

Blood and Water—Human Rights Abuses in the Fishing Industry

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Abstract

This paper sets out the linkages between rapidly declining fish stocks in the world's oceans, in part caused by the widespread practice of illegal, unreported and unregulated (IUU) fishing, and serious human rights abuses in the global fishing industry. It provides case studies focusing on Taiwan describing the problem, and analyses solutions that can be employed to address it – in particular, the pressing need for greater transparency in fisheries.

Keywords

illegal fishing, human trafficking, enforced labor, marine conservation

I. Background

Seafood is a multi-billion dollar global industry with total export trade valued at US\$152 billion in 2017 (FAO, 2018). This represents more than 9% of all agricultural exports across the world (excluding forestry products) and in some countries accounts for more than 40% of the total value of traded commodities (FAO, 2016). Per capita fish consumption has risen from just 9.9 kg of fish consumed in the 1960s to 20.5 kg in 2017, and this ever-growing demand for cheap seafood from buyers around the world has seen employment in this sector expand at a phenomenal rate (FAO, 2018). The UN Food and Agriculture Organization (FAO) estimates that 40.3 million people are working in capture fisheries (FAO, 2018:5). However, this lucrative global business is under threat from illegal, unreported and unregulated (IUU)

fishing which now accounts for up to 30% of catches in some regions (Indian Ocean Commission, 2014). The global cost of IUU fishing is estimated to be between US\$10 – 23.5 billion annually, accounting for 11 to 26 million tonnes of seafood (Agnew DJ, et al., 2009) . Illegal fishing not only deprives nations of their fisheries resources, but ultimately could result in the collapse of fish stocks. 33.1% of fish stocks are fished beyond sustainable limits and 59.9% are on the edge, fished at maximal sustainable limits (FAO, 2018:6). Falling revenue, very largely due to declining fish stocks, coupled with the growing demand for cheap seafood, have created powerful economic forces, driving down profits in many fisheries and leading to increased abuse of crews. In recent years, reports from the Environmental Justice Foundation (EJF), along with those by journalists and other non-governmental organisations (NGOs), have repeatedly shown how overfishing and illegal fishing have substantially increased the risks of serious human rights abuses (EJF, 2015; Htusan, E., Mason, M., 2015; ILO, 2016). Fishers, by the nature of their work, operate in an isolated environment, making them more vulnerable and in need of better protections.

Labor costs can account for up to 60% of total vessel expenses (Tietze, U. et al., 2001: 19), and fishing operators therefore seek to take advantage of cheap labor from poorer countries in an attempt to drive down costs and increase their competitive advantage over their rivals.

Local workers often choose to work in more stable, safer, and less labor-intensive industries. With lower salaries, less social protection and weaker labor rights compared to their domestic counterparts, migrant workers are extremely vulnerable to traffickers, exploitative brokers, and abusive captains or crews.

This can ultimately lead to workers being forced into bonded labor or slavery, being paid little or nothing for exhausting and hazardous work. Modern slavery remains prevalent, with 40.3 million men, women, and children estimated to be enslaved globally across all industries (ILO and WFF, 2017). Those who engage in slavery and human trafficking in fisheries capitalise on capacity gaps in monitoring, surveillance and enforcement tools of states. Weak governance has allowed slavery and trafficking to become embedded in many national seafood supply chains.

Practices such as trans-shipment at sea and the use of flags of convenience further exacerbate these risks, making it more difficult to

identify and track possible cases of illegal fishing or labor abuses and less likely that governments can take enforcement action. These practices also facilitate other illegal activities such as drug or weapons trafficking, and can be associated with the use of tax havens (United Nations Office on Drugs and Crime, 2011; The Norwegian National Advisory Group Against Organized IUU-fishing, 2010; Galaz, V., et al. 2018). EJF’s 2019 study “Blood and Water” gives a global overview of the links among declining fish stocks, illegal fishing and human rights abuses in the seafood industry (Environmental Justice Foundation, 2019). The study details cases of slavery, debt bondage, insufficient food and water, filthy living conditions, physical and sexual assault and even murder aboard fishing vessels from 13 countries operating across three oceans. This paper draws on the findings in “Blood and Water” and focuses on the case of Taiwan.

