

**Comments Concerning the Ranking of Taiwan
by the United States Department of State in the
2022 Trafficking in Persons Report**

Submitted by: Global Labor Justice-International Labor Rights Forum (GLJ-ILRF)
and Greenpeace Taiwan on behalf of the Seafood Working Group

Endorsed by: GLJ-ILRF, Greenpeace Taiwan, Serve the People Association (SPA),
Taiwan Association for Human Rights (TAHR), Taiwan Rerum Novarum Centre,
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FOREWORD

For the second year, Global Labor Justice - International Labor Rights Forum (GLJ-ILRF) and Greenpeace have collaborated to submit *Comments Concerning the Ranking of Taiwan by the U.S. Department of State in the Trafficking in Persons (TIP) Report*. Submitted on behalf of the Seafood Working Group (SWG), the report is the product of a collaborative effort between our organizations and civil society organizations in Taiwan.

Taiwan ranks among the top 25 seafood-producing countries worldwide and has one of the largest distant water fishing fleets globally. The majority of workers on these fishing vessels are from Indonesia, the Philippines, and Vietnam, amounting to nearly 30,000 workers. Investigations consistently reveal egregious human rights abuses in Taiwan's fishing industry, with problems ranging from dangerous working or living conditions and wage deductions, to confirmed cases of forced labor, human trafficking, murder and disappearances of migrant fishers at sea. Human rights monitors regularly emphasize that the wrongdoings on Taiwanese vessels are not sporadic, but are systemic and routine. They also continue to document strong linkages between forced labor and illegal, unreported and unregulated (IUU) fishing and unsustainable fishing practices.

The SWG's 2022 Comments on Taiwan provide the the U.S State Department's Office to Monitor and Combat Human Trafficking in Persons (TIP Office) with current information on the human trafficking and forced labor situation from the perspective of frontline organizations supporting migrant workers in the fishing sector and other industries. The submission presents and analyzes information under the State Department's "3P" paradigm for combatting human trafficking (Prevention, Protection and Prosecution) and makes a recommendation for the country's Tier Ranking in the forthcoming report.

In 2022, the SWG finds that Taiwan has been inappropriately maintained at the 'Tier 1' ranking for twelve consecutive years and should be downgraded to 'Tier 2' due to lack of sufficient progress. The report highlights numerous factors that have persisted for multiple years and that the Taiwanese government continues to fall short of the U.S. Trafficking Victims Protection Act (TVPA) standards.

In particular, the SWG's comments focus on the Prevention prong of the "3P" paradigm. Prevention of forced labor and human trafficking is naturally more effective than retroactive responses. Once workers end up in a situation of exploitation, effective remedy involves lengthy and expensive court proceedings as well as rehabilitation of workers. Ensuring workers' labor rights, particularly freedom of association and collective bargaining, is the most effective method for pre-empting and removing the conditions in which forced labor arises in the modern economy.

In Taiwan, and other countries where GLJ-ILRF works, we find that while effective criminal justice mechanisms are important, the root causes of forced labor are discriminatory legal and policy frameworks and government failure to promote and protect the labor rights for vulnerable categories of workers. This year's report highlights persistent and emergent issues impeding trafficking prevention, including a recruitment and employment system that puts migrant workers at the mercy of unscrupulous and poorly regulated recruitment agencies and maintains a discriminatory system for distant water fishers.

It is our our hope that this TIP Report 2022 submission on Taiwan will provide insight into the root causes of forced labor and human trafficking in the modern economy.



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1. INTRODUCTION

This report contains the comments of the Seafood Working Group (SWG) concerning Taiwan's ranking in the United States Department of State's 2022 Trafficking in Persons (TIP) Report.¹ The TIP Report is a requirement of the Trafficking Victims Protection Act (TVPA). In 2021, the U.S. Department of State maintained Taiwan at its Tier 1 ranking on the basis that "Taiwan authorities fully meet the minimum standards for the elimination of trafficking."²

In 2022, the SWG finds that Taiwan should be downgraded to Tier 2 due to the government's failure to meet the minimum standards as set forth in the TVPA, particularly in the following key areas: (1) failure to systematically identify trafficking victims; (2) inherent risks of human trafficking in the current employment system for migrant workers; (3) failure to regulate recruitment agencies and practices; (4) an impractical human trafficking law that prevents prosecution; and (5) limited and ineffective partnerships with local and international NGOs.

1.1. Methodology

This report focuses on issues and incidents during the TIP Report 2022 reporting period, April 1, 2021 to March 31, 2022. The information in this report is based on a desk review of existing literature and ten consultations with civil society organizations (CSOs) and non-governmental organizations (NGOs) in Taiwan and in Indonesia, including Greenpeace Taiwan, Serve the People Association (SPA), Taiwan Association for Human Rights (TAHR), Taiwan Rerum Novarum Centre, Yilan Migrant Fishermen Union (YMFU), Organization for Migrant Fishers' Rights, Ganas Community, Stella Maris International Service Center, Destructive Fishing Watch (DFW) Indonesia, and PASOPATI. A focus group discussion was also conducted with four Indonesian CSO leaders. English and Chinese language sources were utilized for the literature review.

The report relies heavily on meeting minutes from government agencies, media agencies, and CSO-collected cases through frontline work. The report analyzes the Taiwanese government's efforts and progress in addressing human trafficking and related labor rights abuse of migrant workers in Taiwan.

This report was prepared by Global Labor Justice-International Labor Rights Forum (GLJ-ILRF)³ and Greenpeace Taiwan, with support from Humanity Research Consultancy⁴ in report drafting. The findings and recommendations are supported by the Seafood Working Group.⁵

¹ The submission was filed with the U.S. State Department on March 18, 2022.

² Office to Monitor and Combat Trafficking in Persons, *2021 Trafficking in Persons Report: Taiwan* (June 2021), UNITED STATES DEPARTMENT OF STATE, <https://www.state.gov/reports/2021-trafficking-in-persons-report/thailand/>.

³ GLJ-ILRF is a merged organization bringing strategic capacity to cross-sectoral work on global value chains and labor migration corridors. GLJ-ILRF holds global corporations accountable for labor rights violations in their supply chains, advances policies and laws that protect decent work and just migration. GLJ-ILRF convenes the Seafood Working Group; see <https://laborrights.org/> and <https://globallaborjustice.org/>.

⁴ Humanity Research Consultancy is a UK-based research consultancy specialized in providing research and consultancy service to end modern slavery and human trafficking, through engaging local insights and expertise, see <https://humanityconsultancy.com/>.

⁵ Convened by GLJ-ILRF, the Seafood Working Group (SWG) is a global coalition of 31 labor, human rights, and environmental non-governmental organizations working to hold governments and companies accountable and drive change and end forced labor in the international seafood trade; see https://laborrights.org/industries/seafood?qt-quicktabs_seafood=3#qt-quicktabs_seafood.

1.2. Key Findings

This report documents Taiwan's inadequate efforts to make progress in the areas of Prevention, Protection, Prosecution per the U.S. Department of State's "3P" approach, as well as assessing Partnership during the reporting period.⁶ The key findings are as follows:

- Taiwan has not taken the necessary steps to protect victims of human trafficking, due to a narrow interpretation of human trafficking and ineffective procedures to identify and provide services to such victims. The authorities failed to conduct timely investigations into the working conditions on the Da-Wang and Chin-Chun No. 12 vessels, despite strong indicators of human trafficking, until the U.S. government issued a trade ban. (Section 2.1)
- The lack of labor inspections on distant water fishing vessels has allowed potential victims to be undetected and thus outside the government's safety net, and the national complaint mechanism remains inaccessible to migrant fishers working on the high seas with extremely limited access to satellite phone or Wi-Fi connection. (Section 2.2)
- Recruitment agencies continue to charge migrant workers with illegal job purchasing fees and deposits as well as confiscating their identity documents – indicators of forced labor – yet the government has failed to eradicate faulty agencies through the evaluation system. Such agencies avoid facing penalties or suspension by self-evaluating their business' performance on the official evaluation website and/or by voluntarily shutting down the business and re-establishing the agency using a different name and license. (Section 3.1)
- Migrant fishers in the distant water fishing industry are exploited by the "two-tiered" employment system, under which they are afforded with less protection and welfare, including a lower minimum wage and insurance coverage. While both domestic and foreign workers would benefit from the latest *Labor Occupational Accident Insurance and Protection Act*, migrant fishers in the distant water fleet were again excluded. (Section 3.1.3)
- During the COVID-19 outbreak in July 2021, the Ministry of Labor put policies in place that made it extremely difficult for foreigners to change jobs to a different industry. In practice, with the high demand of domestic nurses in Taiwan, migrant nursing workers, who were not protected by the *Labor Standard Act* and endured poorer working conditions, have had no chance to leave their current industry. (Section 3.2.1)
- While Taiwanese law permits foreign migrant workers to form unions, migrant fishers in the distant water fleet have limited access to unions due to restrictions in Taiwanese law, employer intimidation, and discrimination. Without well-organized worker unions, migrant fishers are unable to exercise their rights to organize or bargain for better working and living conditions with their employers, and prevent situations of forced labor from arising. (Section 3.2.3)
- There is a remaining gap between the number of the cases of trafficking in persons occurring in Taiwan and the number estimated by Taiwanese government. The government has not effectively identified offenders under the *Human Trafficking Prevention Act*, and has failed to prosecute them as human traffickers. (Section 4.1)
- The *Human Trafficking Prevention Act* has an overly narrow definition of human trafficking and does not align with the Palermo Protocol. The punishment of offenders set out by the act are often difficult to execute, resulting in a low prosecution rate of traffickers. (Section 4.2)

⁶ While the "3P" paradigm continues to serve as the fundamental international framework used by the United States to combat trafficking in persons, Secretary of State Hillary Rodham Clinton announced a fourth P – partnership – in 2009; see Four "Ps": Prevention, Protection, Prosecution, Partnerships. US Department of State. <https://ctcwcs.files.wordpress.com/2016/07/four-ps.pdf>

- The government has established ineffective partnerships with local and international organizations; their voices are not fully respected, and the information shared with them by the government is limited. Moreover, a whole-of-government approach was missing, limiting the government's ability to effectively combat human trafficking. (Sections 5.1 and 5.2)

1.3. Overview: Gaps in the legal framework contributing to the exploitation of migrant workers

Between 2011 and 2019, the total number of blue-collar migrant workers in Taiwan increased by 69 per cent, from 425,000 to 718,000,⁷ and fell to around 664,000 in the beginning of 2022.⁸ Originally from Thailand, the Philippines, Vietnam, and Indonesia, these workers are spread across several industries under two categories: industrial work and social welfare work. The former includes marine fisheries, manufacturing, construction, farming, and agricultural work regulated by a designated law;⁹ and the latter includes institutional nursing, domestic nursing, and domestic service work.¹⁰

The International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR) have both been nationalized in Taiwan, meaning the relevant national laws should align with these two treaties.¹¹ Nevertheless, there is structural discrimination of migrant workers in the national legal framework that is contrary to these two treaties. This includes inferior protection of foreign workers compared with nationals, and restrictions on migrant workers changing jobs during the COVID-19 pandemic.¹²

Due to the existence of several policies that discriminate against migrant workers and provide insufficient protection, the migrant worker population has long been considered one of the most vulnerable groups in Taiwan.¹³ For example, most of the workers in Taiwan, regardless of their nationality, are protected by the *Labor Standard Act* (2020).¹⁴ Nevertheless, migrant fishers working on Taiwanese distant water fishing vessels, as well as migrant domestic workers, have been left out by this law and are given fewer legal protections.¹⁵ Compared with nationals, these workers are at a much higher risk of forced

⁷ National Development Council (2022). The number of migrant workers divided by the application category. https://www.ndc.gov.tw/Content_List.aspx?n=44CB0EDF55E07A07#:~:text=100%E5%B9%B4%E5%BA%95%E8%87%B3108%E5%B9%B4%E5%BA%95.%E5%BA%AB%EF%BC%8C%E5%9C%8B%E7%99%BC%E6%9C%83%E6%95%B4%E7%90%86%E3%80%82

⁸ Ministry of Labor (2022). The number of industrial and social welfare migrant workers. <https://statfy.mol.gov.tw/index12.aspx>

⁹ Laws & Regulations Database of The Republic of China (2022). Directions of the Employment Transfer Regulations and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 and 10', Paragraph 1, Article 46 of the Employment Services Act. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090023>

¹⁰ "Directions of the Employment Transfer Regulations and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 9', Paragraph 1, Article 46 of the Employment Services Act". Laws & Regulations Database of The Republic of China (2022). Article 46, Employment Service Act. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001>

¹¹ As Taiwan is not currently recognized as a member of the United Nations, it cannot formally ratify UN conventions; however, the country still seeks to nationalize them into domestic law.

