

# 2018 International Workshop on Strategies for Combating Human Trafficking

2018 年防制人口販運  
國際工作坊

PROGRAM

大會手冊

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# 2018 年防制人口販運國際工作坊

## 2018 International Workshop on Strategies for Combating Human Trafficking





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# 第一場

防制新作為 - 人口販運國際性及區域化聯防機制探討

## **Session 1**

**New Prevention Approaches- Joint International Prevention and Regional  
Prevention Mechanisms**



「移民、安居、和諧」- 聯合國起草「安全有序常態性移居全球約定」及對防制人口販運之影響探討

**Immigration, Housing Safely and harmoniously –  
The Drafting of Global Compact for Safe, Orderly  
and Regular Migration in UN**

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## Brief Introduction of Speaker

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## Education

State University of New York Bachelor of Arts Degree at Friends World College, Huntington, NY.

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Current (since October 2011) President, Global Migration Policy Associates

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Research Coordinator; Coordinator Asylum and Migration Concerns  
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Program Director, South American Refugee Program; Seattle, USA



## Setting the record straight: what migration is about

Migration is about people and it is fundamentally about internationalized labour and skills mobility in a globalized world. That mobility is key to sustaining the world of work in the Twenty-First Century: key to the viability of labour markets worldwide, to obtaining return on capital in a globalized economy, and key to development. The very survival of developed economies depends on migration. This is now as true in Taiwan as anywhere.

Migration rejuvenates workforces, maintains viability of agriculture, construction, health care, hotel, restaurant and tourism and other sectors -in Taiwan the fisheries sector as well. Migration meets growing demand for skills, and promotes entrepreneurship in Taiwan as elsewhere. Migrant remittances, transfer of skills, investments, and expanded trade enhance development and well-being in many countries, including here.

There are an estimated 260 million foreign-born people residing today in countries other than where they were born or held original citizenship. However, this figure is a significant undercount as it does not account for short-term, temporary migrants, nor for cross-border traders moving across various countries although remaining legally resident in their home country.

That UN global estimate does account for refugees and asylum/seekers – although not internally displaced persons (IDPs). Current UNHCR figures count 25.3 million refugees (19 million under UNHCR mandate and 5.3 million Palestinians registered by UNRWA, the UN Relief and Works Agency). UNHCR also counts 10 million Stateless People. Refugees and stateless persons comprise about 13 percent of the global migrant population. 55% of the world's refugees come from three countries: Syria (5.5 million), Afghanistan (2.4m), and South Sudan (1.4m).

### Migration and economic activity

Well over 90 percent of migration today –whether on the immediate or admissions reasons of family reunification, immigration, educational studies, or refugee flight—is bound up in employment and economic activity outcomes. ILO calculated that 150 million of the 232 million people –including refugees – living outside their countries of birth or origin in 2013 were economically active — employed, self-employed or otherwise engaged in remunerative activity.

Migration represents growing portions of populations and, particularly, work forces in many countries across Asia, the Americas, the Caribbean, Europe and Eurasia. Foreign born workers comprise 10% to 15% of labour forces in Western European countries and more than 18% in immigration countries of Australia, Canada and the USA, and 40% to 93% of work forces in member States of the Gulf Coordination Council (GCC). It is 10 to 20% across Eurasia (Russian Federation, Caucasus and Central Asia), and a growing proportion in several Asian countries including Hong Kong (SAR), Malaysia, Singapore, Taiwan and Thailand.

The irony is that this occurs as unemployment rises in the 'old industrialized countries'. The dichotomy is twofold: a significant proportion of unemployment is structurally inherent to jobless growth approaches by finance and industrial capital, while technological evolution in the world of work results in many workers left with obsolete skills and experience or simply without skills relevant to employer needs today. This is coupled with education and training lagging behind evolving economic and labour market needs, both in numbers trained and in content of training.

## **Mobility, Development and Sustaining Development**

Economic activity does not occur without capital, labour power and skills/technology coming together.

Development today will not advance without integrating the material and human resources, capital, technological capacities and larger markets across groups of states that only combined together can obtain: 1) breadth of resources, 2) scale of production and 3) size of markets that assure viability in a highly competitive globalized world economy. Integration will not thrive without regulated international freedom of movement of goods, services, capital, technology and labour at all skills levels.

Development is the catchword for discussion of migration. Development is often simplistically equated with growth of GDP --increased economic growth measured by domestic production of goods and services. However, a more adequate understanding of development is:the elaboration of productive means, forces, capacities and output that provide goods, services, technology and knowledge to meet human needs for sustenance and well being. Development comprises building the material means for: extraction and transformation of resources; for production of goods, services and technology; for constructing infrastructure required for producing, transporting and

distributing resources, goods, and services; for reproducing capital and labour; and for providing human welfare/well-being in terms of housing, nutrition, healthcare, transportation, education, and culture in its broad sense.

Freer movement of persons has long been recognized as a key pillar of economic integration and development, particularly in Regional Economic Integration processes (commonly referred to as Regional Economic Communities -RECs). Free movement of persons is the means to ensure availability of skills and labour where needed to spur investment and economic development by drawing on the full breadth and diversity of professional and technical competencies as well as labour power. Common terms that shape perceptions –South-North and South-South-- do not accurately convey the reality that most migration is taking place within regions – not between. 52% to over 60% of migration originating in Africa, Asia and Europe remains within those regions. Much migration today takes place within the twelve Regional Economic Communities that have formal regimes of free circulation of persons that involve a total of over 100 countries. 80% of migration originating in West Africa goes to other member states of the ECOWAS, the proportion is similar in the Eurasia Economic Union. It is 50-60% for the European Union, Mercosur and the SADC --Southern Africa Development Community region.

### **Economic importance of migration**

Recent figures indicate that the annual flow of remittances is more than 500 billion US dollars . Some estimates exceed \$600 billion. That is considerably larger than total annual overseas development assistance (ODA - “foreign aid”) and larger than total foreign direct investment (FDI). But remittances generally comprise less than 20% of migrant earnings.

A more comprehensive measure of value of economic activity by migrants to host countries may be at least 3 trillion dollars, measured by an extrapolation of aggregate direct earnings. That does not indicate the value added or created by migrants’ labour not returned to workers in remuneration or benefits but that adds to the worth of employers, private and public, in formal and informal sectors. Furthermore, migrants contribute to health of national social security systems, in some cases without ever obtaining benefits or use of their contributions. The acknowledged subsidy that undocumented migrant workers provide to the US Social Security system is estimated to be near 50 billion dollars over the last 5 years.

Remaining un-measured is the value of training and social reproduction cost transfers made by migrants moving usually from less to more developed countries. In aggregate terms, that represents a sort of foreign aid primarily from South to North. Assuming that each migrant with tertiary education represents \$40,000 in cost of usually State-financed higher education, migration of 100,000 skilled workers represents an aggregate transfer of educational investment equivalent to 4 billion US dollars. This figure is indicative, no significant research on costings and aggregate values has been done.

### **Greater mobility anticipated**

Within 15 years, the majority of world's countries and populations will be in serious work force decline. Germany loses 6 million members of its work force over the next twelve years, Italy 3 million; the Russian Federation has lost 12 million since 2000, with currently a rate of reduction of 1 million workers per year in its domestic labour force. The Japanese labour force will have shrunk by 37% in 2040 from what it was in 1990. A recent study says that Switzerland will need 400,000 additional workers by 2030. China's work force may decline as many as 100 million people by 2050.

Some 140 of 224 recognized countries and political territories are at or well below zero population growth fertility rates . That is here and now in Taiwan and across much of Asia. Examples from regions, starting with Africa: Botswana, Libya, Mauritius, Morocco, Seychelles, South Africa and Tunisia. Americas: Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, El Salvador, Mexico, Nicaragua, Paraguay, Peru, Uruguay, USA, plus nearly all Caribbean states. All EU member countries. Eurasia: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russian Federation, Ukraine, Uzbekistan. Middle East: Bahrain, Iran, Lebanon, Qatar and soon Saudi Arabia.

Over coming years, all of these countries face increasing departures from the work force uncompensated by decreasing numbers of youth entrants. This means increasingly intense global competition for the most crucial economic resource of all today, trained skills at all levels. The likely consequence for many countries will be even greater drain of skilled and educated human resources. It also means looming crises for contributory-based social security systems as declining work force numbers face increasing numbers of retired workers.

Pressures for labour displacement and emigration from countries North and South remain intense; in some situations they have significantly intensified in the last five years. Particularly in Africa as well as Afghanistan, India and Pakistan, the main factor remains the absence of jobs and decent work in countries with growing youth populations.

Job creation remains consistently flat while youthful populations are increasing, adding millions of new workers each year to labour markets in which new jobs created only match numbers of jobs lost. Significant population growth is expected to continue over the next three decades across sub-Saharan Africa and certain Asian countries, with fertility rates and global population growth decreasing by mid-century. A major consequence will be millions more youth reaching working age with no prospects for employment and many with no training or qualifications to meet employer needs.

Meanwhile, financial crises and austerity measures that devastated national economies as well as social protection systems even in Europe have resulted in youth unemployment rates reaching 50% in several countries. Although now declining to 20-30%. New waves of emigration, especially of young skilled workers, continue to depart from Greece, Italy, Portugal and Spain.

### **Skills and training constraints**

No country today can form or train the entire range and number of evolving skills needed to perform the ever more complex work performed on its territory. This drives a constantly increasing, international mobility of skills, competences, and labour at all skill levels.

The skills crisis is critical. A forecasting study by the McKinsey Global Institute estimated that the global shortage of high skilled and trained technical skills is projected to reach 85 million by 2020. 38- 40 million skilled workers with tertiary education will be lacking, especially in developed countries. Another 45 million will be missing with needed technical, vocational and scientific skills, particularly in developing countries. This when today employers and their associations around the world complain that they cannot fill one in three jobs on offer with the needed level of skills.

It is widely observed that educational systems in many countries are producing

graduates with inappropriate, inadequate, or obsolete skills and knowledge. At the same time, educational, vocational and technical training systems are not accessible to many youth seeking employable skills.

The development cost is huge, skills are absent where they are needed to spur investment and support economic and infrastructure development. Impediments to mobility and absence of recognition of skills and experience compound the lack of training for current and future needs.

### **Convergence and contention between economic actors**

Capital, managed today mostly by private sector employers and labour represented by worker trade unions, are incontestably the core actors of economic activity. They are the operational pillars for advancing –or simply maintaining-- development. They are the primary beneficiaries of liberalizing international circulation of capital, goods, services, technology and labour. They most immediately suffer the losses engendered by restrictions on circulation –whether of capital or people. And they are the proponents and beneficiaries of free circulation of persons. Participation of these actors, referred to as the social partners, is thus essential in any process addressing migration.

However, migration is a key terrain of contention between capital and labour: between the employers/private sector versus workers/especially organized unions. It is where the division of wealth is fought out-- how much of what is generated is returned to capital versus how much goes to working people as remuneration and to and populations as public services. Migrants are also vectors of contention over conditions of work and investment in safety and health protections versus lowering costs to obtain higher returns on capital.

Migration poses the question of whether working people remain organized to defend their interests. Migrant workers are key to whether and how workers freely associate and organize to collectively bargain for fair remuneration and decent work conditions.

In the context of promoting mobility and freer circulation of people –of labour, 'social dialogue' among the social partners is especially important to facilitate agreement on common positions and cooperation across their diverging interests. This to find workable approaches that engage both employers and workers and

to bring to bear the strength of a common front to ensure that government and parliamentary approaches take full account of their role and perspectives. That is ultimately essential to making mobility work to advance integration and development.

## **Exploitation versus Protection**

Exploitative conditions commonly experienced by migrants are structurally driven. For many enterprises in many countries, for entire economic sectors, low cost foreign labour is the only ticket to survival. Labour-dependent agriculture would not be viable in Europe nor in North America --nor could a part of the population afford to eat-- without cheap immigrant labour. What about Taiwan?

An excerpt from the executive summary of a report on the UK sums up treatment of many migrants, consistent with data from other developed, industrialized countries:

“Migrants, especially those from outside the EU15 who have limited access to social security provisions, face the paradoxical position of being welcomed by businesses and the state due to their high flexibility and minimal utilisation of the welfare state on the one hand, whilst facing increasing unease and hostility from anti-immigrant groups, the same state that welcomes them, and large numbers of the general public on the other.

The highly unregulated and flexible economy has allowed many migrants to easily find work and businesses to remain competitive whilst simultaneously creating the conditions for widespread exploitation and producing divisions amongst workers, both between (native) born/migrant and between different groupings of labour migrants.”

Health, home care and schooling for children and care for populations of ageing people increasingly depend on migrants in all regions as do hotel, restaurant and tourist sectors.

Global competition, free trade, and the race to the bottom phenomena push against costs of labour and provision of social services; they challenge the very social function of States. Keeping some migrants cheap, docile, flexible and removable without social costs-- becomes not just highly desirable. It becomes imperative to keep jobs at home and economies afloat, no matter what those jobs are and who is doing them. Despite rhetoric about controlling migration, migrant workers often fall into or remain in irregular situations, tolerated because they provide cheap, flexible

labour needed to sustain enterprises, employment and competitiveness.

Attention to protection of human and labour rights and of decent work is thus an essential pillar of any approach to international labour mobility. That means especially the national application of international labour standards, their domestication to all workplaces formal or informal especially those where migrants are employed, and their enforcement by effective labour inspection. This is indeed a particular and primordial concern for Taiwan.

## **Social Protection**

Effective social security systems provide income security, prevent and reduce poverty and inequality, and promote social inclusion and dignity. Social security enhances productivity and employability and supports sustainable economic development, contributing to decent living conditions for all and making extension of social security coverage for migrants vital to workers, the economy and society.

Although migrant workers contribute to the economies of both destination and origin countries, they are not usually taken account of in national social security schemes. Migrants often lose entitlement to social security benefits in their country of origin due to absence. They face restrictive conditions or non-access to social security in the country of employment. Even when they can contribute in host countries, their contributions and benefits often are not portable to origin countries.

Migrants are today unwitting players in a global redefinition of social protection: who is responsible for it, who is covered and with what benefits. The intent in international law is universal coverage, as laid out in ILO Convention 102 on social security. The ILO and UN have now established the notion of a social protection floor as a universal expectation. But assertions abound that social protection for migrants is today a question of finding a median between two “extremes,” one being full coverage, the other none at all.

In contrast, progressively extending social security to migrant workers is imperative to ensure welfare and social cohesion across any country such as Taiwan. However, it can only be achieved with political will to obtain necessary legislative acts, administrative mechanisms and practical measures.



## Gender Specificity

The feminization of migration is not about the gender proportions of migration. Female participation has been above 45% for decades and is nearly 49% today . The difference is that today most if not nearly all women migrants are economically active. They often migrate on their own rather than as dependants. This is generally true in all regions, notably across Asia.

In a context of stratification of employment and segmentation of labour markets, women migrants hold particular appeal for employers as they are sought after for 'women's work' that, not coincidentally, is usually low paid and unprotected: domestic work, healthcare, agriculture, hotel and restaurant, semi-skilled manufacturing in export processing zones. Common across these sectors is that while some workplaces may be highly socialized they are not organized, meaning no unions or associations for mutual defence and solidarity, nor any bargaining power to press for decent work conditions.

Women and girl migrants face high risks of sexual and gender based exploitation as well as violence, both in the migration process and in destination countries. Adoption of ILO Convention 189 on Decent Work for Domestic Workers has brought attention to a sector of activity almost entirely comprised of women workers.

Attention to the risks faced by migrant domestic women workers should be a springboard to highlight the generalized lack of effective protection faced by women migrant workers in agriculture, in textile sweatshops, in services and elsewhere. Testimony abounds of women working in these sectors subject to exploitative working conditions, sexual harassment, unprotected exposure to dangerous pesticides or chemicals, and other risks, in Morocco as well.

## The clear and present danger of xenophobia

As burning concern is the recognized generalized rise in both discriminatory practices and of racist, xenophobic behaviour against migrants. Hostility towards migrants is being manifested worldwide; Reported incidents in all regions suggest increasing intensity: shootings of migrant workers at or near workplaces, individual or mob attacks on and killings of migrants, and police round-ups as well as mass detention of migrants in what can only be characterised as concentration camps. In some situations of domestic unrest and civil conflict, foreigners have been explicitly targeted with sometimes deadly hostility.

The concern is aggravated by the absence, with one or two exceptions, of vigorous responses by governments to anticipate, discourage, prevent manifestations of racist and xenophobic hostility against foreigners, and to prosecute perpetrators. It is further aggravated by discourse and action by some governments that engage in public brutality and violent repression against migrants.