II. Illegal, Unreported and Unregulated Fishing

Illegal fishing can apply to violations in fisheries under the jurisdiction of a coastal state, or to high seas fisheries regulated by regional fisheries management organisations (RFMOs). Fishing may also be unreported or misreported to the national fisheries authority or RFMO. Unregulated fishing generally refers to fishing by vessels without nationality, or to vessels fishing in areas or for fish stocks with no conservation measures to protect them, and where such fishing activities conflict with conservation measures under international or regional regulations (FAO, 2001). IUU fishing threatens marine environments and the people who rely on them. By depleting fish stocks and biodiversity, IUU fishing puts the food security and livelihoods of coastal communities at risk – small-scale fisheries provide employment for 90% of those working in capture fisheries (FAO, 2016). It also deprives countries of their marine resources and undermines efforts to sustainably manage fisheries. 90% of fish stocks are caught within countries’ exclusive economic zones – the waters and seabed stretching 200 nautical miles from shore, to which the country claims exclusive fishing, drilling and other resource extraction rights (Kraska, J., 2015). Forced labor, slavery, human trafficking

1. Forced labor

The International Labour Organization’s (ILO) Forced Labour Convention 1930 (No. 29) defines forced or compulsory labor as:

“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” (ILO, 1930)

A violation of the convention occurs even if the initial recruitment is voluntary and the coercive mechanism to keep a person in an exploitative situation manifests itself at a later stage (UNODC, 2011). Forced labor can be imposed either by state or private agents. The ILO estimates that of the 20.9 million victims of forced labor around the world, 89% are exploited by private agents or enterprises such as labor brokers (ILO, 2012).

2. Slavery

Slavery is the “status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,” as defined in 1926 by the League of Nations (LN, 1926). In 1956, the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery considered ‘modern slavery’ practices such as debt bondage and serfdom to be (UN, 1956):

- Debt bondage: “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”
- Serfdom: “the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.”

Both forced labor and slavery’s definitions are therefore based on the idea of coercion (ILO, 2007).

3. Human trafficking

Human trafficking is defined in the UN Trafficking in Persons Protocol 20 as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or

benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The protocol (Article 3. b) specifies that the consent of a victim of trafficking is irrelevant when any of the means mentioned above has been used.

Finally, the notion of exploitation of labor allows for a link between the ‘Trafficking in Persons Protocol’ and the ILO Forced Labour Convention 1930 (No. 29) and “makes clear that trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labor provided under Article 2, paragraph 1, of the Convention. (ILO, 2007)”

III. The Link between Illegal, Unreported and Unregulated Fishing and Human Right Abuses

Workers in the fishing sector are particularly vulnerable to human rights abuses, such as trafficking and forced labor (ILO, 2013). By the very nature and remote location of their work and the lack of transparency in large parts of the industry, fishers are already in a precarious position. They are isolated and sometimes far out at sea, exposing them to risks of exploitative working conditions, wage reductions and abuses, unnoticed by the authorities or regulatory agencies (Stringer, C., Whittaker D.H., and Simmons, G., 2015). In some respects, fishers are a ‘hidden’ workforce, invisible to the authorities and consumers (Bang, N.J, 2014). Where there is inadequate or complete lack of sustainable fisheries management, fishing activities will likely lead to a damaging decline or even full exhaustion of marine resources. Overfishing of the world’s fish stocks leads not only to the collapse of these ecosystems, but also to increased poverty and malnourishment for millions of people who rely on the oceans as their food and livelihoods.

As catches decrease, some local and commercial fishers. take increasingly drastic measures to ensure profitability – such as using illegal fishing gears or fishing in protected or restricted areas. This further contributes to the decline of catches and accelerates the exhaustion of fish stocks. Increased competition among fishers drives this rush to catch the

remaining stocks, further depleting fishery resources.

