



HUMAN RIGHTS AT SEA



Human Rights at Sea Case Study

Labour Disputes Reveal a
Worrying Power Imbalance
and Vulnerability of Migrant
Fishermen in Taiwan's
Fishing Industry



Human Rights at Sea

CASE STUDY ON THE LABOUR DISPUTES AND VULNERABILITY OF MIGRANT FISHERMEN IN TAIWAN'S FISHING INDUSTRY

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AUTHOR

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Reviewed by David Hammond Esq.

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Rerum Novarum Centre, Taipei
IHRB

Executive Summary

At the end of the October 2019, in a main Taiwanese fishing port there was a reported dispute between a Taiwanese employer, a Taiwanese manning agent and two Indonesian brothers who worked on the same offshore fishing vessel. While the dispute ended peacefully with the intervention and mediation of local Catholic social welfare group, Rerum Novarum Center¹, the cause of the dispute demonstrated a worrying power imbalance between employers, agents and fishers. It also highlighted the vulnerability of migrant fishermen working in Taiwan's fishing industry without sufficient access to independent local welfare networks who themselves are free to undertake supporting roles to crew in the cases of legitimate labour and human rights disputes.

The Background and Facts

Indonesian fisherman, Adhiarja², had been working in Taiwanese fishing industry for more than nine years. Two months ago, Adhiarja introduced his younger brother, Intan, convincing him to join him and come to work in the Taiwanese fishing industry. The two brothers worked on the same vessel together.

A month after Intan arrived in Taiwan, severe stomach pains incapacitated him to a degree that he was not able to stand or work on the fishing vessel. His elder brother, Adhiarja, contacted their employer saying that his brother needed to go to hospital immediately. The employer asked Adhiarja to contact the manning agent to find the interpreter who worked for the agent, to go to the hospital with them.

It was the end of the month and the brothers did not have sufficient money in hand so Adhiarja borrowed two thousand Taiwanese dollars (USD 65) from the interpreter to pay for the taxi, as well as the hospital registration fees³.

At the hospital, the brothers were told by the doctors that the pain was caused by appendicitis which required an immediate operation otherwise there may be a threat to life. This was agreed and Intan underwent an operation before being discharged three days later. The hospital did not, however, provide additional painkillers for the recovery period.

After Intan was discharged, as the employer's vessel required crew to operate at sea, Intan was asked to continue working on the vessel despite the wound being fresh and in the healing stage. However, because the work required physical strength, his wound hurt and it became too painful for him to continue. Intan cried and told his elder brother that the pain was unbearable and that he needed to seek further help.

Adhiarja went to their employer and asked if it was possible to move Intan's workload to him to allow Intan to properly rest and recover for a few more days. Adhiarja and Intan even offered not to take Intan's salary during his sick leave though the work would have been covered by Adhiarja. The employer appeared unhappy at the request.

After returning to shore, the employer asked the manning agent to bring Intan from the vessel to the temporary dormitory⁴ provided by the agent. At the dormitory, the agent told Intan that the employer did not want him anymore and that he would be sent back to Indonesia.

Intan was distressed by the news as he had recently come to Taiwan and had not yet been able to pay back the debt⁵ he had incurred in Indonesia for the agent's finder's fee. If he lost his job and returned home he questioned what would happen about the standing debt he owed?

Adhiarja was angry and did not accept the management decision when he learned the agent was about to send Intan home. Intan was only temporarily unable to work due to the necessary operation, as opposed to him being lazy, or deliberately not intending to work.

Human Rights at Sea

CASE STUDY ON THE LABOUR DISPUTES AND VULNERABILITY OF MIGRANT FISHERMEN IN TAIWAN'S FISHING INDUSTRY



Adhiarja told the employer that he himself would not continue working on the vessel and sought to change his employer. Two other Indonesian fishermen working in the same vessel also announced that if the employer dismissed Intan under the circumstances, they would demonstrate their solidarity and dissatisfaction by going on strike.

