

Foreign Caregivers Excluded from Protection of Domestic Law

Authored by The Hsinchu Diocese of the Catholic Church in Taiwan

Chang Yu-Chao

(Contact: hwc.hope@gmail.com

hmisc_tw@yahoo.com

nguyenvanhung2025@gmail.com)

Translated by Emily Lin and Lynn Miles

Abstract

On 8 February 2003, a well-known writer, Liu Hsia, was beaten to death by her foreign caregiver, which brought into sharp relief the fact that foreign caregivers are not protected by the Labor Standards Act, a situation that continues right up the present. Shortly after the incident, on March 4 of the same year, the public called for legislation to protect household service workers, an appeal that since that time has not met with action on the part of the government. Under no legal protection, foreign in-house nurses have continually been subject to unreasonable treatment, which points up the prevailing existence of structural oppression under our government. The protagonist in this article, A-Chia, was a typical oppressed foreign caregiver subjected to this structural violence.

This decade-long peculiar phenomenon is in contrast to Convention Articles 1, 11, 12, 13, and 15; Paragraphs 6, 7, 8, 19 and 24 of General Recommendation No.19; Paragraph 16 of General Recommendation No. 24; and relevant articles such as Paragraph 4, 13, and 26 of General Recommendation No.26. Therefore, through A-Chia's story, the author would like to accuse the government of ignorance and to put forward constructive suggestions as follows:

1. the government should rectify deliberate misconceptions and attitudes regarding foreign in-house nurses;
2. the government should refer to Convention No.181 of the International Labor Organization to reexamine the scope of work and legal standing of labor agents so as to reach the ultimate goal of cracking down on the job placement agencies;
3. the government should set up consulting services for psychological trauma and counselling mechanisms to better our overall society by improving the protection of human rights.

I. CEDAW Related Articles and General Recommendations

A. CEDAW Article 1; Article 11 Paragraphs (a), (d), (e) and (f); Article 12 Paragraph 1; Article 13 (c); Article 15 paragraphs 3 and 4

B. General Recommendation No.19: Violence Against Women

- 6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.
- 7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:
 - (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
 - (d) The right to liberty and security of person;
 - (e) The right to equal protection under the law;
 - (g) The right to the highest standard attainable of physical and mental health;
 - (h) The right to just and favourable conditions of work.
- 8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.
- 19. States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.
- 24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends that:
 - (a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;
 - (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;
 - (g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;
 - (h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;
 - (i) Effective complaints procedures and remedies, including compensation, should be

provided;

(k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;

(p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;

C. General Recommendation No.24: Article 12 of the Convention (Women and Health)

- 16. States parties should ensure that adequate protection and health services, including trauma treatment and counselling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees.

D. General Recommendation No.26: Women Migrant Workers

- 4. The Committee recognizes that migrant women may be classified into various categories relating to the factors compelling migration, the purposes of migration and accompanying tenure of stay, the vulnerability to risk and abuse, and their status in the country to which they have migrated, and their eligibility for citizenship. The Committee also recognizes that these categories remain fluid and overlapping, and that therefore it is sometimes difficult to draw clear distinctions between the various categories. Thus, the scope of this general recommendation is limited to addressing the situations of the following categories of migrant women who, as workers, are in low-paid jobs, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship, unlike professional migrant workers in the country of employment. As such, in many cases, they may not enjoy the protection of the law of the countries concerned, at either de jure or de facto levels. These categories of migrant women are:

(a) Women migrant workers who migrate independently;

(b) Women migrant workers who join their spouses or other members of their families who are also workers;

(c) Undocumented women migrant workers who may fall into any of the above categories.

The Committee, however, emphasizes that all categories of women migrants fall within the scope of the obligations of States parties to the Convention and must be protected against all forms of discrimination by the Convention.

- 13. Once they reach their destinations, women migrant workers may encounter multiple forms of de jure and de facto discrimination. There are countries whose Governments sometimes impose restrictions or bans on women's employment in particular sectors. Whatever the situation, women migrant workers face additional hazards compared to men because of gender-insensitive environments that do not allow mobility for women, and that give them little access to relevant information about their rights and entitlements. Gendered notions of appropriate work for women result in job opportunities that reflect familial and service functions ascribed to women or that are in the informal sector. Under such circumstances, occupations in which

women dominate are, in particular, domestic work or certain forms of entertainment.

- 26. States parties in countries where migrant women work should take all appropriate measures to ensure non-discrimination and the equal rights of women migrant workers, including in their own communities. Measures that may be required include, but are not limited to, the following:

(b) Legal protection for the rights of women migrant workers: States parties should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country, including the right to organize and freely associate. They should ensure that contracts for women migrant workers are legally valid. In particular, they should ensure that occupations dominated by women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws, including wage and hour regulations, health and safety codes and holiday and vacation leave regulations. The laws should include mechanisms for monitoring workplace conditions of migrant women, especially in the kinds of jobs where they dominate (articles 2 (a), (f) and 11);

II. Current Situation and Analysis of Problems

A. Current Situation and Case Studies

According to Article 46.1.1 through 46.1.6 of the Employment Services Act, migrant workers can be defined as white-collar foreign professionals or technical personnel, which come under the definition of "professional migrant worker" as given in General Recommendation No. 26 above. Besides, according to Article 46.1.7 through 46.1.11 of the Employment Services Act, migrant workers engaged in unskilled and heavy physical labor fall within the categorization given in the General Recommendations: "... workers, who are in a low-paying job, may be at high risk of abuse and discrimination, and who may never acquire eligibility for permanent stay or citizenship, unlike professional migrant workers ...," which is in line with the current situation of our foreign blue-collar workers and in correspondence with the "undocumented women migrant workers" cited in the General Recommendation.

For years, gender discrimination has existed in our traditional society such that when the elderly or those with physical and mental disabilities are in need of care, it is mostly the female members of the family who are required to take responsibility for looking after the needs of the elderly. Therefore, they are doomed to sacrifice their working career or may even damage their health due to long-term hard work and caring. Since 1992, when foreign domestic care workers were legalized, a certain proportion of the responsibility for caring for the elderly has been transferred to them. However, due to defects in the system, violence against domestic women in the past has been transferred to the foreign in-house nurses.

Since 1992, when the government first introduced the system that brought in foreign labor to provide the services of household work and of providing for the infirm and the elderly, these workers have been divided into two categories: those doing the household chores (foreign housemaids) and those doing the live-in caring (foreign caregivers). Due to the high requirement threshold in applying for foreign housemaids, the number of foreign caregivers far exceeds the number of foreign

housemaids. By March 2013, the number of foreign housemaids had totaled 2,188 while that of foreign caregivers had reached 205,632. Nearly all of these people who had come from afar to undertake such jobs were women. Therefore, our focus will be on foreign caregivers.

Case Study

A-Chia, a Vietnamese female, came to Taiwan to work as a caregiver in a nursing home in the middle of October 2010, and was employed in Tainan County. Considered unqualified by her employer, she was fired a month later.

In November 2010, under the arrangement of her hiring agency, she was supposed to be dispatched to a family in Yunlin County as a caregiver. Instead, she was transferred by the agency to the L Nursing Home in Yunlin County, where she was tasked with taking care of the elderly. Her real job was as a nurse of the facility instead of as a caregiver for a family as reported to the government.

Aware that she was working overtime, that she was being deprived of her right to leisure time off and holidays, that her documents were being illegally withheld, that her freedoms were being restricted, and moreover that her salary was lower than the minimum wage, on top of which she was not receiving any overtime pay, on 2 September 2011, she called "1955," the 24-hour consultation hotline for foreign workers, giving voice to these violations of her rights, complaining about her employer, and raising suspicions that the terms of her employment with the nursing home were illegal.

The case was reported to the labor affairs department of the local government. But for whatever reason, while the case was being investigated, the nursing home supervisor summoned the hiring agency to the nursing home, where the supervisor rebuked A-Chia: "Why did you call the help line with your complaint?" He forced her to sign a receipt showing falsified working hours and wage records, but she refused to sign. As a consequence, the supervisor kicked her out, and threw her belongings out onto the road. The general affairs officer of the nursing home returned her passport and resident certificate to her at roadside.

Recalling this, she said: "She kicked me out on the road. There were only a few people and the cars on the road were also few but whizzing by at top speed. I walked a long way, feeling that I was going to die. Suddenly, I realized that I had a phone with me, so I called the help line and waited beside the road for help."

After that, A-Chia was taken to the police station by local police officers. On suspicion of labor exploitation involving human trafficking, charges were filed that day by the police and the case was transferred to the Yunlin District Prosecutor's Office. A-Chia was settled in temporary placement by the county Labor Affairs Department in accordance with standard procedures.