The depletion of fish stocks puts pressure on fishing operators to maintain catch rates and profitability by decreasing operational costs. As fish stocks are depleted, fishing boats are forced to travel further out to sea to fish. This increases costs: long-distance fishing requires more fuel, sophisticated support infrastructure as well as crew staying at sea for long periods of time (ILO, 2013). Fuel costs are unavoidable, but labor costs can be modified and distorted. Fishing operations are highly labor intensive, with fishers' wages accounting for up to 60% of operating costs (Tietze, U. et al., 2001). The pressure on vessel operators to cut costs incentivizes the use of migrant workers who are often from poorer, developing countries where insufficient domestic employment opportunities pushes people to seek work abroad. Migrant workers may face being poorly paid and have fewer social protections and labor rights compared to their domestic counterparts (Marschke, M., Vandergeest, P., 2016). This vulnerability to exploitation and a drive for reduced costs increases the risks of forced labor and trafficking for fishing crews (Bang, N.J, 2014). Low-cost workers in fisheries are particularly vulnerable to slavery, human trafficking and forced labor because of a variety of factors (FAO, 2013):

- At sea, escape is difficult and often impossible;
- The isolation and distance from regulatory agencies mean very little oversight, allowing unscrupulous vessel operators to commit crimes and abuses;
- There may not be effective protection against abuses (either because of a lack of appropriate regulation, or because countries are under-resourced or lack political will);
- Migrant workers might lack relevant documentation,
- Recruitment agencies are often unregulated or poorly regulated,
- Workers may not be able to read their contracts in the language they are written in and may be unclear what their rights are;
- There is a critical lack of transparency and accountability in the global fishing industry. There are currently no international requirements for measures such as a unique vessel identifiers (UVIs) or registration on a global record of fishing vessels, which would help authorities track vessels. Vessels may also intentionally register with states less able or

willing to exercise control on vessels. This is known as using ‘flags of convenience’ (UNODC, 2011). *Illegal Fishing and Human Rights Abuses in Taiwanese Seafood Industry*

Taiwan has one of the world’s largest distant water fishing (DWF) industries with a fleet of 1,140 vessels with the Taiwanese flag (Fisheries Agency, 2018), more than 250 vessels owned by Taiwanese interests but using foreign flags (Fisheries Agency, 2018) and a workforce that includes at least 21,000 migrant fishers (Fisheries Agency statement, 2018). An absence of appropriate management in previous years meant the fleet gained notoriety for illegal fishing and human rights abuses. In October 2015, the European Commission issued Taiwan with a formal warning (“yellow card”) for lack of cooperation in the fight against illegal fishing (EU press release, 2015). Since then, the Taiwanese government has initiated some reforms such as introducing the Act for Distant Water Fisheries (2016) and vessel monitoring system. However, illegal activities and human rights abuses continue to be uncovered by EJF’s and others’ investigations and more work is needed to implement Taiwan’s new laws.

IV. Legal Framework that Governs Migrant Fishers on Distant Water Fishing Vessels

Migrant fishers on Taiwan’s fishing vessels are recruited either from Taiwan’s territory or overseas. Those recruited within Taiwan are under the management of the Ministry of Labor applying the Labor Standards Act and those from overseas come under the jurisdiction of the Fisheries Agency applying the Regulations for Authorization and Management of Overseas Employment of Foreign Crew Members (the Regulations). However, there are problems on both sides. Firstly, the Ministry of Labor has no presence in the international ports used by the DWF fleet. Secondly, the Fisheries Agency does not undertake overseas labor inspections and does not have the regulatory tools or experience to identify and prosecute human traffickers, or the resources to do so across Taiwan’s globally dispersed fleet.

Fishers that are recruited from within Taiwan mostly work on costal fishing vessels that are only allowed to fish in the exclusive economic zone and thus tend to have shorter trips to sea. However, those that are recruited from overseas can only work on DWF vessels which often stay at sea for months or sometimes years without coming to port. Although EJF found that

most of the migrant fishers interviewed suffer from labour abuses to some extent, those working on the DWF vessels are more likely to be victims of serious human rights abuses.

