

Road to Migrant Fishers' Rights

NHRC Foreign Fishermen's Human Rights Special Report
(Compact Edition)

International Engagement for the Sustainability of Human Rights

Chairperson Chen Chu, NHRC

Taiwan is a maritime nation that is renowned across the world for its fishing industry. As our fisheries workforce is highly reliant on foreign fishermen, whether our nation's fisheries policies and maritime policies respect the human rights of fishermen is not only critical to our national human rights identity but also has repercussions for the supply chain of the entire industry.

In November 2020, we visited the Taiwan Seamen and Fishermen's Service Center in Kaohsiung to investigate the conditions of fishermen from distant water fisheries and to learn more about the lives and accommodations of foreign fishermen. In February of the following year, the NHRC passed a resolution to clarify the systemic human rights issues facing foreign fishermen by collating six major investigations related to the human rights of fishermen conducted by the Control Yuan. A human rights task force for foreign fishermen was also set up; I served as the convener for this task force with the original investigators, Commissioner Wang Yu-

ling, Commissioner Chi Hui-jung, and Member Wang Mei-yu acting as co-supervisors.

Over a ten-month period, the NHRC clarified issues relating to forced labor, transnational brokerage, complaints mechanism, Flag of Convenience management, transfer of wages, and the differences in the legislation applicable to fishermen employed domestically and overseas. In addition to studying these issues, we also engaged with stakeholders through the hosting of a professional forum on the human rights of fishermen; visited and conducted seminars at Cianjhen fishing harbor in Kaohsiung and Nanfang'ao fishing harbor in Yilan; and hosted four seminars with relevant government agencies, non-governmental organizations, and industry operators. Our goal was to develop practical recommendations for the effective resolution of these issues.

The sea knows no boundaries and human rights know no bounds. Fishing vessels must still contend with the requirements of international conventions and global regulations on fisheries governance even when they are at sea. Synchronization with international standards is essential for Taiwan to ensure sustainable fisheries. The NHRC is, therefore, working together with the government, the industry, and NGOs to promote, support, and protect human rights for all.

Equal Treatment of Foreign Fishermen

Commissioner Wang Yu-ling, NHRC

The human rights of foreign fishermen have always been a very important topic for us so I proposed to the NHRC that we collate the six major investigations conducted by the Control Yuan to produce a thematic report on the human rights of foreign fishermen. This was our first attempt at transferring Control Yuan investigations to the NHRC so that we can establish a model for future cooperation. This was also the first special report to be issued by the NHRC on an important human rights topic in its remit.

Under the principle of equal rights outlined in the International Covenant on Economic Social and Cultural Rights, everyone has the right to the enjoyment of just and favorable work conditions without discrimination of any kind, such as race, color, sex, language, religion, and other status. Even if the Labor Standards Act cannot be applied directly to fishermen employed overseas at present, their labor conditions must still satisfy human rights standards and practical recommendations to this end were, therefore, made by me in this report.

No stakeholder bound up with the fisheries industry chain can avoid scrutinizing their human rights record by the international supply chain. Human rights are not just a matter for governments, private enterprises, transnational broker organizations, and all stakeholders in this industry chain should all come together and support the human rights of migrant fishers.

Face Up to the Issue of Fishermen's Human Rights

Commissioner Chi Hui-jung, NHRC

In 2019, I attended a global conference on human trafficking organized by the Holy See at Vatican City. When a priest from Cape Town, South Africa, publicly accused Taiwan of abusing fishermen, I felt so ashamed that I wanted to dig a hole and hide in it. The priest presented a myriad of evidence including photos of abused fishermen, bodies covered with injuries and strangulation marks around the neck, dilapidated ships and bunks, and salary slips for less than US\$200 a month after excessive deductions. These so-called Taiwanese distant water “Flag of Convenience” fishing vessels may have dodged Taiwanese laws but they cannot escape international condemnation.

In 2020, The Coalition for Human Rights for Migrant Fishers in Taiwan published a report that found 92% of foreign fishermen in Taiwan have had their wages deducted, 24% had been subjected to physical violence (typically kicking and beatings), 82% had worked excessive hours, and frequently worked for up to 20 hours at a stretch with almost no time to rest. In

addition, nearly half of all the foreign fishermen had not been enrolled in mandatory labor insurance.

All of these were issues that had already been addressed before I joined the NHRC. I felt that something had to be done by our country. I was fortunate to join the NHRC's "Task Force on the Human Rights of Foreign Fishermen," which launched a series of inspections, conversations, and collaborations. I believe that Taiwan can change.

Human trafficking turns human beings into "merchandise and slaves." It is a serious crime against humanity as it violates the freedom and dignity of its victims, and inflicts immense harm to individual families as well as the entire human race. We must not turn a blind eye to the pain and suffering of victimized fishermen and their families; let's gather our strength to eliminate human trafficking.

Ending Slavery on the High Seas

Member Wang Mei-yu, Control Yuan

Two events that took place in 2015 led to Taiwan being accused of fishermen exploitation. The first was a yellow card against Taiwan's distant water fisheries from the EU and the other was the death of Supriyanto, a fisherman on the Taiwanese-flagged fishing vessel “Fu Tsz Chiun.” These events drew the attention of the government, domestic and foreign media, and human rights groups. A series of investigations into the human rights of foreign fishermen was launched by the Control Yuan. The Flag of Convenience and the management of transnational brokers, in particular, have come under considerable criticism from many sources over exploitative labor practices. I am glad that Chen Chu, the Chairperson of NHRC, attached great importance to the labor rights of fishermen and formed a task force to investigate the situation.

During our investigations, we witnessed many issues with the human rights of foreign fishermen. We also secured the commitment of the Executive Yuan to make improvements, such as capping the number of FOC vessels and overcoming obstacles with direct international wire transfers

to ensure that fishermen receive their wages in full. The report included a recommendation for the Executive Yuan to make proactive amendments to the relevant legislation.

This special report provides a summary of the works conducted by the task force thus far, and it does not mean that this topic will be put to rest. We will continue to monitor developments and expect that the collaborative efforts of the NHRC, executive agencies, and NGOs will bring about the progressive implementation of practical mechanisms for FOC management and broker supervision. We hope this will put an end to slavery on the high seas and change previous international perceptions of Taiwan so that Taiwan will be known as an advocate of human rights for foreign fishermen. At the same time, this will also protect the sustainable development of our nation's distant water fisheries.

Abstract

During the 13th Meeting of the 1st Session of the National Human Rights Commission, the following resolution was passed: “Collate all of the Control Yuan’s foreign fishermen investigations and produce a national special report on the human rights of migrant fishers.”

In this report, six Control Yuan investigations on foreign fishermen provided the starting point for a systematic review of each case. The report began by looking at the unusual nature of work at sea and then went on to analyze the issues with having a dual-track regulatory system for domestically-hired and overseas-hired fishermen; the origins of Flag of Convenience (FOC) vessels and their problems; forced labor and corporate responsibility in transnational supply chains; applicable international covenants and human rights guidelines; as well as the difficulties caused by the unique international status of Taiwan.

The pertinent problems were collated and narrowed down to eight main aspects. In response to the push from non-governmental organizations (NGOs) to “end forced labor in the distant water fishery,” a formal request was sent out to all the applicable agencies for information on their current implementation and feasibility assessments. A variety of methods, including the hosting of professional forums, on-site inspections at Cijin and Cianjhen

fishing harbors in Kaohsiung, as well as at Nanfang'ao fishing harbor in the Su'ao Township of Yilan, industry-government-academic exchange seminars, three governmental seminars, and one focus group discussion on key topics were used for fact-finding and to look for answers.

This report made practical recommendations in four areas: 1. Effectively improving labor conditions and ensuring equality; 2. Regulating FOC vessels through international cooperation; 3. Strengthening brokerage management to prevent double-exploitation; 4. Combating forced labor on the high seas and timely handling complaints.

