

CEDAW, Taiwan NGO CEDAW Report on Violence against Women

Topic: Migrant Workers, by Hope Workers' Center, Regina Fuchs

As stated in the Article 1 of the UN Declaration on the Elimination of Violence against Women, "the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."¹

Like other fields of society, occupation sectors underlie stereotyped gender roles, too. This is also applicable to the employment opportunities for women migrant workers in Taiwan. They mainly are found in the informal working sector, as caregivers and domestic workers. This sector is characterized by inferior status, low payment and a lack of protection by the labor laws, leaving the women more vulnerable to all forms of exploitation and violence. Without tackling a mindset based on stereotyped gender roles, discriminatory practices will be constantly reproduced. As long as work in the sphere of social reproduction is not recognized as work and accordingly protected and remunerated the principles of equality of rights for women is violated.

A. BACKGROUND INFORMATION

Taiwan's Foreign Labor Policy

Since Taiwan adopted a contract system for hiring migrant workers in 1992, the number of foreign workers has increased steadily. Before the economical crisis hit Taiwan in 2008 there were more than 370 000 migrant workers in the country, by end of August 2009 the number got down to around 344 000. The state strictly limits and controls the number of foreign workers and the sectors of employment available to them. Through the implementation of foreign labor policies (Employment Service Act, Chapter 5) the foreign workers are classified into two hierarchical categories. While the white-collar foreigners are respected as professionals, the blue-collar foreigners (migrant workers) are seen as unskilled and are often stigmatized.

In the government discourse migrant workers are seen as a way to fight shortages within the labour force. According to the web-site of the Bureau of Employment and Vocational Training the Taiwan Foreign Labor Policy is "For the purpose to fulfill the economic and social needs of the country"². The immigration of migrant workers is not wanted; they are only seen as a tool to improve Taiwan's economic and industrial development. For example are their visas and work permits bound to their employers and workers cannot change their workplaces unless the original employer agrees.

Labor policies therefore focus to prevent that migrant workers might become a social problem. The laws overlook the migrants' well being and human rights. They also lack a gender perspective and disregard the unique situation of women migrants. As the demand for feminized forms of labor in Taiwan is increasing this is even more critical. The figures below show the development of foreign labor in Taiwan over the past few years (see figures 1-4³). While the number of female migrant workers and informal employment (especially as caregivers) is steadily growing the number of male workers and employment in the productive sector has remained the same or is declining. Since beginning of 2009 the foreign caregivers and domestic workers even outnumber the foreign factory workers. Along with the rise in number of caregivers and domestic helpers comes rise in female workers leaving their legal employers and becoming irregular. It can be assumed that there is a correlation between the kind of employment and the running away of workers from their legal employers.

In the official discourse, however a connection is only drawn between migrant runaways and an increase of criminal events. Not much attention is paid to the reasons behind the running away, like bad working conditions, abuse, sexual harassment, low income etc. The official conclusion seems to be: the more illegal migrant

¹ <http://www.unhchr.ch/huridocda/huridoca.nsf/%28symbol%29/a.res.48.104.en>

² http://www.evta.gov.tw/eng/content/content.asp?mfunc_id=99&func_id=99&type_id=0&cata_id=0&id=9223

³ All statistical data from Council of Labor Affairs: <http://statdb.cla.gov.tw/html/mon/monehidx12.htm>

workers, the more criminal events. Monthly the status of crimes committed by migrant worker is published by the Council of Labor Affairs (CLA). Having the discourse channelled that way, strict controls and harsh punishment⁴ are justified.

Unfortunately there is no gender disaggregated data about the employment sectors available. However, it is widely known that workers in the domestic sector are mostly female and the ones employed in factories and construction sites mainly male.

