

# Producing Statelessness

How the Predicament of Migrant  
Workers Generates the Existence of  
Stateless Children in Taiwan



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**Producing Statelessness** - How the Predicament of Migrant Workers Generates the Existence of Stateless Children in Taiwan

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# List of abbreviations

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ARC	Alien Residence Certificate
BNPTKI	Indonesian Manpower Placement and Protection Agency
ICCPR	International Covenant on Civil and Political Rights
MOL	Ministry of Labour
MOI	Ministry of Interior
MOFA	Ministry of Foreign Affairs
NIA	National Immigration Agency
NHI	National Health Insurance
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees

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# 1. Introduction

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## 1.1. Background

'The term "stateless person" means a person who is not considered as a national by any State under the operation of its law'.<sup>1</sup> Clearly stated in Article 1 of the 1954 Convention Relating to the Status of Stateless Persons by the United Nations, this statement indicates the exceptional status of stateless people who do not belong and are not being protected by any State government. The status of the stateless is different from any other status and identity in nature; a stateless person is not recognised as a citizen and, as a result, is much more vulnerable to rights violations than normal citizens.<sup>2</sup>

According to the United Nations High Commissioner for Refugees (UNHCR)'s calculation, 4.2 million people worldwide are confirmed to be stateless, as of 2020.<sup>3</sup> The exact figure is unknown due to gaps in data collection and is believed to be much higher than what has been reported.<sup>4</sup>

The four main causes of statelessness are:

- Gaps in national laws regarding nationality
- Children being born in countries that do not grant birthright citizenship
- The emergence of new countries or changes in borders
- People losing or being deprived of nationality due to specific reasons, such as living away from their home countries for too long<sup>5</sup>

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1 UNHCR (1954). Convention Relating to the Status of Stateless Persons. Available at

[https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf)

2 Danish Refugee Council (2022). What does it mean to be stateless? Available at <https://drc.ngo/our-work/resources/faq-on-refugees/what-does-it-mean-to-be-stateless/>

3 United Nations (2021). Ensuring the right to a nationality, more pressing than ever: UNHCR. Available at <https://news.un.org/en/story/2021/08/1098732>

4 UNHCR (2022). Stateless around the world. Available at <https://www.unhcr.org/statelessness-around-the-world.html>

5 UNHCR (2022). Ending statelessness. Available at <https://www.unhcr.org/ending-statelessness.html>

The causes of statelessness vary and include the dissolution of a State,<sup>6</sup> the political transfer of territory, conflicts, and being born by stateless parents.<sup>7</sup> Take Myanmar as an example, the discriminatory citizenship laws have removed the citizenship of many Rohingya, making them one of the predominant stateless communities in the world.<sup>8</sup> As for Kuwait, many people failed to retain their citizenship during the nation's political transformation into an independent state.<sup>9</sup> There was also an increasing number of citizens being stripped of their citizenship during the 2011 Arab Spring.<sup>10</sup>

The predicament of statelessness in Asia, such as stateless Rohingya refugees in Myanmar and Thailand having one of the world's largest populations of stateless people, has been widely discussed in recent years.<sup>11</sup> Taiwan is another Asian country with a long-standing existence of statelessness, which is intertwined with another difficult social issue – that of undocumented migrant workers.

## 1.2. Stateless Children in Taiwan: Facts and figures

It's nearly impossible to accurately calculate the number of stateless children in Taiwan, as a large majority remain unregistered and unknown by the government. As of July 2020, the National Immigration Agency has assisted 729 cases of unregistered stateless children,<sup>12</sup> but it is believed that the actual number of stateless children in Taiwan may be up to 10,000.<sup>13</sup>

In Taiwan, the trends and causes of statelessness are differ greatly from the common trends seen in other countries. Apart from a few individual cases, which will not be covered in this report, all of the stateless people in Taiwan are teenagers or children, and were, unfortunately, born stateless.

