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緣 起

人口販運不僅危害基本人權，亦是侵害自由的嚴重犯罪行為，具有跨國境及有組織性的性質，聯合國的人口販運問題報告顯示，全球人口販運案件有 40% 具有跨國境特色，雙邊及多邊（區域性或全球性）國際交流合作，係不可或缺之防制策略，內政部(移民署)為強化與各國合作關係，精進我國防制人口販運工作，每年邀請國內外政府官員及非政府組織等民間團體人員齊聚一堂，辦理防制人口販運國際工作坊，共同探討防制人口販運相關議題。

現代化奴役行為等於是人口販運的代名詞，為因應新興的人口販運議題及探討防制的策略作為，本次工作坊規劃主題包含「人口販運之新興樣態及趨勢」、「人口販運與詐騙：現況、挑戰及對策」、「脆弱群體之防制人口販運策略：家事移工及外籍船員之權益提升」及「外籍學生於人口販運中的風險與預防」等議題。

Background

Human trafficking violates fundamental human rights and is a severe criminal act against freedom, with organized and transnational characteristics. According to the Trafficking in Persons Report (TIP report) by the United Nations, 40% of global human trafficking cases are cross-border. Bilateral and multilateral (regional or global) international collaboration is an indispensable strategy for combating this issue. The National Immigration Agency, Ministry of the Interior, to enhance cooperation with various countries and improve our nation's anti-human trafficking initiatives, invites officials from both domestic and foreign governments, as well as members of non-governmental organizations and other civil societies, to convene annually for the International Workshop on Strategies for Combating Human Trafficking. In these workshops, participants jointly explore various topics related to combating human trafficking.

Modern slavery is essentially synonymous with human trafficking. To address the emerging trends in human trafficking and discuss preventative strategies, the agenda for this year's workshop includes topics such as " The Emerging Forms and Trends of Human Trafficking," " Human Trafficking and Fraud: Current Situation, Challenges and Countermeasures," " Anti-Trafficking Strategies for Vulnerable Populations: Improving the Rights and Interests of Migrant Domestic Workers and Foreign Crew Members," and " Risks and Prevention of Foreign Students in Human Trafficking."

議程表

2023 年 9 月 7 日

地點：財團法人張榮發基金會國際會議中心 11 樓 1101 會議室

時間	議程
09:00-09:30	報 到
議題三：脆弱群體之防制人口販運策略：家事移工及外籍船員之權益提升	
主持人：行政院防制人口販運及消除種族歧視協調會報委員李凱莉	
09:30-10:00 (30 分鐘)	家事移工之人口販運：從英國最高法院案例 Basfar v Wong 汲取之經驗 主講人：英國皇家哈洛威大學法律與犯罪學系講師 Dr. Mohammad Sabuj
10:00-10:30 (30 分鐘)	外籍家事移工勞動權益提升相關策略 主講人：印尼勞動部勞動協調處高級督導 Mr. Fransiskus Xaverius Watratan
10:30-11:00 (30 分鐘)	漁業與人權行動計畫及國際勞工組織漁業工作公約 (C188) 之關聯 主講人：行政院農業委員會漁業署技正胡邵鈞
11:00-11:20 (20 分鐘)	茶 敘
11:20-12:20 (60 分鐘)	與談人：(20 分鐘-每位各 10 分鐘) 1. 環境正義基金會專案主任葉于瑄 2. 財團法人法律扶助基金會律師陳威延 雙向交流 (40 分鐘)
12:20-14:00 (100 分鐘)	午 餐
議題四：外籍學生於人口販運中的風險與預防	
主持人：行政院防制人口販運及消除種族歧視協調會報委員林盈君	
14:00-14:30 (30 分鐘)	外籍學生落入人口販運之實例分享 主講人：臺灣彰化地方檢察署檢察官蔡奇曉
14:30-15:00 (30 分鐘)	外籍學生權益保障與人口販運防制策略 主講人：日本京都大學副教授安里和晃
15:00-15:20 (20 分鐘)	茶 敘
15:20-16:50 (90 分鐘)	與談人：(45 分鐘-每位各 15 分鐘) 1. 獨立記者出井康博 2. 英國國家犯罪防制局派駐香港(兼轄臺灣、日本及澳門)國際聯絡官 Mr. Andrew Sprake 3. 國際新聞編譯張郁婕 雙向交流 (45 分鐘)

Agenda

Sep 7th, 2023 (Thursday) Venue : Chang Yung-Fa Foundation International Convention Center 11F

Time	Agenda
09:00-09:30	Registration
Session 3 : Anti-Trafficking Strategies for Vulnerable Populations: Improving the Rights and Interests of Migrant Domestic Workers and Foreign Crew Members Moderator : Committee Member of the Executive Yuan Coordination Committee on Prevention of Human Trafficking and Elimination of Racial Discrimination, Ms. Kai Li Lee	
09:30-10:00 (30mins)	Human Trafficking of Domestic Workers: Lessons learned from the UK Supreme Court Case Basfar v Wong Speaker: Department of Law and Criminology, Royal Holloway, University of London, U.K., Lecturer in Law, Dr. Mohammad Sabuj
10:00-10:30 (30mins)	Strategies for Improving Migrant Domestic Workers' Labor Rights and Interests Speaker: Labor Coordination Office, the Ministry of Manpower, Indonesia Senior Supervisor, Mr. Fransiskus Xaverius Watratan
10:30-11:00 (30mins)	The Connection between Action Plan for Fisheries and Human Rights and the International Labour Organization's Work in Fishing Convention (ILO C188) Speaker: Fisheries Agency, Council of Agriculture, Executive Yuan, Specialist, Mr. Shao-Chun Hu
11:00-11:20 (20mins)	Refreshment
11:20-12:20 (60mins)	Commentators : (20 Mins) 1. Environmental Justice Foundation, Campaigner, Ms. Yu-Hsuan Yeh 2. Legal Aid Foundation, Lawyer, Mr. Wei-Yan Chen Open Discussion (40 Mins)
12:20-14:00 (100mins)	Lunch Break
Session 4 : Risks and Prevention of Foreign Students in Human Trafficking Moderator : Committee Member of the Executive Yuan Coordination Committee on Prevention of Human Trafficking and Elimination of Racial Discrimination, Ms. Ying Chun Lin	
14:00-14:30 (30mins)	Case Studies of Foreign Students Falling Victim to Human Trafficking Speaker: Taiwan Changhua District Prosecutors Office, Prosecutor, Mr. Chi-Hsiao Tsai
14:30-15:00 (30mins)	Protection of Foreign Students' Rights and Interests and Related Strategies for Human Trafficking Prevention Speaker: Kyoto University, Japan, Associate Professor, Mr. Wako Asato
15:00-15:20 (20mins)	Refreshment
15:20-16:50 (90mins)	Commentators : (45 Mins) 1. Journalist based in Tokyo, Japan, Mr. Yasuhiro Idei 2. National Crime Agency, U.K., International Liaison Officer, Mr. Andrew Sprake 3. Freelance Journalist and Founder of Ishikawa Kaori's Japan News, Ms. Yu-Chieh Chang Open Discussion (45 Mins)

議事規則

項目	進行方式
專題演講	每場演講時間依議程進行 結束前五分鐘第一次舉牌提醒 時間終了舉牌提醒
雙向交流	開放與會來賓提問與討論 與會來賓提問均須先舉手 經主席同意後，取得發言權

Rules of Procedure

ITEM	DESCRIPTION
Session	Duration of each lecture depends on the agenda. When there are 5 minutes left, we will hold a sign to notify you of the remaining time. When time's up, we will hold the sign to notify you.
Open Discussion	To give and inquiry, please raise your hand before remark.

第三場

脆弱群體之防制人口販運策略：

家事移工及外籍船員之權益提升

Session 3

**Anti-Trafficking Strategies for Vulnerable
Populations: Improving the Rights and
Interests of Migrant Domestic Workers and
Foreign Crew Members**

主持人
履歷

行政院防制人口販運及消除種族歧視協調會報委員 李凱莉

學歷

- ◆ 東海大學社會學研究所碩士

現職

- ◆ 財團法人勵馨社會福利事業基金會 移住者服務中心主任

現任

- ◆ 行政院防制人口販運及消除種族歧視協調會報第八屆委員 (110/2/2-112/2/1)

- ◆ 內政部移民署跨國境婚姻媒合管理審查小組委員 (1100101-1111231)

- ◆ 勞動部 110 年度私立就業服務機構從事跨國人力仲介服務品質評鑑諮詢小組委員

- ◆ 基隆市政府兒少性剝削防制諮詢會諮詢委員(109 度迄今)

經歷

- ◆ 遊戲分級適切性評議會委員(105-106 年度依兒童及少年福利與權益保障法辦理)

- ◆ 香港中文大學、浸會大學、台灣大學、台北大學及東海大學等校實習督導

- ◆ 勵馨基金會社工督導、研發專員及國際事務專員

- ◆ 財團法人台灣基督長老教會高雄中會事工幹事

- ◆ 行政院青輔會專案執行

專長

- ◆ 人口販運防制、外國籍被害人服務、移工人權及兒少性剝削防制

Ms. Kai Li Lee

Committee Member of the Executive Yuan Coordination Committee on Prevention of Human Trafficking and Elimination of Racial Discrimination

CV of Moderator

- Education ♦ Master, Graduate Institute of Department of Sociology, Tunghai University
- Current Position ♦ Director, Migrant Service Center, The Garden of Hope Foundation
- Incumbent ♦ Member of Child Sexual Exploitation Prevention Advisory Committee, Keelung Municipal Government, FY 2020
- Experience ♦ Member of the Annual Game Classification Appropriateness Review Board, 2016-2017 (based on The Protection of Children and Youths Welfare and Rights Act)
 - ♦
 - ♦ Supervisor, New Taipei City Foreign Worker Shelter Center, The Garden of Hope Foundation
 - ♦ Coordinator, Research and Development Division, The Garden of Hope Foundation
 - ♦ Coordinator of International Affairs, The Garden of Hope Foundation
 - ♦ Secretary, Taiwan Presbyterian Church, Kaohsiung Office
 - ♦ Project Coordinator, National Youth Commission, Executive Yuan
- Expertise ♦ Human Trafficking and Child Sexual Exploitation Issues, Child Welfare

家事移工之人口販運：從英國最高法院案例

Basfar v Wong 汲取之經驗

Human Trafficking of Domestic Workers:

Lessons learned from the UK Supreme Court

Case Basfar v Wong

主講人

英國皇家哈洛威大學法律與犯罪學系講師

Speaker

Dr. Mohammad Sabuj

Lecturer in Law, Department of Law and Criminology,

Royal Holloway, University of London, U.K.

主講人
履歷

英國皇家哈洛威大學法律與犯罪學系講師
Dr. Mohammad Sabuj



學歷

- ◆ 法學博士
-諾桑比亞大學 (2018)
- ◆ 法學 (榮譽) 學士
-倫敦大學 (2012)
-發展學院大學 (2007)
- ◆ 法學碩士
-諾桑比亞大學 (2014)
- ◆ 律師職業培訓課程 (2014)
-諾桑比亞大學

教學資格：高等教育學院 (HEA) 研究員 (2014)

經歷

- ◆ 2019年9月-至今：倫敦皇家霍洛威大學法學和社會科學學院法學講師
- ◆ 2018年6月-2019年8月：薩福克大學法學和社會科學學院法學講師
- ◆ 2016年9月-2018年6月：諾桑比亞大學法學院副講師

Dr. Mohammad Sabuj
Department of Law and Criminology
Royal Holloway, University of London, U.K., Lecturer in
Law



Education

- ♦ PhD – LAW
– Northumbria University (2018)
- ♦ LLB (Hons) Degree
– University of London (2012)
– University of Development Academy (Bangladesh) (2007)
- ♦ LLM
– Northumbria University (2014)
- ♦ BAR PROFESSIONAL TRAINING COURSE
– Northumbria University (2014)
- ♦ Teaching Qualification: Fellow of the Higher Education Academy (HEA).

Experience

- ♦ Lecturer in Law, Royal Holloway University of London, School of Law and Social Sciences, September 2019 – Present.
- ♦ Lecturer in Law, University of Suffolk School of Law and Social Sciences, June 2018 – August 2019.
- ♦ Associate Lecturer, University of Northumbria Law School, September 2016 – June 2018.

家事移工之人口販運：從英國最高法院案例
Basfar v Wong 汲取之經驗 [2022] UKSC 20.

Dr Mohammad Sabuj –
英國皇家哈洛威學院法律與犯罪學系講師



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Human Trafficking of Domestic Workers:
Lessons Learned from the UK Supreme Court
Case *Basfar v Wong* [2022] UKSC 20.

Dr Mohammad Sabuj – Royal Holloway, University of
London, UK.



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大綱



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- 案件背景
- 英國最高法院判決
- 議題
- *Al-Malki v Reyes* [2017] UKSC 61 案件之外交豁免權
- 相關法條
- 法律解釋
- 國際法規定的國家責任
- 商業活動
- 異議判決
- 改變法律
- 最高法院辯論
- 「個人利益」元素
- 從本案汲取之經驗

Overview



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- Background of the case.
- Judgment of the UK Supreme Court.
- Issues.
- Diplomatic immunity in *Al-Malki v Reyes* [2017] UKSC 61.
- Relevant law.
- Interpretation of the law.
- State responsibility under international law.
- Commercial activity.
- The dissenting judgment.
- Changing the law.
- Arguments before the SC.
- The 'Personal profit' element.
- Lessons learned.

案件背景



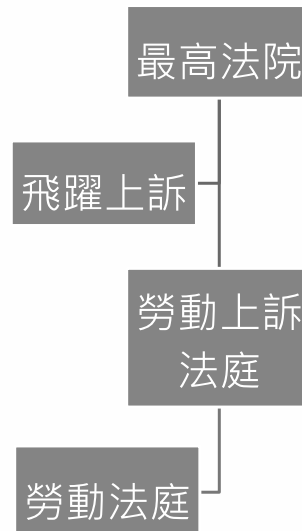
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Basfar :

沙烏地阿拉伯王國駐英使團成員

Wong:

受僱於 **Mr. Basfar** 家中之家事勞動者



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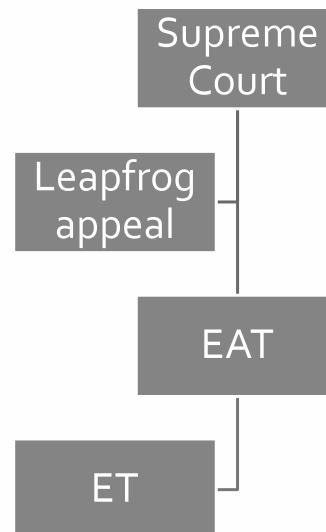
Background of the case



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Basfar: A member of the diplomatic staff of the mission of the Kingdom of Saudi Arabia in the United Kingdom

Wong: A domestic worker employed by the diplomatic household of Mr Basfar.



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背景 (續)



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- **勞動法庭**：拒絕駁回 Ms. Wong 提出的工資和侵犯就業權利的索賠。
- **勞動上訴法庭**：
允許 Mr Basfar 針對這一判決提出上訴，但出具了一份證明書，表明該案適合 Ms. Wong 「飛躍」上訴法院，直接向最高法院上訴。
- **最高法院**：批准飛躍上訴。

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Background (cont.)



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- ET: Refused to struck out the claim made by Ms Wong for wages and breaches of employment rights.
- EAT: Allowed Mr Basfar's appeal against this decision but issued a certificate that the case was suitable for an appeal by Ms Wong directly to the Supreme Court "leapfrogging" the Court of Appeal.
- SC: Granted permission for the leapfrog appeal.

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判決 3:2



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多數

Lord Briggs

Lord Leggatt

Lord Stephens

少數

Lord Hamblen

Lady Rose



The
SUPREME
COURT

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Judgment 3:2



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Majority

Lord Briggs

Lord Leggatt

Lord Stephens

Minority

Lord Hamblen

Lady Rose



The
SUPREME
COURT

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議題



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法律： 根據1961年《維也納外交關係公約》，外交代表享有接受國刑事管轄的完全豁免權且一般也不受其民事管轄。

例外： 其中一種例外與「外交代表在其公務之外在接受國從事的任何專業或商業活動」的民事索賠相關。

議題： 針對該上訴所提出的質疑是以所指控的方式剝削家事勞動者是否構成在1961年《維也納外交關係公約》第31條(1)(c)中的「商業活動」外交豁免權例外範圍內之「進行商業活動」。

Issues



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Law: Under the Vienna Convention on Diplomatic Relations 1961, diplomatic agents enjoy complete immunity from the criminal jurisdiction of the receiving state and are also generally immune from its civil jurisdiction.

Exception: There is an exception for civil claims relating to “any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions”.

Issue: The question raised on this appeal is whether exploiting a domestic worker in the manner alleged constitutes “exercising” a “commercial activity” within this exception. The “commercial activity” exception to diplomatic immunity in Article 31(1)(c) of the Vienna Convention on Diplomatic Relations 1961.

Al-Malki v Reyes [2017] UKSC 61 案件之外交豁免權



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- 外交人員「過往」行為之豁免權。
- 事實差異：該外交人員的任職在訴訟期間結束。
- 最高法院允許上訴的理由是，在外交人員作為使團成員的職能結束後，過去行為的豁免權僅適用於在行使這些職能時的行為。
- 如果他還在職位上怎麼辦？該外交人員是否享有豁免權？
- 最高法院少數法官清楚表示該外交人員享有豁免權。
- 最高法院多數法官對此抱持懷疑態度。

Diplomatic immunity in *Al-Malki v Reyes* [2017] UKSC 61



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- Immunity for the PAST actions of a diplomat.
- **Factual difference:** The diplomat's posting ended during the litigation.
- The SC allowed the appeal on the ground that, after a diplomat's functions as a member of the mission have come to an end, immunity for past acts continues to subsist **only for acts which were performed in the exercise of those functions.**
- What if he had still been in post? Would the diplomat have had immunity?
- A minority of the Supreme Court expressed a clear view that he **would**.
- A majority of the Court considered this to be very much in **doubt**.



為什麼本上訴對最高法院來說很重要？

- 外國外交官剝削家事移工是一個重大問題，因此針對此一上訴所提出的問題具有普遍重要性。
- Mr Basfar，不像 Reyes，仍在其外交官職位上。
- 《外交公約》第 42 條關於個人利益之規定：「外交代表不得在接受國從事謀取個人利益的任何專業或者商業活動。」
- 謀取個人利益的剝削：「然而就目前而言，沒有必要決定這一點。這是因為，正如我們下面所解釋的，我們根據假定的事實確信 Mr. Basfar 對 Ms. Wong 的剝削是為了他的個人利益。」（最高法院，段落 41）。
- 普通就業（自願）vs 現代奴隸制（強制和控制）。

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Why the appeal was important to the SC?

- Exploitation of migrant domestic workers by foreign diplomats is a significant problem, so the question raised on this appeal is one of general importance.
- **Mr Basfar was still serving as a diplomat unlike in Reyes.**
- Personal profit provision in article 42 of the Diplomatic Convention: "A diplomatic agent shall not in the receiving state practise for personal profit any professional or commercial activity."
- Exploitation for personal profit: "For present purposes, however, it is unnecessary to decide this point. This is because, as we explain below, we are satisfied that, on the assumed facts, Mr Basfar's exploitation of Ms Wong was undertaken for his personal profit.": SC at para 41.
- Ordinary employment (voluntary) vs Modern Slavery (coercion and control).

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相關法條

國際法

- 1961 年《維也納外交關係公約》（「外交公約」），有 193 個締約國- 第 1、22-24、27-40 和 45 條。
- 主要法條：31(1)(c).
- 1969 年維也納條約法公約。
- 聯合國打擊跨國有組織犯罪公約關於預防、禁止和懲治販運人口特別是婦女和兒童行為的補充議定書（巴勒莫議定書）。

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本國法

- 1964 年《外交特權法》，第 2 條(1)。
- 英國《1978 年國家豁免法》第 3 和 4 條。

Relevant laws



International law

- Vienna Convention on Diplomatic Relations 1961 (the "Diplomatic Convention"), to which 193 states are parties - articles 1, 22-24, 27-40 and 45.
- Main article: 31(1)(c).
- Vienna Convention on the Law of Treaties 1969.
- The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol).

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Domestic law

- Section 2(1) of the Diplomatic Privileges Act 1964, s 2(1).
- UK State Immunity Act 1978 contains, Ss 3 and 4.

相關法條



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- 《外交公約》第 31 條 (1)(c) 規定了「**商業活動**」之例外情況。此一例外適用於以下情況：「**與外交代表在其公務之外在接受國所從事之任何專業或商業活動有關行為。**」
- 雖然此類特權和豁免權通常在外交代表的職能結束時終止，但對於外交代表在履行使團成員職能時所實施的行為，豁免權仍然存在：第 39 條 (2)。
- 「並不是說 Mr. Basfar 所受指控之行為是『專業』活動。問題在於，這些行為是否屬於《外交公約》31 (1)(c) 所指之『商業活動』。」 [段落 15]

Relevant law



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- Article 31(1)(c) of the Diplomatic Convention provides for the '**commercial activity**' exception. This exception applies in the case of: "**an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.**"
- Although such privileges and immunities normally cease when the functions of a diplomatic agent have come to an end, immunity continues to subsist with respect to acts performed in the exercise of his functions as a member of the mission: article 39(2).
- 'It is not suggested that the alleged acts of Mr Basfar were a "professional" activity. The question is whether they were a "commercial activity exercised" by him within the meaning of article 31(1)(c) of the Diplomatic Convention' [para 15].