Social cohesion can only be maintained by deliberate legal, institutional and practical measures. Demonstrable proof is that in a few countries where discrimination and xenophobia have been vigorously discouraged by government and civil society, there have been few or no racist killings of migrants nor burnings of businesses, homes or places of worship of foreigners and where anti-immigrant politicians and political parties have gained no traction.

### **The governance framework**

Despite the considerable academic literature and discourse to the contrary, there is indeed a comprehensive international framework for governance of migration. Much of it is designed to support good governance and administration at the national level, where most responsibilities and issues lie.

This framework comprises a broad set of complementary international legal standards in several areas of law. It comprises supportive mandates and responsibilities in a range of international and regional agencies and organizations. It also includes globally applicable policy recommendations elaborated in formal, authoritative international conferences over the last two decades.

The legal framework is provided by 1) the nine main Human Rights Conventions; 2) all up-to-date International Labour Standards; 3) the 1951 Convention and 1967 Protocol on the Status of Refugees, 4) the Vienna Convention on Consular Relations; and 5) the two Protocols on trafficking in persons and smuggling of migrants to the Convention against transnational organized crime.

At the core of the global legal regime for migration governance are three complementary, sequential instruments on international migration: ILO Convention 97 on Migration for Employment (1949), ILO Convention 143 on migrant workers (Supplementary Provisions) of 1975, and the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families (ICRMW). All three contain norms for governance and administration of migration and for

international dialogue and cooperation as well as specific standards recognizing and protecting the rights of migrants.

Protection of migrants –and prevention of trafficking-- cannot be realized nor enforced without recognition and enforcement of their human and labour rights in national law and practice. Ratification of these instruments is the essential foundation for national law, policy and practice. In reality, 89 countries have ratified at least one of these three instruments, including 28 in Africa and nearly all countries in Central and South America and several in Asia.

Fitting for a large global population present in many countries, the international institutional structure mirrors the multitude of concerns of governing large populations. More than 20 specialized international institutions address migration in their mandates, competencies and activity, whether labour and employment, health, security, development, education, human rights, criminal justice, etc. No single migration agency could possibly address the range of concerns of governing populations, each requiring specialized knowledge, law, competencies and functions.

## **Smuggling and Trafficking**

Smuggling of migrants and trafficking in human beings are largely the consequence of non-functional mobility regimes in globalized labour and skills supply and demand for deregulated markets.

Trafficking –and smuggling exists because there is need-demand for labour – particularly for cheap unprotected labour (such as in Taiwan fishing industry)-- where at same time there is no effective labour protection or inspection, allowing exploitation of labour with impunity.

When circulation is freer, when employer access to labour and job-seeker access to jobs is unrestricted, --but abuse of workers is controlled-- smuggling and trafficking all but disappear. Which is the case within most RECs. A dramatic example is that trafficking to Western Europe literally disappeared overnight in 2001 when visa restrictions were dropped for nationals of ten accession countries for entry into the EU. People –young women in particular-- from one day to next no longer had to seek “travel agents” and passers to get to Western Europe. In many cases, those agents and passers put their women –and men--clients into exploitative situations, and in doing so met the definition of trafficking.

Smuggling is a more complex issue, especially in today's world of civil warfare, military conflicts, dictatorships and widespread violations of human rights. For many people in refugee and refugee-like situation, there is no escape except to pay for services to get away, and to get around military checkpoints and armed warfare. Many smugglers have nothing to do with trafficking, And many people smuggled across borders would be dead if they hadn't had help in transiting to safe haven.

In not a few countries employers desperate for the labour they need to stay in business recur to –discretely-- allowing undocumented labour to arrive for work. It's a touch choice: do you close your business, go bankrupt –and contribute to your country's economic stagnation? Or do you allow for needed labour and skills to get to you 'without inspection'? That includes 'legitimate' employers who provide decent work and pay, not only those who use restrictive policies to exploit workers who live in fear of apprehension so they can't complain and don't join unions to defend rights and decent work.

### **Restructuring Governance: redefining a new regime for labour?**

The governance structure for migration –as well as ideology and practice of governance of migration – is changing in both old and new immigration countries. The locus of migration governance in immigration/migrant receiving States over previous decades was generally in labour and employment ministries. This designation reflected the primacy of needs to regulate labour markets and protect workers as well as oversee employment relations and social dialogue. Those ministries retained vital competences in labour market administration, in supporting and mediating negotiation between social partners, and in taking account of interests of the key migration actors: employers –public and private –and unions –the latter representing workers both native and migrants. Those ministries also supervised the vital regulatory and administrative functions of labour inspection and social security.

Security and control institutions of States now widely predominate in managing migration and controlling migrants. Ministries of interior or home affairs now hold lead responsibilities on migration in many countries in all regions. Consolidation of home affairs' lead responsibility for migration is coincident with a broad redefinition of conditions for labour. The treatment imposed on a substantial migrant component of work forces can and does influence treatment of the work force more broadly. Administration of increasing foreign components of work forces by control institutions has consequences in shifting emphasis of law enforcement regarding work

from labour standards to immigration enforcement and in imposing policing solutions to labour conflicts at the expense of social dialogue.

Coincidentally, enhanced and generalized border and movement control measures within regional economic community spaces have large implications in impeding and slowing mobility as well as raising costs -- contrary to facilitating free and flexible movement of labour and skills. The plethora of control posts along land routes across Africa, each with obligatory inspections and payment of 'fees,' does not facilitate circulation of goods, services, or people.

Movement control measures also undermine exercise of freedom of association rights in internationalized labour markets and employer chains. Tightened control on movement facilitates tightened control on workers and work forces, restricting realization of rights to change employers or workplaces to escape exploitative, oppressive conditions --or to organize across sectors, industries and production chains that are increasingly organized across borders.

Meanwhile, advocates of expanded 'circular migration' (a generic misnomer for short term, temporary, and seasonal migration regimes) characterize it as the solution to both employment needs and to protecting 'national cohesion and cultural integrity' of nation states needing foreign labour. Many contemporary temporary migration regimes in fact offer explicitly restricted labour rights, notably exclusion of freedom of association, while permitting reduced application of labour standards.

### **The 'price of rights'**

A justificatory discourse associated with these initiatives posits that the level of rights protections for migrants is negotiable. The terminology of rights versus numbers and the price of rights is used to show the advantages of trade-offs where wider access by migrant workers to higher wage labour markets would be obtained by accepting reductions in application of labour rights. The argument that lowering wages instigates creation of more jobs is not infrequently invoked.

A fundamental premise in this discourse --and often in policy initiatives-- is that foreigners are not equal, nor are they equally entitled to protection or inclusion under law or ideology of the nation State. In practical terms, the notion of limiting rights of migrants presumes incentivizing greater migrant access to labour markets in higher income countries, and consequently, greater "development gains" through more jobs

created at lower wages and more remittances returned to migrant origin countries.

Anchoring discourse and program on a development starting point facilitates a rights versus development discourse. The rights versus numbers argument explicitly poses that less rights for migrant workers will generate more employment in higher income situations and thus more development.. Setting development as the main reference point in a deregulatory environment easily permits posing equality of treatment as a constraining conditionality. Development discussion anchored in economic indicators risks perceiving migrants as agents of development rather than first and foremost human beings, regardless of utility to development.

## **National Governance and Policy**

All of the above considerations must be addressed to have coherent and effective migration policy –which must also be coherent in law, policy and practice to prevent trafficking.

Unfortunately, the Global Compact on Migration doesn't offer what's really needed. It enhances the opposite: deregulation, absence of legal rights protections, and emphasis on the very control and restrictive measures that provide fertile ground for trafficking.

A starting point for a coherent policy and practice framework is identifying the real challenges and problems, and defining law and practice to resolve these, individually and together. The following points lay out what are generally common challenges everywhere, most would apply to Taiwan.

### **15 key law, policy and practical challenges for governance of migration**

1. Lack of legal protection, non-recognition of migrants; non-recognition of rights under law.
2. Utilitarian instrumentalization of migrants and migration subordinating human rights
3. Criminalization of migrants
4. Prevalence of sub-standard, abusive employment relations and conditions of work
5. Increasing xenophobic hostility and violence against migrants
6. Systematic/structural discrimination and exploitation of migrant women

7. Suppression of migrant worker organization and participation
8. Lack of health care and OSH; denial of health rights.
9. Absence of access to social protection and social security for many migrants, non-portability.
10. Family disruption and decomposition (adult migrants working abroad; children 'at home',
11. Increasing gaps between skills needs and the numbers and types 'produced' locally (in Taiwan)
12. Restrictive migration/immigration regimes unrelated to economic and labour force realities
13. Absence of explicit, comprehensive national policy frameworks on migration
14. Concentration of migration management responsibilities in security and policing institutions.
15. Absence of policy and administrative responsibility by labour and social protection institutions.

## **An Agenda for Action**

An agenda comprising policy lines, political demands and practical actions for a rights-based approach to governance of migration derives from the review above. Its elements evolve from World Conferences in 1994, 1995 and 2001, the Plan of Action on Migrant Workers adopted by the International Labour Conference in 2004, and the ILO Multilateral Framework for Labour Migration

1. Full recognition and legal protection of all migrants
  - a) Promoting ratification and full implementation of the legal migration governance standards recognizing and protecting migrants: the ICRMW, ILO C-97, ILO C-143 and ILO C-189.
  - b) Promoting and assisting in regularization of migrants in unauthorized situations.
2. Rights and people based discourse
  - a) Identify migrants as rights-holders first and foremost
  - b) Call for respect for four freedoms for all migrants: Freedom of choice; freedom of movement; freedom to remain; freedom of association and participation. Normative references: UDHR, ICPCR, ICESCR, ICRMW, regional conventions and protocols.

3. Decriminalization of migrants, refugees, and migration:
  - a) De-criminalization/non-criminalization of immigration law and infractions to it
  - b) Non-detention/ending detention of migrants for non-criminal offences
  - c) Treatment of minors according to best interests of the child
  - d) Repeal of generalized migrant/traveller identify control, surveillance and restriction measures Normative references: UDHR, ICRMW, Regional treaties and executive decisions, eg ASEAN.
4. Decent Work for all migrants: Vigorous enforcement of labour standards
  - a) Adoption and application of International Labour Standards, particularly to places and conditions where migrants are working.
  - b) Extend labour inspection to and in sectors and workplaces where migrants concentrated.
  - c) Fully 'fire-walling' labour inspection from immigration control.

References: All International Labour Standards, particularly ILO C-81 (labour inspection), ILO C-129 (labour inspection in agriculture), ILO CEACR -Committee of Experts on Application of Conventions and Recommendations- rulings.

#### 5. Stop Xenophobia, racism and discrimination against migrants

- a) Repeal discriminatory legislation; reinforce non-discrimination/equality of treatment in practice
- b) Define and implement national action plans against racism, xenophobia, discrimination
- c) Denounce and repudiate any and all acts of xenophobic violence.
- d) Demand anti-racist, anti-xenophobia political discourse, media reporting and school curricula.

Normative references: ICERD, ILO C-111 (discrimination in employment, occupation), ICRMW, also 2001 Durban Declaration and Program of Action.

6. Support freedom of association participation of migrants in unions and associations
  - a) Advocate for legislation ensuring freedom of associations rights for migrants
  - b) Support migrant organizing in unions, by unions



- c) Conduct outreach to engage migrants in unions, associations, CSOs where they live and work.

Normative references: ILO C-87 (freedom of association), ILO C-98 (collective bargaining rights), ICPCR, rulings of ILO Committee on Freedom of Association

## 7. Gender-specific migration legislation and policy

- a) Ensure equality of rights, opportunities and protection for all migrant women and girls
- b) Obtain gender specific policy, measures and practices recognizing gender-based risks and ensuring equality in outcomes as well as intent.

Normative references: CEDAW, ILO C-100 (equal remuneration), treaty body recommendations

## 8. Health for all migrants (health is a right for all).

- a) Full access by migrants to health prevention and care services and facilities
- b) Elaboration of national public health and OSH policy on health for migrants
- c) Monitor occupational safety and health (OSH) protection for migrants in all workplaces Normative references: UDHR, ICESCR, ILO C-155, 161, 187 on OSH plus over 30 other International Labour Standards on specific branches or specific risks

## 9. Social Security for migrants

- a) Unilateral measures to extend social security coverage and portability to migrants in both origin and employment countries
- b) Incorporate and harmonize social security access in regional integration spaces.
- c) Wider ratification and implementation of ILO C-102 (social security) C-118 ( portability) Normative references: UDHR, ICESCR, ILO C-102, C-118; regional instruments on social security.

## 10. Family Unity and family support

- a) Pro ide family unity provisions in immigration and migration regimes
- b) Ensure immigration law facilitates family reunification
- c) Measures to sustain socialization & education for children and

adolescents remaining at home.

Normative references: UDHR, CRC, CEDAW Policy administration agenda

11. Overcoming skills shortages; training youth for employment

- a) Reform, renovation and expansion of technical and vocational education and training
- b) Harmonize qualifications and training standards
- c) Implement circulation regimes, reduce barriers to labour and skills movement Normative references: UNESCO Conventions; international occupational classifications.

12. Establishing National policy frameworks on migration, in consultation across government and with social partners and civil society

- a) Obtain commitment to establish a (labour) migration policy framework/document
- b) Organize a fully consultative input and elaboration process
- c) Involve concerned government ministries/agencies/authorities at relevant levels, including legislators, social partners, and relevant civil society and migrant organizations.
- d) Address comprehensively concerns, issues, and challenges of international migration
- e) Designate responsibilities among stakeholders
- f) Propose implementation planning and time-lines
- g) Obtain endorsement of policy frameworks by stakeholders
- h) Expect approval and adoption at the highest level of government

Normative references: ILO Multilateral Framework on Labour Migration (non-binding); the African Strategic Migration Policy Framework; formal policies adopted by States in various regions

13. Consolidate migration policy and administrative responsibility, capacity and coordination by labour institutions

- a) Assign labour migration governance responsibilities to labour/employment ministries
- b) Designate focal points or units in labour institutions on labour migration/mobility
- c) Encourage engagement of social partner organizations

- d) Training and capacity building for labour institutions and social partners.
- e) Tripartite policy consultation and coordination at national, regional and continental levels

Normative references: ILO C-143 (involvement of social partners in migration policy); ILO C-144 (Convention on Tripartite Consultations) and ILO C-150 (labour administration)

14. Obtain gender & age disaggregated data on migrant characteristics, situations, conditions.
- a) Adoption/utilization of international labour migration database indicators
  - b) Application of international statistical standards to obtaining data on labour migration
  - c) Establishing data sharing and coordination among national institutions concerned
  - d) Interfacing data with relevant international labour market and labour migration databases
  - e) Supporting provision of competencies, training, and appropriate hardware & software

References: International Labour Statistics Standards; UN guidelines on international migration statistics

History tells that migration has always been an essential ingredient of development and human welfare. It is all the more so today, in every region of the world. However, unless regulated by appropriate laws and policies, migration entails high costs in violations of rights of persons, in social disruption, in reduced productivity, and in lost opportunities for development. Migration must be governed under the rule of law with the involvement of key stakeholders across government, in parliaments, social partners, civil society, and migrants themselves.