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6 State Secretariat for Migration SEM, Switzerland (2022). Available at [https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere\\_themen/staatenlosigkeit.html](https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html)

7 U.S. Department of State (2022). Statelessness. Available at <https://www.state.gov/other-policy-issues/statelessness/>

8 UNHCR (2021). The displacement and stateless of Myanmar in the Asia-Pacific region, 2. Available at <https://reporting.unhcr.org/sites/default/files/The%20Displaced%20and%20Stateless%20of%20Myanmar%20in%20the%20Asia-Pacific%20Region%20-%20January%202021.pdf>

9 Stateless Journeys (2022). Statelessness in Kuwait. Available at <https://statelessjourneys.org/resources/statelessness-in-kuwait/>

10 Roy Greenslade (2014). Kuwaiti media owner is stripped of his citizenship. The Guardian. Available at <https://www.theguardian.com/media/greenslade/2014/aug/11/press-freedom-kuwait>

11 The Borgen Project (2021). Addressing statelessness in Thailand. Available at <https://borgenproject.org/statelessness-in-thailand/>

12 National Immigration Agency (2021). Evaluation report of the budget plan of the year of 2021, 14. Legislative Yuan. Available at <https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=43773&pid=193083>

13 Gin-Long, Chung (2021). The death of an undocumented child - the tragedy of illegal migrant workers in Taiwan. Radio Taiwan International. Available at <https://www.rti.org.tw/news/view/id/2102641>

Children's right of being granted nationality is protected under the international human rights framework. In the United Nations Convention on the Rights of the Child (UNCRC), it is stated that a "child should be registered immediately after birth" and "shall have the right to acquire nationality".<sup>14</sup> The Convention also mandates state parties to ensure the relevant national laws and their implementation are in accordance with the international instruments to protect children from being or becoming stateless.<sup>15</sup> Article 26 of the International Covenant on Civil and Political Rights (ICCPR) further asserts that all children have the right to obtain nationality and receive state protection without discrimination.<sup>16</sup>

What does it mean to be a stateless child in Taiwan? According to the Social and Family Affairs Administration, a child will be recognised as a "foreign orphan", which implies the status of being stateless, if his or her birth father is unknown, as well as if his or her birth mother is missing.<sup>17</sup>

Taiwan follows the principle of *jus sanguinis*, meaning it allows the descendants of its citizens to automatically acquire Taiwanese citizenship at birth.<sup>18</sup> This also means that, unlike the United States, Taiwan does not offer unrestricted birthright citizenship, and the children born in Taiwan to foreign parents are not entitled to the right of becoming Taiwanese at birth.<sup>19</sup> Normally, a baby born on Taiwan's territory whose biological parents are both foreigners, or whose biological mother is a foreigner, and the biological father is unknown, is eligible to apply for the nationality (nationalities) of their parent(s). The application process is simple – the parent provides the birth certificate and other relevant documents to the embassy of his/her country of origin in Taiwan, and this baby will be issued a passport and a legal identity of that country.

For those children born under more unfortunate and complex circumstance, passports and identity documents are often inaccessible luxuries. This report focuses on the stateless children who were born to undocumented ("runaway" or "missing") female migrant workers with an unknown father or a father who is also undocumented in Taiwan. For fear of being reported to the National Immigration Agency (NIA) and facing deportation, these mothers (parents) may choose to give birth at home to avoid themselves and the child being registered in the public healthcare system. Thereafter, a stateless new-born arrives.

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14 United Nations Human Rights Office of the High Commissioner (1989). Convention on the Rights of the Child. Available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

15 United Nations Human Rights Office of the High Commissioner (1989). Convention on the Rights of the Child. Available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

16 United Nations Human Rights Office of the High Commissioner (1966). International Covenant on Civil and Political Rights. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

17 Social and Family Affairs Administration (2019). The process of foreign child born in Taiwan applying for the identification of stateless person. Available at <https://www.sfaa.gov.tw/SFAA/Pages/Detail.aspx?nodeid=1175&pid=8949>

18 Dual Citizenship.com (2022). Dual Citizenship in Taiwan. Available at <https://www.dualcitizenship.com/countries/taiwan.html#:~:text=Taiwan%2C%20also%20referred%20to%20as,must%20renounce%20the%20previous%20citizenship.>

19 World Population Review (2022). Countries with birth right citizenship 2022. Available at <https://worldpopulationreview.com/country-rankings/countries-with-birthright-citizenship>

# 2. Supplying Stateless Children in Taiwan

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The number of stateless children identified by the government has been increasing along with the growing number of immigrants, and most of the mothers of these children are undocumented migrant workers or women with false identities.<sup>20</sup>

## 2.1. The Undocumented Female Migrant Worker

As an island, Taiwan borders the East China Sea, the South China Sea, and the Pacific Ocean. Generally speaking, travelling by plane or boat are the only methods to enter Taiwan, making illegal border crossing a lot more difficult than in other countries which share borders with one another. Almost all of the foreigners in Taiwan, regardless of their current residency status, have initially entered Taiwan through regular migration routes and with a legal identity. With that being said, it is certain that the undocumented migrant workers in Taiwan had once possessed a legal working permit, and have either voluntarily or unwillingly become undocumented by somehow giving up their legal status or remaining in the country after the expiration of their visa.