A sustainable fishery must be based upon the sustainability of human rights. Distant water fisheries in particular are not only subject to the global fishery governance requirements of international maritime law but are also regulated by international labor conventions. Fishery operators must comply with international human rights standards to ensure market access for their catch. Ultimately, we look forward to the government and the private sector's continued collaboration on reforms to eliminate slavery on the high seas.

Keywords: foreign fishermen; migrant fishers; labor rights; working at sea; overseas employment; flag of convenience; brokerage management; forced labor; Work in Fishing Convention; concern for quality of life onboard

Table of Contents

Preface

**International Engagement for
the Sustainability of Human Rights** 004
—Chairperson Chen Chu, NHRC

**Equal Treatment of Foreign
Fishermen** 006
—Commissioner Wang Yu-ling, NHRC

**Face Up to the Issue of
Fishermen's Human Rights** 008
—Commissioner Chi Hui-jung, NHRC

Ending Slavery on the High Seas 010
—Member Wang Mei-yu, Control Yuan

Abstract	012
I. Foreword	017
II. Fishery Development in Taiwan and Overview of Fishery Workforce	023
III. Control Yuan Investigations	031
IV. Follow-up and Institutional Analysis	043
• The unusual nature of maritime labor	046
• Dual-track regulatory system for fishermen employment	049
• Relevant international conventions and human rights indicators	052

V. NHRC Recommendations 085

- Improving labor conditions and ensuring equality 087
- Regulating FOC vessels through international cooperation 091
- Strengthening brokerage management to prevent double-exploitation 093
- Combating forced labor on the high seas and timely handling complaints 098

VI. Expectations and Prospects 103



Foreword



In 2015, four journalists from the Associated Press (AP) conducted a year-long investigation into the inhumane treatment of fishermen trapped on the remote Indonesian island of Benjina. The “Seafood from Slaves” series of reports¹ exposed how seafood sold in American supermarkets and restaurants came from enslaved and exploited fishermen in Southeast Asia. More than 2,000 slave workers from Myanmar, Cambodia, Laos, and Thailand had been tricked into being sold into slavery in Indonesia where they worked long hours under atrocious conditions².

1. Associated Press (AP) investigative report series: <https://www.ap.org/explore/seafoodfrom-slaves/>, last browsed: June 8, 2021.

2. DQ, Obama: Bans U.S. imports of goods produced by child labor, by Weiduoyu (維多魚), 2016.02.26, source: <https://dq.yam.com/post.php?id=5612>, last browsed: June 10, 2021.

In January 2022, an investigation by U.S. Customs and Border Protection (CBP) found evidence of forced labor aboard the Taiwanese-owned and operated fishing vessel “DA WANG” registered in Vanuatu.



The AP reports led to the Obama government passing the Trade Facilitation and Trade Enforcement Act of 2015, which essentially removes the “consumptive demand clause” from the Tariff Act of 1930 (a loophole in the prohibition against goods produced by forced labor to be imported into the United States), opening the way for more rigorous enforcement by Customs. The United States has enforced a strict ban on the import of goods produced by forced labor since.

Between 2019 and 2020, Withhold Release Orders (WRO) were issued at different times by U.S. Customs and Border Protection against four distant

water fishery ships that Taiwanese nationals owned or invested in. The four ships were Tunago No.61, Yu Long No.2, Da Wang, and Lien Yi Hsing No.12.

Taiwanese fishery has come under considerable international pressure in recent years. In 2015, the European Union (EU) added Taiwan to the list of countries not cooperating in the fight against illegal, unreported, and unregulated (IUU) fishing³. The yellow card against Taiwan was finally rescinded by the European Commission (EC) in June 2019 after three years and nine months of hard work. On September 30, 2020, the U.S. Department of Labor published the 9th edition of its “List of Goods Produced by Child Labor or Forced Labor.” The catch from Taiwan’s distant water fishery was an unexpected inclusion.

Due to reports of Taiwanese distant water fishing ships being involved in forced labor and other illegal fishing activities, Karen Christensen, the Senior Vice President of the U.S. supermarket chain Whole Foods Market Inc. wrote a letter to President Tsai Ing-wen on March 31, 2021, stating that

3. In its press release “The European Commission Lifts Taiwan’s Yellow Card on Tackling Illegal Fishing” issued on June 27, 2019, the Council of Agriculture (COA) explained that the regulation to prevent, deter and eliminate illegal, unreported, and unregulated fishing (IUU Regulation) passed by the EU in 2008 imposed a catch certification system for exports to the EU. Third-country inspections commenced in 2012 and a warning (yellow card) would be issued to countries that failed to fulfill international fisheries management responsibilities; bilateral consultations were conducted with such countries to improve their national fishery management system. Ultimately, if improvements had not been made then such countries would be added to the non-cooperative list (red card) and their seafood would be banned from importation into the EU. The EU determined in 2015 that Taiwan was not fully cooperating in the fight against IUU fishing and a yellow card was thus issued.

as their company was a major buyer of sustainable, wild-caught seafood products, they hoped that the Taiwanese government will take the necessary measures to resolve the situation. The decision made by consumers in a major catch market, to engage in ethical catch consumption, has resulted in a flow-on effect throughout the entire distant water catch supply chain.



A view of Cianjhen Fishing Port through a narrow passageway inside the ship.



Fishery Development in Taiwan and Overview of Fishery Workforce

According to the “2019 Annual Report of the Fisheries Agency, Council of Agriculture, Executive Yuan,” the average annual production of Taiwan’s distant water fishery was approximately 697,200 tonnes. The industry employed about 1,140 vessels engaged in tuna longline fishing, skipjack purse seining, squid fishing, and saury stick-held dip netting. These ships operated across three oceans and their total annual output was worth approximately NT\$38.563 billion⁴. Taiwan actively participates in regional fisheries management organizations of the three oceans as a “fishing entity” to protect the rights of Taiwanese vessels to operate in these waters and a quota of around 90,000 tonnes for restricted fish species is secured every year. As of November 8, 2021, there were 255 FOC vessels operated or partially owned by Taiwanese nationals with the authorization of COA. The top three FOC countries were Panama, Vanuatu, and Seychelles⁵.

“Flag of Convenience” vessels refer to ships that are registered in a country different from the nationality of their owners, fly another country’s flag, and fall under another country’s jurisdiction. Low registration fees, low or no taxes, as well as the freedom to hire cheap laborers, are often the main reasons for ship owners to “fly another flag.” Ship owners generally choose

4. The 2020 fisheries statistics of the Fisheries Agency indicated that the distant water fisheries had a total output of 430,000 tonnes valued at NT\$25.665 billion in 2020.

5. Please refer to the Fisheries Agency (FA) website - Homepage > Information and Services > List of Authorized FOC vessels, source: <https://www.fa.gov.tw/cht/FOC/>

a country of registry with lax fisheries management that has neither the will nor the capability to enforce international fisheries management regulations. The practice of using FOC has long been a source of international disputes. In addition to the lack of transparency and difficulty of supervision, they have often been found to engage in IUU fishing activities and other illegal acts such as forced labor and human trafficking⁶.

Taiwanese investment and operation of FOCs can be traced back to the fishing vessel obsolescence scheme established in the 1990s to regulate national catches. The fisheries administration in Taiwan follows the principle of “one-to-one replacement” for managing the number of fishing vessels where an older ship of equal tonnage must be retired for a new fishing ship to be built. Fishing ship operators adapted by investing in FOC fishing vessels. Many operators purchase used fishing vessels directly from Japan. The importation of fishing vessels is banned in Taiwan so these fishing vessels were registered in Panama, Equatorial Guinea, and Belize like merchant ships to become FOC fishing vessels⁷.

6. Please refer to p.32 of the Control Yuan Investigation Report approved on May 5, 2021 (110 財調0006): Flag of Convenience Vessel Management System Case.

