

# **Diluted Justice:** Protection and Redress for Trafficked Fishermen in Asia

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## Foreword

Human beings have fished the seas for millennia. This was always a hazardous and demanding form of work. In the not too distant past, the crews of fishing boats had to cooperate of necessity, and from this there grew a sense of solidarity, both within the crew and within communities that relied upon fishing as a major source of food and income. Dangers at sea could be met with a greater chance of survival; injury and the loss of loved ones could be borne better by families that lived in empathetic communities whose members knew that what others suffered at one time might be what they would have to endure at another.

There are still such fishermen and such communities, but much of the modern fishing industry looks very different. Strong global demand for fish and overfishing in many of the more accessible fishing grounds have resulted in the growth of fishing fleets that travel far from the territorial waters of the countries whose flags they bear, and, of necessity, remain at sea for weeks or even months at a time. This trend has been accompanied by efforts by various actors in the supply chain that delivers fish to markets to drive down labour costs. Not surprisingly, members of traditional fishing communities who are able to earn a living without submitting to these onerous terms, choose to do so, leaving the less competitive and more exploitative sectors of the fishing industry short of labour - a shortage that is frequently made up by recruiting men desperate for paid work, often by deceptive and coercive means.

This is the background to trafficking into the fishing industry. It is a subject that has rightly drawn increasing attention from anti-trafficking activists, human rights groups and the international media, as well as sparking concerns among a public that finds disturbing revelations of gross exploitation in the supply chains of the food that it eats.

In December 2012, TWC2 released "Troubled Waters: Trafficking of Filipino Men into the Long Haul Fishing Industry through Singapore", written by Dr Sallie Yea, with contributions by Shelley Thio. "Diluted Justice" is both a follow-up to that report and an expansion upon it, looking at trafficking cases involving men from Cambodia and Indonesia as well as the Philippines. It underlines the concerns expressed in "Troubled Waters" as well as outlining proposals for combatting the abuses it describes. We hope that it will contribute towards growing international efforts to bring to an end trafficking into the fishing industry, as well as, more broadly, to efforts to improve protections for the men who risk life and limb on the high seas catching fish.

Diluted Justice has benefitted from the contributions of several individuals. Foremost we wish to thank the fishermen whose stories informed this report, and the key informants who provided valuable information to supplement the interview material provided by fishermen. We also wish to thank Stephanie Chok and John Gee for their excellent copy editing of the report, and Stephanie for her technical input into the final production stage. Finally, we wish to thank Thomas Harre for his substantive comments on the final draft of the report.

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## List of Acronyms

**ADHOC** – Cambodian Human Rights and Development Association (NGO)

**Asia-ACTS** – Asia- Against Child Trafficking and Sexual Exploitation (Philippines NGO)

**CLEC** – Community Legal Education Centre (Cambodian NGO)

**EJF** – Environmental Justice Foundation

**EEZ** – Exclusive Economic Zone (normally within a radius of 200 nautical miles of the territory of a country)

**FOC** – Flag of Convenience

**IACAT** - Inter-Agency Council Against Trafficking (Philippines)

**ILO** – International Labour Organisation (United Nations)

**IMO** – International Maritime Organisation

**IOM** - International Organization for Migration

**LSCW** - Legal Support for Children and Women (Cambodian NGO)

**LICADHO** – Cambodian League for the Promotion and Defense of Human Rights (NGO)

**MWC** – Migrant Workers Centre (Singaporean government NGO)

**MOM** – Ministry of Manpower (Singapore)

**OWWA** – Overseas Workers Welfare Association

**POEA** – Philippines Oversea Employment Administration

**TIP Taskforce** - Inter-Agency Taskforce on Trafficking-in-Persons (Singapore)

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# 1. Introduction

## Background

In 2013 we released a report that documented the modus operandi of trafficking in the long haul (open water or deep sea) fishing industry in maritime Southeast Asia.<sup>1</sup> The report focused particularly on the experiences of Filipino fishermen who transited through Singapore and were subsequently deployed on Taiwanese-owned and captained fishing vessels. In that report, shocking practices of deceptive and fraudulent recruitment, financial and labour exploitation, and abuse and violence at sea were documented in detail. The report argued that these arrangements and practices constituted a human trafficking problem that involved Singaporean, Taiwanese, Filipino, Cambodian and Indonesian actors working in collusion to deploy men into hyper-exploitative working situations on fishing vessels.

The report raised some interest and awareness of this issue in Singapore and abroad. The US State Department, for example, has subsequently included the problem in its entries for Singapore in its annual Trafficking in Persons Report.<sup>2</sup> Research institutes have also cited the report in making comparisons and contrasts with other contexts where trafficking at sea is a concern.<sup>3</sup> This has extended both global and regional understandings of the trafficking of fishermen, particularly by drawing attention to a second Asian fishermen trafficking problem in addition to the much discussed and reported Thai fishing sector.<sup>4</sup>

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<sup>1</sup> Sallie Yea and TWC2 (2013). *Troubled Waters: Trafficking of Filipino Men into the Long Haul Fishing Industry through Singapore*. TWC2: Singapore.

<sup>2</sup> US Department of State (2012, 2013, 2014). *Annual Trafficking in Persons Report*. US DoS: Washington D.C.

<sup>3</sup> Rebecca Surtees (2013). "Trapped at Sea. Using the Legal and Regulatory Framework to Prevent and Combat the Trafficking of Seafarers and Fishers", *Groningen Journal of International Law*, Vol. 1, No.2. Available at: <https://groningenijl.files.wordpress.com/2014/01/04-surtees.pdf> (Accessed on 20/05/16).

<sup>4</sup> A presentation on conditions in the Taiwanese fishing industry was made by Andy Shen as part of the ASEAN TRIANGLE project in 2013, [http://www.ilo.org/asia/info/WCMS\\_228775/lang--en/index.htm](http://www.ilo.org/asia/info/WCMS_228775/lang--en/index.htm). See "Work in fishing in the ASEAN region: Protecting the rights of migrant fishers", ILO, 2014. Available at: [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_306645.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_306645.pdf) (Accessed on 28/05/16).



The initial report on the Filipino-Singapore-Taiwan component of this sector hinted at a lack of concerted responses by the Singaporean government to this concern and gave a brief overview of the justifications it used to deny that this was a human trafficking problem with which Singapore need concern itself. A recent report by Greenpeace found the same lack of responses from the Taiwanese government.<sup>5</sup> To reiterate:

*For Singapore:*

- The Singapore government denied that it was a problem for which:
  - a) Singaporean actors were involved as perpetrators/ key facilitators (in their functions as recruiting and manning agencies);
  - b) The Singapore government should consequently take any responsibility by way of redress for victims or pursuit of criminal investigations against perpetrators;
- The Singapore government used a strategy of obfuscating jurisdictional delineations of responsibility to confound efforts to attribute to it such responsibilities to act (for example, by claiming that exploitation took place outside Singapore's jurisdiction)

For Taiwan, the Greenpeace report suggests:

Taiwan knows that these issues exist, and does little to address them despite domestic and international requirements.... Taiwan's [fishing] industry appears to be out of control, and despite legislative change, Taiwan seems either reluctant or unable to properly manage its fleet and its industry. Without proper monitoring, enforcement and sanctions, there will be little change.<sup>6</sup>

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<sup>5</sup> Greenpeace (2016). *Made in Taiwan: Government Failure and Illegal, Abusive and Criminal Fisheries*. Greenpeace International: Taipei, p 6.

<sup>6</sup> Ibid.

Whilst both countries have anti-trafficking laws, the Singapore government's Inter-Agency Task Force on Trafficking-in-Persons (henceforth, TIP Taskforce) was able to construct itself as a hapless victim of the misdeeds of trafficking actors located in other countries, particularly trafficking source countries such as the Philippines and Cambodia, that use Singapore to deploy victims to their fates. By financing and staffing (through a GO-NGO, the Migrant Workers Centre, hereafter MWC) a drop-in centre at the main fisheries port in Singapore (Jurong Fisheries Port), the government has been able to present itself publicly as undertaking action to support the needs of "fishermen in distress"<sup>7</sup> whilst simultaneously taking no substantive action to ameliorate the structural and institutional conditions that enabled these practices to first be documented in 2013 and which continue up to the time of writing.

The complexities attached to this particular form of trafficking – where exploitation takes place at least in part in international waters, or outside a particular national jurisdiction – are indeed extremely challenging. They include *defining* trafficking at sea as human trafficking according to and in keeping with accepted international definitions, such as the United Nations Trafficking Protocol,<sup>8</sup> delineating national responsibility for acting on instances of human trafficking as a crime, and safe return of victims to their home countries. Legal scholar Mariana Valverde has suggested that the construction of legal scale is crucial in making determinations of legal responsibility,<sup>9</sup> and this suggestion certainly holds true in the case of trafficking of fishermen, whose situations give scope to those inclined to skirt international and national legislative provisions.

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<sup>7</sup> The Singapore government will not use the term 'trafficked fishermen' to describe any migrant fisher who winds up on Singaporean shores, even where such an assessment has been made by the embassy of the source country concerned in Singapore.

<sup>8</sup> See Sophie Nonnenmacher (2014). 'Trafficking at Sea: The Situation of Enslaved Fishermen in Asia'. In S. Yea (ed), *Human Trafficking in Asia: Forcing Issues*. Routledge: London. She argues that the TIP Protocol is not well-provisioned to address human trafficking in international waters, whilst the provisions of the Slavery Convention may better serve to address trafficking at sea. However, in order for the Slavery Convention to be able to be invoked, it must first be determined that exploited migrant fishers are, in fact, slaves. Such a determination presents its own set of logistical and conceptual problems.