- 「條約應依其用語按其上下文並參照條約之目的及宗旨所具有之通常意義，善意解釋之。」：維也納條約公約 31(1)。
- 「應與上下文一併考慮者尚有：
- (甲) 當事國嗣後所訂關於條約之解釋或其規定之適用之任何協定
- (乙) 嗣後在條約適用方面確定各當事國對條約解釋之協定之任何慣例
- (丙) 適用於當事國間關係之任何有關國際法規則。」：第 31 條 (3)。

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- “A treaty shall be interpreted in **good faith** in accordance with the **ordinary meaning** to be given to the terms of the treaty in their context and in the light of its object and purpose”: article 31(1) of the Treaties Convention.
- “[t]here shall be taken into account, together with the context:
- “(a) any **subsequent agreement** between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any **subsequent practice** in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any **relevant rules of international law** applicable in the relations between the parties.”: article 31 (3).

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- 為證實由適用第 31 條所得之意義起見，或遇依第三十一條作解釋而意義仍屬不明或難解；或所獲結果顯屬荒謬或不合理時，為確定其意義起見，得使用解釋之補充資料，包括條約之準備工作及締約之結果：第 32 條。
- 「人口販運」一詞在《2000 聯合國打擊跨國有組織犯罪公約關於預防、禁止和懲治販運人口特別是婦女和兒童行為的補充議定書》（“巴勒莫議定書”）有所定義。



- The Convention permits recourse to **supplementary means of interpretation**, including the **preparatory work** of the treaty and the **circumstances of its conclusion**, in order to confirm the meaning resulting from the application of article 31 or if applying article 31 leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable: article 32.
- The term “**trafficking in persons**” is defined in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000 (the “Palermo Protocol”).

國際法規定的國家責任



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- 各締約國均應確保「本國的法律制度包括各項必要措施，使人口販運被害人可以就所受損害獲得賠償」：巴勒莫議定書第 6 條 (6)。
- 2005 年《歐洲委員會打擊人口販運公約》第 15 條 (3)對締約國 規定了類似的義務。
- 《歐洲人權公約》第4條禁止奴役、勞役和強迫或強制勞動。
- 在 *Rantsev v Cyprus and Russia (2010) 51 EHRR 1* 中，歐洲人權委員會認為，雖然沒有明確提及，但人口販運也屬於第 4 條的範圍，並且成員國根據第 4 條負有積極義務，其中包括有義務建立立法和行政框架，以禁止和懲罰人口販運。
- 《歐洲人權公約》第 6 條賦予訴諸法院的權力。

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State responsibility under international law



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- Each state party to ensure that “its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”: article 6(6) of the Palermo Protocol.
- A similar obligation is imposed on states which are parties to the Council of Europe Convention on Action against Trafficking in Human Beings 2005 by article 15(3).
- Article 4 of the ECHR prohibits slavery, servitude and forced or compulsory labour.
- In *Rantsev v Cyprus and Russia (2010) 51 EHRR 1*, the European Ct of HR held that, although not expressly referred to, human trafficking also falls within the scope of article 4 and that member states have **positive obligations under article 4** which include an obligation to **put in place a legislative and administrative framework to prohibit and punish human trafficking**.
- Article 6 of the ECHR confers a right of access to the courts.

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商業活動



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- 問題不在於合法性。
- 「第 31 條 (1) (c) 規定的外交豁免權例外並非以相關活動是否違反國際法或侵犯人權為依據。唯一的問題是該活動是『專業的還是商業的』。當然，一些商業活動違反國際法規則，例如非法毒品交易。但一項活動是否非法這一事實與它是否具有商業性沒有直接關係」：段落 25。
- 最高法院同意 Mr. Basfar 的論點，即「僱用家事勞動者本身並不構成外交代表在例外情況下從事『商業活動』。」：段落 27。
- 所以，究竟何謂「商業活動」？

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Commercial activity



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- The question is not legality.
- The exception to diplomatic immunity created by article 31(1)(c) is not based on whether the relevant activity is contrary to international law or violates human rights. The sole question is whether the activity is “professional or commercial”. Certainly, some commercial activities are contrary to rules of international law, for example dealing in illicit drugs. But the fact that an activity is unlawful has no direct bearing on whether or not it is commercial”: Para 25.
- SC agreed with Mr Basfar’s contention that “employing a domestic worker does not itself constitute the exercise of a “commercial activity” by a diplomatic agent within the meaning of the exception.”: Para 27.
- So, what is a ‘commercial activity’.

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與 Lord Sumption 在 Reyes 案上見解之分歧



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- 多數最高法院法官批評 Lord Sumption 在 Reyes 案中的見解，並在「通常含義」的支持下擴展了「商業活動」的含義。
- 『進行商業活動』的通常含義僅限於『開展業務』或『開辦商店』。當然，這些詞的通常含義也包括這些概念，但不僅限於此」：段落 28。
- 《國家豁免法》表明，購買商品和服務以及簽訂僱傭契約是否應被視為進行『商業活動』的問題不能僅僅通過查詢這些詞的通常含義來回答。.....在國家豁免權的背景下，進行『商業活動』包括僱用私人家庭傭人或在商店購買商品。這些詞語在《外交公約》第 31 條 (1) (c) 中使用時是否具有相同的含義，這個問題只能通過審查上下文以及更重要的是審查該條款的目的來回答。」：段落 32。

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Disagreement with Lord Sumption in Reyes



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- Criticising Lord Sumption in Reyes, majority of the SC extended the meaning of 'commercial activity' under the auspices of '**ordinary meaning**'.
- ... that the ordinary meaning of "exercising" a "commercial activity" is restricted to "carrying on a business" or "setting up shop". Certainly, the ordinary meaning of the words includes those concepts. But it is not limited to them": Para 28.
- ... the law on state immunity shows is that the question whether purchasing goods and services, and entering into a contract of employment, is to be regarded as exercising a "commercial activity" cannot be answered just by interrogating the ordinary meaning of those words. ... In the context of state immunity, exercising a "commercial activity" includes employing a private domestic servant or purchasing goods in a shop. Whether the words bear the same meaning where they are used in article 31(1)(c) of the Diplomatic Convention is a question that can only be answered by examining the **context** and, importantly, the **purpose** of that provision": Para 32.

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與其它司法轄區比較



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- 美國 1976 年外國主權豁免法。
- 1985 年《加拿大國家豁免法》第 5 條對於「與外國任何商業活動有關的任何活動」也有類似的例外規定。
- 就這些例外情況而言，在外國僱用個人履行非政府職能被視為「商業活動」：
- 見 *El-Hadad v United Arab Emirates*, 216 F 3d 29 (DC Cir 2000); *re 加拿大勞動法* [1992] 2 SCR 50, 79 (加拿大最高法院)。
- 美國第九巡迴上訴法院認為，僱傭私人家庭傭人的行為屬於國家豁免權例外之商業活動：*Park v Shin*, 313 F 3d 1138 (9th Cir 2002).
- 在 *Tabion v Mufti* (1996) 73 F 3d 和 *Sabbithi v Al Saleh* (2009) 605 F Supp 2d 122 案件中，美國法院駁回了採用「商業活動」之擴展定義的論點。

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Comparison with Other jurisdictions



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- The United States Foreign Sovereign Immunities Act of 1976.
- There is a similar exception in section 5 of the Canadian State Immunity Act 1985 for “any proceedings that relate to any commercial activity of the foreign state”.
- For the purposes of these exceptions, employment of an individual by the foreign state to perform non-governmental functions has been held to be a “commercial activity”:
- see *El-Hadad v United Arab Emirates*, 216 F 3d 29 (DC Cir 2000); *re Canada Labour Code* [1992] 2 SCR 50, 79 (Supreme Court of Canada).
- It has been held by the US Ninth Circuit Court of Appeals that the act of hiring a personal domestic servant comes within the commercial activity exception to state immunity: *Park v Shin*, 313 F 3d 1138 (9th Cir 2002).
- In *Tabion v Mufti* (1996) 73 F 3d and *Sabbithi v Al Saleh* (2009) 605 F Supp 2d 122, the US courts rejected the arguments to adopt an extended definition of ‘commercial activity’.

LORD HAMBLEN 和 LADY ROSE: (反對)



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- 消費者 vs. 企業

從日常用語來看，我們不認為一個人購買商品或服務供個人使用即構成商業活動。作為消費者和作為企業之間在諸多法律面向上都是重要的區別。我們同意 Lord Sumption 在 Reyes 案段落 51 中的陳述，即「沒有合理理由認為第 31 條 (1)(c) 會使商品和服務的消費成為商業活動」：段落 111。

- 兩位法官都同意 Ms. Wong 的僱傭不屬於「商業活動」，但理由不同：

就第 31 條 (1)(c) 而言，家事勞動者的正常聘僱不屬於「商業活動」的定義，因為它是日常生活中附帶發生的活動，而且，因為家庭日常生活的行為本身並不是「商業活動」...：段落 112。

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LORD HAMBLEN AND LADY ROSE: (dissenting)



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- **Consumer versus business**

... We do not agree that as a matter of ordinary language, a person exercises a commercial activity when they buy goods or services for their personal use. The distinction between acting as a consumer and acting as a business is an important distinction in many aspects of the law. We agree with Lord Sumption's statement in Reyes at para 51 that "there is no sense which can reasonably be given to article 31(1)(c) which would make the consumption of goods and services the exercise [of] a commercial activity": Para 111.

- **Both justices agreed that the employment of Ms Wong was outside of 'commercial activity' BUT on a different reasoning:**

The reason the normal employment of a domestic worker falls outside the definition of "commercial activity" for the purposes of article 31(1)(c) is because it is an activity that is **incidental to the ordinary conduct of daily life** and, further, because the **conduct of the daily life of the household is not itself a "commercial activity"**....: Para 112.

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... 我們認為，在任何這些資訊來源中都找不到任何證據表明「商業活動」一詞的含義已經擴展至包括被販運的就業：段落 113 (ii)。

- 「商業活動」含義的擴展被駁回：

將第 31 條(1)(c)的例外擴大到包括被販運的就業，或者更廣泛地說，包括大多數人描述的剝削性就業，有可能嚴重損害外交豁免權的範圍。這是因為涵蓋內容和未涵蓋內容之間的界限存在不確定性，而且仲裁庭為了以這種新方式適用例外，必須進行侵入性調查。它還可能使英國海外外交官面臨正式或非正式的報復措施：段落 113 (iii)。

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... In our view, there is nothing that can be found in any of those sources to suggest that the meaning of the term “commercial activity” has been expanded so that it now includes trafficked employment: **Para 113 (ii)**.

- Expansion of the meaning of ‘commercial activity’ has been denied:

The expansion of the exception in article 31(1)(c) to include trafficked employment or, more broadly, the kinds of exploitative employment described by the majority, **risks seriously undermining the scope of diplomatic immunity**. This is because of the uncertainty of the boundary between what is and what is not covered and the intrusive nature of the enquiry that a tribunal will have to conduct in order to apply the exception in this new way. It also risks exposing the United Kingdom’s diplomats overseas to formal or informal retaliatory measures: **Para 113 (iii)**.

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第 1 條 (g) 將「公務人員」定義為在使館內從事國內服務的使館工作人員；第 1 條 (h) 將「私人僕人」定義為為使館成員提供家政服務且不是派遣國僱員的人。這些定義很重要，因為外交公約的其它條款對屬於這些定義的人賦予好處。根據第 37 條 (3) 的規定，非接受國國民或永久居民的使館公務人員，其執行職務期間的行為享有豁免。家事勞動者可以要求免除其工作薪資衍生的會費和稅款以及社會保障規定。私人僕人也享有某些特權；見第 37 條 (4)：段落 115。



Article 1(g) defines “**members of the service staff**” as members of the staff of the mission in the domestic service of the mission; a “**private servant**” is defined in article 1(h) as a person who is in the domestic service of a member of the mission and who is not an employee of the sending State. These definitions are important because other provisions of the Diplomatic Convention confer advantages on those falling within those definitions. According to article 37(3), **members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties**. Domestic workers can claim **exemption from dues and taxes** on the payments they receive by reason of their employment and the exemption from social security provision. Private servants also enjoy certain privileges; see article 37(4): Para 115.

那麼，何不挑戰法律？



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- 外交保護的必要性。
- 對外交人員私生活的侵入性調查。
- 來自不友好國家的騷擾。
- 缺乏政治意願。
- 難以界定什麼構成人口販運以及該定義的廣度。
- 例外的範圍，若擴大到超出人口販運範圍並涵蓋其它形式的奴役或剝削性聘僱。
- 擴大例外範圍給英國駐外外交官帶來的風險。



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So, why not change the law?



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- Necessity of diplomatic protection.
- Intrusive investigation into the private life of diplomatic staff.
- Harassment from unfriendly states.
- Lack of political will.
- The difficulty in defining what amounts to trafficking and the breadth of that definition.
- The scope of the exception if it is extended beyond trafficking to cover other forms of slavery or exploitative employment.
- The risks to the UK's diplomats abroad from the expansion of the exception.



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最高法院辯論



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- Ms. Wong 所指控的事實不屬於《巴勒莫議定書》規定的人口販運定義範圍。
- Ms. Wong 在就業法庭上就工資和侵犯其就業權利提出的索賠無論如何都不是「與人口販運有關的訴訟」。
- 作為回應，Ms. Wong 的律師在聽證會後應法院邀請提交的書面意見中辯稱：

即使所指控的事實不屬於人口販運的定義範圍，該申訴也可以適當地定性為與 (a) 強迫勞動及/或 (b) 家庭奴役有關。

- 多數法官於段落 [93] 中表示同意。
- 少數法官於段落 [126] 中表示不同意。

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Arguments at the SC



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- The facts alleged by Ms Wong do not come within the definition of human trafficking set out in the Palermo Protocol.
- Ms Wong's claim in the employment tribunal for wages and breaches of her employment rights is in any case not "an action relating to" human trafficking.
- **In response**, in written submissions filed at the Court's invitation after the hearing, counsel for Ms Wong argued that:

even if the facts alleged do not come within the definition of human trafficking, the claim can properly be characterised as relating to (a) forced labour and/or (b) domestic servitude.

- The Justices in the majority agreed at para [93].
- The Justices in the minority disagreed at para [126].

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「個人利益」元素



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- 通過比較強迫勞動通報案例中家事勞動者與未遭受強迫勞動的家事勞動者自由工作所應獲得的工資，該報告估計，全世界每年約從 340 萬強迫勞動的家事勞動者搾取近 80 億美元的利益。
- - 國際勞工組織 (ILO) 報告 《利益與貧困：強迫勞動的經濟學》 (2014).
- 無付款
- 少付款
- 低於市場工資*
- 假日/病假工資
- -為個人利益而進行的商業活動！

多數 – 贊成「個人利益」元素與「商業活動」相關。

少數 – 否定此結論。

The 'Personal Profit' element



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- By comparing wages earned by domestic workers in reported cases of forced labour with what their counterparts not in forced labour should earn from working freely, the report estimated that profits of nearly **US\$8 billion** are extracted annually from an estimated 3.4m domestic workers in forced labour worldwide.
- - ILO report "Profits and Poverty: the economics of forced labour" (2014).
- **No payment**
- **Missed payments.**
- **Lower than the market wages***
- **Holiday pay/Sick pay**
- -commercial activity practised for personal profit!

Majority – Upheld 'personal profit' element connected to 'commercial activity'.

Minority – Rejected this conclusion.

從本案汲取之經驗



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- *Basfar vs Wong* 是一個特殊的案例，被提交給最高法院，最終 Ms. Wong 以微弱優勢勝訴。然而，她可以執行針對 Mr. Basfar 的判決嗎？
- 在 *Reyes* 案中，最高法院發現更容易得出 al-Maliki 不享有豁免權的結論，因為他的外交職位在訴訟期間終止。有人認為，他過去的行為，例如僱用家事勞動者，並非在履行其外交職能，因此不能享有豁免權。然而，法律分析導致了分歧，例如《巴勒莫議定書》中人口販運定義的擴展、勞動法庭的職權範圍以及「商業活動」例外。
- *Basfar vs Wong* 案中的多數判決顯示，對於國際法律義務的解釋及理解急遽轉向支持定義擴展者的解釋和理解，他們主張國際法需要演變，以與其目的保持一致，儘管反對這種演變的限制主義者提出了挑戰。
- 人口販運的國際法當然已經有所發展，但這種發展在多大程度上影響了「商業活動」例外的變化？

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Lessons learned



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- *Basfar vs Wong* is an exceptional case which went to the SC and ended up with a narrow victory by Ms Wong. However, can she enforce a judgment against Mr Basfar?
- In *Reyes*, the SC found it easier to conclude that al-Maliki did not have immunity as his diplomatic post ended during the litigation. It was held that he cannot entertain immunity for past acts which were not performed in the exercise of his diplomatic function i.e., employing a domestic worker. However, the legal analysis led the way to a division i.e., **extension of the definition of trafficking in the Palermo protocol, the remit of the ET, and the 'commercial activity' exception.**
- The majority judgment in *Basfar vs Wong* shows a **sharp swing towards international legal obligation as interpreted and understood by the expansionists** who advocate for the evolution of international law in order to align with their purpose' albeit the challenges posed by the restrictivists who oppose such evolution.
- **The international law of HT has certainly developed but to what extent that development has affected the change in the 'commercial activity' exception?**



二元論國家：

倡導國際法演變的範圍較小。

一元論國家：空間較大。

限制：擴張主義者所提倡演變之力道，無論在一元論還是二元論國家，都取決於其他國家在雙邊和多邊條約中是否接受。



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Dualist states: Narrower scope to advocate the evolution of international law.

Monist states: The door is open slightly wider.

Caveat: The force of evolution by the expansionists, whether in a monist or dualist state, is subject to the acceptance of other states in bilateral and multilateral treaties.



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feedback
ideas
comments
thoughts
suggestions



是否有問題？
感謝聆聽。



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feedback
ideas
comments
thoughts
suggestions



Any question?
Thank you for your attention.



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外籍家事移工勞動權益提升相關策略
**Strategies for Improving Migrant Domestic
Workers' Labor Rights and Interests**

主講人

印尼勞動部勞動協調處高級督導

Speaker

Mr. Fransiskus Xaverius Watratan

Labor Coordination Office,

the Ministry of Manpower, Indonesia, Senior Supervisor

印尼勞動部勞動協調處高級督導
Mr. Fransiskus Xaverius Watratan



學歷
現職
經歷

加查馬達大學 法律與商業碩士 (2013—2016)

國家犯罪防制局現代奴隸及人口販運組資深經理

1998 年進入公務員招聘考試 (CPNS)，被分配到布魯昆巴縣區勞工局，擔任勞動視察的技術人員。

1999 年至 2002 年擔任南蘇拉威西省布魯庫姆巴縣 (Kandepnaker Kab. Bulukumba) 勞動視察員。

2002 年至 2005 年擔任勞動部與移民局總局的勞動視察總局勞工視察員。

2005 年至 2010 年擔任勞動部與移民局勞動視察總局工資標準監督部門主管，負責勞動視察的發展工作。

2010 年至 2015 年勞動部與移民局勞動視察總局協會保護規範監督部門主管，負責勞動視察的發展工作。

2015 年至 2017 年勞動部勞動視察總局工資標準監督部門主管，負責勞工檢查的發展工作。

2017 年至 2020 年擔任勞動部勞動視察總局工作時間規範、休息時間和工資監督部門主管，負責勞動視察的發展工作。

2020 年至 2021 年擔任勞動部勞動視察總局工作時間規範、休息時間和工資監督部門協調員，負責勞動視察的發展工作。

2021 年至今擔任勞動部勞動視察與職業健康與安全總局勞動規範檢查協調員，負責勞動視察與職業健康與安全的發展工作。

自 2003 年至今擔任勞動部與移民局職員培訓中心勞工檢查領域的專業培訓師。

Mr. Fransiskus Xaverius Watratan
Labor Coordination Office, the Ministry of Manpower,
Indonesia, Senior Supervisor



- Education Magister of Law and Business, University of Gadjah Mada (2013-2016)
- Current Position Labor Coordination Office, the Ministry of Manpower, Indonesia
Senior Supervisor
- Experience ♦ Entered CPNS in 1998 assigned to the District Labor Office. Bulukumba as the technical staff of the labor inspectorate.
- ♦ Labor Inspector of Kandepnaker Kab. Bulukumba South Sulawesi in 1999 – 2002.
- ♦ Labor Inspector of the Ministry of Manpower and Transmigration Directorate General. Development of Labor Inspection in 2002-2005.
- ♦ Head of the Directorate General of Wage Norms Oversight Section. Development of Labor Inspection of the Ministry of Manpower and Transmigration in 2005-2010.
- ♦ Head of Section for Supervision of Associational Protection Norms, Directorate General. Development of Labor Inspection of the Ministry of Manpower and Transmigration in 2010-2015.
- ♦ Head of the Directorate General of Wage Norms Oversight Section. Development of Labor Inspection of the Ministry of Manpower in 2015-2017.
- ♦ Head of Sub-Directorate for Supervision of Working Time Norms, Rest Time and Wages of the Directorate General. Development of Labor Inspection of the Ministry of Manpower in 2017-2020.
- ♦ Coordinator of the Sub-Directorate for Supervision of Working Time Norms, Rest Time and Wages of the Directorate General. Development of Labor Inspection of the Ministry of Manpower in 2020-2021.