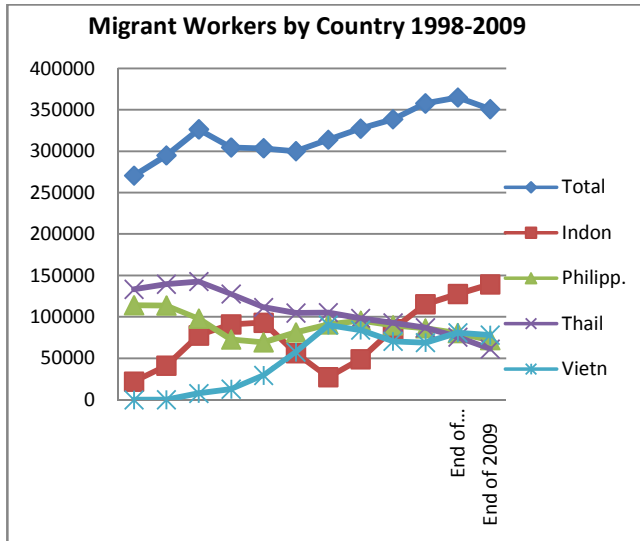


figure1, migrant workers in Taiwan by country, 1998-August 2009

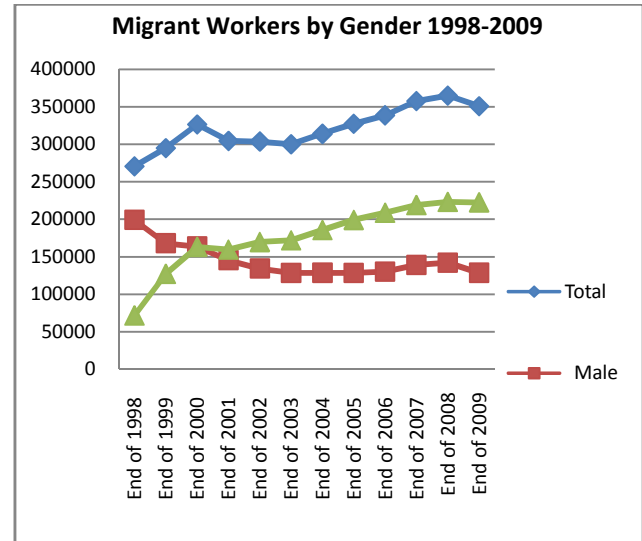


figure2, migrant workers in Taiwan, by sex, 1998-August 2009

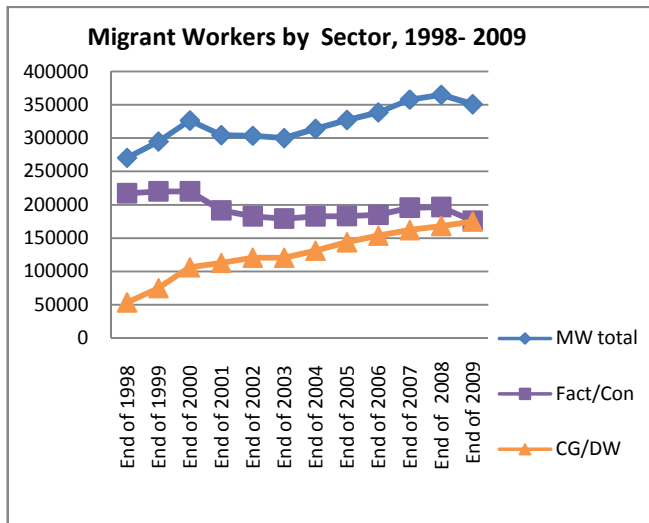


figure3, migrant workers in Taiwan, sector-wise⁵

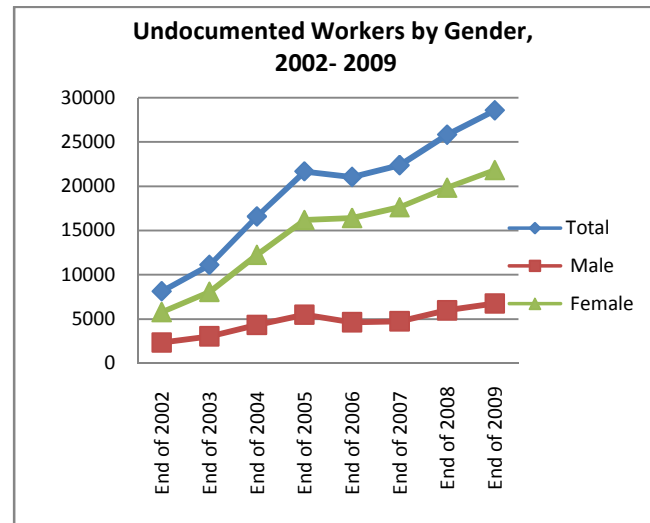


figure4, undocumented migrant workers by gender⁶

⁴ Please find more information in the attached file "Taiwan Policies"