<sup>9</sup> Mariana Valverde (2009). 'Laws of the Street', *City & Society*, Vol 21, issue 2.

Consequently, the trafficking of fishermen onto Taiwanese vessels and involving the same countries of origin (including the Philippines, Indonesia, Cambodia, Vietnam, People's Republic of China, Myanmar) continues at the time of writing. Furthermore, legal justice for trafficked fishermen as well as basic protections and supports for them as trafficked persons appear to be implemented in a piecemeal and at times haphazard manner. Criminal justice proceedings also appeared hampered by some of these same problems. This is the ultimate tragedy of the situations of the fishermen: exploitation without redress in an historic period when international attention to human trafficking and modern day slavery has never been accorded such sustained international attention. The travesty of (in)justice and hyper-exploitation is not lost on either the author or TWC2 as we continue to deal with the fallout for men whose lives – if not broken – are irreparably damaged in emotional, financial, relational and health terms as a result of their experiences at sea.

### *Aims*

Given the above background, the central aim of this report is to go beyond a documentation of the trafficking circumstances of fishermen and instead look at why legal and economic justice and protection appears to be so difficult to achieve for trafficked fishermen. Although this question has a more general resonance for other contexts, such as the Thai or Russian fishing fleets, this report continues its focus on the Taiwanese industry and its transit and country of origin counterparts. The report attempts to answer three major questions following from this focus on justice and protection:

1. How adequately are trafficked fishermen supported (or not), including during and after their involvement in the criminal justice process?
2. To what extent are trafficked fishermen able to avail economic and legal justice consequent to their experiences? What are the main barriers to achieving justice?
3. Why are there so few cases of human trafficking in the fisheries sector, given that there is growing documentation of the widespread use of forced and trafficking labour in the sector?

These questions aim ultimately to evaluate whether the vulnerability of trafficked fishermen to re-trafficking or other precarious migration/work situations is alleviated post-trafficking. This report aims to answer these questions through a focus on two main case studies of trafficking. These cases are: Giant Ocean (Cambodia) and Aklan (the Philippines). Other cases are also selectively drawn on in discussion, particularly a case involving 28 Filipino men stranded in Sarawak, Malaysia, and a case recently concluded in Jakarta, Indonesia. The cases are introduced in further detail below. The author was able to make field research visits to both Cambodia and the Philippines to gather information and speak to victims/witnesses. In the Jakarta case, the author relied on information made available about the case through the IOM (International Organisation of Migration), Jakarta office. What is notable about these cases is that they all take place in trafficking source countries, which are all low-income countries, and with arguably the least capacity to mount a successful prosecution. There has been no prosecution involving trafficking of fishermen in either Singapore or Taiwan thus far consequent upon these cases coming to light.

### *Organisation of the Report*

The next chapter will introduce the participants and case studies, as well as the methods and ethical considerations. Following this, Chapter Three documents the *modus operandi* of those trafficking fishermen onto Taiwanese vessels and highlights the key elements of exploitation that lead us to characterise these situations as human trafficking. Chapters Four, Five and Six discuss three key issues to emerge from the findings of the study: first with victim identification and support, second, obstacles facing fishers in achieving economic and legal justice, and third, lack of political will.

## 2. Ethics, Methods, Participants and Cases

This study involved interviews or discussions with three groups: a) fishermen victims, some of whom were also witnesses in criminal justice proceedings and plaintiffs in civil compensation cases; b) family members of some fishermen victims; c) key informants from local non-governmental organisations (NGOs) and international organisations in Singapore, Cambodia, the Philippines and Indonesia. Appendix A provides the details of the key informant interviewees. Eighteen Cambodian fishermen and twenty-two Filipino fishermen were interviewed for the research. Four of the Filipino fishermen were interviewed a second time one year after their return to the Philippines in order to establish post-trafficking livelihood, economic circumstances and general wellbeing. Interviews with trafficked fishermen normally ranged from forty-five minutes to two hours in duration, and key topics included socio-economic circumstances prior to migration, the recruitment process, including the involvement of brokers and agents, travel and deployment onto fishing vessels, conditions on board the vessels, exit and post-exit trajectories, support and compensation/restitution post-return. This last topic is of particular salience in this report and the interviews drawn upon here provide the main data on it. Family members of eighteen of the participants (seven Filipinos and eleven Cambodian) were also interviewed. Key topics for family members included the financial situation of the family in the absence of remittances from the fishermen, any distress incurred as a result of the lack of communication with their family member, and any action taken on the part of their family to locate their family member. Family interview data do not figure significantly in this report and are analysed further elsewhere.<sup>10</sup>

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<sup>10</sup> See Yea 2016. Families as Victims? The Impact of Human Trafficking on Left-Behind Families. Unpublished paper.

Several authors have noted the particular methodological and ethical concerns that arise when researching human trafficking,<sup>11</sup> which stem primarily from a greater sense of risk for participants. For example, their “story” may become known to their family or community, or even their traffickers, or the interview process through which they re-tell their story may lead to further traumatization. Researchers should also be aware of, and have a means of addressing, the existing needs of victims they interview (including financial and health concerns). In the case of this study most of the fishermen participants were already receiving support from NGOs or government agencies in their countries of origin, or at least knew of an organization they could contact if they experienced difficulties. The researcher explained the purpose of the research and outlined ethical principles which were to be followed, which primarily related to anonymity in published works resulting from the study.

### *Overview of Legal Cases*

#### Giant Ocean Case (Cambodia):

- Giant Ocean Agency recruited more than 1,000 Cambodian men to work on long-haul fishing vessels owned by Taiwanese companies;
- Giant Ocean had a license (issued by Cambodia’s Ministry of Labour) only to recruit for agricultural and factory work in Malaysia, Thailand, Kuwait and Japan;
- This recruitment license did not extend to the offshore fishing industry;
- Giant Ocean actively recruited men between 2008 and January 2012;
- Giant Ocean paid recruiters on a commission basis;

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<sup>11</sup> WHO (2003). *Ethical and Safety Recommendations for Interviewing Trafficked Women*. World Health Organisation: Geneva. Available at: [http://www.who.int/mip/2003/other\\_documents/en/Ethical\\_Safety-GWH.pdf](http://www.who.int/mip/2003/other_documents/en/Ethical_Safety-GWH.pdf). (Accessed 04/04/14).  
UNIAP (2008). *Guide to Ethics and Human Rights in Counter-Trafficking*. Available at: [http://www.endvawnow.org/uploads/browser/files/Ethics\\_Guidelines\\_Trafficking\\_UNIAP\\_2008.pdf](http://www.endvawnow.org/uploads/browser/files/Ethics_Guidelines_Trafficking_UNIAP_2008.pdf). (Accessed 04/04/14).

- In general, in Cambodia, low numbers of recruiters have been prosecuted under the anti-trafficking law (the main cases have involved Thailand as the destination country);
- The main charge against Giant Ocean was unlawful movement of people for profit (Article 10 of Cambodia's anti-trafficking law); this charge relates to the recruitment process only;
- Article 10 requires evidence of lies to recruits regarding salary, deployment, location, etc.;
- Under Cambodian law, there are no precedents for the Giant Ocean case so it was difficult to know what exact evidence was required;
- In April 2014, the case was successfully prosecuted and Taiwanese national Lin Yu-Shin was sentenced to 10 years in jail;
- Five of Lin's associates from Giant Ocean remain at large and were tried in absentia; each of these associates was also given a 10-year sentence;
- A new case was filed in June 2014, seeking an arrest warrant for the husband of Lin; this case was filed by three Cambodian NGOs: LSCW, LICADHO and ADHOC;
- These NGOs and two others (Chab Dai and CLEC) represented the civil parties in this case; they lodged compensation claims on behalf of the fishermen of US\$10,000 each;
- Kor Vandy, presiding judge of Phnom Penh municipal court, ordered Lin and her five accomplices to jointly pay US\$2,000 to \$15,000 in withheld wages to each of the 74 victims who filed complaints in the case;
- Those convicted were also ordered to jointly pay each victim US\$3,000 in compensation, and US\$650-\$1050 in damages.

#### Aklan Case (the Philippines):

- This case involves seven fishermen as prosecution witnesses;

- The case involves two charges: illegal recruitment and human trafficking and was submitted to the provincial court in Aklan province in 2012;
- The two main recruiters (Celia and Roselyn Robelo) were charged; Roselyn Robelo was employed as a foreign domestic worker in Singapore at the time of recruitment and Celia, Roselyn's sister, recruited the men on behalf of Roselyn in Aklan province;
- Celia surrendered herself to the police after a year in hiding in Aklan because a reward was offered for her capture and two warrants of arrest were served on her; however, Roselyn Robelo continues to be employed as a foreign domestic worker in Singapore at the time of writing;
- The Inter-Agency Council Against Trafficking (IACAT) considered how to serve an arrest warrant in Singapore without finding a solution; the Philippines government could not secure an extradition order from Singapore because it has no bilateral extradition treaty with Singapore that would allow it to do so<sup>12</sup>;
- According to Attorney Chris Gonzalez, who was lead prosecutor in the case, there are two key problems with the prosecution: 1) IACAT cannot extradite Roselyn Robelo or the ex-director of Step Up Marine Agency, Victor Lim, implicated in the case, nor can they call on other persons of interest who are currently residing in Singapore (in particular, other employees of Step Up Marine Agency); 2) issues surrounding what constitutes 'force' in signing a contract and the actual terms of the contract signed by the seven fishermen witnesses with Step Up Marine Agency in Singapore.

#### Jakarta Case (Indonesia):

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<sup>12</sup> Although no bilateral agreement exists, Article 16 (4) of the UNCTOC (2000) does allow states to extradite in such circumstances. Notably, Singapore made a reservation to this Article, thus effectively exempting itself from such extradition processes allowed under the UNCTOC.