7. Overseas Fisheries Development Council of The Republic of China (2016), *Distant Waves* (踏浪千行), Global Views Commonwealth Publishing, p.156~159.

In recent years, Taiwan's inshore and offshore fisheries⁸ (including inland fishing catch) amounted to around 175,600 tonnes with a value of NT\$16.311 billion a year. Fisheries development is therefore characterized by diversification. Comprehensive restrictions on the building of fishing vessels were imposed in 1989 to ensure the reasonable use of fishery resources and the sustainability of fisheries. The number of fishing vessels (rafts) has been progressively reduced to implement responsible fishing to facilitate the rehabilitation and sustainable development of inshore and offshore fisheries. Rest and recreation facilities for foreign crews were also established at Keelung, Penghu, and Kaohsiung to protect their human rights.

8. Inshore fishery refers to fishery activities within the territorial waters (within 12 nautical miles) of Taiwan; Offshore fishery refers to activities within the economic zone (12 to 200 nautical miles) of Taiwan; Distant water fishery refers to fishing activities in waters more than 200 nautical miles from Taiwan or in the economic zones of other countries through fishery cooperation.



Maritime fishing is demanding work in an unusual environment that is affected by the 4Ds which are Difficulty, Distance, Danger, and Dirty when compared to work on land, and the pay can be uncertain. A lack of interest in maritime work among the Taiwanese people has resulted in a serious shortage of labor in the fishery industry.

FA statistics indicated that foreign fishermen have come to account for most of the manpower aboard Taiwan's distant water fishing ships over the last decade or so. They now employ nearly 20,000 foreign fishermen with



Foreign fishermen sorting the catch by the harbor.

most coming from Indonesia (60%), the Philippines (30%), and Vietnam (5%), etc. Around two-thirds were employed via brokers while one-third were recruited directly by operators⁹. Statistics on the domestic employment of foreign fishermen for maritime fishing indicated that there were 10,619 people employed as of the end of July 2021, with Indonesian nationals making up the largest group.

9. FA Director-General Chang Chih-sheng, "Improvement Policy for Rights Protection of Foreign Crew Members on Taiwanese Distant Water Fishing Vessels-Actions Taken on Flag of Convenience Vessels and Employment Agents," part of the NHRC "2021 Forum on International Practice of OPCAT-NPM & Human Rights of Fishermen" collection, p.100~107 of the Forum Handbook.





Control Yuan
Investigations

Despite Taiwan being a major fishing nation, it is now almost completely reliant on foreign fishermen for its fishery workforce. Numerous disputes have resulted from inadequate regulations and the failure to manage foreign brokers. Numerous complaints of fishermen exploitation have been made. Investigations were subsequently requested by the Control Yuan and six major investigations into the human rights of foreign fishermen were completed between 2016 and 2021. Corrective actions were subsequently ordered for a number of government agencies including the Council of Agriculture and Fisheries Agency under the Executive Yuan, the National Immigration Agency of the Ministry of the Interior, the Ocean Affairs Council, the Ministry of Foreign Affairs, and the Ministry of Labor.

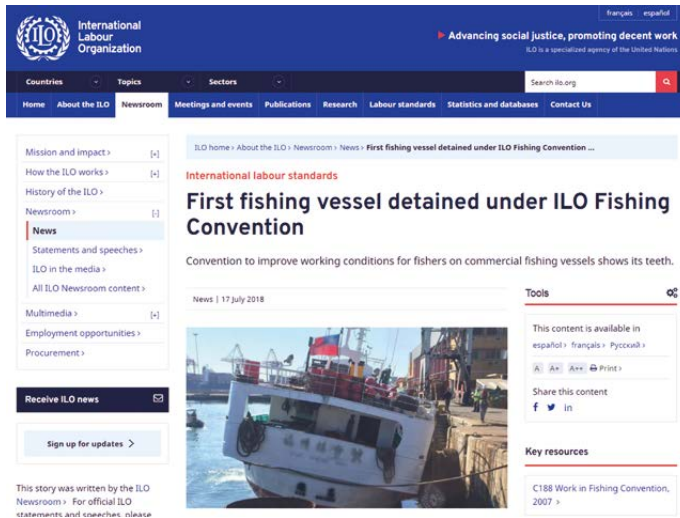
Control Yuan Investigation Report approved on October 5, 2016 (105財調0042): Abuse and Death of Fisherman Employed Overseas Aboard the Fishing Vessel “Fu Tsz Chiun”

In 2015, an Indonesian fisherman fell overboard and another fisherman died after being abused aboard the fishing vessel “Fu Tsz Chiun,” which was homeported in Kaohsiung. The incident drew widespread international interest.

Control Yuan Investigation Report approved on May 8, 2019 (108財調0028): “Fuh Sheng No.11” Impounded Overseas for Violation of Work in Fishing Convention

In 2018, “Fuh Sheng No.11” was impounded in Cape Town, South Africa. The International Labour Organization (ILO) announced on its website that

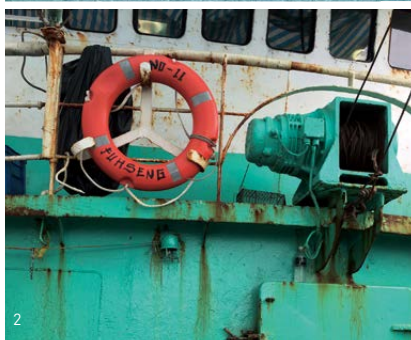
the Taiwanese-flagged vessel “Fuh Sheng No.11” was the first fishing vessel to be impounded overseas on suspicions of violating the C188 - Work in Fishing Convention that took effect in 2017.



When the first Taiwanese fishing vessel accused of violating the 2007 Work in Fishing Convention was listed on the International Labour Organization (ILO) website, it drew international media attention.

On October 12, 2018, Control Yuan Members Wang Mei-yu and Wang Yu-ling traveled to Kaohsiung to inspect the fishing vessel “Fuh Sheng No.11.”





- 1 The harbor where Fuh Sheng No.11 was docked.
- 2 The hull of Fuh Sheng No.11 was noticeably old and worn.
- 3 Control Yuan Members Wang Mei-yu and Wang Yu-ling visited the Indonesian Ministry of Law and Human Rights for discussions on how to combat the exploitation of fishermen.

Control Yuan Investigation Report approved on April 8, 2020 (109財調0019): Rights of Domestically Employed Foreign Fishermen

In 2019, falling debris from the collapse of the Nanfang'ao Bridge in Yilan struck a passing fishing boat, killing six Indonesian and Filipino fishermen, and injuring another nine foreign fishermen. The incident led to widespread public interest in Taiwan and the plight of fishermen. It also highlighted the need to protect the rights of domestically hired foreign fishermen and the necessity to improve their poor working conditions.

Control Yuan Investigation Report approved on May 5, 2021 (110財調0006): Flag of Convenience Vessel Management System

In December 2019, in its report “Seabound: The Journey to Modern Slavery on the High Seas,” Greenpeace Southeast Asia stated that Vanuatu-flagged fishing vessels owned/operated by Taiwanese nationals such as Chin Chun No.12 and Da Wang were suspected of engaging in forced labor through physical violence, excessive overtime, and withholding of wages.





1 No.3 Fishing Port at Nanfang'ao, Yilan. 2 A view of the fishing harbor from a window of the Nanfang'ao coastal center. 3 The collapsed cross-harbor bridge at Nanfang'ao, Yilan.



On September 11, 2021, a group of NHRC staff inspected the FOC vessel “Da Wang” docked at Cijin Shipyard in Kaohsiung.

Control Yuan Investigation Report approved on May 5, 2021 (110 財調0007): Taiwanese Distant Water Fishing Vessel Catches Were Added to the U.S. Department of Labor's List of Goods Produced by Forced Labor

In 2020, the U.S. Department of Labor included Taiwan in the 9th edition of its “List of Goods Produced by Child Labor or Forced Labor” published on September 30 due to exploitative labor practices of Taiwanese-flagged distant water fishing vessels or FOCs with Taiwanese owners. Economic losses may result from a future boycott of catches from these ships.