In mid-2012, after receiving a phone call from A-Chia and hearing of her suffering, the author, having verified the particulars of her case with the NGO charged with A-Chia's temporary placement, learned that the human trafficking case had been dismissed owing to lack of concrete proof that A-Chia had once worked in the L Nursing Home. After being sent to the High Court for review, the High Court too rejected it for the same reason.

After a few frank talks, A-Chia and the author determined that the next step would

be to request payment of back pay that had been withheld by resorting to the civil code and to seek legitimate employment in Northern Taiwan through the employer replacement mechanism.

By the end of December 2012, A-Chia had successfully found a new employer in New Taipei City through the employer replacement process, requesting the payroll deduction one week before she officially took on the job with the help of the Legal Aid Foundation, which authorized her for the litigation right to a legal aid attorney. In the middle of March 2013, she was fired again after only three months on the job, stemming from conflict with the new employment agencies. The unit where the author was serving was authorized by the Labor Affairs Department of New Taipei City to take charge of her temporary placement and accommodation.

During the placement, the director of the organization noticed that A-Chia appeared to be suffering from trauma symptoms. After being taken to the hospital, she was diagnosed with post-traumatic stress disorder (PTSD), with mild symptoms of schizophrenia, as follows:

- a. Illusions occur: She was convinced that the inspector of the Yunlin County Labor Affairs Department was dead, and "saw" his incarnation as a white python, always writhing at her feet. She woke with shock because she dreamed of the supervisor of the L Nursing Home rebuking her beside her bed.
- b. Excessive panic: She had two unexplained fainting experiences while she was out alone. Once was when she was out of the house on a shopping errand and sitting on a chair at the local 7-11 convenience store; and the other time was when she was on the way to the hospital for follow-up consultation. She recalled afterwards that she had seen the supervisor standing beside the busiest provincial highway twice before passing out.
- c. Obsession: She would demand to meet the author every day when she was in placement at the beginning. She kept recounting over and over again the incident that happened on the provincial highway on March 6, 2011, insisting that her case was being ignored by the county's Labor Affairs Department and the police, and protesting that she had been cheated out of a fair verdict. If the author was not in the office, she would call three or four times a day. While in the consulting room in the hospital, she would endlessly recite the same stories to the doctor as she had told the author.

She had been receiving medical treatment from mid-March, and within two weeks the number of storytelling episodes had significantly diminished, and she no longer requested conferences with the author, while her daily phone calls ceased. When her treatment ended in the end of April, she had begun sweeping the courtyard in the morning, and her feelings of resentment gradually faded away.

Chia still now remains in treatment.

B. Problem analysis

Imagine this. A female leaving her home country in Southeast Asia alone for better job opportunities in an alien country is taken to a stranger's house immediately on arrival to perform as a caregiver. Mostly, her job is to take care of the elderly or those suffering from moderate to severe physical and mental disabilities. She has to confront two kinds of psychological pressures once she begins living with the

employer's family: first, all by herself must she face a whole family, all of them strangers with difficulties in communicating and with different habits. Suddenly she has been dropped into a situation that is going to last for two or three years in a space absolutely closed off from the outside world, with no privacy of her own and with no possibilities of catching more than a few hours of uninterrupted sleep. And if the employer should ever send her out shopping or to take out the garbage, she quite likely may never have the chance to step out of the house, her work place for years. As a consequence, under such harsh labor conditions how could a female raised as a girl and perhaps subscribing to the patriarchal ideology return to her country with the same mental health with which she entered the country two year before?

And suppose during the time of her employment in Taiwan, she somehow learned that her wage was far lower than other blue-collar foreign workers and that her working conditions aren't protected under the terms of the Labor Standards Act, and still less, apart from such labor terms as wages, working hours, and holidays, the right of social insurance was also deprived her or she was given the lowest pay in the name of serving the interests of industry by our government. In addition, since there are no legal constraints, she had to suffer arbitrary exploitation by employers and agencies, which are given a free hand by the law. Under these conditions, can this woman satisfy her internalized demands concerning her work, and bring her experience and professional dedication to the task of caring for other?

This is a realistic portrayal of our foreign caregivers, and some even have to slave away while bearing the great discomfort of menstrual pain. A-Chia's story is but an anecdote, but in fact it epitomizes the prevailing situation now faced by all caregivers. The core of the problem lies in our skewed system, which leads to the inevitable result of structural oppression.

The structure of violence at the very last includes: expropriation of work identities of foreign caregivers, being forced to slave under unequal contracts, the willful neglect or favoritism regarding the harm incurred by slave labor conditions due to the political context of local government, and the lack of a caring mechanism for the psychological conditions of workers. The author assumes that the violent factors exist everywhere, meaning that our government has a serious bias when it comes to knowledge of attitudes toward caregivers, and that its policies indeed violate the terms set forth in the Convention and the General Recommendations, leading it to turn a blind eye to the detrimental situations. We now turn to a discussion of the above problems:

1. The deprivation of identities of the foreign caregiver

Article 1 of the Convention defines discrimination against women on the basis of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Paragraph 6, 7 (h), 24(a) and (p) of the General Recommendations No.19 mainly specify the elimination of violence against women.

Do foreign caregivers belong to domestic services?

Article 7 (h) of General Recommendation No.19 cites "the right to just and favorable conditions of work," and our foreign caregivers are deprived of their identities by our government by means of administrative measures beyond the scope of the law.

According to the Standard Industrial Classification of the Republic of China (Rev.9) promulgated by the Executive Yuan's Directorate-General of Budget, Accounting and Statistics March 2011, domestic services are defined as being performed by "a worker employed as maids, laundresses, butlers, babysitters, tutors, secretaries, chauffeurs, gardeners, and gatekeepers, etc."; furthermore, "Social services for the elderly, that is, besides in-house services for the elderly, workers shall perform home visitation, day care, assisting social resources referral, in-home service and counselling services", and "Social services for the disabled, that is, besides in-house services for the disabled, workers do home visitation, day care, vocational rehabilitation and assisting social resources referral and counselling."

Article 4 of the Qualifications and Criteria Standards for foreigners undertaking jobs specified under Article 46.1.8 to 46.1.11 of the Employment Service Act amended on 11 March 2013 that Activities of caregivers are to take care of the daily living of the disabled or patients in households.

Article 12-1 of the Regulations on the Permission and Administration of the Employment of Foreign Workers amended on 19 November 2012, regulates: "An employer who has the intent to hire a caregiver shall apply to the medical teams of medical institutions promulgated by the Central Competent Authority for professional evaluation. In the event if, after the professional evaluation, the person proves to need twenty-four hour care, or the person proves to be heavily dependent upon caring services, native caretakers should be recommended by the Long-Term Care Administration Center of the city government having local jurisdiction. In the event that the recommendation proves unsuccessful in meeting the caring demands, then with a justifiable reason, they may apply to the central competent authority for hiring foreign caregivers."

Therefore, on the basis of the rule of law, the foreign caregivers shall provide full-day care and in-home service for the elderly and the disabled. And the job shall be categorized as "social work services for the elderly/disabled."

Nevertheless, in its public document No. 059604 issued on 31 December 1998 the Executive Yuan announced that the Labor Standards Act does not apply to domestic workers in the personal services industry as of 1 January 1999. In fact, foreign caregivers and social service workers must be protected by the Labor Standards Act. But dating from this promulgation, caregivers have been abruptly excluded from the protection of the Labor Standards Act by the government. In contrast, Taiwanese caregivers engaged in day care or 24-7 care are still under the protection of the Labor Standards Act, which also regulates the certificate system applying to personnel for upgrading skill levels. Apparently, *foreign* caregivers are banished from protection of the Labor Standards Act, which is not based on the exclusion policies of the law, but the rights which foreign caregivers are entitled to under the Labor Standards Act are arbitrarily ignored.

This is what is meant by deprivation of identity and violent behaviors toward caregivers.

2. Laboring under unequal contracts

Convention Article 11 specifies that all men and women shall share the same rights on the basis of equality, especially in its first paragraph, where items (a), (d), (e) and (f) delineate the right to the same employment opportunities, equal

remuneration, social security and the protection of health and safety. In addition, Article 13 (c) mentions the right to participate in recreational activities, sports and all aspects of cultural life. Paragraph 3 of Article 15 directs that restricting the legal capacity of women shall be deemed null and void and that the rights to the movement of persons and the freedom to choose their residence and domicile in item 4 are guaranteed. Meanwhile, we shall examine the contract system of our foreign caregivers based on the General Recommendation 26, which specifies that women shall be protected by labor laws, including wage and hour regulations, health and safety codes, holiday and vacation leave regulations, right to freedom of movement and residence, and pregnancy and maternity rights.