## 前提：何謂移民議題

移民是人民的議題。基本上是目前全世界國際勞動力與技術的流動。這個流動性是維持世界在 21 世紀持續運轉的關鍵因素：全球勞動力市場的存續，在全球化經濟下獲取資本利得及發展的主要關鍵。已開發經濟體的生存必須仰賴移民遷徙。這在台灣或其他地方都是一樣的。

移民可使勞動人口年輕化，維持農業，建築業，醫療照護，飯店，餐飲，觀光及其他產業存續。在台灣，尤其是漁業。移民可以滿足對技術需求增長，促進台灣及其他地區民眾的創業精神。移民的金流，技術交流，投資，及擴大貿易需求，對於當地的正向發展都有貢獻，包括台灣本地。

目前全球預估有 2.6 億人居住在他們非原生國籍地。此數據嚴重低估了實際情況，因為這並不包括短期或臨時的移民遷徙，還有跨境交易商人。這些人仍在他們本國維持合法的居民權。

但這項聯合國統計的確包括了難民及庇護尋求者，但不包括國內流離失所者 (IDP)。目前聯合國難民組織統計 2530 萬難民 (其中 1900 萬名登記在聯合國難民組織中，530 萬名巴勒斯坦人登記在聯合國難民救濟及工程局 UNRWA) 有 1000 萬無國籍人士。難民加上無國籍人士大約佔了全球移民 13% 人口數。全球難民人數中有 55% 來自三個國家，分別是敘利亞 550 萬人，阿富汗 240 萬人，還有南蘇丹 140 萬人。

## 移民遷徙與經濟活動

超過 90% 的移民，無論是基於家庭團聚允許，合法遷移，教育，或難民潮因素，都有就業或是參與經濟活動。ILO 統計，2013 年，在 2.32 億名異地居住人口中，有 1.5 億是經濟活躍的，也就是說就業中，自營生意，或是參與其他經濟產出的活動。

移民在許多亞洲，美洲，加勒比海，歐洲及歐亞大陸國家都代表了人口中的一個成長部分，特別是人力資源。海外出生的工作者在西歐國家是勞動人口的 15%，在移民顯著國家如澳洲，加拿大，美國，甚至超過了 18%。在海灣合作委員會 GCC 會員國中，更代表了 40 到 93% 的勞動力人口。在歐亞大陸國家包括俄羅斯聯邦，高加索地區，和中亞，則代表了 10 到 20%。還有幾個亞洲國家包括香港，馬來西亞，新加坡，台灣和泰國，比例持續增長中。

諷刺的是，這個發展趨勢在成熟工業發展國家中正在面臨失業潮問題。這是雙面性的：失業率很大的一部分來自於潛在結構性因素，尤其在金融與工業

資本領域，工作機會數量本來就刻意偏向零成長策略。科技的發展更導致很多勞動者的工作技能被時代淘汰，不符合需求，導致雇主無法繼續使用。再加上教育和訓練落後於經濟的發展及就業市場需求。這短缺包括了人口數量跟教育訓練的不足。

### 流動性，發展及持續性發展

經濟活動沒有資本，人力及技術 / 科技的配合無法發生。今日的發展如果沒有整合人力資源，資本，科技則無法獲得進步。跨區域性會員國家，較大的市場相互結合可以得到：1) 寬廣的資源，2) 大規模生產，和 3) 市場規模，以確保高度全球化競爭的經濟利益。缺乏完善管理的國際化商品，服務，資本，科技，在各層級勞動力自由流通前提下，將無法蓬勃發展。

開發是移民遷徙的重要主題。通常被簡化為 GDP 的成長比例，也就是以國內生產商品跟服務計算的經濟成長。但一個更為充足的理解應該是：

提供產品，服務，科技及知識以滿足人類生活進步所需求之有效方式。發展包含了建設物質上的條件，達到開發及轉化資源；生產產品，服務及科技；建設必要的基礎設施以利生產，運輸，物流各項資源；貨品及服務；複製資本及勞動力；提供人類福利的目的。並呈現於居家條件，營養，醫療照護，交通，教育及廣義的文化。

自由的移動，一向被視為經濟整合與發展的重要基石，特別是在區域性經濟整合過程中（通稱為區域經濟共同體 REC' s）。移動的自由，是確保技術與勞動力充足的手段。投資及經濟發展除了必須仰賴吸引完整及全面的專業及技術人員參與之外，更需要充足的勞動力資源。通常，南到北，和南到南並無法正確的說明移民遷徙的真實情況。實際的情況是遷徙多是區域內發生，而非區域之間。52% 甚至高於 60% 的遷徙源自非洲，亞洲，及歐洲，通常維持在該區域之內。事實上，今日多數的移民遷徙發生在 12 個區域經濟共同體內。在這些經濟共同體內有正式的自由流通法規，而參與在內的國家超過 100 個。源自西非的移民遷徙中，80% 移動到 ECOWAS 西非國家經濟共同體中的其他會員國。這個比例類似於歐亞經濟聯盟。在歐盟，南方共同市場，南部非洲發展共同體，這個比例則是 50 到 60%。

## 移民遷徙的經濟重要性

近期研究顯示，每年匯款的金額超過了 5000 億美元。有一些研究顯示甚至超越了 6000 億美元。這已經明顯超越了年度 ODA 海外發展援助金額的總數，更超越了海外直接投資 (FDI) 金額的總數。但這個匯款金流數量僅僅代表了移民者收入數字的不到兩成。

移民對其就業國家的經濟活動價值可能不少於 3 兆美元。這是依據其直接收入的總合推算而來。這還不包括移民所創造的非貨幣附加價值，這樣的價值提升可能反映在雇主，私人或是政府，正式及非正式領域。除此之外，移民對國家社會安全系統做出貢獻，許多甚至從未使用任何福利或從系統中取得利益回報。美國社會安全局預計，在過去五年中，已經從無紀錄的移民中獲取了將近 500 億美元的挹注。

其他無法計量的價值包括訓練及社會成本，尤其是從較落後國家遷徙到較先進國家的情況。從另一個角度，這也代表了一種海外援助，主要是從南方到北方。假設每個移民者都擁有高等教育資格，在通常一個州立高等教育下的成本應為 4 萬美元。十萬名技術移民者就代表了約 40 億美元的教育投資的總合移轉。這僅是個意象式數據，在成本及價值上目前還沒有正式的研究。

## 預期將來有更高的流動性

在未來 15 年內，世界上多數國家及其人口將會面臨嚴重的勞動力衰退。德國在未來 12 年將損失 600 萬人的勞動力。義大利 300 萬人。俄羅斯自 2000 年以來已經損失 1200 萬人，目前更處於每年國內勞動力衰減 100 萬人的速度中。日本比起 1990 的數據，到了 2040 年將縮減 37% 的就業人口。最近的研究顯示，瑞士在 2030 年之前必須增加 40 萬個就業人口。而中國的勞動力資源在 2050 年更可能減少高達 1 億人口。

全球 224 個主權國家或政治特區中，大約 140 個目前處於零或是低於零的人口成長現象。在台灣及多數亞洲國家也是一樣。舉區域性例子而言，從非洲開始：波札那，利比亞，毛里求斯，摩洛哥，塞舌爾，南非和突尼西亞。美洲：阿根廷，巴西，加拿大，智利，哥倫比亞，哥斯大黎加，薩爾瓦多，墨西哥，尼加拉瓜，巴拉圭，祕魯，烏拉圭，美國，加上鄰近的加勒比海島國。整個歐盟會員國。中亞大陸：亞美尼亞，亞塞拜然，白俄羅斯，喬治亞，摩爾多瓦，俄羅斯，烏克蘭，烏茲別克。中東：巴林，伊朗，黎巴嫩，卡達及沙烏地阿拉伯。

在未來幾年內，這些國家都將面臨勞動力嚴重流失。這樣的流失無法弭平，因為缺乏年輕人口進入勞動市場。這也意味著未來重要的經濟資源，也就是人

力資源及各層級的技術訓練人才，將面臨嚴峻的全球性競爭。可能的結果是，某些國家將面臨比現在更嚴重的技術人才及高端人力資源的流失。這也表示基於繳費制度的社會福利系統即將面臨進逼的危機，因為勞動力的衰減必須對上成長數量的退休人群。

在過去五年內，來自勞動力轉移及人口外流造成的壓力持續高漲。這個壓力持續惡化！特別是在非洲和阿富汗，印度，巴基斯坦等地。主要的原因仍是因為這些國家有成長的青年人口，但卻無法提供工作機會及優質的工作條件。

就業市場的需求表現一如往常般平常，但是年輕人口卻在成長，每年增加數以百萬計的新人力投入市場。新創工作的數量僅能彌補失去的工作機會。在未來的三十年內，撒哈拉以南的各個非洲國家及一些特定的亞洲國家，人口成長將明顯的持續。生育率及全球人口成長，到本世紀中期將會開始衰退。很可能的一個重要結論將會是，更多數以百萬計的，到達工作年齡的年輕人沒有辦法找到工作，也缺乏必要的訓練或是工作技能來符合雇主的需求。

在此同時，包括在歐洲幾個國家，重創全國經濟和社會福利系統的金融危機和縮減開支方案導致年輕人失業率高達 50%。雖然現況已有改善 20 到 30%，但新一波人口流失，正持續在希臘，義大利，葡萄牙跟西班牙上演中，尤其是年輕技術工作者。

## 技術及訓練限制條件

時至今日，沒有一個國家可以完整訓練所有各層級的技術，尤其是越來越複雜、技術層次需求高的工作。這也促成了高技術層次、能力及勞動力的國際性移動需求。

技術危機很迫切。麥肯錫全球研究所的一份預測性研究預估顯示：全球高端技術及專業訓練技術人才的短缺數量，將在 2020 年達到 8500 萬之數。3800~4000 萬高等教育人力資源將從缺，特別是在已開發國家。另外，在開發中國家，技術性、科學類工作中將有 4500 萬的缺口。現今的雇主跟他們相關單位抱怨，每三個公布的職缺中會有一個無法找到符合所需技術層次的人選。

觀察顯示，很多國家的教育系統，無法教育出符合時宜或具足夠職能的畢業生。在此同時，教育性，技職性，技術性訓練系統，也未能普及到提供相對的資源，讓他們能夠取得足夠的職能。

發展的成本很昂貴。鼓勵投資、經濟支持、基礎建設的發展所需的技術也缺乏。移動上的阻礙、技術缺乏、與經驗的認可，更加劇了現在跟未來訓練的匱乏。



## 經濟因素的趨同和爭論

在今天，資方，大多數是由私人機構管理代表。勞方，由產業工會代表。這兩者是無可爭議的經濟活動核心成員。他們是進步，或僅是維護，發展的執行基礎。他們是自由國際資本、產品、服務、科技與勞動力流通的主要受益者。如果遇到流通上的限制，無論是資本經濟或人員，他們都會立刻受到損害。因此，針對人員的自由流通，他們也是主要倡議者跟受益者。是這場遊戲的參與者，或稱之為社會夥伴，也因此是所有移民遷徙議題程序上的重要成員。

但移民是勞資之間爭論的關鍵：雇主 / 私營，對上勞方 / 特別是工會組織。這也是財富分配爭奪的區塊。產出的利益應該有多少歸於資方所有，多少該以工資呈現、歸勞方所有，或是歸於整體社會人口成為公共服務性質。移民還是爭論的載體，爭論議題包括工作環境條件和職業安全及健康保護方面的投資，對降低成本提升資本的回報率。

移民呈現出一個問題。勞動工作者是否維持組織化來捍衛他們的自身利益。移民工作者是重要關鍵，是否勞方成員應該可以、或如何自由的連結為組織，為他們的工資及良好的工作條件，達到集體協商的功能。

在促進更自由的移動及勞動力流通的議題下，社會夥伴之間的”社會對話”在促成共同立場或是不同利益結構下合作協議尤其重要。在勞資之間找到雙方認可的方案，達成共識，並確保政府或議會可以扮演好適當的角色，是讓移動可以成功進化整合及發展的終極重點。

## 掠奪與保護

移民共同經歷的掠奪性情況是結構因素造成的。對於許多國家的許多企業來說，甚至整個經濟區塊，低成本的外國勞動力是唯一生存的要件。極度勞力密集的農業在歐洲，北美洲將無法生存。如果沒有低廉的移工，可能部份的人口將無力負擔糧食採購。台灣的情況如何？

一份英國報告的結論中節錄總結了對許多移民的對待，這也與其他已開發工業國家的數據相符：

-- “移民，特別是來自於歐盟 15 國以外者，僅有有限的社會安全保障。面臨矛盾的立場。因為他們高度的彈性及最低限量使用到政府福利資源，一方面他們受到企業及政府的歡迎，但在另一方面，他們面臨高度來自於反移民團體的不安與敵意。一方面政府歡迎他們，但多數民眾則反之。

高度未管制及彈性的經濟可以讓許多移民很容易找到工作或是保有經營生意的競爭力，但同時也創造了一個廣泛性的掠奪環境並導致勞動者之間的分歧，無論是在本土勞動者和外來移民者之間，或是不同族群的移民勞動者之間。”

各區域的健康及居家照護，孩童教育，銀髮照護都越來越依賴移民。其他產業包括旅館，餐飲，觀光產業也是一樣。

全球競爭，自由貿易，還有底層爭奪現象都不利於勞動成本及社會服務的提供；這些因素挑戰一個國家基本社會功能。維持著某些移民的低價勞動力，溫順服從，彈性，沒有社會成本的可移除性，這些變成了不只是高度的需要，它變成了將工作機會保留在本國並維持經濟正常運作的基本要件。不管這些工作機會是甚麼，或是誰來做。不管輿論對於控制移民遷徙的高談闊論，移工常常會掉入或持續保持在一個不正常的環境或情況之中。這是可以被允許接受的，因為他們提供了廉價彈性的勞動力，來維持企業生存、就業機會、及競爭力。

關注保護人道與勞工權利及優質工作條件，成為任何國際勞動力流動方案的重要基石。這意味著國際勞動力標準在各國被採用，國內民情調整，在所有工作場所，正式或非正式，特別是移民遷徙者大量被雇用的場所，有效率的勞動檢查及執行，這肯定是台灣特別及原始的關注點。

## 社會保護

有效的社會安全保障系統提供收入安全，預防並降低貧窮及不平等狀況，促進社會的包容及尊嚴。社會安全提升生產力及可雇用性，並支持延續性經濟發展，為全民貢獻優質生活條件，並延伸必要的社會安全保障給移民，保障工作者，經濟和社會。

雖然移民對原生國家及就業國家的經濟有所貢獻，但他們通常得不到國家的社會安全保障福利。由於他們不在原生國家，通常他們的社會福利會被取消。他們面臨有限的或是根本無法取得就業國家福利。即使當他們可以在就業國貢獻，他們的貢獻值及福利通常都無法攜帶或複製回到原生國。

今日，移民是全球重新定義社會保護的參與者：誰需要負責，誰有受到保護，還有是什麼樣的福利。國際法規的目的是全面性的覆蓋，如同在勞工組織公約 102 關於社會安全的宣告。勞工組織公約和聯合國已經建立了社會保障底線的概念。但明確肯定的是針對移民遷徙者的社會保護議題是如何在兩個極端之間找到平衡，一邊是完整的全保障，另一邊則是零保障。

對比之下，在任何國家，像是台灣，逐步分階段式的提供社會安全給移民遷徙勞動者是確保社會福利及社會融合很重要的考量。但這只能憑藉政治意志來達成，促成必要的法規立法，行政機制及實際的執行方案。

## 性別特異性

數十年來，女性移民都在 45% 以上，今天這個數據將近 49%。差別在於今日，大多數，幾乎全部，女性移民經濟力活躍。他們通常能自主遷徙，而非成為他人的依附。在各區域皆是如此，特別是亞洲。

在就業分級和勞動市場分割的範圍內，雇主對女性工作者有高度需求。恰巧這通常也是比較低費用及不受保障的：家政服務，醫療照護，農業，飯店餐飲，出口加工區的半技術性生產製造。這些領域的共通性是，雖然這些工作場所可能具備高度的社會性，但通常管理不完善，也沒有工會或是協會組織來保障他們的共同利益，更沒有集體協商的能力來推動優質的工作條件。

女性和女童移民面對高度的性騷擾及性別基礎的掠奪還有暴力風險。這分別在遷徙過程中和在就業國家中存在。國際勞工組織公約 189 通過關於家政服務優質工作條件，引起大眾對一個幾乎全是女性工作者的產業帶來關注。

關注從事家政服務的女性移民面臨的風險應該成為一個跳板，來凸顯一般女性移民常缺乏有效保護機制的問題。這些包括農業，血汗紡織工廠，服務業等等。在這些產業的女性工作者的證詞比比皆是，他們必須面對掠奪式工作環境，性騷擾，未受保護接觸有毒害的殺蟲劑或化工品，及其他風險。在摩洛哥也是。

## 排外主義的明顯且立即的風險

普遍升高的歧視行為，種族歧視，和不利於移民的排外主義行為，是一個迫切的憂慮。針對移民的敵意正在全球蔓延。各地區傳出的報導案件顯示：在工作場所或附近射殺移民勞工，個別或是集體搶劫或攻擊，殺害移民，警方圍捕及對移民大數量監控，可被比為集中營。在某些特定國內動亂及內亂情況下，外國人曾被惡意鎖定成為目標。

除了一兩個特例，政府有強力介入避免種族歧視及排外行為發生並嚴懲犯行者之外，通常當地政府的不作為更加深此一擔憂。甚至有一些政府在公開演講或行動中執行對移民殘暴行為或是暴力鎮壓，這也讓整個情況更加地雪上加霜。

