

Submission by the Environmental Justice Foundation to the US Department of Labor for the 2022 List of Goods Produced by Child Labor or Forced Labor

Taiwan

The Environmental Justice Foundation (EJF) is an international organization with offices in multiple countries including the UK, Germany, Indonesia, Thailand, S. Korea and Taiwan working to protect the natural environment and the people and wildlife that depend upon it. EJF promotes and encourages international information sharing to enhance transparency in the fisheries sector and combat illegal, unreported and unregulated (IUU) fishing alongside closely associated instances of serious human rights abuses, which include forced labor.

In recent years, EJF has worked with partner organizations in Taiwan and Indonesia to document human trafficking and other serious human rights abuses across the Taiwanese distant water fisheries (DWF) sector. Taiwan has the world's second largest DWF fleet, with approximately 1,140 vessels flying the Taiwanese flag and more than 22,000 migrant crew, mainly from Indonesia, Vietnam and the Philippines.¹ In addition, there are 255 Taiwanese-owned foreign-flagged vessels² (so-called Flag of Convenience vessels) operating across the world's oceans employing an unknown number of crew. Due to the remote nature of fishing, language barriers and information gaps, fishing crew are particularly vulnerable to human trafficking and forced labor. In Taiwan, this has been widely and repeatedly documented by EJF, other civil society groups such as Greenpeace and the Yilan Migrant Fishermen Union and media organizations.

Summary

Over the past year, EJF has observed some improvements introduced by the Taiwanese government to protect the human rights of migrant fishers on Taiwanese-flagged and Taiwanese-owned foreign-flagged vessels.³ These efforts are primarily through legal reforms and civil society engagement, including:

- The *Regulations on the Management and Approval of Foreign Flag Fishing Vessels Entering into Ports of the Republic of China* deny foreign vessels that are convicted of human trafficking and forced labor to enter Taiwanese ports (Article 7).
- The Executive Yuan is leading relevant government departments including the Fisheries Agency and Ministry of Labor to finalize the Fisheries and Human Rights Action Plan (Action Plan). The Action Plan contains several important initiatives such as maximum time at sea, CCTV onboard and direct payment to crew from Taiwanese entities (without any third party from the origin country).

¹ Fisheries Agency (31 December 2019) <https://www.fa.gov.tw/cht/Announce/content.aspx?id=720&chk=1b3c3f83-3f52-41a7-b71f-d17c47ff8647¶m=pn=3>

² Fisheries Agency (2022) <https://www.fa.gov.tw/cht/FOC/>

³ So far, regulations target Taiwanese-owned foreign-flagged vessels only apply to vessels of which Taiwanese owner(s) hold more than 50% of the capital.

- Continued engagement with civil society on policy making and implementations, including NGOs observing the Fisheries Agency conducting crew interviews and discussions on the Fisheries and Human Right Action Plan and other regular meetings.

Over the past year, EJF and other civil society groups have engaged with Members of Parliament who are considering means to increase protection for migrant fishers. The Control Yuan, Taiwan's independent governmental department overseeing the performance of other departments, has also repeatedly pointed out the insufficiency of existing protection in place for migrant fishers and requested improvements.⁴

However, EJF's investigations continue to find that crew are subjected to salary deductions, verbal and physical violence, requirements to pay guarantee money and/or working extremely long hours. These are all strong indicators of human trafficking. In 2019, EJF submitted the details of 62 vessels to the Fisheries Agency (FA) for investigation of alleged IUU fishing and human rights abuses. Within the 62 vessels, only one has been passed by the FA to prosecutors to conduct a judicial investigation into human trafficking. The cases of another 32 vessels were closed by the FA and the remaining 28 are still under investigations.