- Since 9 November 2012, the Indonesian government, in particular the Ministry of Foreign Affairs, has gradually repatriated 154 Indonesian citizens working as fishermen on four Taiwanese fishing vessels; the fishermen were found by locals stranded in Trinidad and Tobago waters;
- On arrival in Indonesia, the fishermen were referred to IOM Indonesia for medical recovery, follow-up, return to their home villages and re-integration assistance;
- In collaboration with Indonesian Garda BMI (a national NGO based in Jakarta), IOM pushed forward their legal case with the Indonesian National Police;
- The case was successfully prosecuted in 2015 and the victims were provided with restitution ranging up to US\$1000 each.

#### Sarawak Case:

- A Philippines-based NGO, Asia ACTS, documented the case of 28 Filipino men recruited in the Philippines to work as fishermen in boats operating out of Kuching, Sarawak (Malaysia) between 2010–11.
- The fishermen had contacted the Philippine embassy in Kuala Lumpur, which initially treated it as a labour case, and only later as a trafficking case;
- When Asia ACTS requested the Malaysian police and immigration authorities to investigate further, as they considered this a trafficking case, they did not do so; the case was referred to the Attorney-General's office, which decided that it was not likely to prosper as a trafficking case;
- The Malaysian authorities argued that the deception practiced on the workers during their recruitment took place in the Philippines, and that the 'signed' contracts were an indication that the men had agreed to work for the rates set forth by the employer, so the case must be pursued in the Philippines against the recruiter;

- The men were returned to the Philippines in 2011;
- Two cases were filed by IACAT in the home provinces of the fishermen (Malabon and Nabusan Del Norte): the Malabon case failed to reach the prosecution stage because the local recruiter's family approached the fishermen and pleaded with them to withdraw as witnesses, and most of the fishermen felt pressured to withdraw; in the Nabusan Dell Norte case, the case also failed to reach prosecution and was dismissed because the police could not locate the main recruiter.

In the following chapters of the report, these cases will be selectively drawn upon to illustrate issues relating to justice and legal redress in cases of trafficked fishermen. In addition, interviews with other trafficked fishermen who did not become involved in legal proceedings, as well as key informant interviews will be drawn on.

### 3. *Modus operandi* and trafficking situations of fishermen

Several reports have documented the alarming incidence of trafficking of men and boys onto long haul fishing boats operated out of Thailand.<sup>13</sup> Some documented research has focused on the South Korean sector<sup>14</sup> and Ukrainian men trafficked onto Russian fishing vessels.<sup>15</sup> Similar practices involving Taiwanese fishing operations recruiting through agencies in Singapore, Cambodia, the Philippines and Indonesia have been relatively under-researched by comparison.<sup>16</sup> In its Annual Trafficking in Persons Report, the U.S. State Department estimates that there could be up to 160,000 migrant men and boys deployed on Taiwanese long haul fishing vessels – or vessels bearing flags of convenience (FOCs) but with Taiwanese ownership connections – globally.<sup>17</sup> Whilst many of the on-board conditions experienced by the fishermen present some similarities in all these fishing fleets (Thai, Russian, South Korean and Taiwanese), there are nonetheless important distinctions in the recruitment and deployment of the men as well as their trajectories after leaving the boats.

The three major countries of origin from which fishermen are recruited are the Philippines, Indonesia, and China, with smaller numbers of Cambodians, Vietnamese, Burmese, Sri Lankans and Indians also reported as working on these vessels. Men from the Philippines, Indonesia and Cambodia are recruited through three key mechanisms:

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<sup>13</sup> EJF (2013). *Sold to the Sea*. EJF: London; EJF (2014). *Slavery at Sea*. EJF: London; IOM (2011). *Trafficking of Fishermen in Thailand*. IOM: Bangkok. Available at: <https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf> (Accessed 22/03/15); Tenaganita (2009). *The Global Catch: Modern Day Slavery Fishermen*. Tenaganita: Kuala Lumpur; UNIAP with LICADHO and LSCW (2007). *Exploitation of Cambodian Men at Sea*. UNIAP: Bangkok; UNIAP (2009). *Exploitation of Cambodian Men At Sea: Facts About The Trafficking of Cambodian Men Onto Thai Fishing Boats*. UNIAP: Bangkok.

<sup>14</sup> Christina Stringer, Hugh Whittaker and Glenn Simmons (2015). New Zealand's Turbulent Waters: the use of forced labour in the fishing industry. *Global Networks*. DOI: [10.1111/glob.12077](https://doi.org/10.1111/glob.12077).

<sup>15</sup> Rebecca Surtees (2012). *Trafficked at Sea. The exploitation of Ukrainian seafarers and fishers*. NEXUS Institute and IOM: Washington D.C. and Geneva.

<sup>16</sup> Though see Greenpeace (2016), op cit.

<sup>17</sup> U.S. Department of State (2015), op cit.

1. Directly through employment agencies operating within the home countries of the recruits, and where these agencies draw on a network of recruiters working on commission;
2. The involvement of Singapore-registered manning agencies (agencies that offer ship manning services, rather than simply being recruitment entities), which have counterpart agencies located in the countries of origin (although many of these agencies are not registered recruitment agencies for off-shore fishing). These Singaporean agencies also utilise foreign domestic workers, primarily from the Philippines and Indonesia, to recruit men in their home communities and districts on a commission basis, with the recruits then directed to these counter-part agencies or agents (usually also unregistered) in source countries;
3. A smaller number of participants in the Philippines and Cambodia responded to print advertisements in local newspapers, calling for men to work abroad on fishing vessels or in another sector entirely.

When men present themselves at the agencies, their documentation is arranged and conditions attached to their work are given verbally. Filipino recruits are normally asked to pay a substantial agency fee upfront in the Philippines. The average sum of these placement fees is normally up to S\$1,000, with many men selling assets or pawning land or borrowing from relatives and informal moneylenders in order to cover the fees. Cambodian men, by contrast, are normally not asked to pay anything to the agency, but are told that some money (though the amount is normally left unspecified), will be deducted from their salaries for the first two-three months of their contract. Because the terms of the men's contracts relating to salaries are normally unfulfilled, these costs become significant debt burdens for the men, as they are unable to pay them back through their work on fishing boats.

High levels of deception are involved in the recruitment process, both through descriptions given by individual recruiters and agency representatives in home countries and Singapore. In home countries, men are deceived about the amount of salary and conditions of remuneration, as well as work conditions on the fishing vessels. If fishermen transit through Singapore en route to their

deployment on fishing vessels, they are normally presented with new conditions of work and are bullied into signing agreements and contract papers outlining these different and normally far worse conditions. This practice of contract bullying by Singaporean agencies is discussed in detail in Yea and TWC2.<sup>18</sup> Significantly, men of all three nationalities were informed by their agencies that if they broke their contract, they would not receive any salary for the time that they had already worked. Thus, for example, if a man remained on a fishing vessel for ten months and wished to break this contract once the vessel called at port, he would return home penniless, and in many cases, still carrying the debt burden incurred through payment of agency fees.

Apart from deception concerning salary and conditions of remuneration, men experienced extremely exploitative and abusive working conditions once on the boat. In short, these conditions include:

- Excessive working hours of between 18 and 20 hours per day, seven days a week;
- Working under hazardous and unsafe conditions, including without appropriate equipment and having no access to first aid and medicine;
- Inadequate food, including the provision of food that is beyond its expiry date or allowing men only a very limited time for meal breaks;
- Inadequate water rations;
- Verbal and physical abuse by captains and senior officers on the vessels.

Some of these conditions are reproduced in written contracts men are asked to sign only once they arrive in Singapore and have already outlaid substantial costs to finance their migration (Plate 1).

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<sup>18</sup> Sallie Yea & TWC2 (2013), op cit.

Plate 1: A Contract Paper Presented to Fishers in Singapore

**CONTRACT BETWEEN CREW AND FISHING VESSEL**  
**(SIGN IN PHILIPPINES)**

NAME:                      PASSPORT NO: XX DOB:                       
 FATHER'S NAME:                      MOTHER'S NAME:                       
 WIFE NAME:                      TEL NO:                       
 ADDRESS:                     

**I. TERMS AND CONDITIONS WITH UNDERTAKING:**

1.1 Tenure of Contract 36 months starting from MARCH 12, 2010.  
 1.2 Sea water will be used for bathing and laundry purposes only.  
 1.3 Cigarettes and personal supplies (E.g. Soft drinks, noodles, Shampoo, etc) is not free, will be paid by crew himself.  
 1.4 He is working on board fishing vessel without any overtime pay with working hours 18 – 22 hours daily.  
 1.5 The fishing Trawler will operate in the high sea for 1 trip, it takes about minimum 6 months to 18 months without communication with the family.  
 1.6 New fishing crew who are beginners may suffer from seasick; he will recover automatically after few weeks working in the vessel.  
 1.7 The crew(s) must follow all the safety rules on board of the ship.  
 1.8 Crew(s) must promise to work hard, obediently and diligently in the ship.  
 1.9 Any crew(s) who breaches the contract (own sickness, fighting, lazy and reject by captain etc.) will be sent home Philippines.

According to ILO's indicators of trafficking for forced labour, these conditions constitute key indicators of the exploitative processes and outcomes of human trafficking.<sup>19</sup> These indicators are given in Box 1:

Box 1: Indicators of Trafficking for Forced Labour

<sup>19</sup> ILO (2009). *ILO Indicators of Forced Labour*. ILO: Geneva.

