118</sup> See supra note 111.

<sup>119</sup> *ibid.*

of the hotline or other governmental complaint channels, but the utilization rate has been rather low.<sup>120</sup> NGOs have also doubted the effectiveness of ‘1955 Hotline’. It was addressed that after the local government take over the case from the Hotline, the government often neglect the will of the migrant workers and directly send them back to either the employers or private employment agencies, which had worsened the situation. Some migrant workers also reported that operator did not actively respond to their questions or request for assistance, but simply make remarks like “You are here to earn money, don’t complain too much.” or “If you endure, things will pass.”<sup>121</sup>

Even though the effectiveness of ‘1955 Hotline’ still has to be improved, the fact of yearly increased Hotline phone calls cannot be denied. By providing a free 24 hours channel for the foreign workers to appeal and seek for advices, it has fulfilled the basic standard of states grievance mechanism, which international standards have required.

#### **4.3 Civil Society’s Assistance**

From previous chapters, it can be observed that most of the policy and mechanisms for protecting foreign workers have only appeared in recent years. Most of them are still being highly criticized by the civil society and waiting to be improved or reform. The rescue rope for the majority of foreign workers thus have been civil society groups, which consist of NGOs and religious groups.<sup>122</sup>

The majority of the first line active rescue and interaction are done by the civil society groups, which often includes individual rescue, follow up and shelter. They also assist

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<sup>120</sup> Yueh-Ling Kang (2010), p.43-44.

<sup>121</sup> Yahoo News, ‘Suffering from abuses for the second time, the Hotline for foreign workers has not played its role’, 26 April 2012. Available from: <https://tw.news.yahoo.com/%E7%A7%BB%E5%B7%A5%E4%BA%8C%E5%BA%A6%E5%8F%97%E8%99%90-%E5%A4%96%E5%8B%9E%E6%9C%8D%E5%8B%99%E5%B0%88%E7%B7%9A%E6%B2%92%E4%BF%9D%E9%9A%9C-143425843.html> (Last accessed: 29 July 2016); Gender/Sexuality Rights Association Taiwan, ‘The human rights of migrant workers has been shivering in the corner’, 29 February 2012. Available from: [http://gsrat.net/news/newsclipDetail.php?ncdata\\_id=9170](http://gsrat.net/news/newsclipDetail.php?ncdata_id=9170) (Last accessed: 29 July 2016)

<sup>122</sup> Embassies from the sending countries in Taiwan also serve as an important pathway for the foreign workers to seek for assistance. Its role will be further discussed in Chapter VI.

foreign workers to go through non-judicial and judicial mechanisms, claiming for negotiation in between workers and employers, justice and compensation. These civil society organizations have been an essential and easier-reached aiding third-power. While foreign workers' do not have their private sphere and limited financial means, some religious groups also expend their assistance to foreign worker's leisure, for instance providing location for foreign worker's gathering and advanced vocational trainings.<sup>123</sup>

When it comes to remediation, Taiwanese government has been highly rely on grass root civil society groups to directly communicate and assist workers who need assistance. Most shelter center for foreign workers are either run by civil society groups or entrusted by the government. There is still a lack of "active assistance" by the government.

#### **4.4 Private Employment Agencies' Complaint Mechanisms**

Under international standard, private employment agencies only cover business of recruitments, so as to the agencies only have responsibility and the duty to avoid known human rights abuses before matching. After the workers start their work, the private employment agencies no longer have to provide services. Therefore there are no related regulations on a need for agencies to provide complaint mechanisms.

Yet the private employment agencies have a wider range of services in Taiwan, including the provision of assistance on managements and supervision after the recruitment. Recalling from Chapter 3.3.1, the evaluation of private employment agencies has a review category requesting a mechanism for employers and workers to appeal. A special emphasis is made that the complaint channel for the workers should be bilingual. Although most of the agencies have passed the evaluation with high scores, the committee member had stated that 'The mechanisms provide by private employment

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<sup>123</sup> Wei Wei (韋薇修女), *Catholic Church's social service on migrant workers*, Community Development Journal, Vol.130, 2010, p.179-181.

agencies are all identical, coming from a united version provided by the guild for private employment agencies. These mechanisms looks perfect on paper, but they are in fact seldom used.’<sup>124</sup>

Observed from the websites of private employment agencies and interviews with foreign workers, there are no such complaint mechanisms in practice. As described in the previous Chapter, foreign workers simply try to phone private employment agencies when they need help. But there are high chances that their request for help will be complete ignored. This issue will be discussed later in Chapter 5.2.2, which will reveal the necessity for a running complaint mechanism to be established. The mechanism will either provide assistance to solve the complaint issue or to direct the foreign workers to adequate channels at the governmental level.

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<sup>124</sup> Chung-Hsin Chang (2009), p.87. An interview with one of the committee member for private employment agency evaluation.

## **Chapter V - Adverse Human Rights Issues on Domestic Workers Raised by Foreign Workers Employment Agencies**

Looking quite different from appearances than common Taiwanese, South East Asians can usually be easily recognized on the streets. There has been an obvious division among different origins and racial groups in Taiwan. Due to the high homogeneity in Taiwanese society, there has been a lower endurance and willingness to integrate immigrants. Thus the 'foreign' nature of immigrant workers has increased their vulnerability. Through media coverage, advertisements from private employment agencies and the conservative attitude towards immigrants, some Taiwanese has a general impression that the foreign workers come to 'earn our money', and choose Taiwan based on a higher salary compared to what they can get in their home country. This has led to some employers having the mindset that the foreign workers can accept anything as long as money compensations are given, or the workers are here for working thus they do not need day offs or leisure time.

Facing these existed stereotypes and discriminations, and resulting other human rights abuses, most foreign workers have no power to change the situation. In particular when they arriving in a new country and with limited knowledge of the local language, the foreign workers do not have good access to information and channels that they can reach to for inquiry. Taken certain amount of services fees each month and as the most reachable third person<sup>125</sup> that foreign workers can have easy contact with, the private employment agencies gain excessive power to control the workers.

Unlike other industries where foreign workers could have other working fellows from similar origin, domestic workers are often restricted in the employers' household. Having to work around 12-17 hours per day and with mostly no vacations, few chances were given for them to build their own network. It is also impossible to have time to organize unions or associations for securing their own rights.<sup>126</sup>

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<sup>125</sup> The third person here refers to except for foreign workers and their employers.

<sup>126</sup> In 2011, the "Labor Union Act" was adapted and started to allow foreigners to form labor unions.

In the beginning period, there are high frequencies to seek help from the private employment agencies.<sup>127</sup> Also, private employment agency have been highly relied upon as an intermediary in between domestic workers and employers. Rather than exhibiting a fair attitude to negotiate with both sides for an adequate solution, most private employment agencies simply suggest the worker to endure unreasonable situations and stay quiet. Some agencies even threat an immediate deportation if the foreign workers are not satisfied with the current working conditions.

Although there have been some corresponding laws and policy trying to prevent and eliminate the possible human rights abuses, as mentioned in Chapter II and III. Cases of human rights abuses by private employment agencies still often occurred, due to poor enforcement and insufficient legal responsibilities. Some of the abuses are a clear violations under Taiwanese law, such as human trafficking; while other more obscure and indirect human rights violation are not clearly regulated. In this Chapter, a discussion will be form regarding the facts and possibility to regulate these unresolved human rights abuses.

## **5.1 Direct Human Rights Abuses**

### **5.1.1 Forced Labor**

Domestic work is often considered as one the professions at high risk to modern form of slavery. By taking the form of forced labor, bonded labor or human trafficking, private employment agencies usually plays a role in these abuses. From 2006 to 2016, each year the issue of forced labor and high private employment agencies fees were listed and emphasized in the “Trafficking in Persons Report”, written by the U.S government.<sup>128</sup> Illegal confiscation of travel documents and deprivation of freedom of

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Until today, there is only one labor union formed by foreign workers- the Filipino fisherman labor union established in 2013.

<sup>127</sup> Yueh-Ling Kang (2010), p.65-66.

<sup>128</sup> American Institute in Taiwan, *Trafficking in Persons Report*. Available from: <http://www.ait.org.tw/en/trafficking-in-persons-report.html> (Last accessed: 13 June 2016)

movement are also common forms to control and exploit foreign workers, which often lead to forced labor.

#### **5.1.1.1 High Recruitment Fees**

In principle, under Taiwanese law, the private employment agencies are strictly restricted to charge limited amount of service fees from foreign workers.<sup>129</sup> Yet it would not be profitable if the agencies solely rely on the services fee charged from employers and workers, the majority of agencies thus have found legal loopholes and developed ways to increase their profits. It was confirmed by some Taiwan private employment agencies: “The revenues are not only obtained domestically, the main profits are in fact coming from overseas employment agencies under the table.”<sup>130</sup>

These under-table business deals thus increased the amount that oversea private employment agencies charged on workers who want to be recruited to Taiwan. In which add up the overall cost on foreign workers in Taiwan, which creates the highest amount of fees charged by private employment agencies among all the receiving countries in Asia.<sup>131</sup>

are not only between the private employment agencies in the sending and receiving countries, loan servicing companies on both ends are often also included in the process.

#### **Transactions Under the Table**

In order to avoid the restrained amount of service fees which can be charged in Taiwan, with constant evolvement over the years, the Taiwanese private employment agencies have developed various ways to dodge regulations. The most common way is to request foreign workers to sign ‘receipt for loan’ for inexistent ‘family emergency’<sup>132</sup>, which

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<sup>129</sup> See Chapter III, 3.4 in this research.

<sup>130</sup> Ying-Chang Wang, *A discussion of foreign employment agency- from a private employment agency view*, National Chengchi University 2002, p.45.

<sup>131</sup> Pei-Chia Lan (2008), p.79.

<sup>132</sup> Sometimes it was signed with the foreign worker’s knowledge, but most of the time the contract was hidden in a pile of papers for the workers to sign. They often did not review the papers one by one, thus in



has authorized Taiwanese private employment agencies to collect the debt. After the workers begin to work in Taiwan, these ‘loans’ would be deducted monthly from the foreign worker’s salary. If the private employment agencies cannot collect the debt with interest, it is common to take the ‘promissory note’ to the court and request for a compulsory execution of the worker’s wage.<sup>133</sup> This was however, directly ruled by the court of a violation of Taiwanese Employment Service Act by forming unjust interest<sup>134</sup>, and also constituted fraud under criminal law.<sup>135</sup>

In recent 2 to 3 years, due to the increasing complaint and conviction on the loans collected by Taiwanese private employment agencies. Some agencies have come up with more advanced ways to avoid legal sanctions. By establishing oversea branches and loan service companies in sending countries, they attract foreign workers by advertising the guarantee to provide Taiwanese jobs with high wages, good benefits and fast recruiting process. They also claim that in order to provide such ‘quality services’, higher placement fees which exceed the legal restrain amount in sending country are charged. Target at the worker’s incapability to pay such high fees, by successfully convincing the workers to sign loans contracts with their ‘cooperative loan service companies’, workers are burdened with high interest debts.

Even though the branches and loan service company are both proven to be owned by the Taiwanese private employment agency. This transnational accomplice has been hard to hold liable, since the clear violations are of laws in the sending countries. Nevertheless, the prosecutors in Taiwan has tried to sue the Taiwanese employment agency with the

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most cases they were unaware of the “family emergency” debt that they have been given.

<sup>133</sup> In one case, the workers have to pay NT8,000 for 10 month, in order to pay back the receipt of loan or promissory note that they signed. Together with the NT 6,0000 that the private employment agencies legally charged, the work have payed NT 14,0000 in total (amounts to around 3,800 USD).