社會融合只能透過刻意的合法，及現實的手段來維護。明顯的證明就是，在某些政府與公民社會積極打擊歧視跟排外主義行為，幾乎沒有種族歧視殺戮，也沒有燒毀店鋪，房舍，外國人宗教祭拜場所等事件。以反移民為主要訴求的政治人物及政黨也沒有得到任何支持。

## 管理架構

雖然有大量的學術文獻及演講持反對意見，國際之間確實存有一個完整的，針對移民的管理框架。大部分的框架是被設計來支持國家層級的良好治理與行政管理。這也是多數的責任及議題的主管層級。

此一架構由廣泛的互補性國際法規標準組成，跨足數個法律專業領域。它涵蓋跨領域的國際及區域性機關與組織中的支持性任務與責任。在過去的二十年間，透過正式及權威性的國際會議詳盡的闡述，它還包括了全球適用的政策推薦。

法律架構是由以下為基礎：1) 九大人權公約；2) 全部即時更新的國際勞工標準；3) 1951 年關於難民地位公約及該公約的 1967 年議定書；4) 維也納領事關係公約；5) 聯合國打擊跨國有組織犯罪公約中關於人口販售及移民走私的兩大協議。

在全球移民管理法規的核心中涵蓋國際移民遷徙的三大互補性，連貫性的工具：國際勞工組織公約 97 關於就業移民 (1949)，1975 年國際勞工組織公約 143 關於移民工作者 (補充規定)，1990 年“保護所有移動勞工及其家庭成員權利國際公約”(ICRMW)。此三者皆包含了移民的管理與行政準則及國際對話與合作，還有明確的認知標準，保護移民的權利。

沒有國家法規與執法性來保護其人權及勞動權，移民的保護及人口走私的預防無法實現或執行。這些工具的批准是國家法律，政策，與實踐的基本基石。事實上，89 個國家已經批准了至少三個裡面的一個工具，包括 28 個國家在非洲，還有幾乎所有的中美洲，南美洲國家，及數個亞洲國家。

許多國家人口眾多，國際組織必須要能充分反映管理大量人口的多樣性。超過 20 個專業國際組織專門關注移民的任務，能力與活動。包括勞動及就業，健康，安全，發展，教育，人權，形式司法權等等。沒有一個單獨的國際移民組織有可能全面地關注到所有管理人口的議題。每個議題都需要該組織具備有專業的知識，法律，能力，及功能性。

## 走私與人口販運

人口走私及販運主要是源自於全球化勞動力及技能供應移動性失能的結果。人口走私及販運存在，是因為市場有勞動力的需求，特別是廉價，沒有受到保護的勞動力（例如在台灣的漁業）。同時，因為缺乏有效的勞工保護或是勞動檢查機制，造成雇主剝削卻不需要受到懲罰的情況。

當雇主找尋勞動力的管道與求職者接觸到雇主的機會是不受限制的，且對勞工的迫害是受管控的，人口走私及販售自然會消失。這也是在多數區域性經濟共同體內常見的情況。一個比較戲劇化的範例就是，人口販售走私到西歐，幾乎在2001某日完全停止。當時是因為十個加入成員國的國民，申請進入歐盟國家的簽證限制完全在同一時間被解除，民眾，特別是年輕女性，在一天之內，不再需要透過任何仲介的安排，即可進入西歐。之前，那些仲介，是將他們的客戶，無論男女，置於一個受到剝削的情境下，也因此符合人口販售的定義。

走私是一個比較複雜的議題，特別是在今日世界中，到處都是內戰衝突，軍事衝突，獨裁政權，及廣泛的人權侵犯行為。對於許多身為難民或是類似難民處境的民眾而言，除了付出費用得以遠離或是避開軍隊的查緝點及戰事之外，別無其他逃避之道。許多走私者其實並無販售人口的問題。而且很多人如果不是經過這些人的幫助得以逃出，他們很可能已經早已身亡。

在某些為數不少的國家，雇主因為迫切需要勞動力以維持生意，多次接收非法勞工為其工作。這是一個敏感的選擇：你是要關閉你的企業，宣告破產，成為造成你的國家經濟停滯的一分子？或是你允許在沒有監督的情況下，接受迫切需要的勞動力及技術？這難題對象不光是那些利用限制性條款，剝削身處於隨時可能被逮捕的恐懼中，因此無法抱怨或加入工會爭取權益的工人，也涵蓋了合法的，甚至提供了優質的工作與薪資的雇主。

## 管理結構重整：重新定義一個新的勞工制度？

移民的治理架構，以及移民的管理實踐與思維，正在舊的跟新的移民國家中改變。過去數十年之間，管理移民的主管單位在移民及新住民國家中通常是由勞動和就業相關部門負責。這個架構反映了管制勞動力市場的原始需求，及保護雇員。同時兼顧監督雇傭關係以滿足社會對話需求。那些機構部門保留了重要的能力處理勞動力市場的行政執行，支持及與社會夥伴們協商溝通，並負責維護關鍵移民參與者的利益：包括雇主，政府及民間私人，和工會。後者代表著包括本地人與外來的工作者。那些部門同時監督著重要的管理法規及行政執行功能，包括勞動檢查及社會安全。

國家安全及管控單位現在普遍主導管理移民相關議題並控制移民。各區域的許多國家現在都是由內政部或是內政單位負責主導移民事務。這個國內事務的整合與廣泛性重新定義勞工制度正是不謀而合。對人力資源中一大部分由移民組成的政策，可以且將會更加廣泛的影響整體勞動力。透過控制法人組織，增加勞動力中海外部分的執行，將會導致執法重點的改變。這些改變，從勞工標準到移民法規的執法，甚至犧牲社會對話，引進警力支援，解決勞資糾紛抗爭。

巧合的是，在區域經濟共同體內，加強及普及邊境移動控制提供了大量的暗示，遏阻及降低移動性並提高成本，這恰是不利於加速自由及彈性的勞動力與技術的流通。過多的檢查崗哨遍佈非洲陸路通道，每個崗哨都有必要的強制檢查及付費機制，這對於加速流通產品，服務，及人流毫無助益。

限制流通的政策同時也對行使國際性勞動力市場及雇主鏈之間自由連結的權利造成了傷害。嚴格的移動管理機制也加速了更嚴謹的工作者及勞動力管理控制，限制了改變雇主或工作環境以避免剝削及高壓控制情況權利之落實，或是組織橫跨區域，產業，及跨邊境生產供應鏈的權利。

同時，擴張型”循環移民遷徙”倡導者（一般用詞不當描述短期，臨時，和季節性的遷徙制度）賦予它為針對需要外國勞動力來解決國內雇主需求及保障”國家融合及文化誠信”的方案。許多的現代臨時遷徙制度政權實際上是正提供高度明確的限制性勞工權益，特別值得注意的是排除自由連結，同時允許接受降低的勞動力標準規範。

## 權利的代價

一個與這些主題相關的辯解發現，移民權利保護的層次是可以商量的。權利對上數字與權利的代價這個術語被用於顯示權衡的優點。透過接受降低的勞工權益，可以交換到使更廣泛的移民者得到高一點工資的機會。此一爭論，經由降低工資換取創造更多工作機會其實常常會被提出討論。

通常發生在政策倡議階段，這話語的基本前提，是外國人與本國人並不同等，他們也不應受到同等的保護或法律及當地國家理念的包容。現實的來說，限制移民權利的概念建立在一個，利誘更多移民到高收入國家勞動力市場，之後可以創造”發展紅利”透過較低工資創造更多工作機會，並且更多的海外資金可以回到移民遷徙者的祖國。

權利與數字爭議明確表述了越少量的移民權益將會產出更多的就業機會及更高的收入環境。將發展設定為主要的參考依據將指向一個去管制化的環境，

因此更容易允許設定平等對待為一限制性條件。鑑於經濟數據的發展討論將是冒著一個認知上的風險，也就是認定移民為發展的媒介者，而非以人類看待之，無論他們對發展的成效如何。

## 國家治理及政策

以上所有的考量都必須被充分檢討才能達成融洽且有效的移民政策。這也必須符合法律，政策及實踐以避免人口販售。

不幸的是全球移民契約並不能完全提供現實所需、反而強化了反向：放鬆管制，法律權利保障不存在，強調更高度的控制及限制方案，反而造就了人口販售的有利環境。

一個適合的政策及整體架構的實踐是真正的挑戰及問題，並且定義法規與實施方案以期個別或是整體性的解決這些問題。以下重點列出常見的挑戰，多數都適用於台灣。

十五條有關於移民治理關鍵的法規、政策、以及挑戰

1. 缺乏法律保護以及不承認移民身分；法律不承認移民之權利
2. 移民遭功利主義的工具化且人權受到欺壓
3. 移民罪犯化
4. 不合標準且含有虐待性質的勞資關係與就業環境
5. 對移民逐漸增多的排外主義、敵意、甚至是暴力行為
6. 對女性移民的系歧視和剝削
7. 壓抑限制移民加入並參與工會組織
8. 工作場所缺乏衛生保健和健康安全；否決享有健康權利
9. 大部分的移民缺乏社會保護及社會保障；缺乏可移植性或複製性
10. 家庭破裂以及瓦解（成年的移民在國外工作；未成年者留在家鄉）
11. 職能技術需求產生落差以及在當地（台灣）的數量和種類逐漸拉大差距
12. 受限的移民遷徙和移民制度與經濟和勞動力的現實面無法產生連結
13. 缺乏明確和全面的國家移民政策
14. 過度集中的移民管理責任全都落在國家安全和警務機構
15. 勞動和社會保護機構缺乏政策和行政責任

## 行動議程

這個議程包含了治理移民之政策路線、政治需求、和實際行動。它的元素是從 1994, 1995, 2001 年的世界會議衍生、2004 年被國際勞工大會所採用、關於移民工人的行動計劃、以及國際勞工組織的移民勞工之多面向架構所進化而來。

1. 完全承認移民之身份並且提供法律保護
  - a) 推動核准及全面實施移民合法治理標準以承認並且保護移民者 :ICRMW, ILO C-97, ILO C-143 and ILO C-189
  - b) 推動和輔助移民在未經授權的情況下正規化
2. 論述中說明的權利與人
  - a) 最一開始就將移民定義為擁有權利的人
  - b) 倡導尊重移民的四樣自由：選擇自由；行動自由；去留自由；結社參與自由
3. 將移民、難民、和移民遷徙合法化
  - a) 合法化移民法規和違規點
  - b) 停止移民因非刑事犯罪而被拘留
  - c) 對待未成年移民以他們的最佳利益為優先
  - d) 廢除一般移民遷徙者 / 遊客之識別管理、監控系統、以及限制措施
4. 移民之合適工作：積極執行勞動力標準
  - a) 採納並應用國際勞工組織標準，特別在移民的就業場所以及工作環境
  - b) 拓展勞動檢查到移民所集中在的行業以及就業場所
  - c) 對來自移民監管單位的勞動檢查設立完整的防火牆
5. 停止對於移民的排外主義、種族主義、歧視
  - a) 廢除帶有歧視之立法；加強非歧視 / 平等待遇的實踐
  - b) 定義並實施國家級行動計畫以抵抗種族歧視主義、排外主義、歧視
  - c) 聲討並否定任何有關於排外主義之暴力行為
  - d) 要求鼓勵反對種族歧視主義和反排外主義之政治論述、媒體報導、以及納入



## 學校教學課程

6. 支持移民參與工會組織和相關協會以及結社自由
  - a) 倡議立法，確實保障移民結社自由之權利
  - b) 支持移民在工會組織中結盟
  - c) 舉辦對外推廣活動讓移民在工會組織、協會、以及其所在居住地和就業地的公民社會組織互相交流
7. 特定性別之移民立法、法規、與政策
  - a) 確保所有女性移民之安全及平等權利和機會
  - b) 取得特定於性別之政策、措施、以及確保平等結果和意圖之做法
8. 移民之身體健康（身體健康是每個人所擁有的權利）
  - a) 移民將擁有健康預防及護理服務和完整的設施使用權限
  - b) 為移民詳盡闡述公共衛生以及工作場所健康與安全之政策
  - c) 在所有職場為移民監控工作場所健康與安全
9. 移民之社會保障
  - a) 擴展社會保障包括的範圍以及對移民者在原生國家和就業國家的可移動性之單方面措施
  - b) 區域性整合空間合併並統一社會保障之管道
  - c) 國際勞工組織公約 102（社會保障）和 118（可移植性）廣度的批准和實施
10. 家族團結和家庭支持
  - a) 提供家族團結相關的移民和遷徙政策
  - b) 確保移民法律促進家庭團聚
  - c) 維持社會化和待在家中的兒童與青年之教育措施
11. 克服技能短缺；訓練青年以為未來雇用
  - a) 改革並加強技術與專業之教育和訓練
  - b) 統一合格條件和訓練標準
  - c) 執行流通制度，降低勞動力與技術的移轉門檻
12. 與跨政府部門、社會夥伴、和公民社會團體徵詢後，建立國家移民遷徙政策架構
  - a) 建立勞動力遷徙政策架構 / 文件之承諾

- b) 組織完整諮詢和發展的過程
  - c) 鼓勵相關政府部門 / 機構參與，包括立法者、社會夥伴、和其他相應之公民社會和移民遷徙團體組織
  - d) 發表完整國際遷徙之顧慮、議題、挑戰
  - e) 指派責任給相關參與者
  - f) 提議履行之規劃和時間表
  - g) 獲取相關參與者政策架構之支持背書
  - h) 期望最高層政府之贊同與採納
13. 鞏固移民政策和行政責任以及協調勞動機構容納和合作
- a) 分別指派勞動移民治理責任給勞動和就業部會
  - b) 指定關注點及勞動機構單位關注有關於勞動力遷徙 / 移動性
  - c) 鼓勵社會夥伴和組織之參與
  - d) 給予勞動機構和社會夥伴適當的訓練和能力建設
  - e) 國家層級、區域、以及洲際三方面政策諮詢協調和合作
14. 蒐集不同性別和年齡有關移民遷徙之特徵、情況、條件等分散性資訊。
- a) 採用國際勞動移民之資料庫指數
  - b) 運用國際統計標準以獲取勞動力遷徙之數據
  - c) 建立相關國家級機構之間的數據交流和協調機制
  - d) 將數據與相關國際勞動力市場和勞動力遷徙之資料庫平台相互分享
  - e) 支援能力訓練以及硬體和軟體規定

從歷史上來看，移民一直都是人文發展和人類福祉的一項重要組成。在今天這個時代，移民在世界的每一個角落更顯重要。但是，當移民沒有被適當的法規和政策所管理時，移民將會帶來很高的負面代價，例如侵害到個人權利、擾亂社會、降低生產效率、甚至是喪失人文發展的重要機會。移民必須被法律所管理，而政府也需要積極與關鍵參與者，包括議會、社會夥伴、公民社會、以及移民者們保持密切的合作。



## 第二場

加害與被害間糾纏 - 人口販運有關犯罪案件競合與處罰

### **Session 2**

**The Tangle Between Offenders and Victims – The Competing Claims over  
Criminality and Penal Actions in Human Trafficking Cases**



# 我國人口販運案件被害人與加害人雙重身分的探討

## **Offshore Fishermen Workers under Control by Means of Narcotics**

主講人：朱芳君

法律基金會台北分會專職律師

**Speaker : Attorney Chu, Fang-chun**

**Staff Attorney, Taipei Branch office of Legal Aid Foundation**

## 主講人簡介

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### 經歷

執業律師(2004年起)及民間反人口販運聯盟成員

法律扶助基金會台北分會執行秘書

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台北律師公會消費者債務清理委員會委員

台北律師公會環境委員會委員

台北律師公會平民法律扶助委員會委員

環境法律人協會理事

卡債受害人自救會顧問

台灣士林地方法院調解委員

## Brief Introduction of Speaker

# Fang-chun Chu Attorney at Law

Staff Attorney, Taipei Branch office of Legal Aid Foundation

## Education

Department of Law, National Taiwan University

## Career Experience

Graduated from Department of Law, Taiwan University in 2003. Admitted to the Taiwanese Bar since 2004.

Fangchun Chu has practiced law at a private law firm since Jan 2004. Soon she realized the importance of legal service for the disadvantaged, and thus started her career in Legal Aid Foundation (LAF) in Taiwan. From September 2007 to September 2009, she was a staff attorney in LAF, chiefly working at Anti-human trafficking project and consumer debt clearance project. Afterwards she served as executive secretary in Taipei Branch Office of LAF, in charge of the administration of the office. Now her fields of practices as a staff attorney are mainly civil litigation, family matters and bankruptcy.