Since foreign caregivers are not protected by the Labor Standards Act, there are no labor contracts to ensure such labor conditions as wage, working hours, holiday and vacation leave, leisure time and labor insurance.

Article 46, Paragraph 3 of the Labor Standards Act stipulates that the employer, when employing foreign worker to engage in work as referred to in subparagraphs 8 to 10 of paragraph 1 of this article, shall execute an employment contract in writing with the employed foreign worker and with fixed duration only; in case where it is not so fixed, the duration of his/her employment shall be deemed as the same as the duration of employment permit thereof. The foregoing in this paragraph shall equally apply to extension of such employment contract." Accordingly, foreigners regardless of their business or industry are required to sign contracts when first arriving in Taiwan to ensure the responsibilities and obligations of both the employee and the employer based on current regulations. Take, for example, the Foreign Workers Affidavit for Wage/Salary and Expenses Incurred before Entering the Republic of China for Employment promulgated by the Council of Labor Affairs on 20 August 2009. Among other things, it regulates service fees, government regulated fees, wages, board and lodging fees, round-trip ticket fees for coming to Taiwan and returning to country of origin when the contract is terminated, and other expenses (such as fees paid prior to coming to Taiwan like middle-man fees, regulated fees paid to the home country government, and money borrowed in the home country). The contract should be signed by the foreign worker, the employers, the domestic hiring broker, and the foreign broker. Once the contract has been verified by the foreign worker's home country, it is brought back to Taiwan, with one copy each for the foreign worker, the employer and the local labor authority.

As far as foreign caregivers are concerned, however, since they don't come under the Labor Standards Act, they are paid NT\$15,840 per month. Apart from the board and lodging fees and return flight ticket fees, which are paid by the employers, foreign caregivers are also required to pay the ticket fees to Taiwan and regulated fees such as labor insurance, national health insurance premium and income tax per month. Meanwhile, they are also required to submit placement fees to the agencies monthly and repay the loan to their home country whether it is regulated on the contract or not.

Putting aside the question of whether the pay level falls far short of what is reasonable, there are still at least four other problems with the contract:

1. lack of terms governing working hours, holiday and vacation leave, leisure and overtime payment;

2. lack of insurance plan;
3. ambiguous role of the brokers, involving a private lending relationship and a loan contract between the foreign worker and the home country bank, and the employment relationship between the foreign worker and the domestic employer. While the broker is entitled to charged fees, it is not obligated to any definite responsibilities.
4. In addition to the employment relationship, the foreign workers must cope with debt obligations incurred in the home country.

To return to A-Chia's story, she worked over 14 hours a day, had no days off in any given month, and received no overtime payment. Nor did she even get paid while she was at the nursing home. Such is the common predicament of all foreign caregivers who, lacking all labor law protection, get cheated when it comes to working hours, holidays, time off and holidays, and overtime pay.

Had A-Chia not been sent off to work illegally in the L Nursing Home and had she been working under those nursing home conditions but at the home of the original employer, the latter could have "bought out" her four days off per month and only had to pay an additional \$2,442 per month without any interference from the government.

Since A-Chia would not have qualified for employment insurance, and had she been injured causing physical disabilities or even death when working in the household for a legal employer, according to the Civil Code, the employer would have been liable for the injuries in proportion to the degree of the fault, whereas if the accident or death had occurred when she was out on an errand for the household, the offender would have been liable in proportion to the degree of the faults. These may add up to some serious disadvantages for her.

- a. The actual indemnity one will receive depends on the employer's or offender's financial resources. When lacking sufficient financial resources, one is not entitled to the subrogation right of compensation to be provided by insurer.
- b. No labor insurance provided: Insurance plans like lump-sum allowance, monthly pensions, auxiliary appliance, and funeral grant.
- c. Inequality of occupation

We learned from A-Chia's story that the agent employee intervened in their dispute in the role of service provider, assisting the employer as a kind of "bouncer." Charging A-Chia for service fees every month, the agent acted as a supervisor to bully her in the employer's favor whenever a dispute arose. Abandoning A-Chia on the roadside had constituted criminal liability even though they didn't do her any physical harm or restrict her freedom of movement while forcing her to sign the affidavit, yet the agent may still escape major responsibility since he was "acting on behalf of" the employer.

In the case of foreign caregivers, the agents charge service fees every month, but apart from their translation services, they do nothing but get the residence certificate renewed every two years once it expires, schedule physical examinations every year, and notify the health agencies on behalf of the employers. Other than that, in the name of assistance, the agencies are actually commissioned to supervise, and the powerful management rights they are accorded puts them in charge of wage payments, handling matters on behalf of the employer, and replacement of the

foreign worker when disputes arise, all without notifying the local labor authorities. Once involved in illegal actions, they may escape responsibility thanks to their special relationship with the employer.

When first coming to Taiwan, the foreign caregiver must have obtained a loan from the bank in order to pay the disproportionately high labor brokerage fees. If she is forced to terminate a contract before the contracted expiration date due to some kind of dispute, or the employer doesn't intend to extend the third year contract for whatever reason, she may end up with no other recourse but to return to her native country, or, may choose to be one of the missing foreign workers involved in illegal work thereby extending her work period in Taiwan that way. During the consultation process, the author has experienced cases in which women had had their contract terminated due to pregnancy, resulting in no job offers from other employers, whereupon they lost their right to work and had to return to their home country early to deliver the baby. These female caregivers may have to live in a room with no lock on the door, leading a life without love or faith. Hidden away in this confined space, they suffer possible threats of verbal and physical violence or are even met with demands by their male employers that they satisfy their sexual desire. These are the real problems occurring in our society, all of which stem from flawed policy.

3. Political context of local government involved in the investigation

According to Paragraph 7(b), (d), (e), and Paragraph 8 of General Recommendation No.19, women are entitled to the unalienable right of security and equal protection; also Paragraph 24(b), (g), (h), and (i) suggest appropriate training, prevention and punitive measures, where protection and compensation should be provided to overcome violence, human trafficking and sex exploitation against women, in stark contrast to the real situation confronting foreign caregivers in Taiwan.

After she was dismissed from her first employer, A-Chia was supposed to be dispatched to a legal employer's family as a caregiver through the agency but instead she was sent to the L Nursing Home. After the initial 6 September 2011 police investigation case was filed based on Human Trafficking Prevention Act, it was passed over to the Yunlin District Prosecutors' Office. Nevertheless, after the prosecutor declined to take the case to court, claiming that there were insufficient grounds to indict, the case was sent for review by the High Court, which also ruled that there was insufficient evidence to indict.

Here lies the question: Why was the employer notified in advance that the department of labor affairs was going to investigate the nursing home with the police the next day as a result of A-Chia's complaint? That is what made it possible for the supervisor of the nursing home to kick A-Chia out beforehand, and then make the false claim that she had never worked there. The author has ruled out any other possibility than that someone had tipped off the supervisor ahead of time.

The central and local governments have established a network system which registers the information concerning legal work identification and the names of prospective employers. Didn't the investigator ever confirm A-Chia's identification once the labor authorities had received A-Chia's complaint via the "1955" 24-hour service hotline voicing her suspicions concerning the withholding of wages and overtime pay while she was working at the L Nursing Home? The author also

wonders whether the L Nursing Home had violated Article 57.1.1 of the Employment Services Act, which requires that the case be kept confidential before the investigation.

Before the day the case was investigated by the local government, A-Chia was questioned by the employer and the agency of the nursing home and forced to sign a fake contract, which she refused to do, resulting in her getting kicked out. The incident illustrates how confidentiality before investigation was betrayed, which directly led to an illegal verdict. By law, this was a result of gross negligence and an offense against justice.

As a result, after the Human Trafficking Prevention Act was promulgated on 12 January 2009, measures addressing trafficking in women based on the Convention have improved gradually, as have their enforcement. Nevertheless, the local labor authorities still regard the issue of labor exploitation as some sort of trivial violation of the Labor Standards Act, allowing them to ignore the processes which should be receiving their prioritized vigilance. Some local governments are even unwilling to deal with labor exploitation cases, preferring to and settle such issues the same way they do labor-management disputes. Such actions are impossible for us to ignore.

4. Caring for foreign caregivers' vocational mental health

We now turn to Article 12.1 of the Convention, General Recommendation No.19 Paragraphs 7(g) and 24(k); and General Recommendation No. 24 Paragraph 16, which refer to the health and medical problems of women, especially their mental health.

The pathological term "post-traumatic stress disorder" (PTSD) is a severe condition that may develop after a person experiences an extremely traumatic event and may incur the feelings or reactions like fear, helplessness and horror. Such traumatic events may occur in the course of war, natural disaster, or rape. A diagnosis of PTSD may be indicated when any of the following three categories of symptoms manifest: reliving the experience through either flashbacks or dreams; avoidance or numbing of memories of the event; and hyperarousal (high levels of anxiety) continuing for more than a month after the traumatic event. The symptoms would impact one's ability to function on a daily basis and interfere with one's relationship with family and friends, and if these symptoms last for a month or more, one is likely to become a PTSD victim.