See Taiwan International Worker’s Association, ‘Press Release: The Press Conference of the Migrant Worker Promissory Note Case’. Available from:

<http://www.tiwa.org.tw/%E6%96%B0%E8%81%9E%E7%A8%BF-%E7%A7%BB%E5%B7%A5%E6%9C%AC%E7%A5%A8%E6%A1%88%E8%A8%98%E8%80%85%E6%9C%83/> (Last accessed: 29 July 2016)

<sup>134</sup> It was a violation of article 40 V, ‘Demanding, agreeing to be paid at a later stage, or accepting fees beyond the prescribed standards or any other unjust interest.’

<sup>135</sup> Taiwan High Administrative Court, No.78 Reversed (2011); Taiwan High Administrative Court, No.1490 (2009); Taiwan High Criminal Court, No.1080 (2014)

‘Human Trafficking Prevention Act’.<sup>136</sup> The prosecutors claimed the action of persuading the workers to sign a high interest loan has constituted “utilizing the non-experience and urgency of workers” and created “undue debts” to bond the labors. By deducting high amount of the worker’s salary in Taiwan, it has equal to working merely for paying off the undue debt. The prosecutors thus asserted the corresponding exorbitant profits have constituted human trafficking.<sup>137</sup>

The Taiwanese high court did not favored the reasoning of prosecutors and ruled a non-violation of human trafficking. The decision was based on two reasoning. Firstly, the court considered there were no situation of “force” or out of options, the labors had signed the loan contract with their free will. The court also did not agree on the urgency and vulnerability of the workers, since they always have the freedom to choose to stay and work in their sending countries. The second reasoning is that although the placement fees which are charged have exceeded the amount regulated by laws in the sending countries. A higher fee charged is recognized officially as a common amount in the business<sup>138</sup>, thus the private employment agencies did not charge the workers with undue fees.

This has shown a general indulge on the violations which occurred extraterritorially. By failing to make efforts to regulate the Taiwanese agencies, the under table transactions have burdened the workers excessively.

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<sup>136</sup> Legislative Yuan, *Human Trafficking Prevention Act* 2009 (Taiwan), Article 32:

‘Anyone using such means as force, threat, intimidation, confinement, monitoring, drugs, fraud, hypnosis, or other means against another person’s will to labor to which pay is not commensurate with the work duty for profit, shall be sentenced to imprisonment under seven years, and may also be fined up to NT\$5 million.

Anyone using such means as debt bondage or the abuse of another person’s inability, ignorance, or helplessness to subject him/her to labor to which pay is not commensurate with the work duty for profit, shall be sentenced to imprisonment under three years, and may also be fined up to NT\$1 million.

Any attempt to commit either crime stated in the preceding two paragraphs is punishable.’

<sup>137</sup> Taiwan High Criminal Court, No.636 (2014); Taiwan High Criminal Court, No.1420 (2015)

<sup>138</sup> According to the court, the Filipino Office in Taiwan has recognized the placement fees higher than law is a normal state.

## Severely Exploited from Private Employment Agencies on both ends

“Some migrant workers are charged exorbitantly high recruitment fees, resulting in substantial debts used by brokers or employers as tools of coercion to obtain or retain their labor. After recruitment, fee repayments are garnished from their wages, some foreign workers in Taiwan earn significantly less than minimum wage.”<sup>139</sup> The American Association pointed out the human trafficking on migrant workers in Taiwan.

Regardless of the service fees that each domestic workers have to pay to the Taiwanese Employment agencies, they already had to bear enormous fees in their sending countries. (See Form 5-1) According to the survey by the Ministry of Labor, 85.8% of domestic workers have debts, and among them, 63.4% have the debt in between NTD 70,000-90,000. Altogether with the NTD 60,000 services fees and other administrative fees they have to pay after the arrival in Taiwan, basically they do not earn a penny in their first year of working. Most of them thus cannot take any risk of losing their jobs. Otherwise instead of earning money to complete their dreams to open a small business back home, they will be drowned in debts and desperations.

	Philippines	Indonesia	Vietnam
Governmental Data <sup>140</sup>	15,000	51,000	66,000
NGOs/ Media Report <sup>141</sup>	45,000-80,000	52,000-90,000 <sup>142</sup>	120,000-150,000

Form 5-1: Domestic Worker's Fee Charging by Private Employment Agencies in Sending Countries<sup>143</sup>

<sup>139</sup> American Institute in Taiwan, *2015 Trafficking in Persons Report: Taiwan*, 28 July 2015. Available from: <https://www.ait.org.tw/en/2015-trafficking-in-persons-report-taiwan.html>. (Last accessed: 1 June 2016)

<sup>140</sup> These are the restrictive amount of fees that the agencies can legally obtained, regulated by the sending countries.

<sup>141</sup> The amount includes the places fees charged by private employment agencies in sending countries, flight tickets, visa fees etc.

<sup>142</sup> Nevertheless, according to a scholar's research, she concluded with NTD 14,000-16,000 of placement fees have to be paid to the private employment agencies in Indonesia. See Supra note 4.

<sup>143</sup> United Daily News, 'The black hole of placement fees, the failure of government's clarification', 30 April 2016. Available from: [http://p.udn.com.tw/upf/newmedia/2016\\_data/20160430\\_migrante/m/analyze1.html](http://p.udn.com.tw/upf/newmedia/2016_data/20160430_migrante/m/analyze1.html) (Last accessed: 13 June 2016); European Union, Open Working Group on Labour Migration& Recruitment, *Recruitment*

The total amount of fees have increased the vulnerability and obedience of the workers. In order to secure their work and salary, even if there have been abusive incidents at work or from the private employment agencies, most workers will stay quite. It was reaffirmed by interviews done by scholars. When the domestic workers were being asked of why they do not complain about the unfair treatments or abuses they have encountered. They answered: “The fees that we paid to the private employment agencies have tightened our hands, we cannot fight back.” “We still have five-six<sup>144</sup> to pay back home!” “We are afraid that if we retort, we will be sent back to the Philippines. We cannot pay another round of placement and service fees. We are going to stay in Taiwan, at least we can earn some money.”<sup>145</sup> “If we were being sent home, it will only be possible to take back 20% of the fees that have paid to the private employment agency, since its often after the expiration of the 40 days try-out period. A lot of the private employment agencies are *mukhang pera*<sup>146</sup>, they will not give a penny back to you.”<sup>147</sup>

Therefore most foreign domestic workers will only make complaints or fight back if they are ‘severely abused’. If it is ‘only’ about long working hours or excessive working loads, they usually choose to stay quiet to save their jobs.<sup>148</sup> Debts originating from high employment agency fees have become the tools of turning the foreign workers into bonded labor. It is also the crucial factor which caused the vulnerability on foreign workers. Together with their fear to be sent home, they have become robots, being expected to be faithful, accurate and no complaint.

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*Fees & Migrant's rights Violations Policy Brief 1*, 2014, p.2.

<sup>144</sup> This is a term implying the usury.

<sup>145</sup> Three remarks are all cited from Pei-Chia Lan's book. See Lan (2008), p. 87.

<sup>146</sup> Filipino word, a literal translation will be money face, which means only care about money.

<sup>147</sup> Lan (2008), p. 87. An interview with a Filipino domestic worker Maya, who had been over-worked and caused injury to her ankle. She had treatment without any health insurance or fee support by her employer.

<sup>148</sup> Chen-Fen CHEN, *Management or Exploitation? The Survival Strategy of Employer of Family Foreign Care Workers*, Taiwan Society Research Journal, Vol.85, December 2001, p.112.

### 5.1.1.2 Withholding and/or confiscation of travel documents

Obtaining workers and immigrants' travel documents is a common usage of human traffickers. The loss of travel documents abroad is almost equivalent to the loss of identity and freedom of movement, which put the workers in to extreme vulnerability and can be easily controlled. The Taiwanese law has prohibited the private employment agencies or employers to retain foreign workers' travel documents, working permit or any identity documents without the worker's consent.<sup>149</sup> If violated, a fine range from NTD 60,000 to 300,000 will be requested, and there would be a possibility of a suspension of agency's license or a withdrawal of employer's qualification to hire foreign workers.

If the workers agreed upon other's to hold their identity documents, a commission in a written form should be signed, with the clauses of the commission can be terminated at any time. In other words, no matter when the worker requests for the identity/travel documents, the employers/private employment agencies cannot decline.<sup>150</sup> These regulations, however, did not meet its expectations to effectively cease the confiscation of identity documents.

According to the research by the government in 2012, among the 1076 interviewed foreign workers, only 24.7% of workers have their passport or residence permit by themselves. 7.5% of workers' identity documents are managed by the employers or private employment agencies with the worker's consent. The rest of 70 % are illegal confiscations.<sup>151</sup> This extremely high rate is due to the fear of foreign workers to run away and disappear. As mentioned in Chapter III and IV, if there has been a certain percentage that workers recruited by the agencies have disappeared, the agencies will be punished with fines or possible withdrawal of business licenses. Given the pressure that

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<sup>149</sup> Legislative Yuan, *Employment Service Act* 2015 (Taiwan), article 57 (8) and 40 (3).

<sup>150</sup> Liberty Times Net, 'Beware of penalties if the employers withhold the worker's identity documents', 17 August 2010. Available from: <http://news.ltn.com.tw/news/life/paper/419900> (Last accessed: 12 June 2015)

<sup>151</sup> See Supra note 20, Shih-Hsin University, *2012 foreigner's satisfaction to the living environment in Taiwan*.

agencies have received, they often strongly advise the employers to safe keep worker's identity documents to prevent their escape. The employers, avoiding the risk of having to train or apply for another foreign worker<sup>152</sup>, often simply take the suggestions from the agencies.

Even though Taiwanese law has prohibited employers or private employment agencies' possession of worker's travel documents. The exception of "the worker's consent" which permits the withholding has made the prohibition in vain. The legislators have failed to consider the unbalance power relations in between the workers and employers/private employment agencies. There is in fact very little space for the workers to refuse the request to "safe keep" their documents. When there's no bargaining power, the exception of permitting the safekeeping will only be the loophole of allowing the continuous control on workers.

### **5.1.2 Illegal Recruitment- After the "Run-away"**

Illegal recruitment of domestic workers can be originate from the following situations: (1) the failure for the foreign domestic workers to pass all the necessary procedures (eg. Failed to pass the health examinations or a forgery on application documents) (2) the employers have hired foreign domestic workers without being qualified (3) run away workers being recruited to other work<sup>153</sup>. The first situation is a simple non-qualification, which will not be further discussed. The second and third situation, nevertheless, are often connected. So as to the unqualified employers often illegally hire run-away workers, which are usually intermediated by the private employment agencies.

As mentioned in Chapter II, the foreign domestic workers do not have the right to freely transfer work. Once the foreign workers run away from their employers, their only hope to find another legal working opportunity is through the assistance of private employment agencies. To make a living and pay back their debts, the foreign domestic

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<sup>152</sup> If the foreign workers disappeared, although the employers do not have responsibility, they have to wait for at least 3 month to receive a new foreign worker.

<sup>153</sup> After the run-away being reported, the foreign worker's right to work in Taiwan will be forfeited.

workers usually are open to any job offers, regardless of the legitimacy. Some conscientious employment agencies will make attempts to transfer workers to another legitimate job. Most of the employment agency will either deport the workers, or make use of the eagerness of foreign workers and match them to unauthorized employers. When the foreign workers start to work for the unauthorized employers, this has put them under the worst situation. They have lose legal working permit and no longer under any legal protection. If they seek assistance from governmental organs for unfair treatments, they will be sent home. This is when severe exploitations occurred.

### **5.1.3 Power Misuse- Illegal Deportations**

“What if the foreign worker is badly-behaved?” asked by the employers.