## 當人口販運被害人成為被告 WHEN THE VICTIMS OF HUMAN TRAFFICKING BECOME THE ACCUSED.

法律扶助基金會 專職律師  
朱芳君

Legal Aid Foundation Resident Attorney  
Ms. Chu, Fang-Chun

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## 被害人因被販運而涉犯刑法之常見類型

Common scenarios where the victims of human trafficking run into criminal laws

### 偽造文書

#### Forgery of documents

- 如遭販運而辦理假結婚來台，涉犯刑法偽造文書之規定。If the human trafficking into Taiwan is by means of fake marriages, then it's a violation of criminal laws pertaining to documentation forgery.

### 妨害風化

#### Offenses Against Sexual Morality

- 因被販運從事性交易，遭以社會秩序維護法第80條裁處罰鍰。If the human trafficking results in sexual transactions, the victim is subject to fines imposed by Article 80 of the Social Order Maintenance Act.

### 非法入國、工作

#### Illegal entry or violation of employment services laws

- 非法入國(入出國移民法第74條) Illegal entry (Article 74 of Immigration Act)
- 非法工作(就業服務法第43條、第56條) Illegal employment (Article 43 and 56 of the Employment Services Act)

## 人口販運防制法對於被害人之減輕、免責規定

### Reduction of sentence or exemption rules for victims of human trafficking stipulated in the Human Trafficking Prevention Act

#### ■ 人口販運防制法第29條

#### Human Trafficking Prevention Act, Article 29

人口販運被害人因被販運而觸犯其他刑罰或行政罰規定者，得減輕或免除其責任。

Victims of human trafficking violating rules and regulation of laws or executive orders, as a result of being trafficked, may be entitled to reduction of penalty or exemption of such legal responsibilities.



## 案例1

## Case Study 1

- 被害人為柬埔寨籍，不識字

Victim is from Cambodia origin and illiterate.

- 經牛頭告知可安排來台工作

Was informed by agent of job opportunities in Taiwan

- 加害人於2004年8月利用假結婚方式使被害人入境，並於入境後直接帶至雇主家中工作

Offender arranged for victim's entry into Taiwan in August 2004 by way of fake marriage. Upon entry, victim was taken directly to the employer's home to work.

- 每日工作15小時，於遭查獲前，工作6年半從未休假

Working 15 hours a day, and prior to the arrest, victim never had any day off for six and a half years.

- 薪資：第一年每月4820元、第二年每月6000元、第三年每月9000元、第四年每月12000元、第五年每月15000元、第六年每月18000元

Monthly salary for the first year was 4820NTD, 6,000NTD for the second year, 9,000NTD for the third year, 12,000NTD for the fourth year, 15,000NTD for the fifth year, and 18,000NTD for the sixth year.

- 旅行文件遭仲介扣留

Travel documents were withheld by the agent.

- 被告知：不得在無人陪伴之狀況下出門，否則會被警察抓走

Victim was informed not to leave the house without being accompanied by others, or she will be arrested by the police.



## 案例1(續) Case Study 1 (continued)



## 案例1(續) Case Study 1 (Continued)

- 人口販運罪名部分，因取得賠償，同意與雇主和解，雇主獲緩起訴。仲介遭通緝多年，似已出境。

For human trafficking portion, because compensation was received, settlement with employer was reached.

Employer received deferred prosecution. The agent was wanted for many years and was suspected to have left Taiwan.

## 案例1(續) Case study 1 (continued)

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- 不起訴處分書認定：

### Non-prosecution decision recognizes:

- 使公務員登載不實之結婚事項於戶籍謄本上

Making public servants record false marriage items on the official household registration.

- 以不實戶籍謄本向我國駐越南台北經濟文化辦事處申辦來台簽證

Applying for visa entry using false household registration copy to Taipei Economic and Cultural Office in Vietnam.

- 超過追訴期，應為不起訴處分

Expiration of statues of limitation should result in non-prosecution



## 案例2 Case Study 2

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- 被害人A為印尼籍

Victim A is of Indonesian citizenship

- 曾以真名來台工作，返國後因欲再來台工作但無法前來

Had worked with real name in Taiwan before, but was not approved for working in Taiwan again after returning to his country.

- 印尼仲介稱可用B名義辦理假結婚來台。嗣A以用B之名義於印尼辦理結婚後再來台，並在台辦理結婚登記；但A在台之「配偶」未能配合，無法取得居留證。

Agent in Indonesia advised that A can use B's name to come to Taiwan by means of fake marriage. After A uses B's name to register for marriage in Indonesia and he can come to Taiwan to register for marriage; but A's "spouse" in Taiwan wasn't cooperative, hence A was not able to obtain the residence approval.

- A之台灣仲介稱可以C之名義在台工作。後因該台灣仲介涉嫌販運人口案件遭警方查獲

A's agent in Taiwan claimed A can work under C's name in Taiwan, but this case was discovered by police when the Taiwan agent was allegedly involved in human trafficking offenses.



## 案例2(續) Case study 2 (continued)

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- A遭地檢署傳訊，被控偽造文書罪及違反未經許可入國規定（入出國及移民法第74條）。台灣仲介要求A以C之名義應訊，因C係刑事犯罪被害人，檢察官予以緩起訴處分。

A was summoned for interrogation by District Prosecutors Office and was subsequently accused of forgery of documentation and entry into Taiwan without permission (Article 74 of Immigration Act). Taiwan agent requested that A answer interrogation in C's name because C is the victim of criminal laws, District Attorney should grant deferred prosecution.

- 但A返國前二日，C本人遭查獲，檢方發現A係冒C之名應訊，就冒名應訊部分，以偽造文書罪名加以偵查、起訴。

However, two days prior to A's return, C himself was arrested, and the prosecutor realized that A was using C's identity. For the part of testifying under false identity, A was investigated and prosecuted under the crime forgery of documentation.



## 案例2(續) Case study 2 (continued)

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- 判決結果（人口販運防制法尚未施行）：

Verdict (before the Human Trafficking Prevention Act was instituted)

一審：有期徒刑三月

The first instance: imprisonment three months

二審：有期徒刑三月，緩刑兩年

The second instance: imprisonment three months, probation two years.



## 案例3 Case study 3

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- 被害人為印尼籍

Victim is of Indonesian citizenship

- 2000年經仲介協助來台工作，當時16歲。來台後始知仲介於文件上提高年齡歲數，以符合台灣引進外籍勞工的最低法定年齡之規定。

Came to Taiwan for employment through agent's aid at 16 years old and after arrival, realized that the agent had purposely falsify the age on documentation in order to comply with the minimum age requirement under Taiwan's foreign labor regulation.

- 第二次來台擔任看護：

Came to Taiwan to work as care taker for the second time:

- 每日工作17.5小時

Worked daily 17.5 hours.

- 雇主限制其不得外出、不得請假

Employer restricted leaving the household and cannot take time off.

- 不得與配偶會面

Was not allowed to meet the spouse.

- 護照及存摺均遭扣留。

Passport and savings book were withheld.

- 被迫從事餵食糖水等行為

Was forced to feed sugar water amongst other work.



## 案例3(續)

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- 遭追訴偽造、變造護照

Was prosecuted for forging and modifying the passport

- 遭雇主提告過失傷害、業務登載不實

Was sued by the employer for negligent damage and publishing false information of business duties.

- 雇主被控人口販運部分不起訴

The employer accused of human trafficking is not to prosecuted.

- 被害人被控過失傷害部分遭判刑2年

The victim accused of negligent offenses of causing bodily harm is sentenced for two years.



## 案例4 Case study 4

- 被害人為越南籍。原生家庭經營賣米零售業，因經營不善，負債累累。

Victim is of Vietnam citizenship. Original family was in the business of rice retailing and due to mismanagement, was deeply in debt.

- 經友人介紹，2005年假結婚來台。入境前曾與台灣仲介簽定合約，約定每月薪資新台幣10000元。

Through introduction of friends, victim came to Taiwan by means of fake marriage in 2005. A contract was signed prior to entry with Taiwan agent committing to monthly salary of 10,000NTD.

- 入台後仲介安排工作，工作半年僅取得台幣29000元，向仲介催討薪資遭到毆打及性侵。在同鄉幫忙下逃離仲介住處，逃離時無任何身份證明文件。

Upon entry to Taiwan, the agent arranged for work but in six months, victim earned only 29,000NTD. Victim was raped and beaten after trying to ask for the pay. Victim escaped the agent's residence with help from other Vietnamese friends, but had no identity documents with her.

- 2009年與台籍男友交往並懷孕。欲生產時至婦產科，男友辦理入院登記時登載他人姓名，被害人事後才知情。

Victim dated a Taiwanese boyfriend and became pregnant in 2009. When she went into labor at the clinic, the boyfriend used other people's name for registration, and the victim found out afterwards.

- 生產後，婦產科告知須有身分證明證件才能帶走小孩，被害人與男友計畫先行離開，再設法返回接走小孩。

After the delivery of baby, clinic informed that they must have proof of identity before the baby can be released. Victim and her boyfriend decided to leave first and come back for the baby later.



## 案例4(續) Case study 4 (continued)

- 檢察官以涉犯遺棄、偽造文書加以調查。

District attorney investigated the case under alleged offenses of desertion and forgery of documentation.

- 最終被害人均獲不起訴。

Eventually the victim received non-prosecution.



## 案例5 Case study 5

- 移工遭勞力剝削： Labor exploitation of immigrants
  - 遭控制行動 restricted freedom
  - 超時工作、無法休假 excessive working hours and no time off
  - 被要求做看護老人以外之工作 required to do other works in addition to caring for the elderly
  - 被照顧者失智且身形魁梧，排拒肢體接觸，移工經常遭老人抓傷（老人已經轉換多次雇主） The person under care suffered from dementia, has big physique, and resisted bodily contact. Immigrant worker was often scratched by the elderly. (The elderly had changed care takers many times)
  
- 離開原雇主後遭提告侵占、傷害，均不起訴。  
 After leaving the employer, the worker was accused of offenses of criminal conversion and offenses of causing bodily harm. Both charges were dropped without prosecution.



## 看護工經常遭提告類型

Common accusation imposed on care workers





## 小結 summary

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- 因販運而成為被告，若能說明清楚被販運之情境，可獲較有利之處分或判決。

When accused as a result of human trafficking, if one can describe clearly the situation and conditions, one can receive favorable results or legal decisions.

- 亟需律師協助。

Legal professional help is very much needed.

- 被害人若為外籍，無論在台多長時間，必須有適格通譯配合。

If the victim is of foreign nationality, no matter how long he is in Taiwan, he must receive qualified translator assistance.

- 確實符合被害人母語 Qualified victim's mother tongue language.
- 司法雙語能力良好 Excellent bilingual judicial capacity.
- 立場公正 Impartial stance.



## 當人口販運被害人成為加害人

WHEN HUMAN TRAFFICKING VICTIM BECOMES THE OFFENDER

## 如何辨識出兼具加害者身分之人

How to recognize the victim who also acts as an offender

- 部分被害人工作一段時間後遭洗腦，或與加害集團成員交往，成為招攬其他被害人之人

Some victims, after working for some time become brainwashed, or get involved in relationships with members of the offending group, can become a soliciting party for other victims.

- 庇護所便於作證，不受收容期間之箝制

Detention shelter, in order to testify, is not limited by the time of detention.



## 法律扶助基金會 在協助人口販運被害人上的角色

Legal Aid Foundation's Role in assisting the victims of human trafficking

## 受扶助人不分國籍

## Legal aid has no limitation on nationality

- 法律扶助法第十四條第一項第一款：

Legal Aid Act, Article 14, Clause 1, Item 1:

合法居住於中華民國境內之人民均適用之。Applies to any person legally residing in Republic of China

另非中華民國國民符合下列情形之一者，亦適用之：Also applies to those non-ROC citizen who fit any of the following conditions:

- 1 因不可歸責於己之事由而喪失居留權。Lost residence right not because of his own faults or responsibilities.
- 2 人口販運案件之被害人或疑似被害人。Victim or suspected victim of human trafficking incidences.
- 3 非居住於中華民國境內之人民，對於他人曾因同一事實受基金會扶助後死亡，依中華民國法律得行使權利。Non-resident of Republic of China, had been aided by foundation because of the same incidence with a third party who passes away afterwards, can enjoy the rights according to laws of Republic of China.
- 4 非居住於中華民國境內之人民，對於他人因職業災害死亡，依中華民國法律得行使權利。Non-resident of Republic of China, for others died of occupational hazards, can enjoy the rights according to laws of Republic of China.
- 5 其他經基金會決議。Others, according to Foundation's resolutions.



## 法律扶助種類 Types of legal aid



法律諮詢 Legal advising



調解、和解之代理 Mediation or settlement representation



法律文件撰擬 Drafting of legal documents



訴訟、非訟、仲裁及其他事件之代理、辯護或輔佐  
Representation, defense, or support for litigation, non-litigious, arbitration, and other events



其他法律事務上必要之服務及費用 Other legally related services and fees



其他經基金會決議之事項 Other items as resolved by the Foundation

## 對於外籍人士之法律扶助 Legal aid for foreign nationals

- 法律扶助法修正前，本會對外籍人士之扶助，僅限於申請時仍合法居住台灣地區之人民。

Prior to the modification of the Legal Aid Act, aid offered to foreign nationals by this Foundation is limited to those who are legal residents of Taiwan at the time of application.

- 2015年7月1日修法後，擴大扶助範圍，除合法居住台灣地區人民外，亦增加因不可歸責於己而喪失居留權者、人口販運案件的被害人及符合特定原因之非居住於中華民國境內之人民。

After the modification of the Act on July 1, 2015, the scope of aid has been expanded. In addition to those who are legal residents of Taiwan, people who lost their residency rights not due to their own fault, victims of human trafficking incidences, and non-residents who fit particularly criteria can apply for aid.

- 近五年間(2013-17)，累計有8,682位外籍人士符合標準獲得扶助。

In the past 5 years, from 2013 to 2017, an accumulated 8,682 qualified foreign nationals have received support.



法律扶助基金會  
Legal Aid Foundation

## 參與人口販運防制法之立法、修法

### Getting involved in the legislation and modifications of Human Trafficking Prevention Act

- 參與推動人口販運防制法立法聯盟，於2008年提出民間版草案

Participated in the promotion of Legislating Alliance of Human Trafficking Prevention Act, and offered the first civilian draft version in 2008.

- 2009年在官方及民間共同推動下，人口販運防制法通過

Through joint efforts with government and civilian organizations, Human Trafficking Prevention Act was passed in 2009.

- 持續參與民間人口販運防制監督聯盟

Continue to participate in the civilian Supervision Alliance for Human Trafficking Prevention.

法律扶助基金會  
Legal Aid Foundation

## 持志集團-印籍看護工苛扣薪資案

Chi-Zhi Group – Case study for Indonesian care worker deferred salary

- 受害人為印尼籍看護工，於2008年間來台灣工作，遭台灣仲介苛扣薪水，受害人數多達5,000餘人，金額逾新台幣2億餘元。

Victims are mostly care workers of Indonesian nationals who came to work in Taiwan during 2008. Their salaries were severely deducted and withheld by Taiwan agent. Victims count exceeded 5,000 people and the amount over 200 million NTD.

- 於2016年間，苗栗地檢署委託本會成立扶助專案，協助受害人對被告提起民事訴訟追討損失。迄至2017年底，本會計尋獲受害人347人，並由法扶會律師代理受害人向被告提起訴訟。被告乃同意和解，並提出總計新台幣3600餘萬的賠償金由法扶會協助發還被害人，受害人的損失將獲得賠償。

In 2016, Miaoli District Attorneys Office commissioned this Foundation to establish Aid Project to help the victims seek civil damage law suits against the accused. Till the end of 2017, we have found 347 victims and filed law suit on their behalf. The accused had agreed to settlement and proposed total compensation in excess of 36 million NTD to be disbursed to the victims. The victims' losses will be compensated.



法律扶助基金會  
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## 菲籍移工重利案

Case of usury against Philippines immigrant workers

- 菲律賓仲介公司與融資公司，貸款給欲來台灣工作之菲籍移工，違法超收高額利息(年息48%以上)。若移工未還款，則由在台灣合作之公司持移工簽立之本票，加計違約金、遲延利息等，強制執行移工之薪資；受害移工達數百人，遍佈全台。

Philippine agent and finance company offered loans to Philippine immigrants who want to work in Taiwan and collect exorbitant interest in excess of 48% per annum. If the immigrant work does not repay, their Taiwan partner company will use the immigrant's signed check, added with liquidated damage and late payment interests, to force compulsory collection of their wages. Victim counts in the hundreds and throughout Taiwan.