Not all people who have experienced high impact trauma will develop pathological PTSD. However, this is a critically important issue, whether or not one suffers severe symptoms.

Under current active aid measures for foreign workers, apart from the "1955" 24-hour consultation hotline for foreign workers and temporary placement, no further measures are provided. These two measures are functionality viable only if the case of complainant foreign worker is put under the administration systems and temporary board and lodging provided when the foreign worker needs care. However, the measures only take into consideration the rights and obligations expressly covered by the limited scope of the law, which does not include within its purview the mental health of the foreign worker.

For a long time, people in Taiwan have not taken mental health issues seriously. As a result, foreign workers inevitably fail to receive much attention in this respect upon initial entry into Taiwan. According to current regulations, measures for foreign

worker's mental health consultations are only provided for the victims of domestic violence or sexual assaults. When requesting a mental health consultation, where no such services are provided by the government, a trip to the hospital is the only option. When regarded in terms of welfare, such measures are limited to legal residents and qualified taxpayers who are paying into the national health insurance plan.

Nevertheless, in general not all mental health problems may only be medicated after first having gotten the diagnosis and prescription of a doctor. Still more cases rely on the counseling and guidance measures are provided by psychiatrists for preliminary treatment. So the "lack" that the author speaks of above refers to the latter, the deficiency of counseling and guidance measures.

Again taking A-Chia as an example, if she was suffering from schizophrenic symptoms like regular delusions and hallucinations, and repeatedly spoke of her misfortune and couldn't let it go, taken together with the PTSD symptoms like dizziness, insomnia, and panic, this should have required a trip to hospital. Otherwise, based on current counseling techniques, the author would merely deem her reaction to her grievances as hatred. Such counseling techniques are pretty much limited to listening to her complaints, and showing emotional support, giving verbal encouragement, and suggesting that she take up gardening or physical exercise. Such "support" might best be call "companionship."

Under the current regulations, foreign workers often lack sufficient time for rest and leisure, undergo deep nostalgia for their homeland, while workers at many factories are restricted in their private social time with the opposite sex after work under a high-security lock-gate control regime. When the managers are questioned, officials with the local councils of labor affairs don't take these situations seriously and respond with a kind of attitude that says "Foreign workers aren't here for fun." When it comes to the lack of awareness and mechanisms concerning the psychological problems of migrant workers, obviously the government and employers hold unreasonable expectations when they regard foreign workers merely as working machines.

The foreign caregivers must live and work with her client day and night. There is no way to get away from the work place, which makes her working conditions all the worse. The work place as far as her client is concerned is his/her home, but for the foreign caregiver, it is hard to see the work place as home or to regard her employers as family members, especially when she is deprived of rest time lasting more than a few hours. Unluckily, she may encounter an agency with malicious intent and is taken to a nursing home for illegal work, as happened to A-Chia.

These actual incidents happening to foreign workers highlight the deficiency of our counseling measures and point out at the same time pressures imposed on foreign workers in the current migrant system and its measures. Judging from these facts, the author assumes with confidence that PTS is as prevalent among foreign workers as proper compassion and care for her lot is missing.

III. Recommendations

The prevalence of foreign caregivers suffering from structural oppression is often neglected because it is the last aspect of women's rights protection to be accorded

attention. Before the story of A-Chia came to light, many tragic incidents had already occurred involving foreign workers suffering insufficient rest and mental health problems going without proper treatment. On 8 February 2003, the well-known writer Liu Hsia was beaten to death by her foreign caregiver. Although news reports at the time roundly condemned the foreign female worker, nowhere did they report the reasons behind her violence toward Liu Hsia, merely focusing on the fact that she was mentally unbalanced. But some media did point out that her psychological disorders were due to her long working hours without the chance to rest.

Ever since the tragic incident took place, the migrant advocates working on foreign caregivers' issues caused by systemic oppression joined forces to launch the first parade of migrant workers on March 4 of the same year, and founding the Promotion Alliance for the Household Services Act (PAHSA), an empowerment network comprising former migrant workers, and called for legislation to protect foreign caregivers. Since then, the discussion about whether the government should enact the Household Service Law or add Article 84-3 of the Labor Standards Act to resolve the problems of foreign caregiver policies has been pending for ten years. That is to say, the government continues to disregard the real situation, where migrant workers are still oppressed. The author assumes that, aside from the powerful economic interests backing current migrant worker policy assuring difficulty in getting legalization passed, our government has no way to explain its failure to respond to the issue. Therefore, the author would like to make some suggestions as follows:

1. The government should rectify deliberate misconceptions and attitudes regarding foreign caregivers, and squarely face the fact that the rights of foreign caregivers are equal to those of workers in social services for the elderly and disabled according to the Standard Industrial Classification, so as to take up two amendments as follows:

a. Foreign caregivers should come under the protection of Article 84-1 of the Labor Standards Act, and be expressly identified as social workers for the elderly and disabled.

b. Amend the Household Protective Law to protect the rights of domestic workers regardless of their nationality and gender, so that one and all are included within the purview of the regulations.

2. Refer to Convention No. 181 of the International Labour Organization and re-examine the scope of work and legal standing of labor agents so as to crack down on the job placement agencies as the ultimate goal. In order to stop the exploitation of migrant workers before the goal is accomplished, there are at least two reforms that must be carried out under the current system.

a. The responsibility of the agent is to find a match between the employer and the job seeker. Once the contract is signed, the agent is no longer to engage in any services whatever, no matter whether for employer or employee.

b. Directly or indirectly, the agent may not charge the foreign worker any fee.

3. The government should set up a mechanism for psychological trauma consulting and guidance services for migrant workers, especially for foreign caregivers. The author believes that there are at least three dimensions which need to be considered in establishing the mechanism:

a. When dealing with disputes relating to the employment of foreign workers, the local labor authorities should set up a standard operating procedure to assess the

psychological conditions of the migrant worker at the moment an incident happens as well as to assess the capabilities of the workplace staff in evaluating the migrant worker's mental condition.

b. When settling the immigrant worker into temporary placement, the local labor authorities should take psychological problems into consideration and also require the managers to be able to handle and resolve psychological problems.

c. Consultation resources under the current jurisdiction of the social affair authorities should be expanded to serve both domestic and foreign workers, or perhaps a counseling mechanism should be established under the jurisdiction of the local labor affair authorities so as to provide appropriate and immediate consultation and resolve PTSD problems.

These few suggestions are offered in the hope that our government will give due regard to the foreign caregiver issue so that their human rights may be protected.

The Story of `Black Household Children` and `Black Household Mothers` Abandoned by their Motherland

Authored by The Hsinchu Diocese of the Catholic Church in Taiwan

Chang Yu-Chao

(Contact: hwc.hope@gmail.com

hmisc_tw@yahoo.com

nguyenvanhung2025@gmail.com)

Translated by Dennis Engbarth

Abstract

In our society, there exist ``black children`` or ``unregistered children`` who should hold but are unable to obtain Vietnamese nationality and are unable to attend school or enroll in the National Health Insurance System (NHIS) because they have not been granted residency by our government. In addition, there are women of Vietnamese nationality who have abandoned their original statehood but divorced before they were able to complete the process of naturalization in Taiwan or who were convicted for illegalities after obtaining Taiwan nationality and therefore had their Taiwan nationality revoked. As the Vietnam government does not operate based on law, both types of women have become ``black household mothers`` (or ``unregistered mothers``) who are unable to enjoy residency or the right to work in our country. This article will discuss both of these phenomena.

This report involves Articles 4, 9 and 11 of CEDAW and General Recommendations 21 and 25 of the Committee to Eliminate All Forms of Discrimination Against Women. The author will cite the stories of a mother and her son, referred here as ``Ah-Min`` and ``Ah-Shih,`` respectively, to explicate the issue of ``black households`` in our society.

This report will recommend that the Taiwan government, besides publically rebuking the government of Vietnam, should take the following acts: revise or eliminate clauses in the Nationality Act that mandate the revocation of Taiwan nationality for naturalized citizens for having committed a crime or for moral failings; grant prior application for the provisions of the United Nations Covenant on the Rights of the Child for ``black household children`` whose nationality issue is in suspense; and, adopt active remedial measures to guarantee the right of survival and other fundamental rights for existing ``black household`` or unregistered persons in Taiwan.

I. Relevant Articles of CEDAW and General Recommendations

1. Articles 4, 9 and 11-1 (a) of CEDAW

2. General Recommendation 21 (Equality in Marriage and Family Relations) Point 6:

- 6. "Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality."