¹² See section 3.2.1.

¹³ Civicus (2021). Protests in labour rights and against discriminatory migrant worker policies in Taiwan. <https://monitor.civicus.org/updates/2021/08/03/protests-labour-rights-and-against-discriminatory-migrant-worker-policies-taiwan/>

¹⁴ Laws & Regulations Database of The Republic of China (2022). Labor Standards Act. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

¹⁵ Ministry of Labor (2017). The migrant fishers employed overseas by fishing vessels are subject to the "Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members" in the Act for Distant Water Fisheries". <https://www.mol.gov.tw/1607/1632/1640/19846/post>

labor and human trafficking.¹⁶ Despite NGOs' reporting and the media coverage on migrant workers being abused and exploited, the Taiwanese government has taken a relatively passive attitude towards ensuring their rights and prosecuting the Taiwanese nationals involved in exploiting these workers.

The abuse of migrant domestic workers and migrant fishers in the distant water fishing industry highlights the precarious labor conditions and ineffective government action to protect migrant workers in Taiwan.

Migrant domestic workers are excluded from the *Labor Standards Act (2020)* and face excessive working hours with extremely low pay. They work an average of 10.4 hours per day, with a lack of overtime pay and leave, and are often subjected to mistreatment.¹⁷ While the consumer price index, as well as the minimum wage in Taiwan, has increased annually, there has been no rise in migrant domestic workers' wages for more than six years.¹⁸ The minimum monthly wage for migrant domestic workers was last modified in 2015, from NTD 15,840 (USD 571) to NTD 17,280 (USD 623). Meanwhile, the national minimum wage in Taiwan was raised from NTD 20,008 (USD 705) to NTD 24,000 (USD 865) at the beginning of 2021.¹⁹

Migrant fishers in the distant water fishing industry are subjected to poor working and living conditions. According to a survey conducted by the Environmental Justice Foundation (EJF) in 2020, 82 per cent of workers on Taiwanese longline vessels had experienced excessive overtime working hours, and 92 percent had experienced the withholding of their wages.²⁰ Verbal threats and physical abuse were also reported on these vessels.²¹ The Fisheries Agency is the competent authority of the distant water fishing industry and its workers. According to stakeholders interviewed for this report, it has not implemented sufficient policies and initiatives to prevent the exploitation of migrant fishers.

This report identifies significant gaps in the ability of the Taiwanese government to govern the migrant workforce in the country. It shows how existing laws and regulations have failed to act as sufficient safety nets to protect migrant workers from rights violations, as well as how the government's ignorance and inability continue to enable the prevalence of forced labor and human trafficking of migrant workers in Taiwan.

2. PROTECTION

The "Protection" prong of the "3P" paradigm requires governments to take a victim-centered approach to combatting human trafficking by "identifying victims, providing referrals for a comprehensive array of services, directly providing or funding NGOs to provide those services, and supporting these individuals as they rebuild their lives."²²

¹⁶ Freedom United (2019). Taiwan failing to protect vulnerable migrant workers.

<https://www.freedomunited.org/news/taiwan-failing-to-protect-vulnerable-migrant-workers/>

¹⁷ Huang Tzu-ti (2021). Labor ministry rolls out one-stop service introducing migrant domestic workers into Taiwan. Available at: <https://www.taiwannews.com.tw/en/news/4299834>

¹⁸ 4 Way Voice (2021). Indonesian labor organizations disappointed over the fact that the low salary of migrant domestic workers has not risen in Taiwan for years. Available at:

<https://4wayvoice.nownews.com/news/20211008/663866/?trms=48602294ba2cf88f.1634547172162>

¹⁹ <https://www.mol.gov.tw/1607/1632/1640/45143/>

²⁰ <https://www.france24.com/en/live-news/20210513-rampant-fishing-industry-abuses-dull-taiwan-s-rights-record>

²¹ <https://www.seafoodsource.com/news/environment-sustainability/taiwan-responds-to-ngo-reports-on-forced-labor-within-its-fishing-fleet>

²² 3Ps: *Prosecution, Protection, and Prevention*, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, <https://www.state.gov/3ps-prosecution-protection-and-prevention/>.

2.1. Examples of Failure to Protect

In 2009, Taiwan introduced the *Human Trafficking Prevention Act*, defining human trafficking as “to recruit, trade, take into bondage, transport, deliver, receive, harbor, hide, broker, or accommodate a local or foreign person, by force, threat, intimidation, confinement, monitoring, drugs, hypnosis, fraud, purposeful concealment of important information, illegal debt bondage, withholding important documents, making use of the victim’s inability, ignorance or helplessness, or by other means against his/her will, for the intention of subjecting him/her to sexual transactions, labor to which pay is not commensurate with the work duty, organ harvesting; or to use the above-mentioned means to impose sexual transactions, labor to which pay is not commensurate with the work duty, or organ harvesting on the victims.”²³ In addition, the Ministry of Justice released the Victims Identification Principles and Guidelines to further enforce the Act. Forced labor is also banned in the Labor Standards Act, in which “no employer shall, by force, coercion, detention, or other illegal means, compel a worker to perform work.”²⁴ Taiwan has made forced labor a form of exploitation within the crime of human trafficking.

However, a main challenge is the government’s narrow interpretation of human trafficking, which has led to a failure to provide legal protection to many victims. A report published by the Control Yuan²⁵ points out that government officials only consider superficial indicators of human trafficking and do not review potential trafficking in persons cases in-depth and holistically. As a result, cases of suspected forced labor or human trafficking are labeled as mere labor disputes between employers and employees. For example, the Control Yuan noted that victims expressed a willingness to work overtime because they considered it to be their only choice at the time; yet, during the investigation, law enforcement officials failed to identify that the decision was based on an imbalance of power, and misjudged it as free will.²⁶

In the cases of “Da-Wang” and “Chin-Chun No. 12,” workers on both fishing vessels complained of retention of identity documents, withholding of wages, and excessive overtime. However, while two migrant fishers on “Da-Wang” were identified as human trafficking victims, no one on “Chin-Chun No. 12” was identified as such. The Ministry of Interior said the result was based on “a comprehensive judgment at that time, which was also evaluated by social workers, lawyers, and CSOs.” The official from the National Immigration Agency said, “Perhaps the reason why the migrant fisher on ‘Chin-Chun No.12’ was not identified as a victim is because the salary has been transferred to the family back home.”²⁷ Provision of unpaid wages should not prevent the government from reviewing the case comprehensively and assessing the other potential indicators of exploitation. This highlights an example of government failure to identify and protect victims of human trafficking.

The Taiwanese government has not properly controlled fishing vessels from entering and exiting ports even when there are potential cases of human trafficking. Despite the fishers on “Da-Wang” being identified as human trafficking victims, the vessel continued to run its business as usual and was allowed to depart from Taiwan’s port in May 2020 and to re-enter

²³ Article 2, Human Trafficking Prevention Act.

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

²⁴ Article 5, Labor Standards Act. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

²⁵ The Control Yuan (CY), one of the five branches of the Government of the Republic of China (Taiwan), is an investigatory agency that monitors the other branches of government. It may be compared to the Court of Auditors of the European Union or the Government Accountability Office of the United States.

²⁶ The Control Yuan (May 20, 2021). <https://www.cy.gov.tw/CyBsBoxContent.aspx?s=17496>

²⁷ The Control Yuan (May 20, 2021). <https://www.cy.gov.tw/CyBsBoxContent.aspx?s=17496>

Taiwan in March 2021. It again departed in October 2021.²⁸ Upon learning this information, Greenpeace Taiwan sent a letter to the Fisheries Agency, asking if they would conduct any labor inspections on the vessel, and if Greenpeace Taiwan could observe. The Fisheries Agency responded that the authorities were still studying the possibility of conducting labor inspections on foreign vessels.²⁹ However, the international convention regulating fishers' rights, the International Labor Organization (ILO) Work in Fishing Convention (2007), No. 188 (referred to as C188), provides guidance on the labor issues to be monitored during inspections, and is used by other Port States for foreign vessels.³⁰

Without conducting labor inspections, Taiwan's government failed to protect other fishers from becoming human trafficking victims on "Da-Wang." One fisher working on this vessel, "Fisher A", had his wage of around 7,500 USD withheld until the end of his contract, and the recruitment agency threatened to hold the money until Fisher A agreed to sign a new contract to work for another two years. The recruitment agency also provided misleading and false information about the nature of recruitment and wages in order to persuade Fisher A to stay. Fisher A was reluctant to sign this agreement, but was afraid of not being paid fully once Fisher A left Taiwan. Fisher A later turned to a local CSO for help, and the case was reported to the National Immigration Agency (NIA) and the Fisheries Agency. It was only after a lot of follow up with the government by the CSO that Fisher A was finally able to leave the vessel, interviewed by the NIA for further human trafficking investigation, and later identified as a victim. However, NIA officials did not set foot on "Da-Wang"; rather, it was the staff of the fishing company who escorted Fisher A out. The process put Fisher A into unknown and unnecessary danger, and because Fisher A did not bring along any personal belongings, Fisher A had to go back to the vessel again without an official guide, which again put him at risk of danger.³¹

U.S. Customs and Border Protection (CBP) issued a Withhold Release Order on "Da-Wang" in August 2020, and in January 2022 announced it had determined that the "Da Wang" had used forced labor, after investigations found evidence aboard the vessel of all 11 ILO indicators of forced labor.³² As a result, all seafood harvested by the vessel will be seized at U.S. ports unless an objection is raised.³³ Meanwhile, the Taiwanese government remained reluctant to step forward. Taiwan's authorities did not conduct a labor inspection or detain "Da-Wang" as it should have done as a Port State, and the Fisheries Agency only claimed to abolish the vessel owner's operation rights after CBP announced the aforementioned decision.