⁵ MW: migrant workers, Fact/Con: Factory and Construction workers, CG/DW: Caregivers and domestic workers

⁶ These numbers only include workers who legally entered Taiwan as migrant workers and then became undocumented

Migrant workers in Taiwan

At the moment migrant workers can work in Taiwan for a maximum of nine years, but have to leave the country every three years and renew their contracts. They earn the minimum wage of currently NTD 17,280 (US\$ 605)⁷ (factory and construction workers) and NTD 15,840 (US\$ 554) (domestic workers and caregivers)⁸. People who want to come to Taiwan as migrant workers need to go through recruitment agencies. These agencies demand sky-high commissions, forcing potential workers to take loans or mortgage their assets. As shown in figure5 the net income of a migrant worker is around US\$ 3000/year. This amount does not yet include the yearly visa fees (NTD 1,000), health check-ups (NTD 1,600) and the plane ticket at the end of the contract.

The work and residence permit is bound to the employer, which means that the worker has no freedom to change the employer but needs the employer's agreement if wishing to do so. Exceptions are when a worker has evidence of a) sexual or physical abuse, b) illegal work or illegal employment (against her/his will). Under afore mentioned circumstances a transfer to a new employer without the agreement of the original one is possible. Another restrictive state regulation is that migrant workers are not allowed to form unions in Taiwan. Though they can join local unions many local workers don't welcome migrant workers to do so out of concern the management might be influenced, especially when electing union leaders. According to the Taiwanese law migrant workers have to stay in accommodation provided by the employers.

At the end of August 2009 344,599 migrant workers, mostly coming from Indonesia, the Philippines, Thailand and Vietnam were employed in Taiwan. This is around 3% of the national labour force. About 218,000 of the foreign blue-collar workers were female and 126,000 were male. Around 166,500 employees worked in productive industries, mainly factories, while almost 174 000 worked as nursing or domestic workers. Employees in the productive industries are covered by the Labour Standards Law (LSL), not so the caregivers and domestic helpers, who only can rely on the contract with their employer. This leaves the bigger share of female migrant workers in Taiwan vulnerable to abuse and violation.

Income Calculation: Migrant Worker (1st contract year, factory)

Gross Minimum Wage:	17,280 NTD
Food & Board:	4,000 NTD
Broker's Service Fee:	1,800 NTD
Tax:	2,292 NTD
Health Insurance:	225 NTD
Labor Insurance:	215 NTD
Total:	8,532 NTD
Net Monthly Income:	8,748 NTD (250 US\$)
Net Annual Income:	104976 NTD (3000 US\$)

figure5, income calculation of migrant workers

B. MIGRANT DOMESTIC WORKERS AND CAREGIVERS

a) Major violations and problems (CEDAW Art. 11, 1 (d), (e), (f); MDG Goal 3, GR 26 Art.4, 5, 6, 13, 15, 17, 20, 21, 26)

As globally observed labor migration is involving more and more people, especially women. The demand for female labor in the informal working sector is steadily growing. Taiwan, a country with a high female labor force participation (in 2007 66.1% of mothers with children 6 years and older were working)⁹, is currently undergoing a demographic change and has a high demand for care services. Work in the sphere of social reproduction, when valued by the market, is gendered, very often racialized, and poorly remunerated. The underlying gendered stereotypes contribute to violence against women. Migrant domestic workers and caregivers often face long working-hours, heavy workload and a high risk of sexual abuse and harassment. This is also a reality for female migrant workers in Taiwan who work private households and nursing homes.

⁷ Exchange rate: 1 US\$ = 34,99 NTD

⁸ The average income in Taiwan is around NTD 46,600 (2007)

⁹ see also: [http://eng.stat.gov.tw/public/data/dgbas03/bs2/gender/2009%20GenderImages\(Eng\).pdf](http://eng.stat.gov.tw/public/data/dgbas03/bs2/gender/2009%20GenderImages(Eng).pdf)

Domestic workers and caregivers are not covered by Labour Standards Law

At the end of 2009 almost 175 000 mostly female migrant workers were working in Taiwan as nursing or domestic workers in families or nursing homes. The majority (69%) of them is coming from Indonesia, followed by 17% from Vietnam and 13% from the Philippines (see figure6). Except caregivers in nursing homes with more than 5 employees, these workers are not covered by the Labour Standards Law or a