EJF believes that the FA and Taiwanese government as a whole is failing to detect forced labor during inspections for three key reasons:

First, Taiwan uses a narrow definition of a human trafficking victim. The Taiwan Human Trafficking Prevention Act defines human trafficking as using illegal methods such as drugs, violence, deception or any means against his/her will to force him/her into sexual transactions, labor to which pay is not commensurate with the work duties and/or organ harvesting.⁵ However, due to the unclear definition of payments not commensurate with work duties and officials not being fully aware of modern forms of human trafficking, NGOs and the Taiwanese Control Yuan have both observed that potential cases of forced labor are often being treated as labor disputes by the government.^{6/7}

Second, EJF has found that most migrant fishers, in fact most migrant workers in Taiwan, are required to pay 'guarantee money' before they are employed. Guarantee money is an upfront payment by crewmembers to the recruitment agency/employer to ensure they will fulfill and obey the contract. This money prevents fishers from leaving their job even if they are abused or mistreated thus creating a condition of bonded labor. Although the charging of guarantee money at any point of the recruitment process is widely recognized by the international community as an indication of human trafficking, the Taiwanese government has yet to include it in their judgment of whether or not human trafficking is taking place.

Last, the process through which migrant fishers are recruited is opaque and complex, involving recruitment agencies as well as the governments from both Taiwan and the fishers' home countries.

4 Control Yuan's report published on the 3rd December 2021. Available at: <https://nhrc.cy.gov.tw/monitor/report/detail?id=da0c9264-2429-4514-8315-3bf1321f2519>

5 Human Trafficking Prevention Act Article 2. Available at: <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>

6 The Storm Media press release (12th May 2021). Available at: <https://www.storm.mg/article/3669710?page=1>

7 Control Yuan report (2021) Available at: <https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17492>

Once fishers have left their vessels and returned home, it is difficult for the Taiwanese government, especially the FA alone, to carry out comprehensive investigations into potential human trafficking cases or the conduct of any non-Taiwanese agencies. This problem is made worse by the lack of port inspectors in most overseas ports. Of the 32 overseas ports authorized for use by Taiwanese DWF vessels, only six have a government inspector. The main duty of the inspectors is to inspect fish catch, and they only use paper-based questionnaires to understand crew's human rights and working conditions. Previous experience⁸ has demonstrated that this method is not effective in detecting or preventing human trafficking.

In 2021, EJF further interviewed 25 crewmembers who had worked on 20 vessels. Among these vessels, the most common human rights abuses include withholding of wages and deductions (84%), withholding of identity documents (88%) and excessive overtime (92%). 80% of the crewmembers were required to pay guarantee money before they started their contract. Detail of four severe cases can be provided upon request. A set of recommendations to the Taiwanese government is also provided at the end of the briefing.

Recommendation for the Status of Taiwan on the List of Goods Produced by Child Labor or Forced Labor

Despite the ongoing shortcomings in the system, EJF has observed a strong political willingness to change the situation implement new policies. EJF recommends that Taiwan should remain on the List of Goods Produced by Child Labor or Forced Labor in 2022 due to the continued failure of Taiwan to translate policy reforms into improvements on DWF vessels, in particular through loopholes that continue to lead to low prosecutions. The report should include strong and specific recommendations for the Taiwanese government to work urgently to address the weaknesses set out in this submission.

Prevention

Migrant fishers on Taiwanese vessels are recruited through two different systems that are governed by separate government agencies. Those on DWF vessels are governed by the FA while fishers working on coastal fishing vessels are governed by the Ministry of Labor. The latter has the same standard of protections and social welfare for all the workers in Taiwan regardless of nationality, while the former does not. The Ministry of Labor has the authority and experience to conduct official labor inspections while the FA does not. However, despite having the tools available, there is no evidence that the Ministry of Labor is exercising their authority to a sufficient degree. One inspection conducted by the Ministry of Labor that EJF observed in October 2021 made clear the insufficiency of the inspection process. Two inspectors from the Ministry of Labor joined the FA to inspect a DWF vessel at Dong-Gong port in the south of Taiwan. The inspector did not talk to the crew, go on board the vessel or check any safety equipment on the vessel. Instead, they only talked briefly to the captain and asked the captain to scan a barcode which links to a website that states all the safety information for fishing vessels, despite the captain telling the inspectors that he was

⁸ EJF press release on Taiwanese vessel Fuh Sheng No. 11 on 13th September 2018. Available at: <https://ejfoundation.org/news-media/first-hand-reports-of-grave-abuse-and-illegal-fishing-aboard-taiwanese-vessel-allowed-to-slip-through-the-net>

too old to understand how to use the phone and barcode.