Control Yuan Investigation Report approved on May 5, 2021 (110財調0008): Employment Broker System and Management of Foreign Fishermen in Taiwan

In 2020, the Yilan District Prosecutors Office investigated a case of unethical brokerage and filed charges against the suspect under the Human Trafficking Prevention Act. The broker had forced domestically-hired foreign fishermen into becoming black market foreign workers by maliciously reporting them as missing. The statuses of fishermen hired overseas cannot be established if they were not properly reported by fishing ship operators or brokers, turning them into phantom workers on the high seas. The absconsion rates for fishermen hired domestically or overseas are both higher than for foreign workers in other industries.



Shipboard conditions of fishermen.



The living conditions at Dasi Fishing Port's coastal center. There are no partitions in the showers.



Control Yuan Members Wang Mei-yu and Wang Yu-ling traveled to Keelung Port on August 10, 2018, to inspect the fishing vessel "Hou-Shin" and learn about the shipboard living conditions of fishermen.

The aforementioned six completed investigation reports involve a complex web of related issues. Preliminary analysis suggested that the problems can be narrowed down to the following eight main aspects:

- ① Questions over applicable legislation and which agencies have jurisdiction
- ② Protection of fishermen's labor rights
- ③ Pre-employment training
- ④ Manpower issues
- ⑤ FOC management
- ⑥ Brokerage management
- ⑦ Human trafficking for forced labor
- ⑧ Quality of life onboard



Follow-up and Institutional Analysis

The NHRC utilized the six migrant fishermen investigations as the starting point for looking at the unusual nature of maritime labor. The report then analyzed the issues with having a dual-track regulatory system for domestically-hired and overseas-hired fishermen, the applicable international conventions and human rights indicators. The hosting of professional forums, on-site inspections at Cijin and Cianjhen fishing harbors in Kaohsiung, as well as at Nanfang'ao fishing harbor in the Su'ao Township of Yilan, industry-government-academic exchange seminars, and governmental seminars were conducted to track the progressive improvements made by government agencies on labor rights issues in distant water fishery.

The NHRC organized numerous meetings with relevant agencies over a one-month period from the end of September to the end of October in 2021. The agenda for agency talks was developed from the list of identified issues and the actual conditions found during the inspections. The focus of each communication session was as follows: The topic for the first session was the labor conditions of fishermen and FOC management. The second session looked at identifying human trafficking and forced



labor. The third session looked at issues with transnational brokers, and for the last session NGOs, the Indonesian Economic and Trade Office in Taipei, and brokers were brought together to discuss how to ensure that wages were paid directly to foreign fishermen instead of having to pass through Taiwanese brokers then the brokers in their home country first. Bypassing the brokers would prevent exploitation by intermediaries or wage deductions. Substantive and practical recommendations were also proposed in the special report.

• The unusual nature of maritime labor

Fishery operations are deeply influenced by the weather and sea state, and differences in fish species, fishing methods and fishery environments, meaning that the working hours and conditions can be very different as well. Research by Lin Liang-jung, Wang Han-wei et al.¹⁰ found that the basic difference between maritime labor and terrestrial labor was in their place of work. Fishermen working on ships spend extended periods of time in an isolated environment. The long periods spent at sea meant extended separation from their families and society. Manpower constraints aboard

10. Lin, L.J., and Wang, H.W., (2016) "The legal mechanism and employment policies for the crew of fishing vessels - with discussion on labor protection of Japanese crew of fishing vessels" , *Taiwan the Law of the Sea Review*, Issue 24, p.6~7. Lin, L.J., (2011.08), "Specificity of maritime labor issues and protection of rights: Additional discussion on regulation and impact of the 2006 MLC established by ILO", *Journal of New Perspectives on Law*, Issue 31, p.6.

ships meant that working at night was unavoidable and has become a norm. The working hours of fishermen are also influenced by the season, weather, and target catch; therefore, irregular labor is also unavoidable.

The shipboard conditions of fishermen were poor.





Low-skilled or unskilled foreign fishermen are at high risk in terms of occupational safety, health, and abuse. Academics¹¹ stated that distant water fishing vessels employ fishermen overseas to replenish their foreign workforce as quickly and cheaply as possible. There is, however, no established supervisory or inspection mechanism to determine whether fishermen have the appropriate fishing knowledge or health and safety awareness, never mind whether the fishermen have undergone adequate training on occupational health and safety.

11. Liu Huang L.C., Yen K.W., (2019), "A pilot research on the labor process system in distant water fisheries: An industrial fishing model building on maximized profits, consensus and risk delegation", *Journal of Labor Studies*, Vol. 21, Issue 2, p.84.

• Dual-track regulatory system for fishermen employment

Foreign fishermen are employed by Taiwanese fishing vessel owners for maritime fishing. Employment can be divided into domestic employment and overseas employment depending on the type of fishing activity. The recruitment, approval and management of domestically hired migrant fishermen must follow the Employment Services Act, and must also comply with domestic labor regulations such as the Labor Standards Act, Occupational Safety and Health Act, and Labor Insurance Act with the Ministry of Labor as the competent authority. Whereas the approval and management of foreign fishermen hired overseas are governed by the Act for Distant Water Fisheries and its subordinate legislation with the Fisheries Agency of the Council of Agriculture as the competent authority. There are immense differences between the two regulatory systems.

NGOs have called for “abolishing of overseas hiring and making the Labor Standards Act applicable to all foreign fishermen” as they believed that foreign and Taiwanese fishermen alike should enjoy the same rights and protections. If the Labor Standards Act applies to all domestically-hired foreign fishermen, then why aren’t Taiwan’s labor regulations applicable to foreign fishermen that are hired overseas to work on Taiwanese vessels?

According to the COA, the industry believed that distant water fisheries is a highly internationalized industry subject to international competition. The working conditions (e.g. working hours and wages) of foreign

fishermen hired overseas should be based on ILO Convention No.188 (C188) and international mechanisms. The regulations governing working and living conditions should be adjusted and implemented in accordance with C188 to progressively close the gap with the Labor Standards Act¹².

The Labor Standards Act is a mandatory public law. Applying a public law directly to labor contracts established overseas runs into problems with extraterritorial jurisdiction which tests Taiwan's ability and limitations on exercising public authority overseas. When a contract is signed overseas, the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements applies and will most likely cause issues such as which laws to apply.

Most domestically hired fishermen work on inshore and offshore fishing vessels. They have always been covered by the Labor Standards Act. Those hired overseas are generally fishermen on distant water fishing vessels. Employment is in the form of fixed-term contracts where employment, work, and dismissal all take place overseas. The employer and employee can in theory agree to be bound by the Labor Standards Act of Taiwan.

12. Letter No. 1100233521 issued by the COA on August 27, 2021.

The unusual nature of maritime labor means working conditions such as working hours and rest time stipulated by the Labor Standards Act are difficult to implement in practice. There are major differences in the work aboard inshore/offshore fishing vessels and distant water fishing vessels. Distant water fishing vessels operate for long periods at sea making them more similar to the crew of merchantmen. The labor rights of merchantmen crews are actually governed by the Seafarer Act, the ILO Maritime Labour Convention (2006) (Convention No. 186), and not the Labor Standards Act. At the same time, domestic and overseas-hired fishermen each fall under the authority of different regulatory systems and are managed under different laws. Abolishing the dual-track regulatory system requires a decision at a higher policy level. Past amendments to the three distant water fisheries laws however were already based on the adoption of the dual-track regulatory system.