- ♦ Associate Expert Labor Inspector/ Coordinator of Examination of Training Norms, Placement, Work Relations and Association Protection, Dit. Directorate General of Labor Norms Inspection. Development of Labor Inspection & K3 of the Ministry of Manpower in 2021-present.
- ♦ Extraordinary Widyaiswara in the field of Labor Inspection at the Staff Training Center of the Ministry of Manpower and Transmigration in 2003-present.



**KEMENTERIAN KETENAGAKERJAAN
REPUBLIK INDONESIA**
Ministry of Manpower of the Republic of Indonesia



透過勞動檢查 保護印尼外籍移工

F.X. WATRATAN, SH, MH.
勞工部勞動規範檢查發展署
防制人口販運國際工作坊
2023年9月6-7日，台北



**KEMENTERIAN KETENAGAKERJAAN
REPUBLIK INDONESIA**
Ministry of Manpower of the Republic of Indonesia



LABOR INSPECTION FOR THE PROTECTION OF INDONESIAN MIGRANT WORKERS

F.X. WATRATAN, SH, MH.
Directorate of Labour Norms Inspection Development, Ministry of Manpower of Indonesia
“International Workshop on Strategies for Combating Human Trafficking”
Taipei, 6 - 7 September 2023

到國外工作



每位印尼公民的
權利

WORKING ABROAD



**RIGHTS
OF EVERY CITIZEN
INDONESIA**



ADD A FOOTER

監管法規

1. UU Uap Tahun 1930 (*Stoom Ordonantie*).
2. UU No. 1 Tahun 1970 tentang Keselamatan Kerja.
3. UU No. 7 Tahun 1981 tentang Wajib Laport Ketenagakerjaan di Perusahaan.
4. UU No. 21 Tahun 2000 tentang Serikat Pekerja/Serikat Buruh.
5. UU No. 13 Tahun 2003 tentang Ketenagakerjaan.
6. UU No. 40 tahun 2004 tentang SJSN.
7. UU No. 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial.
8. UU No. 18 Tahun 2017 tentang Pelindungan Pekerja Migran Indonesia.
9. UU No. 11 Tahun 2020 tentang Cipta Kerja

3



ADD A FOOTER

SUPERVISED REGULATION

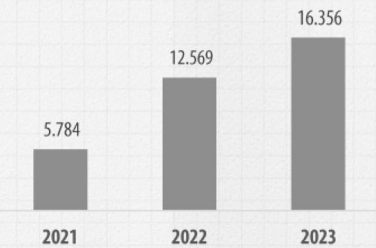
1. UU Uap Tahun 1930 (*Stoom Ordonantie*).
2. UU No. 1 Tahun 1970 tentang Keselamatan Kerja.
3. UU No. 7 Tahun 1981 tentang Wajib Laport Ketenagakerjaan di Perusahaan.
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8. UU No. 18 Tahun 2017 tentang Pelindungan Pekerja Migran Indonesia.
9. UU No. 11 Tahun 2020 tentang Cipta Kerja

3

2023 年印尼移工安置情況



2023 年印尼移工安置情況

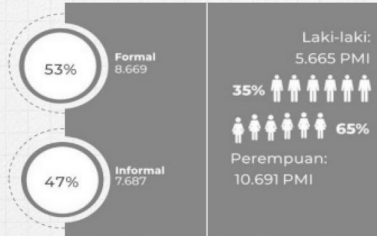


* 2023 年 5 月 1 日資料

- 近兩年來，印尼移工安置數有所增加，2023 年 4 月共有 16,356 名。和過去兩年相比，2021 年 4 月 5,784，2022 年 4 月 12,569
- 2023 年 4 月，大多數印尼移工被安置於正式部門，共 8,669 名 (53%)，非正式部門則有 7,687 個 (47%)
- 按性別劃分，5,665 名 (35%) 印尼移工為男性，10,691 名 (65%) 為女性
- 按省份劃分，印尼移工安置人數最多來自為東爪哇 (4,413)，中爪哇 (3,531) 和西瓜哇 (3,066)。這三個省份加總佔 2023 年 4 月印尼移工安置總數的 67%

資料來源：BP2MI

2023 年 (4 月) 印尼移工安置正式、非正式身份和性別比例



2023 年印尼移工安置 (4 月) 按移工來源省排序

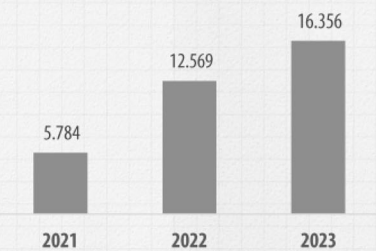
No	Provinsi	Jumlah	No	Provinsi	Jumlah
1	Jawa Timur	4.413	18	Bengkulu	32
2	Jawa Tengah	3.531	19	Kepulauan Riau	23
3	Jawa Barat	3.066	20	Sulawesi Tenggara	20
4	NTB	1.802	21	Jambi	19
5	Lampung	1.356	22	Sulawesi Tengah	18
6	Bali	816	23	Riau	15
7	Sumatera Utara	433	24	Kalimantan Timur	9
8	Banten	190	25	Sulawesi Barat	9
9	NTT	120	26	Kalimantan Selatan	7
10	DKI Jakarta	78	27	Kalimantan Utara	7
11	Sematera Selatan	77	28	Kalimantan Tengah	5
12	Aceh	65	29	Maluku	3
13	Sulawesi Selatan	59	30	Papua	2
14	DI Yogyakarta	58	31	Gorontalo	1
15	Sumatera Barat	49	32	Maluku Utara	1
16	Sulawesi Utara	37	33	Bangka Belitung	0
17	Kalimantan Barat	35	34	Papua Barat	0



CONDITIONS OF PLACEMENT FOR INDONESIAN MIGRANT WORKERS IN 2023



CONDITIONS OF PLACEMENT FOR INDONESIAN MIGRANT WORKERS IN 2023

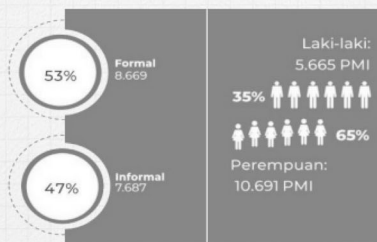


*Data from 1st of May 2023

- The number of IMW placements has increased over the last two years, with a total of 16,356 placements in April 2023. Meanwhile in April 2021 there were 5,784 placements and in April 2022 there were 12,569 placements.
- In April 2023, the majority of PMI were placed in the formal sector, with a total of 8,669 placements (53%), while in the informal sector 7,687 placements (47%)
- Based on gender, 5,665 (35%) IMW male and 10,691 (65%) IMW female
- By province, the largest number of IMW placements came from East Java (4,413 placements), Central Java (3,531 placements), and West Java (3,066 placements). The total of the three provinces constitutes 67% of the total IMW placement in April 2023

Source: BP2MI

PLACEMENT OF INDONESIAN MIGRANT WORKERS IN 2023 (APRIL) BASED ON FORMAL INFORMAL STATUS AND GENDER



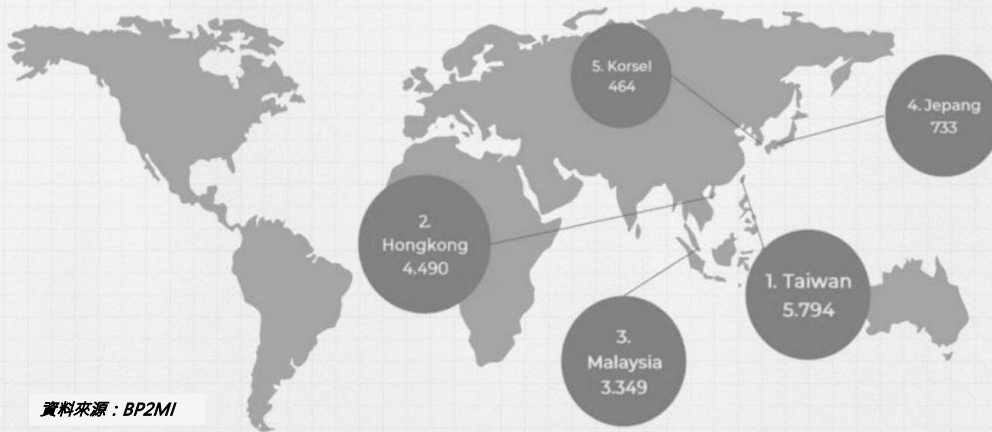
IMW PLACEMENT 2023 (APRIL) BY IMW PROVINCE OF ORIGIN

No	Provinsi	Jumlah	No	Provinsi	Jumlah
1	Jawa Timur	4.413	18	Bengkulu	32
2	Jawa Tengah	3.531	19	Kepulauan Riau	23
3	Jawa Barat	3.066	20	Sulawesi Tenggara	20
4	NTB	1.802	21	Jambi	19
5	Lampung	1.356	22	Sulawesi Tengah	18
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10	DKI Jakarta	78	27	Kalimantan Utara	7
11	Sematera Selatan	77	28	Kalimantan Tengah	5
12	Aceh	65	29	Maluku	3
13	Sulawesi Selatan	59	30	Papua	2
14	DI Yogyakarta	58	31	Gorontalo	1
15	Sumatera Barat	49	32	Maluku Utara	1
16	Sulawesi Utara	37	33	Bangka Belitung	0
17	Kalimantan Barat	35	34	Papua Barat	0



印尼移工安置情況

根據前五大安置國 (2023 年 4 月)



資料來源 : BP2MI

- 按國家來看，印尼移工安置人數最多的地方為台灣 (5,794)、香港 (4,490)、馬來西亞 (3,349)。
- 2023 年 4 月這三個國家的安置數達到總數的 83%

IMW PLACEMENT CONDITIONS

BASED ON 5 HIGHEST PLACING COUNTRIES (APRIL 2023)



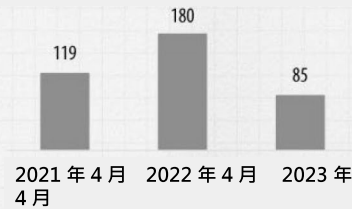
Source: BP2MI

- By country, the most consecutive placements for IMW were Taiwan (5,794 placements), Hongkong (4,490 placements), Malaysia (3,349 placements).
- In April 2023 the number of placements in these three countries reached 83% of the total placement

2023 年印尼移工保護情況



2021、2022、2023 年（4 月）
印尼移工申訴



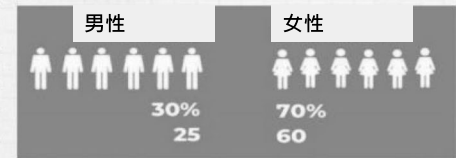
2023 年（4 月）申訴按媒介分



2023 年（4 月）印尼移工申訴按來源省
排序

No	Provinsi	Jumlah	No	Provinsi	Jumlah
1	Jawa Barat	36	18	Jawa Barat	0
2	Jawa Tengah	10	19	Jawa Tengah	0
3	Lampung	5	20	Lampung	0
4	NTB	5	21	NTB	0
5	Bali	4	22	Bali	0
6	Banten	4	23	Banten	0
7	Sulawesi Selatan	4	24	Sulawesi Selatan	0
8	DKI Jakarta	3	25	DKI Jakarta	0
9	Jawa Timur	3	26	Jawa Timur	0
10	Kepulauan Riau	2	27	Kepulauan Riau	0
11	Sulawesi Utara	2	28	Sulawesi Utara	0
12	Sumatera Selatan	2	29	Sumatera Selatan	0
13	Sumatera Utara	2	30	Sumatera Utara	0
14	Riau	1	31	Riau	0
15	Sulawesi Barat	1	32	Sulawesi Barat	0
16	Sulawesi Tengah	1	33	Sulawesi Tengah	0
17	Aceh	0	34	Aceh	0

2023 年（4 月）印尼移工申訴按性別分
排序



- 印尼移工申訴數量有所減少，2023 年 4 月共收到 85 件申訴，其中女性移工有 60 件，而男性移工 25 件。
- 西爪哇和中爪哇是印尼移工申訴數量最多的兩個省份。兩省總申訴量佔總量的 54%。
- 多數申訴來自因德拉馬尤縣 (Indramayu Regency)、加拉旺線 (Karawang Regency) 和蘇加武眉縣 (Sukabumi Regency)。三區佔申訴總數的 18%。

資料來源：BP2MI

IMW PROTECTION CONDITIONS IN 2023



IMW COMPLAINT
YEARS 2021, 2022, 2023 (APRIL)



*Data from 1st of May 2023

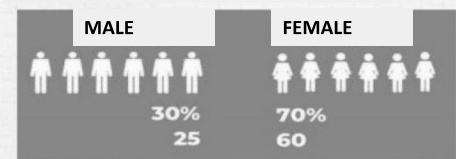
IMW COMPLAINTS BASED ON THE
MEDIA YEAR 2023 (APRIL)



IMW COMPLAINTS BASED ON PROVINCE
OF ORIGIN, 2023 (APRIL)

No	Provinsi	Jumlah	No	Provinsi	Jumlah
1	Jawa Barat	36	18	Jawa Barat	0
2	Jawa Tengah	10	19	Jawa Tengah	0
3	Lampung	5	20	Lampung	0
4	NTB	5	21	NTB	0
5	Bali	4	22	Bali	0
6	Banten	4	23	Banten	0
7	Sulawesi Selatan	4	24	Sulawesi Selatan	0
8	DKI Jakarta	3	25	DKI Jakarta	0
9	Jawa Timur	3	26	Jawa Timur	0
10	Kepulauan Riau	2	27	Kepulauan Riau	0
11	Sulawesi Utara	2	28	Sulawesi Utara	0
12	Sumatera Selatan	2	29	Sumatera Selatan	0
13	Sumatera Utara	2	30	Sumatera Utara	0
14	Riau	1	31	Riau	0
15	Sulawesi Barat	1	32	Sulawesi Barat	0
16	Sulawesi Tengah	1	33	Sulawesi Tengah	0
17	Aceh	0	34	Aceh	0

IMW COMPLAINTS BASED ON GENDER,
2023 (APRIL)



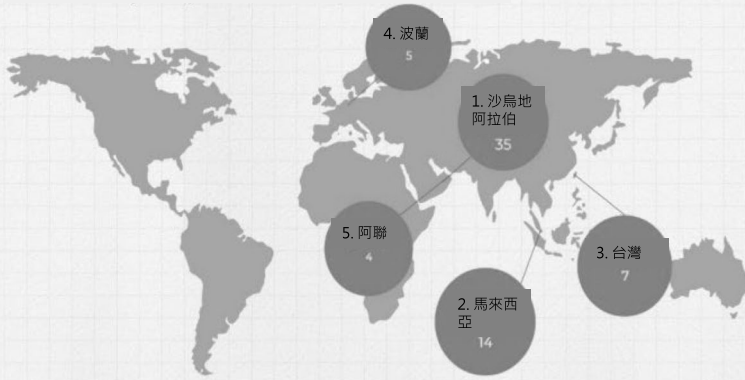
- The number of IMW complaints has decreased, with a total of 85 complaints in April 2023, there were 60 complaints for women IMW, while there were 25 complaints for male IMW.
- West Java and Central Java are the two provinces with the highest number of IMW complaints. The sum of the two provinces is 54% of the total complaints.
- Most of the complaints came from Indramayu Regency, Karawang Regency and Sukabumi Regency. The three districts accounted for 18% of the total complaints

Source: BP2MI

2023 年印尼移工保護情況



2023 年 (4 月) 印尼移工申訴前五大國家



印尼移工申訴按申訴案件狀態分 (2023 年 4 月)

案件狀態	總數	%
處理中	83	97,65%
▪ 接受申訴	24	28,24%
▪ 釐清	16	18,82%
▪ 釐清單位負責人確定工作單位	1	1,18%
▪ 負責人指派專人釐清	1	1,18%
▪ 負責人指派專人驗證	35	41,18%
▪ 驗證	6	7,06%
已完成	2	2,35%
總數	85	100,00%

Sumber: BP2MI

- 85 件印尼移工申訴中，83 件處理中，2 件已完成。
- 多數申訴來自沙烏地阿拉伯 (35 件)，其次是馬來西亞 (14 件) 和台灣 (7 件)。

IMW PROTECTION CONDITIONS IN 2023



IMW COMPLAINT BASED ON TOP 5 COUNTRIES IN 2023 (APRIL)

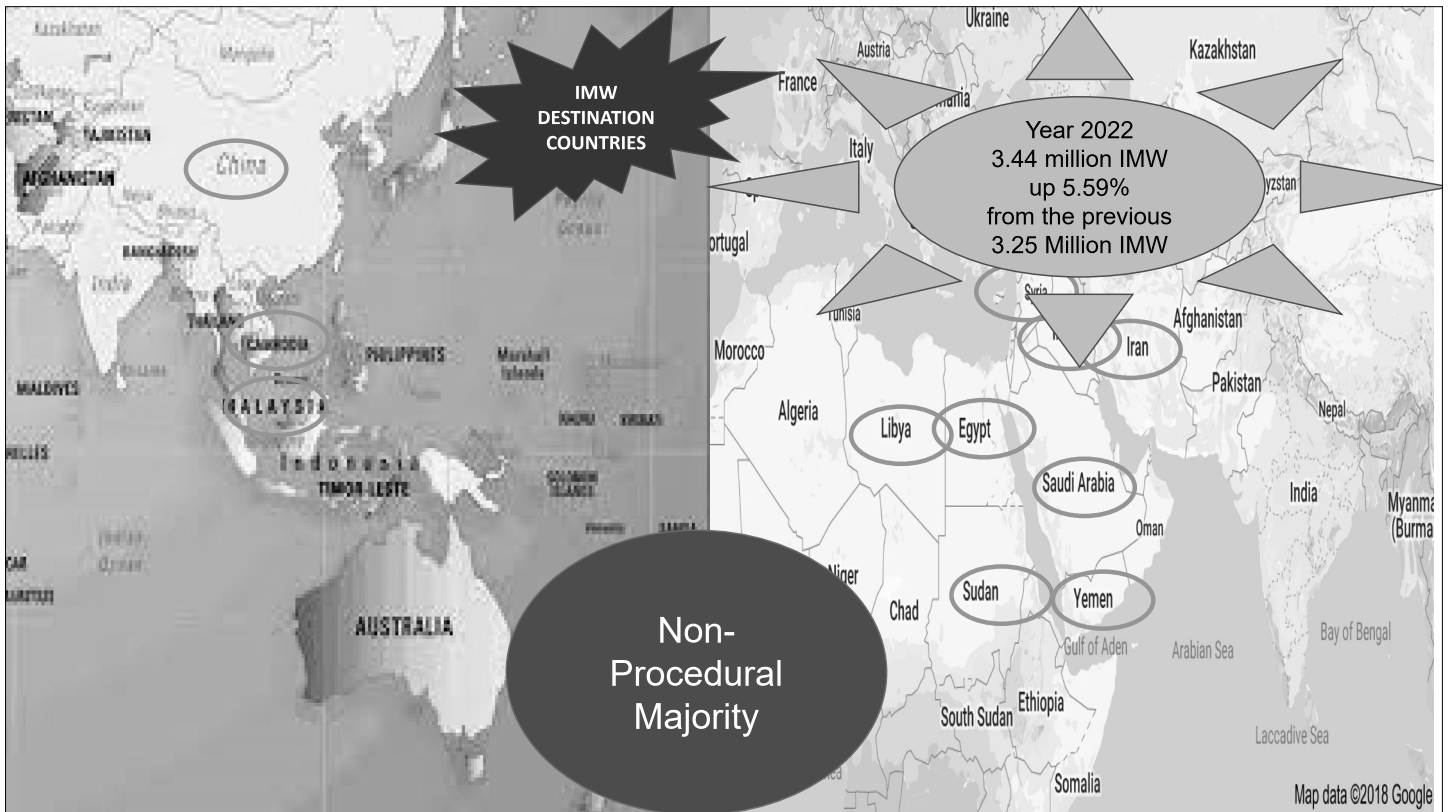
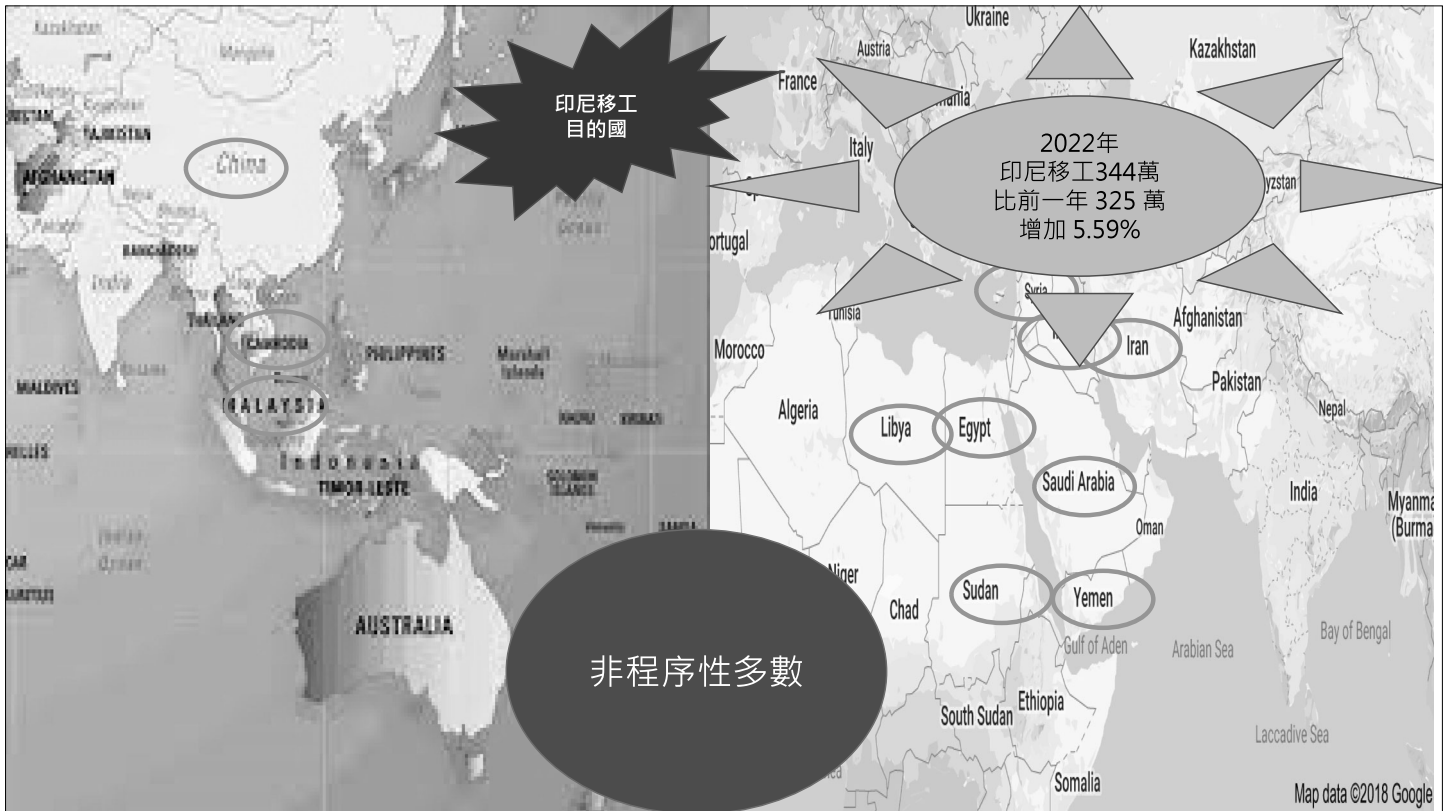


IMW COMPLAINTS BY COMPLAINT CASE STATUS (APRIL 2023)

CASE STATUS	TOTAL	%
IN PROGRESS	83	97,65%
▪ Complaint Accepted	24	28,24%
▪ Clarification	16	18,82%
▪ Determination of Work Units by In the Leader of the Clarifiator	1	1,18%
▪ Assignment of Clarifiator by Leaders	1	1,18%
▪ Assignment of Validators by Leaders	35	41,18%
▪ Validation	6	7,06%
COMPLETED	2	2,35%
TOTAL	85	100,00%

Sumber: BP2MI

- Out of 85 IMW complaints, 83 conditions were in progress and 2 complaints were completed.
- Most complaints came from Saudi Arabia (35 complaints), followed by Malaysia (14 complaints) and Taiwan (7 complaints).