The "Da-Wang" case involved the death of a fisher and the trafficking of multiple victims, yet the Taiwanese government still has not promised any legal or operational reforms. This decision highlights the Taiwanese government's passive attitude and inaction to make serious and sustainable efforts to eliminate trafficking in persons. As a result, migrant fishers working on Taiwan's distant water fisheries remain at high risk of forced labor.

In October 2021, Greenpeace Taiwan discovered dozens of cases on Taiwanese-flagged distant water fishing vessels suspected of forced labor, among which one involved the death

²⁸ The Fisheries Agency's press release on January 29, 2022 confirmed that "Da-Wang" was authorized to port in Taiwan. Available at: <https://www.fa.gov.tw/cht/NewsPaper/content.aspx?id=2835&chk=59e540e6-f34d-46b3-a797-0a972c204876¶m=pn%3d1%26yy%3d2022%26mm%3d>

²⁹ Letter from the Fisheries Agency to Greenpeace Taiwan (2021).

³⁰ International Labour Organization (July 17, 2018). "First fishing vessel detained under ILO Fishing Convention." https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_634680/lang--en/index.htm

³¹ Conversation with Serve the People Association (SPA) on November 15, 2021.

³² International Labor Organization (2012). ILO Indicators of Forced Labour. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

³³ US Department of Homeland Security (January 28, 2022). "DHS Takes Action to Combat Forced Labor and Hold Companies Accountable for Exploiting Workers." Available at: <https://www.dhs.gov/news/2022/01/28/dhs-takes-action-combat-forced-labor-and-hold-companies-accountable-exploiting>

of a migrant fisher and serious violence and threats by the captain, including beatings and showcasing knives to threaten the migrant fishers. Migrant fishers were also forced to work for two days and nights without rest and were not provided with enough food. The Fisheries Agency and the police were well aware of the situation; however, no further steps of human trafficking investigation were taken.³⁴

2.2. Failure to Identify Trafficking Victims

2.2.1. Ineffective labor inspections on fishing vessels

Labor inspections can be very powerful in deterring unlawful activities in workspaces and should be one of the main tools for the government to identify forced labor and human trafficking. According to the *Labor Inspection Act (2020)*, business entities found in violation of related labor laws and regulations through labor inspections are subject to imprisonment or to a fine. However, based on the current legal framework, only coastal-offshore fisheries³⁵ are subject to proper labor inspections, whereas inspections are almost non-existent in the distant water fisheries. This is because the coastal-offshore fisheries are governed by the Ministry of Labor, which has the legal authority to conduct labor inspections, while the responsible authority of distant water fishery is the Fisheries Agency under the Council of Agriculture, a governmental agency without such authority.³⁶

However, even though the Ministry of Labor is authorized to conduct labor inspections in the coastal-offshore fisheries, the coverage rate is so low that the effectiveness of such inspections is unclear. In 2020, the Ministry of Labor conducted only 30 inspections on coastal-offshore fishing vessels.³⁷ The inspection rate is very low in comparison to the number of employed migrant fishers (12,498) working on coastal-offshore vessels. Therefore, it is doubtful whether the crime rate – only three illegal activities identified from 30 inspections – reflects reality. The Ministry of Labor made a commitment to double the number of inspections in 2021; however, up until October 7, it had only conducted 28 inspections.³⁸

There are similar problems with the Fisheries Agency's monitoring of distant water fishing vessels. Since 2021, CSOs have been invited to observe the labor interviews conducted by the Fisheries Agency. During the process, several problems were identified by the observers and later reported to the Agency, both in oral and written forms and through individual and group channels. Observers pointed out that the interviews are conducted right next to the port and in public areas that are accessible to vessel owners and staff of recruitment agencies, failing to offer migrant fishers a sense of safety necessary to speak openly and without fear of retaliation. Observers also stated that the interviewers are unable to recognize a potential victim of forced labor, nor do they ask in-depth questions or offer timely assistance. Furthermore, with only ten interviewers, including an interpreter, in the entire

³⁴ The content of this paragraph is based on a field research conducted by Greenpeace Taiwan, and the cases have not been revealed to the public yet. During the interview, the fisher told Greenpeace Taiwan that he had conversations with the Fisheries Agency and the police but no further investigation took place as he has not received any updates ever since.

³⁵ Coastal-offshore fisheries refer to fisheries operated in Taiwan's internal waters, territorial sea, and EEZ. Coastal fisheries are situated between the coastline and 12 nautical miles and offshore fisheries operate between 12 and 200 nautical miles from Taiwan's coastline.

³⁶ More information about Taiwan's "two-tiered" system can be found in a brief paper published by Global Labor Justice-International Labor Rights Forum (December 2020). Labor abuse in Taiwan's seafood industry & local advocacy for reform. Available at: <https://laborrights.org/sites/default/files/publications/Labor-Abuse-in-Taiwan-Seafood-Industry-Local-Advocacy-for-Reform.pdf>

³⁷ The number of inspections conducted was sourced from an official letter sent to Greenpeace Taiwan by the Council of Agriculture on November 8, 2021.

³⁸ The number was sourced from an official letter sent to Greenpeace Taiwan by the Council of Agriculture on November 8, 2021.

Fisheries Agency, migrant fishers are not able to have one-to-one interviews.³⁹ Such an arrangement could put individual migrant fishers under peer pressure and affect their willingness to answer questions genuinely. So far, the Fisheries Agency has not made adjustments to these improper interview arrangements.⁴⁰

Besides the procedure, the professionalism and impartiality of the labor interviews conducted by the Fisheries Agency are also lacking. On land, business entities are governed by the Ministry of Economic Affairs, while the Ministry of Labor is responsible for the labor affairs within these business entities. However, in the case of the fishing industry, the Fisheries Agency is responsible for both, even though the Agency was designed to develop and implement fisheries policies and to solve fisheries-related problems. The Fisheries Agency lacks the knowledge, resources, and staff to handle labor issues.⁴¹ Furthermore, the connections between the Fisheries Agency officers and members of the fishing industry, such as powerful vessel operators, continue to develop and are not well considered and addressed by Taiwan's current administrative arrangement. In some cases, the Fisheries Agency has been accused of bias toward employers in labor disputes and other cases because they inevitably share common interests, leaving migrant fishers even more vulnerable.⁴²

2.2.2. Failure to identify labor exploitation through the national labor complaint mechanism

An accessible and effective complaint mechanism is essential to provide a pathway to justice and to protect forced labor and human trafficking victims from further abuse. However, the current national labor mechanism is neither accessible, nor effective, for migrant fishers, especially those who work in distant water fisheries.

On July 1, 2009, the Ministry of Labor set up the "1955 consultation and protection hotline" for foreign workers in Taiwan. The 1955 hotline is a 24-hour toll-free service in five languages, including Mandarin, Indonesian, English, Vietnamese, and Thai, to assist migrant workers who encounter problems at their workplace, with their employers, or with their recruitment agencies. The services are supposed to range from providing daily life and occupational information to providing legal consultation, receiving and filing labor complaints, and referring victims of physical harm and trafficking in persons to the local authorities.⁴³

In 2020, the Ministry of Labor received 41,057 complaints via the 1955 hotline; however, only 81 complaints were filed by migrant fishers who work in distant water fisheries.⁴⁴ This number is low because of how migrant fishers in distant water fisheries are recruited.

³⁹ During the interviews observed by Greenpeace Taiwan, only two interpreters, one who works for the Fisheries Agency and the other who is only a part-time contractor, participated, and each interpreter would partner with one or two Taiwanese interviewer(s). These two interview groups would interview all migrant fishers in one vessel. Instead of conducting private interviews, the fishers were divided into groups of two or three and were asked questions at the same time.

⁴⁰ Greenpeace Taiwan sent a letter of recommendation to the Fisheries Agency in May 2021, and the Fisheries Agency called a meeting in July 2021 with local CSOs to discuss the labor interviews. On both occasions, CSOs expressed in detail how the interviews could be improved.

⁴¹ Civil Media in Taiwan (2017). "Allow migrant fishers to be protected by the Labor Standard Act? Officials from the Ministry of Labor refuse to respond." <https://www.civilmedia.tw/archives/59537>

⁴² Taiwan Ocean Conservation and Fisheries Sustainability Foundation, a government sponsored entity, proposed a plan to replace overtime payment with bonus after rounds of conversation with the fishing companies. However, overtime payment and bonus are two different sources of fishers' salary, none of which should be compromised or replaced. The plan showcases the close relationship between Fisheries Agency and the industry as well as the lack of participation of employees in a conversation about their own salary policy.

⁴³ Ministry of Labor (2019). "The function of 1955 Hotline provided by the Ministry of Labor is to assist Migrant Workers in Seamless Communication."

https://www.wda.gov.tw/en/News_Content.aspx?n=8E8FA34452E8DBC2&s=4B08E109578D2D32

⁴⁴ The Control Yuan (2021). <https://www.cy.gov.tw/CyBsBoxContent.aspx?s=17496>

Migrant fishers who work on distant water fishing vessels are allowed to be onboard and leave the vessels without entering into Taiwan. With no opportunity to be properly introduced to and reminded of the 1955 hotline, such as through posters, flyers, or any kind of information on vessels, and no access to phones on the vessels, this complaint mechanism is an empty shell. From observing the labor interviews conducted by the Fisheries Agency, CSOs report that many migrant fishers are not aware of the 1955 hotline, not to mention the lack of access to satellite phones or Wi-Fi on the high seas that make it impossible for those migrants who do wish to contact the hotline.⁴⁵

Furthermore, even if migrant fishers in distant water fisheries were aware of and could contact the 1955 hotline, they opt not to use it because they are afraid of facing retaliation, such as losing their jobs and being forced to go back to their countries. Instead, they will turn to their own communities or local CSOs in Taiwan or Indonesia for assistance. Some migrants have had negative experiences using the hotline, leading to frustration when their complaints were not recognized or resolved.⁴⁶

3. PREVENTION

The Prevention prong of the “3P” paradigm asks governments to “address the tactics of human traffickers head on.”⁴⁷ Examples of prevention methods include dissemination of information; strategic intervention programs to reach at-risk populations; amending and robustly enforcing labor laws; developing and monitoring labor recruitment programs to protect workers from exploitation; strengthening partnerships among law enforcement, government, and NGOs; and monitoring supply chains to address cases of forced labor.

3.1. Flawed Recruitment and Employment System

The majority of blue-collar migrant workers in Taiwan have entered the country through private employment service institutions, which are recruitment or broker agencies. As of the end of 2020, there were 3,317 human resources agencies certified for conducting the foreign worker recruitment business.⁴⁸ From the perspective of local CSOs, the Taiwanese government uses these recruitment agencies as a tool to manage and control migrant workers, while it fails to carry out an effective management system towards the foreign workforce in Taiwan. The following sections set out the number of problems caused by this flawed foreign worker recruitment system.