The 2017 Regulations for Authorization and Management of Overseas Employment of Foreign Crew Members remain the main legislation covering the recruitment and protection of DWF migrant workers. This is despite repeated recommendations from national and international NGOs that Taiwan extend its national Labor Standards Act to protect DWF workers, coupled with implementation of the ILO's Work in Fishing Convention (C188). In late 2018, the Taiwanese Fisheries Agency announced its intention to improve the Regulations based on the principles of ILO C188, but due to insufficient collaboration between the Fisheries Agency and other relevant departments it is not clear when, how and if ILO C188 will be implemented and enforced. Significant gaps between the Regulations and ILO C188 include:

1. Unlike under ILO C188, there are no measures in Taiwanese law stopping local agents of vessel owners from deducting "guarantee fees" from wages. These are used to stop crew from leaving employment early. These deductions often create conditions of bonded labor.
2. Unlike under ILO C188, fishers are not guaranteed repatriation at the expense of the vessel owners if they choose to leave employment.
3. There are no measures to reduce occupational injury or death on fishing vessels or requirements for suitable maritime training.
4. Living conditions and health and safety on vessels are not addressed by the Regulations and there are no requirements regarding the quality or amount of food and water provided.
5. Unlike ILO C188, which dedicates an entire section to state compliance and enforcement measures to prevent labor abuses, the Regulations give Taiwanese municipal governments the main role in solving labor disputes, despite DWF vessels spending the vast majority of their time, and in some cases all of their time, away from Taiwan well out of the reach of Taiwanese local authorities.
6. There is no mention in the Regulations of the captain's responsibilities for the safety of the fishers on board and the safe operation of the vessel.

Furthermore, there are no laws to regulate the hiring of crews for foreign-flagged fishing vessels that are owned by Taiwanese citizens. The use of so-called flags of convenience is widespread in Taiwan and represents a large part of the Taiwanese-owned fleet, with at least 250 vessels using foreign flags. EJF's ongoing investigations in Indonesia have identified several cases of Taiwanese brokerage agencies being involved with the recruitment of Indonesian workers onto Chinese-flagged vessels and vessels flying flags of convenience but owned by Taiwanese nationals. A complete lack of regulations to protect these workers leaves them extremely vulnerable to labor abuses and human trafficking. Similar cases have also been identified by the Yilan Migrant Fishermen Union and The Presbyterian Church in Taiwan Seamen / Fishermen Service Center. This loophole raises grave concerns that Taiwanese agencies are involved in trafficking migrant workers onto vessels registered in other countries that have even weaker regulations and enforcement measures.

V. Implementation

In addition to continued gaps in legislation, in recent years EJF has continued to uncover further evidence of systematic failures to implement existing protections for migrant workers or take effective action against illegal fishing activities. Taiwanese DWF vessels operate across the Pacific, Indian and Atlantic oceans and many of them do not come back for months or even years to Taiwan. Fishers usually travel from their home countries directly to the vessels in their region of operation and then return from the fishing vessel without ever entering Taiwan. Despite the situation offering clear challenges to proper oversight, there are only eight labor interviewers employed by the Fisheries Agency to examine the working conditions on fishing vessels, and all of them are based in Taiwan (Fisheries Agency implementation report, 2018). At overseas ports, Taiwanese inspections rely on fisheries inspectors who do not have the professional knowledge or skills to conduct labor inspections. The current regulations, even with recently proposed improvements, do not establish anything close to the inspection infrastructure required to properly protect the migrant crew of such a large and disparate fleet.

These concerns are most vividly evidenced by the methods used by the Fisheries Agency in its handling of the Fuh Sheng No. 11 case – the first ever

fishing vessel detained by a port state for violating ILO C188.¹ When South African authorities detained the vessel in May 2018, the initial reaction by the Fisheries Agency was to task a Taiwanese fisheries inspector based in Cape Town with conducting an inspection. Following this visit, which EJF later discovered was done in the presence of the vessel's abusive captain, the Fisheries Agency announced in a press release and at its annual international human trafficking conference in Taipei that there were no human rights abuses on the vessel and that it would be allowed to leave port to resume fishing.² It was only after EJF released its own investigation into the vessel in September 2018, which documented a litany of serious human rights abuses and illegal fishing practices, that the Fisheries Agency finally conducted a proper inspection and carried out professional interviews with the crew.

This belated investigation confirmed that the recruiting agency and the vessel owners were engaged in human trafficking and other serious abuses. The crimes include illegally recruiting workers for the vessel, physical abuse, a lack of signed contracts for many crew members, breaches of contract where they existed, illegal repatriations and wages below the minimum wage. In addition, the vessel was engaged in illegal fishing such as shark finning and inaccurate data recording.³ These crimes, and most critically the failure of the Taiwanese inspection in Cape Town to detect any of them, again show that the Fisheries Agency lacks the ability to protect migrant fishers working aboard the Taiwanese DWF fleet.