- 法扶會指派律師代理受害移工向持票人提起確認本票債權不存在之訴或債務人異議之訴等。於2017年度共准予扶助279件，多數案件仍在地方法院審理，勝敗均有；有部份案件已與持票人達成和解。

Legal Aid Foundation designated lawyers to represent the victims and filed law suit on various grounds including the debt represented by the signed checks do not in fact exist or maintaining disputes. In 2017, approved aid cases count 279. Most cases are still under process in district courts with some wins and losses. Some cases have already reached settlement with check holders.

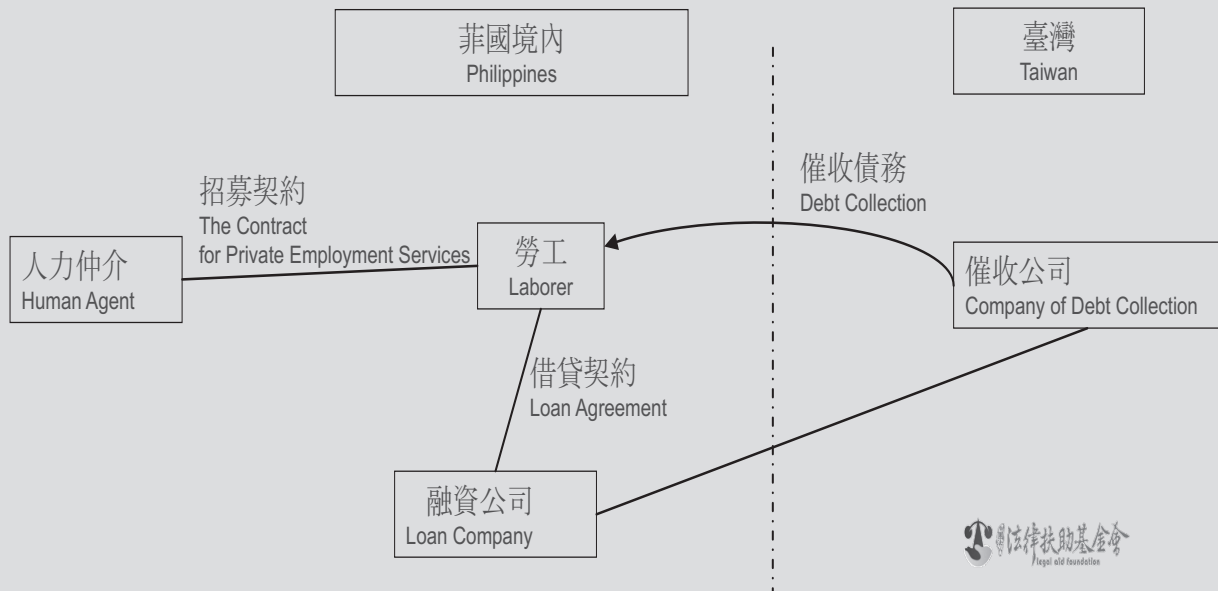


法律扶助基金會  
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法律扶助基金會  
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# 菲律賓移工重利剝削案模式

model of Exorbitant Usury of Filipino in Taiwan





## 第三場

監督出剝削沒 - 有效防範弱勢族群遭受勞力剝削之機制

### Session 3

**Supervision Appearance, Exploitation Disappearance – Effective Mechanisms  
for Preventing Labor Exploitation of the Vulnerable**





## 臺灣預防境外漁工免於剝削的新紀元

### **Slavery in New Zealand's Offshore Fisheries: A Multi – Stakeholder Responses**

主講人：劉啟超

行政院農業委員會漁業署 簡任技正

**Speaker : Liu, Chi-Chao**

**Technical Specialist of Fisheries Agency of the Council of Agriculture Executive Yuan**



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## Brief Introduction of Speaker

# Chi-Chao Liu

Technical Specialist, Fisheries Agency of the Council of Agriculture, Executive Yuan

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Master's Degree of the Institute of Oceanography, National Taiwan University

## Career Experience

Associate Technical Specialist of Agriculture and Forestry Department  
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Technical Specialist of Fisheries Agency of the Council of Agriculture  
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Section Chief of Fisheries Agency of the Council of Agriculture Executive  
Yuan

Technical Specialist of Fisheries Agency of the Council of Agriculture  
Executive Yuan



# 2018年防制人口販運國際工作坊

## 2018 International Workshop for Combating Human Trafficking

### 臺灣預防境外漁工免於剝削的新紀元

A new era for preventing foreign crew members from being exploited starts in Taiwan

行政院農業委員會漁業署  
Fisheries Agency, Council of Agriculture, Executive Yuan  
2018年7月26日  
26 July 2018



## 外籍漁工許可及管理之法律依據

Legal bases for permission and management of the employment of foreign crew members

境內僱用外籍漁工

Foreign crew members employed domestically

- 依「就業服務法」及其子法規範。

In accordance with "Employment Service Act" and its sub-laws



境外僱用外籍漁工

Foreign crew members employed overseas

- 依「遠洋漁業條例」及其子法規範。

In accordance with "Act for Distant Water Fisheries" and its sub-laws



## 外籍漁工權益保障所被關注之問題

Issues concerning rights and benefits of foreign crew members



薪資 Wages

保險 Insurance

工作時間 Working hours

生活品質 Living conditions

仲介機制 Employment Agents



## 強化保障之境外僱用外籍漁工權益：

Actions taken to strengthen protection of rights and benefits of foreign crew members employed overseas

### 法規制度面的改善調整

Legal aspect

#### 1. 完善及提高境外外籍船員之權益保障法規

Improve and advance relevant laws and legislations on the protection of rights and benefits of foreign crew members

#### 2. 防堵遠洋漁船涉及人口販運

Deter and prevent the distant water fishing vessels from getting involved in human trafficking



## 強化保障之境外僱用外籍漁工權益：

## Actions taken to strengthen protection of rights and benefits of foreign crew members employed overseas

## 執行面-1 Implementation aspect

## 1. 強制建立定型契約納入僱用範圍

Obligate the use of standardized contract

## 2. 提高境外僱用外籍漁工生活管理標準

Raise the criteria of living management for foreign crew members employed overseas

## 3. 設置申訴專線、落實外籍船員權益宣導作業

Set up complaint hotlines and publicize the rights and benefits of foreign crew members

## 4. 加強查察工作，落實法規執行

Reinforce investigation to ensure the fulfillment of relevant laws and regulations



## 強化保障之境外僱用外籍漁工權益：

## Actions taken to strengthen protection of rights and benefits of foreign crew members employed overseas

## 執行面-2 Implementation aspect

## 5. 辦理仲介機構評鑑，藉以獎優汰劣

Conduct annual review on employment agents to select the superiors and eliminate the inferiors

## 6. 建立海上傷病救援通訊諮商

Establish at-sea telemedicine consultation mechanism

## 7. 與地方政府分工共治

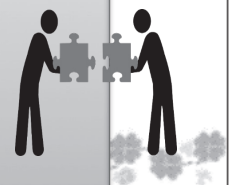
Cooperate with local governments to carry out the respective duties

## 8. 強化打擊人口販運

Strengthen measures to combat human trafficking

## 9. 推動各項關懷照護措施

Push for a series of caring and assistance measures



## 法規制度面的改善調整-1 Legal aspect

### 完善及提高境外外籍船員之權益保障法規

Improve and advance relevant law and legislations on the protection of rights and benefits of foreign crew members

- 早期管理依據漁業法下之「漁船船主在國外僱用外籍船員應行遵守及注意事項」，法律授權不明確且保障較不足。
- 行政院農業委員會依據「遠洋漁業條例」授權，於2017年1月20日公告實施「境外僱用非我國籍船員許可及管理辦法」，提高境外僱用外籍船員的工資、工時、保險、生活等待遇。

In the earlier times, the management was based on the "Directions for Fisheries Operators to Employ Foreign Crew Members Overseas", which is an administrative orders promulgated under of Fisheries Act without due authorization.

- To improve the situation, the Council of Agriculture, Executive Yuan promulgated and implemented "Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members" under the explicit authorization of "Act for Distant Water Fisheries" on 20 January 2017, aiming at improving wages, working hours, insurance and living conditions of foreign crew members.



## 法規調整重點-1 Key points of the amendments to relevant laws and regulations

項目 Item	舊法規 Past	新法規 Current
法規 Laws and regulations	「漁業法」、「漁船船主在國外僱用外籍船員應遵守及注意事項」 "Fisheries Act" and "Directions for Fisheries Operators to Employ Foreign Crew Members Overseas" 法律授權不明確、保障不足 Inexplicit legal authorization and insufficient protection	「遠洋漁業條例」、「境外僱用非我國籍船員許可及管理辦法」(2018年1月20日發布實施) "Act for Distant Water Fisheries" and "Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members" 明確的法律授權、保障較高 Explicit legal authorization and better protection
工資 Wages	雙方議定 Reached by bilateral agreement	每月工資不得低於450美金 Minimum monthly wage is set as 450 US Dollars
工資給付方式 Payment methods	未規定 No relevant provisions	以直接給付給船員為原則，不得預扣賠償或保證金費用 Direct payment to crew member is the principle. Any beforehand deduction of compensation or guarantee bond is not allowed.
保險 Insurance	意外險50萬 Accident insurance of 500 thousand New Taiwan Dollars	除意外險外，增加一般身故保險金額不得低於新臺幣100萬元，並增加醫療險 Besides accident insurance, life insurance of no less than one million New Taiwan Dollars and medical insurance are required.



## 法規調整重點-2 Key points of the amendments to relevant laws and regulations

項目 Item	舊法規 Past	新法規 Current
船主應遵守事項 Provisions that fisheries operators shall comply	分散於契約及規定 Scattered over the contract and regulations	明確規定並要求提供船員 申訴之便利條件 All requirements are explicitly stipulated in the regulations and it is required to provide crew members with convenient conditions of complaint-filing
仲介管理 Management on employment agents	1.公司或自然人皆可從事 Both company and natural person can engage in agent business.  2.無保證金制度 No guarantee bond system  3.評鑑機制較鬆 Looser review mechanism	1. 仲介機構許可制：排除以自然人身份從事仲介 Permission system for agents: excluding natural person from engaging in agent business 2. 仲介保證金制：150萬~500萬元 Guarantee bond system: 1.5 million to 5 million New Taiwan Dollars 3. 強化評鑑機制：評鑑不良者可勒令停業 Strengthening annual review mechanism: agent with poor performance in the review may be subject to revocation of permission
罰則 Penalties	1.仲介無；2.船主(長)違規處收照或罰款3萬~15萬元 1.No penalty will be imposed on the illicit agents. 2.Any fisheries operator committing infringement will be subject to suspension of license or a fine of 30 thousand to 150 thousand New Taiwan Dollars.	1. 仲介未經許可罰400萬~2,000萬、違規罰100萬~500萬元 Any agent without permission will be subject to 4 million to 20 million New Taiwan Dollars. In case of committing infringement, any agent will be subject to one million to five million New Taiwan Dollars.  2. 船主(長)違規處收照或罰款5萬~25萬元。 Any fishery operator committing infringement will be subject to suspension of license or a penalty of 50 thousand to 250 thousand New Taiwan Dollars.

## 法規制度面的改善調整-2 Legal aspect

### 防堵遠洋漁船涉及人口販運

Deter and prevent the distant water fishing vessels from getting involved in human trafficking

- 農委會於2015年9月14日訂定「我國境外僱用外來船員之遠洋漁船涉嫌違反人口販運防制法爭議訊息受理通報及後續處理標準作業程序」，倘有漁船主(船員)涉及人口販運案件，將依法移送法辦。  
The Council of Agriculture promulgated the "Standard Operating Procedures for Reporting and Processing Cases of Foreign Crew Members Employed Overseas Onboard Distant Water Fishing Vessels Suspicious of Violating Human Trafficking Prevention Act" on 14 September 2015. In the event that any fisheries operator (crew members) gets involved in human trafficking, the competent authority shall transfer the case to judicial authority for further investigation and prosecution.

## 執行面-1 Implementation aspect

### 強制建立定型契約納入僱用規範 Obligate the use of standardized contract

- 強制船員、經營者及仲介三方依前述辦法彼此簽訂契約。船員與經營者定型契約，規範船員最低薪資(每月450美元)、一般身故險最低額度(100萬元新臺幣)、新增醫療保險、每日休息時間(至少10小時)、每月休息日數(至少4日)，並明確規範船主應遵守事項等。

Obligate the three parties (crew member/fisheries operator/agent) to sign standardized contracts mutually in accordance with the aforementioned Regulations. The standardized contract stipulate the minimum wage of crew members (450 US Dollars per month), minimum insured amount of life insurance (one million New Taiwan Dollars), medical insurance, daily rest time (at least 10 hours), monthly rest days (at least four days), and concrete items that fisheries operator shall comply.



## 執行面-2 Implementation aspect

### 提高境外僱用外籍漁工生活管理標準 Raise the criteria of living management for foreign crew members employed overseas

- 2017年5月起，要求漁船僱用外籍船員，船上居住環境應符合「生活照顧服務計畫書」之標準，船主申請僱用時自評，了解最低標準。  
Starting from May 2017, the competent authority has required the living conditions onboard any fishing vessels with foreign crew members shall meet with the criteria set forth in the "Foreign Workers Living/Caring Service Plan". Fisheries operator shall therefore self-evaluate to understand the minimum standard, when applying for employment.



## 執行面-3 Implementation aspect

### 設置申訴專線，落實漁工權益宣導作業

#### Set up complaint hotlines and publicize the rights and benefits of crew members

- 若遭遇勞資爭議、不當對待或人身侵害等情形，可透過1955勞工申訴諮詢專線（國外可撥打：+886-2-8073-3141）、我國駐外館處、我國觀察員及駐外專員等提出申訴。  
In the event of facing labor dispute, mistreatment or physical abuses, the crew member can file complaint through reaching out to 1955 Complaint Filing and Consultant Hotline for Labors (dial +886-2-8073-3141 for international calls), overseas missions, national observers and fishery officers stationed abroad.
- 制發放船員權益小卡，利用各種活動、教育訓練課程宣傳與外籍船員工作夥伴關係，俾其瞭解自身權益及申訴管道。  
Preparation and distribution of educational cards highlighting rights and benefits of foreign crew members: the competent authority seizes every chances and occasions to promote the concept of working partnership with foreign crew members so as to allow them to understand their rights and benefits and complaint-filing channels.



## 執行面-4 Implementation aspect

### 加強查察工作，落實法規執行

#### Enhance the investigation to ensure the fulfillment of relevant laws and regulations

- 自2017年起以問卷訪查船員，瞭解經營者及仲介是否確實遵守管理辦法之相關規定。  
Questionnaires are used to interview with foreign crew members since 2017 for the purpose of learning whether the fisheries operators and agents comply with relevant laws and regulations.
- 2018年增聘6名外籍漁工訪查員、增派6名駐外漁業專員，強化國內外港口訪查能力。  
新增公海登檢時進行訪查  
Six dedicated investigators have been recruited and six more fishery officers have been dispatched to station abroad in 2018, aiming at fortifying the investigation capacity. The task of interviewing foreign crew members has also been included in the mission of high seas boarding and inspection.
- 對有違規疑義，專案調查確定後依規定處罰。  
For any suspicion of in violation against the relevant laws and regulations, it will be further investigated on a case-by-case basis. Once the infringement is verified, the competent authority will penalize the violator accordingly.
- 2018年度預計完成訪查遠洋漁船80艘、外籍船員450名以上。  
At least 80 distant water fishing vessels will be surveyed and 450 foreign crew members will be interviewed in 2018.

## 執行面-5、6 Implementation aspect

### 辦理仲介機構評鑑，藉以獎優汰劣

Conduct annual review on agents to select the superiors and eliminate the inferiors

- 2018年5月起依「境外僱用非我國籍船員仲介機構服務品質評鑑作業要點」輔導仲介進行試評鑑，2019年起正式評鑑，屆時將對不良仲介進行核處。  
Annual review has been conducted on a trial basis in accordance with “Directions for the Annual Review on the Employment Agents Authorized to Conduct Overseas Employment of Foreign Crew Members” since May 2018. Such review will be formally carried out from the year of 2019, hence any violation will be subject to punishment then.

### 建立海上傷病救援通訊諮商

Establish at-sea telemedicine consultation mechanism

- 已建立「漁船船員海上傷病申請救援通訊諮詢機制」，提供遠端醫療諮詢，協助評估海上船員病情。  
“At-sea telemedicine consultation mechanism for crew members onboard fishing vessels” has been established. Such mechanism provides telemedicine consultation, assisting in evaluating patient’s condition.