3. General Recommendation No. 25 (Temporary special measures):

- 3. "The Convention is a dynamic instrument. Since the adoption of the Convention in 1979, the Committee, as well as other actors at the national and international levels, have contributed through progressive thinking to the clarification and understanding of the substantive content of the Convention's articles and the specific nature of discrimination against women and the instruments for combatting such discrimination."
- 4. "The scope and meaning of article 4, paragraph 1, must be determined in the context of the overall object and purpose of the Convention, which is to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men."

II. Current Situation and Analysis of Problems

1. The current situation and explanation of the case example.

Within our country's borders there is a group of children who have never had any nationality. Most of their mothers are foreign spouses who hold nationality in their mother country of Vietnam and whose father was not their mother's original spouse and who was also not a Taiwan citizen. Since their mother had not yet secured Taiwan nationality at the time of their birth, Taiwan's Nationality Act designates them as having either the nationality of their mother or their father. However, since the motherland of the mothers of these children is unwilling to process the procedures for their accession of nationality and as they have either been abandoned by their natural father or did not know who their father was in the first place, it is difficult for anyone to know how to resolve the problem of the status of these children.

Those affected include children born outside of marriage or who have been

abandoned by their fathers. In Taiwan law, illegal residents who are stateless are often called ``black household children.`` This type of situation determines the future course of their lives. If they are fortunate, their future days will be shared with their mothers striving to survive in Taiwan society and they will at least not become orphans. But even if they do not become orphans, they will be branded with the stigma of ``black household child.`` While growing up in Taiwan, they must pay themselves to get vaccinations or to go to the doctor and are denied access to normal channels to get an education. Even if the school uses the pretext of persons with special circumstances to allow them to attend classes, they will be restricted a kind of discounted national education and their chances of gaining the qualifications to attend secondary or higher levels of education are unknown.

If such circumstances are seen as hardship, these children are innocents who never committed a sin or crime will certainly suffer their fill of hardships. But what about the sufferings that their mothers have to bear?

These include women who lost their marriages and are also foreign spouses of Vietnamese nationality who were unable to complete the process of naturalization in Taiwan or who were convicted for illegalities after completing the process of naturalization and therefore had their Taiwan nationality revoked. Afterward, the delay or refusal of the Vietnam government to process their applications to restore Vietnamese nationality causes these women to become so-called ``non-nationals`` who thereby become illegal residents or ``black household mothers`` in Taiwan. Just as the ``black household children`` described above, these unregistered mothers also face the difficulties of being unable to obtain qualifications to secure access to social insurance. Moreover, many have little choice but to work as strippers or drinking partners or engage in sexual work.

As far as these women and children are concerned, the extremely passive attitude adopted by the native country Vietnam is seen as a deliberately and cruelly inflicted wound. Hence, the report has used the term ``abandoned`` in its title as a form of condemnation.

Case Example

Ah Min <FN4>, whose original country was the Socialist Republic of Vietnam, entered the Republic of China (Taiwan) on October 10, 2003 after being married and accompanied by her husband Ah Fu <FN5> and later in the same year obtained legal residency through her marriage relationship. On October 25, 2005, Ah Min gave birth to a son named Ah Shih. <FN6> On November 4 of the same year, Ah Shih was registered as Ah Fu`s son in his household registration. On December 4, 2007, Ah Min abandoned her Vietnamese nationality and on March 12, 2007 obtained ROC nationality and on April 28, 2009 obtained a ROC national identity card.

Since Ah Min and Ah Fu did not have a happy marriage, the two separated for a period of time during the year after Ah Min entered Taiwan. As a result, Ah Fu`s elder sister began to have doubts after she saw Ah Shih`s household birth registration record. In the middle of 2010,<FN7> Ah Fu finally accepted the suggestion of his elder sister to file a lawsuit denying paternity over Ah Shih and the court judged that Ah Shih was in fact not the natural son of Ah Fu and Ah Min. The court based its decision on the acknowledgement during the period of the trial by Ah Min that Ah

Shih was not born from their marriage, a court - ordered DNA test and the calculation of the time of conception as having occurred between 181-302 days or during the period that the two had been living separately.

Regarding the question of who was Ah Shih`s natural father, Ah Min embarrassedly stated: ``At the time, I often went to night clubs to drink and I think that on one occasion after getting drunk I must have somehow gotten pregnant. As to who that man was? I would like to know, too, as I want to ask him why did you abuse me?``

On December 24, 2010, Ah Min and Ah Fu were officially divorced and, after waiting for the court to confirm the verdict, Ah Fu took the written verdict to the household registration office on February 18, 2011 to apply for a cancellation of Ah Shih`s household registration and change Ah Shih`s address to the address where the latter lived. On February 22, 2011, Ah Shih`s surname was changed to the surname of his mother.

On March 29, 2011, Ah Min went to the NIA service office in her district <FN8> to apply for Ah Shih to obtain ROC nationality. On the same day, the NIA office issued an official document to the Vietnam Economic and Cultural Office in Taipei (VECOT) to ask for assistance in processing Ah Shih`s Vietnamese nationality. On July 28, 2011, VECOT replied that Ah Min had never gone to their office to apply for Ah Shih to have Vietnamese nationality and therefore there was no way to conduct this procedure. Accompanied by a social worker from the Service Center for Foreign Spouse Families (SCFSF), Ah Min personally went to VECOT to process Ah Shih`s application to gain Vietnamese nationality, but never expected that VECOT personnel refused to accept the application with the excuse that ``this is a matter for the Vietnamese foreign ministry and our office cannot handle it.``

Afterwards, as Ah Min could not find any other option, she accepted the suggestion of SCFSF social workers to ask for help from our office and the author began to assist her on August 30, 2011.

On September 20, 2011, our office sent another document to the concerned NIA service office and the Department of Social Welfare of the Ministry of Interior asking for an interpretation of the laws and regulations affecting Ah Min`s situation. The MOI Department of Household Registration Affairs responded on September 23, 2011 as follows: ``According to Article 16 of the Law on Vietnamese Nationality, `a child born inside or outside the Vietnamese territory either of whose parents is a Vietnamese citizen and the other is a stateless person at the time of his/her birth or whose mother, at the time of his/her birth, is a Vietnamese citizen and whose father is unknown, has Vietnamese nationality.` <FN9> This law was stated clearly in an official document sent by the Foreign Affairs Office of Ho Chi Minh City of Vietnam on August 12, 2008 to our Taipei Economic and Cultural Office. In addition, Article 3 of our country`s Enforcement Rules of the Nationality Act states: ``In this Act, a `stateless person` is a person who is not recognized as the citizen of any country according to the laws of that country.`` Therefore, since Ah Shih`s mother held Vietnamese nationality at the time of his birth, he should also hold Vietnamese nationality.`` <FN10> On September 29, 2011, the district County Service Center of the National Immigration Agency (NIA) sent a reply stating that according to the statement by the MOI Department of Household Registration Affairs, there is no

doubt that Ah Shih has Vietnamese nationality.

In the process of providing assistance in this case, the author learned that Ah Min and Ah Shih faced the following difficulties at that time:

1. Ah Shih`s medical needs intensified the difficulties of Ah Min`s finances: Ah Shih lacked the qualification to enroll in the National Health Insurance System (NHIS) and thus was required to directly pay doctor fees. At the time, Ah Min`s monthly income was only just over NT\$20,000 and, after deducting rent and living expenses, had little left over to cover Ah Shih`s medical fees.

2. Ah Shih`s schooling problem: Ah Shih had reached six years old and was old enough to enter primary school. However, he could not attend school normally like ordinary children.

3. There was the possibility that Ah Min could lose her ROC (Taiwan) nationality: Ah Shih held neither ROC nor Vietnam nationality and was an illegal resident in Taiwan, but also could not be deported. Ah Min worried that the cause behind this situation was her own unmentionable ``immoral`` error and ``pushing too hard`` could lead to her also losing her own ROC nationality. In that case, she would become like many other foreign spouses who lost ROC nationality and be unable to restore her Vietnamese nationality and thus cause an even more difficult situation in which both mother and son were illegal residents. <FN11>

After repeated discussions, we discovered that the bottleneck was the question of Ah Shih`s nationality since his inability to secure Vietnamese nationality was the reason why he was an illegal resident and made it legally impossible for him to enjoy access to services such as social insurance, national education and numerous other social welfare policies essential for living in Taiwan. Therefore, we formulated a strategy regarding the nationality problem, namely to assist Ah Shih secure Vietnamese nationality, which would allow Ah Min to bring him to Taiwan to live with his mother and therefore allow Ah Shih to obtain legal residency status.