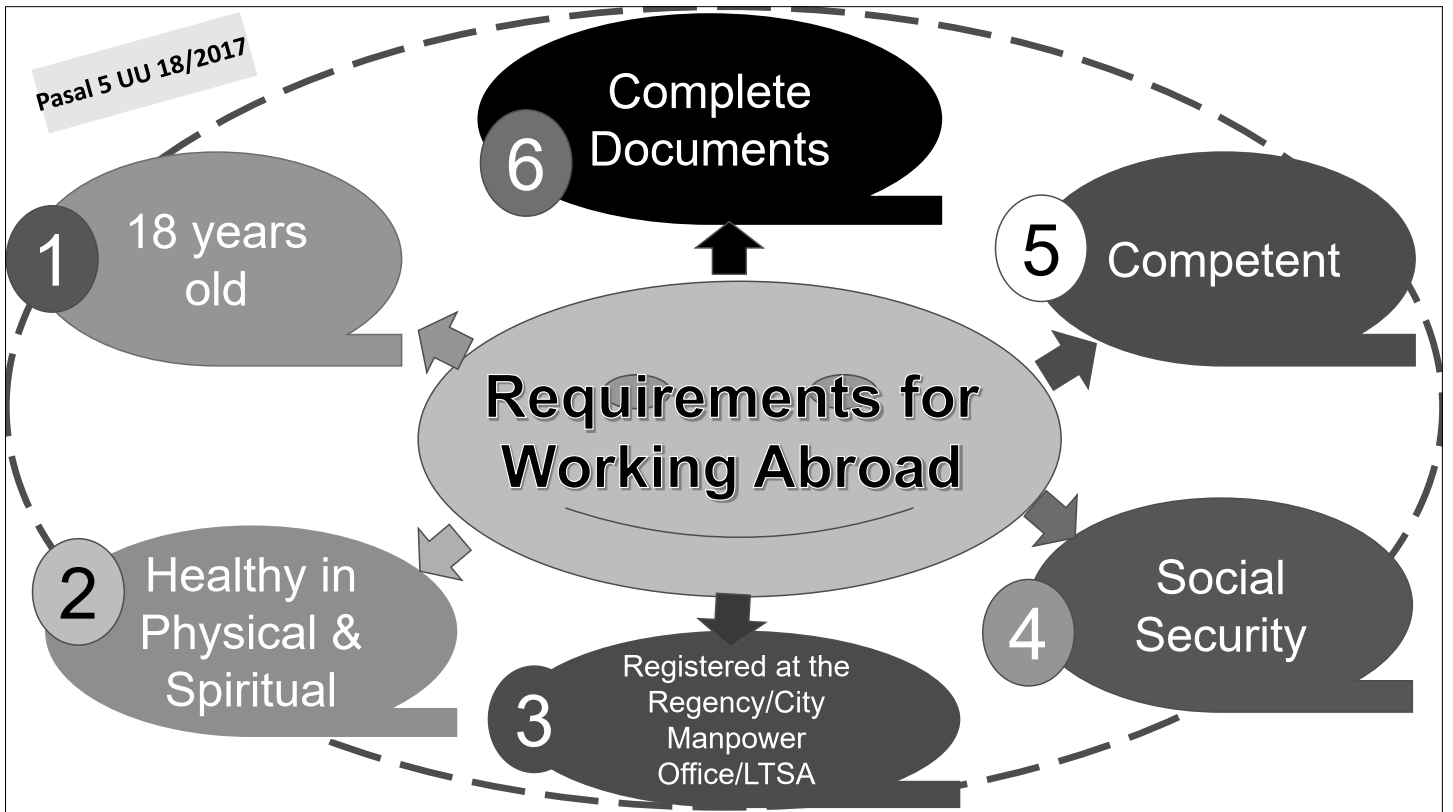
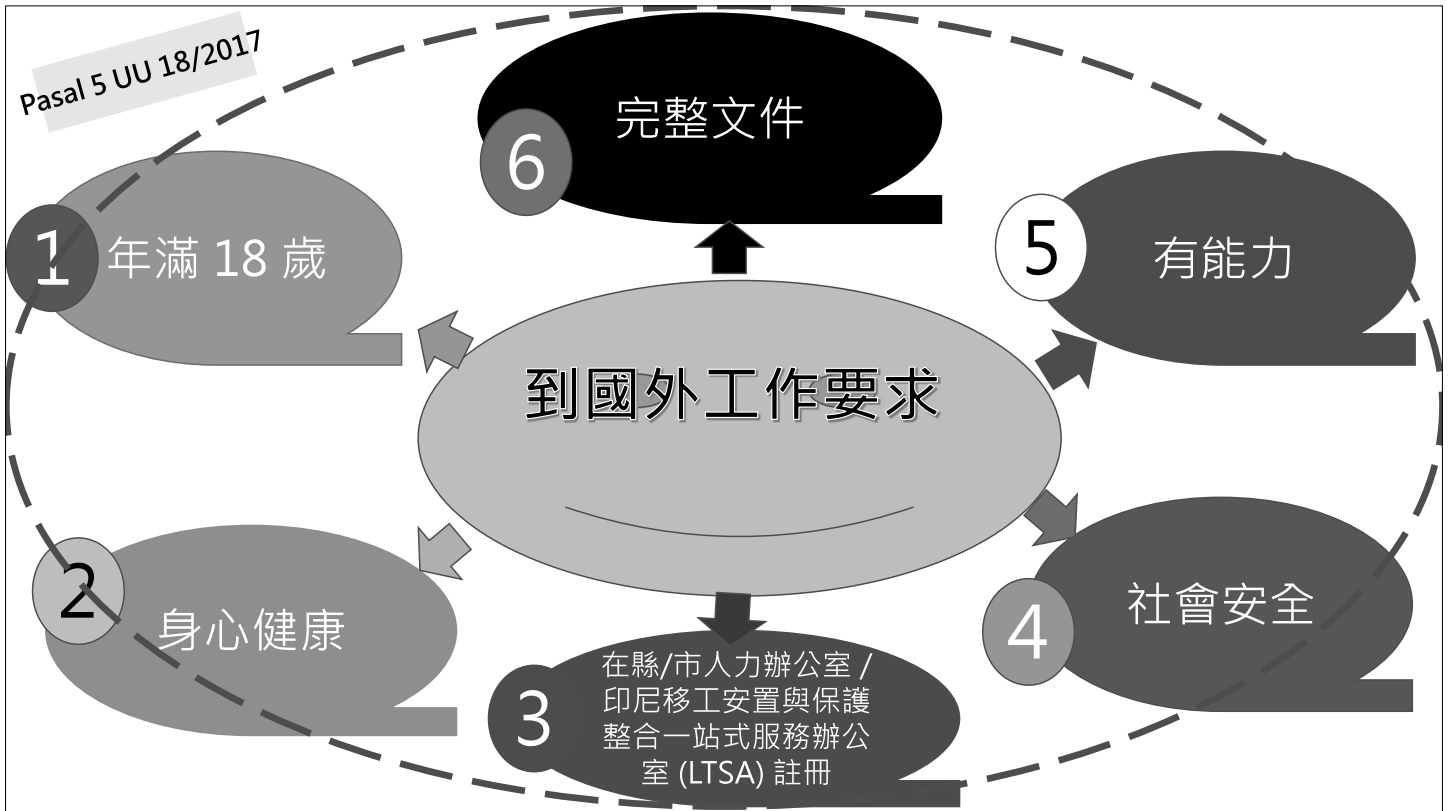


提供中東個人使用者家事工人印尼移工的驅動因素

- 中東國家對家事移工，特別是印尼家事移工需求高。
- 部分中東國家駐雅加達代表家事移工簽證簽發容易。
- 出發容易，可透過印尼主要機場，如蘇卡諾-哈達國際機場和其他大型機場出發。
- 操弄女性移工家事工安置，將女性移工派往正式職位，但卻是擔任家庭照護工。
- 透過副朝覲 (Umroh) 簽證或朝覲 (Pilgrim) 簽證安置，即使目前透過 PT. Visa Facilitation Services 使用工作簽證。

DRIVING FACTORS OF DOMESTIC WORKER IMW DELIVERY OF INDIVIDUAL USERS TO THE MIDDLE EAST

- HIGH DEMAND FOR DOMESTIC WORKERS (PLRT) IN MIDDLE EAST COUNTRIES, ESPECIALLY THOSE FROM INDONESIA.
- EASE OF ISSUING PLRT VISAS IN SOME MIDDLE EAST COUNTRY REPRESENTATIVES IN JAKARTA
- EASE OF DEPARTURE THROUGH THE MAIN GATE OF INDONESIA SUCH AS SOETTA AIRPORT AND OTHER LARGE AIRPORTS
- MANIPULATION OF PMI PLRT PLACEMENT BY SENDING PMI TO FORMAL POSITIONS, BUT STILL EMPLOYED AS HOUSEWIDER
- PLACING PMI PLRT USING UMROH VISA OR PILGRAM VISA EVEN CURRENTLY USING WORK VISA THROUGH PT. Visa Facilitation Services



潛在印尼移工 / 印尼移工文件完整性

- 1) 婚姻狀況證明，已婚者附結婚證書影本；
- 2) 村長或區長知道的丈夫或妻子許可、父母許可或監護人許可的證明；
- 3) 工作能力證明；
- 4) 根據醫學和心理檢查結果的健康證明；
- 5) 當地出入境管理局簽發的護照；
- 6) 工作簽證；
- 7) 印尼移工安置協議；和
- 8) 聘雇協議。



Pasal 13 UU 18/2017

COMPLETENESS OF CPMI/IMW DOCUMENTS

- 1) Certificate of marital status, for those who are married attach a photocopy of the marriage book;
- 2) certificate of husband or wife permission, parental permission, or guardian permission that is known by the village head or lurah;
- 3) work competency certificate;
- 4) health certificate based on the results of a medical and psychological examination;
- 5) passport issued by the local immigration office;
- 6) Work visa;
- 7) Indonesian Migrant Worker Placement Agreement; And
- 8) Employment agreement.



Pasal 13 UU 18/2017

印尼移工安置合作協議

印尼移工安置公司與業務夥伴或僱主之間的書面協議，包含各方在目的國安置和保護印尼移工上的權利和義務。

印尼移工安置協議

印尼移工安置執行人和潛在印尼移工之間的書面協議，包含根據法規規定將印尼移工安置於目的國時雙方的權利和義務。

IMW PLACEMENT COOPERATION AGREEMENT

A written agreement between Indonesian Migrant Worker Placement Companies and Business Partners or Employers which contains the rights and obligations of each party in the context of placement and Protection of Indonesian Migrant Workers in destination countries.

IMW PLACEMENT AGREEMENT

**A written agreement between the executor for the placement of Indonesian Migrant Workers and Prospective Indonesian Migrant Workers which contains the rights and obligations of each party, in the context of placing Indonesian Migrant Workers in the destination country of placement in accordance with the provisions of the regulations
legislation**

印尼移工工作協議

印尼移工和雇主之間的書面協議，包含工作條款、雙方的權利和義務，以及根據法規規定工作時的安全保障。

印尼移工工作簽證

目的國負責官員提供的書面許可，包括批准進入該國並在該國工作。

IMW WORK AGREEMENT

A written agreement between Indonesian Migrant Workers and Employers which contains the terms of work, rights and obligations of each party, as well as guarantees of security and safety while working in accordance with regulatory provisions legislation.

IMW WORK VISA

Written permission given by an authorized official in a country of destination which includes approval to enter and do work in that country concerned.

印尼移工安置目的國要求



- 具備保護外籍工人的法律和規範；
- 具備目的國政府和印尼政府之間的**書面協議**；和 / 或
- 具備保護外籍工人的**社會安全系統**和/或**保險**。

至少符合其中一項要求！

REQUIREMENTS FOR COUNTRIES OF DESTINATION OF IMW PLACEMENT



- Have **laws and regulations** that protect foreign workers;
- Has a **written agreement** between the government of the destination country and the Government of the Republic of Indonesia; and/or
- Have a **Social Security System** and/or **insurance** that protects foreign workers.

Meets at least one of these requirements.....!!!!

印尼移工安置實施



機構：政府安置（例如韓國和日本）

印尼移工安置公司 (P3MI)：
正式和非正式部門（家庭）· 包括人力仲介



為自身利益而安置印尼移工的公司

IMPLEMENTING THE PLACEMENT OF INDONESIAN MIGRANT WORKERS



Agency : Placement by Government
(eg Korea and Japan)

**Indonesian Migrant Worker Placement
Companies (P3MI):**
(Formal and Informal Sectors (Domestic =
Household) including the manning agency



Companies that place Indonesian Migrant
Workers for their own interests.

印尼移工涵蓋範圍



印尼
總統

2017 年第 18 號印尼法令

印尼移工保護法

第二章
印尼移工

第一部分
一般性

第四條

- (1) 印尼移工包括：
- a. 為合法成立僱主工作之印尼移工；
 - b. 為個別僱主或家戶工作之印尼移工；以及
 - c. 海員和漁工。

COVERAGE OF INDONESIAN MIGRANT WORKERS



PRESIDEN
REPUBLIK INDONESIA

LAW OF THE REPUBLIC OF INDONESIA
NUMBER 18 OF 2017

ON
PROTECTION OF INDONESIAN MIGRANT WORKERS

CHAPTER II

INDONESIAN MIGRANT WORKERS

Part One

General

Article 4

- (1) Indonesian Migrant Workers include:
- a. Indonesian Migrant Workers who work for legally incorporated Employer;
 - b. Indonesian Migrant Workers who work for individual Employer or household; and
 - c. seafarers and fishermen.

3

職責和責任 P3MI (機構)



尋找工作機會

1

安置印尼移工

2



替安置印尼移工解決問題

3

3

DUTIES & RESPONSIBILITIES P3MI (AGENCIES)



Looking for Job Opportunities

1

Placing Indonesian Migrant Workers

2



Solve the IMW problems it places

3

P3MI (機關) 為何



印尼移工安置機構 (P3MI) :
依法成立的有限責任公司，獲得部長書面許可經營印尼移工安置服務。

要成為印尼移工安置公司的公司必須獲得人力部長的**移工聘僱機構認證 (SIP3MI)** 書面許可。

SIP3MI 不得轉讓給其他人。

SIP3MI 申請期限為五年且得延展。

如要招募和安置印尼移工，P3MI 必須擁有機構 **SIP2MI**。

WHAT AND WHO P3MI (AGENCIES)



INDONESIAN MIGRANT WORKERS PLACEMENT AGENCY (P3MI):
business entity that is legally incorporated as a limited liability company that has obtained a written permit from the Minister to operate the placement service of Indonesian Migrant Workers.

Companies that will become Indonesian Migrant Worker Placement Companies must obtain **written permission in the form of SIP3MI from the Minister of Manpower.**

SIP3MI cannot be transferred and transferred to another party.

SIP3MI applies for 5 years and can be extended.

To be able to recruit and place IMW, P3MI **must have SIP2MI from the Agency.**

P3MI 分部辦公室



印尼移工安置公司可以在總部戶籍地以外的地方成立分部辦公室。

印尼移工安置公司分部辦公室進行的活動由印尼移工安置公司總部負責。



P3MI 分部辦公室必須於省政府登記。

P3MI BRANCH OFFICE



Indonesian Migrant Worker Placement Company can form a branch office outside the domicile of its head office.

Activities carried out by branch offices of Indonesian Migrant Worker Placement Companies **is the responsibility of the head office** Indonesian Migrant Worker Placement Company




P3MI branch office **must be registered** in the Provincial Government.

勞務遷徙過程和潛在犯罪行為

勞務遷徙是因為以下原因造成：國內就業機會有限、自我意志想打造更美好的未來。

1

- 
1. 遷徙可能為合法或非法
 2. 非法遷徙方式包括但不限於：
 - a. 人口走私
 - b. 人口販運
 - c. 以非程序方式安置印尼移工

2

非法/非程序方法往往成為選項，因為：

- a. 是有發展性的商業領域
- b. 流程被認為簡單快速
- c. 規避嚴格的檢查和要求
- d. 受害者並不覺得自己處於劣勢，重要的是找到工作
- e. 大眾對到國外工作流程一無所知


3



LABOR MIGRATION PROCESS AND POTENTIAL CRIMINAL ACTIONS

Labor migration is caused by: limited domestic employment, self-will to build a better future.