The aforementioned problems all increase the difficulty of applying the Labor Standards Act to fishermen hired overseas. Fishing vessel owners and fishermen hired overseas are unlikely to agree to be bound by Taiwan's labor regulations in their labor contracts as well. If a separate set of regulations that account for the unusual nature of maritime labor is to be defined, this can't be left completely up to the market to decide. The parts on protecting the health, safety, and dignity of fishermen, in particular, should still be guided by the spirit of the Labor Standards Act. Reference principles should be set such as maximum working hours and minimum wage aboard fishing ships. Such standards may be different from terrestrial labor but the differences should not be too pronounced

either. The standards should be comparable to other countries in the same class such as Japan and Korea. Progressive improvements should be implemented to meet this target. Ultimately, the standards should comply with the Work in Fishing Convention (2007) for harmonization with international standards.

If the protection of fishermen's rights can be strengthened by amending existing legislation in accordance with the above principles, bypassing the Labor Standards Act and the various obstacles to their inclusion may be a faster way to realize the protection of fishermen hired overseas. The advantage of this implementation is more transparency of fishing vessel information. A compliance database for fishing vessels can be set up by recording violations committed by the vessels. The legal authority for the publication of the compliance black lists should be secured in advance to avoid any privacy issues.

- **Relevant international conventions and human rights indicators**

The declaration of the 200 nautical mile exclusive economic zones (EEZ) by coastal nations in the 1970s puts pressure on the existing fishing areas of distant water fisheries nations. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) recognized the "sovereign rights" of coastal nations on biological resources within their 200 nautical miles EEZ¹³.

Distant water fisheries nations have the right to fish on the high seas beyond the 200 nautical-mile limit under Article 116 of UNCLOS. At the same time, restrictions are placed on the type of fish stocks, fishing gear, fishing technique, and fishing area¹⁴.

A number of key documents were subsequently passed by the United Nations to bring about the effective conservation and maintenance of order in international fisheries. The passing of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stock on August 4, 1995, marked the end to the freedom of fishing at will on the high seas¹⁵. In the foreword of *Distant Waves*, former COA deputy minister Sha Chih-I noted that: “Management of high seas, regional disputes over fishing rights, and the Taiwan question spurred the creation of the 1995 UN agreement on fishing stocks.” The unique international status of Taiwan led to the term “fishing entity”¹⁶ being coined so that Taiwan could be

13. See Article 56 of the United Nations Convention on the Law of the Sea.

14. Wang K.H. (2011), Globalization, Maritime Ecology, and New Trends in the Development of International Fisheries Laws, Showwe Information, p.4.

15. Liao, W.C. (2008), *The International Law of the Sea: Maritime Delimitation and Fisheries of the High Sea*, Yang-Chih Book, p.166.

16. Overseas Fisheries Development Council of The Republic of China (2016), *Distant Waves* (踏浪千行), Global Views Commonwealth Publishing, p.13~15.

brought into the regulatory framework. Taiwan would go on to participate in regional fisheries management organizations as a fishing entity as well.

In addition to the UNCLOS regulations on sustainable fisheries, there are also international conventions and agreements on the human rights of fishermen. Together, they form the regulatory framework for fishery safety, environmental protection, and crew training for fishing vessels. The four main documents in question are: “Work in Fishing Convention (2007)” (C188) of the International Labour Organization, “International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1995),” the “Cape Town Agreement (2012)” on the safety of fishing vessel of the International Maritime Organization, and the “Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing” of the UN Food and Agriculture Organization.

Other important conventions related to the human rights of fishermen include: “The International Covenant on Economic, Social and Cultural Rights” (ICESCR), “The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families” (ICMW) and the eight fundamental conventions of the ILO. The basic human rights issues involved in the six investigations included: right to life, right to freedom, right to health, right to equality, right to social security, right to work, and right to freedom from torture. Articles corresponding to these basic human rights can all be found in core UN conventions on human rights.

The key to ending “Seafood from Slaves” is law enforcement.

How can Taiwan progressively carry out the spirit of international conventions and work together with all stakeholders to protect the human rights of migrant fishers?



On November 27, 2020, NHRC Chairperson Chen Chu and other commissioners inspected the Taiwan Seamen and Fishermen's Service Center in Kaohsiung. They were accompanied by the Deputy Minister of the Council of Agriculture, Chen Tian-shou, as well as officials from the Fisheries Agency and Kaohsiung City Marine Bureau (KCMB). During the visit, the Pastor of the Presbyterian Church (PCT), Joshua Chen briefed the officials on the Center's efforts to protect the rights of foreign fishermen. Pastor Chen has been a long-time advocate of migrant fishers' rights.



On June 23, 2021, topics such as FOC vessels and brokerage management, as well as the working conditions, healthcare, and social security of migrant fishers were discussed during the Forum on Human Rights of Fishermen.



Participants: 1 Wang Mei-yu, Member of Control Yuan. 2 Hsin-Huang Michael Hsiao, National Policy Advisor. 3 Moffy Chen, Ocean Project Lead of Greenpeace. 4 Chang Chih-sheng, Director-General of the Fisheries Agency.

2021



Moderator: Commissioner Wang Yu-ling, NHRC



Shih Chen-yang, Director General
of Workforce Development Agency



Member Tsai Chung-yi,
Control Yuan

酷刑防制國際運作暨

Forum on International Practice of OPCAT-NPM

漁工人權專業論壇

& Human Rights of Fishermen



Moderator: Commissioner Chi Hui-jung, NHRC



Wei Chien-feng, Attorney
and Consultant



Shih Yi-hsiang, Secretary
General of Taiwan Association
for Human Rights





A fishing vessel docked at Cijin Shipyard, Kaohsiung.



On September 11, 2021, NHRC Chairperson Chen Chu along with members Wang Yu-ling, Wang Mei-yu, and Chi Hui-jung traveled to Kaohsiung to inspect the Cijin and Cianjhen fishing ports. They were accompanied by Director-General Chang Chih-sheng.



1 The commissioners spent the morning interviewing Indonesian fishermen working aboard the fishing vessel “Da Wang” with the help of an interpreter.



2 NHRC Chairperson Chen Chu noted the complaints mailbox aboard the “Da Wang” and asked the fishermen what other complaints channels are available.



3 Lin Han-yu, Section Chief at Taiwan Tuna Association, introducing the improvements to the shipboard equipment aboard “Da Wang.”



4 Inspection of “Da Wang” comes to an end.

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1-4 In the afternoon, the commissioners visited the Taiwanese-flagged distant water fishing vessel “Fong Chun No.36” docked at Cianjhen Fishing Port.

5 Interviewing the Indonesian fishers working aboard Fong Chun No.36 accompanied by Kaohsiung City Mayor Chen Chi-mai.

6 The commissioners inspected the shower facilities at Cianjhen Port.





On September 11, 2021, an industry-government-academic exchange seminar hosted by Prof. Liu-Huang Li-chuan was held at the Taiwan Tuna Association conference room.



A corner of Cianjhen Fishing Port, Kaohsiung.



Nanfang'ao Fishing Port, Yilan.



On September 11, 2021, NHRC Chairperson Chen Chu along with members Wang Yu-ling, Chi Hui-jung, and Wang Mei-yu visited Nanfang'ao Fishing Port in Yilan. They were accompanied by Director-General Chang Chih-sheng.



NHRC Chairperson Chen Chu and the rest of her party inspected the vacant coastal center and listened to a presentation from the Yilan County Government on its plans to convert the coastal center into a multi-purpose accommodation hostel for fishermen.





1-2 The commissioners inspected the shore-side shower and washroom facilities at Nanning Market as well as the foreign fishermen's showers at the No.3 Fish Market.



3 A seminar was held at the Su'ao Fishermen's Association conference room at the end of the inspection and a speech was given by Chairperson Chen Chu.

4 Member Wang Mei-yu.

5 Commissioner Chi Hui-jung.



A number of seminars were held by the NHRC between September and October 2021 on the topic of migrant fishers' rights. On September 30, the first multi-agency exchange seminar was held to discuss the working conditions of fishermen and the management of FOC vessels.

