

## Submission by the Environmental Justice Foundation to the US Department of Labor regarding human rights abuses on the distant water fishing fleet of Taiwan

2021

The Environmental Justice Foundation (EJF) is a UK registered non-profit organization working internationally to protect natural environments and the human rights of people who depend on them.

### Summary

Since 2017, 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 one of the world's largest DWF fleets in the world, with approximately 1,140 vessels flying the Taiwanese flag and more than 22,000 migrant crew members, mainly from Indonesia, Vietnam and the Philippines.<sup>1</sup> In addition, there are 230 Taiwanese-owned foreign-flagged vessels<sup>2</sup> (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. 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.

Over the last year, EJF interviewed 38 Indonesians who worked on 36 Taiwanese-flagged fishing vessels and two Taiwanese-owned, foreign-flagged vessels. These interviews found that, despite promised legal reforms, enforcement remains extremely limited, and workers largely unprotected from human rights abuses. Of the 32 overseas ports authorized for use by Taiwanese distant water fishing vessels, only eight have a government inspector. These inspectors have still not received adequate training in the identification and prevention of human trafficking. Fishers therefore remain at the mercy of their captains on vessels that are struggling to maintain a profit in collapsing high seas fisheries. EJF's investigations find that all too often, this lack of protection leads employers to resort to human trafficking and other associated human rights abuses.

**This version of the briefing has had information on specific vessels removed in order to avoid jeopardizing ongoing investigations.**

### Legal developments

Over the past year, the Taiwanese authorities have made some improvements to regulations in place to protect migrant workers on Taiwanese-flagged vessels and Flag of Convenience vessels. Legal reforms and other areas of progress include:

- The timeline for the legal review of the International Labor Organization's Work in Fishing Convention (ILO C188) has been brought forward from 2022 to the middle of 2021.
- The Taiwan Fisheries Agency is running a pilot project to provide free satellite-based WIFI for crew to use while at sea to remain in contact with their family and raise any concerns relating to their treatment.
- The *Regulations on the Approval of Investment in or the Operation of Foreign Flag Fishing Vessels* have been amended to give the government the ability to revoke the permission to

<sup>1</sup> <https://www.fa.gov.tw/cht/Announce/content.aspx?id=720&chk=1b3c3f83-3f52-41a7-b71f-d17c47ff8647&param=pn%3d3>

<sup>2</sup> <https://www.fa.gov.tw/cht/FOC/content.aspx?id=7&chk=73d6f4b2-a69e-4524-aafb-397e1c83ab47&param=pn%3d1>

invest in or operate foreign flag fishing vessels that are confirmed to be involved in human trafficking or forced labor.<sup>3</sup>

- The *Regulations on the Management and Approval of Foreign Flag Fishing Vessels Entering into Ports of the Republic of China* are under review to consider an amendment to prevent vessels that have an official record of forced labor or human trafficking from using ports of Taiwan.<sup>4</sup>

According to crew testimony, EJF also observed that the average wage deductions by both Taiwanese employers and/or agencies are declining. However, deductions by their contracted counterparts (mostly Indonesian agencies) remain the same. There seems to be minimal impetus for vessel owners or Taiwanese recruitment agencies to lobby for better performance from their origin country counterparts. This means workers still regularly face falling into conditions of bonded labor.

Despite gradual improvements in the legal framework, enforcement remains almost non-existent. Last year, EJF's submission to ILAB documented allegations of human rights abuses on 62 vessels, which have all been shared with the Taiwanese government. To date, none of these vessels have been subject to rigorous investigation and no vessels have received significant sanctions.

### Prevention

During 2020, civil society in Taiwan continued to engage with relevant authorities including the Executive Yuan, Control Yuan, the Taiwanese Fisheries Agency (TFA) and Members of Parliament to provide information and suggestions regarding trafficking and other human rights abuses on Taiwanese fishing vessels. Roundtable meetings were held monthly since the middle of last year between civil society and the Director General of the TFA to discuss issues raised by the NGOs. The Minister without Portfolio also met with NGOs several times over the year to seek recommendations. During one of the meetings, the Minister committed to accelerate the regulatory review that is reviewing the gap between domestic regulations and ILO C188. It will now conclude by the middle of 2021 instead of in 2022.

Steps have been made by the TFA to address human rights issues on fishing vessels using flags of convenience after the US Customs and Border Protection's withhold release order issued against the Taiwanese-owned foreign-flagged vessel *Da Wang*. An amendment to the *Regulations on the Approval of Investment in or the Operation of Foreign Flag Fishing Vessels* authorized the government to revoke the permission to invest in or operate foreign flag fishing vessel(s) if it is confirmed to be involved in human trafficking or forced labor<sup>5</sup>. The Agency is also undergoing the process to update the *Regulations on the Management and Approval of Foreign Flag Fishing Vessels Entering into Ports of the Republic of China* to include an amendment preventing vessels that have an official record of forced labor or human trafficking from using ports of Taiwan<sup>6</sup>.