1

- 
1. Migration can occur both legally and illegally
 2. Migration by illegal means, among others:
 - a. people smuggling
 - b. human trafficking (trafficking in person)
 - c. *Placement of IMW in a non-procedural manner*

2

Illegal/nonprocedural methods tend to be an option because :

- a. is a promising business area
- b. The procedure is considered easy and fast
- c. to circumvent strict checks and requirements
- d. Victims do not feel disadvantaged, the important thing is to get a job
- e. Public ignorance about the process of working abroad

3



識別潛在非程序印尼移工安置

1 P3MI 合法性檢查：總部有人力部長頒發的 SIP3MI，如果是分部辦公室則需獲得省政府許可證

2 檢查 SIP2MI 所有權、聘僱需求案件 (Job Order) 所有權

3 印尼移工文件的完整性

4 印尼移工中心 / 印尼移工是否於區 / 市人力辦公室登記

5 印尼移工是否於外國勞動力電子系統 (SISKO TKLN) 留有記錄

6 印尼移工是否於村子裡留有記錄

7 印尼移工是否於印尼代表處留有記錄

8 目的國是否開放印尼移工安置



IDENTIFY POTENTIAL NONPROCEDURAL PMI PLACEMENT

1 P3MI Legality Check: SIP3MI from the Minister of Manpower for the head office or a Permit from the Province if a branch office

2 Check SIP2MI Ownership, Job Order Ownership

3 Completeness of IMW documents

4 Is CIMW/IMW registered with the District/City Manpower Office

5 Is IMW recorded at SISKO TKLN

6 Is IMW recorded in the village

7 Is IMW recorded in the system at the RI Representative

8 Are Destination Countries open for IMW placement



識別印尼移工中心要求文件

當然潛在移工年紀不能低於 **18 歲**

1

要求文件須備妥且有效：

2

- a. 身分證 (KTP) 和戶籍謄本 (KK)
- b. 婚姻狀況證明
- c. 村長知道的父母 / 丈夫 / 妻子許可證明
- d. 社會安全系統會員
- e. 指定醫院 / 診所提出之健康證明
- f. 工作能力認證
- g. 安置協議
- h. 聘雇協議
- i. 護照
- j. 工作簽證

確認要去哪個國家

3



IDENTIFICATION OF CIMW REQUIREMENT DOCUMENTS

Certainty of the Age of Prospective Migrant Workers cannot be less than **18 years**

1

Existence and validity of the required documents:

2

- a. KTP and KK
- b. Certificate of Marital Status
- c. Permit of parents/husband/wife known by the village head
- d. Membership in Social Security
- e. Health certificate from designated hospital/clinic
- f. Work Competency Certificate
- g. Placement Agreement
- h. Employment agreement
- i. Passport
- j. Work visa

Check which country to go to

3



人口販賣 (販運) 計畫 :

流程	方式	目的
招募 或 送達 或 轉移 或 庇護 或 接待	威脅 或 脅迫 或 綁架 或 詐欺 或 欺騙 或 欺瞞 或 濫用權力	賣淫 或 拍色情片 或 性暴力 / 性剝削 或 強迫 / 無償工作 或者 奴役 / 類似奴役其他做法

1

+

1

+

1

受害者是否同意並不重要

SCHEME OF HUMAN TRADE (TRAFFICKING):

<i>Process</i>	<i>Way</i>	<i>Objective</i>
Recruitment Or Delivery Or Transfer Or Shelter Or Reception	Threat Or Coercion Or Kidnapping Or Fraud Or Lie Or Fraud Or Abuse of power	Prostitution Or Pornography Or sexual violence/exploitation Or Forced/unpaid work Or slavery/other practices similar to slavery

1

+

1

+

1

VICTIMS' CONSENT IS NOT RELEVANT

識別潛在人口販運

編號	誰	販運者
1	印尼移工贊助者 / 黃牛	向印尼移工中心謊報工作條件或提供包含虛假資訊的文件 (例如年齡、職業、預付款)
2	印尼移工招募仲介	接待或強迫人做不想做的工作 (例如：性工作)，在沒有文件的情況下提供住宿
3	政府機構	偽造文件、違規招聘或幫助非法穿越邊境、讓不合格的印尼移工通過、變老年齡、身份、地址
4	僱主 / 使用者	不支付工人薪資、苛扣工資
6	親戚	販賣兒童、或讓兒童從事剝削性工作、協助偽造文件等

POTENTIAL IDENTIFICATION OF LABOR TRAFFICKING

NO	WHO	TRAFFICKERS
1	Sponsor IMW/scalpers	They lied to CIMW about working conditions or provided documents with false information (eg age, occupation, given advance payment)
2	IMW Recruitment Agents	They host, or force people to do work they don't want to do (ex: sex work), accommodate without documents,
3	Government Apparatus	falsifying documents, recruitment violations or helping to cross borders illegally, passing unqualified IMW, changing age, status, address
4	Employer/User	Does the worker or does not pay his wages, withholding wages
6	Relatives	Selling children, or contracting their children for exploitative work, helping falsify documents, etc

禁止...!!!!

第 65 章

- a. 禁止任何人於填寫各式印尼移工文件時提供不正確資料和資訊。
- b. 印尼移工文件：
 - 1) 婚姻狀況證明，已婚者附結婚證書影本；
 - 2) 村長或區長已知的丈夫或妻子許可、父母許可或監護人許可證明；
 - 3) 工作能力證明；
 - 4) 根據醫學和心理檢查結果的健康證明；
 - 5) 當地出入境管理局簽發的護照；
 - 6) 工作簽證；
 - 7) 印尼移工安置協議；和
 - 8) 聘雇協議。

PROHIBITION....!!!!

Pasal 65

- a. **Each person** Prohibited from providing incorrect data and information for each document in filling out each **IMW document**.
- b. **IMW Documents:**
 - 1) Certificate of marital status, for those who are married attach a photocopy of the marriage book;
 - 2) certificate of husband or wife permission, parental permission, or guardian permission that is known by the village head or lurah;
 - 3) work competency certificate;
 - 4) health certificate based on the results of a medical and psychological examination;
 - 5) passport issued by the local immigration office;
 - 6) Work visa;
 - 7) Indonesian Migrant Worker Placement Agreement; And
 - 8) Employment agreement.

刑事制裁

章節	內容	刑事
第 79 章	任何在填寫印尼移工文件時蓄意提供不正確資料和資訊者	最高兩年徒刑和 / 或最高印尼盾兩億罰金

CRIMINAL SANCTIONS

CHAPTER	SUBSTANCE	CRIMINAL
Chapter 79	Everyone who intentionally provides incorrect data and information in filling out each IMW document	Maximum 2 (two) years and/or a maximum fine of Rp. 200 million

禁止...!!!!

第 66 章

- a. 禁止任何人安置不符合第 5a 條所規範年齡要求的印尼移工。
- b. 印尼移工年齡限制：年滿 18 歲

刑事制裁

第 80 章	任何安置印尼移工者，即使已知或應該懷疑該人不符合年滿 18 歲的年齡要求	最高三年徒刑和最高印尼盾五億罰金
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PROHIBITION....!!!!

Chapter 66

- a. Each person prohibited from placing Indonesian Migrant Workers who do not meet the age requirements as referred to in Article 5 letter a.
- b. IMW Age : 18 years old

CRIMINAL SANCTIONS

Chapter 80	Everyone who places Indonesian Migrant Workers, even though it is known or should suspect that the person concerned does not meet the age requirement of 18 years and over	Maximum 3 (three) years and a maximum fine of Rp. 500 million
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禁止...!!!!

第 67 章

禁止任何人將潛在印尼移工安置於：

- a. 職位和工作類型不符合聘僱協議，對第 19 條第 (2) 項所指之潛在印尼移民工人不利；
或
- b. 違反法律及規範的工作。

第 19 條第 (2) 項：

印尼移工安置公司必須根據聘僱協議所載之職位和工作類型安置前在印尼移工

PROHIBITION...!!!!

Chapter 67

Everyone is prohibited from placing Prospective Indonesian Migrant Workers on:

- a. position and type of work that is **not in accordance with the Employment Agreement** so that it is detrimental to Prospective Indonesian Migrant Workers as referred to in Article 19 paragraph (2); or
- b. work that is contrary to laws and regulations.

Article 19 paragraph (2):

Indonesian Migrant Worker Placement Company **must place Prospective Indonesian Migrant Workers according to the position and type of work as stated in the Employment Agreement**

刑事制裁

章節	內容	刑事
第 82 章	任何人蓄意將潛在印尼移工安置於： <ul style="list-style-type: none"> a. 職位和工作類型不符合工作協議，對潛在印尼移民工人不利；或 b. 違反法律及規範的工作。 	最高十年徒刑和最高印尼盾 150 億罰金

CRIMINAL SANCTIONS

CHAPTER	SUBSTANCE	CRIMINAL
Chapter 82	Everyone who intentionally places Prospective Indonesian Migrant Workers on : <ul style="list-style-type: none"> a. Position and type of work that is not in accordance with the work agreement so that it is detrimental to Prospective Indonesian Migrant Workers; or b. Work that is contrary to laws and regulations 	Maximum 10 (ten) years and a maximum fine of Rp. 15 billion

禁止...!!!!

第 68 章

禁止任何人安置不符合第 5 b-e 條所指要求之印尼移工。

第 5 b-e 條：

- a. 具備能力；
- b. 身心健康；
- c. 登記並有社會安全系統會員號碼；和
- d. 具備所有所需文件。

PROHIBITION....!!!!

Chapter 68

Each person prohibited from placing Indonesian Migrant Workers who do not meet the requirements as referred to in Article 5 letter b to letter e.

Article 5 letter b - letter e:

- a. have competence;
- b. physically and mentally healthy;
- c. registered and has a Social Security membership number; And
- d. have all the required documents.

刑事制裁

章節	內容	刑事
第 83 章	任何蓄意對不符合要求之印尼移工進行安置者	最高十年徒刑和最高印尼盾 150 億罰金

CRIMINAL SANCTIONS

CHAPTER	SUBSTANCEE	CRIMINAL
Chapter 83	Any Person who deliberately carries out the placement of Indonesian Migrant Workers who do not meet the requirements	Maximum 10 (ten) years and a maximum fine of Rp. 15 billion

禁止...!!!!

第 69 章

禁止個人安置印尼移工。

章節	內容	刑事
第 81 章	對印尼移工進行安置之個人	最高十年徒刑和最高印尼盾 150 億罰金

PROHIBITION....!!!!

Chapter 69

Individuals are prohibited from placing Indonesian Migrant Workers.

CHAPTER	SUBSTANCE	CRIMINAL
Chapter 81	Individuals who carry out the placement of Indonesian Migrant Workers	Maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 15 billion

禁止...!!!!

第 70 章

- 1) 禁止任何官員派遣不符合第 13 條所指文件要求的印尼移工。
 - 2) 禁止任何官員派遣不符合第 13 條所指文件要求的印尼移工。
-

PROHIBITION...!!!!

Chapter 70

- 1) Every official is prohibited from **dispatching** Indonesian Migrant Workers who **Do not meet the document requirements** as referred to in Article 13.
 - 2) **Every Official is prohibited from dispatching** Indonesian Migrant Workers **Who do not meet the document requirements** as referred to in article 13.
-

印尼移工文件

第 13 章 (印尼移工文件) :

- 1) 婚姻狀況證明，已婚者附結婚證書影本；
- 2) 村長或區長知道的丈夫或妻子許可、父母許可或監護人許可的證明；
- 3) 工作能力證明；
- 4) 根據醫學和心理檢查結果的健康證明；
- 5) 當地出入境管理局簽發的護照；
- 6) 工作簽證；
- 7) 印尼移工安置協議；和
- 8) 聘雇協議。

IMW Documents

Chapter 13 (IMW Documents):

- 1) Certificate of marital status, for those who are married attach a photocopy of the marriage book;
- 2) certificate of husband or wife permission, parental permission, or guardian permission that is known by the village head or lurah;
- 3) work competency certificate;
- 4) health certificate based on the results of a medical and psychological examination;
- 5) passport issued by the local immigration office;
- 6) Work visa;
- 7) Indonesian Migrant Worker Placement Agreement; And
- 8) Employment agreement.

刑事制裁

章節	內容	刑事
第 84 章	1) 任何蓄意派遣不符合文件要求的印尼移工之官員。 2) 任何蓄意阻止符合文件完整性要求的印尼移工出發之官員	最高五年徒刑和最高印尼盾 100 億罰金

CRIMINAL SANCTIONS

CHAPTER	SUBSTANCE	CRIMINAL
Chapter 84	1) Any official who intentionally dispatches Indonesian Migrant Workers who do not meet the document requirements. 2) Every official who intentionally holds back the departure of Indonesian Migrant Workers who have fulfilled the document completeness requirements	Maximum 5 years and a maximum fine of Rp. 10 billion

禁止...!!!!

第 71 章

禁止任何人：

- 1) 將印尼移工安置於不符合已議定並由印尼移工簽名之工作協議內容的工作；
- 2) 雇用印尼移工從事或將印尼移工放在不符合其專業、技能、才能、興趣和能力的職位上；
- 3) 挪用或轉移 SIP3MI 給其他方；或
- 4) 挪用或轉移 SIP2MI 給其他方。

PROHIBITION....!!!!

CHAPTER 71

Everyone is prohibited:

- 1) **Placing** Indonesian Migrant Workers in jobs that are not in accordance with the Work Agreement that has been agreed upon and signed by Indonesian Migrant Workers;
- 2) **Put** or hiring Indonesian Migrant Workers in positions that are not in line with their expertise, skills, talents, interests and abilities; save
- 3) **Divert or transfer SIP3MI** to other parties; or
- 4) **Divert or transfer SIP2MI** to other parties.

刑事制裁

章節	內容	刑事
第 85 章	任何人： <ol style="list-style-type: none"> a. 將印尼移工安置於不符合已議定並由印尼移工簽名之工作協議內容的工作 b. 將印尼移工安置於不符合其專業、技能、才能、興趣和能力的職位上； c. 挪用或轉移 SIP3MI 給其他方；或 d. 挪用或轉移 SIP2MI 給其他方。 	最高五年徒刑和最高印尼盾 50 億罰金

CRIMINAL SANCTIONS

CHAPTER	SUBSTANCE	CRIMINALS
Chapter 85	Everyone who : <ol style="list-style-type: none"> a. Placing Indonesian Migrant Workers in jobs that are not in accordance with the Work Agreement that has been agreed upon and signed by Indonesian Migrant Workers b. Placing Indonesian Migrant Workers in positions that are not in accordance with their expertise, skills, talents, interests and abilities c. Transferring or transferring SIP3MI to another party, or d. Transferring or transferring SIP2MI to other parties. 	Maximum 5 (five) years and a maximum fine of Rp. 5 billion

禁止...!!!!

第 72 章

禁止任何人：

- 1) 向潛在印尼移工收取由潛在雇主承擔的安置費；
- 2) 將潛在印尼移工安置於已宣布關閉的國家；
- 3) 沒有 SIP2MI 便安置印尼移工；或
- 4) 將印尼移工安置於缺乏外籍工人保護法規、目的國政府與印尼政府之間未簽訂書面協議和/或沒有社會安全的目的國和/或保護外籍工人的保險制度。

PROHIBITION.....!!!!

Chapter 72

Everyone is prohibited:

- 1) **charge a placement fee component that has been borne by the prospective Employer** to Prospective Indonesian Migrant Workers;
- 2) Placee Prospective Indonesian Migrant Workers to certain countries that are **declared closed**;
- 3) **placing Indonesian Migrant Workers without SIP2MI; Or**
- 4) **placing Indonesian Migrant Workers** to a destination country where there are no regulations legislation that protects foreign workers, do not have a written agreement between the government of the destination country and the government of the Republic of Indonesia, **and/ or** does not have a Social Security and/or insurance system that protects foreign workers.

刑事制裁

章節	內容	刑事
第 86 章	任何人： a. 向潛在印尼移工收取由潛在雇主承擔的安置費； b. 將潛在印尼移工安置於已宣布關閉的國家； c. 沒有 SIP2MI 便安置印尼移工； 或 d. 將印尼移工安置於缺乏外籍工人保護法規、目的國政府與印尼政府之間未簽訂書面協議和/或沒有社會安全的目的國和/或保護外籍工人的保險制度。	最高五年徒刑和最高印尼盾 50 億罰金

CRIMINAL SANTIONS

CHAPTER	SUBSTANCE	CRIMINAL
Chapter 86	Everyone who : a. Charge the placement fee component that has been borne by the prospective Employer to the IMW Candidate b. Placing IMW Candidates in certain countries that are declared closed c. Placing IMW without SIP2MI; or d. Placing IMW to the destination country of placement that does not have laws and regulations that protect foreign workers, does not have a written agreement between the government of the destination country and the order of the Republic of Indonesia, and/or does not have a Social Security and/or insurance system that protects foreign workers.	Maximum 5 (five) years and a maximum fine of Rp. 5 billion

罰則和附加懲罰

1. 如果公司或其代表犯下第 65 條、第 66 條、第 67 條、第 68 條、第 71 條和第 72 條所述之犯罪行為，得起訴並刑事定罪該公司及其或其管理階層。
2. 對公司的主要懲罰僅為罰金，每次罰金最高罰增加 1/3（三分之一）。
3. 除主要懲罰外，第 (2) 項所指之公司可能會受到吊銷執照等附加懲罰。

PENALTIES AND ADDITIONAL IMPOSITION.....

1. In the event that the criminal acts referred to in Article 65, Article 66, Article 67, Article 68, Article 71 and Article 72 are committed by or on behalf of a corporation, charges and criminal convictions can be made against the corporation and or its management.
2. The main punishment that can be imposed on corporations is only fines, with the maximum penalty being added 1/3 (one-third) of each fine.
3. In addition to the main punishment, the corporation as referred to in paragraph (2) may be subject to additional penalties in the form of license revocation.

處理非法印尼移工步驟

1. 印尼移工非程序處理工作小組和省、區 / 市人口販運工作小組等各單位作法一致且負責；
2. 財政部和國家發展規劃署 (BAPPENAS) 支持部會/機構、代表和省 / 區 / 市人力辦公室，提供印尼移工處理和保護資金及對外聯絡，提升民眾對到海外工作的認識；
3. 在國際機場和海港製作告示牌/公共服務廣告；
4. 在印尼移工飛地和邊境/跨境地區及或非官方航線/港口對非程序印尼移工/人口販運進行大規模和持續社會意識提升；

STEPS TO HANDLE ILLEGAL IMW

1. The parties are consistent and responsible in the PMI Non-Procedural Handling Task Force and the TIP Task Force in Provinces and Regencies/Cities;
2. The Ministry of Finance and BAPPENAS provide support to Ministries/Agencies, representatives and Prov/District/City Manpower Offices to provide PMI handling and protection funds as well as outreach to increase public understanding of working abroad
3. Making billboards/public service advertisements at international airports and seaports.
4. Mass and continuous socialization on the prevention of non-procedural PMI/TPPO in PMI enclaves as well as border/cross-border areas and embarkation or unofficial routes/ports;

處理非法印尼移工步驟

5. 透過 KPK、KSP、TNI、BIN、POLRI 和移民署的參與，鼓勵優化各部會/機構角色；
6. 在五大來源省和五大邊境的縣/市進行非法印尼移工預防的意識提升（中爪哇、西努沙登加拉、北蘇門答臘、北加里曼丹、南蘇拉威西、西加里曼丹、廖內群島）；
7. 透過外交努力和緊急應變處理來消除非程序印尼移工；
8. 在五大來源省和五大邊境的縣/市進行非法印尼移工預防的意識提升（中爪哇、西努沙登加拉、北蘇門答臘、北加里曼丹、南蘇拉威西、西加里曼丹、廖內群島）；
9. 監督並確保邊境門的安全：巴淡島和丹戎檳榔、恩迪貢 (Entikong)、奴奴干、巴厘巴里、丹戎巴來亞沙漢、杜邁、其他邊境門；
10. 各省制定印尼移工保護實施的區域法規。

STEPS TO HANDLE ILLEGAL IMW

5. Encouraging the optimization of the role of Ministries/Institutions by involving the KPK, KSP, TNI, BIN, POLRI and IMMIGRATION.
6. Socialization of Illegal IMW Prevention in Regencies/Cities in 5 Prov. Origin and 5 Wil. Borders (Central Java, West Nusa Tenggara, North Sumatra, North Kalimantan, South Sulawesi, West Kalimantan, Riau Islands);
7. Bleaching of Non-Procedural IMW through Diplomatic Efforts and handling of Emergency Response;
8. Socialization of Illegal IMW Prevention in Regencies/Cities in 5 Prov. Origin and 5 Wil. Borders (Central Java, West Nusa Tenggara, North Sumatra, North Kalimantan, South Sulawesi, West Kalimantan, Riau Islands);
9. Security and supervision at border gates; Batam and Tanjung Pinang, Entikong, Nunukan, Pare-Pare, Tanjung Balai Asahan, Dumai, other Border Gates;
10. Formation of Regional Regulations in each Province concerning the Implementation of IMW Protection.

已做出的努力

1. 與當地利害關係人之間對話平台；
2. 建立整合跨部門和私人利害關係人的服務系統；
3. 中央、地方、海外協同的技術協調會議；
4. 印尼移工中心的對外聯絡活動；
5. 成立非程序印尼移工預防工作小組（人力部）；
6. 成立人口販運特別工作小組 (KemPPPA)；
7. 邊境監控（偶爾）；
8. 印尼移工中心庇護所檢查（偶爾民眾申訴）

EFFORTS THAT HAVE BEEN MADE

1. Dialogue forum with local Stakeholders/Stakeholders;
2. Building a Service System that is integrated with cross-sectoral and private stakeholders;
3. Technical Coordination Meetings in synergy at Central, Regional and Overseas
4. Outreach in CIMW pockets;
5. Formation of the Non-Procedural IMW Prevention Task Force (Ministry of Manpower;
6. Formation of the TIP Task Force (KemPPPA);
7. Surveillance at the Border (Incidental).
8. Inspection at the CIMW shelter (Incidental public complaints)

與相關部會 / 機構的協調

- 勞工健康與安全監控及培育司勞動規範檢查局積極參與預防和處理人口販運犯罪工作小組，協調人力發展和文化協調部下屬的執法子工作小組並擔任反人口販運工作小組 (GT-PPTPPO) 的日常主席，婦女賦權和兒童保護部 (KPPPA) 則擔任反人口販運工作小組日常副主席。
- 勞工健康與安全監控及培育司積極參與印尼移工保護工作小組，該工作小組由海外安置司人力安置發展局擔任主席。其一被販運至國外的對象便是潛在印尼移工和印尼移工。

Coordination with related Ministries/Institutions

- The Directorate for Inspection of Labor Norms, Directorate General of Binwasnaker, is actively involved in the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons, the Law Enforcement Sub Task Force where the Coordinating Ministry for Human Development and Culture (Kemenko PMK) as the Daily Chairperson of the Anti-Trafficking Task Force (GT-PPTPPO) and the Ministry Women's Empowerment and Child Protection (KPPPA) as Deputy Daily Chairperson of GT-PPTPPO.
- The Directorate General of Binwasnaker is actively involved in the Task Force for the Protection of Indonesian Migrant Workers where the Directorate General for Development of Manpower Placement, Directorate of Overseas Placement is the Chairperson. One object of people being trafficked abroad is Prospective Indonesian Migrant Workers and Indonesian Migrant Workers.