1 Consultant Liu Chin-hsin speaking.

2 Commissioner Wang Yu-ling was the seminar moderator.

3 Deputy Minister of Labor Wang Shang-chih proposing suggestions on insurance.

4 Director-General Chang Chih-sheng of the Fisheries Agency giving an explanation.

5 Briefing on the working conditions of foreign fishermen delivered by Section Chief Chiu Yi-hsien of the Fisheries Agency.



6 Member Wang Mei-yu raising a question.

7 Commissioner Chi Hui-jung raising a question.

8 Director Wang Hou-cheng from the Ministry of Labor explained the actions taken by the ministry in response to the human rights issues of foreign fishermen.

9 Briefing delivered by Senior Technical Specialist Liu Chi-chao from the Fisheries Agency on FOC vessels.



On October 8, 2021, ways to identify human trafficking and forced labor were discussed at the second multi-agency exchange seminar.



- 1 Head Prosecutor Chu Hua-chun from the Ministry of Justice speaking.
- 2 Deputy Director Su Yu-kuo from the Ministry of Labor speaking.
- 3 Section Chief Shi Tsun-ping from the National Immigration Agency speaking.
- 4 Deputy Director-General Liang Kuo-hui from the National Immigration Agency speaking.
- 5 Section Chief Wang Shi-feng from the Coast Guard Administration speaking.
- 6 Section Chief Huang Ling-yu from the National Immigration Agency speaking.



- 1 Moderator: Member Wang Mei-yu.
- 2 Speech by NHRC Chairperson Chen Chu.
- 3 Speech by Commissioner Wang Yu-ling.
- 4 Commissioner Chi Hui-jung raising a question.
- 5 Briefing delivered by Senior Technical Specialist Liu Chi-chao from the Fisheries Agency.
- 6 Additional explanation provided by Section Chief Lin Ding-rong from the Fisheries Agency.



7 Staff from the Ministry of Labor in attendance.

8 On October 8, 2021, the topic of brokerage management was discussed at the third multi-agency exchange seminar.

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On October 27, 2021, the topic of direct wire transfer of foreign fishermen's salaries was discussed at the 4th seminar:

- 1 Speech by NHRC Chairperson Chen Chu.
- 2 Moderator: Commissioner Wang Yu-ling.
- 3 Member Wang Mei-yu raising a question.
- 4 Speech by Minister without Portfolio Lo Ping-cheng.
- 5 Briefing by Section Chief Chiu Yi-hsien of the Fisheries Agency.





- 1 A seminar focused on solving issues regarding the direct wire transfer of salaries.
- 2 Director Chen Chun Chao and Manager Wang Wen-lang attended as the brokers' representatives.
- 3 Assistant Vice President Lin Hsiang-pin from Mega ICBC (as the representative for the Bankers Association) explained international wire transfer.
- 4 Head of Manpower Purwanti Uta Djara from the Indonesian Economic and Trade Office in Taipei (IETO) explained the attitude adopted by the Indonesian Government.
- 5 Deputy Director Su Yu-kuo from Workforce Development Agency, Ministry of Labor speaking.
- 6 Director Liu Wan-chi from Banking Bureau, Financial Supervisory Commission speaking.
- 7 General Manager Endry Supriadi, representative of PT. Bank Rakyat Indonesia Tbk. explained the international wire transfer operations of Indonesian banks.

1 Director Lennon Wong from the Serve the People Association, Taoyuan, speaking as the NGO representative.

2 Shih Yi-hsiang, Secretary General of Taiwan Association for Human Rights, speaking.

3 Hsiulien Chen, Researcher of Taiwan International Workers' Association, speaking.

4 Senior Campaigner Chiu Shao-chi from Environmental Justice Foundation, speaking.

5 Allison Lee, Secretary General of Yilan Migrant Fishermen Union, speaking.

6 Yuton Lee, Campaigner from Greenpeace, speaking.

7 Seminar moderator introducing the participants.





工人權專案座

單位：監察院國家人權委員會

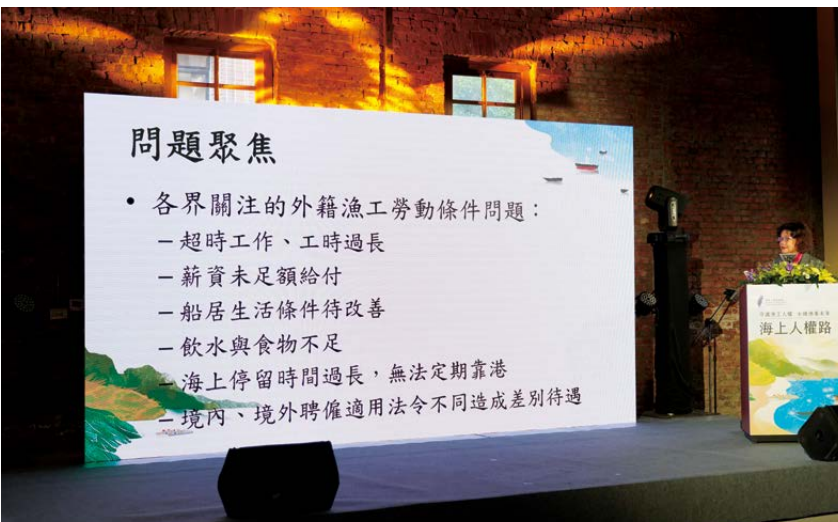




NHRC Recommendations

• Improving labor conditions and ensuring equality

The most immediate issue for foreign fishermen is their labor conditions. Areas of domestic and international concern in the labor conditions of fishermen included overtime, excessive hours, wages not paid in full, inadequate shipboard living conditions, and lack of food and water aboard the ship. Other labor rights issues included staying too long at sea and not being able to dock for long periods of time. Different legislation



On November 30, 2021, Commissioner Wang Yu-ling gave a report on fishermen's working conditions during a press conference for the release of the *NHRC Foreign Fishermen's Human Rights Special Report*.



NHRC Chairperson Chen Chu and Minister without Portfolio Lo Ping-cheng each delivered a speech during the press conference.

governing fishermen hired domestically and overseas lead to wide gaps in their labor conditions. Fishermen hired overseas are covered by the Act for Distant Water Fisheries and receive significantly lower wages by comparison and are not protected by social insurance.

The Labor Standards Act cannot be applied directly to foreign fishermen hired overseas but a minimum standard for human rights should be defined in the spirit of the Labor Standards Act. The Executive Yuan should therefore examine the relevant provisions of the Work in Fishing Convention (2007) (C188) of the ILO and conduct an inventory of items yet to be implemented from the convention. Amendment of existing regulations should be studied pending the domestication of ILO-C188 to narrow the gaps between the Act for Distant Water Fisheries, the Labor Standards Act and ILO-C188. Alternatively, the feasibility of specifying minimum standards for labor conditions and dispute resolution mechanisms in standard labor contract templates should also be considered.

Equal rights as enshrined in the ICESCR should not discriminate against foreign fishermen hired overseas. The wages of fishermen hired



Guests viewing a photo gallery during the press conference for the release of the *NHRC Foreign Fishermen's Human Rights Special Report*.

overseas should be progressively increased based on the adjustment mechanism for minimum wage. Wages should in principle be paid directly and in full. In terms of working hours, employers should receive mentoring on using technology-based management of attendance records to ensure that fishermen receive sufficient rest. Further improvements are also recommended in the following areas where there are significant discrepancies in existing legislation:

- ① **Social insurance protection:** Fishermen hired domestically are entitled to labor insurance, occupational accident insurance, and National Health Insurance. Occupational accident insurance is in effect a form of liability insurance for employers as well. Fishermen hired overseas are only entitled to commercial insurance of no less than NT\$1 million. This offers inadequate protection to fishermen, and the employer is still liable for compensation claims from the fishermen if there is an accident.
- ② **Occupational accident protection and compensation:** Owners of fishing vessels that measure over 24m in length or routinely spend more than 3 days at sea are expected under the convention to establish prevention plans for occupational accidents, occupational injuries, and occupational diseases¹⁷. Fishermen should be able to obtain appropriate medical treatment and compensation in line with national legislation¹⁸.