Caregivers	Indonesia	Philippines	Thailand	Vietnam
2006	49%	19%	2%	30%
2007	63%	15%	1%	21%
2008	66%	13%	1%	20%
2009	69%	13%	1%	17%

figure6 foreign caregivers and domestic workers in Taiwan, by percentage

similar law or act to protect them. There are also no standard contracts or control mechanisms to ensure a minimum of safety for these women. Generally speaking this kind of work is not regarded as work and does not qualify these women to possess the same rights as a worker. They solely have to rely on the agreements specified in the contract with the employer. Due to this, women employed in that kind of work are more vulnerable not only to abuses like unpaid or excessive working hours but also to deprivation of liberty, violence, sexual harassment and rape¹⁰.

Disadvantage for Indonesian caregivers and domestic workers

According to a policy of the Indonesian government, Indonesian caregivers and household workers who work abroad, have to pay a “security bond” of NTD 30,000 (US\$ 870). A monthly share of NTD 2,500 for 12 months is collected. A worker can only get back the money in Indonesia after finishing the contract. If a worker becomes undocumented the money is not returned to her at all.

Monthly deductions to pay off the high placement fee and the security bond shrink the take-home pay. On average the Indonesian caregivers and domestic workers earn less than, for example, their colleagues from the Philippines¹¹.

Vulnerable to abuse and exploitation

-by the employer

There are strict regulations on hiring a foreign caregiver in Taiwan. Two certificates from two different doctors are needed, stating that a person in the household suffers from a certain disease and needs extensive care. However, once a medical certificate is obtained, there are no further controls regarding the patient’s need of care. Many “by contract caregivers” were never meant to become caregivers but have to work in their employer’s house and/or business. Very often these are small and micro enterprises, predominantly in the food processing sector.

It can be assumed that a lot of women working in the informal sector are victims of trafficking and suffer from forced labor. Unfortunately most of them stay unrecognized or – when found by the National Immigration Agency (NIA) or after surrendering are punished for working illegally. Regarding this issue, please see the trafficking in persons section of this report.

Nursing workers in a family often are not only responsible for taking care of an old or sick person – as said in their contracts, but are seen as a servant of the family. Household work (sometimes also in relatives’ houses), taking care of children, or even working in the employer’s factory or business are frequent offences. Beside the basic wage of 15,840 TWD the domestic workers are very often not paid accordingly. Cases of caregivers who

¹⁰ Also see the attached file “Taiwan News, 3. Feb 2008”

¹¹Please find further information in the attached file “Research_income caregivers”.

had to work around the clock, taking care of an old person, without any days off for years are not an exception. In nursing homes foreign caregivers have to take care of up to 20 patients in long shifts without regular days off.

-by the broker agency

Another source of vulnerability for female migrant workers are the unscrupulous practises by labour agencies. While the woman comes to Taiwan with a caregiver or domestic helper contract the recruiter sends her to work illegally in a factory and sometimes even becomes forced labour. According to the Taiwanese law a migrant worker who is found be doing illegal work will be sent home. This can be used as leverage by the recruiter and/or employer: if the worker complains the standard answer is that the responsible law enforcement agency will be informed and the worker will be sent home.

Case study:

Imna, an Indonesian young woman, came to Taiwan to work as a caregiver. Her workplace was a nursing home for elderly people. Instead of only taking care of one patient, as said in the contract, she had to take care for up to 20 patients, working 12 hours shifts without a regular day off. She didn't even have a bed on her own but the caregivers had to take turns in working and sleeping. She only received the basic wage of NTS 15,480 but no overtime payment. Working like that for months she was exhausted and overworked.