The total number of missing migrant workers in Taiwan, as of May 2022, is 66,789. According to National Immigration Agency's statistics, about 53% of the missing workers are female, among which 62% are Indonesian.

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<sup>20</sup> National Immigration Agency (2021). Evaluation report of the budget plan of the year of 2021. 14. Legislative Yuan, Republic of China (Taiwan). Available at <https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=43773&pid=193083>



Table 1. The number of migrant workers missing in Taiwan as of May 2022.<sup>21</sup>

Country		Nurse	Domestic helper	Construction worker	Manufacturing worker	Fisher	Agricultural worker, forestry worker, fish farmer	Agricultural engineer	Outreach manufacturer	Others	Total
Indonesia	F	21,521	114	409	0	3	0	1	0	11	22,059
	M	162	0	2,566	109	1,547	0	1	0	12	4,397
Vietnam	F	7,195	23	3,894	3	2	9	10	0	93	11,229
	M	352	0	23,402	547	718	67	56	0	135	25,277
The Philippines	F	1,820	11	117	0	0	0	0	0	0	1,948
	M	35	1	340	1	177	0	0	0	3	557
Thailand	F	44	0	155	0	0	2	0	0	4	205
	M	19	0	907	156	3	0	0	0	31	1,116
Malaysia	F	0	0	0	0	0	0	0	0	0	0
	M	0	0	1	0	0	0	0	0	0	1
Sub-total	F	30,580	148	4,575	3	5	11	11	0	108	35,441
	M	568	1	27,216	813	2,445	67	57	0	181	31,348
Total		31,148	149	31,791	816	2,450	78	68	0	289	66,789

Legal identity is necessary for a person to exercise their fundamental rights, be legally identified as a person, and receive protection from the state in which they find themselves in. Without a solid reason, such as personal safety due to political instability, it's unlikely that a person will willingly remain undocumented or sacrifice their legal identity, especially in a foreign country. To understand the reasons for the prevalence of stateless children in Taiwan, it's important to first explore the factors behind the prevalence of undocumented workers in Taiwan.

It is believed that financial pressure is one of the main reasons migrant workers in Taiwan are choosing to “run away” from their employers and become undocumented workers. In addition, the ongoing unethical recruitment practices are the most significant contributor to the financial burden bore by these workers.<sup>22</sup>

Before the revision of the Employment Service Act in October 2016, migrant workers employed in Taiwan were required to leave the country for at least one day every three years.<sup>23</sup> Mandated by Article 52 of the previous version of this act, many workers made several round trips between their home countries and Taiwan throughout their period of employment. Recruitment agencies saw this as an opportunity to exploit these workers, charging excessive recruitment fees ranging from 2,511-6,028 USD upon each entry, forcing workers to carry debt liabilities.<sup>24</sup> It would normally take workers 12 to 18 months to repay these debts, adding a heavy burden on top of the financial pressure of supporting their families in their home countries.<sup>25</sup>

21 National Immigration Agency (2022). Statistics of the missing migrant workers. Available at <https://www.immigration.gov.tw/5385/7344/7350/8943/?alias=settledown&sdate=202205&edate=202205>

22 Sin-Chu, Peng (2019). 50,000 migrant workers wandering in Taiwan – revealing the unethical recruitment agencies. Global Views Monthly. Available at [https://event.gvm.com.tw/201906\\_migrant-worker/03.html](https://event.gvm.com.tw/201906_migrant-worker/03.html)

23 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Employment Service Act. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>

24 Cheng-Yu, Yang (2016). Migrant workers are no longer required to leave the border once every three years in Taiwan – workers no longer have to be exploited by the recruitment agencies. The News Lens. Available at <https://www.thenewslens.com/article/52110>

25 Chun-Huai (2017). Migrant workers oppose to being exploited: seeking a win-win situation between the employers and the workers. Taiwan International Workers' Association. Available at <https://www.tiwa.org.tw/ment%E6%96%B0%E8%81%9E%E7%A8%BF%EF%BD%9C%E7%A7%BB%E5%B7%A5%E5%8F%8D%E5%89%9D%E7%9A%AE-%E5%8B%9E%E9%9B%87%E7%88%AD%E9%9B%99%E8%B4%8F/>

Now, blue-collar migrant workers are allowed to stay in Taiwan to extend their contracts or switch to another employer upon completion of their previous three-year contract period, which helps them avoid being overcharged by recruitment agencies. Nevertheless, migrant workers in Taiwan are still exposed to a high risk of financial exploitation. After working for three years, workers who would like to continue their employment in Taiwan may be charged a “work-purchasing fee” by their recruitment agencies.