“If the foreign worker misbehaved, the employers can firstly communicate with the foreign worker. If it is not working, our agency can ask the translator to communicate with the worker. If the situation is still not improved, our agency will send a warning letter to the worker as a final call. In case that the letter is nonetheless void, we will deport the foreign worker back to his/her home country. And apply for new foreign workers for substitute. ” This is what written on one of the website of private employment, and it is also how most of the agency do to eliminate foreign domestic workers who do not ‘well-behaved’ in practice.

According to law, the Immigration Agency should investigate and ensures that the situations are truly accorded with the deportation requirements before a forced deportation. And the prosecution reasons should be provided to the foreigners with their languages, including a given remediation period of 7 days.<sup>154</sup> When it comes to an early working contract termination, it should be informed to the responsible government organ.

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<sup>154</sup> Legislative Yuan, *Regulations Governing Forcible Deportation for Foreigners* 2012 (Taiwan), article 2-4.

Despite these laws and policies in good intention, they are not being well enforced. “Brokers in Taiwan often assist employers in forcibly deporting ‘problematic’ foreign” employees should they complain, enabling the broker to fill the empty positions with new foreign workers and continually use debt bondage to control the work force.” The 2016 human trafficking report has pointed out this illegal conduct.<sup>155</sup> There has been several cases on the news throughout the years of illegitimate sent back and deportations. Oftentimes, the deportations occur after there has been certain dispute in between the workers and the employers.

These cases usually repeat with the same patterns. Firstly, there would be some disagreements or unpleasant incidents occurred in between employers and foreign workers. At this stage, private employment agencies or the government might be involved in order to either solve the disputes. Prior to any reached consensus, the foreign workers will be informed a transformation of work. Then on the day of the transfer, without any previous inform, foreign worker would be directly sent to the airport to be deported back home. There also have been a few other cases that the command to deport was sent to the Private Employment Agencies, but they have not informed the workers. Before the due date of voluntarily to leave Taiwan, they were directly being brought to the airport and deported by the agencies.<sup>156</sup>

Some of the illegal deported cases were reported by media, which draw certain public attention. The Ministry of Labor made respond that if the procedure is proven to be illegal, they will consider to make assistance of the foreign worker’s return to Taiwan for working.<sup>157</sup> Follow-up news of these incidents cannot be found, which in part reflected the disregard on the issue of illegal forced deportation. And even if any foreign workers have successfully came back to work in Taiwan, another round of services fees would be awaited. Then who would make up for the time and financial loss which

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<sup>155</sup> U.S Department of State, *Trafficking in Persons Report 2016*, 30 June 2016, p.359.

<sup>156</sup> China Times, ‘Employment agency deport the foreign workers Conflict with NGOs in the airport’, 27 February 2016. Available from: <http://www.chinatimes.com/realtimenews/20160227003265-260402> (Last accessed: 21 June 2016)

<sup>157</sup> New Talk, ‘The complaint of foreign workers would lead to deportation?’, 6 November 2013. Available from: <http://newtalk.tw/news/view/2012-11-06/30771> (Last accessed: 13 June 2016)



caused by the illegal deportation? Based on current policy and law, no compensation would be possibly given.

The common grounds of these above mentioned situations are the lack of opportunities for the foreign workers to appeal. Under law, if the foreign workers have lost their jobs, they can have a 60 days 'transfer work period'. But this rights is often been concealed by the private employment agencies. And the Immigration Department has failed to fulfill its duty to examine and investigate into the legitimacy of deportations. The power of deportation thus becomes a weapon for the private employment agencies and employers to threat the foreign workers. "Most employment agencies will request the foreign workers to lie about the actual fees they were being charged. If they tell the truth in the interviews with the inspectors or prosecutors, they will sent back the workers." said in the open letter of Vietnamese workers.<sup>158</sup> The illegal sent back is also often an accomplice between the employers and agencies to eliminate not workers when the employers are not satisfied.

This human rights abuse should be much accounted of, once the foreign workers are being send off, they no longer have the opportunity for justice or any forms of compensation. To solve these forced deportations, a strong intervention from either the public sector or NGOs should be made. In particular as the perimeter to stop such forced deportation, a last examination mechanism should be implemented in the airport.<sup>159</sup> And this should be included as one of the responsibilities of private employment agencies.

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<sup>158</sup> Cited from an open letter to the Taiwanese government, written by the Vietnamese workers requesting for actions from the government to stop the exploitation to the foreign workers. Referencing from Liberty Times Net, 'Suppressed by debt before starting to work? The suppression of Private Employment Agencies to the immigrant workers', 15 March 2016. Available from: <http://talk.ltn.com.tw/article/breakingnews/1632971> (Last accessed: 14 June 2016)

<sup>159</sup> Taiwanese government has one airport counter which aims as the last resort for foreign workers before they are being deported. But from all the continuous forced deportation, it can be proven that the airport counter is a mere decoration.

#### 5.1.4 Stereotypes and Discriminations

Stereotypes and discrimination is another human rights violation on foreign domestic workers which has seldom been discuss, but is in fact a violation which often cause more ‘advanced’ human rights abuses. Some research has shown that more than 60% of foreign workers felt discriminated by Taiwanese, which had negative impact on their integration.<sup>160</sup> Observed from interviews that have been conducted, there is not only a hierarchy in between locals and foreign workers, but also an internal hierarchy based on different nationality among foreign workers.

##### 5.1.4.1 External and Internal Discriminations

The racial formation in Taiwan is with extremely high unitary, since most of the residents were immigrants from China since 1662 onwards. The population is 97.55% consists of Han Chinese, 2.33% of indigenous people and only 0.12% other races<sup>161</sup>, which mainly consist of foreign spouses from South East Asia or China. Due to the high homogeneity on races, Taiwanese overall has a lower endurance on race heterogeneity. In particular there has been a resistance of accepting foreigner from China and South East Asia in society, which has largely reflected on the immigration laws and policies. It shows an eagerness to embrace white-collar intelligence from western countries, but only deem the foreign blue-collar workers as ‘guest workers’.

This has developed to a so called ‘new racism’, which implies a racism not strictly defined with racial factors. But a discrimination that is based on immigration and borders.<sup>162</sup> Blue-collar foreign workers usually are being seen as “dirty, noisy and out of order”. When there are ‘social issues’ caused by foreign workers, it is often discussed under the context of “how these will affect the homogeneity in Taiwan society”.<sup>163</sup>

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<sup>160</sup> One research has the percentage of 58%, while the other one has 73%.

<sup>161</sup> Department of House Registration, *Monthly Population Survey Data*, April 2016. Available from: [http://www.ris.gov.tw/zh\\_TW/346](http://www.ris.gov.tw/zh_TW/346) (Last accessed: 14 June 2016)

<sup>162</sup> Etienne Balibar, *Race, Nation, Class: Ambiguous Identities*, London, Verso, 1991.

<sup>163</sup> Yen-Fen Tseng, *Expressing nationalist politics in guestworker program: Taiwan's recruitment of foreign labor*, Taiwan Sociology Journal, Vol.32, June 2004.

These discrimination and against blue-collar foreign workers was further fostered by media and private employment agencies.

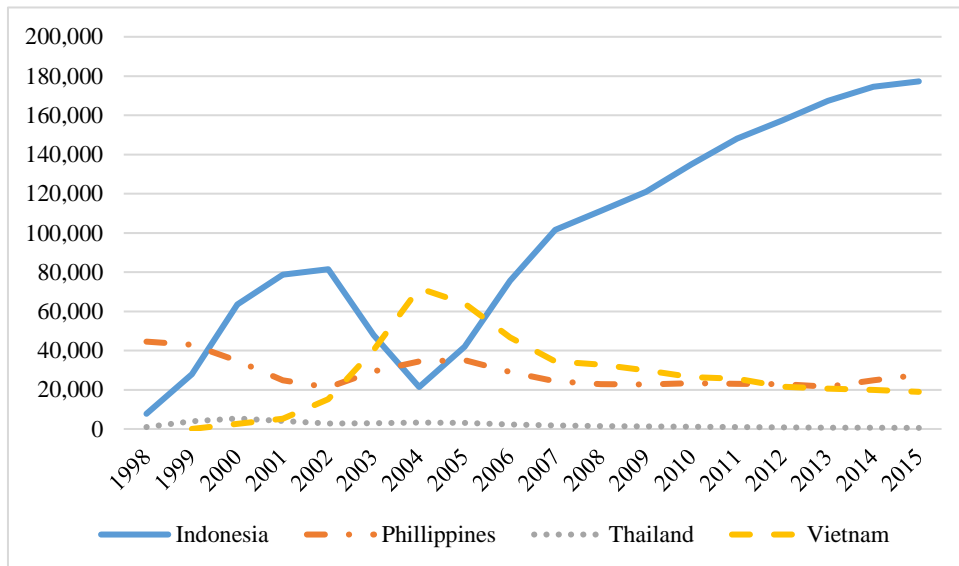
Almost on every private employment agencies' website, there are guidelines of how to select a "good worker" from South East Asia. Advices are given in terms of selecting workers who will obey any instructions and well-behaved. Worker with no oversea experiences, not good looking and introverted are highly recommended. For the purpose of higher profits, labels and categories with certain personality or culture habits are given for different nationalities. By referencing 10 different private employment agency websites, the feature of each nationalities are as follows:

1. Philippines: Smart, with good language ability and usually received higher 'westernized' education, which enable them to be more independent and easier to communicate. On the other hand, they are more aware of their labor rights, which made them harder to manage. In general, Filipinos have a higher possibility to run away.
2. Indonesia: Usually low-educated but honest and kind-hearted. Have higher obedience, can ensure hardship and can accept not having any day-offs. They are overall the easiest to manage.
3. Vietnam: Have a closer culture to Chinese/Taiwanese society. They can pick up Mandarin quicker and very hard-working. Affected by communism, they tend to have high obedience.
4. Thailand: More used to doing rough work, have a drinking culture and can only communicate with Thai.

Based on the stereotypes stated above, Indonesians are usually recommended for elder's caregiving due to their 'patient and kind-hearted' image. While Filipinos are mostly suggested to be hired as maids or nannies, since they are higher educated and have the ability to speak English, which can have a more positive influence on children.

In Taiwan, as the caregivers are the majority needed and have a lower threshold to apply,

influenced by the stereotypes placed by private employment agency, the Indonesian are the largest group among foreign domestic workers (See form 5-1). The question here is, if the private employment agencies have merely labeled the workers under the interest of facilitating the recruitment, or it is also related to agencies' self-interest.



Graph 5-1: 1998-2015 number of foreign domestic workers (nationality)<sup>164</sup>

By ‘positioning the products’, there are several purposes and benefits behind this strategy. First is to attract its customers, so as to the employers, to have the impression that the agencies do have a grasp of the characteristic of the workers and can be good recruiter. Second would be easier to control and manage the foreign workers. The third will be manipulating the labor market in order to import workers who can gain higher profits.

Unlike the more functioning Filipinos Governmental Office in Taiwan, and various Christian organizations which supports Filipino workers, the assistance that Indonesian workers can reach are more restrained. Taking the languages into account, unless the

<sup>164</sup> Ministry of Labor, *Number of Foreign Workers- Service and social workers*. Available from: <http://statdb.mol.gov.tw/statis/jspProxy.aspx?sys=100&kind=10&type=1&funid=q1301&rdm=mecUXior> (Last accessed: 15 June 2016)

Indonesians have Mandarin ability to a certain level, otherwise it is difficult for them to access to information related to their rights. By building an impression to enlarge the recruitment of Indonesian workers, due to their less accessibility to remediation compare to Filipino workers, they will create 'less trouble' to the agencies and employers. At the same time, more profits can be obtained by private employment agencies.