After she reported her work situation to an NGO, the local Bureau of Labor Affairs (BLA) was informed, too. The BLA- inspectors went to the nursing home to examine Imna's exploitative work situation. When they arrived, however the director denied that Imna had to take care of more than one patient. Also the photographs showing her with different patients didn't count as evidence. Finally Imna got paid for the overtime and the employer allowed her to transfer to another job. But there were no further investigations regarding the working conditions for foreign caregivers in the respective home and also no other consequences.

b) Existing policies and ways to deal with the problem

- Discussion of amendments to the Labour Standards Law regarding caregivers and domestic workers or implementing a new law for caregivers and domestic workers. The amendments include that caregivers and domestic helpers would be entitled to have one day off in seven days, but not a single word is said about the regulation and limitation of working hours and overtime payment and no mechanism will be implemented to counter abusive treatment by the employer.
- Since July 2009 there is the 24 hours free hotline "1955" for foreign workers. The hotline offers service in English, Thai, Indonesian and Vietnamese that the workers can ring and ask for help.
- A migrant worker has the right to change the employer if a) there is evidence of sexual or physical abuse, b) the worker was forced to do illegal work or to work for an illegal employer
- Domestic helpers and caregivers have access to Taiwan's Justice System. The Legal Aid Foundation has offices in every county.
- NGOs are offering their services and also shelter to migrant workers.
- Direct hiring service: Employers can rehire the same foreign worker. The advantage for the worker is that no placement- and no broker's fee needs to be paid. But direct hiring is not often used as it implies some complicated procedures for the employer.

- Due to the high number of undocumented Vietnamese caregivers and domestic workers who became undocumented is very high, the Taiwan government implemented a policy that no new contracts are given to Vietnamese caregivers or domestic workers. For Vietnamese caregivers or domestic workers it is only possible to be rehired by the same employer.

c) Recommendations

- Caregivers and domestic helpers have to be fully covered by LSL or an equivalent law. Legislation on domestic work should stipulate minimum standards for the scope of work, age, wages, working hours, rest days, holidays, annual and maternity leave, accommodation, food and transport allowances, insurance, and physical and mental treatment of domestic workers. It should guarantee freedom of association and cover questions related to social security, training, termination of contract, and consular services and repatriation (for foreign domestic workers). It must stipulate realistic and deterring penalties in case of breach of obligations either by domestic workers or by employers, as well as accessible and effective mechanisms that minimise violations of workers' rights and allow domestic workers to seek redress in case of grievances.
- Domestic workers and caregivers are to be covered by labour insurance.
- Migrant workers should have the right and freedom to choose and change their employers.
- There should be standard contracts for all migrant workers that strengthen their rights.
- Implementation of control mechanisms and regular and independent inspection of workplaces and creation of accessible complaint mechanisms for migrant domestic workers who suffer abuse.
- The government should hold information campaigns to increase the awareness of female migrant workers' situation in Taiwan.
- The government should provide redress for workers who suffered maltreatment and exploitation and penalise labour agents, employers, government officials, and other individuals or institutions who perpetrate abuses against domestic workers, whether in their own countries or overseas.
- Corruption is a major obstacle in the improvement of protection of domestic workers. Governments of sending and receiving countries should take urgent steps to eradicate illegal practices by recruitment agencies, immigration officials, labor departments, police officers and any other party involved.
- Set up of a gender sensitive monitoring, reporting and evaluation system in cooperation with relevant groups of the civil society.

C. BROKER SYSTEM

a) Major violations and problems (CEDAW Art. 11, 1 (d), (e), (f); GR 26 Art. 4, 5, 6, 13, 15, 17, 20, 21)

Taiwan's brokerage system is known to be the cause of many problems migrant workers are facing. Before coming to Taiwan a worker needs to pay a very high placement fee. Although some countries set maximum fees

the amount finally paid by the workers is often higher. To be able to pay the exorbitant placement fee workers very often have to take loans or borrow money at a high interest rate. They arrive in Taiwan burdened with this

huge debt. Here, aside from repaying the loan they took in their home country they have to pay a brokers' fee that equals NTD 60,000 (around US\$ 1,700) for a 3 year contract, legally collected monthly. With regular payment it takes a migrant worker between 19 months (Philippines) up to 44 months (Vietnam) to pay off the debts¹².