Work-purchasing fees are usually incurred when a migrant worker is looking for a new job. Without adequate local connections and access to job postings, most migrant workers rely on their recruitment agencies to find jobs in Taiwan. Apart from the 50 USD to 60 USD monthly service fee regulated by Taiwanese law, some recruitment agencies collect additional fees from the workers, and those who refuse to pay are not granted any work opportunities.<sup>26</sup> It has been reported to local NGOs<sup>27</sup> and a legislator’s offices that many migrant workers have been charged a work-purchasing fee, despite the fact that it’s an illicit fee that is not included in the Employment Service Act.<sup>28</sup> According to Control Yuan’s investigation in 2019,<sup>29</sup> there is a prevalence of illegal work-purchasing fees in Taiwan, and the Ministry of Labour has not been proactive in preventing migrant workers from being exploited.<sup>30</sup>

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26 Yong-Da, Jian (2020). What happens after cancelling the policy of migrant workers being required to leave the border once every three years? The ongoing exploitation behind the policy favouring migrant workers. The Reporter. Available at

<https://www.twreporter.org/a/migrant-workers-policy-loophole>

27 Chun-Huai (2019). Discussion regarding the elimination of the migrant worker recruitment agency system. Taiwan International Workers’ Association. Available at <https://www.tiwa.org.tw/新聞稿|「廢除EF%BC%8F不廢除移工仲介制度」討論會/>

28 Foreign Workers news Agency (2021). Migrant workers being charged work-purchasing fee – legislators demanding a review on relevant cases. The Workforce Development Agency promised to simplify the job transferring procedure and adding new functions to the system. Available at [https://www.sea.com.tw/news\\_detail.php?sn=7041](https://www.sea.com.tw/news_detail.php?sn=7041)

29 The Control Yuan is the impeachment branch of the Taiwanese government.

30 The Control Yuan (2019). Investigation Report, 108(0048). Available at <https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=6672>



Table 2. The common amount of work-purchasing fees charged from migrant workers by the workers' countries of origin and types of work.<sup>31</sup>

Country	Job Category	
	Factory Workers	Nursing Workers
Indonesia	USD 837~USD 3350	USD 335~USD 502
The Philippines	USD 105~USD 3015	USD 167~USD 1172
Vietnam	USD 670~ USD 2345	USD 167~USD 335

Standards for Fee-charging Items and Amounts of the Private Employment Service Institution have set out the amount of service fee that can be charged to migrant workers by Taiwanese recruitment agencies,<sup>32</sup> and any additional fees, such as recruitment and placement fees that are not listed in this act are considered illegal. Nevertheless, media has revealed that many migrant workers still pay a significant number of fees to their brokers prior to their departure from Taiwan.<sup>33</sup> As these fees may be charged overseas or by the recruitment agencies in the workers' sending country, it is often difficult for the Taiwanese government to track and manage the entire migrant labour supply chain and suspend these unethical recruitment practices.

Apart from the risk of being overcharged in recruitment fees, some migrant workers may also be trapped in debt bondage as a result of signing promissory notes and taking on unwanted loans prior to their employment in Taiwan.<sup>34</sup> There have been cases where Taiwanese recruitment agencies established or collaborated with loan companies in the workers' sending countries, setting the workers up to borrow money from these lenders, and tricking them to make repayments that are significantly higher than the initial borrowed amount.

Take Filipino domestic worker Linda as an example. Before coming to Taiwan for work, she signed a promissory note of 85,000 PHP (1,632 USD). The amount of her debt was altered to 85,000 NTD (2,852 USD) by her loan company, and her monthly instalment were set at 258 USD for 12 months. The total amount that she would have to repay increased to 3,100 USD, almost double that of what she initially borrowed from the loan company.<sup>35</sup>

31 The Control Yuan (2019). Investigation Report, 108(0048). Available at <https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=6672>

32 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Standards for Fee-charging Items and Amounts of the Private Employment Services Institution. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090028>

33 Linh Le (2021). The problem of Taiwan's lost-contact migrant workers' 'illicit enjoyment.' The News Lens. Available at <https://international.thenewslens.com/article/145936>

34 Yong-Da, Jian (2020). Forcing migrant workers into debt bondage – the trap of signing promissory notes. The Reporter. Available at <https://www.twreporter.org/a/migrant-workers-promissory-note-debt-trap-between-taiwan-and-philippines>