“Most private employment agencies admit that recruiting Indonesian are more profitable than other nationalities [...] One of the Indonesian-Chinese who works in private employment agencies told me: Most private employment agency assert that Filipinos are harder to manage, that is not true, they said it simply because of they can earn more from Indonesian domestic workers”<sup>165</sup>

Even if the agencies have labeled foreign domestic workers due to their own interest, simply fostering stereotypes does not constitute a human rights violation. But if these stereotypes created by private employment agencies have worsened the discrimination within foreign domestic workers, it would constitute a direct human rights violation.

#### **5.1.4.2 Merely stereotyping?**

“Stereotyping is the application of an individual’s own thoughts, beliefs, and expectations onto other individuals without first obtaining factual knowledge about the individual(s)”<sup>166</sup>, while “discrimination is the denial of equal rights based on prejudices and stereotypes.” Many might solely consider the categories and descriptions given by private employment agencies are sole a formation of Taiwanese society’s stereotype on foreign workers. But it is often forgotten that stereotype and discrimination is just a fine line.<sup>167</sup>

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<sup>165</sup> Pei-Chia Lan (2008), p.113.

<sup>166</sup> Susan T. Fiske, *Social beings: Core motives in Social Psychology* (2nd ed.), New York, Wiley, 2010.

<sup>167</sup> This is still disputed among social psychologist of whether stereotype can be the cause of discrimination. Some psychologist hold complete opposite opinions, considering discrimination will lead to stereotypes. No matter which theory, it is confirmed that stereotypes and discriminations exist hand in hand.

A racial discrimination means “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” according to the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>168</sup>

In ICCPR Article 2, it has requested the state to ensure no distinctions of race and national origin.<sup>169</sup> Although it is unclear if this applies to ‘non-nationals’, so as to a nationality discrimination, the notion of ‘other status’ in article 2 as prohibited grounds for discrimination implies that ‘nationality’ and ‘citizenship status’ could be prohibited grounds for discrimination as well. Article 26 further entitles all person’s equal protection of the law.<sup>170</sup> Principally, the right to non-discrimination cannot be derogated from in any circumstances.<sup>171</sup> But if “a differentiation which is compatible with the provisions of the ICCPR and is based on objective and reasonable grounds does not amount to prohibited discrimination within the meaning of Article 26”.<sup>172</sup> In the case of a quota system and complicated application procedures established for foreign workers, it is commonly found that states place a stricter process for non-nationals to obtain visa or working opportunities. It can be reasonable justified under a priority protection of citizens’ right to work. Nevertheless, once the non-nationals have legally obtained working status, there should not be differential treatments on their access to social

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See C. Neil Macrae, Charles Stangor, and Miles Hewstone, *Stereotypes and Stereotyping*, The Guilford Press, 1996, Chapter 9.

<sup>168</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD), article 1(1).

<sup>169</sup> International Covenant on Civil and Political Rights (ICCPR), article 2(1).

‘Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

<sup>170</sup> *ibid.*, article 26.

<sup>171</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 29, 31 August 2001, CCPR/C/21/Rev.1/Add.11.

<sup>172</sup> *F. H. Zwaan-de Vries v. The Netherlands*, Communication No. 182/1984, U.N. Doc. CCPR/C/OP/2 at 209 ((9 April 1987), paragraph 13; *Nikolaus Fürst Blücher von Wahlstatt v Czech Republic*, Communication No. 1491/2006, UN Doc CCPR/C/99/D/1491/2006 (19 August 2010), paragraph 10.2.

benefits and being protected by other labor standards.

As Taiwanese law has excluded foreign domestic workers from the protection of basic labor standard acts, it is clear that it has been violating ICCPR article 2 and 26. But here the research will like to discuss the private employment agencies' contribution to such discrimination, and have worsen the discrimination on treating foreign domestic workers based on nationality.

In the case of foreign workers, private employment agencies have given nationalities the description of 'easier to run away', 'hard-working thus do not need vacations' or 'hard to manage' etc. These has in fact directly cause the harsh treatment which imposed on certain groups of workers, such as taken away travel documents to avoid the workers to run away. And oftentimes, the private employment agencies instruct the employers: "You can request the Indonesian and Vietnamese domestic workers to give up their day-offs and vacations, but this is not acceptable by Filipino workers."<sup>173</sup> And it has indeed frequently been reflected in the decision-making of the employers, which becomes a reality of the distinguish treatments among different nationalities.

Under legal sphere, it would hard to proof the causation in between the private employment agencies' advice and the employer's decision. But if the government can directly place a ban on the nationality stereotyping advertisements, it can prevent possible discrimination and reduce hostility in between different nationalities.<sup>174</sup> At the same time, it would fulfill the expectation of the ILO conventions, which is to combat unfair advertising practices and misleading advertisements by private employment agencies. Also, to solve discriminations from the root, the government should provide foreign domestic workers the same protection as other workers in Taiwan.

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<sup>173</sup> Pei-Chia Lan (2008), p.112.

<sup>174</sup> The hierarchy within domestic workers have been fostered by private employment agencies and the employers. Since remarks of threatening a substitution of one nationality to another often occurs. It has also contributed to the tensions and competition mindsets between different nationalities of domestic workers in Taiwan.

## 5.2 Indirect Human Rights Abuses

The concept of ‘indirect’ human rights infringement has been indicated in the UN Principles of Business and Human Rights, discussed in Chapter III. The indirect infringements imply a complicity to the principle perpetrator, which is the employer in the discussion of domestic workers. The complicity will be founded with intentional participation, but not necessarily any intention to do harm, only knowledge of foreseeable harmful would be sufficient. And “it is important to note that in criminal law an accomplice can usually be tried for complicity in a crime even where the principal perpetrator has not been identified or where guilt could not be proven against that principal. Equally important, the accomplice need not desire that the principal offence be committed.”<sup>175</sup>

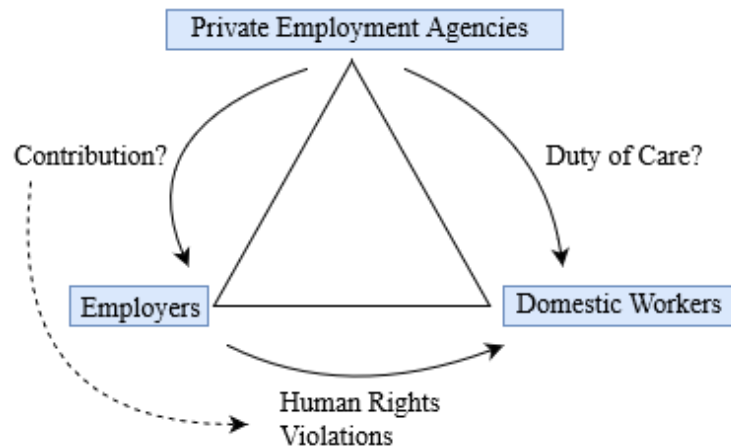
The question here is how to allocate responsibility on the triangular relationship in between foreign workers, employers and private employment agencies.

Although Taiwanese law did not impose a general duty on the private employment agency to protect the foreign workers inflicted from human rights abuses. Yet since foreign workers also have a signed contract with the private employment agencies, and have paid their service fees monthly, it is modest to acclaim a “reasonable duty of care” to protect the foreign workers suffer from abuses. Such as when the private employment agencies knowingly express the illegal working conditions (eg. prohibition of pregnancy), or they foster or tacitly consent on inhuman working conditions and abuses. They have failed to exercise their reasonable duty of care.

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<sup>175</sup> Andrew Clapham, *Categories of Corporate Complicity in Human Rights Abuses*, 2008, p.342.





Graph 5-2: Possible legal liability under indirect human rights abuses

### 5.2.1 Private employment agencies' contribution?

Observed from the private employment agencies' websites and some interviews with employers, employers often highly rely on private employment agencies' assistance and information, since they do not have experience in hiring domestic workers. Questions about working hours, vacation, tips for selecting workers etc. are asked frequently. Speaking in favor of employers, private employment agencies often suggest that no day-offs given to foreign workers is acceptable as long as overtime pay are provided. And tips of "Indonesian and Vietnamese workers can accept no day-offs" are very commonly found. As mentioned above, sometimes accomplice of illegal deportation and confiscation of identity documents would be formed in between agencies and employers.

"I often told the *labor sisters*<sup>176</sup> not to haggle over everything, thus now they all have the common sense to 'endure' the situations they face. The income here is 10 or 20 times than their home countries, why can't they be obedient? I said after you go back home, you are the one that have earned the most. If you are really suffering, you can go back (to your home country) now, I don't care!" said by an employee in the private

<sup>176</sup> It is a direct translation. By calling others brothers or sisters in Chinese, it often reveals the message of "we are on the same side."

employment agencies.<sup>177</sup> This has reflected the mindset of the majority of employers and private employment agencies. They often suppose that since the foreign workers come to work in Taiwan because of money, the workers will do whatever requested.<sup>178</sup>

Nevertheless, legally it will be very hard to proof the causal link between each cases. Since the actual ‘sphere of influence’ of private employment agencies have upon each employers is unknown. Particularly in some cases, the foreign have agreed upon long working hours and no vacation with overtime pay. It is also difficult to distinguish whether the worker agreed with their will or due to the fear of losing their job and being sent home.

Under current legal discussion, it would only be possible to ask for a moral self-regulation on the private employment agencies not to foster employer’s human rights abuses. Get to the bottom of how the employment agencies and employers have this space to conduct such inhuman working conditions, it is solely because of Taiwanese governments’ continuous stagnation of providing a legal protection to domestic workers.

### **5.2.2 A responsibility to stop human rights abuses by employers?**

According to Taiwanese civil and criminal law, there is no responsibility on passively not acting against a violation conduct by someone else. But since the private employment agencies have a special role to manage the foreign domestic workers, it is worth discussion whether it is reasonable to place a responsibility on passively not reacting to foreign worker’s SOS messages.

In various human rights abuse cases, the private employment agencies were in fact aware of the abuse that might occurred, since the private employment agencies are usually the priory contact of domestic workers. Two types of violations are often

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<sup>177</sup> Chen-Fen CHEN (2001), p.114-115.

<sup>178</sup> This distorted mindset also often applies to the sexual harassment/assault cases. For instance some perpetrators attempt to pay domestic workers for sex.

reported to the agencies: inhuman working conditions and sexual harassments/assaults.

As mentioned in the second chapter, the domestic workers are in fact divided into two categories-caregivers and maids under law, both of the category has a set of working content. Although the working content also depends on each household, basically it should not surpass certain range. For instance caregivers should not be asked to tidy the whole house, or to pick up children from school etc. Unfortunately, in fact a large number of caregivers in Taiwan have been asked to do overloading works, which include to work as a housemaid or to help on the employer's private businesses. Since these working contents are against Taiwanese regulations, it is not written in the working contract. Most of the domestic workers cannot bare these high intensity of workload, '1955 Hotline' and private employment agencies are often their only two ropes for rescuing them from the harsh working environment.

Similarly, sexual harassments/assaults are frequently reported to private employment agencies and 1955 hotline. The statistics show that there had been 319 sexual harassment and 64 sexual assault complaint being made to 1955 Hotline in 2015.<sup>179</sup> It amounts to each day, there is one new domestic worker suffering from sexual crimes. Notwithstanding there has no formal statistics of the amount of cases report to the private employment agency. Taken the easier accessibility of the agencies to the foreign domestic workers, the complaints will be no less than what the Hotline had received per year.