## 106年1月至107年5月 遠洋漁船海上傷病救援通訊諮商案件統計

Statistics of at-sea telemedicine consultation (from January 2017 to May 2018)

月份 Month	件數 Cases
2017年2月 February 2017	1
2017年3月 March 2017	3
2017年4月 April 2017	3
2017年5月 May 2017	3
2017年6月 June 2017	4
2017年7月 July 2017	3
2017年8月 August 2017	0
2017年9月 September 2017	1
2017年10月 October 2017	2
2017年11月 November 2017	1
2017年12月 December 2017	0
2017年合計 Subtotal for 2017	21件
2018年1月 January 2018	0
2018年2月 February 2018	1
2018年3月 March 2018	2
2018年4月 April 2018	2
2018年5月 May 2018	1
2018年前5月合計 Subtotal for the first five months of 2018	6件



## 執行面-7、8 Implementation aspect

### 與地方政府分工

#### Cooperate with local governments to carry out the respective duties

- 2017年6月起，委託宜蘭縣政府、屏東縣政府、高雄市政府等辦理船員僱用登錄管理，地方政府就近了解外籍船員進港及掌握陸上安置狀況，一但發生事件，可即時協調處理。  
Since June 2017, the competent authority has commissioned Yilan County Government, Pingtung County Government and Kaohsiung City Government to undertake the registry management of the employment of crew members. These local governments have accesses to the information about the in-port foreign crew members and accommodation arrangement, therefore prompt coordination can be arranged in case of any emergent circumstances.

### 強化打擊人口販運

#### Strengthen measures to combat human trafficking

- 我國人因經營遠洋漁船涉及人口販運案件者，將依人口販運防制法移送法辦。  
Any national getting involved in human trafficking case through the operation of distant water fishing vessel will be subject to prosecution in accordance with Human Trafficking Prevention Act.



## 執行面-9 Implementation aspect

### 推動各項關懷照護措施 Push for a series of caring and assistance measures

健康休憩中心Recreational Center



個人電腦空間Computer area



外語廣播Broadcast in foreign languages



按摩活動Massage event



健康檢查活動Health examination



剪髮活動Haircut event

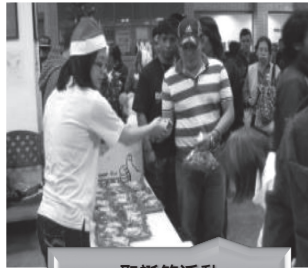


## 增加外籍船員生活娛樂

Organize gathering and provide entertainment for foreign crew members



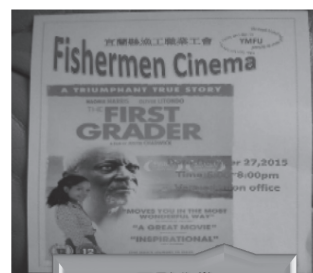
團體活動  
Group activity



聖誕節活動  
Christmas celebration



生活救助  
Living allowance



電影欣賞  
Film-watching



火災演練  
Fire-drill

10

## 未來後續推動方向-1 Future prospect

### 持續檢討法令，完善漁工權益保障

Review relevant laws and regulations periodically to fulfill the protection of rights and benefits of crew members

- 持續檢討相關法規，以更完善漁工權益保障。  
Review relevant laws and regulations periodically to fulfill the protection of rights and benefits of crew members
- 委託專家學者，透過研究相關法規與措施，研擬更完善可行的法規或機制。  
Commission experts and scholars to draft more applicable and appropriate legislation or mechanism through researching on relevant

### 持續加強宣導

Strengthen the guidance and education

- 持續宣導作為俾漁船業者遵守規範，並宣導外籍船員權益與雇主夥伴關係。  
Strengthen the guidance and education for fisheries operators to ensure their compliance, and advocate rights and benefits of foreign crew members and the concept of working partnership

## 未來後續推動方向-2 Future prospect

### 確保落實遵守相關法令

#### Enforcement and compliance of relevant laws and regulations

- 強化執行船員訪查。  
Fortify the investigation
- 漁民違反前述法令將依規定處置，以利落實保障外籍船員之權益。  
Violator will be subject to punishment pursuant to the aforementioned laws and regulations to ensure the protection of rights and benefits of foreign crew members

### 持續營造和諧友善環境設施

#### Create friendly environment

- 將持續於屏東、蘇澳等地區建置外籍船員休憩場所。  
Establish more recreational centers for foreign crew members such as in Pingtung and Suao.



# 敬請指教

Thanks for your attention and welcome your comments

行政院農業委員會  
COUNCIL OF AGRICULTURE, EXECUTIVE YUAN

健康 效率 永續經營







## 與談人簡介

# Sam Ismail

印尼漁工協會秘書長



### 學歷

印尼雅加達薩希德大學主修飯店管理  
包括行銷管理、企業經營管理、策略管理及統計學

### 經歷

2001-2004 印尼豐田製造廠 維修部門主管  
2005-2009 日本餐廳酒吧和燒烤店負責人  
2009-2015 非政府組織漁民計畫國際事務  
印尼漁工協會秘書長

## Brief Introduction of Commentators

### **Sam Ismail**

Chief Executive of Indonesia  
Fisherman Foundation



### **Education**

Sahid University, Jakarta, Indonesia Hotel Management Major (full time)  
Subject include Marketing management, Business management, Strategic management, Accountance, Statistic.

(Member of Hotel Student Organization,)

STM RESPATI / Technic and Middle Engineering Basic Programs

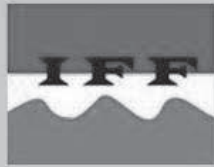
### **Career Experience**

Toyota manufacture Indonesia (2001 ---- 2004) Chief Improvement

Japanese Restaurant bar & Grill(2005 ---- 2009) Owners

N-G-O programs for fisherman (2009 ---- 2015)International Affair

N-G-O programs Fisherman Federation & Foundation, Chief Executive



# INDONESIAN FISHERMAN FOUNDATION YAYASAN NELAYAN INDONESIA

## PROFILE



Jl. Kayu Manis No. 3 Condet Jakarta 13530 Indonesia

Telp. : +62-21-2861-1991

Fax. : +62-21-2861-1991

Email : [INDONESIAFISHERMANFOUNDATION@iff.or.id](mailto:INDONESIAFISHERMANFOUNDATION@iff.or.id)

Web : [www.iff.or.id](http://www.iff.or.id)



## REPUBLIC OF INDONESIA



Ir. H. Joko Widodo  
President



Dr.(H.C.) Drs. H. Muhammad Jusuf Kalla  
Vice President

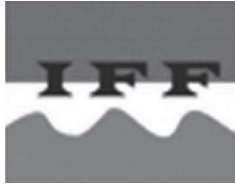


Dr. (HC) Susi Pudjiastuti  
Minister of maritime Affairs and Fisheries

The Department of Maritime Affairs and Fisheries has the duties to help the President in performing a part of governmental affairs in the field of maritime affairs and fisheries.

The Department of Maritime Affairs and Fisheries perform the functions of:

- Formulating the nation policies, the implementation policies, and the technical policies in the fields of maritime affairs and fisheries;
- implementing the governmental affairs in accordance with its assignments;
- Organizing state-owned properties/assets under its responsibilities;
- Supervising the implementation of its duties;
- Submitting the report of evaluation results, suggestions, and considerations its task fields and its functions to the President.



# INDONESIAN FISHERMAN FOUNDATION

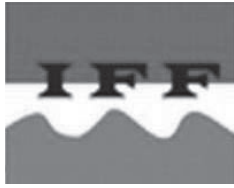
**Yayasan Nelayan Indonesia**

## INTRODUCTION

Indonesian Fishermen Federation was found begin from our thought and consideration about real traditional fishermen life in Indonesia which is mostly living under poverty line. Based on this situation, we are trying hard to find them proper jobs as a professional fishermen who can work overseas in many of international fishery vessel companies. Concerning this vision we train our fishermen to improve their skill by educating them with modern fishing techniques, maritime knowledge, physical and mental exercise, behavior education and teaching them foreign language like English, Japanese, Korean, Taiwan and etc , its depend on language which is used in the vessel they will work in.

Now day many Indonesian fishermen who work in the foreign fishing vessel are not the real fishermen . They could work there because those people are able to pay some amount of money to the Agent. Many problems arised after they had arrived in the fishing ground, they do not have any capability in the fishing field, become sea sick and stressful in the middle of they work on sea. Finally they will make trouble and ask the owner to let them back to indonesia or some of them usually will become Boat-Jumper. All of these matters of course will make the vessel owner company get loss and generally it will give bad reputation for all of Indonesian fisherman in relation to international fishing company worldwide.

Based on the previous explanation hopefully the vessel owner would consider to have profitable cooperation with us. The vessel owner will get professional fisherman and our fishermen can have proper job to make better living to their family, because they deserved it. We guarantee that our fishermen we provide will have good spirit and capability to work hard and will give benefit to your company.



# INDONESIAN FISHERMAN FOUNDATION

Yayasan Nelayan Indonesia

## VISION

Educate traditional fishermen to be professional fishermen so they can be a part to participate in world fishing industry.

## MISSION

- Training and improving fishermen skill with the latest technology of fishing technique and related skill which will support their ability and capability as a fisherman.
- Find proper job and proper payment for the sake of the fishermen life to promote their quality of better life.
- Make business relationship to fishery companies overseas.

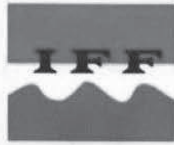
## SERVICE

We provide professional fishermen who are ready to work overseas.

## BACKGROUND

We had established because of the high demand professional fishermen to work overseas and we have real fishermen resources to supply it. Our fishermen are very tough. They have fishing experiences since they were children. So hopefully they do not have any difficulty to work on the vessel. We believe to provide the best human resources of fishermen with our recruitment method as follows;

- We have cooperation with some Fisheries and Maritime School in Indonesia which we believe can guarantee the continuity to get the human resources who is ready to work.
- We have cooperation with the government under Department of Maritime Affairs and Fisheries to find solution in matter to provide some regulation and facilities which give our fishermen all benefit and secure to work as fishermen.
- We have skill and expertise recruitment agent in all fisheries region in the country to recruit traditional young men fisherman to educate them to be a professional fisherman.
- We never take money from fishermen as an agent fee in order to distribute our fisherman to work in our relation fishery vessel company. Also we only take smallest fee from vessel companies so the rest of salary from the company will give to fisherman it selves. We believe this thing will avoid and reduced many problems that usually happens related to fishermen behavior when working in the vessel. They will work hard with integrity, high spirit, and with full heart as a professional because they believe it worth with the salary they can get.



## INDONESIAN FISHERMAN FOUNDATION YAYASAN NELAYAN INDONESIA



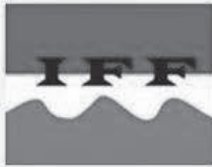
### Greeting from; Chief Executive Sam Ismail

If we look about the fisheries industry development today, seems that more advanced and modern, such advanced needs professional labor force to support the catches. We understand that in the several modern countries it is difficult to find fisheries labor due to the hard and dangerous work also the length of work time in the middle of the sea. Although if there labor, but it would require high salary.

Therefore Indonesian fisherman foundation (IFF) would like to offer cooperation with world's fisheries institutions and agencies. For any Indonesian fisherman who would like to work in any of the overseas fisheries vessels, they wouldn't ask for high salary, instead they would ask for adequate salary for their family's welfare.

Indonesian fishermen now only extorted by the agent of labor (labor syndicates) in Indonesia they are on the payrolls of U.S. \$ 150-250, they were actually at a minimum salary of U.S. \$ 400, there is no justice here, who enjoyed the work of Indonesian fishermen are agencies, while the fishermen who work just enough to feed their families.

Thus the IFF is working hard to help the fishermen of Indonesia, we are not ashamed to ask and beg to work for the Indonesian fishing vessel owners who had been a cash cow, who enjoys only the boss agent labor (labor syndicate boss), let us together to fight against labor syndicate.

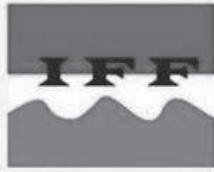


# INDONESIAN FISHERMAN FOUNDATION YAYASAN NELAYAN INDONESIA

## HEAD OFFICE JAKARTA



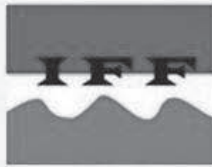




# INDONESIAN FISHERMAN FOUNDATION YAYASAN NELAYAN INDONESIA



Portrait of our social activity. We build a simple elementary school which we dedicated to fishermen children who cannot afford to pay school cost.



# INDONESIAN FISHERMAN FOUNDATION YAYASAN NELAYAN INDONESIA



Portrait of our member who are working on overseas fishery vessel company. You can see the difference, with your kindness to give them a chance to work on your vessel now they become professional fisherman who have self confident to facing and participate in the world fishery industry.



## 第四場

好還要更好 - 被害人保護機制全面探究

### **Session 4**

**Better and Better- Victim Protection Mechanisms**



## 被害人保護及國家轉介機制

### Protection Promotion – from the church’s cooperation mechanism

主講人：**Simon Moring**

英國倫敦大都會警察局刑事警察大隊長

**Speaker : Simon Moring**

**Detective Superintendent of Metropolitan Police Service,  
London, UK**

## 主講人簡介

# Simon Moring

英國倫敦大都會警察局刑事警察大隊長

### 學歷

電氣與電子工程

### 經歷

現代奴隸制與綁架、國際小組偵查警司協調管理 MPS 對現代奴隸制和人口販運的因應方式倫敦橋恐攻事件高級鑑定管理和格倫費爾塔 (Grenfell Tower) 火災事件的家庭聯絡主管  
負責鑑定大規模死亡人數案件及聯繫死者家屬。

偵查單位總督察 - Trident 調查槍枝和幫派犯罪

偵查總督察 - Sapphire 管理倫敦東北部強姦和嚴重性犯罪案件

兇殺案和重大犯罪偵查指揮

自治市警察

## Brief Introduction of Speaker

# Simon Moring

Detective Superintendent  
Metropolitan Police Service (MPS)

## Education

ELECTRICAL & ELECTRONIC ENGINEERING B.ENG(HONS)  
Brunel University

## Career Experience

DETECTIVE SUPERINTENDENT MODERN SLAVERY & KIDNAP,  
INTERNATIONAL UNIT

November 2017 to Present

Coordinating the MPS response to modern slavery and human trafficking

SENIOR IDENTIFICATION MANAGER (LONDON BRIDGE) &  
FAMILY LIAISON MANAGER GRENFELL TOWER FIRE

DETECTIVE CHIEF INSPECTOR - TRIDENT

DETECTIVE CHIEF INSPECTOR – SAPPHIRE

HOMICIDE AND MAJOR CRIME COMMAND

BOROUGH POLICE DUTIES



# Simon Moring

## Detective Superintendent

Modern Slavery and Kidnap Unit

Metropolitan Police Service  
New Scotland Yard  
London  
England



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# Victim Care & National Referral Mechanism



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POLICE



## Morecambe Bay Disaster 2004



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POLICE**



**It is estimated that there are  
13000 people living in  
slavery in the UK**



Source:  
Home Office



**METROPOLITAN  
POLICE**





**modern  
slavery  
helpline**

**08000 121 700**



**METROPOLITAN  
POLICE**



## **Council of Europe Convention on Action Against Trafficking in Human Beings**

**Ratified by the UK on the 17 December 2008**

**Came into force 1 April 2009**

The UK has adopted a National Referral Mechanism to help identify individuals who may be victims of trafficking and provide appropriate protection and support.

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



**METROPOLITAN  
POLICE**



## National Referral Mechanism

- Accommodation and material assistance.
- Medical treatment and care
- Counselling and emotional support
- Advice on immigration and legal rights and services
- Advice on the criminal justice system
- Guidance on education, training, and employment
- 45-day reflection period when you cannot be removed
- 1 year residence permit if cooperating with the police



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## 45 Day Reflection Period

If accepted onto the NRM victims are given a period of 45 days to reflect and consider what action they wish to take.

During this period they will have a right to **remain** in the UK.



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## **The person completing the referral form is known as the first responder**

There is a prescribed list of first responders including,

Police

Local Authorities

Local Safeguarding Children's Board

Designated Non Government Organisation experts

Charities

National Crime Agency (NCA)

UK Visa & Immigration

Statutory Qualified Health Providers



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## **What Happens Next?**

### **Co-operating With Police Enquiries**

The victim may be granted discretionary leave to remain in the UK for one year to allow them to co-operate fully in any police investigation and subsequent prosecution.