35 Thinking-Taiwan (2018). Signing promissory notes to pay the recruitment fee and having the loans being doubled...migrant workers in Taiwan accumulating debts before starting to work. The Storm Media. Available at <https://www.storm.mg/lifestyle/390790?mode=whole>

These Taiwanese companies are familiar with the laws and regulations, and they have designed a well-developed chain of practices to exploit migrant workers without violating Taiwanese law:<sup>36</sup>

1. Local recruitment agencies in the worker's sending country charge a high recruitment fee, and encourage or even threaten workers to borrow money from an appointed loan company with a reasonable initial interest rate.
2. The workers are asked to sign a promissory note and loan agreement containing unfair terms, such as excessive processing fees, unjust exchange rates between New Taiwan Dollar and the currency of the worker's home country, and a penalty of late payment.
3. The promissory note is then passed on to a Taiwanese debt collection agency or loan company after the worker has begun their employment in Taiwan, and meanwhile, the debt may double or even triple as a result of hidden fees and unreasonable compound interest.
4. If the worker is unable to repay the debt in regular instalments, the loan company takes the matter to court in order to enforce this promissory note.
5. The worker's monthly salary is automatically deducted for the repayment, exacerbating their pre-existing financial burden.
6. To avoid violating Taiwanese law and becoming a suspect of overcharging recruitment fees, the recruitment agency asks the worker to sign an affidavit stating that this is not an employment-related loan.

Many migrant workers in Taiwan spend a significant portion of their monthly salary on repaying loans and illegal recruitment fees. In order to take on better-paid jobs and work in Taiwan for a longer period of time to support their families, or to escape poor working conditions, some workers choose to run away from their employers and take on illegal jobs. According to article 52 of the Employment Service Act, blue-collar migrant workers are not allowed to work for more than 12 years in Taiwan,<sup>37</sup> and it's nearly impossible for them to obtain permanent residency, which makes them a potential source of stateless children in the country.

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<sup>36</sup> Yong-Da, Jian (2020). Forcing migrant workers into debt bondage – the trap of signing promissory notes. The Reporter. <https://www.twreporter.org/a/migrant-workers-promissory-note-debt-trap-between-taiwan-and-philippines>

<sup>37</sup> Migrant domestic workers can potentially extend their contracts for another 2 years.

## 2.2 Upon Pregnancy

In the past, pregnant female migrant workers were not allowed to work in Taiwan, and those who were found to be pregnant after their employment in Taiwan had begun may have faced deportation. In Article 15 of the Regulations on the Permission and Administration of the Employment of Foreign Workers, it is stated that a pregnancy exam is required before female migrant workers enter Taiwan, and those who do not “pass the examination” would not be granted entry permission.<sup>38</sup> This law was amended in 2001,<sup>39</sup> and starting from 2003, female migrant workers do not have to undergo a pregnancy exam prior to their arrival in Taiwan, and those who get pregnant in Taiwan no longer face deportation.<sup>40</sup>

According to the Act of Gender Equality in Employment, pregnancy, childbirth, and childcare cannot be used as reasons for employers to terminate employment with their employees.<sup>41</sup> Normally, if a migrant worker wishes to change careers or to switch to a new employer, the transferring process will need to be finalised within 60 days following the completion of the worker’s previous contract.<sup>42</sup> For those who are pregnant, however, their transferring period can be extended for another 60 days with the approval of the Central Competent Authority,<sup>43</sup> which means that if a pregnant migrant worker voluntarily chooses to quit her job and wishes to continue her employment in Taiwan, she will be granted a 120-day grace period to rest and look for a new job.

From a legal perspective, migrant workers’ rights to work and give birth are protected in Taiwan, but in reality, many female migrant workers suffer from pregnancy-related discrimination. Some women have even been forced to make a difficult decision between keeping their jobs or keeping their babies.<sup>44</sup>

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38 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Regulations on the Permission and administration of Foreign workers (abolished). Available at <https://law.moj.gov.tw/LawClass/LawOldVer.aspx?pcode=N0090003&lnndate=20011107&lser=001>

39 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Regulations on the Permission and Administration of Foreign workers (abolished). Available at <https://law.moj.gov.tw/LawClass/LawOldVer.aspx?pcode=N0090003&lnndate=20011107&lser=001>

40 Chi-Ming, Yu (2021). The recurring tragedy of migrant workers and undocumented children – why did the lifted restriction on pregnancy of migrant workers backfire? The News Lens. Available at <https://www.thenewslens.com/article/156165>