While the agencies have knowledge about the ongoing or possible human rights abuses, in most cases, the reply given to the foreign domestic workers are persuading them not to overact and make official report.<sup>180</sup> If the employment agencies have the knowledge of the overworking and sexual harassment/assault and it have a very high possibility to

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<sup>179</sup> Newtalk News, 'Last year there have been one worker suffering from sexual harassment or infliction per day', 9 May 2016. Available from: <http://newtalk.tw/news/view/2016-05-09/72979> (Last accessed: 22 June 2016)

<sup>180</sup> Epoch Times, 'Stop the sexual assault incidents on domestic workers', 8 December 2008. Available from: <http://www.epochtimes.com/b5/9/12/8/n2747224.htm> (Last accessed: 14 July 2016)

continue, do they not have the responsibility to assist the workers to find possibly solutions?

According to the ILO C188 convention, the private employment agencies “should not knowingly recruit, place or employ workers for job involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind.” This clause only indicated to the situation before the workers start to work. Nevertheless, given that the government still actively request the agency to have the role of assisting the management of the workers. I believe the responsibility above should extend to even after the foreign worker start to work, so as to a duty of care. If the agency has gained a later knowledge of the job has “involved unacceptable hazards or risks or where may be subjected to abuse or discriminatory treatment of any kind”, agency should assist the worker to be free from such abuses.

## **Chapter VI- Political Efforts and Struggles**

The previous chapter has revealed unfair treatment and human rights abuses towards foreign domestic workers, which has mostly been existed since the beginning of receiving foreign workers. 25 years later today, not a lot has changed. But following the inclusion of several international human rights laws into domestic level, there has been increasing attention upon human rights issues in Taiwan. Observed from Legislative Yuan sessions, due to some legislators' persistently promotion on the rights of foreign domestic workers, more and more awareness and attempts to change the situation on have been ongoing. Taken that pressure, the Ministry of Labor has also been more active on improving its policy.

As mentioned briefly in the Chapter II, there has been a long existing stagnation on legal protection for domestic workers. This Chapter will start with a discussion of possible reason behind the stagnation of related laws, then go into other efforts which the Ministry of labor has been trying to promote. Other attempts of amending related current existing laws and opposition forces will also be covered in this Chapter.

### **6.1 Draft Law on Protection of Domestic Workers <sup>181</sup>**

#### **6.1.1 Various Attempts**

Tracing back to the core reason of why foreign domestic workers have been easily abusive and exploited, one simple and essential reason is that domestic workers are not protected by any laws in terms of their working conditions.

This lack of protection and the constant abuses have triggered numerous protests and civil actions to improve the situation. There have been two different movements in the past 15 years. One it to directly involve the domestic workers into the Labor Standard Act, which will provide equal basic protection as labors in other industries. While the second is to legislate a separate act which only deals with the issue of domestic workers.

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<sup>181</sup> A translation by the author, since there was no official translation for this draft law yet.

These two movements have been supported by different scholars and NGOs. Some express the inadequacy to involve the domestic workers in the Labor Standard Act. Due to the private nature of house working environment, domestic workers are more vulnerable to abuses. The protection of Labor Standard Act is thus not sufficient, special standards and mechanisms should be established to prevent and protect the domestic workers from exploitations. On the other hand, there are others opinions supporting the idea to directly involve the domestic worker into Labor Standard Act, which is more equal and easier to push forward a legislative change. These two movements have been intertwined before 2008, due to multiple changes on administrative policy from the Ministry of Labor. But after 2008, a consensus between the government and civil society of a separate Domestic Worker's Act was formed.

Before 2003, whenever the Ministry of Labor was requested upon whether to include the domestic workers into the Labor Standard Act, they have repeatedly addressed that the working time and content of domestic workers varies among each family and employer. Due to the 'special nature' of domestic worker, it should not be put together with other categories of labor, but based on individual's negotiations and needs.

The constant passive attitude from the governmental side has triggered the unity of several NGOs in Taiwan to form a "Migrant Empowerment Network in Taiwan". They have developed an action and launched a "Worker's Draft on Domestic Workers Act" in 2004.<sup>182</sup> The worker's version has been supported by some legislators and sent into the Legislative Yuan three times. Nevertheless, because of the Ministry of Labor's strong opposition on the act, the worker's version act thus did not even entered the stage of discussion in the Legislative Yuan.

Around 2008, seeing the high reluctance for the Ministry of Labor to develop a separate act for domestic workers. Some NGOs and scholars have altered the strategy and turned to advocate the inclusion of domestic workers into the existing Labor Standard Act.

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<sup>182</sup> Draft of Household Service Act, Workers' Version, 18 July 2004. Available from: <http://www.coolcloud.org.tw/node/61101> (Last accessed: April 15 2016)

Surprisingly, the Ministry of Labor agreed upon the proposal and start to form a discussion group with the involvement of NGOs. After a year of discussion, there has been few consensus reached, the NGOs had disappointedly dropped out from the discussion group. Shortly after the drop off, the Ministry of Labor abruptly decided to change its policy to establishing a separate Act for domestic workers. The Draft Domestic Workers Act by the Ministry was later sent to the Executive Yuan for examine and approval in 2010<sup>183</sup>, but it has been stagnated in the Executive Yuan ever since.

The stagnation has been due to the disagreements among different departments in Executive Yuan.<sup>184</sup> The disputes has been mainly surrounding ‘working hours’ and ‘day-offs’ that the domestic workers could obtained. The Ministry of Welfare and most of the employers have addressed that if the foreign domestic workers would have legal rights to take regular day-offs, there would be difficulty for the employers to find substitute manpower for caregiving. They employers argued: “Since the government’s ‘Breathing Service’, which provides substitute caregivers upon request, is still in the prior experimental phase. Without handing out satisfying plan for substitute manpower, the government should not shift the predicament to the employers to solve by themselves.”

Besides the unsuccessful consensus seeking inside the Executive Yuan, the 2010 draft was highly criticized by civil society as a ‘Forced Labor Act’<sup>185</sup>. Despite it has given an upper bound for the working hours and a lowest standard of working condition, it still gives an exceptional clause of “the standards will not apply if the employers and

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<sup>183</sup> In the Draft of Domestic Workers Act from the government side, detailed protections are provided. It proposed a continuous rest of 8-10 hours each day, 84 hours of working time every two weeks as normal working hours; and a continuous 24 hours of vacation every 7 days. The actual salary (after the deduction of fees for accommodations and food etc.) shall not below the minimum wage in Labor Standard Act.

<sup>184</sup> Executive Yuan is the official term for cabinet in Taiwan, which is responsible for the governance of a state. ‘Yuan’ is the Chinese word for department or branch. Similarly, the legislature is officially named as “Legislative Yuan”.

<sup>185</sup> PTS News Network, ‘Domestic Workers become house slaves?’, 25 August 2011. Available from: <http://pnn.pts.org.tw/main/2011/08/25/%E5%AE%B6%E5%8B%99%E5%8B%9E%E5%8B%95%E6%88%90%E3%80%8C%E5%AE%B6%E5%A5%B4%E3%80%8D%E5%BC%9F%E5%8B%9E%E5%9C%98%E5%97%86%E5%AE%B6%E4%BF%9D%E6%B3%95%E6%88%90%E3%80%8C%E9%9A%9C%E7%9C%BC%E6%B3%95%E3%80%8D/> (Last accessed: 27 June 2016)

workers have individual negotiations”<sup>186</sup>. Together with the criticism from civil society and other stakeholders, the 2010 draft was being withdrawn back to the Ministry of Labor. The newest adapted draft was sent into the Executive Yuan in 2014, but so far there is still no signs of sending it to the Legislative Yuan for discussion.

There have been other two drafts of domestic workers act proposed by the legislators from two major parties in 2014. Nevertheless, they have been waiting for the Executive Yuan version “in order to have a more thoroughly discussion altogether”.<sup>187</sup> Nevertheless, in fact there is no such custom that the draft can only be discussed when there is a governmental version. Therefore there must be certain opposition forces or there has not been enough political pressure on the issue of passing the law.

Time	Incident
04/2003	Civil Movement of “Promoting Domestic Worker’s Act” Started
10/2004	The Worker’s Version of Domestic Service Act was sent into the legislative Yuan for the first time. <sup>188</sup> The Ministry of Labor however refuse to support the Act.
03/2011	Ministry of Labor launched “Domestic Worker’s Protection Act” <sup>189</sup>
06/2011	The Executive Yuan withdraw the Act proposed by Ministry of

<sup>186</sup> Draft Domestic Worker’s Act, article 9: ‘The labor should have continuous 8 hours of break each day, but the employers and workers can have different decision through negotiations.’ Article 10: ‘The labor should have one day break every 7 days. But if the labor agrees, it can be substitute with one day of salary or have the break on other days.’

<sup>187</sup> Legislative Yuan, Social Warfare and Health Environment Committee Term 8, *The Legislative Yuan Gazette*, Period 5, 15<sup>th</sup> meeting, 21 April 2014.

<sup>188</sup> This Act was sent again in 2008 and 2012, but it wasn’t accepted by legislators.

<sup>189</sup> The Act proposed by the Ministry of Labor was highly criticized by NGOs, deeming as “an Act which legalized forced labor”. The draft regulations state that the working hours and day-offs can be exempted simply by the “negotiation between the employers and workers”, nevertheless this will lead to a complete uncover of the protection under the extremely unbalance power relations.

See Taiwan International Worker Association, ‘The Domestic Worker’s Protection Act should have more international insights’, 9 May 2011. Available from:

<http://www.tiwa.org.tw/2011/05/09/%E3%80%8A%E5%AE%B6%E4%BA%8B%E5%8B%9E%E5%B7%A5%E4%BF%9D%E9%9A%9C%E6%B3%95%E3%80%8B%E6%87%89%E5%85%B7%E5%9C%8B%E9%9A%9B%E8%A6%96%E9%87%8E/> (Last accessed: 11 June 2016)



	Labor
03/2014	Discuss the Version proposed by legislators, but the conclusion is to discuss again on another chosen day.
2014	The adapted “Domestic Worker’s Protection Act” was sent to the Executive Yuan again

Form 2-2: Attempts to legislate domestic worker’s related laws<sup>190</sup>

### 6.1.2 Oppositions on Increasing Protections for Foreign Domestic Workers

If the protection of foreign workers is improved, the prior affected are the employers. The employers thus have formed strong opposition alliances with some social welfare organizations, for instance Taiwanese League for Persons with Disabilities, and several regional organization for private employment agencies.<sup>191</sup> Altogether they claim for the “elders and disable persons’ rights to be take care of”, and the right cannot be secured if the worker benefited from more protection. Since it equals to an increase on the burden of the families which have heavily relied on foreign domestic workers. The improvement of the wages would make the poorer families that need the caregiving service no longer have the capacity; and by restricting the working hours would cause serious losses when emergencies occur.<sup>192</sup>

Some employers and general public also stand the view of: “Since we have elected the government, it should serves for Taiwanese’s good. It does not make any sense to protect foreigners but sacrifice Taiwanese’s benefits.”<sup>193</sup> It has truthfully reflected how suffrage can dominate a state’s policy. Over 20 years, the foreign workers have been positioned as ‘guest worker’ and ‘outsider’. Corresponding the employer’s voices and

<sup>190</sup> Compiled from many sources, but mainly reference from: *The Legislative Yuan Gazette Term 103/29*, 8 May 2014, p.403-404.

<sup>191</sup> This organization is also the biggest opposition when the worker’s version of domestic workers act was send into legislative yuan in 2005 and 2008 respectively. Adding the non-supportive attitude of Ministry of Labor, the act was rejected due to “a failed to reach a consensus among civil society”.

<sup>192</sup> The main objections have been coming from the organizations with disabled persons. Except for what has been mentioned, they were especially worried about the substitute manpower when the foreign domestic workers were given day-offs.