3.1.1. The existence of illegal practices of Taiwanese recruitment agencies

In Taiwan, migrant workers often end up in dirty, dangerous, and demeaning work, undertaking jobs that are not popular among Taiwanese nationals, and supplementing the lack of manpower in these industries. The COVID-19 pandemic has aggravated existing labor shortages in Taiwan. In December 2020, Indonesian workers were banned from entering Taiwan for two weeks,⁴⁹ and since May 2021, no foreigners without a valid residential permit have been allowed to enter Taiwan, including migrant workers.⁵⁰

⁴⁵ Conversation with Permalang Association on November 18, 2021.

⁴⁶ Conversation with Permalang Association on November 18, 2021.

⁴⁷ 3Ps: Prosecution, Protection, and Prevention, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, <https://www.state.gov/3ps-prosecution-protection-and-prevention/>.

⁴⁸ Workforce Development Agency, Ministry of Labor (2021). Overview of the manpower agencies conducting foreign recruitment and employment businesses. Available at: <https://statdb.mol.gov.tw/html/mon/m50020.pdf>

⁴⁹ Taiwan Centers for Disease Control (2020). Suspending Indonesian workers from entering Taiwan for two weeks starting from December 4, 2020. Available at: <https://www.cdc.gov.tw/Bulletin/Detail/1izxRf69jL99V-lx2vMPtq?typeid=9>

⁵⁰ Taiwan Centers for Disease Control (2020). Suspending Indonesian workers from entering Taiwan for two weeks starting from December 4, 2020. Available at:

Besides impacting Taiwanese employers, the severe labor shortage has also affected the private employment services institutions that mainly conduct business activities related to introducing foreigners to employment options in Taiwan. Recruitment brokers have long been recognized as a key part of the process that leads to the exploitation of migrant workers in Taiwan.⁵¹ This year, as recruitment brokers are not allowed to recruit migrant workers into the country during the pandemic, many agencies have either come up with new means to make profit from the recruitment industry or have continued unethical or even illegal practices, such as charging illegal job-purchasing fees, to exploit migrant workers. The Taiwanese government does not effectively regulate these recruitment agencies to prevent migrant workers from exploitation.

3.1.1.1. Illegal job-purchasing fee

The notorious “job-purchasing fee” has long existed in the migrant labor market in Taiwan.⁵² According to a staff member at a grassroots organization who has close contact with many Indonesian migrant workers, it is illegal to charge both workers and employers any additional fees that are not stated in the *Employment Service Act*⁵³ or the *Standards for Fee-charging Items and Amounts of the Private Employment Services Institution*⁵⁴ for their recruitment services; nevertheless, it has become a normality for illegal transactions to take place in the market.⁵⁵

Under law, the “registration fee and placement fee... in total shall not exceed the first-month salary of a foreign person unless it is agreed by the foreign person that the conditions of recruitment are special.”⁵⁶ However in practice, recruitment agencies charge illegal fees to both workers and employers.

In Taiwan, migrant factory workers are subject to the *Labor Standard Act* with a monthly minimum wage of NTD 25,250 (USD 890), and migrant domestic workers receive a monthly salary of about NTD 17,000 (USD 614), which is set by the Taiwanese government and the worker’s government.⁵⁷ This means that the total registration fee and placement fee of hiring each worker should not exceed these numbers. Nevertheless, it is common for employers who are in urgent need of hiring migrant workers to be charged an “introduction fee” of up to NTD 35,000 (USD 1,264), on top of the registration and placement fee to “purchase a worker.”⁵⁸

<https://www.cdc.gov.tw/Bulletin/Detail/jFbqjTTexTGf3kdrinf0FA?typeid=9>

⁵¹ Covenants Watch (2013). Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants. Concluding Observations and Recommendations Adopted by the International Group of Independent Experts. No. 39. Available at: https://covenantwatch.org.tw/wp-content/uploads/2018/12/2013-ICCPR-ICESCR-CORs_EN.pdf

⁵² Environmental Justice Foundation (2018). Human trafficking in Taiwan’s fisheries sector. Available at <https://ejfoundation.org/resources/downloads/EJF-Briefing-Taiwan-2018.pdf>

⁵³ Law & Regulations Database of The Republic of China (2022). Standards for Fee-charging Items and Amounts of the Private Employment Services Institution. Art.35, No.2. Available at: <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090028>

⁵⁴ Law & Regulations Database of The Republic of China (2022). Standards for Fee-charging Items and Amounts of the Private Employment Services Institution. Art. 2. Available at: <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090028>

⁵⁵ Conversation with Rerum Novarum on November 17, 2021.

⁵⁶ Law & Regulations Database of The Republic of China (2022). Standards for Fee-charging Items and Amounts of the Private Employment Services Institution. Art. 5. Available at: <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090028>

⁵⁷ Ministry of Labor (2022). The History of Enacting and Adjusting the Minimum Wage Policy. Available at <https://english.mol.gov.tw/21004/21015/21016/21033/21232/>

The salary of the migrant domestic workers in Taiwan were agreed between the Taiwanese government and the Vietnamese, Filipino, and Indonesian governments.

⁵⁸ Su Shin-Yi, Hsu Tsai-Wei (2021). Revealing how recruitment agencies survive (pt. 1): Government’s failure in regulating the business licenses. Available at: <https://www.thenewslens.com/article/153312>

For workers, the fees can range from NTD 50,000 (USD 1,897) to NTD 70,000 (USD 2,529) for them to be introduced to a new job or be transferred to a new employer,⁵⁹ which is the so-called “work-purchasing fee”. In Taiwan, most migrant workers possess neither adequate local language skills, nor have information about potential Taiwanese employers, to navigate the recruitment system on their own. Without the assistance provided by the recruitment agencies, these workers have little to no chance of finding jobs in Taiwan and may face deportation if they do not renew their working visa and have themselves registered with a new employer before their most recent working permit expires. Under these circumstances, migrant workers are much more vulnerable than Taiwanese nationals to trafficking in persons, and some Taiwanese recruitment agencies take advantage of such vulnerability and the desperation of settling with a new job to exploit these workers.⁶⁰ Even though these charges are unlawful and the recruitment agencies could face prosecution and penalties, most brokers are not afraid of punishment, as the fines are often very minor compared with the profit they are able to make from these workers.

Since the start of the pandemic, during which time the recruitment agencies are unable to bring in new migrant workers from abroad, some agencies have developed a system to extort migrants and employers for profit using the existing pool of workers in Taiwan. The cycle works in the following manner:⁶¹

1. Migrant worker A seeks to transfer from his previous job with employer A to a new job with employer B.
2. The recruitment agency asks for fees above the legal limit from both migrant worker A and employer B to process the employment transferring process.
3. Employer A seeks to hire a new worker, as migrant worker A has been transferred to another job/employer.
4. The recruitment agency introduces another migrant worker (similar to migrant worker A who has been working for another Taiwanese employer) to employer A, and charges fees from both employer A and the new worker.

If the workers are unwilling to pay or unable to afford the excessive transition fees asked by the recruitment agencies, their transition may be held up by the agencies until payment is completed. Without paying the fees, they will not only be unable to begin their new employment, but they may also face the risk of becoming undocumented in Taiwan as well, as their working visas are bound to their employment contracts. The action of utilizing the vulnerability of the workers is a flagrant violation of the *Human Trafficking Prevention Act* in Taiwan. Moreover, this abusive recruitment practice is an indicator of trafficking in persons.

3.1.1.2. “Deposit” toward migrant workers

Another way that recruitment agencies extort and profit from migrant workers is through the practice of requiring a deposit, especially for fishers working in the distant water fishing industry. The deposit is a fee that is often charged by the migrant fishers’ employers or the vessel owners before the beginning of a fisher’s employment, and it is supposed to be returned to the fisher upon termination of the contract.

According to a local CSO worker, many fishers are charged a one-off deposit of USD 800-1,200 before the start of their employment. There are also cases in which the deposit has been split into 12 payments that will be directly deducted from the worker’s salary over 12

⁵⁹ Su Shin-Yi, Hsu Tsai-Wei (2021). Revealing how recruitment agencies survive (pt. 1): Government’s failure in regulating the business licenses. Available at: <https://www.thenewslens.com/article/153312>

⁶⁰ Conversation with Rerum Novarum on November 17, 2021.

⁶¹ Conversation with Rerum Novarum on November 17, 2021.

months. Upon completion of the employment contract, this deposit can be returned to the worker. However, if for any reason, a worker is unable to fulfill the work over the entire contract period (for example, by changing jobs or being unable to continue working because of sickness or injuries), the deposit may be taken away by the agency. Even if a worker has completed the contract, he may still not be able to get the deposit back as many brokers would use this money to purchase the worker's flight for him to return to his home country.⁶²

This practice of withholding migrant workers' salaries in the name of holding a "deposit" violates the *Labor Standard Act*.⁶³ To date, this deposit system in the labor market is still operating under the acquiescence of the Taiwanese government.

3.1.1.3. Confiscation of employment documents

Some recruitment agencies confiscate workers' employment documents, such as their labor contracts, in the name of "protecting them from being harmed or deceived by other unscrupulous brokers," but actually to make sure that these workers are under their control.

Employers hiring migrant workers are required to complete the registration process with the local labor affairs governmental department, and workers transferring to another employer must provide relevant legal employment documents for their employers to finalize the registration. If a worker's employment documents have been confiscated by the broker, he/she will not be able to work for another employer. To the workers, additional fees may apply for them to reclaim their employment documents from their previous brokers; or in some cases, their previous brokers will ask for a fee from their new recruitment agencies to complete the job transition. The practice of confiscating workers' identity documents and charging arbitrary and unexpected recruitment fees are indicators of forced labor and human trafficking.⁶⁴

The Taiwanese government has not addressed this type of document confiscation from happening, and in most cases, the offenders will not be prosecuted.⁶⁵ According to Chapter 31 of the *Criminal Code of the Republic of China*,⁶⁶ unlawful control of another person's belongings constitutes the element of offenses of embezzlement, and the perpetrator shall be sentenced to imprisonment for no more than five years.⁶⁷ In a case shared by a CSO, the local government took no legal action after a migrant worker reported that his broker refused to return his documents to him. Instead, the government officials held a coordination meeting between the broker and the worker. In the end, even though the worker successfully got his documents back, the broker received no punishment in this case.⁶⁸ The Taiwanese government treats this kind of criminal offense as a labor dispute, instead of serious misconduct that would require involvement of the judicial system.

⁶² Environmental Justice Foundation (2019). No action in human trafficking prevention causing continuous exploitation against migrant fishermen. Available at: <https://ejfoundation.org/news-media/%E4%BA%BA%E5%8F%A3%E8%B2%A9%E9%81%8B%E9%98%B2%E5%88%B6%E5%85%89%E8%AA%AA%E4%B8%8D%E5%81%9A-%E5%A4%96%E7%B1%8D%E6%BC%81%E5%B7%A5%E7%B9%BC%E7%BA%8C%E5%8F%97%E5%89%9D%E5%89%8A>

⁶³ Law & Regulations Database of The Republic of China (2022). Labor Standard Act. Art. 26. Available at <https://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=N0030001>

⁶⁴ International Labor Organization (2012). ILO Indicators of Forced Labour. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

⁶⁵ Conversation with Yilan Migrant Fishermen Union on November 16, 2021.

⁶⁶ Law & Regulations Database of The Republic of China (2022). Criminal Code of the Republic of China. Available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>

⁶⁷ Law & Regulations Database of The Republic of China (2022). Criminal Code of the Republic of China. Art. 335. Available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>

⁶⁸ Conversation with Yilan Migrant Fishermen Union on November 16, 2021.