Three months after releasing its findings on the Fuh Sheng 11 case, EJF identified another five DWF vessels that were engaging in illegally catching and killing protected marine species, illegal practice of finning shark and, in the case of four of them, human right abuses. The testimony of seven crewmembers working on these vessels described widespread physical and verbal abuse, wage deductions, forced surrender of guarantee money and being forced to work excessive hours. For example, one crew member reported that the senior Taiwanese crew members would threaten them with salary and food deductions if they worked slowly. Crew members would

1 https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_634680/lang--en/index.htm

2 <https://www.fa.gov.tw/cht/NewsPaper/content.aspx?id=2493&chk=58cf1c6c-33b6-45cf-b562-7ba8e92e15e8¶m=pn%3d1%26yy%3d2018%26mm%3d07>

3 <https://www.fa.gov.tw/cht/PolicyIUU/content.aspx?id=9&chk=8db63778-3976-47f0-97c4-052aba6fc627¶m=pn%3d1>

often be kicked, hit and slapped if they made a mistake. In several cases crew members reported only being shown their contract on the day that they were expected to travel.

VI. Conclusion and Recommendation

The global over-exploitation of fish stocks, enabled by weak governance and driven by increasing consumption of seafood from transnational supply chains, is a critical factor in facilitating abuse and exploitation in fisheries.

This paper makes clear that worker exploitation is a trans-boundary issue, with crew being trafficked from origin to host countries, often travelling vast distances in dangerous conditions. Labor brokers are a key component of this trafficking system, taking advantage of vulnerable workers in countries of origin and weak regulation in host countries. They facilitate the exploitation of workers by tricking or forcing them to sign unreasonable contracts that restrict their freedom of movement, charge extortionate fees, deduct wages, and threaten them or their families psychologically and physically.

Taiwan has one of the world's largest DWF fleets, supplying fish to markets around the world. However, it is only in recent years, under international and domestic pressure, that the Taiwanese government has started reforming its fisheries management. Over the past few years, some improvements have been observed, and the removal of the EU yellow card warning on June 2019 (European Commission, 2019) is also a reflection of those efforts. One of the most significant transformations is the publication of data such as vessel information, a list of sanctions that have been imposed and the registration details of vessels that are owned by Taiwanese but flagged in foreign countries. Transparency is a cost-effective, operationally efficient and politically realistic measure to build effective enforcement against both illegal fishing and the associated human and labor rights abuses. Transparency allows enforcement agencies and management officials to leverage limited assets and financial resources to the best effect, simultaneously giving other stakeholders – such as retailers and NGOs – the opportunity to scrutinise production and supply chains to identify abuses. This can reward law-abiding businesses while weeding out illegal, unscrupulous players.

In Taiwan, much more could be done to address gaps in workers' rights and enforcement procedures. Fishing is a complex, global industry and in

Taiwan its management involves a range of different laws and competencies, including marine affairs, fisheries, transportation and labor. These issues cut across the remits and skillsets of the Ministry of Labour and Council of Agriculture. In addition, some of these activities involve crime and therefore close collaboration with prosecution agencies is required to fully investigate them. Establishing a multi-agency, inter-departmental task force to proactively investigate issues that encompass fishing, labour, wildlife, tax and other matters would expand Taiwan's investigative powers and in turn would likely lead to deterrent sanctions and a resolution to the problem.

ILO's Work in Fishing Convention (ILO C188) is designed to protect workers on fishing vessels from human trafficking and occupational injuries. Bringing Taiwanese national regulations up to the same standards and ensuring that sufficient resources are allocated to enforce the law will not only protect workers but also create a less risky and fairer competitive environment for law-abiding vessel owners.

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喋血海洋——漁業中的人權剝削

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摘要

非法、未報告和未受管制（IUU）漁撈活動的猖獗導致世界漁業快速凋零，本文闡述此類漁業中資源枯竭與人權剝削的關聯，並以台灣作為案例研究，分析可行的解決方案，並強調提高漁業透明度的迫切性。

關鍵字

非法漁業、人口販運、強迫勞動 23、海洋保育