- 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

Each of the above conditions have been documented for men trafficked onto Taiwanese long haul fishing vessels. In addition, unlike victims of trafficking who are deployed on land, trafficking at sea offers little opportunity for victims to avail themselves of support, report their situations, or leave these same situations. This ‘confinement by default’ through geographical isolation at sea enables these hyper-exploitative conditions to continue largely beyond the purview of any intervening authority. The prevalence of forced labour and human trafficking in the sector has been confirmed in a more recent publication by the ILO, which overviews published, in-depth research on the issue. They found:

Migrant workers in particular are too often deceived and coerced by brokers and recruitment agencies and forced to work on board vessels under threat of force or by means of debt bondage. Victims describe illness, physical injury, psychological and sexual abuse, deaths, and their vulnerability on board vessels in remote locations of the sea for months and years at a time. Fishers are forced to work for long hours at very low

pay, and the work is intense, hazardous and difficult. Capture fisheries have amongst the highest occupational fatality rates in the world.<sup>20</sup>

In sum, the mode of recruitment, particularly the role of brokers and labour/manning agencies in the fishermen's home countries as well as in Singapore, Taiwan and ports of deployment, constitute both deceptive and illegal recruitment. Further, the subsequent conditions on the fishing vessels are deplorable, with excessive working hours, unsafe working and living conditions, high incidence of injury, illness and death, and no opportunity to break contracts, leave or seek advice and support. These conditions have been documented for men deployed on Taiwanese vessels,<sup>21</sup> though further research could provide a greater depth of understanding of the recruitment practices and debt arrangements, as well as the possible links between human trafficking at sea and other forms of criminal activity, including IUU fishing, drug trafficking and related crimes, as have been suggested by other studies.<sup>22</sup>

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<sup>20</sup> ILO (2013). *Caught at Sea: Forced Labour and Trafficking in Fisheries*. ILO: Geneva, p. v.

<sup>21</sup> See Yea & TWC2 (2013), op cit; Greenpeace (2016), op cit. Both these studies make important recommendations for action in recruitment and deployment, and so these recommendations are not repeated in this report.

<sup>22</sup> Greenpeace (2016), ibid; EJF 2014, op cit.



## 4. Issue One: Victim Identification and Protection

### *Victim Identification*

Victims of trafficking on fishing vessels are rarely identified and, if they are, it is usually through a haphazard and incidental process. Many fishermen wish to break their two-year contracts on Taiwanese vessels because of the financial and labour conditions they endure, even though they know they will not receive any salary for the period worked. Their only opportunity to leave the fishing vessels comes when the vessels dock at port, normally for repairs or due to severe weather at sea.<sup>23</sup> When men attempt to leave fishing vessels, it may not necessarily be in Singapore, or in the port where they first boarded. Fishermen often become stranded in third countries such as Fiji, South Africa, India, Papua New Guinea or Trinidad and Tobago. In these circumstances, men are often without significant protections afforded by legal immigration status (for example, once they leave the confines of the port area they may become illegal entrants to a territory) and have to wait for embassy staff or NGOs to intervene in order to arrange their safe passage home. Thus, it is likely that the vast majority of fishermen who are trafficked onto Taiwanese vessels are not subsequently identified or detected as victims of trafficking, whether in countries of origin, transit or destination. Based on the experiences of men in this study, victim identification may occur through three possible avenues in their trajectories, outlined here, though notably at present victim identification is not actively undertaken at any of these points. Rather, it occurs only if men are able to risk leaving the vessel and reporting to some authority or support organization, or manage to contact their family.

**FIRST**, men may present themselves in third countries (points of transit, ports of disembarkation or port of call) to NGOs, seafarers' missions, or embassies when 'in distress'. For men to be recognised as trafficked in these situations it requires those with immediate access to be able to

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<sup>23</sup> For example, in the months of June, July and August, Taiwanese fishing vessels dock at Singapore to undertake repairs, this being a time when weather conditions do not permit fishing.

make an assessment of trafficking, which in turn requires they are cognizant of trafficking indicators and criteria specific to the fishing industry. Based on key informant interviews, these actors often do not have a robust understanding of indicators of trafficking of fishermen. For example, there have been several cases of trafficked fishermen in distress who sought help in Singapore but whose cases were not treated as trafficking cases and they were eventually repatriated.<sup>24</sup> In other words, fishermen in distress can also face barriers in seeking help when they do reach port. For example, they may not be given freedom to leave the fishing vessels on which they work (which constitutes forced confinement through surveillance, intimidation, withholding of documents and physical restraint) when the vessels dock for transshipment because their captains withhold their passports. In some instances, local authorities actively facilitate the removal of potential victims of trafficking for forced labour without adequate screening in an effort to identify those who may have been subject to forced labour on vessels (see section on ‘Off-shoring Victims’ in Chapter 6 for further discussion of this problem).

**SECOND**, victims can be identified when NGOs and seafarers’ missions undertake outreach or government authorities undertake labour and safety inspections on fishing vessels within their territory. Currently, this is not practiced in most ports of call. Singapore’s Fisheries (Fishing Vessels) Rules, for example, provide for powers of inspection that would allow the conditions of vessels and changes to the crew to be checked, but they conclude with Article 14 that states: “The Director-General may if he thinks fit exempt any person from all or any of the provisions of these Rules”.<sup>25</sup> The non-binding and discretionary nature of these rules then render them of little help in efforts to identify fishers in distress. The ILO’s Working in Fishing Convention is potentially one of the most important pieces of international law to facilitate pro-active compliance checks and inspections of fishing vessels

<sup>24</sup> TWC2 (2011). ‘Where fish comes from, labour laws don’t go’, 20 August. Available at <https://twc2.org.sg/2011/08/20/where-fish-come-from-labour-laws-dont-go/> (Accessed on 15/06/14); *The Straits Times* (2014). ‘Singapore accused of trafficking fishermen’, 23 September. Available at <http://news.asiaone.com/news/asia/spore-man-accused-trafficking-fishermen?page=0%2C1> (Accessed 15/05/14).

<sup>25</sup> Agro-Food and Veterinary Authority of Singapore (AVA) (2005). Fisheries Act. Available at: [http://www.ava.gov.sg/docs/default-source/legislation/fisheries-act/43web\\_fisheriesact](http://www.ava.gov.sg/docs/default-source/legislation/fisheries-act/43web_fisheriesact) (Accessed on 19/02/15).

in a territory, even where the vessel is not bearing the flag of that state. However, at the time of writing this convention has not come into force, lacking the minimum number of signatories required for this.

**THIRD**, returning home can present another opportunity for victim identification. However, once again, many can, and in most cases do, return home undetected. For these men to come forward voluntarily to the authorities or present themselves to authorities requires that they have some information about these support agencies. For this mode of victim identification to be successful, it requires coordinated effort between organisations in countries of origin, transit and destination to provide contact information to fishermen. There are two purposes to having victims identify with authorities and support organisations: namely to be able to provide them with immediate and longer-term social, health and economic supports, and to encourage their involvement in legal proceedings against their traffickers, including civil claims for compensation and restitution.

The following narratives from fishers interviewed for this study reveal the above problems in victim identification for trafficked fishers, demonstrating some of the many haphazard and incidental ways in which victims come to be identified and assisted.

*Box 2: Victim Identification in Fishermen Trafficking Cases*

*154 Indonesian fishers stranded in Trinidad and Tobago:* 154 Indonesian fishers working on four Taiwanese fishing and feeder vessels (Rich 5, Fullness 6, Fullness 2, and Fullness 5) belonging to the Taiwanese Company PT Kwo-jeng were abandoned in Trinidad and Tobago waters when the company went bankrupt in August 2012. The fishers were left without adequate food and water till found and rescued by locals. The Government of Trinidad and Tobago then contacted the nearest Indonesian Embassy, located in Venezuela, which gradually repatriated the men to Indonesia with the assistance of the Indonesian Ministry of Foreign Affairs. When the men arrived they were referred to the IOM for medical recovery, follow up and return to their home villages, and reintegration assistance.

*Undisclosed number of Indonesian fishers stranded in Abidjan:* In September 2012, the boat onto which the men were deployed arrived at Abidjan Port but did not dock, and at that point, the captain left. The men traded goods for a phone from a smaller boat that accosted them. In that way they were able to contact a friend in Trinidad and Tobago who was working on another boat; this friend gave them the phone number of the Indonesian Embassy in Venezuela. They made contact and were given the number of the Indonesian Embassy in Senegal. They were able to talk with a person by the name of Mr. Agi (Indonesian staff from Indonesian Embassy in Senegal) who attended to the boat, verified the situation, contacted the company and subsequently organized to repatriate the fishermen to Indonesia. Mr. Agi contacted an Indonesian Pastor, Mr. Max, who contacted the Ministry of Foreign Affairs, provided for their basic needs, and contacted the Company who then paid for their flights back to Indonesia. The men said that they were stranded for about a month, and during the last week, the food stocks were very low and they were very hungry. The men also asserted that a number of Chinese Nationals were left on the boat and as far as they knew, they were still there, as the Chinese Embassy did not provide any assistance, suggesting that their families should pay for them to return to China.

*The Batangas Four (Philippines Nationals):* Four fishers deserted their Taiwanese vessel when it docked at Singapore's Jurong Fisheries Port for repairs in April 2012. The men wished to leave their vessel and return to the Philippines, however the Taiwanese captain would not allow the men to do so and withheld their passports. He would not provide them with a landing pass [allowing the men to legally enter Singaporean territory; usually granted for periods of 24 or 48 hours]. The men decided to desert the vessel and enter Singapore illegally. They attempted to find the Philippines Embassy, but did not have any money with them and none had even basic fluency in English. They slept in a public park for three nights and on the fourth day were approached by a Filipino maid who saw them sleeping under a tree and inquired about their situation. When they explained their circumstances she called the Philippines Embassy on their behalf and provided them with money for taxi fare to the Embassy.