However, we also considered the attitude of the Vietnam Economic and Cultural Office in Taipei and therefore mapped out four possible scenarios:

1. Under the assumption that VECOT was willing to agree to process the application, Ah Shih could secure Vietnamese nationality in Taiwan or assist the child return to Vietnam to carry out the procedures to secure nationality;
2. If VECOT was unwilling to provide assistance, we could commission friends or relatives in Vietnam to process an application for household registration and secure recognition of his nationality;
3. If VECOT was unwilling to provide assistance and if friends or relatives were unable to act as representatives, we could commission a local lawyer in Vietnam or a cross-border non-governmental organization (NGO) to represent him in carrying out these procedures; and,
4. We could adopt social movement resistance methods to force our government and the Vietnamese government think of ways to handle this problem.

In proceeding with this case, we found that both VECOT and the household registration office in Ah Min`s home district in Vietnam mutually push responsibility back on each other. The household registration office stated that Ah Shih was born in Taiwan and therefore should obtain Vietnamese nationality through VECOT and then return to Vietnam to process household registration. VECOT`s attitude was the same

as before in refusing to receive the application. Hence, the focus of this case has shifted toward resolving the burning priorities of medical care and school attendance. Ah Min still has some concerns as to whether we should adopt a more radical social actions through expanded social participation to bring this issue to the attention of the world.

II. Analysis of the Problem

There is always the possibility that a mature female may conceive if suitable contraceptive measures are not adopted during sexual behaviour. Nevertheless, when men and women have sexual relations, it cannot be assumed that the male has the expectation of thereby creating a child. No matter what the male thinks, what can be affirmed is that the risks of conception are directly borne by the female and if the woman in question is unable to hold onto the man who has made her pregnant and also refuses the risks to her health from abortion and chooses to have the child, she then chooses to independently bear the duties of being the parent of the child.

At that time, Ah Min decided to bear her child. However, she encountered numerous difficulties in the process of nurturing her child, namely the amount of money she was able to earn was limited, but she had to bear all of the expenses of the child's livelihood and deal with the most vexing problem of the child's medical fees and the restriction on his education.

With regard to the questions of "black household children" and "black household mothers," the original cause lay in the refusal of VECOT to receive the application of the subject to restore her Vietnamese nationality. Nevertheless, most of our country's own laws and policies lack the flexibility to provide active remedy and caused the subject fall into despair after failing to receive any friendly treatment. This state of affairs represents the inhumanity and injustice of our own government and also contravenes the following provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the framework established by the General Recommendations approved by the Committee to Eliminate All Forms of Discrimination Against Women:

(1) The risks borne by foreign spouses when applying for ROC naturalization and after naturalization

This section concerns Article 9 of CEDAW and Point 6 in General Recommendation No. 21 regarding the guarantees for the nationality of women after marriage.

Based on existing laws and regulations, foreign spouses who gain the right to long-term legal residency in Taiwan can be divided into two basic categories: persons with permanent residence and persons who naturalize. The first category concerns right of residence, while the second involves the question of nationality.

Article 25 of the Immigration Act states: "An alien, who has legally and continuously resided in the State for five years and for more than 183 days each year, or the alien spouse and/or children of a national with registered permanent residence in the Taiwan Area who have legally resided in the State for 10 years, during which period they have actually resided in the State for more than 183 days each year for five years, may apply to NIA for permanent residence if they meet the following requirements . . . 1. Are at the age of 20 or over; 2. Have a decent character;

3. Have considerable property, skills or talents that enable them to make a living on their own; 4. Are beneficial to the national interests of the State.`` These conditions exclude students and foreign workers.

In addition, Article 3 of the Nationality Act states: ``A foreign national or stateless person who now has a domicile in the territory of the ROC, if meeting concurrently the requisites provided in the following Subparagraphs, can apply for naturalization:

1. He/she annually has resided in the territory of the ROC for more than 183 days every year in total for more than 5 consecutive years; 2. He/she is above 20 years old and has the capacity to act in accordance with both the laws of the ROC and the laws of his/her own country; 3. He/she behaves decently and has no records of crime; 4. He/she has enough property or professional skills for his/her self-support or ensuring his/her living; 5. He/she possesses basic language ability in the language of our country and understands the basic common knowledge of a national's rights and obligations.``

Article Four of the Nationality Act states: A foreign national or stateless person who now has a domicile in the territory of the ROC, if meeting the requisites provided in Subparagraph 2 to Subparagraph 5 of Paragraph 1 of the preceding article, has legally resided in the territory of the ROC totally for more than 183 days every year for more than 3 consecutive years, under any of the conditions provided by the following Subparagraphs, can also apply for naturalization: 1. He/she is the spouse of a national of the ROC; 2. His/her father or mother is or was once a national of the ROC; 3. He/she is an adopted child of a national of the ROC; 4. He/she was born in the territory of the ROC.``

Article 9 of the Nationality Act states: ``A foreign national who applies for naturalization according to Article 3 to Article 7 shall provide the certification of his/her loss of previous nationality.`` Moreover, Article 10 Clause 1 of the Enforcement Rules of the Nationality Act mandates: ``In order to submit a document certifying the loss of original nationality pursuant to Article 9 of this Act, a foreign national may submit an application form along with the documents . . . for the Certificate of ROC Naturalization Candidacy.`` Clause 3 of the same article adds: ``After obtaining the Certificate of ROC Naturalization Candidacy as referred to in Paragraph 1, the foreign national shall submit the application for naturalization along with the document certifying the loss of original nationality to the household registration office of where the applicant is domiciled.``

In sum, if foreign spouses want to retain their original nationality, they can during their tenth year of residence in Taiwan, after meeting the condition of residence for five consecutive years for over 183 years each year, apply for a Alien Permanent Residence Certificate (APRC) and in tandem retain their nationality. On the other hand, if a foreign spouse plans to take our country's nationality, he or she can apply for naturalization during the fifth year of living in Taiwan. However, before submitting an application, the foreign national needs to submit a Certificate of ROC Naturalization Candidacy along with documentation proving the loss of his or her original nationality and the lack of any criminal record. In operational terms, the foreign spouse should submit the Certificate of ROC Naturalization Candidacy to the representative office of his or her country in Taiwan and apply to renounce her original nationality. During the year or so from the moment that she has applied to abandon her original nationality until she receives permission to naturalize as a ROC, the foreign spouse exists in a transitional period of statelessness. During this period,

if any reason causes her to be unable to smoothly complete the naturalization process, she may face the dilemma that her mother country may be unwilling to receive her application to restore her original nationality and she may remain a stateless person indefinitely and become an illegal resident or a temporary visit, which is to say, a ``black household mother``.

The author believes that there are at least two types of situations in which persons who been unable to successfully naturalize as expected, namely foreign spouses who divorce during the period after abandoning their original nationality and before obtaining ROC nationality and persons who violate the Criminal Code and receive guilty sentences from criminal courts during this period. The cases of Ah King and Ah Hsuan mentioned in a footnote above are examples of both categories. Based on the experiences encountered by the author's organization, cases of obstruction by the mother country's representative office, such as the refusal of VECOT staff to even accept a legal application to restore nationality, are increasing day by day.

The second period of time with risks for foreign spouses who have naturalized is the five years after they obtain ROC nationality. Article 19 of the Nationality Act states: ``If it is found within five years that the naturalization, loss or restoration of the nationality of the ROC does not conform to the provisions of this Act, the naturalization, loss, or restoration shall be withdrawn``. This article means that if the foreign spouse violates the provisions of Article 3 of the Nationality Act within the first five years after naturalization, her ROC nationality may be revoked and, as a consequence, she may face the predicament of the disinclination of the government of her mother country to accept an application to restore her original nationality. The main reason why Ah Min has misgivings and does not dare to engage in social advocacy actions is rooted in her concern that the fact that she bore her son out of wedlock could be interpreted as ``indecent behaviour`` and as cause for the revocation of her ROC nationality.

The significance of Article 9 of CEDAW lies in its declaration that the nationality of a woman should not be attached to the nationality of her father or husband and that her independence and autonomy should be protected. Although the provisions of the Immigration Act and the Nationality Act grant the rights of independence and autonomy, these rights are in turn subject to officially mandated moralistic preconditions and restrictions. This means that the stability and loyalty of the marriage between a foreign spouse and her husband and even her ``moral quality`` are subject to surveillance and control by the law, just as if a chastity belt was insultingly strapped on the body of a foreign spouse with a legally mandated term of 10 years.

(2) The health insurance and school attendance problems faced by `black household children`

Article 4 of CEDAW mandates that the adoption of special measures for the protection of maternity shall not be considered discriminatory. This implies that special measures can be adopted to protect maternity. From the predicament faced by Ah Min and Ah Shih it can be seen that if the government determined that Ah Shih's nationality, health insurance, education and other problems were items for which it could actively find solutions, then this child would have been able to

gradually leave behind the state of original sin and the interests of maternity in this case could have received protection.