與相關部會 / 機構的協調

- 與 BinaP3MI 和 BP2MI 局一起舉辦聯合討論，指導 BP2MI 省、縣 / 市和省、縣 / 市的勞動監察員，加強其對印尼移工保護法規，以及人口販運犯罪法規實施的認識。
- 與 BinaP3MI 和 BP2MI 局一起傳喚有合理理由懷疑在沒有符合勞動法規的行政文件和潛在人口販運的情況下規劃和實施安置的個人、法人實體和 P3MI。

Coordination with related Ministries/Institutions

- Together with the Directorate of BinaP3MI and BP2MI in the context of coaching the Labor Inspectors of the Provincial Service, BP2MI Prov, Regency/City and Prov, Regency/City Work Introduction by holding joint discussions regarding understanding regarding the regulations for the Protection of Indonesian Migrant Workers and the Crime of Trafficking in Persons in the implementation of regulations in the field.
- Together with the Directorate of Bina P3MI and BP2MI in the context of fostering summons to Persons, Legal Entities and P3MI who are reasonably suspected of planning and carrying out placements without having administrative documents that are in accordance with labor regulations and there is a potential for TIP violations to occur.

與相關部會 / 機構的協調

- 針對涉嫌在沒有官方文件和潛在人口販運的情況下進行住宿/收集要到海外就業/安置人員活動的個人、法人實體、P3MI 進行突擊檢查 (SIDAK)。
- 與社會事務部協調，根據印尼移工中心/印尼移工調查結果，將在沒有文件/非程序的情況下被雇用的移工臨時安置在保護之家和創傷中心 (RPTC) 中，接著送回來源地。
- 如果法律證明個人 / 法人實體 / P3MI 進行了非程序安置活動，則與印尼國家警察協調，根據違反適用法規的行為採取調查行動。

Coordination with related Ministries/Institutions

- Carry out Sudden Inspections (SIDAK) where Individuals, Legal Entities, P3MI who are suspected of carrying out activities of accommodating/collecting people to be employed/placed abroad without official documents and potential TIP.
- Coordinate with the Ministry of Social Affairs to be placed temporarily at the RPTC against the findings of CIMW/IMW in shelters who will be employed without documents/unprocedurally and then be sent back to their place of origin.
- Coordinate with the Indonesian National Police if it is legally proven that a Person/Legal Entity/P3MI has carried out unprocedural placement activities for investigative action to be taken and processed according to violations of applicable regulations.

如何降低人口販運數字

- 分配預算用於檢視移工問題和人口販運凸顯的問題。
- 聯絡印尼移工和人口販運相關部門和主管、BP2MI 以及省級和縣 / 市相關單位，提供監管法規發展相關知識。
- 根據 2017 年第 18 號移工保護法的規定，向正在進行刑事調查的警方提供專家證詞協助。

How to reduce the number of TPPO

- Allocating budgets for the purposes of examining the problems of Migrant Workers as well as those indicated by TPPPO.
- Providing knowledge on regulatory developments through outreach both related to Provisions for Indonesian Migrant Workers and TIP to Ket Supervisors, BP2MI and Introduction to Prov and Regency/City Work.
- Providing expert testimony assistance to the police who are conducting criminal investigations as referred to in Law 18 of 2017 concerning the Protection of Migrant Workers.

A. 移工保護職責

憲法 18/2017

保護印尼移工是指為保護潛在印尼移工和 / 或印尼移工及其家人的利益而作出的一切努力，以保證他們在工作前、工作期間和工作後的所有活動中在法律、經濟和社會面的權利獲得實現

工作前保護

- 行政保護：安置文件的完整性和有效性，以及工作條件和條款的確定。
- 技術保護：資訊傳播、教育與職業培訓、社會安全、促進權利行使、強化工作媒合員工的角色、安置與保障整合一站式服務的安置服務、指導與監督

工作期間保護

- 由勞工專員或指定外交官員收集和登記資料
- 監測和評估雇主、聘僱和工作條件
- 促進權利的實現
- 促進聘僱案件的解決
- 提供領事服務
- 協助、調解、倡議和提供法律協助
- 輔導
- 便利遣返

工作後保護

- 方便返回來源地
- 完成印尼移工未實現的權利
- 促進對生病和死亡的印尼移工的管理
- 社會復歸和重新融入社會
- 賦權印尼移工及其家庭



A. MANDATE OF PROTECTION FOR MIGRANT WORKES

CONSTITUTION 18/2017

Protection of Indonesian Migrant Workers is all efforts to protect the interests of prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers and their families in realizing guaranteed fulfillment of their rights in all activities before work, during work and after work in legal, economic and social aspects

PROTECTION BEFORE WORK

- ADMINISTRATIVE PROTECTION: completeness and validity of placement documents, as well as determination of conditions and terms of work.
- TECHNICAL PROTECTION: dissemination and dissemination of information, education and job training, Social Security, facilitation of fulfillment of rights, strengthening the role of job delivery functional employees, placement services in one-stop integrated services placement and protection, guidance and supervision

PROTECTION DURING WORK

- Data collection and registration by the labor attaché or appointed foreign service official.
- Monitoring and evaluation of Employers, employment and working conditions.
- Facilitate fulfillment of rights
- Facilitate settlement of employment cases
- Provision of consular services.
- Assistance, mediation, advocacy, and provision of legal assistance.
- coaching
- Facilitate repatriation

PROTECTION AFTER WORK

- Facilitate return to the place of origin
- Completion of the unfulfilled rights of Indonesian Migrant Workers.
- Facilitate the management of sick and deceased Indonesian Migrant Workers.
- Social rehabilitation and social reintegration.
- Empowerment of Indonesian Migrant Workers and their Families



G. 工作小組強化

印尼移工保護



中央工作小組成員包括：人力部、外交部、警方、法律和人權部以及 BP2MI。



在出發 / 抵達 / 來源區已成立 25 個區域工作小組，包括：負責人力、人口和公民登記 (Dukcapil)、移民、警察、交通、社會和婦女賦權及兒童保護的服務部門。

G. Task force reinforcement

IMW PROTECTION



Membership of the central task force consists of: Ministry of Manpower, Ministry of Foreign Affairs, Police, Ministry of Law and Human Rights, and BP2MI.



In the area of embarkation/debarkation/area of origin, 25 regional task forces have been formed consisting of: Services in charge of manpower, Dukcapil, Immigration, Police, transportation, social and women's empowerment and child protection.



強化利害關係人之間的協調與合作

多方利害關係人在「安全和公平遷徙」計畫中與國際勞工組織、聯合國婦女署和多個印尼移工觀察員非政府組織協調與合作，例如：

1. SBMI
2. KSBSI
3. Women' s Solidarity
4. Sebay Lampung
5. Indonesian Women' s Coalition
6. Kalyanamitra，和
7. Women Crisis Center Mawar Balqis

合作於整合一站式服務辦公室 (LTSA) 進行，讓政府和公民社會之間共同提供印尼移工保護服務和安全遷徙



STRENGTHENING COORDINATION AND COOPERATION BETWEEN STAKEHOLDERS

Multi-stakeholder coordination and cooperation in the "safe and fair migration" program with the ILO, UN Women and several IMW observer NGOs such as:

1. SBMI
2. KSBSI
3. Women's Solidarity
4. Sebay Lampung
5. Indonesian Women's Coalition
6. Kalyanamitra, and
7. Women Crisis Center Mawar Balqis

This collaboration is carried out at LTSA to provide IMW protection services and safe migration jointly between the Government and elements of civil society



F. 印尼移工中心職業培訓計畫

計畫類型 正式部門培訓

1. Program pelatihan bahasa Jepang
2. Program pelatihan bahasa Inggris
3. Program pelatihan bahasa Mandarin
4. Program pelatihan bahasa Korea
5. Program pelatihan bahasa Arab atau
6. Program pelatihan bahasa Jerman

職業培訓計畫會提升人力資源品質
· 印尼移工中心將擁有更好的談判
能力 · 不會輕易被人口販運所困

十類計畫

非正式部門培訓 (家事)

Keputusan Menteri Ketenagakerjaan Nomor 354 Tahun 2015 tentang Jabatan yang Dapat Diduduki oleh Tenaga Kerja Indonesia di Luar Negeri pada Pengguna Perseorangan.

1. Program pelatihan pengurus rumah tangga/housekeeper
2. Program pelatihan pengasuh bayi/balita/babysitter
3. Program pelatihan juru masak/family cook
4. Program pelatihan pengasuh lanjut usia (lansia)/elderly caretaker
5. Program pelatihan sopir keluarga/family driver
6. Program pelatihan perawat taman/gardener
7. Program pelatihan pengasuh anak/child careworker

Tambahan 3 jabatan berdasarkan Peraturan Badan Perlindungan Pekerja Migran Indonesia Nomor 09 tahun 2020 tentang Pembebasan Biaya Penempatan Pekerja Migran Indonesia

1. Program pelatihan petugas kebersihan
2. Program pelatihan pekerja ladang/perkebunan
3. Program pelatihan awak kapal perikanan migran



F. CIMW WORK TRAINING PROGRAM

PROGRAM TYPE FORMAL SECTOR TRAINING

1. Program pelatihan bahasa Jepang
2. Program pelatihan bahasa Inggris
3. Program pelatihan bahasa Mandarin
4. Program pelatihan bahasa Korea
5. Program pelatihan bahasa Arab atau
6. Program pelatihan bahasa Jerman

Through job training programs there will be an increase in the quality of human resources so that CIMW will have better bargaining power and not be easily trapped by TPPO

10 TYPES OF PROGRAMS

INFORMAL SECTOR TRAINING (DOMESTIC)

Keputusan Menteri Ketenagakerjaan Nomor 354 Tahun 2015 tentang Jabatan yang Dapat Diduduki oleh Tenaga Kerja Indonesia di Luar Negeri pada Pengguna Perseorangan.

1. Program pelatihan pengurus rumah tangga/housekeeper
2. Program pelatihan pengasuh bayi/balita/babysitter
3. Program pelatihan juru masak/family cook
4. Program pelatihan pengasuh lanjut usia (lansia)/elderly caretaker
5. Program pelatihan sopir keluarga/family driver
6. Program pelatihan perawat taman/gardener
7. Program pelatihan pengasuh anak/child careworker

Tambahan 3 jabatan berdasarkan Peraturan Badan Perlindungan Pekerja Migran Indonesia Nomor 09 tahun 2020 tentang Pembebasan Biaya Penempatan Pekerja Migran Indonesia

1. Program pelatihan petugas kebersihan
2. Program pelatihan pekerja ladang/perkebunan
3. Program pelatihan awak kapal perikanan migran





強化勞動檢查

勞動檢查 (BINWASNAKER) 預防非程序性之印尼移工安置

2022

編號	日期	調查地點	安置目的	印尼移工非程序性發現
1.	6 Januari 2022	Penampungan di Tebet, Jl. Masjid 2 Nomor 10 RT 07 RW 01, Kelurahan Kebuh Baru, Kec. Tebet, Jakarta Selatan	澳洲	79
2.	15 Januari 2022	Penampungan di Jl. Munggan Balekambang, Kec. Keramat Jati, Jakarta Timur	沙烏地阿拉伯	25
3.	21 Januari 2022	Penampungan CPMI illegal di Jl. Jambu Air Kembangan, Jakarta Barat	沙烏地阿拉伯	14
4.	6 Juni 2022	Penampungan CPMI illegal Arab Saudi di Pondok Gede Permai, RT. 6 RW 9, Blok C. 30 nomor 3, Kel. Jatirasa, Kec. Jatiasih, Kota Bekasi	沙烏地阿拉伯	14
5.	2 Agustus 2022	Kranggan Wetan, Kec. Jatisampurna, Kota Bekasi	沙烏地阿拉伯	82
6.	17 Oktober 2022	Bandara International Soekarno Hatta	沙烏地阿拉伯	38
7.	15 Desember 2022	Bandara International Soekarno Hatta	沙烏地阿拉伯	64
8.	27 Desember 2022	Bandara International Soekarno Hatta	沙烏地阿拉伯	6
TOTAL				322

2023

編號	日期	調查地點	安置目的	印尼移工非程序性發現 FINDINGS
1.	28 Januari 2023	Bandara Juanda, Sidoarjo, Jawa Timur	沙烏地阿拉伯	
2.	9 April 2023	Bandara International Soekarno Hatta	沙烏地阿拉伯	4
3.	11 Mei 2023	Bandara International Soekarno Hatta	沙烏地阿拉伯	1
4.	16 Mei 2023	Bandara International Soekarno Hatta	沙烏地阿拉伯	10
5.	17 Mei 2023	Bandara International Soekarno Hatta	沙烏地阿拉伯	1
TOTAL				117

透過勞動檢查員的檢查得知，近兩年來大多數非程序性印尼移工中心的目標是到沙烏地阿拉伯工作

18



STRENGTHENING OF LABOR INSPECTION

PREVENTION OF NON PROCEDURAL IMW PLACEMENT BY BINWASNAKER

2022

NO	DATE	PLACE OF INVESTIGATIONS	PURPOSE OF PLACEMENT	IMW NON PROCEDURAL FINDINGS
1.	6 Januari 2022	Penampungan di Tebet, Jl. Masjid 2 Nomor 10 RT 07 RW 01, Kelurahan Kebuh Baru, Kec. Tebet, Jakarta Selatan	Australia	79
2.	15 Januari 2022	Penampungan di Jl. Munggan Balekambang, Kec. Keramat Jati, Jakarta Timur	Arab Saudi	25
3.	21 Januari 2022	Penampungan CPMI illegal di Jl. Jambu Air Kembangan, Jakarta Barat	Arab Saudi	14
4.	6 Juni 2022	Penampungan CPMI illegal Arab Saudi di Pondok Gede Permai, RT. 6 RW 9, Blok C. 30 nomor 3, Kel. Jatirasa, Kec. Jatiasih, Kota Bekasi	Arab Saudi	14
5.	2 Agustus 2022	Kranggan Wetan, Kec. Jatisampurna, Kota Bekasi	Arab Saudi	82
6.	17 Oktober 2022	Bandara International Soekarno Hatta	Arab Saudi	38
7.	15 Desember 2022	Bandara International Soekarno Hatta	Arab Saudi	64
8.	27 Desember 2022	Bandara International Soekarno Hatta	Arab Saudi	6
TOTAL				322

2023

NO	DATE	PLACE OF INVESTIGATIONS	PURPOSE OF PLACEMENT	IMW NON PROCEDURAL FINDINGS
1.	28 Januari 2023	Bandara Juanda, Sidoarjo, Jawa Timur	Arab Saudi	101
2.	9 April 2023	Bandara International Soekarno Hatta	Arab Saudi	4
3.	11 Mei 2023	Bandara International Soekarno Hatta	Arab Saudi	1
4.	16 Mei 2023	Bandara International Soekarno Hatta	Arab Saudi	10
5.	17 Mei 2023	Bandara International Soekarno Hatta	Arab Saudi	1
TOTAL				117

Through an inspection by labor inspectors it is known that most of the non-procedural CIMW in the last 2 years aim to work in Saudi Arabia

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預防人口販運

- a. 強化邊境監管，像是機場或港口等出入境檢查站，為涉嫌出國或非按程序出國工作的印尼公民提供特別通道
- b. 強化地方政府在實施 2017 年第 18 號移工保護法中扮演的角色，包括提供印尼移工中心職業培訓預算和印尼移工賦權預算。
- c. 執法打擊人口販運加害者並保護印尼移工

FOR THE PREVENTION OF TPPO

- a. Strengthening supervision at crossings, in this case Immigration Checkpoints at Airports or Ports, among others by providing special lanes for Indonesian Citizens who are suspected of going abroad or going abroad non-procedurally to work
- b. Strengthening the role of local governments in implementing Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, including providing a job training budget for CIMW and an IMW empowerment budget.
- c. Law enforcement against the perpetrators of TIP and IMW protection

... TERIMA KASIH



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... TERIMA KASIH



[f](#) Kementerian Ketenagakerjaan Republik Indonesia [t](#) @KemnakerRI [i](#) Kemnaker [v](#) Kementerian Ketenagakerjaan Republik Indonesia

漁業與人權行動計畫及國際勞工組織漁業工作公約（C188）之關聯

The Connection between Action Plan for Fisheries and Human Rights and the International Labour Organization's Work in Fishing Convention (ILO C188)

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漁業與人權行動計畫 及國際勞工組織漁業工作公約 (C188)之實踐



1

Action Plan for Fisheries and Human Rights and the Implementation of ILO Work in Fishing Convention (C188)



2

大綱

- 一、前言
- 二、漁業與人權行動計畫
- 三、C188公約之實踐
- 四、結語

3

Agenda

- I. Introduction
- II. Action Plan for Fisheries and Human Rights
- III. Implementation of C188
- IV. Conclusion

4



一、前言

- 漁船上工作相較陸上工作危險又辛苦，國人上漁船工作意願低落，加上少子化，漁業勞動力短缺情形普遍，國內勞動市場無法滿足漁撈業之勞力需求，致漁船主不得不引進外來漁業人力，以解決當前漁業勞動力不足問題

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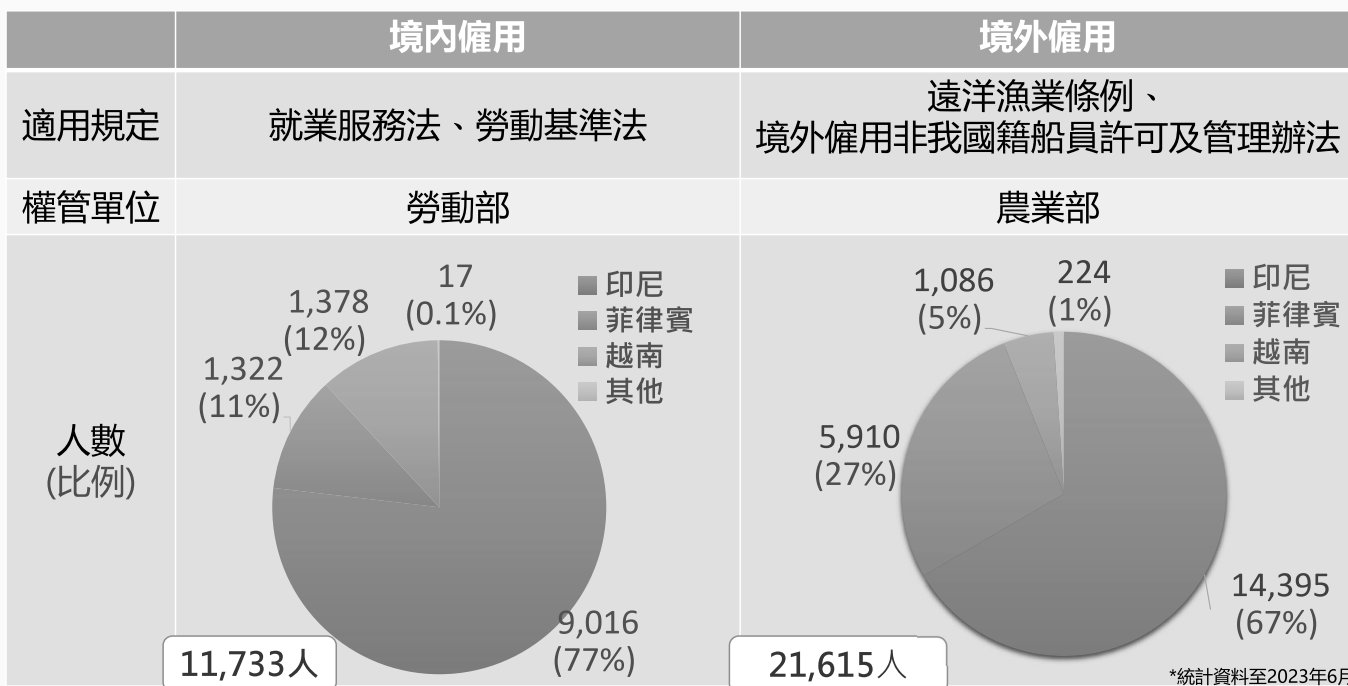


I. Introduction

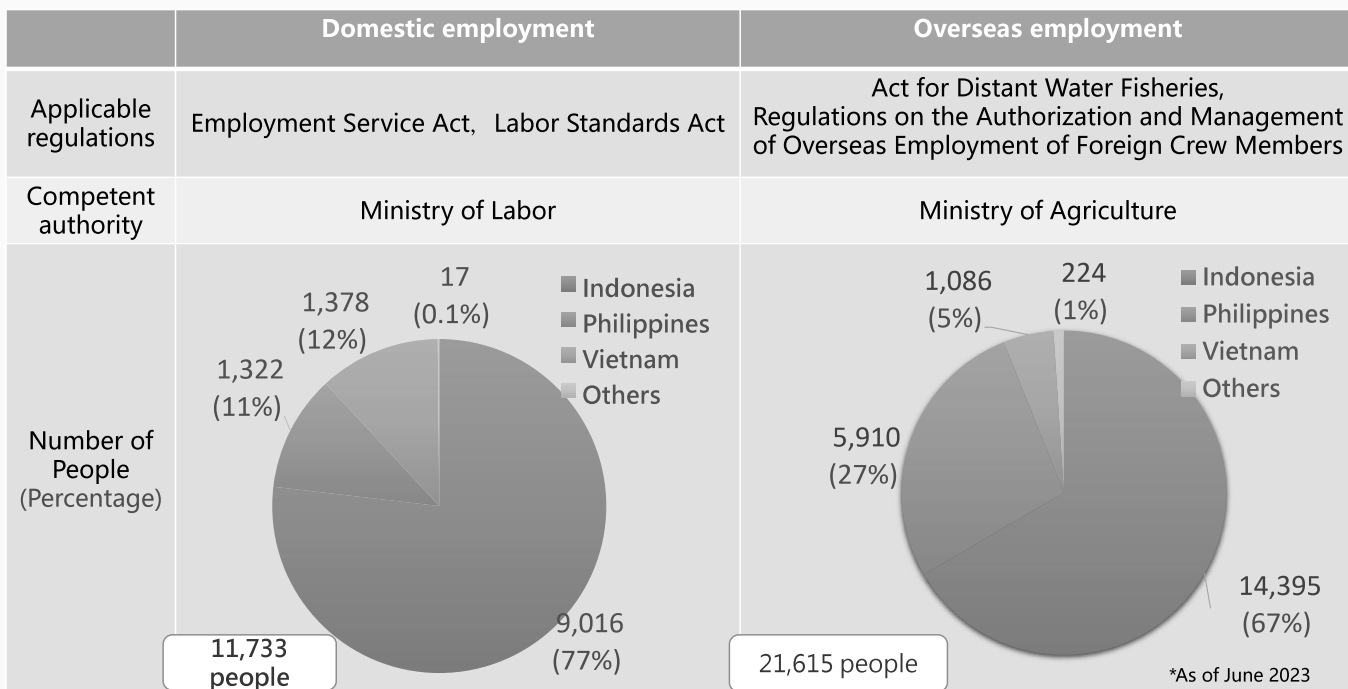
- Compared to work on land, work on fishing vessels is dangerous and rough. Consequently, citizens of Taiwan are less willing to work on fishing vessels. Low birth rate also contributes to labor shortage in the fishing industry. As the domestic labor market fails to meet the needs of the fishing industry, vessel owners have to recruit foreign workers to resolve the shortage of fishing workers.