The latest statistic available showing that during 2020, the Ministry of Labor inspect 30 fisheries business units, including wild fisheries and aquaculture.⁹ This is extremely disproportionate to more than 40 thousand registered fishery business units in Taiwan.¹⁰

On the other hand, during 2021, the Fisheries Agency continued to invite civil society to policy consultation meetings, implementation meetings and policy implementation monitoring. In recent years, NGOs have repeatedly highlighted the capacity gaps of the labor inspection process and the urgent need to apply a victim-centered approach when interviewing crew. This year, some encouraging improvements during the labor interviews were observed, including crew being interviewed in a seated and shaded environment out of sight from their captains or recruitment agencies. It is a step towards a victim-centered approach but there is still room for improvement. Currently, labor interviews and inspections are only held in Taiwanese ports. There are 32 overseas ports used by Taiwanese vessels and only six of them (in Port Louis, Mauritius; Cape Town, South Africa¹¹; Pago Pago, American Samoa; Suva, Fiji; Majuro, the Marshall Islands; and Bangkok Thailand¹²) have an official inspector, who rely on a paper-based questionnaire to collect information on the crew's living and working conditions. Crewmembers that work on vessels entering the remaining 26 overseas port have very limited to no channels to contact either Taiwanese authorities, home country authorities or NGOs for support and thus rely on the mercy of their employers to treat them with decency.

At home, even though interview settings have improved, the FA as an administrative agency has no authority to initiate unannounced inspections and instead has to pre-schedule inspections and request permission from the vessel's owner and crew's employer. This will largely compromise the effectiveness of the inspection and gives employer time to prepare. Without sufficient evidence, judicial inspectors such as the police are less likely to initiate judicial inspections or levy charges. Inspections initiated by the FA also require assistance from the employers or recruitment agencies to provide a recruitment list or documentation.

In addition, the interview questions mostly focus on recruitment processes, working and living conditions that concern Taiwanese employers and recruitment agencies but ignore contract conditions set by recruitment agencies of in the home country of crewmembers. EJF's investigations have shown that it is critical to ensure recruitment agencies in home countries meet the standards and requirements the flag state government sets for their own agencies and fisheries companies. Without understanding contract details set by home country agencies, it is unlikely the Taiwanese government can eliminate the debt bondage that forces crew to continue working on vessels against their will.

Apart from Taiwan-flagged vessels, there are more than 255 foreign vessels owned by Taiwanese nationals. In June 2021, the FA amended the *Regulations on the Management and Approval of*

⁹ Ministry of Labor 2020 statistic. Available at: <https://www.osha.gov.tw/1106/1164/1165/1168/34345/>

¹⁰ National Census Statistic (2015). Available to download at: <https://www.stat.gov.tw/public/data/dgbas04/bc1/2015census/F0/3601010.XLS>

¹¹ Also covers the Port of Durban

¹² Also covers the Port of Phuket



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Foreign Flag Fishing Vessels Entering into Ports of the Republic of China to deny foreign vessels that are convicted of human trafficking and forced labor the ability to enter Taiwanese ports. This is an encouraging step forward to prevent human trafficking on such vessels. Details of this new approach are still being established, and EJF will be monitoring implementation.