3.1.2. The problematic recruitment agency quality evaluation system

The recruitment agency quality evaluation system operated by the Workforce Development Agency of the ministry of Labor aims to evaluate the services and rank the performance of the recruitment agencies, and it is supposed to act as an active tool to identify the agencies that are conducting unlawful recruitment practices and/or exploiting their workers.⁶⁹ Nevertheless, the flawed system makes it ineffective in identifying and punishing the faulty agencies, and the Taiwanese government has failed to reform the system to protect the workers managed by these agencies.

3.1.2.1. Unobjective evaluation system

The “Service Quality Evaluation of Private Employment Service Institutions that Engaged in Overseas Manpower Agency” takes place once a year⁷⁰ and investigates the following issues: the practice of overcharging recruitment fees; the ratio of the workers who are missing to the total number of their workers; the illegal introduction of migrant workers into Taiwan; whether the commissioned employment service business has been properly conducted; and inability to provide all of the relevant documents for examination.⁷¹ As stated by the Workforce Development Agency, the purpose of holding these yearly evaluations is to reward lawful recruitment agencies and eliminate unlawful ones in the market, and to ensure the quality of services received by employers and migrant workers.⁷² These evaluations should serve as a safety net to prevent unethical and unlawful recruitment agencies from operating and potentially exploiting migrant workers; in reality, however, according to a CSO, these evaluations are unable to eliminate unscrupulous agencies from the market.⁷³

After the service quality evaluation, each recruitment agency will be ranked as A, B, or C, and a “C” ranking for two consecutive years will result in a prohibition of operation of an agency. However, since 2015, no recruitment agency’s license has been suspended by the government,⁷⁴ despite the high prevalence of charging illegal fees and other exploitative practices used by agencies to recruit migrant workers to Taiwan.

Recruitment agencies use several approaches to avoid facing penalties or suspension of their operations: (1) agencies are able to use documents provided by the Workforce Development Agency to self-evaluate their business’ performance in the past year on the official website for the service quality evaluation;⁷⁵ (2) if an agency is in danger of receiving a C rank or having their operation suspended, the agency’s owner can voluntarily shut down the business and re-run the agency using a different name and license.⁷⁶ Instead of spot-checking the migrant workers’ cases processed by the agencies or interviewing their clients,

⁶⁹ Ministry of Labor (2021). Service Quality Evaluation of Private Employment Service Institutions that Engaged in Overseas Manpower Agency. Available at <https://laws.mol.gov.tw/FLAW/FLAWDAT01.aspx?id=FL044060>

⁷⁰ Workforce development Agency, Ministry of Labor (2021). Restarting the evaluation of private employment service institutions. Available at: https://www.wda.gov.tw/News_Content.aspx?n=7F220D7E656BE749&sms=E9F640ECE968A7E1&s=92954AC72E00AF92. Normally, the evaluation period lasts from June to August, with the result being made available in late October. In 2021, due to the COVID-19 outbreak, the evaluation has been postponed to December with an expected date of release in March 2022.

⁷¹ Ministry of Labor (2021). Service Quality Evaluation of Private Employment Service Institutions that Engaged in Overseas Manpower Agency. Available at: <https://laws.mol.gov.tw/FLAW/FLAWDAT01.aspx?id=FL044060>

⁷² Workforce Development Agency, Ministry of Labor (2020). 2019 Service Quality Evaluation of Private Employment Service Institutions that Engaged in Overseas Manpower Agency Orientation Slides. Available at: <https://www.golden-brother.com/upload/files/A.pdf>

⁷³ Conversation with Yilan Migrant Fishermen Union on November 16, 2021.

⁷⁴ Su Shin-Yi, Hsu Tsai-Wei (2021). Revealing how recruitment agencies survive (pt. 1): Government’s failure in regulating the business licenses. Available at: <https://www.thenewslens.com/article/153312>

⁷⁵ 2020 Service Quality Evaluation of Private Employment Service Institutions that Engaged in Overseas Manpower Agency. Available at: <http://tfoi.ehosting.com.tw/Download.aspx>

⁷⁶ See the next section.

the actual evaluation conducted by the Workforce Development Agency consists of some readied interview questions to be asked by the observer and the examination of relevant documents, which allows the staff at the agencies to prepare beforehand. A broker stated in a media report that “all you have to do is have the documents prepared and memorize the relevant regulations to receive a rank A.”⁷⁷

These loopholes for agencies to evade the law have long been popular and have even been normalized in the local recruitment industry. This year, the Taiwanese government has, once again, failed to develop effective policies or methods to address and eradicate this problem.

3.1.2.2. Loophole for recruitment agencies to possess multiple licenses

According to some experienced brokers, it is common for the owners of the recruitment agencies to possess more than one business license and, as mentioned in the previous section, owning multiple licenses is a common practice among unlawful agencies that are used to avoiding being penalized under Taiwanese law while continuing to exploit migrant workers.

A business can apply for one business license only; however, there is no restriction on how many businesses a person can own. Therefore, many brokers have established multiple offices using different company names and have applied for a license for each of these businesses. In practice, however, these recruitment businesses are run by the same owner and the same group of staff. If the owner of the agency has conducted unlawful practices (e.g., collecting illegal fees from migrant workers) and senses that the business may receive a low ranking from the service quality evaluation, or even have its operations suspended by the government, the owner can simply shut down the business to avoid evaluation and penalty, and continue the business using another license owned by him/her.⁷⁸

Taiwanese law makes it simple for recruitment agencies to own multiple licenses; it is just a matter of paperwork. For registering a new business license, a deposit of NTD 3,000,000 (USD 107,000) to the government and registered capital of NTD 5,000,000 (USD 180,000) are required.⁷⁹ For the former, brokers can apply to the “interest-free loan program” provided by some banks in Taiwan and pay a processing fee of NTD 120,000 (USD 4,323) - NTD 150,000 (USD 5,403) to the bank. For the latter, the broker only has to provide a bank statement as proof of funds.⁸⁰ The entire application process for a new license takes no more than two months; and for those brokers who are experienced in this practice, the administration processes are very simple, and they can easily receive a new license without fuss.

The “new” recruitment agencies can even operate without attracting new clients; they are only required to transfer their existing clients to the “new agency” by signing a new contract with them under the newly-registered company name. Any mistreatment and exploitation of migrant workers and the practices of making an illegal profit off of the migrant workers are able to continue under the new company name.

⁷⁷ Su Shin-Yi, Hsu Tsai-Wei (2021). Revealing how recruitment agencies survive (pt. 2): The first-generation brokers using multiple licenses to avoid legal punishments, and the next-generation brokers attempting to make changes to the industry. Available at: <https://www.thenewslens.com/article/153320>

⁷⁸ Su Shin-Yi, Hsu Tsai-Wei (2021). Revealing how recruitment agencies survive (pt. 1): Government’s failure in regulating the business licenses. Available at: <https://www.thenewslens.com/article/153312>

⁷⁹ Laws and Regulations Database of Taipei City (2022). Private employment service institution business license application process. Available at: <http://www.laws.taipei.gov.tw/lawatt/Law/A040290091029000-20140319-1000-038.pdf>

⁸⁰ Su Shin-Yi, Hsu Tsai-Wei (2021). Revealing how recruitment agencies survive (pt. 1): Government’s failure in regulating the business licenses. Available at: <https://www.thenewslens.com/article/153312>

Many brokers are misusing the law for their benefit, and the Taiwanese government has failed to effectively manage the foreign recruitment market and carry out regulations to stop the long-existing loopholes in Taiwanese law. The inaction of the government has led to failure in preventing unlawful businesses from operating, which has further led to serious labor exploitation and trafficking of migrant workers.

3.1.3. The problematic two-tiered employment system for migrant fishers

The two-tiered system for recruitment of migrant fishers in Taiwan aggravates the existing labor exploitation in the distant water fishing industry.⁸¹ Under this system, fishers are being employed under two different categories: coastal-offshore fishing and distant water fishing, and there is a large gap in terms of working conditions and protection between the two.

Unlike the coastal-offshore fishers, migrant fishers working on distant water fishing fleets are not protected under the *Labor Standard Act*, the *Employment Service Act*, or the *Occupational Safety and Health Act*. Migrant workers in other sectors, including the coastal-offshore fishery workers, are governed by the Ministry of Labor, whereas migrant fishers in the distant water fishing industry are governed by the Fisheries Agency.⁸² CSOs in Taiwan have been advocating around this issue for more than five years,⁸³ repeatedly showing how this discriminatory system leads to exploitation of distant water fishers, yet no reforms have been made. This represents one of the most striking forms of inaction by the Taiwanese government with regard to addressing the trafficking of migrant fishers. The following table sets out the difference between the two systems:

Table 1. Comparison of rights and legal protections for coastal-offshore fisheries and distant water fisheries (2021)⁸⁴

	Coastal-offshore Fisheries	Distant Water Fisheries
Employment method	Domestic employment	Overseas employment
Responsible authority	Ministry of Labor	Fisheries Agency
Applicable laws	Employment Service Act; Labor Standards Act; Occupational Safety and Health Act	Acts for Distant Water Fisheries; Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members ⁸⁵

⁸¹ Greenpeace (2019). The Two-Tiered System: Discrimination, Modern Slavery and Environmental Destruction on the High Seas. Available at: https://www.greenpeace.org/usa/wp-content/uploads/2019/09/Greenpeace-Briefing-on-the-Two-Tiered-System_9.19.19.pdf

⁸² 4 Ways Voice (2021). Legal loopholes of the FOC vessels: migrant fishers accusing the captains of physical abuse and excessive working hours. Available at: <https://4wayvoice.nownews.com/news/20211119/669509/>

⁸³ The following are examples of Taiwanese CSOs raising awareness on and advocating for migrant fishers' rights: CoolCloud (2015). Migrant fishers sleeping on decks and only having porridge for their meals are paying USD 180 per month to their employers for food and accommodation. Available at: <https://www.coolcloud.org.tw/node/83314>. Greenpeace Taiwan investigating the Indonesian fishers who are kept like slaves in Taiwan (2017). Available at <https://www.thejakartapost.com/news/2017/09/19/fishermen-including-from-indonesia-kept-like-slaves-in-taiwan-.html>. Taiwanese CSOs forming coalition to combat labor exploitation against migrant fishers (2018). Available at <https://www.newsmarket.com.tw/blog/109439/>. Taiwanese CSOs collaborating with a legislator to investigate the working conditions, labor rights, and labor exploitation on FOC vessels (2020). Available at <https://www.tahr.org.tw/news/2694>

⁸⁴ Mina Chiang, Kimberly Rogovin (2020). Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform, Global Labor Justice - International Labor Rights Forum. Available at <https://laborrights.org/sites/default/files/publications/Labor-Abuse-in-Taiwan-Seafood-Industry-Local-Advocacy-for-Reform.pdf>

⁸⁵ Greenpeace (2019). The Two-Tiered System: Discrimination, Modern Slavery and Environmental Destruction on the High Seas. Available at: https://www.greenpeace.org/usa/wp-content/uploads/2019/09/Greenpeace-Briefing-on-the-Two-Tiered-System_9.19.19.pdf

Minimum wage	NTD 24,000 ⁸⁶ (approx. USD 865)/month	USD 450/month
Freedom of association and collective bargaining	Can form and join unions; two fishers' unions formed	Practical difficulties to form or join unions (isolation at sea); no unions formed
Insurance	Standard Labor Insurance; Taiwan National Health Insurance; Labor Occupational Accident Insurance and Protection Act ⁸⁷	Private accident, medical, and life insurance; not eligible for the Labor Occupational Accident Insurance and Protection Act
Labor inspections	Ministry of Labor	None (only interviews and surveys by the Fisheries Agency)

3.1.3.1. No access to the Labor Occupational Accident Insurance and Protection Act

Taiwan's *Labor Occupational Accident Insurance and Protection Act* is an example of how the two-tiered employment system systematically discriminates against migrant workers in the distant water fishing industry.