The period of discretionary leave can be extended if required.

### **Wishes to Return Home**

If they are from outside the European Economic Area, the victim can receive help and financial assistance to return home through the UK Border Agency Assisted Voluntary Return of Irregular Migrants (AVRIM) process.

If they are an EEA national MSHTU will put them in touch with their embassy and any relevant Non-Governmental Organisations who may be able to help.



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## What if the Referred Person is Not Considered to be a victim?

If at any stage the referred person is confirmed not to be a victim then they will be referred to the appropriate law enforcement agency – UK Border Agency or the relevant Police force.

Dependant on the referred person's personal circumstances, UKBA may consider a grant of discretionary leave to remain in the UK.

It is up to the law enforcement agency to decide whether they consider the referred person to have made a fraudulent claim and whether they wish to pursue a prosecution.



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## Statistics

- 5145 potential victims were submitted to the NRM in 2017 an increase of 35% (33% of all referrals are received by the Metropolitan Police)
- These victims were from 116 different nationalities
- 2118 of these victims were children
- The most common exploitation was labour exploitation



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## Bakhita House

Bakhita House was established in June 2015 to provide women escaping human trafficking with sanctuary and support



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## Language Support



Victims referred into the NRM in 2017 represented 116 nationalities



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## Achieving Best Evidence

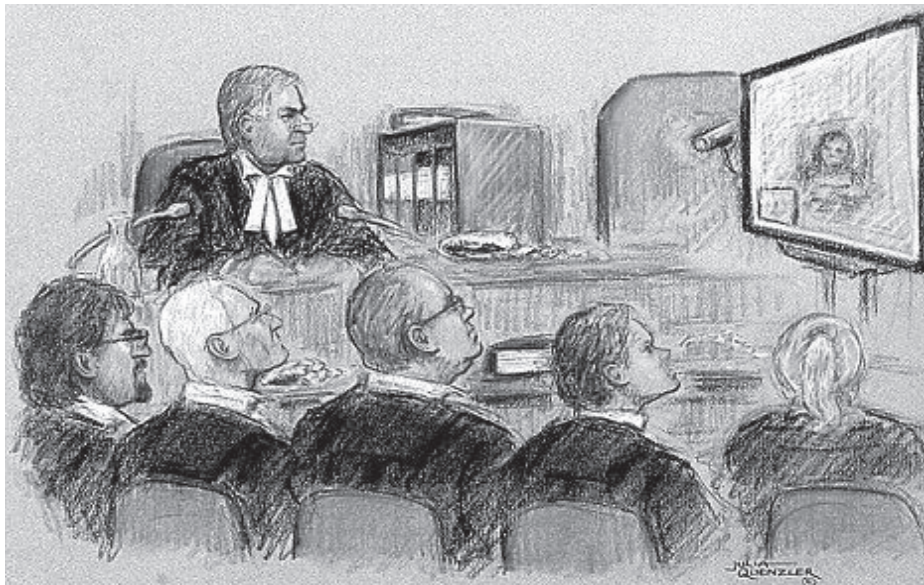
Victims of Human trafficking may record their evidence rather than appearing in court.



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NEW  
SCOTLAND  
YARD

## Evidence and Cross Examination via Video Link



**METROPOLITAN  
POLICE**

NEW  
SCOTLAND  
YARD



## NRM Reforms

### Increased Victim Support

Confirmed victims will now have 45 days to access move on support (an increase from 14 days)

Government-funded 'places of safety' will be created so that adult victims leaving immediate situations of exploitation can be given assistance and advice for up to 3 days before deciding on whether to enter the NRM.

Single expert unit replacing the 2 competent authorities

Digital NRM form replacing current paper based system



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## Contact

email: [simon.moring@met.police.uk](mailto:simon.moring@met.police.uk)



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# 臺灣安置保護人口販運被害人之得失分析與展望

**Protection Promotion – from the church’s cooperation mechanism**

主講人：白智芳

婦女救援基金會副執行長

**Speaker : Jasmine Bai**

**Deputy Executive Officer, Taipei Women’s Rescue Foundation**

## 主講人簡介

### 白智芳

婦女救援基金會副執行長



### 學歷

臺灣大學社會工作碩士

慈濟大學社會工作學士

### 經歷

婦女救援基金會研發部主任，兼任花蓮工作站主任

婦女救援基金會花蓮工作站主任，兼任公共政策事務組督導

婦女救援基金會救援部主任

婦女救援基金會救援部督導，兼任花蓮庇護所主任

婦女救援基金會救援組社工

婦女救援基金會婦幼組社工

## Brief Introduction of Speaker

# Jasmine Bai

Deputy Executive Officer, Taipei  
Women's Rescue Foundation



## Education

Master in Social Work, National Taiwan University, January 2012

Bachelor in Social Work, Tzu Chi University, June 2004

## Career Experience

Deputy Executive Officer, Taipei Women's Rescue Foundation

Director, Research and Development Department, Taipei Women's  
Rescue Foundation

Director, Hualien Workstation, Taipei Women's Rescue Foundation

Supervisor, Public Policy Sector, Taipei Women's Rescue Foundation

Director, Anti-Trafficking Department, Taipei Women's Rescue  
Foundation

Supervisor and Director of Shelter, Anti-Trafficking Department, Taipei  
Women's Rescue Foundation

Social Worker, Anti-Trafficking Department, Taipei Women's Rescue  
Foundation

Social Worker, Domestic Violence Department, Taipei Women's Rescue  
Foundation



# Retrospect and Prospect of Protecting Human Trafficking Victims in Taiwan



婦女救援基金會  
Taipei Women's Rescue Foundation

Jasmine Bai, Deputy  
Chief Executive Officer

2018.7.26

# 販運被害人安置保護 台灣經驗分享與展望



婦女救援基金會  
Taipei Women's Rescue Foundation

副執行長 白智芳

2018.7.26







# The Visible, and Invisible Barrier

 婦女救援基金會  
Taipei Women's Rescue Foundation



# 看得見.與看不見的圍籬

 婦女救援基金會  
Taipei Women's Rescue Foundation



## Different Categories of Taiwan resettlement protection shelter



### Mixed

- Largest number in Taiwan
- No specific object



### Specific

- The one and only in Taiwan
- No gender restriction



### Community

- Focus on the future



婦女救援基金會  
Taipei Women's Rescue Foundation



## 台灣安置保護庇護所類型



### 混合型

- 全台數量最多
- 安置對象多元



### 專門型

- 全台唯一
- 男女兼收



### 社區型

- 未來展望



婦女救援基金會  
Taipei Women's Rescue Foundation

## Hua-Lien Resettlement Protection Shelter

National Immigration Agency has subcontracted with TWRP to run the shelter since March 2009 to 2014. The shelter can accommodate 10-20 residents.



## 花蓮庇護所

自2009年-2014年  
內政部入出國及移民署委託  
婦女救援基金會辦理  
安置人數10-20名

National Immigration Agency has subcontracted with TWRP to run the shelter since March 2009 to 2014. The shelter can accommodate 10-20 residents.



## Purposes

- Provide a human-centered and culturally-sensitive environment for the victims to be emotionally stabilized
- Offer a thorough case management and resources referral to assist the victims in their recovery and reintegration, increasing the sense of self-control.
- Lower the risk of being re-trafficked through the multifaceted services.



## 花蓮庇護所服務目 Purposes

- 提供人性化、具文化敏感度的安置環境，以協助被害人身心穩定
- 提供入住個案完整的保護管理服務，並連結各項資源，以協助其身心復原與生活重建，提昇個案生活自主權
- 透過服務降低個案未來再度被販運的風險

- Provide a human-centered and culturally-sensitive environment for the victims to be emotionally stabilized
- Offer a thorough case management and resources referral to assist the victims in their recovery and reintegration, increasing the sense of self-control.
- Lower the risk of being re-trafficked through the multifaceted services.



## 「BIG TREE HOME」 -Transitional residence

Held in 2009 by Taipei Women's Rescue Foundation  
In the residential area in  
New Taipei City

Convenient transportation near the MRT  
station

Arranged for 6-8 people



## 大樹家園-過渡性住宅

2009年婦女救援基金會自行試辦

位於新北市住商混合區

鄰近捷運站交通便利

安置人數6-8人



## Purposes

- Especially provided for the victim in a rather a stable status, and are able to manage their everyday living individually.
- Continuously provide case protection management services as well as necessary resources.
- Counseling for employment



## 大樹家園服務目 Purposes

- 提供狀態穩定，進入獨立自主階段的被害人回歸社區生活的選擇
- 持續提供入住個案保護管理服務，並連結各項資源
- 輔導媒合個案就業



Empowerment

Physical and mental recovery

Prevent re-trafficking

Reconstruction of social interaction and trust

Rebuild their lives and sense of control

Planning of future

Training and empowerment of individuals

Growth group

Family-style Environment

Least management

Community participation

Job hunt

Vocational training

Role models

Self-advocacy

Personal adventure



婦女救援基金會  
Taipei Women's Rescue Foundation

增權 Empowerment

身心復原

Physical and mental recovery

預防再被販運

Prevent re-trafficking

重建人際互動  
與信任感

Reconstruction of social interaction and trust

重建  
生活掌控感

Rebuild their lives and sense of control

規劃  
未來生活  
Planning of future

培養並增強  
個人能力  
Training and empowerment of individuals

成長  
團體  
Growth group

家庭式  
生活  
Family-style Environment

低度家  
園規範  
Least management

家園事  
務參與  
Community participation

就業  
媒合  
Job hunt

職業  
訓練  
Vocational training

角色  
示範  
Role models

自我  
倡議  
Self-advocacy

探索  
學習  
Personal adventure



婦女救援基金會  
Taipei Women's Rescue Foundation



 婦女救援基金會  
Taipei Women's Rescue Foundation



 婦女救援基金會  
Taipei Women's Rescue Foundation





Shelter staff attitude

Environmental security

Demand being heard and resolved



庇護所工作人員態度

環境安全感

需求被聽見與解決



## Reflection on Resettlement and Protection Experiences

- Balance between group and individual is required
- Listening and accompanying is a kind of knowledge
- Understand and appreciate the difference
- Maximize the “Safe Zone” between each other



婦女救援基金會  
Taipei Women's Rescue Foundation



## 安置保護經驗下的反思

- 團體生活與個別性需求的平衡點
- 傾聽與陪伴是一門學問
- 接納欣賞差異
- 擴大彼此的安全領域(Safe Zone)



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## Challenges on Resettlement and Protection Experiences



### General

- Differentiation of topic will challenge the workers capability
- The difference between group and individual
- Expectation verses reality



### Specific

- Funding verses protected victims
- Protection for specific gender
- Difficulties in group cases



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## 台灣安置保護面臨之挑戰



### 混合型

- 議題多元挑戰人力專業
- 團體生活與個別差異
- 補助項目與實際需求落差



### 專門型

- 營運成本v.s安置人數
- 單一性別安置的困境
- 集團性案件處遇不易



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## Cooperation Between Private and Public Departments

- Simplified administrative work
- Favorable Cross-departmental communication
- Funding and resources
- Flexibility



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## 公私部門合作關鍵

- 行政作業化繁為簡
- 跨部門溝通積極性與順暢度
- 經費與資源
- 變通與彈性的可能



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## Challenges or Restrictions in Taiwan

- Victims are unwilling to stay and give evidence
- The impact on the victims' identity due to judicial proceedings
- The limited choices for the victim



## 台灣面臨的限制與挑戰

- 被害人缺乏長期停留作證的意願
- 司法訴訟結果對被害人身份的影響
- 被害人缺乏安置外的其他選擇



## Human Trafficking Prevention Law Revise

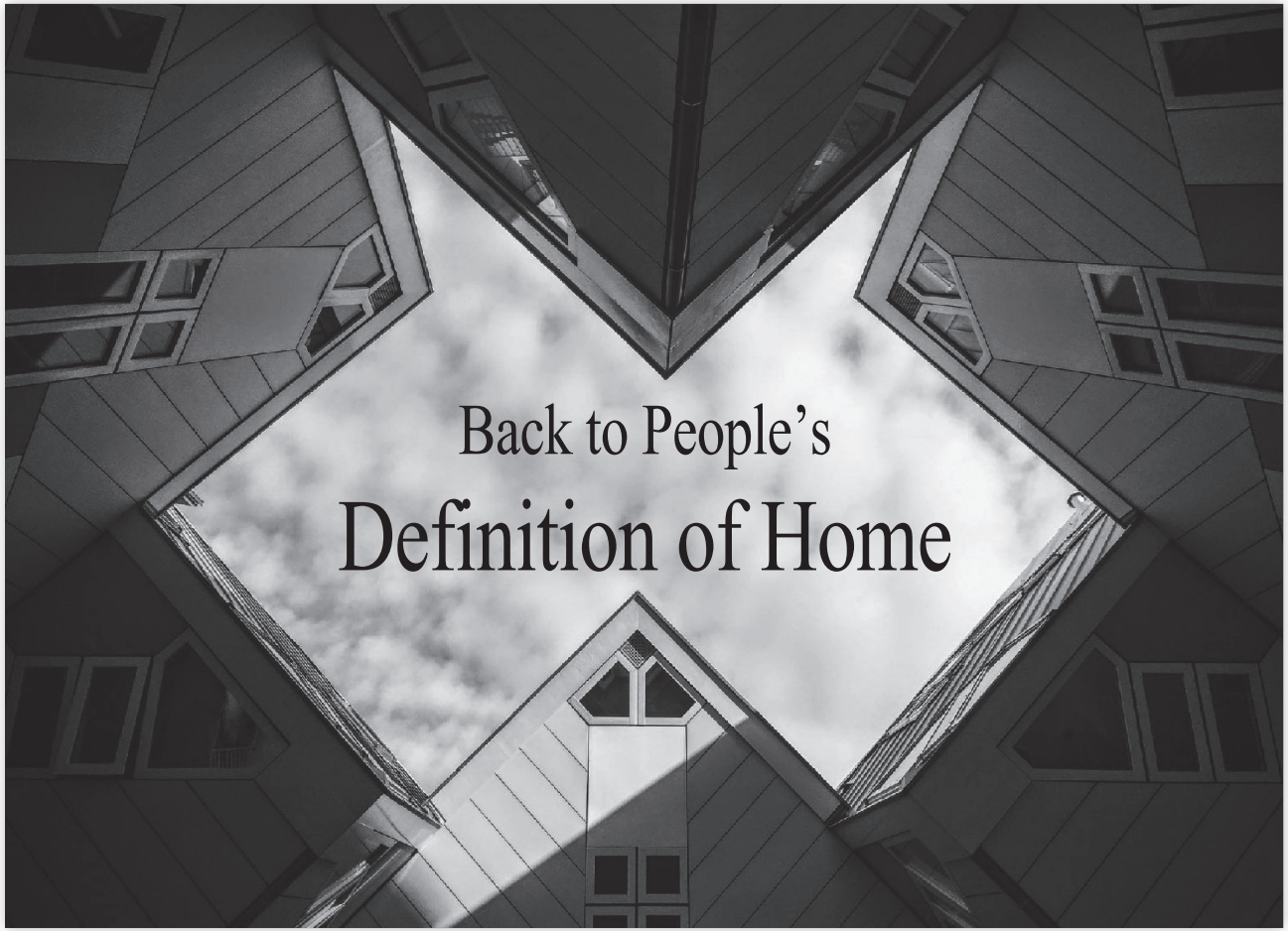
- Decoupling Victim Identification and Judicial Litigation
- Extend the residence period of the victim
- Victim increases the choice other than resettlement in the shelter



## 人口販運防制法修法方向

- 被害人身份鑑別脫鉤與司法訴訟脫鉤
- 被害人居留期限延長
- 被害人安置保護增加庇護所外的選擇





Back to People's  
Definition of Home



回到人對家的想像

Please advise

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敬請指教

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Prevention  
預防

Protection  
保護

Prosecution  
查緝起訴

Partnership  
夥伴關係



ADVISOR  
指導單位



Ministry of the Interior  
內政部

HOST  
主辦單位



Mainland Affairs Council  
大陸委員會



Tourism Bureau, MOTC  
交通部觀光局



Ministry of Foreign Affairs  
外交部



Fisheries Agency, Council of Agriculture, Executive Yuan  
行政院農業委員會漁業署



Ministry of Labor  
勞動部



National Immigration Agency  
內政部移民署