<sup>193</sup> Hsiu-lien Chen, *The double binding of public and private: The labor condition of migrant domestic workers in Taiwan*, Shih Hsin University, 2011.

the fact that the foreign workers do not have a right to vote, the majority of politicians have been extremely passive on developing policies related to foreign domestic workers. The Taiwanese former president, who had involved the international human rights treaties into domestic law, also had promised back in 2008 that he will push forward the legislation of domestic workers act. Unfortunately he did not meet his promises within his term from 2008-2016. The new president who went on board from May 2016 still has a rather unclear position on her policy towards foreign workers.

Despite the reluctance to establish Domestic Workers Act over the years, there is another essential new legislation that reveals the unwillingness to involve foreign domestic workers into Taiwanese labor market. The 'Long Term Care System Act' was passed in May 2015, with the target to establish a caring system for elder and disability person by 2017. Nevertheless, as one of the most essential manpower for caregiving in Taiwan for the past 20 years, the foreign domestic workers are being completely ruled out of the Long Term Care System.

Most politicians have been emphasizing on how the 'care giving' industry has been benefiting countries which send out foreign domestic worker, and asserting the foreign domestic workers would be the barriers for the Long Term Care System to well-developed. Yet in reality, with the current 8,914 local domestic workers who can partake in the Long Term Care System, it is far from sufficient to cover the extensive need for caregiving.<sup>194</sup> If the government truly aims at providing good services to Long Term Care System, they should have include foreign domestic workers in to the system, to receive identical rights and professional training which can raise the quality of caregiving.

The government should also face up the manpower shortage that cannot be filled up without foreign domestic workers. Instead of continuously take advantage of the foreign domestic workers' hardships; the workers should be entitled to more legal protection

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<sup>194</sup> Strom News, 'The job which people unwilling to do even if they have the license. Low pay, busy and not being respected, caregivers still have a shortage of 30,000 persons', 16 November 2015. Available from: <http://www.storm.mg/article/73744> (Last accessed: 28 June 2016)

and policy support. Taking this flow, the individual hiring system should also be altered to a country-to-country employment in recent years. In this way, issues of human rights abuses on foreign workers through employers and private employment agencies can be changed. This possibility will be further discussed in the Chapter VII.

## **6.2 Direct Employment Service**

Even though the legislation of legal protections for domestic workers has been not smooth. Some smaller administrative attempts have been evolving. The Direct Hiring Service Center was established in 2008, under the Ministry of Labor. It assists employers to hire foreign workers without the participation of domestic and oversea private employment agencies, which aims at reducing the debts that foreign workers have to burden. At the same time, the employers do not have to pay recruitment fees to the agencies.

Despite the good intension of the government, the categories of foreign labors who can be hired through direct employment system is still very limited. Only Thailand and the Philippines have agreed upon a first time direct employment. Other sending countries, Vietnam and Indonesia have only accepted the direct employment on re-hires, which is the second time employment after the first three years of working permit expired.

Among the re-hiring domestic workers, with gradual increase on the utilization rates, there has been 43% of employers in 2015 choose to use direct employment. In comparison, despite around 50% of employers have the knowledge about the possibility to utilize direct hiring system for first time employment<sup>195</sup>, the using rate is still rather low. According to surveys, it is due to three main reasons, including “have no time to deal with all the procedures personally”, “no provision of follow-up management services” and “the application procedures are very complicated”.

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<sup>195</sup> There are 45% of employers have the knowledge of the direct hiring options. See Ministry of Labor *The Investigation of the Management of Foreign Labor Report*, 2015.

And certainly, the direct hiring system is an explicit threat to the business of private employment agencies. There were strong opposition of the establishment and development of direct hiring system, the agencies commented badly on the system through the internet and its customers. They mostly address on the employer's inability to handle the complicated application procedure. An emphasis has been put on the high rate of employers who use direct hiring system have failed to finish all the administrative procedure after the worker's arrival, which eventually lead to possible fines or termination of the employer's qualification for hiring.<sup>196</sup>

Interesting, instead of simplified the procedure or further increase the incentives for the employers to use direct hiring, the Taiwanese government invent another option of 'partial direct hiring'. It allows private employment agency to assist on the administrative procedures after the foreign workers arrive in Taiwan, also including the management services to be the communication channel in between employer and worker. Under the partial direct hiring system, the foreign worker can avoid the exploitation from the agencies in the sending countries. They still have to form a contract with the Taiwanese private employment agency and pay the service fees. This notion from the government also reflects its passive attitude to establish a system that can eliminate the exploitation on foreign workers.

### **6.3 Amendments on Employment Service Act**

Similar to the aim of Direct Hiring System, there has been a recent movement in the Legislative Yuan to reduce the debt on domestic workers, so as to weaken the control of private employment agencies on foreign workers.

Recalling the working restrictions for foreign workers, based on Employment Service Act, only a three-year contract can be formed at a time. After the contract expires, it will be mandatory to leave Taiwan for at least one day. Even if the foreign worker has

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<sup>196</sup> South East Asia Group (Private Employment Agency), 'Numerous loopholes in the management of direct hiring system, there are high rates for employers to violate the law', March 2015. Available from: [http://www.sea.com.tw/news\\_detail.php?sn=3537#.V3GRGqLkhWC](http://www.sea.com.tw/news_detail.php?sn=3537#.V3GRGqLkhWC) (Last accessed: 29 July 2016)

successfully made a consensus with their employers to continue their work, they still have to depart for at least one day according to the law. Except for being re-hired through the direct hiring system, the workers have to go through the private employment agencies on both sending and receiving country again in order to form their working contract for the next 4-6 years of stay in Taiwan. The placement fees and the service fees also have to be paid for another 3 years.

To reduce such exploitation on foreign workers, some legislators proposed for an amendment on Article 52 of Employment Service Act. By deleting the mandatory leave every 3 years, the foreign workers can directly prolong its working contract without the need to go through overseas private employment agency. This will save the foreign domestic workers another NTD 75,000-180,000 of debt to carry. This amendment is supported by the Ministry of Labor, and has passed the First Reading in Legislative Yuan in May 2016.<sup>197</sup> To be expected, it has triggered an outcry among the private employment agencies.

After the First Reading was passed, the main promoter of this amendment had announced her ‘non-suicidal statement’. She claimed constant threat calls by a large number of domestic and overseas private employment agencies, which put her and other legislators who support this amendment under extreme pressure.<sup>198</sup> Except directly voice their opinions to the legislators, by spreading opposition remarks over the Internet and media, the private employment agencies have been trying to trigger more opposition powers from civil society to stop the amendment. They assert that deleting the mandatory 3 years of return has equal to depriving the foreign workers’ human rights to

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<sup>197</sup> The government-proposed bills or the member-proposed bills shall be listed on the bill agenda for report. These titles of the bills shall be read out loud in the Legislative Yuan Sitting (First Reading). After the First Reading, these bills shall be immediately referred to appropriate committees for examination, or proceed directly for the Second Reading. The Second Reading is of great importance in that thorough discussion, revision, reexamination, revocation, and withdrawal are all decided upon at this stage. The bills that have completed the Second Reading shall undergo the Third Reading in the following Yuan Sitting. Unless a bill is found self-contradictory, unconstitutional or is in conflict with other laws, only rephrasing can be made in the Third Reading.

<sup>198</sup> SET News, ‘Burst into tears in the Legislative Yuan! Blocking others benefits, Lin Shu-fen read her “non-suicidal statement”’, 22 June 2016. Available from: <http://www.setn.com/News.aspx?NewsID=157785> (Last accessed: 27 June 2016)

‘return and visit their home and family’. They also put emphasis on how the amendment would cause negative influence on the employers. For instance, they claimed: “Foreign workers who cannot prolong their contract will have a high risk to run away, then the employers might face the risk of losing their quota for hiring foreign workers.” And “Foreign workers might frequently request for a transfer if they are not satisfied with the working conditions. This will cause the employers enormous inconvenience.”<sup>199</sup> On the other hand, the local agencies also advocate the importance of oversea private employment agencies, by stating the necessity of cooperation in order to provide good quality of ‘foreign worker user experience’.

It is interesting to observe such agitating effects triggered by the amendment. This amendment targets at eliminating the exploitations of oversea employment agency on the foreign workers. It has nothing to do with the employers, nor is what the private employment agencies have stated are true. Theoretically, the amendment has not threaten any benefits that Taiwanese employment agencies have acquired legally. The enormous opposition from Taiwanese employment agencies have proven the vigorous ‘under table deal’ in between Taiwanese and overseas’ agencies. The over-reaction from local agencies have verified the high placement fees charged by oversea agencies have also been shared by Taiwanese agencies.

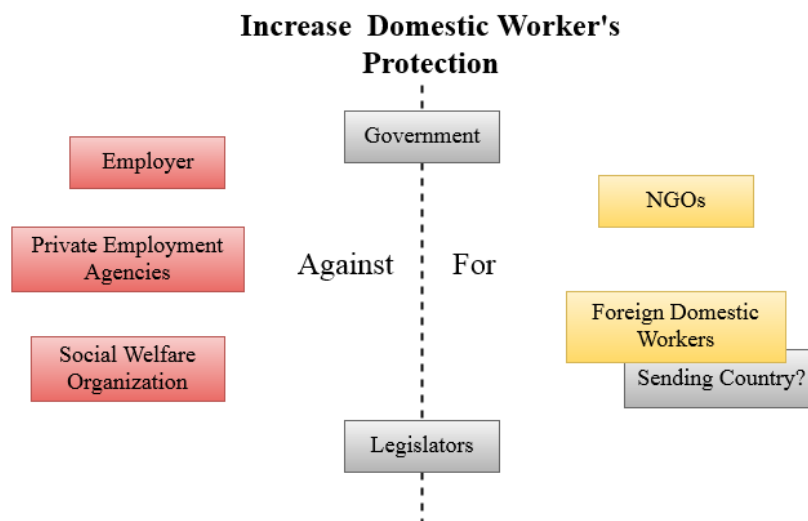
Since the amendment has only passed the First Reading, there still might be some changes along the Second Reading. Regardless of whether this amendment can eventually passed, it has been an unprecedented action indicating that some legislators are willing to make actual change towards the issue of private employment agency, and a small step forward to protect the foreign domestic workers against the exploitation.

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<sup>199</sup> It was referenced from several regional Manpower Agencies Associations and private employment agencies. Such as Litung International (Private Employment Agency), ‘Deleting going abroad for one day, there will be management issues.’, 24 June 2016. Available from: <http://www.litung.com.tw/index.asp?s=1&d=3260> (Last accessed: 15 July 2016)

## 6.4 Power Relations

From the law and policy making and attempts which previously stated, there are various stakeholders in civil society which have been influencing the government and legislator's decision making process. From the graph below (See Graph 6-1), an imbalance of powers can be clearly observed. The opposition side has been excessively discussed in the previous paragraphs, but the stakeholders which have been supporting the reform are not thoroughly mentioned.



Graph 6-1: Stakeholders on the foreign domestic worker issue<sup>200</sup>

With the ineffective remediation provided by government and private employment agencies, the support from NGOs and religious groups are extremely important for foreign domestic workers. Unlike most European countries have strong NGOs devoting to human rights issues; the numbers and influences from Taiwanese NGOs are still relatively limited. With merely a few NGOs working for the foreign domestic workers issue in Taiwan, the main driving forces are the ones which form the 'Migrants Empowerment Network in Taiwan'. Since 2003, they have been holding 'Migrants

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<sup>200</sup> Created by the author.