6

一、前言



I. Introduction



一、前言

制度化提升境外僱用外籍船員勞動權益



9

I. Introduction

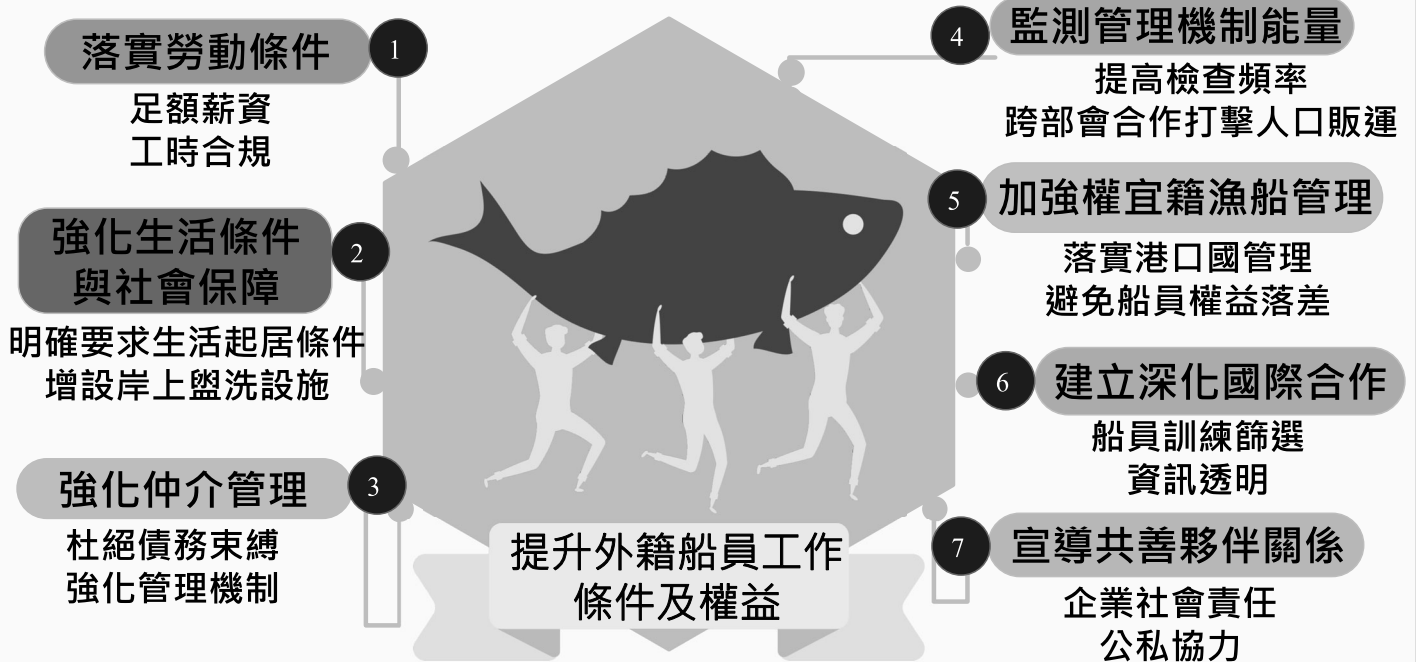
Systematic Enhancement of Labor Rights for foreign crews employed overseas



10



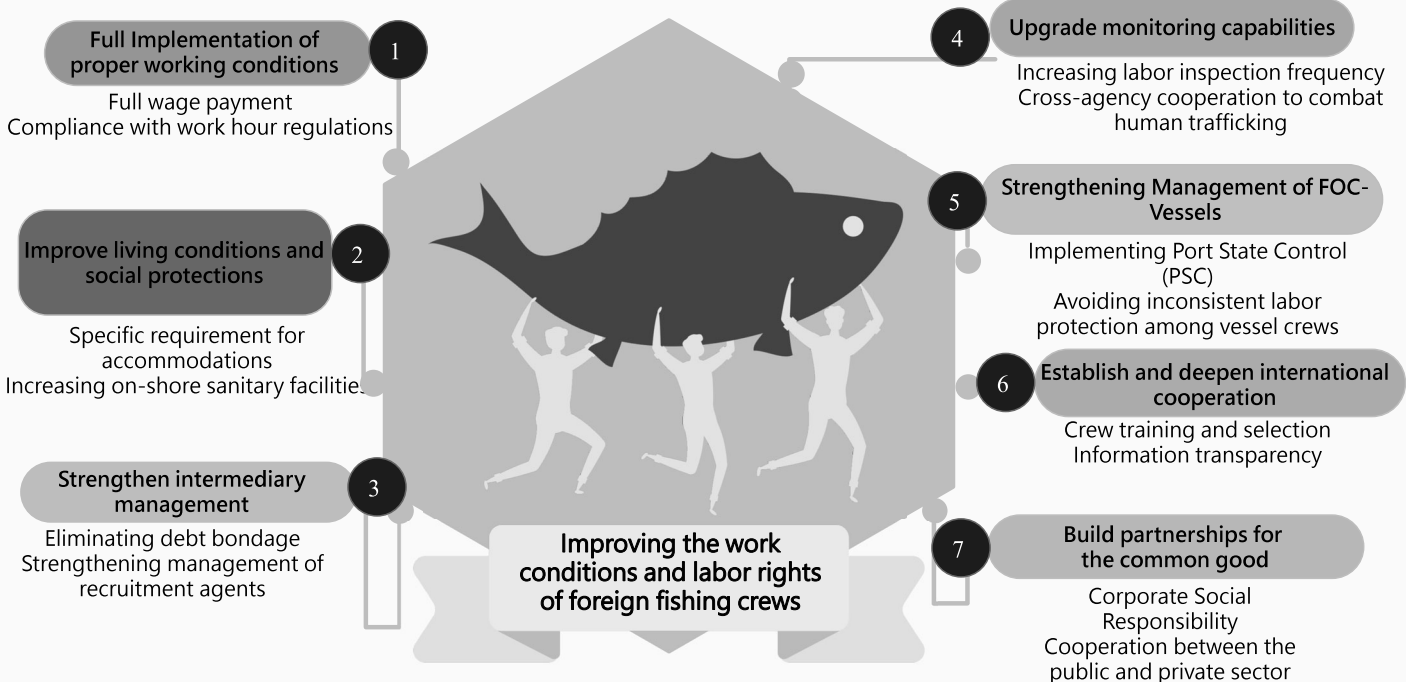
二、行動計畫-七大策略



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II. Action Plan - Seven Strategies



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二、行動計畫-執行情形(1/6)		
	目標	行動
落實勞動條件	1. 落實薪資給付	✓ 2022年已修法要求薪資足額給付，以現金給付或匯款至船員指定帳戶，不得透過國外仲介轉匯
	2. 提高薪資待遇	✓ 已修法自2022年7月起，每月最低薪資由450美元提高為550美元 ✓ 2022年建立基本工資審議機制，2023年起逐年檢討
	3. 合理工時	✓ 2022年已修法要求最低休息時間比照C188公約，經營者應置備出勤紀錄，確實記錄每日工時 ✓ 補助裝設CCTV，並2023年7月12日預告要求遠洋漁船分階段裝設，於2025年6月底前全數完成裝設

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II. Action Plan - Implementation (1/6)		
	Target	Action
Full Implementation of Agreed Labor Conditions	1. Ensuring wage payment	✓ Regulations amended in 2022, requiring that vessel operators make full wage payment either in cash directly to foreign crew members, or through bank transfer to the account designated by foreign crew members. Wage payment shall not be made through foreign recruitment agents
	2. Increasing wage	✓ Law amended, and the minimum monthly wage increased from \$450 to \$550 since July 2022. ✓ Established a basic wage adjustment scheme in 2022, which will conduct annual review starting in 2023
	3. Reasonable work hours	✓ Law amended in 2022, requiring that the minimum hours of rest be in line with C188 and that operators to maintain the attendance record (daily work hours) of crew members ✓ Provision of subsidies for installing CCTV; announced that all distant fishing vessels are required to gradually install CCTV on July 12, 2023 and completed installation for all distant water vessels by June 2025

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二、行動計畫-執行情形(2/6)

強化生活條件與社會保障

目標

1. 船上：
改善住艙空間
增加通訊管道
提升船員安全
2. 提高醫療保障
3. 岸上：
提升生活設施

行動

- ✓ 要求2010年11月16日以後新建漁船住艙符合C188公約，小型或老舊漁船無法調適，推動減船200艘
- ✓ 2022年修法明定漁船連續停留海上不得超過10個月；獎勵漁船建置WI-FI供船員使用
- ✓ 2022年修法要求遠洋甲板作業須穿充氣式救生衣，已受理補助7,537件
- ✓ 2022年修法提高身故險保額不得低於新臺幣150萬元，明定醫療險實支實付不得低於新臺幣30萬元
- ✓ 已提高境內僱用外籍船員勞保投保率達95.37%
- ✓ 2021年起增設盥洗及休憩設施21處
- ✓ 增設4處岸電及2處平價住宿設施

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II. Action Plan - Implementation (2/6)

Improvement on Living Conditions and Social Protection

Target

1. Vessel:
 - Improvement of accommodation space
 - Adding communication channels
 - Improvement of crew safety
2. Improvement of medical support
3. Onshore: Improvement of living care facilities

Action

- ✓ Requiring vessels built after November 16, 2010 to comply with C188 accommodation requirements; phasing out 200 of the small scale or timeworn fishing vessels that cannot fulfill the requirement on accommodation specified in C188
- ✓ Law amended in 2022, specifying a maximum 10-month stay at sea for fishing vessels; encouraging vessels to install Wi-Fi equipment for crew members
- ✓ Regulations amended in 2022, requiring all deck crew members onboard distant water fishing vessels to wear life jackets in the performance of their duty; subsidized operators to purchase 7,537 inflatable life jackets
- ✓ Law amended in 2022, requiring that the minimum insured amount of the life insurance for crews to be no less than NT\$1.5 million and that the minimum insured amount of health insurance to be no less than NT\$300,000
- ✓ The coverage rate of labor insurance of foreign crew members employed domestically reached 95.37%
- ✓ Constructed 21 additional on-shore sanitary facilities and recreation facilities since 2021
- ✓ Constructed 4 on-shore power facilities and 2 affordable accommodations

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二、行動計畫-執行情形(3/6)		
	目標	行動
強化仲介管理	1. 提升仲介品質	<ul style="list-style-type: none"> ✓ 已修法要求國內仲介須取得勞動部許可，國外仲介須取得來源國許可；涉人口販運或強迫勞動，仲介未善盡責任者，廢止許可 ✓ 2023年仲介評鑑納入船員滿意度調查 ✓ 勞動部對就服法設立之仲介執行訪查，2022年計訪查2,800次、2023年已訪查1,319次
	2. 避免謊報行蹤不明	<ul style="list-style-type: none"> ✓ 所仲介船員行蹤不明達一定比例，處分停業1年
	3. 避免不當收費	<ul style="list-style-type: none"> ✓ 要求不得向船員收取服務費、巧立名目收費或預扣工資，服務契約載明收費項目及金額 ✓ 與來源國洽商明訂收費項目及標準

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II. Action Plan - Implementation (3/6)		
	Target	Action
Strengthening Management of Recruitment Agents	1. Improvement of agent quality	<ul style="list-style-type: none"> ✓ Law amended, requiring domestic recruitment agents obtaining authorization from the MOL, and foreign recruitment agents obtaining authorization from the countries of origin. Where there is forced labor or human trafficking on board, the authorization of the recruitment agents involved would be revoked or suspended when found that they did not assume their legal responsibilities ✓ Agent evaluation was included in Crew Member Satisfaction Survey in 2023 ✓ The MOL conducted inspections of recruitment agents established based on the Employment Service Act; 2,800 inspections took place in 2022, and 1,319 took place in 2023
	2. Preventing false report of unknown whereabouts	<ul style="list-style-type: none"> ✓ For domestic recruitment agents which a certain number of foreign crew members with unknown whereabouts will be suspended for one year
	3. Preventing illegitimate charges and fees	<ul style="list-style-type: none"> ✓ Recruitment agents are prohibited from charging service fees or other fees, or withhold wage payment from crew members; the items of charges and amount must be specified on the service contract ✓ Specifying charge items and standards for recruitment agents through consultation with the countries of origin of foreign crew members

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二、行動計畫-執行情形(4/6)

	目標	行動
提升 監測 管理 機制 能量	1. 提高檢查 量能	<ul style="list-style-type: none"> ✓ 漁業署2022年增加招募勞檢員60名，自2022年9月底投入檢查，目標每年查核遠洋漁船50%，並新增對經營者及仲介處所檢查 ✓ 2023年起委託第三方驗證，補足國外檢查量能 ✓ 分階段推動裝設CCTV，記錄工作情形
	2. 打擊人口 販運	<ul style="list-style-type: none"> ✓ 2022年訂定「強化打擊海上人口販運案件合作機制」，強化跨部會分工合作 ✓ 2023年修法提高人口販運罪之刑度 ✓ 漁、勞政機關納入地檢署之人口販運執行小組 ✓ 各部會每年辦理至少1場防制人口販運教育訓練

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II. Action Plan - Implementation (4/6)

	Target	Action
Increasing Monitoring and Control Capacity	1. Increasing labor inspection capacity	<ul style="list-style-type: none"> ✓ The Fisheries Agency recruited 60 additional labor inspectors in 2022, who began inspection duties at the end of September 2022, targeting to inspect 50% of all distant waters fishing vessels annually and added inspections on offices of operators and recruitment agents ✓ Commissioned third-party inspections since 2023 to improve inspection capacity in foreign ports ✓ Gradually installing CCTV to record work conditions
	2. Combating human trafficking	<ul style="list-style-type: none"> ✓ Formulated the Cooperative Mechanism for Strengthening Combat against Human Trafficking at Sea in 2022, strengthening collaboration across divisions ✓ Increased the penalties for human trafficking in 2023 ✓ Inclusion of the Fisheries Agency and MOL in the Human Trafficking Prevention Task Force of each district prosecutors' office ✓ Organizing at least one educational training in human trafficking prevention for each ministry annually

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二、行動計畫-執行情形(5/6)		
	目標	行動
加強 權宜 籍漁船 管理	1.保障勞動條件	✓ 2022年修法禁止國人投資涉及強迫勞動之外籍漁船，並要求權宜籍漁船(FOC)勞動條件與我遠洋漁船相當，應每年2次繳交僱用船員資料清冊
	2.健全港口國管理責任	<ul style="list-style-type: none"> ✓ 2021年修法禁止涉及強迫勞動或人口販運之外籍漁船進入我國港口 ✓ 2022年建立外籍漁船進入我國港口之聯合查察機制，每年查察15%以上

II. Action Plan - Implementation (5/6)		
	Target	Action
Strengthening Management of FOC Vessels	1. Protecting labor conditions	✓ Laws amended in 2022, banning Taiwan nationals for investing in foreign vessels involved in forced labor and requiring FOC vessels to comply with labor standards consistent with Taiwanese distant waters fishing vessels), including submitting crew list twice a year
	2. Enhancing Port State Control (PSC)	<ul style="list-style-type: none"> ✓ Laws amended in 2021, banning foreign vessels involved in forced labor or human trafficking from entering Taiwanese ports ✓ Established joint inspections/interviews mechanisms for foreign-flagged fishing vessels entering Taiwanese ports by in 2022, inspecting at least 15% of vessels annually

二、行動計畫-執行情形(6/6)		
	目標	行動
建立及 深化國 際合作	1.加強船員訓練與保障 2.強化國際溝通、澄清不實資訊 3.加強FOC船管理	<ul style="list-style-type: none"> ✓ 與來源國尋求合作，建立外籍船員篩選訓練機制；鮪魚公會、魷魚公會2022年與印尼漁工工會簽約進行船員勞務合作 ✓ 與市場國會商，促進資訊交流 ✓ FOC船旗國合作，落實FOC船管理
宣導共 善夥伴 關係	強化勞雇雙方勞動權益意識	<ul style="list-style-type: none"> ✓ 推動業者加入企業社會責任計畫 ✓ 辦理公約宣導、人權教育、船員關懷活動 ✓ 邀請專家學者、NGO參與漁業勞動條件及衛生安全專案檢查 ✓ 與NGO交流座談 ✓ 船員有法扶需求時轉介法扶基金會協助

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II. Action Plan - Implementation (6/6)		
	Target	Action
Establishing and Deepening International Cooperation	1. Enhancing crew training and protection 2. Strengthening international communication and clarification of misinformation 3. Strengthening management of FOC vessels	<ul style="list-style-type: none"> ✓ Working with the countries of origin of foreign crew members to establish a crew member selection mechanism; Taiwan Tuna Association and Taiwan Squid and Saury Fisheries Association signed labor collaboration agreements with Indonesian fishermen unions in 2022 ✓ Consultation with major market states to facilitate information exchange ✓ Working the Flag States to manage FOC vessels
Promoting Mutually- Beneficial Partnerships	Promoting awareness of labor rights for both the employers and the employees	<ul style="list-style-type: none"> ✓ Encouraging companies to join CSR programs ✓ Organizing promotional campaigns for human rights conventions and events supporting foreign crew members ✓ Inviting experts, scholars, and NGOs to participate in fishery labor inspections and occupational safety and health inspections ✓ Organizing panel discussions with NGOs ✓ Referrals to the Legal Aid Foundation for foreign crew members in need of legal assistance

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二、行動計畫-精進措施

經檢討本行動計畫執行情形，就船員通訊及安全方面再精進提出修正，經行政院於2023年7月25日核定，將增加投入新臺幣4.3億元，總預算達新臺幣10.3億元

項目	內容
通訊設備	提高Wi-Fi補助額度，將設備租金納入補助，並增加補助衛星電話供船員使用，計補助Wi-Fi 300艘及衛星電話200艘
船員安全	增加補助充氣式救生衣數量；增加補助氣瓶及水溶藥片汰換；補助救生衣加裝個人緊急指位示標(PLB及PAB)

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II. Action Plan - Improvement Measures

Upon review of the implementation of this Action Plan, the Fisheries Agency proposed amendments in crew member communications and safety with additional NT\$430 million approved by the Executive Yuan on July 25, 2023. The total budget thus reached NT\$1.03 billion

Item	Content
Communication Equipment	Increased subsidy for Wi-Fi and expanded the scope to cover monthly rental fees and satellite phones available to crew members; the FA subsidizes the Wi-Fi installation for 300 vessels and satellite phones for 200 vessels in total
Crew Safety	Increased the number of subsidized inflatable life jackets and expanded the scope to replacement of gas cylinders and water-soluble tablets; subsidizes the installation of personal location beacons (PLB and PAB) on life jackets

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三、C188公約之實踐(1/3)

- 臺灣非ILO會員國，無法簽署C188公約，但行政院已指示由勞動部主責推動C188國內法化作業，並已跨部會盤點法規，俟行政院決定國內法化途徑後，將啟動相關法令修訂程序。
- 農業部為保障境外僱用非我國籍船員權益，已先行主動將公約內容逐步納入管理規範。

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III. Implementation of C188 (1/3)

- Taiwan is not a member of the ILO and cannot sign the 188 Convention. Nevertheless, the Executive Yuan has instructed the Ministry of Labor to be in charge of the domestication of C188. The EY has made an inventory of relevant regulations across all agencies and will initiate amendment processes once the approach of making C188 into domestic law is decided.
- The Ministry of Agriculture has begun gradually incorporating content of C188 into its management regulations to protect the rights of foreign crew members employed overseas.