41 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Act of Gender Equality in Employment. Art. 11. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014>

42 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Directions of the Employment Transfer Regulations and Employment Qualifications for Foreigners Engaging the Jobs Specified in Items 8 to 11, Paragraph 1, Article 46 of the Employment Service Act. Art. 11. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090023>

43 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Directions of the Employment Transfer Regulations and Employment Qualifications for Foreigners Engaging the Jobs Specified in Items 8 to 11, Paragraph 1, Article 46 of the Employment Service Act. Art. 14. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090023>

44 Nick Aspinwall (2019). Baby of a job? Stark choice for Taiwan’s migrant workers. Reuters. Available at <https://www.reuters.com/article/us-taiwan-migrants-workers-idUSKBN1YLOWU>

Even though an employer can be fined between 300,000 to 1,000,000 NTD (10,230 to 34,100 USD) for dismissing an employee for being pregnant,<sup>45</sup> it is not guaranteed that a pregnant migrant worker will be protected by this law. It is easy for employers to fabricate another excuse as to why the pregnant employee's contract must be terminated. If such cases are reported to the authorities, it's nearly impossible for law enforcement to gather substantial evidence to prove that the employer is firing an employee because of her pregnancy. As a result, punishment is often unable to be imposed on the employers, and the pregnant workers may end up being unemployed. Due to factors such as the lack of labour unions and language barriers, migrant workers are considered one of the most vulnerable communities in Taiwan. If mistreated, most of them are unable to negotiate with their employers to defend themselves.

According to an investigation conducted by the Control Yuan in 2019, the Ministry of Labour (MOL), which is the competent authority of the migrant workforce, has failed to protect the rights of pregnant migrant workers.<sup>46</sup> A number of female migrant workers interviewed by the Control Yuan stated that they were informed by their recruitment agencies that "they cannot get pregnant, and those who are pregnant would face deportation".<sup>47</sup> On the employer's side, the MOL allows for employers to replace pregnant migrant employees on maternity leave with other migrant workers, ultimately leading to the termination of the expectant mother's contract.<sup>48</sup> These examples demonstrate the inability of the MOL to implement the Act of Gender Equality in Employment effectively, leaving pregnant migrant workers in an even more vulnerable position.

To put it briefly, pregnancies often result in the unemployment of female migrant workers. Without proof of employment, migrant workers are not eligible to renew their visas, which means they are no longer entitled to the rights of residing in Taiwan. With the financial pressure of supporting their families in their home countries and/or making a better future for themselves, many pregnant migrant workers try to stay and work in Taiwan, leaving them with no other option than to give up their legal status and become an undocumented worker.

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45 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Act of Gender Equality in Employment. Art. 38-1. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014>

46 The Control Yuan (2019). The Control Yuan correcting the Administrative Yuan, the National Immigration Agency, and the Ministry of Labour on handling the rights and identity of children of migrant workers and the incapability of the Act of Gender Equality in Employment of protecting pregnant migrant workers. Available at [https://www.cy.gov.tw/News\\_Content.aspx?n=528&s=14906](https://www.cy.gov.tw/News_Content.aspx?n=528&s=14906)

47 The Control Yuan (2019). Case of Correction, 108-0034. Available at <https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=6870>

48 The Control Yuan (2019). Case of Correction, 108-0034. Available at <https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=6870>

# 3. The Invisible Children

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In January 2017, a nine-month-old stateless orphan “Bing-Bing” living in a shelter died of sepsis resulting from a lung infection. It is likely that this child would have survived if he had been given the Pneumococcal vaccine after he was born; however, without an identity and nationality, he wasn’t able to receive this vaccine which contributed directly to the cause of his death.<sup>49</sup>

Bing-Bing was abandoned at the door of a shelter operated by the Harmony Home, a Taiwanese NGO dedicated to taking care of undocumented pregnant migrant workers and their children, a few days after his birth.<sup>50</sup> As his parent was unknown and he did not have a birth certificate, Bing-Bing was born to be a stateless child without an identity. It is estimated that 80 per cent of the stateless children in the Harmony Home were borne by Indonesian mothers who often fell pregnant as a result of unfortunate and unethical circumstances such as rape, and human trafficking.<sup>51</sup> These unintended pregnancies of foreigners have, unfortunately, led to a number of unregistered children in Taiwan.