Protection

In 2019, The Taiwanese government committed to bring domestic regulations in line with the International Labor Organization's Work in Fishing Convention (ILO C188), with a regulatory review complete by 2021. The Ministry of Labor is designated to lead the project; however, the project has been delayed and no obvious progress has been announced at the time of writing (January 2022).

While the FA and some industry members are trialing WIFI on some vessels, most crew on vessels still have no accessible emergency hotlines available while at sea. Crew can only contact Taiwanese or port state authorities when vessels arrive at port. In Taiwan, crew can contact civil society for support or use a government hotline to seek help. However, crew on the many vessels that do not come back to Taiwan have limited or no access to help. Crew that are able to use the government hotline for support still face several challenges that reduce the effectiveness of the protection. First, the process is lengthy while vessels only stay at port for a short period of time. Often crew are unable to wait for the process before they have to leave for another trip. Crew that report any abuse usually would still be under the same employment, leaving them vulnerable to retaliation if the abuser finds out the identity of the whistle blower.

Prosecution

Over the past three years, EJF has provided more than 100 alleged cases of human trafficking and illegal fishing to the Taiwanese government to investigate. However, last year only three cases were passed to the prosecution office for judicial investigation and so far, no convictions of human trafficking or forced labor have been confirmed. As mentioned in the previous section, the FA only has human rights interview capacity at Taiwanese ports, meaning that potential victims might go undetected, as Taiwanese distant water vessels rarely return to Taiwan. Cases that involve Taiwanese-owned foreign-flagged vessels or incidents that happen overseas require information from the flag state and port state. The FA often has no reply from foreign governments to information requests, making prosecution more difficult.

The system is far from perfect at home. Though the FA is the competent authority overseeing migrant fishers on DWF vessels, it is an administrative department and therefore does not have judicial investigative powers and lacks the authority to prosecute perpetrators of abuse. Upon receiving allegations from NGOs or detecting suspicious cases during port inspections, the FA summons the owner and captain of the vessel and relevant broker for an interview. The FA then makes a judgment based on the interview with the captain and owner to decide if the case should be submitted to the prosecution office for judicial investigation.

In 2021, the FA handled 62 cases (different to EJF's 62 cases) and within that, six are under administrative guidance (a process through which the administration agency gives guidance on

minor violations for correction), three vessels were fined and three were submitted to the prosecution office for further investigation.¹³ However, cases that were submitted to the prosecution office for further investigation often led to no further action due to a lack of evidence. At the end of 2019, a case that EJF submitted to the FA featured a crewmember alleging they were locked in a freezer by the captain while he was still wet from the shower.¹⁴ He also told EJF that he was electrocuted with a stun gun by a fellow crew member under orders from the captain. Upon receiving the case, the FA conducted their own administration investigation and then passed the case to Ping-Tung Prosecution Office, where the vessel was registered, for judicial investigation. On 24th June 2020, Ping-Tung Prosecution Office closed the case citing a lack of witnesses or video footage to support the victim's testimony.

Several NGOs consider Taiwan's Human Trafficking Prevention Act, the main regulation to prevent human trafficking and forced labor, to be outdated and urgently requiring improvements. According to the Act, traffickers will only be convicted if the labor of the trafficked person is directly sold for profit (such as through prostitution)¹⁵. NGOs have criticized the narrow and unclear definition of human trafficking by the Act¹⁶. In the case of human trafficking in the seafood industry, workers are trafficked onto vessels in order to reduce costs and the worker is not himself directly sold for profit. This loophole enables owners and captains, particularly in the seafood industry, to avoid sanctions under the Act. Some experts have pointed out that this is one of the reasons that Taiwan has a low prosecution and conviction rate.¹⁷ To close the loophole, 13 NGOs recommended that the government amend the Act in 2016.¹⁸ Discussions are underway among the Immigration Agency, parliamentarians and NGOs regarding the content of such an amendment, but progress has been delayed.