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三、C188公約之實踐(2/3)

C188公約對應境外僱用非我國籍船員之相關推動情形

公約章節		推動情形
漁船上工作之最低要求	最低年齡	已規定船員最低年齡為18歲
	健康檢查	已規定申請僱用時，應檢附船員健康檢查合格之證明文件
工作條件	人員配置	已規定漁船出海船員及幹部船員之最低員額
	休息時間	已規定最低休息時間與C188公約一致
	船員名冊	已規定漁船應置船員名冊及申報進出港等相關資料
	勞動契約	<ul style="list-style-type: none"> • 已規定經營者應將契約應載明事項告知船員後，再與船員簽訂雙語勞務契約，並提供船員一份契約留存 • 履行前項告知義務時，應全程錄音及錄影，並保存3年 • 已參考公約要求訂定勞務契約範本 • 要求船上置備出勤紀錄表，確實記錄工時



III. Implementation of C188 (2/3)

Implementation of C188 for foreign fishers employer overseas

Convention Section		Implementation
Minimum requirements for work on board fishing vessels	Minimum age	The minimum age for work on board a fishing vessel is set at 18
	Medical examination	Application of employment for crew members must include a valid medical certificate attesting to fitness to perform their duties
Conditions of service	Manning	Established a minimum level of manning specifying the number of the fishers and crew members required
	Hours of rest	Established a minimum hours of rest in line with C188
	Crew list	Required vessels to carry a crew list, port arrival/departure applications and records
	Fisher's work agreement	<ul style="list-style-type: none"> • Required vessel owners to notify each fisher of the provisions within a fisher's work agreement (in a language and format understood by the fisher) before signing, and a copy of which shall be provided to the fisher • Notification of the provisions above shall be recorded in audio and video formats and the records shall be kept for at least 3 years • Formulated a standard work agreement according to C188 requirements • Required vessels to keep a record of attendance and document work hours accurately



三、C188公約之實踐(2/2)

章節		內容
工作條件	遣返	<ul style="list-style-type: none"> • 契約期滿或經營者因素提前解約，由經營者負擔遣返費用 • 因船員因素提前解約，服務滿1年者，由經營者負擔遣返費用，服務3個月以上未滿1年者，由雙方依比例分攤
	招募及安置	<ul style="list-style-type: none"> • 仲介機構須先取得勞動部許可 • 仲介不得向船員收取服務費，或巧立名目收費 • 經營者應負責船員出國後之食宿，並負擔相關費用
	薪資	要求薪資應足額直接給付，不得透過國外仲介轉匯，並應保留薪資清冊5年
住宿及膳食		<ul style="list-style-type: none"> • 2010年11月16日以後新建漁船住艙應符合C188公約 • 申請聘僱時，須檢附「非我國籍船員船居生活照顧服務計畫書」供審核，包含飲水、飲食及住宿之衛生安全、健康保護等條件

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III. Implementation of C188 (2/3)

Section		Content
Conditions of service	Repatriation	<ul style="list-style-type: none"> • The cost of the repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fishing vessel owner shall be borne by the fishing vessel owner • The cost of the repatriation due to agreement termination for justified reasons by the fisher, whose service exceeds one year, shall be borne by the fishing vessel owner and that of whose service extends between 3 months and one year shall be shared proportionally by the vessel owner and the fisher
	Recruitment and placement	<ul style="list-style-type: none"> • Recruitment agencies must be approved by the Ministry of Labor • Recruitment agents shall not charge service fees or other fees • Vessel owner shall be responsible for the fishers' food and accommodation overseas and cover relevant costs
	Payment of fishers	Required full and direct wage payment and the wage payment shall not be made through foreign recruitment agents. Payment records shall be kept for at least 5 years
Accommodation and food		<ul style="list-style-type: none"> • Accommodation space on board newly-built vessels after November 16, 2010 shall comply with C188 • When applying for employment, the application must include a foreign crew member's onboard care service plan for review, which specifies the hygiene and safety of potable water, food, and accommodation and health protection

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三、C188公約之實踐(3/3)

章節		內容
醫療、健康保護及社會保險	醫療	<ul style="list-style-type: none"> • 漁船應攜帶有醫藥箱及適當藥品，藥品應有用法說明，其格式應易於船員理解 • 在漁船備有可以得到岸上醫療諮詢之通訊清單 • 非我國籍船員因傷病無法工作，應即時提供妥善照顧，並就近安排治療
	職業安全衛生及事故預防	<ul style="list-style-type: none"> • 要求經營者辦理船員職前講習，並應以船員易懂文字或語言向船員介紹船上環境、求救電話、救生設備放置地點及逃生路線等緊急應變措施 • 船上應備置充氣式救生衣，要求甲板工作船員穿著
	因工患病、受傷或死亡保護	<p>要求經營者為船員投保身故、意外及醫療險</p> <p>船員因職務受傷或生病，經營者應負擔醫療費</p>
遵循及執行		<ul style="list-style-type: none"> • 每年檢查遠洋漁船50% • 對進入我國港口之外籍漁船檢查15%，將結果通報船旗國

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III. Implementation of C188 (3/3)

Chapter		Content
Medical care, health protection and social security	Medical care	<ul style="list-style-type: none"> • Requiring vessels to carry medical equipment and supplies on board to be accompanied by instructions or other information in a language and format understood by the fishers • Requiring a contact list on board listing available medical services ashore • When foreign fishers on board cannot work due to injuries or diseases, the vessel owner shall immediately provide appropriate care and arrange treatment in close proximity
	Occupational safety and health and accident prevention	<ul style="list-style-type: none"> • The vessel owner is required to organize training prior to work and give an introduction to the environment on board and emergency measures such as emergency calls, lifesaving equipment, and escape routes, in a language and format understood by the fishers • Vessels shall carry inflatable life jackets on board and fishers working on the deck are required to wear said life jackets
	Protection in the case of work-related sickness, injury or death	<p>Vessel owners are required to purchase life, accident and medical insurance policies for the fishers</p> <p>When a fisher is injured or sick on duty, the vessel owner shall be borne by the fishing vessel owner</p>
Compliance and enforcement		<ul style="list-style-type: none"> • Inspect 50% of all distant waters fishing vessels annually • Inspect 15% of all foreign vessels entering Taiwanese ports and report the results to the Flag States

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四、結語

- 遠洋漁業近年在面臨營運成本大幅提高、漁獲配額縮減、管理日趨嚴格等挑戰下，產業仍願意在人權方面進行改善。
- 政府將與產業、NGO共同努力，落實保障船員權益並兼顧漁業永續發展，達成臺灣人權立國的目標

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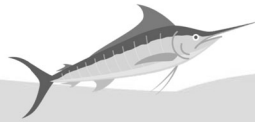


IV. Conclusion

- In recent years, the distant waters fishing industry is trying to improve human rights protection while facing challenges such as significant increase in operational costs, reduced fishing quotas, and stricter management and oversight.
- The government will work with the industry and NGOs to ensure the rights of fishers on board and the sustainable development of the fishing industry in order to achieve the goal of establishing Taiwan as a human rights-based nation.

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報告完畢
敬請指教



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The End
Feedback Welcome



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與談人
履歷

環境正義基金會專案主任
葉于瑄



學歷
現職
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◆ 勤業眾信 企業永續發展顧問

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Protecting People and Planet



遠洋漁業外籍漁工處境與人權保障

環境正義基金會 葉于瑄專案主任



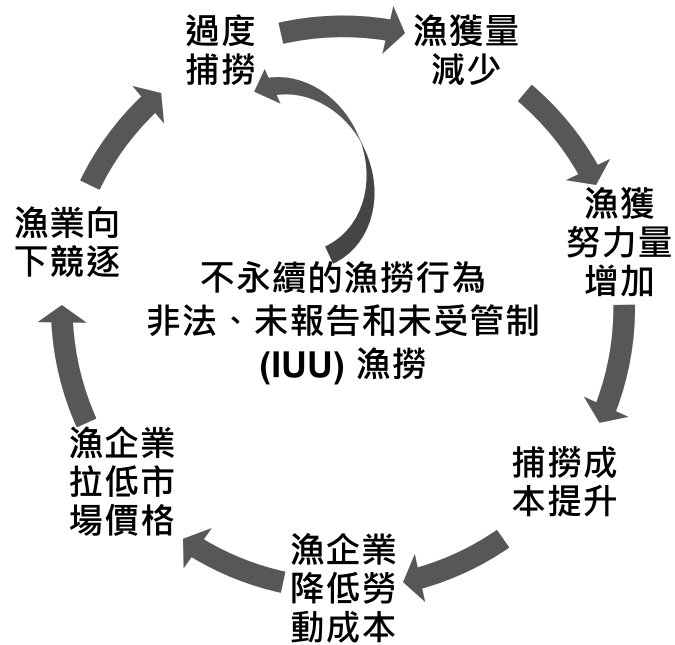
Protecting People and Planet



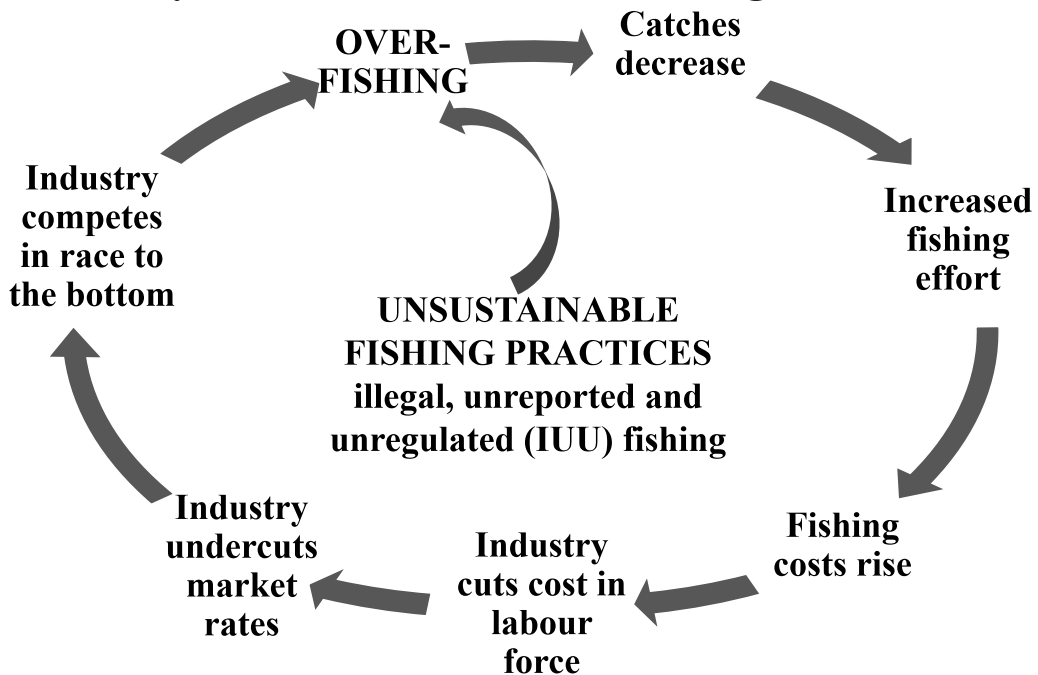
Protection of Migrant Fishers' Human Rights in Distant Water Fisheries

Yu-Hsuan Yeh, Environmental Justice Foundation

漁業的人權和環境問題是怎麼產生的



The Vicious Cycle of Unsustainable Fishing



近年遠洋漁業的人權侵犯與 IUU 漁撈

- EJF 訪談 31 位 2018 年至 2022 年間，在 20 艘台灣漁船和 2 艘台灣人擁有外國籍漁船上工作的漁工（漁業與人權行動計畫實施前）
- 扣留薪資、繳交保證金和沒收身分證件仍然非常常見
- 漁業與人權行動計畫雖回應部分問題，漁工仍亟需完整的制度性保障

指控內容	受訪者比例	船隻比例
涉嫌侵犯人權		
扣留薪資	94%	95%
要求繳交保證金	94%	95%
沒收身分證件	94%	95%
超時工作	71%	68%
身體虐待	13%	18%
言語霸凌	68%	73%
惡劣的工作和生活條件如缺少藥物、食物或水	42%	50%
非法、未報告和未受管制 (IUU) 漁撈		
割鰭棄身	42%	41%
蓄意捕撈宰殺鯨豚類動物	45%	50%

Human Rights Violations & IUU Fishing in Recent Years

- EJF interviewed 31 crew members who worked on 20 Taiwanese flagged vessels and two Taiwanese-owned foreign-flagged vessels between 2018 – 2022 (before the implementation of Action Plan for Fisheries and Human Rights)
- Wages withheld, guarantee money requirements and confiscation of ID documents are still very common
- Though Action Plan for Fisheries and Human Rights addresses some issues, fishers still need complete institutional protection

Allegations	Fishers	Vessels
Alleged Human Rights Violations		
Wages withheld	94%	95%
Required to pay guarantee money	94%	95%
Confiscation of ID documents	94%	95%
Excessive overtime	71%	68%
Physical abuse	13%	18%
Verbal abuse	68%	73%
Abusive working and living conditions, e.g. lacking food/ water	42%	50%
illegal, unreported and unregulated (IUU) fishing		
Shark finning	42%	41%
Intentionally catching and killing cetaceans	45%	50%

2023 年案例一：台灣漁船

- 船員失蹤
- 身體虐待
- 恫嚇和言語霸凌
- 惡劣的工作和生活條件
- 超時工作
- 扣薪
- 扣留身分證



2023 Case I: a Taiwanese Vessel

- Missing crew
- Physical abuse
- Intimidation and verbal abuse
- Abusive working and living conditions
- Excessive overtime
- Wage deductions
- Confiscation of ID documents



2023 年案例二：權宜船

- 惡劣的工作和生活條件
- 合約資訊不明
- 扣薪
- 扣留身分證件
- 申訴管道無法發揮效果
 - 漁業署訪船
 - 1955

	NAMA ABK	KAPAL	PERIODE	GAJI	BUAN	HARI	SISA GAJI	PINJAMAN DI ATAS KAPAL	SISA PINJ USD DI KANTOR
2023				450	2		900	-42	
2023				450	2		900	-66	
2023				450	2		900	-65	
2023				450	2		900		
2023				450	2		800	-47	-60
2023				400	2		800	-55	-201
2023				400	2		800	-13	-173
2023				450	2		900		-534
2023				400	2		800		-162
2023				400	2		800	-168	-108
2023				400	2		800		
							Rp 10,200		

2023 Case II: a Taiwanese-owned Foreign-flagged Vessel

- Abusive working and living conditions
- Unclear about contract information
- Wage deductions
- Confiscation of ID documents
- Ineffective grievance mechanisms
 - Fisheries Agency crew welfare interviews
 - 1955 hotline

	NAMA ABK	KAPAL	PERIODE	GAJI	BUAN	HARI	SISA GAJI	PINJAMAN DI ATAS KAPAL	SISA PINJ USD DI KANTOR
2023				450	2		900	-42	
2023				450	2		900	-66	
2023				450	2		900	-65	
2023				450	2		900		
2023				450	2		800	-47	-60
2023				400	2		800	-55	-201
2023				400	2		800	-13	-173
2023				450	2		900		-534
2023				400	2		800		-162
2023				400	2		800	-168	-108
2023				400	2		800		
							Rp 10,200		

現行制度落差

- 漁業署非勞動檢查機關，須預先告知之訪船難以得知實情
- 海上作業不透明且難以監管，漁工缺乏與陸地聯繫管道及即時申訴機制
- 缺乏適當機制篩選符合台灣政府標準之外國仲介

依據	漁業工作公約	境外僱用非我國籍船員許可及管理辦法	投資經營非我國籍漁船許可辦法	差異
安置費用	安置船員的費用和其他開支不得直接或間接，整體或部分，由船員承擔。	船員自抵達漁船所在港口國之日起，至返國之日止，由經營者提供交通及食宿費用。	無	〈境外僱用非我國籍船員許可及管理辦法〉僅針對船員自抵達漁船所在港口國之日起，至返國之日止。〈投資經營非我國籍漁船許可辦法〉無生活照顧相關之規定。
工作環境	船上居住環境應符合「漁船住艙標準」漁船上住艙之空間、居住品質、生活所需裝備應維持衛生和安全、健康、舒適之條件，船上攜帶和提供之食物、水必須足夠且有足夠的營養。	船上居住環境應符合「境外僱用非我國籍船員船居生活照顧服務計畫書審查原則」。	提供船員足夠之飲食、飲水，及每人個人之床鋪。	〈漁業工作公約〉對船上居住環境的要求更為嚴格，且要求進行頻繁檢查，以確保漁船上的船員能夠生活在安全、健康、舒適的環境中。而〈境外僱用非我國籍船員許可及管理辦法〉則較為寬鬆，對於食品及飲用水之營養價值與多樣性並無要求，且不要求頻繁檢查。〈投資經營非我國籍漁船許可辦法〉僅規定了最基本的飲食、飲水與床鋪。
勞務契約	要求船員與經營者之間應簽署契約，並且確保船員在簽署契約前有時間以及機會能徹底瞭解契約內容，並有管道能夠尋求幫助了解契約內容條款。經營者應保證給予船員書面、經船員和經營者或其授權代表簽名，按照本公約要求所制定船上體面勞動和生活條件的勞務契約。	契約應載明境外僱用辦法中列出的事項，包括契約期限、船員薪水、保險、經營者對船員傷病時的責任、交通費用、休息時間、違反契約之賠償、申訴管道、其他權利義務。經營者或仲介必須履行告知義務，告知船員其契約內容，並不間斷錄影保存三年。	與船員簽訂具船員母國語言之雙語勞務契約。	與〈境外僱用非我國籍船員許可及管理辦法〉相比，〈漁業工作公約〉對簽署契約的程序更為嚴格，需使船員實際瞭解契約內容，且提供幫助使船員了解契約內容。〈漁業工作公約〉與〈投資經營非我國籍漁船許可辦法〉之間的差距更大，主要在對勞務契約簽署前能徹底瞭解契約內容的機會和管道，與勞務契約內容。

Gaps in Current Laws and Policies

- The Fisheries Agency is not authorised to conduct labour inspection, and as the administration agency to conduct interviews, it requires agreement from the vessels owner which largely reduces the truthfulness of the interview
- Lacking transparency and monitoring capacity for operation at sea
Lacking a grievance system or communication channels for fishers at sea
- Lacking proper mechanisms to screen foreign manning agencies that can provide service that meets the standards the Taiwanese government required

結論與建議

- 儘速將C188國內法化，並由勞動部主責管理，執行正式勞動檢查
- 加強仲介管理及評鑑，並要求國內仲介只能與符合政府標準之外國仲介合作
- 持續增加透明度，以確保保護人權及終止 IUU 相關措施落實
- 承諾支持全球漁業透明度憲章，並鼓勵其他國家跟隨台灣腳步提升漁業透明度

《全球漁業透明度憲章》	
船舶資訊	1 規定所有漁船（包括運輸船和補給船）必須有唯一的識別號碼。
	2 發佈許可、授權和制裁清單。
	3 公開船舶受益所有人。
	4 禁止漁船懸掛方便旗。
捕撈活動	5 公開船舶位置資料。
	6 禁止或密切監測海上轉運。
	7 規定海產品從海洋到餐桌全程可追溯。
治理和管理	8 簽署為漁船和漁業貿易制定標準的國際條約。 (包括聯合國糧食及農業組織[FAO]制定的《港口國措施協定》；國際勞工組織[ILO]制定的《工作基本原則和權利》和《漁業勞工公約》(C188)；國際海事組織制定的《開普敦協定》)
	9 確保公眾能公開公平地獲取漁業資訊並參與漁業管理和決策。
	10 收集有關漁船船員狀況的資料，並以匯總形式公佈。

Conclusion and Recommendations

- Immediately bring all relevant domestic regulations to the standards of ILO C188, and the Ministry of Labor should be the competent authority for all labor governance and be able to conduct the formal labor inspections
- Strengthen manning agencies' management and evaluation, and require Taiwanese agencies only work with foreign counterparts that meet the standards set by the Taiwanese government
- Continue to increase transparency to ensure the implementation of human rights protection and elimination of illegal fishing
- Commit support to the Global Charter for Fisheries Transparency and encourage other countries to follow Taiwan's progress to improve transparency in fisheries management

Global Charter for Fisheries Transparency	
Vessel information	1 Require unique identification numbers for all fishing vessels (including transport and supply vessels).
	2 Publish lists of licenses, authorizations, and sanctions.
	3 Make public the beneficial ownership of vessels.
	4 Stop the use of flags of convenience by fishing vessels.
Fishing activity	5 Make vessel position data public.
	6 Ban or closely monitor at-sea transshipment.
	7 Mandate seafood traceability from boat to plate.
Governance and management	8 Ratify international agreements that set standards for fishing vessels and trade. (Including the Food and Agriculture Organization of the United Nations (FAO) Agreement on Port State Measures; International Labour Organization (ILO) Fundamental Principles and Rights at Work; ILO C188; and International Maritime Organization (IMO) Cape Town Agreement.)
	9 Ensure public and equitable access to fisheries data and participation in fisheries management and decision-making.
	10 Collect data on the conditions of fishing vessel crews and publish it in aggregate form.

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 - ◆ 臺北環宇法律事務所律師 (104.04-105.04)
 - ◆ 臺北嘉禾法律事務所律師 (103.04-104.03)
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