Upon arrival and after interviewing the men, the Attache for Assistance to Nationals assessed them as victims of trafficking. After unsuccessfully attempting to procure air tickets for the men from Beverley Marine Agency [the manning agency with whom the men had signed contracts] the Embassy staff pooled some money together and paid for the men's flights to Manila.

### *Victim Protection*

Where victim identification does occur, victim protection may be forthcoming, although by no means guaranteed. In the anti-trafficking sector, victim protection includes the delivery of a range of services aimed at restoring a victim's health and well-being post-trafficking. These may be delivered in conjunction with, or separately from measures aimed to ensure the victim is protected – for example from retribution by traffickers – during criminal justice proceedings. In neither the Philippines, Cambodia nor Indonesia (source countries of fishers), Taiwan (fleet country for migrant fishers) or Singapore, Fiji and South Africa (key countries of transit, contract issuance and deployment) are there dedicated NGOs oriented to male victims of trafficking.<sup>26</sup> Anti-trafficking oriented NGOs in Cambodia and Indonesia have provided reasonable assistance to some victims, which can include short-term monetary assistance and legal support for their involvement in the Giant Ocean case and Jakarta case respectively. The delivery of psycho-social and health interventions and skills upgrading or micro-finance loans for business start-ups were less likely to be delivered, with returned fishers reporting that there are significant gaps in these supports:

After I returned to Cambodia, I went to the NGO with the other Cambodian fisherman (also from Sansok). The NGO only provided legal support and did not mention any vocational training. I wish to be trained so I can find a job with good salary. I want to be a mechanic.

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<sup>26</sup> This problem is further discussed in Yea & TWC2 (2013), *op cit*.

The NGO helped arrange for my son to come back to Cambodia. When he returned, they interviewed him and provided legal support. They did not mention about any vocational training or any other type of help.

The NGO gave me legal support. At first, I was directed to one NGO and they told me they would train me if I want to be a driver. However, after two months, I lost contact with them because my case was referred to another NGO. The other NGO only contacts me when they need me to attend court sessions. I have to pay for my own transportation to attend these court sessions. During my time on the fishing boat, I injured my stomach. When I returned, the NGO paid for me to have an operation and that was the only other assistance I received.

Several of the Cambodian NGOs interviewed for the study admitted that the delivery of comprehensive supports post-trafficking for fishers was not well-established or coordinated. For example, needs assessments of returned victims are often not undertaken, NGOs may lack the financial or personnel capacity to deliver needed supports, and they may not be able to coordinate adequately with partner NGOs to ensure supports are forthcoming through a referrals mechanism. Further, many men re-migrate internally or to Thailand for work, or return to live in areas that are remote from Phnom Penh, where most NGOs are based, making it difficult for NGOs managing their case to conduct regular follow-ups with them.<sup>27</sup> IOM's program officer for migrant assistance in Cambodia echoed many of these concerns:<sup>28</sup>

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<sup>27</sup> A recent report on returned trafficked Cambodian fishers drew similar conclusions, suggesting that reintegration services for trafficked Cambodian men are not adequate, particularly in dealing with the physical and psycho-social health issues many male victims face upon return. Although a similar study has not yet been conducted for either the Philippines or Indonesia, anecdotally it appears similar reintegration challenges are evident in all three contexts. See Hagar International (2015). *(Re)integration of Cambodian trafficked men: Trends in trafficking and available aftercare services*. Hagar International: Phnom Penh.

<sup>28</sup> See Hagar (2015). 'New Hagar Research: Reintegration of Trafficked Men', 28 May. Available at: <http://hagar.org.au/new-hagar-research-reintegration-of-cambodian-trafficked-men/> (Accessed 22/06/16).

In last six months alone, IOM has assisted with the return of hundreds of Cambodian men who were trafficked into the fishing industry, mostly from Indonesia. Almost all of these survivors bear physical and psychological scars as a result of cruel abuse at the hands of their employers. Survivors are often ashamed and rarely share their stories with families upon return which can lead to isolation, mental health issues and in some cases substance abuse and violence that impacts on their successful reintegration. We need to ensure access to proper mental health care and long-term reintegration that allows trafficking survivors to successfully recover, otherwise they will continue to suffer and be extremely vulnerable to being re-trafficked.

In fact, more than 70 per cent of the Cambodian participants had either re-migrated (and then returned again to Cambodia) or were hoping to re-migrate. All of those with migration plans/ experiences stated a preference for Thailand, primarily because they believed they were less likely to be exploited if they remained on land (in seafood processing or agriculture) and because of the great number of Cambodians already traversing this migratory route, providing important social network supports in the event of any problems. Whilst it is debatable whether these perceptions are accurate, all but five returned Cambodian fishers admitted they would not have sought to re-migrate had they received livelihoods assistance, either skills training or a business start-up loan. The lack of interventions aimed at building financial resilience thus has deleterious effects on future vulnerable migration choices.

In addition to problems relating to the type and availability of supports, returned trafficked fishermen can face discrimination from their home communities for their “failed” migration, with the lack of or delay in compensation (see Chapter Five for further discussion of this) significantly compounding these problems. Several of the Filipino participants, for example, stated that they did not

immediately return to their home upon return to the Philippines, but rather remained in Manila to seek work. Nor did they inform their families that they had returned to the Philippines. Driven by a sense of shame at returning home without the financial rewards for their work on the fishing vessels after an absence of more than two years, the men confided that they could not return home out of a sense of embarrassment, with some men having also sold land or other family assets in order to finance their migration. As stated above, some of the Cambodian fishers re-migrated, this time to Thailand, shortly after returning to Cambodia, again in part because of their sense of shame at returning without any income and having used all their previous savings to finance their initial migration. Others face family rifts and crises after returning empty-handed as one of the Cambodian participants confided:

I was happy to return home but I know some people in the community look down on the returned fishermen because we come back empty handed after three years. I do not really care about this because life on the boat was like hell so nothing can beat that. My family was very happy to receive me. In fact, my family is the driving force that helped me overcome the traumatic experience. My wife was happy to receive me. However, after five months, her family found out about my situation. They found it embarrassing that I am penniless and jobless. They got her to divorce me.

Just over a third of the Cambodian and Filipino fishermen participants in total faced separation from their spouse and/ or non-acceptance by either their marital families or the community from where they migrated and had lived prior to working on the fishing vessels. In contrast, only three of the participants faced a lack of acceptance by their families, with most stating that their families were simply glad to have them home alive, since so many other fishers were still missing abroad.



In sum, the information collected from fishers in this study suggests that victim identification is weak because it is often not proactively undertaken and individuals and organisations that may have initial contact with fishers may not be cognizant of indicators of trafficking for forced labour. Once fishers return home, there are even less opportunities to seek support because of a lack of information provided by intervening stakeholders about types of assistance that may be available to fishers. Stigma, shame and community or family pressure can also mitigate against fishers seeking assistance, especially if they have a poor understanding of what assistance actually entails in the context of trafficking. Lack of appropriate and available reintegration services can lead to family breakdowns and to men seeking new job opportunities abroad which may present new rounds of unsafe migration.

*RECOMMENDATION 1 (OVERARCHING): Victim identification measures for trafficked fishers need to be strengthened. Primarily this needs to occur at ports of call and (dis)embarkation, and at sea in both open and territorial waters. Competent authorities with an understanding of indicators of trafficking for forced labour, preferably as these apply to the fisheries sector, need to be present at key ports and be given authority to inspect vessels for labour abuses in addition to the current focus on breaches of safety and environmental standards. These authorities need to develop coordinated responses in concert with a range of other stakeholders, including relevant foreign consulates, NGOs, and seafarer's missions.*

*RECOMMENDATION 2 (OVERARCHING): Monitoring of vessels in all types of waters (territorial, Exclusive Economic Zone (EEZ), and international) needs to be strengthened in order to enhance efforts to identify potential victims whilst they are still working on vessels at sea. This requires both ratification of relevant international conventions and binding commitments to their implementation. The most relevant of these are the ILO's Work in Fishing Convention (No. 188), the IMO's Torremolinos Protocol, and the IMO's Standards on Trading, Certification and Watchkeeping for*

*Vessel Personnel (STCW-F). The STCW-F is currently the only of the instruments in force. Ultimately, many countries have domestically legislated for vessels carrying the flag of that country to be subject to domestic labour laws and standards, including the ability to inspect vessels for compliance to these same standards. However, lax enforcement and the use of flags of convenience have mitigated against the effectiveness of these legal measures. In the absence of strong international laws, it is imperative that states commit to implementing existing domestic legislation and that states look to amend domestic laws in creative ways that enable them to undertake inspections of vessels not bearing that country's flag.<sup>29</sup>*

**RECOMMENDATION 3 (SINGAPORE PORT AUTHORITY AND MINISTRY OF MANPOWER):**

*Regulations governing access to the Jurong Fisheries Port drop-in centre should be relaxed to allow proper access for NGOs and seafarers' missions. Currently, approval for access is granted on a yearly basis and stringent restrictions exist around the requirements for registered staff and volunteers. Automatic renewals should be granted and restrictions on the registration of staff and volunteers should be loosened. Better measures to ensure privacy for fishermen who use the drop-in centre should be provided so they cannot be easily observed by captains and officers of fishing vessels. The drop-in centre could, in the short term, be obscured from the view of fishing vessels, but in the longer term should at least be refitted so that whatever workers may do once they enter it is not visible from outside. Inside, it should be fitted with private counseling rooms so that fishermen can feel secure when speaking to staff members of the seafarers' mission and not fear victimization. If functioning properly such a drop-in centre should be replicated in other major fisheries ports, including in South Africa, Fiji and Taiwan itself.*