Worker Parade’ every year. It calls for actions from the government, and tries to raise public awareness to the unfair working conditions on migrant workers. The urge of implementing protection on domestic workers is also their prime demand over the years, but there have been few results.<sup>201</sup>

Another effective actor which can support the foreign workers is their home state. Under ILO conventions, the sending states and the receiving state have the duty to form bilateral treaties or negotiations to protect migrant workers. In between Taiwan and sending countries, there have been various Memorandum of Understanding (MOU), which can be a good platform for the sending state to request for Taiwanese government to implement policy on improving the situation of domestic workers. But in fact, most sending states do very little to assist migrant workers before their departure and while they are living abroad. Likewise, all the sending states have general failure on monitoring and regulating their own private employment agencies on exploiting their own citizens with high placement fees.

Recalling the wage raise on foreign domestic workers in 2015, the wage had successfully increased due to the request and pressure from the governments of Philippines, Vietnam and Indonesia.<sup>202</sup> This has demonstrated that the sending countries in fact have enough bargaining power, and the ability to negotiate and request for improvements on domestic workers’ conditions. But with ‘salary’ being the only negotiation items along these years, it leads to the doubt if the home state truly caring for its people abroad.

From the materials that I can find, only Indonesia has a recent endeavor to use their bargaining power on receiving country, by stating a possibility to completely stop of sending out domestic workers. “The Indonesian government should sign a Memorandum of Understanding (MOU) with Taiwanese government, with the inclusion

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<sup>201</sup> Initium Media, ‘Almost a thousand of foreign workers in South East Asia has requested ‘Caregiving Justice’ in a parade in Taiwan’, 14 December 2015. Available from:

<https://theinitium.com/article/20151214-dailynews-taiwan-migrant-labor/> (Last accessed: 29 June 2016)

<sup>202</sup> The whole negotiation has been mentioned in Chapter II.



of protection on Indonesian migrant workers.” said Soes Hindarno, the chief of the Indonesia Oversea Labor Bureau.<sup>203</sup> This warning of stopping to send out domestic workers to Taiwan has exhibited its efficacy, leading to more discussions facing up to the foreign domestic workers’ situation in Taiwan. Hopefully this action will incorporate more similar attempts from other countries, and create enough political pressure which push forward a policy change in Taiwan.

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<sup>203</sup> Central News Agency, ‘Indonesian government pause their sending out of domestic workers, which temporality not include Taiwan.’ 22 May 2016. Available from: <http://www.cna.com.tw/news/firstnews/201605220156-1.aspx> (Last accessed: 2 July 2016)

## **Chapter VII— Policy Suggestion and Recommendation**

Taken the discussions from previous Chapters, it can be observed that the predicament in between insufficient regulations on private employment agencies and constant human rights abuses has been unsolved under existing law and policy. Despite the obstacles to push forward reformation, there has been consistent attempts to increase the protection on foreign domestic workers, which has a certain progress in recent two years. By giving high expectations that there would be some substantial changes in the near future, with the inclusion of the political powers and stakeholders, several policy suggestions and recommendations will be given in this Chapter as concluding remarks.

The recommendations will be divided into two parts, the first part will be based on current societal and political reality to give adequate recommendations on improving the human rights protection for foreign domestic workers. The second part will provide the most ideal reform orientation, but at the same time requires a complete overturn of the system, thus it would be relatively difficult to reach.

As Taiwan has been deeming itself as ‘a nation based on human rights’, it would be reasonable for the Taiwanese government to consider the following recommendations in order to fulfill its proclamation throughout the years of being a country which thinks highly of human rights. And by truly showing an actual implementation on the voluntary bondage of international human rights law, can it substantially increase possible international recognitions and praises on Taiwan.

### **7.1 Amendments on Existing Laws and Policies**

Based on common beliefs in neoliberalism, most governments have in general stand the position of not to interfere the labor market. By handing in more power to private employment agencies, besides more economic gains, governments can also have lesser responsibilities. In addition to the ‘foreignness’ of migrant workers, taken that most home states of foreign workers have a weaker implementation on the protection of

human rights, the host states often do not feel sufficient pressure to adequately provide protections. Taiwan has no exception in this stance. Nevertheless, ‘the functioning of any system, including a market-based one, is subject to the judgment and limitations that come from the fact that all human beings have inalienable human rights. It argues that processes of accountability, participation, inclusion, justice, and social guarantees have to underlie both the market and the state.’<sup>204</sup> The State should still ensure the lowest standard of protection on foreign workers, through a well monitoring system for private employment agency and laws which can directly guard workers from harm.

### **7.1.1 Basic Legal Protection for Foreign Domestic Workers**

‘Domestic workers are among the most vulnerable of migrant workers in terms of excessive working hours, low wages, and their vulnerability to sexual harassment. It is also a matter of concern that domestic workers are not covered by basic labor protection legislation, such as the Fair Labor Standards Act and the Labor Safety and Health Act.’ concluded by the Expert Committee in the 2013 Taiwan’s State Review.<sup>205</sup>

Many might say that without well-implementation, laws are just words on papers, but if there’s no legal regulations, there would be a lesser stand and fewer binding pathways to request the stakeholders to fulfill their duty and responsibility. The very core reason of foreign domestic workers abuses in Taiwan is the lack of basic legal protection. Being exempted from Taiwan’s Labor Standard Act, the foreign domestic workers do not have any stand to fight back against private employment agencies and employers’ inhuman treatments. They can only see their humanity being stamped over but with no legality to fight back.

Regulating wages, working hours and vacations are the very basic necessity to protect labor, which should also be established for foreign workers. Besides the basic protections, in the foreign domestic workers’ case, the most essential and urgent reform

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<sup>204</sup> Peter Uvin, *Human Rights and Development*, Michigan U.S.A, Kumarian Press, 2014.

<sup>205</sup> Taiwan State Review, *Concluding Observations and Recommendations Adopted by the International Group of Independent Experts*, 1 March 2013, paragraph 38, p.8.

should be giving them the right to freely transfer their work. When this right is given, they would be able to switch work when faced with unreasonable and abusive working environment. Without their 'leaving or staying' controlled by private employment agencies and employers, the threat of a forced deportation if not obeying would be no longer be compelling. It would substantially decrease the domination on foreign domestic workers and lower the risk of becoming forced labored and exploited.

Regarding the two current alternative ways to provide protection in Taiwan, the inclusion in Labor Standard Act or the establishment of a separate act for domestic workers, both can reached the aim of a legal shield for foreign domestic workers. Taken the discussion in Legislative Yuan in recent five years, since the efforts have already been on an establishment of separate Act, it shall be a shorter path to make a real change. The separate Act, so as to the Domestic Workers Act, should however give the same basic wages as the Labor Standard Act. Other working conditions such as working hours and vacations can be regulated corresponding the working content of caregivers, but a limitation should be established. Most importantly, comparable punishments for a violation have to be given.

A legislation for Domestic Workers Act could be expected, yet it still need more political pressure on legislators. Either through local civil movements or pressure inflicted by foreign domestic workers' home states. With the gradual establishment on Long Term Care System, by hoping that local domestic workers can also stand up requesting for adequate treatments, it can create a larger joint power to adding up pressures on the realization Domestic Workers Act.

### **7.1.2 Zero-Fees for Migrant Workers**

The most common shared exploitation conducted by private employment agencies is the exorbitant fees they charged. Recalling the ILO convention No.181 for private

employment agencies, article 7 has called for a prohibition of fee-charging.<sup>206</sup> Since a complete elimination of fees can actively solve forced labor and debt bondages.

The current triangular relationship in between employers, private employment agencies and foreign workers has been a rather sophisticated and unclear under current laws. The Taiwanese regulations only explicitly mention the agencies' responsibility on employers, in addition to agencies' services are largely provided for employers in practice, it will be reasonable for the employers to burden the cost requesting from agencies. But to prevent the notion of 'fully owning foreign workers' aroused from bearing all the recruitment fees. Reasonable pre-arrival (or pre-working) cost can be obtained from foreign domestic workers, which might include flight tickets, professional training fees or health examinations fees etc. But once the domestic workers begin to work, all the charges should be borne by the employers.

To fully realize zero-fees for migrant workers, it will require efforts from both sending and receiving countries to place a ban on recruitment fees. Otherwise if the ban is merely on one side, for instance in Taiwan as the receiving state, it still remain a probability that an accomplice would be formed in between local and overseers private employment agencies. To cover the loss of Taiwanese agencies because of the zero-fee policy, a higher recruitment fee in the sending countries would be charged. The total amount of debts on foreign workers would remain at the same amount, which would make the effort and aim to lessen the debt burden on migrant workers in vain.

Yet great political obstacles would be faced with the reform on zero-fee charging. Taken the experience from the current ongoing reform to eliminate the '3 year mandatory leave' on foreign workers. It has already triggered intensive opposition from private employment agencies.<sup>207</sup> By widely cutting of the profits of private employment agencies and increasing the expense of employers, the zero-fee charging policy would definitely initiate more fierce opposition. Enormous resistance would come from private

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<sup>206</sup> International Labour Organization, C181 - Private Employment Agencies Convention, article 7.

<sup>207</sup> See Chapter 6.3, Amendments on Employment Service Act.

employment agencies, employers and the political support behind them. But it is necessary to normalized zero-fee charging in order to free the workers from extreme debt bondage, and place an end to the unreasonable tolerances on human rights abuses.

### **7.1.3 Increase Legal Responsibility on Private Employment Agency towards their Recruited Workers**

The analysis and discussion in Chapter V has revealed the deficiencies of present laws on private employment agencies. As the intermediary who has legal relationships with both employers and recruited workers, the present laws have over-tilted to merely addressing the relationship in between agencies and employers. There has been a lack of agencies' responsibility on recruited workers' human rights violations.

Based on the contribution and important role which private employment agencies have played in the triangular relationship<sup>208</sup>. A reasonable duty of care of private employment agencies towards workers should be measured and established. This duty does not imply a responsibility on foreign worker's conducts, such as the existing punishment on agencies if the foreign workers runaway. But a duty of care of taking reasonable notice on the job which they advertised and have assisted the matching process. For the abuses that their recruited workers have been facing, the private employment agency should take reasonable steps to report and assist finding ways for remediation if they are aware of such abuses.

Along with the increased responsibilities, relatively harsher punishment while violated should also be placed. The burden of proof should be set on the agencies' side, since it is more impartial to proof that they have actively assist the foreign workers then vice versa.

Nonetheless, this policy suggestion would create a complete different route than zero-fee charging. Instead of decreasing the relationship bond in between foreign

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<sup>208</sup> The triangular relationship consist of employers, foreign workers and private employment agencies.

workers and private employment agencies, the increase of responsibility on private employment agencies imply a clearer and more substantial relationship in between agencies and workers. Although I personally consider that zero-fee charging will alter the situation on foreign domestic workers more efficiently, the increase on agencies' responsibility is in fact the most feasible reformation considering the current situation in Taiwan.

Similar to zero-fee charging, the increase responsibility would also face objections from private employment agencies. But the opposition would be lesser since this will not notably affect the employer's interest. Therefore compare to a complete elimination or partially decrease the influence of private employment agencies, perhaps facing the crucial role which private employment agencies have been playing, and place corresponding responsibility will be the best solution in current stage.

#### **7.1.4 Increase Utilization Rate of Direct Hiring System**

Taking the current situation in Taiwan, the above stated policy suggestions would have higher thresholds to make reforms. Before the reform take place, in the meantime, more efforts should be given by the state to improve existing mechanism.

The Direct Hiring System, although has mostly been utilized with re-hires, still enables a different option for recruitment. As long as the government can increase the utilization rate of this system, it can effectively lower the number of foreign workers hired through private employment agencies and avoid debt bondage from exorbitant fees. In particular if the amendments on 'cancelling 3 year mandatory departure', it can be an ideal synergism to promote the Direct Hiring System. Later on, if the government improved the first-time direct hiring system with the Philippines, and have successfully negotiated for first time direct hiring with other sending countries, there would also be more people have the knowledge of the possibility and convenience of the system.