The employer was “furious”. He concluded that Adhiarja had deliberately incited the other Indonesian fishermen to strike, thereby making the employer unable to operate the fishing vessel as normal, and that Adhiarja was deliberately causing significant financial loss for him.

The employer “shouted” at Adhiarja stating that he should leave and not come back.

Adhiarja left the employer’s fishing boat and went to the agent’s office. He asked the agent to assist him to change his employer.

The agent stated that Adhiarja could not leave his employment and his employer in this way. The agent therefore asked Adhiarja to negotiate with the employer directly and refused to help in those negotiations.

Adhiarja remained angry at their treatment and so, asked fellow Indonesian fishermen to help him to remove both his and his brother’s personal items from the agent’s temporary dormitory. The agent was also angry, “shouting with anger” and stated that the fishermen should remove all their personal items, and stay in the employer’s depot⁶ instead of the dormitory.

When Adhiarja, Intan, and the other fishermen had moved the personal effects, they came across the local port welfare organization which was campaigning for the rights of the fishermen. When the organisation asked Adhiarja to state the facts and issues, he described the situation with tears in his eyes.

¹ See Rerum Novarum Centre. (2019). Available at: <https://www.new-thing.org/english>

² NB: Pseudonyms are used for all names to protect the Indonesian fishers’ identities based on researched facts and testimony supplied to Human Rights at Sea.

³ It should be noted that under Taiwanese Labour law in the minimum wage is around USD 770, which applies to the offshore and coastal fishing industry that the two brothers work in, while those under the Overseas Employment scheme is USD 450.

⁴ Dormitory provided by the manning agents are usually used for a few days before migrant workers leave Taiwan. It normally costs NTD 300 to NTD 500 a day (around USD 10 to 17 a day).

Source: Interview conversation with the Rerum Novarum Centre social workers.

⁵ For an Indonesian fisherman to come to Taiwanese vessel, normally the debt will be around NTD 100,000 (around USD 3,300). In Intan’s case, NTD 7,620 per month is deducted from his salary for almost a year.

Source: Interview conversation with the Rerum Novarum Centre social workers.

⁶ Normally the employer will pose a depot in the port for placing the fishing equipment.

⁷ Under the Taiwanese law, Taiwanese agents are allowed to charge NTD 1,800 per month for the first year, NTD 1,700 per month for the second year, and then NTD 1,500 for the third year from migrant workers as service fees. Normally three years is a contract period. See: Ministry of Labour. (2016). Implementing the protection of labour rights for the migrant workers, the Ministry of Labour is encouraging employers to use the direct employment service centre. (落實保障外籍勞工勞動權益, 勞動部鼓勵企業(雇主)使用「直接聘僱聯合服務中心」). Available at: <https://www.mol.gov.tw/announcement/33702/25536/?cprint=pt>

Human Rights at Sea

CASE STUDY ON THE LABOUR DISPUTES AND VULNERABILITY OF MIGRANT FISHERMEN IN TAIWAN'S FISHING INDUSTRY

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Issues Raised

- Adhiarja was frustrated that the hospital had not provided enough painkillers for his brother after what was a significant operation, nor did the agent or the employer try to ask for extra medical care on behalf of them
- He was frustrated that the employer had asked Intan to immediately return to work despite the wound not being fully recovered
- He did not understand how the employer could arbitrarily dismiss Intan simply because he was not able to undertake work on a temporary basis during his recovery period
- He did not understand why the agent did not help to fairly communicate with the employer despite charging regularly agency service fees⁷
- He did not know why the agent previously charged fees for changing their employer or extending the contract after completing their employment term on the present vessel
- He did not know why the agent was deducting fees from their salaries to force Indonesian fishermen to save money for their return flight ticket home at the end of their contract

Actions by Taiwanese Social Workers

Social workers from the Rerum Novarum Centre intervened and suggested Adhiarja contact the agent. They requested the agent to invite the employer to participate in a mediation between the three parties. The atmosphere was later described to being intense as Indonesian fishermen gathered to express their frustration.