Broker's Service Fee (in Taiwan):

1st year: NTD 1800/month (NTD 21, 600/US\$ 635)

2nd year: NTD 1700/month (NTD 20, 400/US\$ 600)

3rd year: NTD 1500/month (NTD 18, 000/US\$ 530)

Total: NTD 60 000 (US\$ 1700)

figure7, Broker's Service Fee for migrant workers in Taiwan

Placement Fees (to be paid in the country of origin):

Indonesia: Factory workers: NTD 50,000 (US\$ 1,400), Domestic Worker NTD 104 000 (US\$ 2,900), actual NTD 107,000 – NTD 180, 000 (US\$ 3000 - US\$ 5000)

Philippines: NTD 28,000 (US\$ 800), actual NTD 70,000- 90,000 (US\$ 2100 - US\$ 2500)

Thailand: NTD 48,000 (US\$ 1300), actual NTD 120,000 –NTD 140,000 (US\$ 3,200 - US\$ 4,000)

Vietnam: no official regulation, actual up to NTD 230,000 (US\$ 6,700)

figure8, Placement Fees, country-wise¹³

Consequences of the broker system

-indebtedness

The pressure to pay off debts make the workers vulnerable to abuse and exploitation. They have little bargaining power and many do not dare to complain for fear of being repatriated. To prevent the migrant workers from running away brokers are confiscating passports, ID-cards, visa and contracts from the workers – which is against the law in Taiwan. Very often workers are receiving only a part of their wages, with the remaining part being kept by the broker until the contract is finished – another effective way to prevent workers from running away. In factories a similar, though illegal, method is common: forced savings. Monthly a certain part of the wage (usually NTD 3,000-NTD 5,000) gets deducted by the employer and is put on a bankbook, which is kept by the employer until the workers finish their contracts.

-all forms of abuse and exploitation

Unscrupulous and abusive brokers and employers use the workers' indebtedness to make even bigger profits. The migrant workers bargaining power is very low. Some might be not very well informed about their rights. The bigger obstacle, however is that migrant workers are too afraid to complain. A complaint could lead to a deterioration of the working conditions (e.g. less overtime, mobbing). Many also fear losing their jobs and being sent home again. Bad and risky working conditions, forced labor, inadequate payment, occupational accidents

¹² Also see the attached file "Taiwan News 24: April 2008"

¹³ Also see: <http://www.catholic.org.tw/catholic/in-3.htm>

and overwork are some of the results. Women working in private households also face the risk of sexual abuse and mistreatment by the employer or members of the employer's family.

Case study:

Maria de la Cruz, a Filipina came to Taiwan around 5 years ago. She worked 1 year and 10 months as a caregiver in a private household, when her patient died. Her employer didn't need her anymore and she had to leave the family. As she went to her broker agency to ask for help in being transferred to another job, the broker only said he couldn't help. He told her to go back to the Philippines and apply again.

Maria said, after hearing this she didn't see any other chance but to run away and become undocumented. She knew that she had to leave Taiwan if she didn't have a legal employer, but to return to the Philippines was impossible. Before coming to Taiwan she had to pay PHP 30,000 (US\$ 620) as placement-fee. After arrival in Taiwan she had monthly deductions to pay off the rest of the placement -fee and her loan. Altogether she paid NTD 85,000 (US\$ 2,500) – her salary was too low to save up any money. Maria explains her decision to become undocumented: “How could I go home without any money? I wouldn't have had any chance to pay the placement-fee in the Philippines again. But I have to earn money. I am the only breadwinner of the family and have to take care for the education of my two children. After my broker didn't help me to find a new employer, I ran away.”

For almost three years Maria worked as an undocumented migrant worker in Taiwan. In December 2008 the police raided the boarding house where she and another undocumented worker used to live. Probably “friends” reported the police where they stayed. Maria meanwhile has been in the detention center for almost three months. She hopes that her sister and her brother who live in Europe will send her some money so she can pay the penalty of NTD 10,000 (US\$ 286) and the plane ticket back to the Philippines. The money she saved herself was all needed to pay for the treatment and medication of her mother who was seriously sick before dying last October.

b) Existing policies

- Broker's service fee since 2001 regulated by CLA, services defined
- Suggestion by the CLA for sending countries to limit the placement fee to 1 month's wage.
- “Foreign worker's Affidavit Regarding Expenses Incurred For Entry into the ROC to Work and the Wage/Salary” since 2001.
- Current discussion about new standard contracts: The one discussed end of 2008 would strengthen the role of brokers and weaken migrant workers' rights¹⁴. Beginning of October 2009, however the CLA announced that it had devised a standard contract (unfortunately it is not available yet).