On April 23, 2021, the Legislative Yuan approved the *Labor Occupational Accident Insurance and Protection Act*,⁸⁸ which mandates occupational accident insurance for both local and foreign workers.⁸⁹ The insurance covers the incidents of death, permanent disability, and disappearance, as well as the medical cost of injury or sickness of workers who have been legally hired.⁹⁰ However, as for the fishing sector, this legislation only includes the migrant coastal-offshore fishers, and those who work on the distant water fishing vessels or Flag of Convenience (FOC) vessels⁹¹ are excluded from this law.

Both the fishing fleets and merchant ships that operate in the open water should be recognized as an extension of Taiwan's territory, and the crews working on these boats should be subject to Taiwan's legislation.⁹² Unfortunately, as the migrant workers on distant water fishing vessels have not been domestically employed, they are not covered by this new legislation. So far, migrant domestic workers, factory workers, construction workers, coastal-offshore fishers, and crews on merchant ships that have been "hired to work in Taiwan" have been included in this law, leaving the migrant distant water fishers as the only category of worker that has been left out.

⁸⁶ Laws & Regulations Database of The Republic of China (2022). Labor disputes regarding part-time jobs. Available at:

<https://law.moi.gov.tw/SmartSearch/Theme.aspx?T=12&O=3.1#:~:text=%E4%BE%9D%E6%93%9A%E5%8B%9E%E5%8B%95%E5%9F%BA%E6%BA%96%E6%B3%95%E7%AC%AC,%E4%BA%8C%E8%90%AC%E5%9B%9B%E5%8D%83%E5%85%83%E3%80%82>

⁸⁷ Ministry of Labor (2021). The Legislative Yuan passing the Labor Occupational Accident Insurance and Protection Act. Available at: <https://www.mol.gov.tw/1607/1632/1633/32988/>

⁸⁸ Ministry of Labor (2021). The Legislative Yuan passing the Labor Occupational Accident Insurance and Protection Act. Available at: <https://www.mol.gov.tw/1607/1632/1633/32988/>

⁸⁹ Claire Lee (2021). Taiwan mandates occupational accident insurance for all workers. HRMASia. Available at: <https://hrmasia.com/taiwan-mandates-occupational-accident-insurance-for-all-workers/>

⁹⁰ Law & Regulations Database of The Republic of China (2022). Labor Occupational Accident Insurance and Protection Act. Art. 26. Available at: <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0050031>

⁹¹ Flag of Convenience (FOC) refers to a business practice in which the vessel owner registers the vessel in a country different from their own nationality to evade regulations and policies in the home country.

⁹² Conversation with Yilan Migrant Fishermen Union on November 16, 2021.

3.2. Authorities' Practices and Inaction Contribute to Labor Rights Violations

3.2.1. Restrictions on migrant workers' freedom to transfer jobs

Due to the tightened entry restriction for foreigners since the COVID-19 pandemic started in March 2020,⁹³ migrant workers have been unable to enter Taiwan, resulting in a lack of manpower in some industries in which migrant workers are in high demand. In Taiwan, nursing services for the elderly and the disabled in private households rely heavily on migrant domestic workers, and it is one of the industries that suffers from a labor shortage.

Unlike industrial workers, migrant domestic workers, including both domestic nurses and domestic helpers in Taiwanese private households, are not protected by the *Labor Standard Act* and have poorer working conditions. For example, their minimum salary is set at NTD 17,000 (USD 615), while other migrant workers enjoy a minimum salary of NTD 25,250 (USD 890), which aligns with Taiwan's national standard. Migrant domestic workers also have much longer regular working hours, compared to industrial workers.⁹⁴ This has resulted in many migrant domestic workers seeking opportunities to change to factory jobs, thereby worsening the existing shortage of domestic workers in private households.

The lack of manpower has enraged many Taiwanese employers. To ease their frustration, the Ministry of Labor proposed to "prohibit migrant nursing workers from switching careers to factories".⁹⁵ On July 16, 2021,⁹⁶ the Ministry of Labor amended the "Directions of the Employment Transfer Regulations and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11, Paragraph 1, Article 46 of the *Employment Services Act*," stating, "foreigners processing transfer of registration are restricted to the same type of job in their original industry."⁹⁷ Under the latest restriction, migrant workers are only able to switch careers to another job category if they have not been hired by any employer in their former industry. In practice, with the high demand of domestic nurses in Taiwan, the migrant nursing workers have no chance to leave their current industry.

According to a frontline CSO supporting migrant workers, CSOs in Taiwan were not fully included in the discussion of the imposition of this new restriction,⁹⁸ and the migrant workers themselves did not have the opportunity to share their opinions regarding this amendment of the law, even though it directly impacts their work. A CSO worker mentioned⁹⁹ that the prohibition on migrant workers to transfer to different job categories clearly violates Article 39 of the "Concluding Observation and Recommendations on the Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants" published in March 2013, which states that "the rights of migrant workers

⁹³ Bureau of Consular Affairs, Ministry of Foreign Affairs (2021). Entry restrictions for foreigners to Taiwan in response to COVID-19 outbreak. Available at: <https://www.boca.gov.tw/cp-56-5078-41ac3-1.html>

⁹⁴ Sharlene Chen (2021). The Marginalised - An Overview of the Migrant Domestic Workers in Taiwan. Available at: <https://humanity-consultancy.com/wp-content/uploads/2021/07/The-Marginalised-An-Overview-of-the-Migrant-Domestic-Workers-in-Taiwan.pdf>

⁹⁵ <https://www.awakening.org.tw/news/5603>

⁹⁶ 4 Ways Voice (2021). Restriction against migrant workers transferring between industries - a giant leap backwards in labor rights. CSOs demanding the National Human Rights Commission initiate an investigation. Available at: <https://4wayvoice.nownews.com/news/20210811/656429/>

⁹⁷ Law & Regulations Database of The Republic of China (2022). Directions of the Employment Transfer Regulations and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11, Paragraph 1, Article 46 of the Employment Services Act Chinese. Available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090023>

Jake Chung (2021). Foreign workers protest changes to job transfer rules. Taipei Times. Available at: <https://www.taipetimes.com/News/taiwan/archives/2021/07/30/2003761730>

⁹⁸ 4 Way Voice (2021). Restriction against migrant workers transferring between industries - a giant leap backwards in labor rights. CSOs demanding the National Human Rights Commission initiate an investigation. Available at: <https://4wayvoice.nownews.com/news/20210811/656429/>

⁹⁹ Conversation with Serve the people Association on November 15, 2021.

enabling them to transfer between employers be extended.”¹⁰⁰ The Taiwanese government not only has not yet extended the right of migrant workers to transfer jobs, but rather has imposed further restraints, which results in potential labor exploitation.

3.2.2. Lack of labor standards regarding the FOC vessels

According to the Fisheries Agency, as of March 30, 2021, there were 255 Flag of Convenience (FOC) vessels owned by Taiwanese nationals.¹⁰¹ Most of them are registered in Vanuatu, Seychelles, and Panama; and the European Commission has issued a yellow card (which indicates a formal warning) or red card (being banned from the EU market)¹⁰² for illegal, unreported, and unregulated (IUU) fishing for 67% of these vessels in the past seven years,¹⁰³ demonstrating that these fishing operations are not properly regulated.

In the investigation report published by the Control Yuan on May 5, 2021, even though these FOC vessels are either owned or have been financially backed by Taiwanese nationals, the working conditions on these vessels are not regulated under the *Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels*¹⁰⁴ or the *Act for Distant Water Fisheries*.¹⁰⁵ Furthermore, the Ministry of Transportation and Communications failed to include fishing vessels in its inspection of port state control; and the Fisheries Agency, which should be in charge of managing the fishing sector, failed to proactively investigate cases of trafficking in persons.¹⁰⁶

There is evidence that migrant fishers working on FOC vessels have suffered severe exploitation and even death. A former migrant fisherman on the infamous “Da Wang” vessel, where human trafficking and physical abuse were identified, stated that he and his fellow crew members often worked for 22 to 28 hours non-stop, followed by a rest time of as little as three hours. Hunger was also common on the vessel, as the captain only prepared meals sufficient for three to five people, which would have to be shared by more than ten workers onboard.¹⁰⁷

So far, the Taiwanese government has continued to react passively to the labor exploitation happening on FOC vessels and has not yet carried out any plan to stop it, leaving these migrant fishers unprotected.

¹⁰⁰ Covenants Watch (2013). Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants. Concluding Observations and Recommendations Adopted by the International Group of Independent Experts. No. 39. Available at: https://covenantwatch.org.tw/wp-content/uploads/2018/12/2013-ICCPR-ICESCR-CORs_EN.pdf

¹⁰¹ The Fisheries Agency (2022). List of FOC vessels run by Taiwanese. Available at: <https://www.fa.gov.tw/cht/FOC/content.aspx?id=14&chk=3a15a1b5-762e-40d1-9a09-f0e785814650¶m=pn%3D1>

¹⁰² EU IUU Fishing Coalition (2022). EU carding decisions. Available at: <http://www.iuuwatch.eu/map-of-eu-carding-decisions/>

¹⁰³ International Institute for Cultural Studies. Dialogue between Law and Society 2: Future Labor Policies on Migrant Fishers and Flag of Convenience on November 19, 2021. Available at https://iics.nctu.edu.tw/zh_tw/intro/News/event/%E6%AC%8A%E5%AE%9C%E8%88%B9-%E6%B5%B7%E4%B8%8A%E5%8B%9E%E5%8B%95%E6%94%BF%E7%AD%96%E8%88%87%E5%A4%96%E7%B1%8D%E6%BC%81%E5%B7%A5%E5%8B%9E%E6%AC%8A%E4%BF%9D%E9%9A%9C-%E5%B7%A5%E4%BD%9C%E5%9D%8A-40555730

¹⁰⁴ See the *Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels* here: <https://www.fa.gov.tw/en/LegalsActs/content.aspx?id=4&chk=8e673d97-5589-4483-a986-8c2d26cd5607¶m=>

¹⁰⁵ The Control Yuan (2021). Investigation Report. Available at: <https://www.cy.gov.tw/CyBsBoxContent.aspx?s=17495>

¹⁰⁶ The Control Yuan (2021). Investigation Report. Available at: <https://www.cy.gov.tw/CyBsBoxContent.aspx?s=17495>

¹⁰⁷ The Control Yuan (2021). Investigation Report. 54. Available at: <https://www.cy.gov.tw/CyBsBoxContent.aspx?s=17495>

3.2.3. Limited rights to freedom of association and collective bargaining

Freedom of association and collective bargaining are fundamental labor rights and are central to ensuring decent working conditions and preventing forced labor.¹⁰⁸ Migrant fishers in Taiwan, especially those in the distant water fishing industry, lack access to unions. Without well-organized worker unions, migrant fishers are unable to exercise their rights to organize or bargain for better working and living conditions with their employers. In Taiwan, there is a severe shortage of worker associations for these fishers to protect their labor rights.