At the mediation, basic labour rights and regulations concerning fair and reasonable periods of sick leave were informed to all parties, and the fishermen were advised to file complaints to resolve problems instead of leaving their vessel, to avoid getting themselves into more trouble with their employer.⁸ Notably, there are established ways to file complaints, including calling the 24/7 hotline 1955,⁹ which serves in Chinese, Thai, Indonesian, Vietnamese, and English. Meantime, the agents and employers were respectively informed about their professional responsibilities towards migrant workers and were advised to obey Taiwanese Labour Law.

Mediation Result

Through mediation by the Rerum Novarum Centre, the fishermen, employer, and the agent came to a mutual agreement. The following mediation points are highlighted.

- While Taiwanese Labour Law protects workers so that they receive half salary during periods of sick leave, Intan voluntarily agreed to rest and recuperate without salary for three weeks
- If, after three weeks, Intan was still unable to work he agreed to end the current contract and wait 60 days before searching for a new employer
- If Intan was not able to find a new employer, he would cover his own costs for a flight ticket home
- The agent agreed to assist to apply for medical insurance to cover Intan's hospital costs, while Adhiarja agreed to return to the vessel and continue working

⁸ Based on the Article 74 of the Employment Service Act, where an employed foreign worker has been unjustifiably absent from his/her work and not in contact for three consecutive days, the competent authority(s) administering the entry/exit businesses may, prior to the annulment of employment permit therefore, immediately order him/her to depart from the Republic of China.

⁹ Workforce Development Agency, Ministry of Labour. (2019). The function of 1955 Hotline provided by the Ministry of Labour is to assist Migrant Workers in Seamless Communication. Available at: https://www.wda.gov.tw/en/News_Content.aspx?n=8E8FA34452E8DBC2&s=4B08E109578D2D32

¹⁰ For Taiwanese, when disputes happen, seeking for the police is normally a suitable option. However, when it comes to migrant workers, is police still an option? (Ask Jason).

¹¹ CAN. (2018). Ministry of Labour: If the agent illegally charge the fee for job changing, a fine of maximum 20 times may be applied (勞動部: 仲介違規收費工費 最高處20倍罰鍰). Available at: <https://www.cna.com.tw/news/ahel/20181216015.aspx>

¹² ILO. (2011). Work in Fishing Convention and Recommendation, 2007: Action Plan 2011–2016. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161220.pdf

¹³ N Laws & regulations database, Ministry of Justice. (2019). Regulations of Leave-Taking of Workers. Available at: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030006>

Human Rights at Sea

CASE STUDY ON THE LABOUR DISPUTES AND VULNERABILITY OF MIGRANT FISHERMEN IN TAIWAN'S FISHING INDUSTRY



Points of Concern

Through mediation by the Rerum Novarum Centre, the fishermen, employer, and the agent came to a mutual agreement. The following mediation points are highlighted:

- The present case demonstrates a contradiction in that while the employee (Adhiarja) was not allowed to change employer, the employer was able to arbitrarily dismiss a fisherman under what were controversial circumstances.
- While the dispute ended peacefully with mediation action plans that all parties agreed to, it is concerning to note what would have happened without the intervention of the local civil society social welfare group. The case was picked up by luck as on that day welfare group was in port for outreach work.
- The question remains not only for social welfare NGOs, but for Government departments, how can such cases of disputes between Taiwanese employers and migrant employees be given the right support for resolution, especially considering the language and resources gaps?¹⁰
- Manning agents are supposed to equally serve the employer, as well as the employee, however in this case, the agents failed to assist the process of obtaining medical service, facilitate communication and fairly represent both sides. Instead, the agent did not challenge the employer's unreasonable decision (sending Intan home for temporarily not being able to work due to unforeseen sickness), choosing instead to stay silent when the employee raised a reasonable request to change employer after working for him for nine years).
- Manning agents should not, in any case, charge fees for an employee to find a new employer, for extending a contract with a current employer, for changing employer after completing the contract, or changing employer when terminating the current contract.¹¹
- The employer appeared not to have basic knowledge of labour rights, and was "furious" when he learned that the Indonesian fishermen on his vessel would strike in response for the unfair treatment. There is therefore a need to not only educate migrant fishermen of their rights, but also convey the same messaging to their employers.