17. Article 32, Paragraph 1, Sub-paragraph 1 of Work in Fishing Convention, 2007.

18. Article 38, Work in Fishing Convention, 2007.



③ Health and safety equipment and basic safety training: The convention requires fishing vessel owners to provide fishermen with appropriate personal protective clothing and equipment aboard the ship; every fisherman must undergo basic safety training that has been approved by the competent authority; fishermen must possess a reasonable understanding and be familiar with the equipment or tasks before they are expected to use the equipment or perform those tasks¹⁹. The convention also specifies the captain's responsibility for health and safety management²⁰.

The issues of inadequate social insurance protection, inadequate occupational accident protection and compensation, inadequate health and safety equipment, and inadequate training in basic safety outlined above should be addressed by amending the Act for Distant Water Fisheries and its subordinate legislation. The harmonization of distant water fisheries regulations, with ILO-C188 and the Labor Standards Act, can reduce discrepancies in their respective provisions and will improve the labor conditions of foreign fishermen and effectively protect equal rights.

19. Article 32, Work in Fishing Convention, 2007.

20. Article 8, Work in Fishing Convention, 2007.

- **Regulating FOC vessels through international cooperation**

Under international law, if Taiwan is not the FOCs country of registration then it has no jurisdiction over them unless human trafficking is involved. The FA has in recent years managed the labor conditions of FOC fishermen indirectly through permits for investing in the operation of FOCs. The Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels and its subordinate legislation were however originally written to prevent illegal, unreported, and unregulated (IUU) fishing by FOCs.

Short, medium and long-term policy measures have been proposed by the FA for FOC management. The government has made it clear that it does not support the use of FOCs and caps will be imposed. Recent amendments to the relevant legislation also bar Taiwanese nationals involved in forced labor, human trafficking, and similar crimes from investing in the operation of foreign-flagged fishing vessels; foreign-flagged fishing vessels involved in forced labor or human trafficking are banned from Taiwanese ports as well.

More detailed provisions should be incorporated into these management measures based on the actual conditions of fishermen aboard the ships. An outright ban may represent a missed opportunity to conduct boarding inspections or impound ships to seek compensation.

Taiwan's diplomatic difficulties make it difficult to liaise with the main countries of registration used. Even if they ignore our requests for arbitration, we can still leverage pressure from the target markets for catch

products to establish an international mechanism for fighting FOCs engaged in IUU fishing and exploitative labor practices.

Under existing legislation, FOCs can be required to undergo customs, immigration, plant and animal, security, IUU catch, and navigational safety inspections when they arrive in port. The only exception is human rights and there is currently no legal basis for conducting labor inspections; the legal basis for imposing additional labor conditions during investment review and approvals is also too weak. The Executive Yuan should therefore be proactive in amending the relevant legislation to ensure that a sound legal basis is put into place.



On November 30, 2021, member Wang Mei-yu gave a report on FOC vessels and brokerage management during the press conference for the release of the *NHRC Foreign Fishermen's Human Rights Special Report*.

• Strengthening brokerage management to prevent double-exploitation

In addition to FOCs being owned by Taiwanese nationals, Taiwanese brokers have also been accused of recruiting foreign fishermen for FOCs or even foreign-flagged fishing vessels. The labor contracts they drew up were in effect for indentured servitude. Poor management or inadequate supervision of transnational labor brokerage means that unscrupulous brokers are given free rein to engage in exploitative labor practices.

More than fifty brokers involved in the overseas employment of fishermen are supervised by the FA. There are however significant shortfalls in its management regulations compared to the brokers governed by the

Ministry of Labor under the Employment Services Act. Brokerage for overseas employment of fishermen is far more complex than domestic employment. The broker might be responsible for fishermen management, local training, and disbursement simultaneously leading to a blurring in responsibilities between the employer and the broker.

So-called “sponsors” (brokers) in the source countries of fishermen as well as license-sharing by one-man agencies in Taiwan are all problems that require rigorous



enforcement. The most serious of the cases investigated by the Control Yuan involved fishermen being deliberately reported as missing by the broker. The absconsion rate for foreign fishermen was higher than migrant workers in the general industry and was concentrated in a small number of brokers. These fishermen became the victim of double-exploitation and wage deductions by brokers in two countries.

The advance payment of wages by brokers is particularly problematic. Brokers in two countries may charge fees, pre-deduct wages, or collect fines under a variety of pretenses that result in fishermen not receiving their full wages. Multiple transfers may also lead to high processing fees and international wire transfer losses, all of which may ultimately be borne by the fishermen. Inter-ministerial or even international cooperation should be launched to resolve the problem with international wire transfers and exchange rates. Remove brokers from the loop and allow for wages to be transferred directly will ensure that foreign fishermen and their families receive the wages they are entitled to.

The Ministry of Labor (MOL) has more experience with the management and evaluation of international labor brokers but there is still room for improvement in its implementation. Marks are now deducted for the number of missing fishermen in the FA's evaluations. The FA is also planning to align its brokerage management model with that of the MOL in the future. For example, local brokers that handle overseas employment of fishermen will be required to obtain a permit from the MOL. Taiwanese brokers that recruit fishermen for FOCs will be regulated in the future

as well. In theory, the standard for brokers involved with distant water fishermen should be set higher than brokers for inshore/offshore fishermen. The FA should therefore strengthen its management of brokers for overseas employment of fishermen using the domestic broker regulations as a starting point. We look forward to seeing the two ministries working closely together to realize the effective supervision of brokers through better management and evaluation.

As for foreign brokers, even though they fall under the jurisdiction of the fishermen's source countries, the FA has indicated foreign brokers will be reined in indirectly through regulation of domestic brokers. There must be fisheries cooperation between Taiwan and the source country, and the foreign broker must be fully-licensed in its home country. Domestic brokers will not be allowed to collaborate with them otherwise. We recommend that the requirements be tightened even further. If a foreign broker or its employees had been disciplined on employment services in the source country of the fishermen then fishing vessels or brokers with Taiwanese investment in their operations are barred from recruiting fishermen through these illegal foreign brokers.



踏上船艙...

漁業是香港重要的經濟活動，也是香港人生活的一部分。然而，隨著漁業資源的減少，漁民的生活也面臨著巨大的挑戰。本片記錄了漁民在船艙上的生活，以及他們對未來的期望。

工作日常

本片記錄了漁民在船艙上的生活，以及他們對未來的期望。本片記錄了漁民在船艙上的生活，以及他們對未來的期望。

漁獲

本片記錄了漁民在船艙上的生活，以及他們對未來的期望。本片記錄了漁民在船艙上的生活，以及他們對未來的期望。

紀惠容





A group photo of all the guests attending the press conference for the release of the NHRC Foreign Fishermen's Human Rights Special Report.

- **Combating forced labor on the high seas and timely handling complaints**

The vulnerability of foreign fishermen is due to the nature of their industry. Issues such as poor working conditions, wages not being paid in full or directly, poor living conditions, and lack of a transparent channel for complaints have all been mentioned above. These structural problems have resulted in the systematic exploitation of labor.

However, such practices of forced labor have rarely been classified as human trafficking. In 2019, judicial police agencies prosecuted 32 cases of human trafficking and exploitation. Charges were filed and summary judgments were requested for 14 cases (43%). Only 7 cases (21%) were found guilty by the district courts²¹. Many issues with the current system were found including an inadequate procedure for identification of the victims; blurred division of responsibilities between the MOL and the FA impacted on the time and efficiency of distant water fishing vessels making it difficult to investigate forced labor of distant water fishermen; the lack of

21. In 2019, judicial police agencies prosecuted 32 cases of human trafficking and exploitation. Charges were filed and summary judgments were requested for 14 cases (43%). Only 7 cases (21%) were found guilty by the district courts; this showed that investigation and sentencing of forced labor cases by prosecutors and the courts led to summary sentences (suspended sentence, set term of imprisonment commutable to fines or community service, or fines). Only 20% of the cases were found guilty so there is room for improvement in how such cases are handled. (Please refer to the Control Yuan Investigation Report approved on May 5, 2021 (110財調0007), p.120.)