According to Article 2 of the Nationality Act: ``A person shall have the nationality of the ROC under any of the conditions provided by the following Subparagraphs: 1. His/her father or mother was a national of the ROC when he/she was born; 2. He/she was born after the death of his/her father or mother, and his/her father or mother was a national of the ROC at the time of death; 3. He/she was born in the territory of the ROC and his/her parents cannot be ascertained or both were stateless persons; 4. He/she has undergone the naturalization process. Preceding Subparagraph 1 and Subparagraph 2 shall also apply to the persons who were minors at the time of the amendment and promulgation of this Act.`` According to Article 3 of the Enforcement Rules of the Nationality Act: ``In this Act, a `stateless person` is a person who is not recognized as the citizen of any country according to the laws of that country.``

Ah Min gave birth to Ah Shih because she had extramarital sexual relations with an unknown man after getting intoxicated. At the time Ah Shih was born, Ah Min had not yet completed the procedures for the abandonment of her original nationality in order to gain the qualification to be approved for naturalization and therefore was determined to be of Vietnamese nationality and not a stateless person. Moreover, after her husband Ah Fu after the latter filed a lawsuit denying paternity, the court's judgment verified that Ah Shih was indeed not Ah Fu's son. Given that Ah Min was unable to state who was the father, Ah Shih would be determined to be of Vietnamese nationality based on the provisions of the Nationality Act, a status that would not automatically change after Ah Min herself obtained ROC nationality.

However, Ah Shih encountered the same type of situation regarding his registration of Vietnamese nationality as faced by many ``black household mothers,`` namely the unwillingness of VECOT staff to accept this kind of application. Moreover, given the fact that the provisions of the Law on Vietnamese Nationality also mandate that Ah Shih should be of Vietnamese nationality, our own government, even if it is willing, probably would be unable to find grounding in existing law for the adoption of proactive special measures to handle Ah Shih's nationality problem. Therefore, Ah Shih has been unable to register any nationality since his birth.

How then can Ah Shih continue to legally reside in our country?

Article 26 of the Immigration Act states: ``A person shall apply to the National Immigration Agency for residence within 30 days starting from the second day after the date of the occurrence of one of the following circumstances. The Agency shall issue an Alien Resident Certificate to the person after it permits the application: 1. Has lost the nationality of the State and has not yet acquired a foreign nationality; 2. Has lost his/her original nationality while having not yet acquired the nationality of the State; 3. Is born as an alien in the State. At his/her birth, his/her father or mother hold or held a Alien Resident Certificate, or an Alien Permanent Resident Certificate; 4. Has switched to the application for a Resident Visa pursuant to Subparagraph 6, Paragraph 1, Article 23.`` At the time of Ah Shih's birth, Ah Min still held an Alien Resident Certificate (ARC). Therefore, Ah Shih could also obtain an ARC. The problem was that when Ah Shih was born, Ah Min did not use her status as an ARC holder to apply for an ARC for Ah Shih, but registered him under Ah Fu's household registration

and therefore exceeded the time limitation for the application of this article and thus Ah Shih remains to this day an illegal resident.

Article 8 of the National Health Insurance Act states: "Any national of the Republic of China should become the beneficiaries of this Insurance." Article 9 of the same act states: "With the exception of individuals mentioned in the previous article, any person who has an alien resident certificate in the Taiwan area should become the beneficiaries of this Insurance if they meet the following conditions: 1.Those who have established a registered domicile for at least six months; 2.Those with a regular employer." Based on this article, since Ah Shih does not have an ARC, he is unable to enroll in the NHIS.

Ah Min herself stated that "a small child frequently gets ill and each time he gets ill, I have to spend a lot of money, like NT\$518 just for a cold and a major illness is just terrible. One time he contracted entrovirus and had to be hospitalized and that cost NT\$7000 or NT\$8,000, but how much money can I earn in a month? That month it all went to take care of him. . ." From this statement, one can see the gravity of the problem this poses for Ah Min and her son.

The handling of the question of Ah Shih's schooling is comparatively moderate. According to the "Rules for National Elementary School Students" promulgated by all local governments contains provisions for the application to enroll by students who are stateless or victims of huge natural disasters. The county where Ah Shih lives, has provisions through approval by the county government that permit boarding schooling, studying at a school on a temporary basis, auditing, repeating classes and other matters. The only problem is that after completing their course work, such students are unable to receive graduation certificates and can only receive certification of the completion of studies. Hence, it is uncertain whether Ah Shih will be able to continue into secondary or tertiary schooling after completing the curriculum of the national elementary education.

Moreover, Article 5 Clause 1 of the Primary and Junior High School Act states: "Primary and junior high school students shall receive free education. Governments shall provide books for students from poor families and they are exempt from fees stipulated by other laws and regulations."

With regard to Ah Shih's experience, he had to pay in advance NT\$2,500 for a variety of fees

when he registered for classes and later had to apply to the school for the return of these fees.

Therefore, Ah Shih's schooling did not for the moment add to Ah Min's economic pressure.

There are also still doubts as to whether he will receive a "certificate of attendance" instead of a

"diploma" which is needed as a condition for higher education.

Article 22 of the Protection of Children and Youth Welfare and Rights Act mandates: "The authorized agency will ask for assistance from household and registration, the immigration agency in charge of the relevant affairs of household registration, naturalization, residence, or settlement for children and youth who do not apply for household registration, are stateless, or have failed to acquire a residence and settlement permit. Before completing their household registration or

acquiring a permit of residence and settlement the law will protect the social welfare services, medical care, and schooling rights and interests of the children and youth.” Based on this article, there should be opportunities to find solutions to the problems that Ah Shih has faced regarding residency, education and health insurance even if the question of his nationality remains hanging in limbo. Nevertheless, this article has never been cited in reference to his case and Ah Shih has been unable to first secure his rights for health insurance and education due to the unresolved issue of his nationality. After several times of going around in circles, in August 2013, we were finally able to secure an ARC for Ah Shih through the assistance of the county center for assistance to foreign spouses and, after waiting for another six months, Ah Shih finally was able to secure the qualification to enroll in the NHIS.

(3) `Black household mothers` need the legal right to work

Article 11 Clause 1(a) of CEDAW mandates that the right to work of women should be protected. Moreover, such guarantees should not be restricted on the basis of whether they lose Taiwan nationality or even have been convicted of offenses. So long as she must remain in our country’s territory, her right to work should be protected by the government as this is a basic condition of survival.

Article 24 of the Regulations Governing Visiting, Residency, and Permanent Residency of Aliens, which was drafted by the NIA based on Article 35 of the Immigration Act, states: “Any alien unable to be deported due to the refusal by the country of issuance of his/her passport, or other countries, to receive the alien, may be issued a provisional alien registration permit for stay, subject to limitations on his/her place of residence and other conditions.” Such provisional alien registration permits are essentially a type of provisional visit visa.

Article 43 of the Employment Services Act states: “Unless otherwise specified in the Act, no foreign worker may engage in work within the Republic of China if his/her employer have not yet obtained a permit via application therefore.” Article 48 of the same act mandates: “Prior to employing foreign worker to engage in work, employer shall apply to the central competent authority for employment permit with relevant documents submitted. However, the following foreigners are exempted:. . . A foreign worker has married a national of the Republic of China with a registered permanent residence in the Republic of China and has been permitted to stay therein.” What constitutes examination of the submitted relevant documents? According to Article 4 of the Regulations on the Permission and Administration of the Employment of Foreign Workers, which was drafted based on this article: “The entry visa held by a foreign worker shall be deemed as a work permit should such visa be granted on the basis of an international written agreement specifying the foreign work permit, the number of people and the period of residence unless the primary purpose of such agreement is not to enter the Republic of China to work.” Article 5 of the same set of regulations states: “The entry visa held by a foreign worker who engages in occupations as referred below shall be deemed as a work permit, should the period of stay permitted by the visa be within thirty days: 1. To engage in the work mentioned in the Paragraph 3 of Article 51 of the Act; 2. To help assist in the solution of emergency cases and relating problems for the purpose of public welfare to engage in the works regulated in the Subparagraph 1 of Paragraph 1, Article 46 of the

Act; 3. To be recognized as well-known experts by the agencies of main responsibilities to engage in the speech or commercial technical advisory work regulated in the Subparagraph 1, Paragraph 1 of Article 46 of the Act.”

As related above, cases of Vietnamese women, such as those of Ah Ying and Ah Hsien, who were divorced during the period after they abandoned their original nationality as part of the process to apply for naturalization or who had their ROC nationality revoked after violating our criminal code, are unable to restore their original nationality and cannot return to their home country and instead have become mired in Taiwan as “unregistered persons.” However, the creation of such unregistered persons is not limited to only these two types, which are only the types of cases the author has directly encountered.