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49 An-Chi, Huang (2017). What the government done after the death of a stateless child and what we can do. United Daily News Group. Available at <https://theme.udn.com/theme/story/6773/2493902>

50 Su-Yu, Hu, Huan-Yun, Lee (2021). Where to call home for children who have no nationality? PeoPo News. Available at <https://www.peopo.org/news/507738>

51 An-Chi, Huang (2017). What the government done after the death of a stateless child and what we can do. United Daily News Group. Available at <https://theme.udn.com/theme/story/6773/2493902>



### 3.1. Child Protection System

The tragic case of Bing-Bing highlighted the predicament of unregistered stateless children in Taiwan and resulted in the Taiwanese government finally making amendments to some of the relevant laws to protect the rights of these children.

In September 2011, the Taiwanese government amended the Protection of Children and Youths Welfare and Rights Act to protect the rights of unregistered children.<sup>52</sup> The law demands that relevant government agencies assist unregistered and stateless children in receiving medical care, education, and social welfare services.<sup>53</sup> Since Bing-Bing's case went viral in 2017, several policies have been introduced to prevent similar tragedies from happening.

Under the current legal frameworks, stateless children born to undocumented migrant workers have access to some governmental assistance if they meet certain conditions. The followings are examples of the key support provided:<sup>54</sup>

- The Social and Family Affairs Administration of the Ministry of Health and Welfare will arrange foster families or shelters for stateless children whose parents cannot be found in that instance, are unknown, or are unable to take care of them
- The Department of Education of each administrative area will arrange for stateless children who have not obtained a temporary or permanent residency to attend primary or middle schools upon request
- Upon receiving the Alien Residence Certificate (ARC), stateless youths can apply to attend high schools with a junior high school diploma or an equivalency diploma
- Stateless children who have been registered with the government and have received any sort of residence permit will be allowed to join the Taiwan National Health Insurance (NHI)
- The caretaker of the stateless child may be qualified to apply for subsidies for life assistance and medical expenses of disadvantaged children and youth

The above-mentioned applies to children that are recognised by the Taiwanese government. To allow these stateless children to acquire a legal identity and to receive assistance from the government, new regulations relating to the application for residence permits of stateless minors were created in 2017.

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52 Social and Family Affairs Administration (2014). Reflecting on the Protection of children and Youths Welfare and Rights Act. Available at <https://www.sfaa.gov.tw/SFAA/Pages/Detail.aspx?nodeid=197&pid=1961>

53 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Protection of children and Youths Welfare and Rights Act. Art. 22. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050001>

54 Social and Family Affairs Administration (2020). List of laws and services available for foreign children and youths. Available at <https://www.sfaa.gov.tw/SFAA/Pages/Detail.aspx?nodeid=1175&pid=8948>



## 3.2. Acquiring an Identity

On 15th June 2017, the Ministry of Interior published the Standard procedures for Alien Residence Permit Issuance for Unregistered Foreign Children, which regulates the process of registration for stateless children and allows them to acquire a legal identity.<sup>55</sup> This regulation applies to stateless children whose biological father is unknown, and the biological mother is either a missing foreigner in Taiwan or a foreigner that has already left Taiwan and is unable to be reached.

If the child's biological mother is a missing foreigner who is still on Taiwan's territory, the NIA will begin searching for the mother; and if the mother has voluntarily left the country or been deported back to her home country, the Ministry of Foreign Affairs (MOFA) will take over the case, turning to the embassy of the mother's country of origin in order to request the embassy's assistance to look for her. Three different outcomes may occur from the search:

**1**

The first, which is the best scenario, is that the Taiwanese government successfully finds the mother of the child. The child will then be issued an ARC and a travel document, allowing for them to reunite with their mother, or it will be arranged for the mother and child to return to the mother's home country.

**2**

On the other hand, the child will officially be deemed a Stateless Minor in accordance with Article 3 of the Enforcement Rule of the Nationality Act by the Ministry of Interior (MOI)<sup>56</sup> if 1) the birth mother of the child remains missing after three months of searching domestically in Taiwan and six months of searching overseas, and 2) the mother's country of origin's government does not recognise this child, or if said government is not responding to the case.<sup>57</sup> Upon being determined as stateless, the child will be guarded by the government until being adopted by local or foreign adopters. If successfully adopted by a Taiwanese person(s), this child will then become eligible to apply for Taiwanese nationality.<sup>58</sup>

55 Ministry of the Interior (2017). The government has been actively dealing with the issue of the identity of undocumented children. Available at [https://www.moi.gov.tw/News\\_Content.aspx?n=2&s=10810](https://www.moi.gov.tw/News_Content.aspx?n=2&s=10810)