Trafficking Profile and Prevalence

There are several key intermediaries relevant to the recruitment of crew in both Taiwan and home countries such as Indonesia. This includes manning agencies, home country brokers and Taiwanese brokers. The most common indications of human rights abuse on Taiwanese DWF vessels, the withholding of wages and the creation of artificial debts to create conditions of bonded labor, occur between the manning agency and brokers. Despite being banned by Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members, crew almost always still have to pay guarantee money and recruitment fees upon employment. In many cases, the money is paid to the home country brokers or manning agency. To solve this problem, the Taiwanese government plans to request that Taiwanese employers and/or agencies pay salary directly to crewmembers without a foreign third party. However, NGOs are concerned that this method, although potentially ensuring crew receive full of salaries payment, cannot stop upfront payments being taken by brokers to secure the job in the home country. Once trapped by these

13 FA's presentation on 11th January 2022

14 EJF's press release on 22nd July 2020. Available at: <https://ejfoundation.org/news-media/widespread-abuse-and-illegal-fishing-as-taiwans-fishing-fleet-remains-out-of-control>

15 Human Trafficking Prevention Act. Available at: <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D0080177>

16 Radio Taiwan International (15th June 2018). Available at: <https://www.rti.org.tw/news/view/id/414011>

17 A study on influential factors in conviction decision of human trafficking in Taiwan district courts (2018). Available at: <https://www.cprc.moj.gov.tw/media/9189/8111216385630.pdf?mediaDL=true>

18 The Garden of Hope Foundation press release (2017). Available at: https://www.goh.org.tw/mobile/news_detail.asp?PKey=aBJTaB38aBOxAb37aBULaB33&Class1=aBSQaB32



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bonded labor conditions, crew are then subject to verbal and physical abuse that is often conducted by senior crewmembers or the captain. Without requiring Taiwanese agencies to work only with counterparts that can meet the standards set by Taiwanese regulations, crew will still be in the same trap.

Recommendations

EJF is encouraged to see increased civil society involvement in policy making and implementation over the past year. With a better system, Taiwan will be able to demonstrate the same high level of human rights standards in the fisheries sector as other sectors in society. For the Taiwanese government, it is critical to ensure that all current policy is properly implemented, and that they enhance capacity and resources in the following areas:

- Rapidly bring the domestic regulations in line with ILO C188 and allocate sufficient resources to implement this. Special emphasis should be put on ensuring crew do not pay any money in any form to anyone to secure the job or during the whole recruitment period from the home country to Taiwan;
- To ensure ILO C188 is implemented properly, the Taiwanese government should increase inspector coverage to include all authorized overseas ports (or reduce the number of such ports if more practical in some instances) and provide inspectors with extensive training in identifying human trafficking and other human rights abuses. Interpreters for Bahasa and Tagalog are also required to ensure inspectors can communicate appropriately with the interviewees;
- Pledge support for EJF's Charter for Transparency and continue to increase transparency measures including the publication of vessel positional data as well as information on beneficial ownership;
- Implement electronic monitoring systems for all Taiwanese fishing vessels including remote sensors and CCTV. Require high-risk vessels to participate in pilots of electronic observers, with extension to the remainder of the fleet as soon as possible. It is also important to ensure that civil society is given the ability to scrutinize implementation of this; and
- The Executive Yuan should ensure and oversee proactive cross-departmental investigations into human right abuses and IUU fishing cases on Taiwanese vessels. This should also include input from civil society.

EJF also encourages more technical exchange between US and Taiwanese governments on these issues. The exchange could cover specific topics including:

- Providing training to identify signs of a victim of human trafficking for frontline inspectors as well as officials at the competent authorities including the FA, Ministry of Labor, Immigration Agency and Coast Guard. A victim-centered approach, ensuring any whistleblowers are protected, is key during labor inspections and interviews;
- Increase capacity of high-sea boarding and inspection by Taiwan or foreign authorities under mutual agreement; and



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- Enhance information exchanges between flag states, port states and coastal states to facilitate investigations and prosecutions.