Thus the Ministry of Labor in Taiwan, as they promised over the years in the session in

Legislative Yuan, should improve and promote the Direct Hiring System. By simplifying application procedures, enlarge the options for recruiting, the more employers that utilized direct hiring, the more foreign workers can be free from debt bondage.

## **7.2 An Elimination on Private Employment Agency in the Foreign Labor Market**

Recalling from the history of ILO convention No.181 for private employment agency, while the first version of convention for fee-charging private employment agencies established<sup>209</sup>, the ILO had the intention to completely eliminate private employment agencies by a full-replacement from public employment offices<sup>210</sup>. But through the continuous recognition towards the importance of private employment agencies over the years, ILO has softened its stand and turned to the view of strictly regulated and non-fee-charging private employment agencies. Nevertheless, the vision to eliminate the private employment agencies, nevertheless, has been reviving in recent years.

Under the common understanding of the evident role which private employment agencies play in the migration cycle and their ‘active contribution’ to abuses inflicted upon migrants, most states and international discussions have been eager to find solutions. Some states thus have decided to make the original concept of ILO into practice, so as to utterly eliminate private employment agencies and establish a ‘government to government’ (G-to-G) system for recruiting foreign workers. The most well-known country for G-to-G is South Korea, which has its whole foreign labor market under the government’s hands.<sup>211</sup> Other countries have been only partially experimenting on the probability of such system, with agreements in between certain

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<sup>209</sup> International Labor Organization, C034 - Fee-Charging Employment Agencies Convention, 1933 (No. 34).

<sup>210</sup> ILO Recommendation R42: Employment Agencies Recommendation (Recommendation concerning Employment Agencies) (17th ILC session Geneva 29 Jun 1933).

<sup>211</sup> South Korean has been using G-to-G system since they open the labor market towards foreign workers. Therefore it is not a recent alteration, but it has been the model of the countries which have recent endeavors to try G-to-G system.



countries, such as Bangladesh with Malaysia and Saudi Arabia.<sup>212</sup>

By managing the foreign labor market with the G-to-G system and public employment agencies, it can completely eliminate maltreatments caused by private employment agencies. As the ‘pioneer’, South Korea has been the first country among East Asia to implement national treatment principle to foreign workers.<sup>213</sup> It has also placed a higher standard of a basic knowledge of Korean and have to take mandatory professional trainings before they start to work, which aims at an easier integration to the local working environment. With such policies and no fee charged from private employment agencies, G-to-G system is expected to have less human rights violations.

Nevertheless, different from theory, the G-to-G system in Korea has encountered various criticism and doubts. Abuses such as long working hours, physical violence and delayed wage payments have been frequently occurred.<sup>214</sup> This has also led to a doubt that if G-to-G system is a good option to solve the issue. Yet the numerous human rights abuses inflicted on foreign workers in South Korea have been originated from poor substantial implementation of equal protection and weak monitoring system. In my personal opinion, it cannot deny the G-to-G system’s elimination on the debt bondage and exploitation originated from private employment agencies.

Over the years, some Taiwanese NGO workers also have been claiming for a reform of altering to a G-to-G employment system.<sup>215</sup> To some extent this attempt has facilitated the establishment of Direct Hiring System in Taiwan. As mentioned in Chapter 6.2, the first-time direct hiring has been carried out in recent years. Through an agreement to form an option of G-to-G in between the Philippines and Taiwan, the Filipino

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<sup>212</sup> European Union, Open Working Group on Labour Migration& Recruitment, *Recruitment Fees & Migrant’s rights Violations Policy Brief 1*, 2014, p.6-7.

<sup>213</sup> National treatment principle here implies an equal treatment of foreign workers to its nations under law.

<sup>214</sup> Amnesty International, *South Korea: End rampant abuse of migrant farm workers*, 19 October 2014. Available from: <https://www.amnesty.org/en/latest/news/2014/10/south-korea-end-rampant-abuse-migrant-farm-workers/> (Last accessed: 25 July 2016)

<sup>215</sup> Ching Ju Wu, *The new era of slavery: Congress of the International Migrant Workers Policy: Slavery Workers System*, *The Constitution Review Journal*, Vo. 31, 2005, p. 164-167.

government has promised to place high quality workers on the Taiwanese direct recruitment database system. By ruling out private employment agencies on both sides to provide a lower cost option to attract both employers and worker, the agreement aims at lower the reliance on agencies and the probability to be exploited.

Yet this system will require excessive support and coordinated sets of measures on both sending and receiving ends, in order to fulfill the blueprint of a more efficient and non-exploitative path. From the current utilization rate of the Direct Hiring System, the result so far has showed that Taiwanese government is not yet capable to enlarge direct hiring system.<sup>216</sup> Not to mention a complete alteration to G-to-G system, which required even more transnational cooperation, detailed planning and long transit period. Also from South Korea's experiences, a comprehensive G-to-G system would need a well-structured monitoring system to oversee the implementation and protection on foreign workers, which cannot be reached over night. Yet this can still be an ultimate goal. By establishing an ideal G-to-G system and combining it with the Long Term Care System, it can ensure the quality of domestic workers through coherent professional training, and make the responsibility to monitor and protect clearer and more complete.

### **7.3 Conclusion**

To sum up, in order to ensure foreign domestic workers equally enjoy the rights to be free from abuses and harm, the most essential and urgent will be giving them substantial legal protections. By providing basic standard of working condition, which include minimum wages, day-offs, right to transfer work freely and a limitation on working hours, they no longer have to live under a helpless situation. Instead, they can seek for

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<sup>216</sup> Observed from the current operation of the first-time direct hiring, both Taiwanese and the Filipino government have underestimated the efforts that have to be given in order to build up a new system. There has been low matching rates for first-time recruitment through direct employment. It is due to the passive attitude on implementation on both ends. The Filipino government has not been actively selecting and placing workers into the Taiwanese database, which have made the general impression from the employers to deem this channel as not able to provide sufficient choices. Therefore not a lot of employers would employ through direct hiring, which have led to the workers who enrolled have to wait for an excessive amount of time to be matched. Then lesser workers would be willing to enroll. This has become a vicious cycle and need to be changed.

help with a legal standing and can enjoy reasonable working environment.

Besides the establishment of legal protection for foreign domestic workers, the government also have to improve existing policies and mechanisms. There should be more advocacy on the promotion of Direct Hiring System and ‘1955 Hotline’, by raising the visibility and prestige of these mechanisms can effectively raise utilization rates and decrease reliance on private employment agencies. The government should also cooperate with the civil society, such as NGOs, to set up a monitoring system to oversee the effective of the government running mechanisms.

Overall, a shorter term goal ought to increase the responsibility of private employment agencies on its recruited workers. While a long term aim would be gradually decrease the influence of private employment agency in foreign labor market. By completing the Direct Hiring System, both the workers and employers would recognize the convenience and benefit of using other channels for recruiting than private employment agencies. The reliance on private employment agencies thus would largely decline, which would be a good progressive way to eliminate the private employment agencies in foreign labor market.

‘All revolutions are impossible until they happen. Then they become inevitable.’<sup>217</sup> The reformation of pursuing legal protection for the foreign domestic workers, and decrease the exploitation from private employment agencies will be a long fight, but it is definitely necessary and worth the efforts. And in the end, there would be certain goals achieved and a step forward to a more equal society, just like seeing lights after a long walk in a long, dark tunnel.

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<sup>217</sup> A quote by Albie Sachs, a former judge on the Constitutional Court of South Africa.

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## **Abstract**

Since the opening of Taiwanese market to foreign domestic workers in 1992, with gradual aging population and a lack of functional governmental long-term care system, the demands for foreign domestic workers have been increasing every year. In 2015, there are 224,356 foreign domestic workers in Taiwan, with origin mainly from Indonesia, Philippines and Vietnam. Yet there are no legal protections for their working conditions, which connived numerous unfair treatments and human rights abuses.

Private employment agencies, as an important stakeholder in this issue, have been holding excessive power to control the market. But besides the issue of fee-charging, they have been rarely highlighted under the Taiwanese context. In particular their contribution to other abuses. This research has analyzed various reports and articles to reveal the extent of agencies' involvement in the human rights abuses which workers were inflicted upon. It shows that agencies have been conducting both direct and indirect abuses, which includes forced labor, illegal deportation and discrimination etc.

Taken the recent inclusion of international human rights treaties to Taiwanese law, international standards are involved in this research to examine the domestic regulations on private employment agencies. The domestic law has failed to provide corresponding regulations and penalties on agencies, for their responsibility on adverse human rights incidents. By encompassing the political endeavors and oppositions for the protection on foreign domestic workers over the years, several reform orientations are given with the hope to create a fair and equal working environment for foreign domestic workers in Taiwan.

**Keywords: Foreign Domestic Worker, Private Employment Agencies, Human Rights, Taiwan**

## **Abstract**

Seit der Öffnung des taiwanesischen Marktes für ausländische Hausangestellte im Jahre 1992, ist – einhergehend mit einer zunehmend alternden Bevölkerung und dem Fehlen eines funktionierenden, vom Staat getragenen Langzeit-Pflegesystems – die Nachfrage nach eben diesen jedes Jahr gestiegen. Im Jahre 2015 arbeiten 224.356 ausländische Hausangestellte in Taiwan, die meisten davon aus Indonesien, den Philippinen und Vietnam. Da hinsichtlich der Arbeitsbedingungen für ausländische Hausangestellte kein Rechtsschutz existiert, kommt es zu zahlreichen Fällen von unfairer Behandlung und Menschenrechtsverletzungen.

Private Arbeitsvermittlungsagenturen gelten als wichtige Akteure in dieser Angelegenheit, weil sie über eine unverhältnismäßige Macht über den Markt verfügen. Abgesehen von der Debatte über Vergebührungskosten werden solche Firmen im taiwanesischen Kontext nie hervorgehoben. Besonders über ihren Beitrag zu anderen Missbräuchen wird geschwiegen. Mittels Analysen von zahlreichen Berichten und Artikeln deckt die vorliegende Masterarbeit auf, in welchem Ausmaß Arbeitsvermittlungsagenturen an Menschenrechtsverletzungen an ausländischen Hausangestellten beteiligt sind. Sie zeigt, dass sie sowohl direkte als auch indirekte Missbräuche ausüben, u.a. Zwangsarbeit, illegale Deportation und Diskriminierung.

In Anbetracht dessen, dass internationale Menschenrechtsverträge vor Kurzem in das taiwanesisches Recht einbezogen wurden, werden in dieser Forschungsarbeit innerstaatliche Regelungen über private Arbeitsvermittlungsagenturen unter Berücksichtigung der internationalen Standards untersucht. Das innerstaatliche Recht hat es versäumt, entsprechende Regelungen und Strafen zu schaffen, mithilfe derer Arbeitsvermittlungsagenturen für ihre Mitwirkung an Menschenrechtsverstößen zur Verantwortung gezogen werden könnten. Durch die Schilderung der politischen Bemühungen für und gegen einen besseren Rechtsschutz von ausländischen Hausangestellten und die Entwicklung der entsprechenden Bewegungen über die letzten Jahre hinweg, werden etliche Reformideen mit der Hoffnung auf ein faires

Arbeitsverhältnis und auf Gleichberechtigung für ausländische Hausangestellte in Taiwan vorgeschlagen.

**Schlüsselbegriffe: ausländische Hausangestellte,  
privateArbeitsvermittlungsagenturen, Menschenrechte, Taiwan**