56 Laws & Regulations Database of The Republic of China (Taiwan) (2022). Enforcement Rules of the Nationality Act. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0030022>

57 Social and Family Affairs Administration (2020). List of laws and services available for foreign children and youths. Available at <https://www.sfaa.gov.tw/SFAA/Pages/Detail.aspx?nodeid=1175&pid=8948>

58 Social and Family Affairs Administration (2019). The process of foreign child born in Taiwan applying for the identification of stateless person. Available at <https://www.sfaa.gov.tw/SFAA/Pages/Detail.aspx?nodeid=1175&pid=8949>



### 3

The third and toughest outcome occurs when the child's mother has been identified in Taiwan, but the government is unable to keep track of her whereabouts. Some undocumented migrant workers who are unable to take care of their children send them to shelters run by Taiwanese NGOs, such as the Harmony Home. Many of these mothers have not abandoned their children, and occasionally come to the shelters to visit them. These mothers who are undocumented migrant workers cannot be recognised as "missing" as they do show up to meet their children (in)regularly. Said children are also regarded as nationals of the mothers' home country even without official registration, which makes it difficult for the Taiwanese government to take over guardianship and provide further assistance. It is impossible for stateless children to acquire citizenship without being registered by the authority of their mothers' country of origin, or being adopted by qualified adopters.

Unlike most children who are born to Taiwanese nationals or foreigners with legal residence permits in Taiwan, the children of undocumented migrant workers must undergo a long process before acquiring an identity and being legally treated as a real person.

# 4. Recommendation: Towards a country without the occurrence of statelessness

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**No child needs to be stateless**

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The UNHCR suggests that children being stateless is entirely preventable, whether it has resulted from the flawed birth registration system, gaps or discrimination in nationality laws<sup>59</sup>, or any other reasons<sup>60</sup>.

The Taiwanese government has been amending relevant laws as well as their implementation to better protect the rights, and ease the sufferings of stateless children. However, none of the policies currently in place prevent the “supplying” of statelessness throughout the country. Apart from developing legal tools and guidelines to protect stateless children’s rights, preventive measures should also be introduced to end childhood statelessness in Taiwan.

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59 United Nations high Commissioner for Refugees (2015). I am here, I belong. The urgent need to end childhood statelessness. Available at <https://www.unhcr.org/ibelong/the-urgent-need-to-end-childhood-statelessness/>

60 United Nations high Commissioner for Refugees (2015). I am here, I belong. The urgent need to end childhood statelessness. Available at <https://www.unhcr.org/ibelong/the-urgent-need-to-end-childhood-statelessness/>

The author suggests the following to realise the advancement of child and labour rights:

- To align with Action 2 of UNHCR's Global Action Plan to End Statelessness, to "ensure that no child is born stateless".<sup>61</sup> The MOI should also consider amending the naturalisation process in the Nationality Act to allow children being guarded by the social welfare institutions to acquire Taiwanese nationality.<sup>62</sup>
- The MOL and other relevant frontline legal actors should ensure the implementation of the Act of Gender Equality in Employment to protect the employment and maternity rights of female migrant workers that are already ordered by Taiwanese law.
- Practical plans and policies should be introduced and implemented to end the unethical recruitment practices that lead to the debt bondage of migrant workers, such as proactively investigating cases of workers being charged excessive fees, effectively punishing the unjust recruitment agencies for their illegal practices, and suspending the operation of unjust Taiwanese loan companies.
- The Taiwanese government should introduce a designated safety net for pregnant migrant workers to secure their employment, provide necessary financial and medical support, and provide legal assistance if needed.

Acquiring a nationality at birth is a fundamental human right, and the Taiwanese government is responsible for preventing children being born stateless on its territory. Without a better legal framework and protection mechanism for female migrant workers, it's impossible to end the occurrence of stateless children in Taiwan. Immediate changes should be made not just for the stateless children who have been recognised by the government and are waiting for a legal permit, but for all of the future foreign expectant mothers, vulnerable female migrant workers, and the unregistered children that remain invisible and yet to be identified.



61 United Nations high Commissioner for Refugees (2017). Global action plan to end statelessness. Available at <https://www.unhcr.org/54621bf49.html>

62 Ping-Jen, Hsu et al. (2019). Stateless children being a part of the ghost population - the unsolved problem of the offspring of migrant workers. NCCU Uonline News. Available at <https://unews.nccu.edu.tw/unews/無國籍兒童如幽靈人口%E3%80%80移工後代權益問題仍未解/#:~:text=該機制規定,當發現,歸化為我國國籍%E3%80%82>