According to the *2020 Progress Report on Combating Human Trafficking of the R.O.C. (Taiwan)* issued by the National Immigration Agency of Ministry of the Interior: 159 cases of human trafficking were detected in 2020. Of these, 29 were for forced labor and 130 were for sexual exploitation; charges were filed by local prosecutors' offices in 78 cases related to human trafficking.

建議(二)：建立聯合查緝平台

內政部正研議訂定「強化打擊海上人口販運案件工作指引」，以利第一線漁政及勞政人員於公海登檢或港口檢查時，可以快

On November 30, 2021, Commissioner Chi Hui-jung gave a report on forced labor at sea during the press conference for the release of the *NHRC Foreign Fishermen's Human Rights Special Report*.

government capacity to investigate distant water fishing vessels and having no legal basis for conducting labor inspections of FOCs.

1 Rapid identification of forced labor

Previous investigation reports by the Control Yuan noted that some cases of foreign fishermen subjected to exploitative labor practices were identified as human trafficking for "forced labor" while some were treated as "labor dispute." The 11 indicators set out in the ILO Forced Labour Convention (C-029) are generally used internationally as the criteria for determining forced labor²². Even though these 11 indicators have now been incorporated into the identification criteria used in Taiwan, further improvements are needed in how they are applied in practice.

22. The 11 indicators are: the abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime.

As of the end of September 2021, the 1955 hotline received 3 reports of suspected human trafficking. These were passed onto the judicial agencies for assessment and 1 was determined to be a victim. Front-line administrative personnel staffing the 1955 hotline and law enforcement personnel require adequate training so they can use past examples to quickly identify “forced labor” cases when a victim’s complaint is received. Step one, therefore, calls for improved training so that follow-up judicial investigations and protective placement can proceed smoothly.

② Establish a joint inspection platform

The “Guidelines for Combating Human Trafficking at Sea” are now being devised by the Ministry of the Interior. A checklist format based on the 11 forced labor indicators of the ILO is recommended to facilitate rapid assessment by front-line fisheries and labor administration personnel during boarding inspections on the high seas or shore-side inspections.

The numerous competent authorities specified in Article 5 of the Human Trafficking Prevention Act complicate the division of labor. Forced labor aboard fishing vessels in particular involves a number of competent authorities. At sea, the Coast Guard Administration (CGA) and the FA may be involved. Once docked, labor inspection units, National Immigration Agency, and the National Police Agency may become involved as well. A multi-agency joint inspection platform with clear divisions of labor is needed so that new cases can be quickly reported to law enforcement for investigation.

③ Popularize human rights education and cultivate sensitivity to human trafficking

Promoting greater victim awareness among all NGOs, corporate sectors, professional associations, and even fishermen themselves is recommended. Human rights education and exchanges can be used to introduce the 11 indicators of forced labor and cultivate sensitivity to human trafficking to create a common language for the protection of human rights.

④ Institutionalization of supply chain responsibility

Western countries are increasingly institutionalizing supply chain responsibility through legislation and banning the products of forced labor from their markets. Orders from consumption nations are being used to exert pressure on large enterprises to take responsibility for assessing the forced labor risks in the products or merchandise supplied by their supply chains. Preventive and remedial actions must also be taken. Businesses have no choice but to be proactive in dealing with forced labor issues in their product supply chains. Taiwan is no longer on the periphery of the global supply chain but is in fact a major trading nation. The Executive Yuan should therefore think actively about the institutionalization of corporate responsibilities such as “transparent supply chain” and “duty of due diligence.” Such initiatives will contribute to harmonization with international standards and provide businesses with a yardstick to follow.

⑤ Diverse and timely complaints channels

A diverse range of timely complaints channels as well as a mechanism for processing complaints must be established to effectively protect the rights of fishermen and combat forced labor at sea. The Executive Yuan should work actively to overcome difficulties such as the relatively high cost and difficulty of popularizing hardware for seeking assistance so that maritime communications do not prevent complaints from being made and assistance being provided in a timely manner. It is hoped that diverse and timely complaints channels can be established on every distant water fishing vessels so that fishermen aboard these vessels can make complaints in a timely manner. The relevant government agencies can then monitor and respond to situations right away.

Finally, there should be more frequent communication between government departments and NGOs to promote mutual understanding and collaboration. NGOs will then be more willing to discuss and work with the government to resolve problems when a complaint is received instead of applying pressure through the international community right away.



Expectations and Prospects

The “2021 Forum on Human Rights and Corporate Action in Taiwan” was hosted by the NHRC on December 6, 2021. The topic of the forum was based on the “UN Guiding Principles (UNGPs) on Business and Human Rights.” Industry and government leaders in associated fields were invited to present reports on responsibilities and new business opportunities related to the environment, society, and corporate governance (ESG).

In her speech, NHRC Chairperson Chen Chu stated that corporate human rights were a key milestone in the development of human rights in Taiwan. Economic development is not the sole goal of national development as it should also be balanced against democracy, human rights, and the environment. Taiwanese businesses play a key role in the global industry supply chain. The actions that they take on business human rights, such as



tangible improvements to the labor conditions and rights of their employees will not only create an environment for sustainable development but will also attract new customers, enhance their business reputation, and increase their brand value. Minister without Portfolio Lo Ping-cheng of the Executive Yuan spoke about the efforts made by Taiwan to promote an environment conducive to human rights in Taiwan under the UNGP framework. The “National Action Plan on Business and Human Rights” was formally announced by the Executive Yuan during International Human Rights Day on December 10, 2020²³.

The United Nations has been actively promoting sustainable development in recent years. The “2030 Sustainable Development Goals” encompassed 17 SDGs such as Zero Hunger, Gender Equality, Responsible Consumption and Production, and Climate Action. Special emphasis was placed on “people” as being core to sustainable development. The SDG 8 included “protecting labor rights and promoting safe and secure working environments for all workers, including migrant workers.” The SDG 14 called upon countries to effectively combat illegal fishing and eliminate overfishing to ensure the sustainable use of the ocean’s resources.

23. NHRC press release, December 6, 2021, “Sustainable development through ESG-Chen Chu hopes for win-win outcome in corporate governance and human rights.” Business Today, Issue 1304, December 20, 2021, p.164~165.

These international trends mean that Taiwan with its high reliance on foreign fishermen in its fisheries will have to embrace international standards and comply with global fisheries governance in order to retain the cream of its fishery workforce. Supporting the sustainable development of fisheries in Taiwan ensures the sustainable development of human rights as well.

This “Foreign Fishermen’s Human Rights Special Report” was released by the NHRC after several months of investigation by collating six major human rights of foreign fishermen investigations conducted by the Control Yuan to identify problems at the institutional level. Various methods including professional forums, on-site inspections, and seminars were also employed to engage with the government and related groups.

It is hoped that the Executive Yuan will carefully consider the substantive and practical recommendations proposed in this report and incorporate them into its “Fisheries and Human Rights Action Plan.” A timetable for corrective action should also be defined. The NRHC will continue to monitor the situation. It is hoped that continuous reforms will ameliorate Taiwan’s international reputation of violating fishermen’s human rights and that the human rights of fishermen will be protected through effective action.





A view of the harbor from the No.3 Fish Market of
the Su'ao Fishermen's Association, Yilan.

Road to Migrant Fishers' Rights

NHRC Foreign Fishermen's Human Rights Special Report

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