However, due to the opaque structure of company ownership in the fisheries sector, vessels using flags of convenience and their owners are more likely to escape sanctions and penalties even where

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<sup>3</sup> Regulations on the Approval of Investment in or the Operation of Foreign Flag Fishing Vessels, Article 6

<https://www.fa.gov.tw/cht/LawsCentralDeepSea/content.aspx?id=3&chk=eab879b2-390e-4add-a077-84b6cf3a5d39&param=pn%3d5>

<sup>4</sup> Taiwan Fisheries Agency committed during a meeting with NGOs including EJF in December 2020. A formal announcement is expected to be published soon.

<sup>5</sup> Regulations on the Approval of Investment in or the Operation of Foreign Flag Fishing Vessels, Article 6

<https://www.fa.gov.tw/cht/LawsCentralDeepSea/content.aspx?id=3&chk=eab879b2-390e-4add-a077-84b6cf3a5d39&param=pn%3d5>

<sup>6</sup> Taiwan Fisheries Agency committed during a meeting with NGOs including EJF in December 2020. Formal announcement is expected to be published soon.

such regulatory powers exist. Vessels under suspicion can change their identity and nationality to evade scrutiny. There are currently 230 Taiwanese-owned vessels using foreign flags registered with the TFA<sup>7</sup>. However, EJF's investigations have continued to uncover vessels that are closely linked with Taiwanese corporations but which are not on the official registration list. The government has recently formed a cross department task force to track the ownership of unidentified suspicious vessels.

### Protection

Migrant fishers on Taiwanese vessels are recruited through two different systems that are governed by different government agencies. Those on DWF vessels are governed by the TFA 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 TFA does not. EJF's investigations have consistently found that without victim-centered inspections undertaken by trained officials, governments will not be able to identify and protect trafficked workers.

Another example of the problem of the two-tier approach to protecting fishers is the hotline for migrant workers, 1955. It is overseen by the Ministry of Labor and outsourced to an external provider. NGOs providing services to help migrant fishers have repeatedly raised concern over the quality of 1955 and the time it takes to process cases. The Serve the People Association (SPA), which runs shelters for victims of human trafficking, also found that migrants who call the hotline are passed directly to their employers or brokers by 1955 staff, exposing them to reprisals. Even if the case proceeds confidentially, the time it takes is still a concern. Once 1955 receives a complaint from a migrant fisher, the case is transferred to the TFA who in turn transfers the case to the local office where the vessel is registered. This process usually takes weeks to complete and very often migrant fishers on DWF vessels will have left Taiwan by then. Without the victim or the vessel present in Taiwan, it is difficult for authorities to intervene.

The US State Department's 2020 Trafficking in Persons report highlighted these problems and recommended that Taiwan abolish the two-tiered system<sup>8</sup>. NGOs including EJF, Greenpeace, SPA and the Yilan Migrant Fishermen Union have all advocated for the Ministry of Labor to be the authority that oversees migrant fishers' affairs as it has more resources and capacity. However, despite the Fisheries Agency expressing support for this arrangement, no progress has been made.

### Prosecution

Though the TFA is the competent authority overseeing migrant fishers on DWF vessels, it is an administrative department and therefore does not have judicial investigation powers and lacks the authority to prosecute perpetrators of abuse. Upon receiving allegations from NGOs, the TFA summons the owner and captain of the vessel and relevant broker for an interview. The agency normally does not have the resources and inclination to interview crew or send investigators to the vessels concerned, which are almost always operating overseas. The TFA 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. This limited process has meant that last year the TFA only transferred eight human trafficking cases from six Taiwanese flagged vessels and two Taiwanese-owned and foreign-flagged vessels to the prosecution office for investigation. The

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<sup>7</sup> Taiwan Fisheries Agency (2021) <https://www.fa.gov.tw/cht/FOC/>

<sup>8</sup> <https://www.state.gov/reports/2020-trafficking-in-persons-report/taiwan/>

prosecution office concluded two cases and did not charge them. The remaining six are still under investigation.<sup>9</sup> Although the prosecution office can initiate an investigation without a referral, this very rarely happens.

In 2020, the above process led to no sanctions on Taiwanese vessels for serious human rights abuses. In comparison, over the same period the US Customs and Border Protection issued four withhold release relating to credible allegations of forced labor on vessels flagged to Taiwan or owned by Taiwanese nationals.