**RECOMMENDATION 4 (SINGAPORE AGRI-FOOD AND VETERINARY AUTHORITY, AVA):**

*Singapore's Fisheries (Fishing Vessels) Rules (under the Fisheries Act) should be enforced more rigorously, especially with regard to checks on crew log records so that cases of missing crew members can be detected expeditiously.*

## 5. Issue Two: Economic and Legal Justice for Trafficked Fishermen

There have been less than a dozen human trafficking prosecutions in the off-shore fishing industry in Asia. Many investigations fail to reach the prosecution stage. Although the failure of legal proceedings to substantially diminish fishermen trafficking through deterrence is notable, this part of the report focuses on the related issue of the relationship fishers themselves have to the crime of trafficking. Two concerns about legal proceedings involving trafficked fishermen are identified from this study:

1. *Lack of support during criminal justice proceedings:* Trafficked fishermen are often asked to participate in investigations and prosecutions against traffickers as key witnesses for the state. In these cases, fishers are often not well supported or protected. In fact, the lack of protection and support does act as a significant disincentive for fishers to agree to participate in legal proceedings initially. It is widely accepted that a victim-centred approach to human trafficking is not only consistent with human rights standards for the treatment of trafficked persons, but also benefits criminal justice responses to human trafficking. Whilst this is clearly recognized for trafficking of women and children into the sex industry, there is less understanding and acceptance of this principle for trafficking of men generally or into fisheries specifically.
2. *Lack of economic and legal justice:* Currently the benefits, including financial benefits, for trafficked fishermen involved in legal proceedings are negligible. Primarily this means that civil proceedings do not occur in concert with criminal justice cases, that compensation awarded is not forthcoming because of logistical or legal obstacles, or that cases fail to reach the prosecution stage. For some victims, other legal obstacles, such as lack of eligibility to avail migrant welfare schemes, can also remove the possibility of compensation or restitution outside of the scope of legal proceedings.

1. *Lack of support during criminal justice proceedings:* Trafficked fishermen in the four cases reviewed for this study stated the following problems, which negatively affected their desire to be involved in proceedings, even where they may have been motivated by anger or frustration at the perpetrators. **FIRST**, lengthy court proceedings requiring victims/witnesses to remain immobile for long periods of time is frustrating for fishers. For example, in the Aklan case, filed in 2012, the seven fishermen involved as witnesses have not been able to go abroad to pursue job opportunities and the government has temporarily confiscated their passports. This is frustrating for the men because only one of them has been able to find regular employment since returning to the Philippines after having been trafficked. Further, those not living in close proximity to the provincial court where proceedings are taking place must pay substantial costs to attend proceedings. These costs are not covered by either the public prosecutor's office or the Department of Social Welfare and Development (DSWD).

**SECOND**, intimidation and bribing of victims/witnesses is commonplace in these criminal proceedings, indicating inadequate protection for the men. For example, in the Malabon case filed in the Philippines as a result of the Sarawak trafficking episode, the case failed to reach prosecution because the family of the local recruiter convinced the men to withdraw through threats to their families.

**THIRD**, and relatedly, victims' recruiters are often living in close proximity to the fishermen post-return. In these cases, victims' embeddedness in social relations within their home communities provides a powerful explanation for men's decision to decline cooperation with the authorities in prosecuting traffickers. For example, in the case of four Filipino men recruited from one barangay in Batangas, the Philippines, one of the men's cousins was the recruiter. The cousin's girlfriend, employed in Singapore as a domestic worker at the time of recruitment, was contacted by Beverly Agency in Singapore to recruit from her home district.<sup>30</sup> Because the men did not want to create

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<sup>30</sup> This mode of recruitment is the same as that utilised to recruit the men who are now witnesses in the Aklan case. In fact, the owners of Step Up Marine Agency (the manning agency in the Aklan case) and Beverley Agency (the manning agency through which the four men discussed here) were recruited were, at the time, owned by two brothers, Victor Lim and Albert Lim.

tensions with relatives within their own community, they decided not to file a police case and consequently they returned to their home district both undetected and unassisted as victims.

Plate 2: Four Filipino fishermen in Batangas decided not to pursue legal action against Beverley Marine Agency, or contact any NGO because their recruiter was the cousin of one of the men, living in the same barangay.



Many trafficked persons, both in the fishing industry and other sectors, simply wish to resume a 'normal life' at home, including work and social relations. Involvement in criminal proceedings can stimulate memories of traumatic and shameful experiences, which many would rather forget. Although this is understandable and not only a concern for trafficking of fishers, it is also true that financial and other supports, where properly administered, can significantly contribute towards building resilience of survivors of trafficking. Trafficked fishermen are no exception to this.

## 2. *Lack of Economic and Legal Justice:*

There have only been a few instances globally where cases against traffickers in the fisheries sector have been successfully tried. Of the cases considered in this study, only two fulfill this status. In the Giant Ocean and Jakarta cases the traffickers were convicted of human trafficking charges. However, in the Giant Ocean case the successful conviction has not resulted in the delivery of economic or legal justice. In other cases, particularly in the Philippines, investigations stall before reaching the prosecution stage, again leaving victims without the opportunity to avail compensation or restitution, as discussed above. For many other trafficked fishermen economic and legal justice is even further out of reach since they remain undetected, for various reasons.

The disappearance or bankruptcy of traffickers is a major hindrance to the delivery of both economic and legal justice for fishers. The disappearance of traffickers can describe both their hiding out (for example, in the case of Giant Ocean manager Lin's husband, who is believed to be at large in Siam Reap) and the inability of authorities to have traffickers extradited (for example, in the case of Roselyn Robelo in Singapore). Even where traffickers are incarcerated and/or convicted, this is no guarantee that trafficked fishers will receive compensation or restitution in the form of recovery of lost wages or other payments. The Giant Ocean conviction is a case in point. Although originally convicted in April 2014, Lin has to date submitted two appeals to her sentence which have delayed the compensation and restitution payments to the fishers involved in the case (see Box 3, below):

### *Box 3: Lin's Appeal and Delayed Compensation in the Giant Ocean Case*

*Monday 23 May 2016: Email correspondence from a representative of the Cambodian NGO LSCW to TWC2. The appeal's process may delay compensation by years. Now the Giant Ocean case is at the Supreme Court after the appeal from Lin maintained the guilty judgement of the Phnom Penh Appeals Court. Lin again filed an appeal against the decision made by the Appeals Court to the Supreme Court in 2015. Until now the Supreme Court has not made any decision and the appeal is still pending. The fishermen are always asking us why they haven't received their money yet, even though Lin and her associates were found guilty over two years ago.*



Fishers involved in the Giant Ocean case reiterated their concerns about the lengthy court proceedings and failure for compensation to be forthcoming, despite the successful conviction of Lin and her associates from Giant Ocean:

The NGO keeps assuring me that I will receive my compensation. But it has been so long so I have lost hope of ever receiving the compensation. I work in construction and I have to go build houses in different places. It is difficult to keep in contact with the NGO for any updates.

After working in Thailand for a year, I managed to save some money so I returned to Sansok. My financial condition is better right now because of the work I did in Thailand. But I still wish to receive my compensation. With the compensation money, I plan to run my own business. Otherwise I will probably have to go to Thailand again.

The NGO provides us with legal support. In the beginning (2014), we had to make trips to the NGO office every month to prepare the documents for the court case. Now (June 2015), every three months they will call us down. When we go to the office or for court sessions, we have to pay the transportation fees out of our own pocket. We have to take time off work for the whole day. Each time we think we will be able to get the compensation but it turns out to be a wasted trip. Right now, I just need my compensation money. I worked so hard on the fishing boat.

In the Aklan case, if the recruiter Celia Robelo does not have enough money to pay compensation if convicted, as seems highly probable, then there will be no financial benefit for the fishers. Given that it was Step Up Marine agency in Singapore that reaped the major profits from the labour of the seven men, it would be far more expeditious if Step Up was required to pay compensation. This is



particularly so for the Aklan Case, given that the contracts the men signed were with Step Up Marine agency, a registered manning agency in Singapore.

Another problem relating to compensation for some trafficked fishers, such as in the Aklan case, concerns access to restitution through government welfare channels for migrant workers. In the Philippines, as in many other migrant sending states in Asia (including Indonesia, Cambodia and Bangladesh), the government, through the Philippines Overseas Employment Administration (POEA) has established an assistance fund for migrant workers who experience exploitation, injury or other problems in their work abroad, particularly where these problems result in their repatriation. In the Philippines at least, for migrant workers who make claims under the fund a follow-up investigation of agencies and brokers involved in the recruitment and wrongful deployment of the workers is undertaken by the POEA. This investigation sometimes leads to the de-registration and fining of errant labour recruitment agencies, manning agencies for seafarers and fishers, and training centres for various types of migrant workers. However, in order to avail this fund, workers must have been legally recruited by a registered labour recruitment or manning agency in the Philippines. The Overseas Workers Welfare Association (OWWA) also stated it cannot provide support for exploited or injured returned migrant workers who initially left the Philippines through irregular channels. This is a major gap in protection responses in the Philippines for persons trafficked into the fisheries sector overseas, since the vast majority of those trafficked leave the Philippines precisely through irregular channels.