c) Recommendations

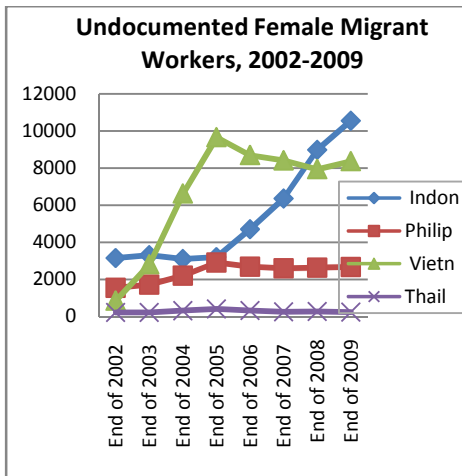
- Abolish the commercial broker agencies for migrant employment in Taiwan.
- Application of direct nation to nation contract.

¹⁴ Find the sample contract (version November 2008) as attached file

- It is clear that increased regulation and monitoring of labour agencies involved in recruitment and placement of migrant workers would contribute to a decrease in the occurrence of abuse and exploitation. Such regulation should be undertaken by Ministries of Labour, in conjunction with immigration authorities and Ministries of Foreign Affairs in the case of overseas domestic work.
- Memorandums of Understanding are needed with each of the labor sending countries to restrict and regulate placement fees.

D. UNDOCUMENTED MIGRANT WORKERS

a) Major Violations and Problems (CEDAW GR26 Art. 22, 26)



For years the number of migrant workers who run away from their legal employers has been steady on the rise. Where there were 8,000 undocumented workers in 2002 the number more than tripled in the following 7 years. By the end of 2009 about 28,500 migrant workers had left their legal employers. Almost 22,000 of the undocumented workers are female, most of them coming from Indonesia and Vietnam (together about 19,000, see figure9), the two countries that send most of the foreign domestic helpers and caregivers to Taiwan.

figure9: 2002- 2009, Undocumented female migrant workers by country

Becoming undocumented: Fear of high costs and bad working conditions

There are two main reasons why workers run away: 1) It is the end of the legal contract. Workers don't want to go home, pay the placement fee, air-fare etc. again to come back. 2) Migrant workers in Taiwan don't have the freedom to choose or change their employers¹⁵. They either put up with abusive working conditions or decide to become a so-called "runaway worker". Of course there are legal ways to change the workplace when the employer violated laws and regulations. Many workers, however do not trust government agencies and believe they will always decide in favour of the employer.

Becoming undocumented - is undoubtedly - risky. The workers lose their legal status, are no longer covered by the health insurance. If caught by the police they will be detained, have to pay a penalty of NTD 10,000 (US\$ 300) and finally will be repatriated to their home country. Many are still willing to take the risk. They are often working in the informal sector and, aware of their irregular status, try not to leave the house very often. Undocumented workers are especially vulnerable to abuse and exploitation and can easily become victims of trafficking. Illegal employers and brokers can threaten to report the migrant workers to the immigration agencies. The problems already mentioned in the last chapter also apply to undocumented workers.

¹⁵ To change the employer the worker needs the agreement of the actual employer.

b) Existing policies and ways to deal with the problem

- Penalties for illegal employment or hiring: If government agencies find out about illegal employment, the illegal employer has to pay a penalty.
Fine for illegal hiring of workers: NTD 150,000 to NTD 750,000 (US\$ 4,287-US\$ 21,435)
Problem: often the fine is very light.
- Reward of NTD 5,000 (US\$ 143) for each reported case of a runaway foreign worker.
- Fine for migrant workers working for an illegal employer: NTD 30,000 – NTD 150,000 (US\$ 857 – US\$ 4,287), but the usual penalty for irregular migrant workers is NTD 10,000 (US\$ 285).

c) Recommendations

- More thought for the well being and human rights of migrant workers should be given in formulating Foreign Labor Policies. Besides that, laws and regulations need to become more gender sensitive.
- Research is required about the reasons for migrant workers, especially caregivers and domestic workers, fleeing their workplaces. Undocumented workers should not only be seen as violators of immigration laws but also as victims of unscrupulous recruiters and/or employers and of defective migration policies.
- Although there are fines for illegal employers, it still seems to be attractive to hire an undocumented worker. The penalties have to become harsher.
- Law enforcement agencies should receive better training to be able to distinguish between “real” undocumented workers and, for example, victims of trafficking.