Even with a law enabling migrant workers to form unions, Taiwan presents a disempowered and discouraging environment for them to realize their rights to freedom of association. The constitution of Taiwan, the Labor Union Act and the Enforcement Rules of the Labor Union Act provide the legal grounds for freedom of association. The Labor Union Act was amended in May 2011 to allow foreign workers to serve as directors or supervisors of a union, which in practice allowed them to form and lead their own unions. Since then, only three unions have been established by migrant workers with assistance of local labor rights organizations and activists— including two for fishers with about 100 members in each and one for domestic caregivers, a small number given the population of over 600,000 migrant workers in Taiwan.

The law itself creates a restriction for workers to assemble. In Taiwan, labor unions are classified into three types. A ‘corporate union’ is for employees at the same workplace or company, an ‘industrial union’ is for workers in the same industry, and a ‘professional union’ is for workers with the same professional skills.¹⁰⁹ It is difficult for migrant fishers to form any of these types of unions; however, it has been possible for coastal-offshore fishers to form professional unions.¹¹⁰ A professional union must be formed by workers in the same work category who are registered in the same administrative area. This is easier for coastal-offshore fishers; however, for distant water fishers, it is common for them to transfer to employers or work on vessels registered in different cities or counties, which makes it particularly challenging for them to form the group of initial members needed to establish a union.¹¹¹

The two migrant fishers’ unions in Taiwan were established in Yilan and Keelung counties in the northeast of Taiwan. As the Labor Union Act prohibits these professional unions to take in members from other geographical areas, these unions are unable to cover fishers working or registered outside of Yilan and Keelung, which means 20 out of the total 22 counties and cities in Taiwan do not have a fishers’ union for workers to unite and bargain for the rights that they are already entitled to.

Other examples further show that the Taiwanese government has not fostered an environment to promote and protect the right to freedom of association for migrant workers. Firstly, most employers are unwilling to support the forming of worker unions, and migrant fishers may face pressure or even threats from their employers of losing their jobs if they seek to organize or join a union. Secondly, the discrimination against fishers’ unions is driving migrant fishers

¹⁰⁸ “ILO Declaration on Fundamental Principles and Rights at Work,” ILO, <https://www.ilo.org/declaration/lang-en/index.htm#:~:text=These%20categories%20are%3A%20freedom%20of,respect%20of%20employment%20and%20occupation>.

¹⁰⁹ Law & Regulation Database of The Republic of China (2022). Labor Union Act. Available at <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020001>

¹¹⁰ It is even more challenging for migrant fishers to form a corporate union or industrial union. According to Labour Union Act, an initial pool of 30 members is required to establish a corporate union, and it would be rare for any Taiwanese vessel owners to employ more this number of workers at once. The main difference between an industrial union and a professional union is the scope of their members. An industrial union should include members of different jobs in the same industry, such as fishers, vessel keepers, and porters in the fishing industry. As most migrant workers have been hired as the same job category – fishers – this union category is not applicable to them unless they were able to join together with other types of workers.

¹¹¹ Chia-Wei Liang (2021). Establishing Keelung Migrant Fishermen’s Union. Events in Focus, <https://www.facebook.com/eventsinfocus/posts/1774099519433666>.

away from forming their own unions. A previous report shows that a fishers' union was excluded from the discussions on labor rights among other local unions in Taiwan.¹¹² Thirdly, in order to form a union, the group must have 30 initial members, participate in a congress and send an application form to a local labor office. This is very challenging in general for migrant workers who do not speak, read or write Mandarin Chinese, but particularly so for distant water fishers who are at sea most of the time and rarely return to Taiwanese ports. In addition, the relevant authority for distant water fishers is the Fisheries Agency, so it is unclear if the labor office would have the authority to accept their application.¹¹³ Lastly, as distant water fishers are not covered by the Labor Standard Act and are not subjected to the protection and management of the Ministry of Labor, which governs the trade unions in Taiwan, it is unclear whether they are entitled to the same rights of forming unions as other workers in Taiwan.¹¹⁴ At the time of writing this report, a group of Indonesian fishers in Southern Taiwan had submitted an application to the government to establish a distant water fishers' union.

So far, the Taiwanese government has shown little support in assisting migrant workers to deal with the discrimination and pressure from employers when it comes to forming unions.¹¹⁵ The majority of migrant fishers have no representation in the workplace and no ability to negotiate for better working conditions, leaving them exposed to the risk of forced labor and other forms of exploitation. These barriers prevent migrant fishers from exercising their internationally recognized rights to freedom of association and collective bargaining, which are included in both the ICCPR and the ICESCR as well as ILO core labor conventions No. 87 and No. 98. The absence of worker unions is preventing migrant workers from addressing labor rights violations and mitigating forced labor risks in their workplaces.

4. PROSECUTION

Under the “3P” paradigm, governments have the duty to “criminalize all forms of human trafficking, vigorously investigate and prosecute cases of human trafficking, and convict and sentence those responsible for such acts with prison sentences that are sufficiently stringent to deter the crime and adequately reflect the heinous nature of the offense.”¹¹⁶

4.1. The Underestimated Cases

As of the end of January 2022, there were 664,733 blue-collar migrant workers in Taiwan.¹¹⁷ In the previous five years, the numbers ranged from about 624,000 to 718,000.¹¹⁸ Despite the high prevalence of forced labor against migrant workers, less than 200 cases of trafficking in persons have been identified during annual investigations over the past five years. The statistics provided by the government indicate insufficient efforts to prosecute human traffickers in Taiwan.

¹¹² Mina Chiang, Kimberly Rogovin (2020). Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform. Global Labor Justice - International Labor Rights Forum, <https://laborrights.org/sites/default/files/publications/Labor-Abuse-in-Taiwan-Seafood-Industry-Local-Advocacy-for-Reform.pdf>.

¹¹³ GLJ-ILRF & Greenpeace (2021). Comments Concerning the Ranking of Taiwan by the U.S. Department of State in the 2021 Trafficking in Persons Report. Available at https://laborrights.org/sites/default/files/publications/SWG%20Taiwan%202021%20TIP%20Report_Final_Publication2.pdf

¹¹⁴ Conversation with Yilan Migrant Fishermen Union, March 25th 2022.

¹¹⁵ Conversation with Yilan Migrant Fishermen Union, March 25th 2022.

¹¹⁶ 3Ps: Prosecution, Protection, and Prevention,” Office to Monitor and Combat Trafficking in Persons, <https://www.state.gov/3ps-prosecution-protection-and-prevention/>.

¹¹⁷ Ministry of Labor (2022). The number of industrial and social welfare migrant workers. Available at: <https://statfy.mol.gov.tw/index12.aspx>

¹¹⁸ Ministry of Labor (2021). The numbers of industrial and social welfare migrant workers. Available at: <https://statdb.mol.gov.tw/evta/jspProxy.aspx?sys=100%26kind=10%26type=1%26funid=wqymenu2%26cparm1=wq14%26rdm=l4y9dcli>

According to the National Immigration Agency, less than 40 cases of labor exploitation happen in Taiwan each year. The number of cases has declined since 2018, and as of October 2021, only 18 cases have been identified within 2021. It is important to note that these statistics cover the total number of cases in Taiwan, and some cases are not related to migrant workers, making the number of investigations conducted among vulnerable migrant workers even lower. These numbers seem impossibly low, given the prevalence of exploitation against migrant workers in Taiwan reported by the CSOs and covered by the media.

Table 2. Statistics on investigations of human trafficking cases¹¹⁹

Year/Type of trafficking	Sex trafficking	Labor exploitation	Total
2017	108	37	145
2018	95	38	133
2019	111	32	143
2020	130	29	159
2021 (as of Oct.)	80	18	98
total	524	154	

The numbers of potential human traffickers that were investigated by the judicial officers are also low compared to the numbers of those prosecuted. In the most recent four years, the prosecution rate of human trafficking has never exceeded 45 percent.

Table 3. Statistics on the human trafficking cases handled by local prosecutors' offices¹²⁰

Year/Item	Concluded investigation (person)	Number of persons being prosecuted	Prosecution rate	Number of people found guilty
2017	590	248	42.0%	62
2018	402	112	27.9%	50
2019	322	122	37.9%	50
2020	387	132	34.1%	55

There are several reasons for the low prosecution rates, as well as the fact that only about a hundred people have been prosecuted as human traffickers.

1. The *Human Trafficking Prevention Act* has a detailed definition of trafficking in persons, as well as clear regulations for prosecution in Taiwan. However, the law is difficult to implement, especially in terms of prosecuting violators.¹²¹
2. Secondly, the number of cases prosecuted since the passing of the *Human Trafficking Prevention Act* in 2009 is very low. When reviewing a criminal case, most judges rely on the referral of previous cases to make a court decision. Without sufficient similar criminal cases to refer to, it is often difficult for the judges to find the offenders guilty.¹²²

¹¹⁹ National Immigration Agency (2022). Statistics of human trafficking cases investigated by the judicial police. Available at:

<https://www.immigration.gov.tw/5385/7344/7350/8940/?alias=settledown>

¹²⁰ Ministry of Justice (2020). Forensic Statistics Annual Report. Available at

https://www.risd.moj.gov.tw/risdweb/book/Book_Detail.aspx?book_id=491

Update required: 2021 report not published yet

¹²¹ See section 4.2.

¹²² Conversation with Organization for Migrant Fishers' Rights on November 23, 2021.

3. The authorities are not vigilant enough in terms of identifying human traffickers or the practice of trafficking in persons. For example, there was a case of a migrant worker having his salary withheld by his employer. To avoid penalties, the employer returned the worker his salary before the trial, and the judge decided not to prosecute this employer since the “damage on the victim’s side has been compensated.” The employer ended up walking away without any punishment.¹²³

4.2. The Impractical Human Trafficking Prevention Law

4.2.1. The overly narrow definition of human trafficking in the national law

The ILO has set out the following 11 indicators of forced labor to help the frontline workers/authorities worldwide identify the presence of forced labor:¹²⁴

- 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
- Excessive overtime

Taiwan’s legislation does not align with the Palermo Protocol. The *Human Trafficking Prevention Act* contains a much more complex system, making it difficult for traffickers to be prosecuted. It is conceptually unclear what labor exploitation means in relation to trafficking in persons, making the identification and prosecution of relevant cases difficult on the ground.¹²⁵

In Article 32 of the *Human Trafficking Prevention Act*, criminal practices regarding trafficking in persons are classified into two levels of misconduct.¹²⁶ The higher level of misconduct refers to “Anyone using such means as force, threat, intimidation, confinement, monitoring, drugs, fraud, hypnosis, or other means against another person’s will to labor to which pay is not commensurate with the work duty for profit, shall be sentenced to imprisonment under seven years, and may also be fined up to NTD 5,000,000 (USD 180,000).” The lower level of misconduct refers to “Anyone using such means as debt bondage or the abuse of another person’s inability, ignorance, or helplessness to subject him/her to labor to which pay is not commensurate with the work duty for profit, shall be sentenced to imprisonment under three years, and may also be fined up to NTD 1,000,000 (USD 36,000).”¹²⁷

This article is vital as it defines the types of unlawful practices and how an offender should be punished. However, according to a lawyer experienced in assisting potential victims of

¹²³ Conversation with Organization for Migrant Fishers’ Rights on November 23, 2021.