There are also cases where fishers die at sea under suspicious circumstances but without consequent investigations. The deaths attract little or failed opportunities for relatives to determine the circumstances surrounding the death, to seek compensation or bring those responsible to justice where these deaths involve extreme levels of violence, neglect or other forms of abuse at sea. Below are just two examples of the narratives of fishers concerning deaths of their crewmates or senior officers:

Our captain was drunk and he started to beat the PRC chef. This happened while we were working. When we all were asleep, the PRC chef killed the captain and his body was thrown overboard. The PRC chef could not take the abuse from the captain any longer. The engineer took over as captain until we reached the port. When we docked in Singapore we had to leave the boat. We couldn't stand to continue after that. (Filipino participant)

We woke one morning to find one of our Cambodian crewmates had died during the night. We knew the captain had picked on him a lot because he was not well-educated and didn't understand some of the orders he was given. We had seen the captain beat him a few times and the body had a lot of bruising on it. The captain was planning to throw the body overboard, but we pleaded with him and said he could take all our bonus if he kept the body on board. He agreed and the body was put in the ice hold with the fish until we returned to port three months later. We took the body and gave our friend a proper burial in Fiji. We didn't know his family's location and so until now we don't know if anyone has told them that he died. (Cambodian participant)

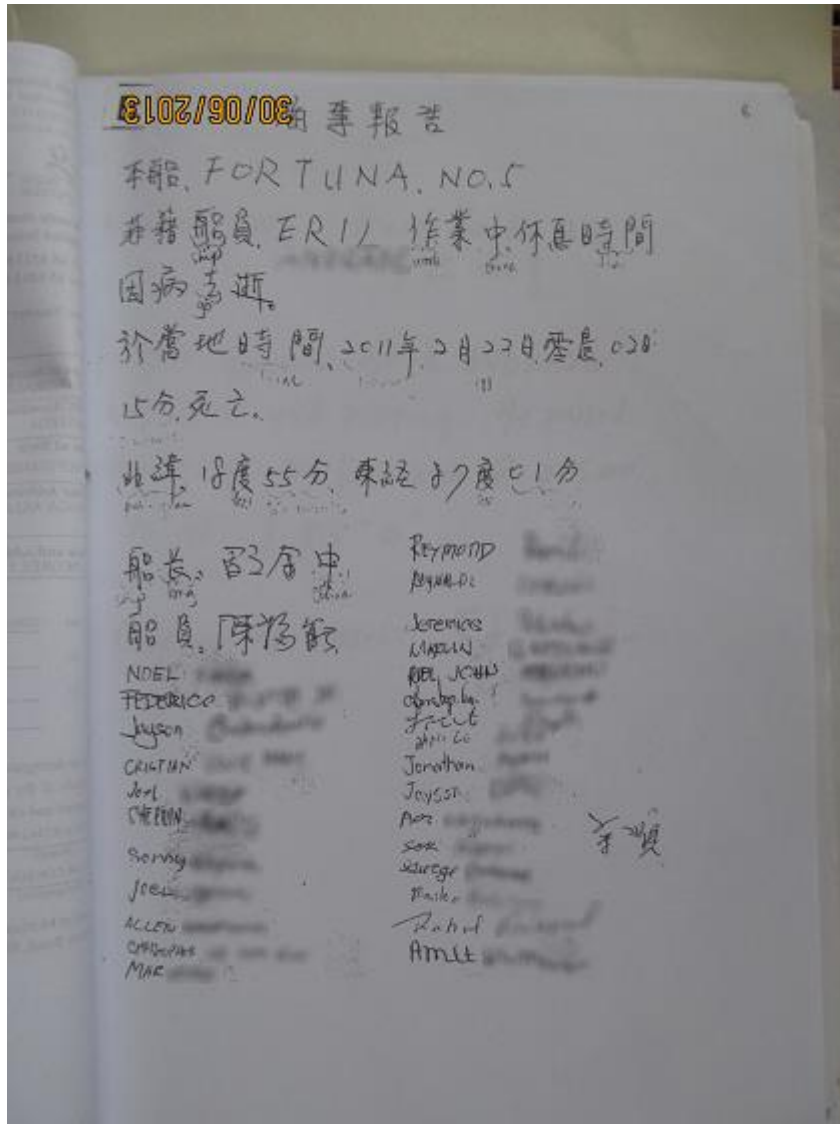
In the Aklan case, one of the victim plaintiffs, Julius Andrade, filed a separate complaint requesting assistance from the Philippines Embassy to understand the circumstances surrounding the death of his brother, Eril Andrade, on the Taiwanese fishing trawler MV Hung Yu 12. The following recounts the circumstances surrounding Eril's death:<sup>31</sup>

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<sup>31</sup> The story of Eril Andrade's death at sea has been reported in the *New York Times*: Ian Urbania (2015) 'Tricked and Indebted on Land: Abused or Abandoned at Sea', *New York Times*, 9 November. Available at [http://www.nytimes.com/2015/11/09/world/asia/philippines-fishing-ships-illegal-manning-agencies.html?\\_r=0](http://www.nytimes.com/2015/11/09/world/asia/philippines-fishing-ships-illegal-manning-agencies.html?_r=0) (Accessed 05/03/16).

1. Eril Andrade died on or about February 2011 in the Bay of Bengal on board Taiwanese fishing trawler MV Hung Yu # 212 that was fishing at that time in the Indian Ocean, but his body was not landed until the vessel docked in Singapore on 6 April 2011. The post mortem conducted on 12 April 2011 by Dr. Wee Kheng Poh, Senior Consultant Forensic Pathologist in the Mortuary of the Forensic Medicine Division of the Health Services Authority, Outram Road, concluded that the cause of death was “consistent with acute myocarditis”, i.e. inflammation of the heart caused by infection.
  
2. On 17 April 2011, the body of Eril Andrade was repatriated to the Philippines. Documents contained in the sealed casket included a brief hand-written report (see Plate 3 below) of the Master of the fishing vessel identified as Mr. Shao Chin Chung, which translated into English states: *“Filipino seaman Eril Andrade was sick and resting. He passed away on 22 February 2011 at 0215 AM.”*. The report appears to be witnessed by 27 members of the crew, including up to 18 other Filipinos who affixed their signatures and thumb marks (see Plate 3, below).
  
3. Dr. Noel Martinez, the Region VI Pathologist, performed a second autopsy on Eril Andrade on 18 April 2011 in the Socion Funeral Service, Kalibo. After concluding his examination of Eril Andrade’s cadaver, Dr. Martinez advised those present at the funeral home that the pancreas was missing. The Post Mortem Report No M-005-2011 completed on 27 August 2012 confirms that the pancreas was absent during the Post Mortem and that the cause of death was ‘myocardial infarction’. Dr. Martinez also recorded that there were unexplained ante-mortem bruises on the brow, the bridge of the nose, the upper and lower lips, upper right chest and beneath the right axilla (armpit) of the deceased. There is currently no plausible explanation for any of this, which raises doubts in the minds of his relatives.

Plate 3: Handwritten Note from Vessel Captain Concerning the Death of Eril Andrade



If Eril Andrade died of natural causes, the second autopsy report indicates physical abuse prior to death, throwing the first report into question. The family subsequently requested that the death be properly investigated. However, since that time there has been no resolution to this matter despite the Andrade family having sent several letters to the Philippines Embassy in Singapore and Singapore's Law Minister.

The fact is that it is unknown how many men and boys working as migrant fishers are missing. Deaths are often unreported and fishers can end up stranded in third countries, possibly for years.<sup>32</sup> Crew lists are also often incomplete or inaccurate, particularly where crew are transshipped at sea without record. Table 2 below illustrates the complex trajectories many migrant fishers travel and provide an indication of where missing migrant fishers deployed on Taiwanese vessels may be stranded, using information provided by some of the Cambodian participants:

Table 2: Route of Travel to Deployment on Taiwanese Vessels (Selected Cambodian Participants)

Person	Travel Route (underlined location indicates port of deployment)	No. of men travelling together	Length of time on boat	Other information (e.g. Name of Agency / Fishing Company / Boat)
1	Phnom Penh → Bangkok → Singapore → <u>Cape Town</u>	4 men (20 people on boat)		Regal Gate Marine
2, 3	Phnom Penh → Hong Kong (transit at airport only) → <u>Fiji</u>	4 men	20 months at sea	Fishermen's book – Haoyuen I.N. Co. Ltd; Boat name is Chin Long 216
4	Phnom Penh → Seoul (transit at airport only) → <u>Fiji</u>	5 men	24 months at sea	Boat name is Senko
5	Phnom Penh → Singapore (by boat) → <u>Micronesia</u>	5 men	9 months at sea	Nothing known
6, 7	Phnom Penh → Bangkok → Dubai → <u>Cape Town</u>	2 men (47 people on boat)	4 months at sea x 2, docked at Uruguay, then Cape Town 3 months later	Boat name is Sin Fa (3 in fleet have the same name but different numbers)
8	Phnom Penh → Kuala Lumpur → <u>West Africa (Dakar)</u>		28 months on boat	Yei Shipping Company

Rebecca Surtees has also documented the routes travelled by Cambodian fishers in the Giant Ocean case, with their final destination of South Africa. She also noted the role of Malaysia, Singapore, Republic of Korea, Qatar, Thailand as transit points, with some men also signing documentation if

<sup>32</sup> Surtees, op cit.

they transited through Singapore where the partner manning agencies of Giant Ocean were located.<sup>33</sup>

Yet a comprehensive documentation of routes travelled and circumstances of ports of deployment, such as Cape Town and Fiji is yet to be undertaken.