Human Rights at Sea

CASE STUDY ON THE LABOUR DISPUTES AND VULNERABILITY OF MIGRANT FISHERMEN IN TAIWAN'S FISHING INDUSTRY

Analysis of the Case against ILO C188 and Taiwanese Domestic Law

The case study arguably demonstrates the need for Taiwan to accelerate the process of incorporating ILO Convention No. 188 (C188)¹² in to domestic law.

ILO C188

- **Article 29 (e) "fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment in the event of serious injury or illness."** In the present case, even when the fishing vessel was operating at sea, with the serious nature of Intan's illness, he was entitled to be taken ashore in a timely and speedy manner.
- **Article 39 "fishing vessel owners are responsible for defraying the expenses of medical care, including related material assistance and support, during medical treatment in a foreign country, until the fisher has been repatriated."** In the present case, the expenses for medical care should not be charged to neither Intan nor Adhiarja, but taken care of by the insurer and/ or the employer.
- **Article 21-2 "The cost of the repatriation referred to in paragraph 1 of this Article shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations."** The manning agents should not be allowed to unilaterally deduct money from salaries to save for their own return flight tickets, as the repatriation costs should be borne by the fishing vessel owner. However, the current practice in Taiwan is that if a fisherman's contract ends before the term (normally three years), the cost of flight ticket is charged to the fisherman.
- **Article 21-4 "If a fishing vessel owner fails to provide for the repatriation referred to in this Article, the Member whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner."** This article regulates the role of the flag State to ensure the repatriation of the fishermen at first instance, while the cost should be borne by the fishing vessel owner. Moreover, in the present case, as it is the offshore fishing industry, both Adhiarja and Intan they are under the protection of Taiwanese labour law as equally as other Taiwanese workers are.

Taiwanese Domestic Law

- **Article 4, Regulations of Leave-Taking of Workers, Ministry of Labor¹³ "When a worker must receive medical service or rest on account of ordinary injury, sickness, or physical reasons, he shall be entitled to ordinary sickness leave according to the following provisions" and "Where accounted ordinary sick leave does not exceed thirty days in one year, fifty percent of salary shall be paid. In cases where Labour Insurance payments do not reach fifty percent of salary, the employer shall make up the difference."** As the article explains, Intan was actually entitled to a fifty percent of his salary during the three weeks if agreed sick leave.

Conclusion

The case study demonstrates the nature of the current power imbalance between the employer (fishing vessel owner) and employees (fishermen) when it comes to disputes and bargaining powers, especially when manning agents align themselves with the employers instead of fairly serving both sides. Without an independent fishermen's voice to defend their human and social welfare rights, fishermen, both national and migrant, are often on the losing side with little or no justice available to them.

Moreover, analysis of the present case study also highlights the key importance for Taiwan to embed ILO C188 'Work in Fishing Convention' into domestic law without delay in order to correct current bad employment practices towards fishermen that have otherwise seemly become acceptable and the norm. Without enforced legal protections, the reality is that employers are taking advantage of the fishermen. This is exemplified by the fact that the repatriation fee should be covered by the fishing vessel owner being the default, and not charged to the fishermen.

Who We Are

BACK GROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **Research, Education, Advocacy and Lobbying** specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.

OUR MISSION

To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.



STAY IN CONTACT



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World Map: Taiwan



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Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment. Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

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