¹²⁴ International Labor Organization (2012). ILO Indicators of Forced Labour. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

¹²⁵ Human Rights At Sea (2021). Watershed for Human Rights in Taiwan’s Fishing Sector. Available at <https://www.humanrightsatsea.org/2021/05/11/watershed-for-human-rights-in-taiwans-fishery-sector/>

¹²⁶ Law & Regulations Database of The Republic of China (2022). Human Trafficking Prevention Act. Available at <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>

¹²⁷ Law & Regulations Database of The Republic of China (2022). Human Trafficking Prevention Act. Art. 32. Available at <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>

human trafficking, this article is not practical and difficult to be utilized.¹²⁸ This is the case for three main reasons as described below.

First, the elements of misconduct stated in this article, such as “force”, “monitoring”, and “means against another person’s will to labor to which pay is not commensurate with the work duty for profit,” are blurred; thus, in practice, it is difficult to differentiate whether a specific practice should be categorized as a more serious criminal offense or a minor offense.¹²⁹

Second, the element “debt bondage” in this law is not consistent with international standards.¹³⁰ A lawyer pointed out that, in Taiwan, only practices involving usury will be recognized as debt bondage; in contrast, in most countries, the presence of usury¹³¹ is not required for a case to be identified as human trafficking. Many migrant workers have borrowed loans with unreasonably high interest from the recruitment companies in their home countries before coming to Taiwan, putting them in debt. As the initial lenders may not be Taiwanese, the Taiwanese government is unable to prosecute the offenders, even after the workers have been recognized as victims of trafficking. Many CSOs have long been urging the Taiwanese government to amend the *Human Trafficking Prevention Act* to ensure adequate indicators of forced labor so that the offenders can be prosecuted through this law, but it has yet to be amended.¹³²

Third, certain practices stated in the law require the explanation from the Criminal Code of the Republic of China, meaning that in practice, articles in the *Human Trafficking Prevention Act* cannot stand alone and be utilized without the support of other laws. For example, under the *Human Trafficking Prevention Act*, the practices of “force and threat” are illegal. However, the definitions of these two practices are defined in the *Criminal Code of the Republic of China*, and are not stated in the *Human Trafficking Prevention Act* itself, making the Act ineffective for identifying trafficking cases and prosecuting offenders.¹³³

4.2.2. Severe punishment became a barrier in the prosecution process

In Taiwan’s judicial system, human trafficking is a felony. If an offender of human trafficking has pled guilty, he can be sentenced to imprisonment up to seven years and can be fined up to NTD 5,000,000 (USD 180,000).¹³⁴ The severe penalty may seem intimidating to traffickers and prevent them from committing such a kind of crime; but in reality, the high penalty acts as a barrier for judicial officers to prosecute offenders and find them guilty of violating the *Human Trafficking Prevention Act*.

The punishment for human trafficking is as severe as for murder and robbery, according to the *Criminal Code of the Republic of China*.¹³⁵ Article 271 in this law states that “Any person who kills others on the scene by righteous indignation shall be sentenced to imprisonment

¹²⁸ Conversation with the Organization for Migrant Fishers’ Rights (a Taiwanese NGO) on November 23, 2021.

¹²⁹ Conversation with Organization for Migrant Fishers’ Rights on November 23, 2021.

¹³⁰ International Labor Organisation (2022). C029 - Forced Labour Convention, 1930 (No. 29) Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

¹³¹ The illegal action or practice of lending money at unreasonably high rates of interest.

¹³² Conversation with Organization for Migrant Fishers’ Rights on November 23, 2021.

¹³³ Conversation with Organization for Migrant Fishers’ Rights on November 23, 2021.

¹³⁴ Law & Regulations Database of The Republic of China (2022). Human Trafficking Prevention Act. Art. 31. Available at <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177>

¹³⁵ Article 273 in this law states that “Any person who kills others on the scene by righteous indignation shall be sentenced to imprisonment for **not more than seven years**”, and causing another person’s death by negligence results in imprisonment for under five years or a fine **no more than NTD 500,000 (USD 18,000)**.

for not more than seven years,” and causing another person’s death by negligence results in imprisonment for under five years or a fine no more than NTD 500,000 (USD 18,000).¹³⁶

Compared to murder, many criminal practices that form a case of human trafficking can hardly be considered a felony. According to an experienced lawyer, this is a matter of the philosophy of law. For example, a broker who confiscates a worker’s documents or withholds that worker’s salary can be recognized as a human trafficker. However, even if the judge does recognize this case as human trafficking, the judge may find it difficult to punish the broker using the *Human Trafficking Prevention Act*, as compared with murdering people, confiscation of documents or salary seems to be a simple misdemeanor.

5. PARTNERSHIP

A whole-of-government approach should be used to eliminate human trafficking. However, the government has failed to work closely with civil society and has not established effective cooperation and coordination mechanisms within its administrative branches.

5.1. Limited and ineffective partnership with NGOs

Effective and transparent partnerships with local and international NGOs¹³⁷ and private sector actors can well assist the government’s efforts to prevent trafficking, protect victims, and punish traffickers. In addition, cooperation and coordination between governments are equally important, as the crime of human trafficking often involves actors in more than one region and/or country.

However, in the case of distant water fisheries, the Taiwanese government has so far built limited and ineffective partnerships with local and international NGOs. In 2021, the Fisheries Agency started to invite local and international NGOs to observe the process of labor interviews for migrant fishers in distant water fisheries, yet the latter were required not to ask any questions or offer any suggestions during the process even when indicators of forced labor were visible. Observers were not provided the questionnaire used by interviewers, and were not given proper channels to express their concerns over the ineffectiveness and unprofessionalism of such interviews.¹³⁸

In addition, some local NGOs were also invited to participate in the recruitment agencies’ annual evaluation held by the Fisheries Agency. However, in contrast to what the authority claimed to be a “public-private partnership”,¹³⁹ NGOs could only listen to the discussion and were not given equal chance to evaluate the agencies. Moreover, suggestions and criticism given to the Fisheries Agency before the evaluation were not taken into account in the evaluation process.¹⁴⁰

Partnerships between the government and NGOs are also inadequate—even missing—in the human trafficking victim identification training program. Every year, the National Immigration Agency holds two education and training courses for governmental officials, yet the NGOs’ involvement is limited. Local NGOs who have been supporting frontline workers to protect and promote migrant fishers’ rights were not invited to share their experiences and insights.

¹³⁶ Law & Regulations Database of The Republic of China (2022). Criminal Code of Republic of China. Art. 271. Available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001>

¹³⁷ ‘Local NGOs’ is used here to refer to a range of local civil society organizations, labor unions, service providers and other frontline groups supporting migrant fishers.

¹³⁸ Conversation with Yilan Migrant Fishermen Union on November 16, 2021.

¹³⁹ Fisheries Agency (September 29, 2021).

<https://www.fa.gov.tw/cht/newspaper/content.aspx?id=2799&chk=e6b6c301-9cb7-4e0a-b8ec-f44a361da927¶m=pn%3D1%26yy%3D2021%26mm%3D>

¹⁴⁰ Conversation with Yilan Migrant Fishermen Union on November 16, 2021.

Instead, speakers and trainers are mainly the ones with less or even no experience on the ground.¹⁴¹

Without a platform to truly discuss problems and develop solutions, the Taiwanese government has not established meaningful partnerships with local and international NGOs.

5.2. Inadequate cooperation and collaboration between government agencies

Local and international NGOs have repeatedly called for the Ministry of Labor to take greater responsibility for migrant fishers and work closely with the Fisheries Agency on the matter, as the Ministry of Labor possesses more knowledge, manpower, and resources in regards to labor issues.¹⁴² As previously mentioned, the Fisheries Agency only has the power to conduct labor interviews, unlike legal binding labor inspections conducted by the Ministry of Labor; yet the latter never conducts any labor inspection on distant water fishing vessels, and the two institutions rarely implement joint inspections. According to an official document sent by the Fisheries Agency, in 2021, the two aforementioned institutions only conducted five joint labor inspections on distant water fishing vessels. This is disproportionate to the total number of Taiwanese distant water fishing vessels, which is around 1,100.

In addition, the government lacks communication and collaboration with regards to the national complaint mechanism. The Fisheries Agency is in charge of migrant fishers in distant water fisheries, while the key platform to receive information and file complaints for these fishers, the 1955 hotline, is run by the Ministry of Labor (see Section 2.2.2). Instead of establishing any kind of collaborative mechanism, the Ministry of Labor has not used its own channel, nor cooperated with the Fisheries Agency to ensure that all migrant fishers, especially the ones working in distant water fisheries, have a good understanding and full accessibility to the 1955 hotline. Without accessible communication tools, such as Wi-Fi or satellite phone, migrant fishers have no access to the hotline, and the government has yet to legally require the fishing vessels to provide these communication tools. Some migrant fishers have expressed their fear of using the 1955 hotline, and some have tried to directly communicate with the Fisheries Agency. Yet, instead of providing a safer channel or other options, these migrant fishers were told to stick to the 1955 hotline.¹⁴³ The relevant government agencies have failed to coordinate and establish an effective complaint platform for migrant fishers.

6. RECOMMENDATIONS

The Seafood Working Group asks the U.S. Department of State TIP Office to support the following recommendations to the Taiwan government and include the recommendations in the 2022 TIP Report.

- Abolish the overseas employment scheme for migrant fishers, apply the Labor Standards Act to all fishers, and ensure all migrant fishers are governed by the Ministry of Labor and thus afforded the same rights and protections as Taiwanese fishers.
- Establish a clear timeline for swift and full domestication and implementation of the ILO Work in Fishing Convention, 2007 (No. 188).
- Increase inspections on vessels of Taiwan-owned and flagged as well as Taiwan-owned and foreign flagged vessels, and prosecute the owners and senior crew suspected of forced labor, especially among the distant water fishing vessels.

¹⁴¹ Conversation with Yilan Migrant Fishermen Union on November 16, 2021.

¹⁴² See Now News, <https://4wayvoice.nownews.com/news/20211004/663245/>

¹⁴³ Conversation with Permalang Association on November 18, 2021.

- Deploy labor inspection personnel in foreign ports where Taiwan's distant water fishing vessels are authorized to port, and train all maritime-related inspection authorities on victim identification and law enforcement.
- Increase transparency in the fishery sector by requiring disclosure of vessel position (i.e. publishing Vessel Monitoring System or Automatic Identification System, and punishing vessels for turning either off), 100% observer coverage (independent human or effective electronic catch monitoring, such as camera and remote sensor), and ensuring the safety of all observers on all fishing vessels.