Taiwanese vessels use 32 ports around the world of which only eight (in Port Louis, Mauritius; Cape Town and Durban, South Africa; Pago Pago, American Samoa; Suva, Fiji; Malakal, Palau; Majuro, the Marshall Islands; and Bangkok, Thailand) have a designated official inspector. The official inspectors were tasked with fishery inspection with additional responsibility to interview crew members. The inspectors mainly use paper-based surveys to understand the human rights condition of the crew. There is limited support from other Taiwanese official departments such as the Ministry of Foreign Affairs and the Ministry of Labor to assist the TFA to increase inspection capacity. The TFA has contracted online interpretation services to assist communication between the inspectors and crew members at overseas ports. However, according to the TFA, due to the COVID-19 pandemic, there were fewer vessels returning to overseas ports and thus it has not been able to review the effectiveness of the interpretation services. While the TFA has contracted third party inspection service for the remaining 24 ports, they only inspect vessels' fish catch and not human rights conditions.

Taiwan's Human Trafficking Prevention Act is the main regulation to prevent human trafficking and forced labor. 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)<sup>10</sup>. NGOs have criticized the narrow and unclear definition of human trafficking by the Act<sup>11</sup>. 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<sup>12/13</sup>. To close the loophole, 13 NGOs recommended that the government amend the Act in 2016. Discussions are underway among the Immigration Agency, parliamentarians and NGOs regarding the content of such an amendment.

### **Summary of recent findings**

There are several key intermediaries relevant to the recruitment of crew in both Taiwan and source countries such as Indonesia. These includes manning agencies, source country brokers and Taiwanese brokers. The most common indications of human rights abuses 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 illegal, crew almost always still have to pay 'guarantee money' and recruitment fees upon employment. Once trapped by these bonded labor conditions, crew are then subject to verbal and physical abuse that is often conducted by senior crew members or the captain.

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<sup>9</sup> Information provided by the Taiwan Fisheries Agency to EJF in January 2021

<sup>10</sup> <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D0080177>

<sup>11</sup> <https://www.rti.org.tw/news/view/id/414011>

<sup>12</sup> <https://www.cprc.moj.gov.tw/media/9189/8111216385630.pdf?mediaDL=true>

<sup>13</sup> <https://www.koko.url.tw/臺灣的新奴隸制度--談人口販運的防制.html>

In its 2020 submission to ILAB, EJF submitted evidence arising from interviews with Indonesians who had worked on 62 Taiwanese DWF vessels. In the past year, EJF investigators interviewed crew from a further 38 vessels (36 with a Taiwanese flag and two Taiwanese-owned vessels using a foreign flag). Unfortunately, these interviews found similar levels of human rights abuses. Withholding of wages is still almost universal (taking place on 35 out of 38 vessels). Wages are often withheld by their brokers for ‘guarantee money’, which is an up-front payment to guarantee that crewmembers finish the contract. This creates conditions of debt bondage and forced labor. Deductions are also made from wages, including in the form of ‘processing fees’ and other up-front fees, such as for identity documents and medical checks. These also create debts at the start of employment and were reported by 36 of the 38 fishers EJF interviewed. Other associated abuses remain common, with 84% of crew reporting excessive working hours, over half of crew alleging verbal abuse and threats and 19% describing physical abuse.

An overview of the allegations made by those interviewed over recent years is provided in the table below.

| <b>Unlawful practice</b> | <b>Prevalence among vessels based on interviews undertaken in 2018-2019 (% , n=62)</b> | <b>Prevalence among vessels based on interviews undertaken in 2020 (% , n=38)</b> |
|--------------------------|--|---|
| Withholding of wages     | 92%  | 92%   |
| Excessive overtime       | 82%  | 82%   |
| Physical abuse           | 24%  | 21%   |
| Verbal abuse and threats | 34%  | 37%   |

### **Recommendations**

EJF has made the following recommendations to the Taiwanese government:

- Increase inspector coverage to include all authorized overseas ports (or reduce the number of such ports if more practical in some instances) and where appropriate, prosecute and convict traffickers enough to deter such crime;
- Provide port inspectors with both the training required to identify human trafficking and other human rights abuses and associated resources, including translation capacity;
- Conduct comprehensive, victim-centered interviews of a sample of crewmembers during inspections to identify potential human rights abuses;

- Allocate sufficient resources to bring Taiwanese law in line with the ILO Work in Fishing Convention, C188 in the next year;
- Implement transparency measures, including the publication of information on beneficial ownership and vessels' movement history such as VMS or mandatory AIS;
- Implement electronic reporting and monitoring systems for Taiwanese fishing vessels including remote sensors, cameras and the ability for crew to communicate with outside stakeholders to raise any concerns;
- Strengthen regulations on manning agencies to require that Taiwanese companies only work with agencies that are legally registered in their respective countries; and
- The Executive Yuan should lead cross-agency collaboration involving relevant departments such as the Ministry of Labor, the TFA, the Ministry of Foreign Affairs and the Immigration Agency to increase resources and capacity and to tackle the issue.