In the experience of handling these cases, women such as Ah Ying and Ah Hsien and are unable to restore their original nationality and during an indefinite period of time for the sake of resolving the problem of their legal residence in our country, the NIA has issued many provisional alien residence registrations. The function of these documents is equivalent to a provisional visitor visa and their status is similar to the spouses of changing from the spouses of citizens to becoming non-nationals. Therefore, they are unable to obtain legal working rights under the provisions of the Employment Services Act. Therefore, this measure, which may have intended to resolve the legality of their stay in Taiwan, simultaneously abrogated their right to legally work. For the sake of survival, they naturally must work illegally in our country.

This is an extremely inhumane form of policy violence.

In fact, it is possible to guarantee their right to work legally. As noted, Article 26 of the Immigration Act states that a person who has lost ROC nationality and has not yet acquired a foreign nationality can apply to the NIA for an ARC within 30 days after the event of losing ROC nationality occurs and therefore can both issued an ARC and, as she provisionally retains the status of a foreign spouse, can also have the right to work.

Since there is the option in the above quoted laws to select an option favorable for applicants, the question becomes why the immigration authorities persist in creating difficulties for these women?

III. Recommendations

The problems encountered by “black household children” in household registration, residency, health insurance and education originate in the failure of our government agencies to act according to law. The difficulties faced in securing residency and the right to work by “black household mothers” are also almost all caused by the failure of government to administer based on law due to the time restrictions imposed by the government on related applications and the refusal to handle applications made outside of these time restrictions on a special case basis. Moreover, the government’s failure to face the reality that if these children and women are unable to secure legal residency in Taiwan, they will also be unable to return to their home countries.

Even though most of the difficulties in these cases occur among children and women, the dereliction of duties and discrimination on the part of both the Taiwan

and Vietnam governments also may exist in an extremely small number of cases in which adult males are also victimized. In light of the statement in General Recommendation No. 25 that CEDAW is a "dynamic instrument," the author hopes that the explication of these case examples can allow more people to appreciate that there exist in our country and internationally many children and women who have no country to which they can return and can spur the government to provide more active remedial measures besides passively administrating based on law and offers the following recommendations:

1. Our government should publically rebuke the government of the Socialist Republic of Vietnam. The problem of unregistered children and unregistered mothers substantially affects Taiwan society, including in terms of the expenditure of social resources and even more in the abrogation of fundamental human rights. At a time when there is no war or social chaos, the request to be accepted by the country to which one belongs or even to realize the most humble request to return to one's home should not become impossible dreams. Nevertheless, the reality is that the lack of action on the part of the Vietnamese government has resulted in the abrogation of the rights of these people, an abrogation which is tantamount to a rejection by their own compatriots and an humiliation akin to banishment. Since these events occur within our borders, our government should formally rebuke the Vietnam government.

2. The stipulations that foreign spouses must "have decent character and not have any criminal record" as important conditions for the granting of permanent residency or as a condition for the revocation of ROC nationality after naturalization are unreasonable and should be expunged from relevant laws and regulations. Ideally, the key factors in sustaining a marriage should be emotions and feelings and not quantifiable selfish interests. Nevertheless, the use by our national judiciary of the threat of the abrogation of status to intervene cross-border marriages and familial relationships is a most bizarre phenomenon. Even though the original legislative intention was not to interfere in family relationships, this stipulation has other objectives, such as deterring crime or even the occurrence of false marriages. Nevertheless, in the actual experience of foreign spouses, the significance of this stipulation lies in the necessity to avoid divorce and to promise to remain faithful in the marriage relationship. This is tantamount to an absurd use of the judiciary to preserve chastity and also violates the principle of proportionality.

3. The issue of the nationality of "black household children" should be set aside in favor of placing priority on ensuring the rights of children such as access to essential social services, medical care and education as stipulated by the UN Convention on the Rights of the Child.

Taking this step would provide basic guarantees for the right of life for children and constitute a fundamental step in the elimination of discrimination.

4. With regard to unfortunate persons who are unable to obtain or restore their original nationality, our government should do its best to adopt tolerant policies and measures and avoid discrimination. May we ask how our government understands the significance of the existence of "black household children" and their mothers? Can it be that it sees these mothers and children as deserving their fate or as disadvantaged single - parent families? If the object of this question was changed to

“black household mothers,” what would the answer be? From the standpoint of a social worker, the author believes that the government’s viewpoint will influence the treatment that these children and women receive in our country.

Given the discriminatory character of official policy, most “black household children,” their mothers and “black household mothers” do not dare to hold out any hope that they will receive much care but at most anticipate that they will receive at most only the opportunity to keep surviving. Nevertheless, besides the right to work essential for survival, their actual needs of also include the provision of medical insurance, the right to enroll in school, living quarters, daycare and even after-class guidance and other services. Regretfully, the items that the government can provide are inadequate to permit them to have sufficient guarantees. Even more ridiculous is the fact that there are cases in which the government has used its discretion in the application of laws and regulations to provide relatively inferior treatment and do not provide lift a hand to provide advice on their rights to people who do not fully understand our legal code. These facts expose the existence of discriminatory violence among government officials toward Southeast Asian women.

In the years since the Legislative Yuan approved CEDAW on January 15, 2007 to the present, we continue to witness discrimination and violence toward foreign spouses in government policies and measures. It is evident that the sensitivity of government officials has yet to show visible results. Nevertheless, the author deeply hopes that our country can improve the equalization of gender rights, especially with regard to the understanding of our citizens toward foreign spouses.

FOOTNOTES

1. This report was drafted by Ms Chang Yu-chao () of the Hsinchu Diocese of the Catholic Church in Taiwan and translated by Dennis Engbarth ().

2. Persons who do not match the definition in Taiwan’s Nationality Act of “stateless” are referred to as “non-nationals” to distinguish them from being “stateless” persons. [WHERE? not in nationality act ???]

3. The issue of “black household mothers” in Taiwan affects foreign spouses who originally hail from Vietnam or the Philippines. However, the difference in character between the two types of cases lies in the fact that a number of Philippine citizens did not apply for extensions after they had completed their legal term of residence for various reasons and thus have become “over-stayers.” Their situation has similarities with the “non-nationals” who are the subject of this report as both lack social insurance and the right to work.

4. “Ah Min” is a pseudonym used to safeguard the privacy of this person.

5. “Ah Fu” is a pseudonym used to safeguard the privacy of this person.

6. “Ah Shih” is a pseudonym used to safeguard the privacy of this person.

7. The exact date when Ah Fu filed the lawsuit to deny a paternity relationship is not known and this approximate timing was related by Ah Min.

8. In order to safeguard the privacy and interests of Ah Min and Ah Shih, the location of this NIA office is being withheld.

9. Translator’s Note: The Law on Vietnamese Nationality can be viewed at the website of Legal Normative Documents of the Ministry of Justice of the Socialist

Republic of Vietnam

<http://www.moj.gov.vn/vbqq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10451>.

10. Translator`s note: English translations of Taiwan laws in this report are mainly based on the unofficial translations that can be found at the Law and Regulations Database of the Republic of China (<http://law.moj.gov.tw/>) maintained by the Ministry of Justice with certain corrections or grammatical corrections made by the translator to reflect more accurately the meaning of the original Chinese language text.

11. The subject of another case being assisted by our office is ``Ah Ying`` (a pseudonym) whose original nationality is Vietnamese and entered Taiwan on April 22, 2003 in order to be married. She abandoned her nationality in order to apply for naturalization, but the couple divorced. Her application to restore Vietnamese nationality was not accepted when she presented it at the Vietnam Economic and Cultural Office in Taipei and she is still waiting for the restoration of her nationality so she can return to her home country.

Another case concerns ``Ah Hsien`` (a pseudonym) whose original nationality was also Vietnamese. On May 10, 2010, Ah Hsien was determined by a court judgment to be divorced after being discovered committing an ``offense against morality.`` At that time, she had already abandoned her Vietnamese nationality in order to apply for naturalization. The affair began in April and May of 2008 when Ah Hsien fled her home after suffering frequent beatings from her mentally ill husband. In order to support herself, Ah Hsien engaged in sexual work and was arrested by police on September 9, 2009. Afterward, her husband filed a lawsuit for divorce. After the court verdict, her ROC nationality was revoked. After she completed serving her prison sentence and was unable to smoothly restore her Vietnamese nationality, the NIA cited the reason that she had ``already lost (ROC) nationality but cannot be deported`` to issue her a temporary Alien Registration Certificate (ARC) so that she could legally stay in Taiwan. However, she does not have a work permit.