*RECOMMENDATION 5 (PHILIPPINES GOVERNMENT): Review and amend as necessary legislative provisions that exclude trafficked and exploited migrant workers from access to social and financial supports if they depart the Philippines through irregular channels. This would include migrant workers whose deployment was arranged through informally operating brokers and agents not registered with the POEA, and those who either enter into a verbal agreement or a written agreement of which they did not receive a copy with their agent.*

*RECOMMENDATION 6 (OVERARCHING): In line with Article 6 of the UN Anti-Trafficking Protocol, people who are believed may be victims of trafficking should have access to means of earning a living while their cases are being investigated, wherever they remain while investigations proceed. This is a matter of fairness to people who have possibly been trafficked and also a practical matter of helping to ensure that they are able to support their families while remaining available to those responsible for the sometimes protracted process of investigating and prosecuting trafficking cases.*

*RECOMMENDATION 7 (OVERARCHING): In accordance with Article 6 of the UN Trafficking Protocol, states should ensure they enable victims of trafficking and their families to seek and obtain compensation. The means by which they may do so should be explained clearly to them and in uncomplicated terms, at no net cost to them, and allow for circumstances in which the main beneficiaries of their trafficking may not be in detention or under the jurisdiction of the authority handling the compensation claims.*

<sup>33</sup> Rebecca Surtees (2014). *In African Waters: The trafficking of Cambodian fishers in South Africa*. Nexus Institute and IOM: Washington D.C. and Geneva.

## 6. Issue Three: Lack of Political Will

It is often assumed that if states have the capacity, appropriate legal mechanisms in place, and knowledge of the operations of human trafficking affecting their territory, they will devote considerable effort to implementing counter-trafficking measures. These may include a wide range of activities such as investigations (including where these involve transnational criminal networks), compliance checks/ inspections (in this case on vessels and in the quarters of recruitment and manning agencies), and arranging appropriate supports for victims. During the course of this research it became clear that even where these conditions may be satisfied in countries such as Singapore and Taiwan, counter-trafficking efforts may still remain piecemeal and limited in both scale and scope. Lack of political will provides an important explanation in Singapore and Taiwan for the low levels of success in dealing with fisheries trafficking over the past few years. Lack of will is expressed through four distinct processes examined in this chapter: **evidentiary obfuscation**, **responsive investigations**, **jurisdictional exceptionalism** and **off-shoring victims**. Combined, these provide a powerful explanation for the failure to make significant inroads into the reduction of fisheries trafficking.

### *Evidentiary Obfuscation*

*“The deliberate or incidental non-pursuit of documentary evidence and witnesses to assist with legal proceedings of trafficking cases, including where such evidence may assist in the extradition of key witnesses or plaintiffs.”*

In prosecuting trafficking cases, including civil claims, documentary evidence plays an important role. Important documents can include copies of fraudulent contracts, insurance notes, and receipts for recruitment fees paid, crew lists, flight tickets, and monetary transfer receipts between agencies and fleet or vessel owners (such as might be paid for crew salaries). Commonly, trafficked fishermen are not allowed to keep copies of contracts and other agreements signed with recruiting or manning agencies. Lack of political will is an issue that arises when documentary evidence is not actively

sought or where a lack of bilateral co-operation hampers its release, as in the case considered in Box 4 below.

Box 4: Lack of International Co-operation for Securing Documentary Evidence and Key Witnesses

In the Aklan case being prosecuted in the Philippines, public prosecutor, Attorney Chris Gonzalez, made a request to the Singaporean government through IACAT in 2014 to send documents from Step Up Marine Agency to support the prosecution's case. At the time of writing, IACAT had received no response from the Singapore government. A request was also made via IACAT for the cooperation of the Singapore government to extradite one Roselyn Robales, one of the recruiters who recruited the seven men acting as witnesses for the prosecution in the Philippines. Roselyn Robales has been charged with Syndicated Human Trafficking and Illegal Recruitment. Again, the Singaporean government has neither extradited, nor investigated Roselyn Robales, and she remains gainfully employed as a foreign domestic worker in Singapore, with the full knowledge of Singapore's Ministry of Manpower and Attorney General's Department.

Lack of documentary evidence can, as the above example demonstrates, have significant implications for the prosecution of trafficking cases. In the Aklan case the charge of illegal recruitment was eventually dropped because the public prosecutor in the Philippines was unable to secure documents pertaining to recruitment from Step Up Marine Agency.

*Responsive Investigation*

*"The failure of authorities to actively investigate those named by witnesses/in documentary evidence for their potential involvement in fishermen trafficking operations or cooperate with fishermen who may have been trafficked."*



There are potentially hundreds of Taiwanese vessels that warrant attention from anti-trafficking policing authorities in both Taiwan and Singapore. Lists of both vessels and fishing fleet companies, as well as recruiting agencies, are easily obtainable from exploited fishers and/ or NGOs and other organizations such as seafarers' missions assisting them. Yet, there appears to be no sustained effort to follow up with these stakeholders, as the Table 3 illustrates.

Table 3: Information Provided by Trafficked Fishermen about their Employers (Philippine Participants)

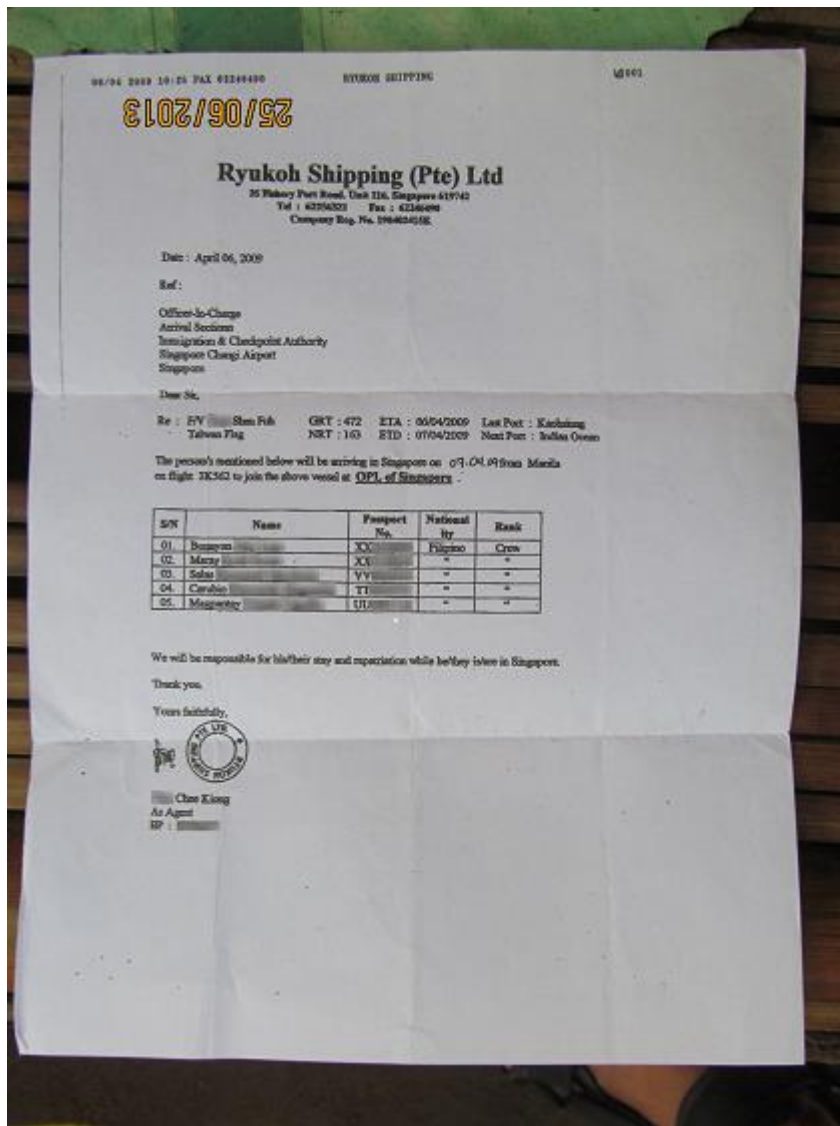
Person	Age (Yrs)	Point of Origin	Family Situation	Type of TIP	Detected Victim/Legal Case
1	40	Lian, Batangas	Married, Mother, 1 child	Fish processing (Kaohsiung)	No (only POEA compensation, license of agency revoked)
2	25	Matabunkay, Batangas	Single	Local boat (Kaohsiung)	Filed complaint through Taiwan NGO but dropped due to family pressure (resulting from Philippines agency pressure)
3	30	Balate San Palucan, Batangas	Married, 3 children (Grade 6)	Long-haul (Taiwan – Ryukoh Shipping Co. Singapore). Boat is Yow Shen Fuh Po	No (Undetected)
4		Balate San Palucan, Batangas	Married, wife	Long-haul (Taiwan – Ryukoh Shipping Co. Singapore). Boat is Yow Shen Fuh Po	No (Undetected)
5		Balate San Palucan, Batangas		Long-haul (Taiwan – Ryukoh Shipping Co. Singapore). Boat is Yow Shen Fuh Po	No (Undetected)
6	46	Nogsuan, Batangas	Married, 4 children (2 <sup>nd</sup> year HS)	Local boat (Kaohsiung)	No (Undetected)
7	44	(Aklan case)	Married, 1	Long-haul.	Yes

		Negros Oriental	child (HS grad)	Taiwan boat (Step Up)	
8	31	Aklan	Single (college)	Long-haul. Taiwan boat (Step Up)	Yes
9	40	Aklan	Single	Long-haul. Taiwan boat (Step Up)	Yes
10	34	Aklan	Married (seaman cert)	Long-haul. Taiwan boat (Step Up)	Yes
11	25	Aklan	Single	Long-haul. Taiwan boat (Step Up)	Yes
12	34	Aklan	Married, 3 children (HS grad)	Long-haul. Taiwan boat (Step Up)	Yes
13	43	Taguig City	Single	(Fortune 58) Tuna long-haul (Taiwan-owned boat)	No (Undetected)
14		Taguig City	Single	(Fortune 58) Tuna long-haul (Taiwan-owned boat)	No (Undetected)
15		Taguig City	Single	(Fortune 58) Tuna long-haul (Taiwan-owned boat)	No (Undetected)

In the above Table, it is only the seven participants involved as witnesses in the Aklan case that have been detected. Yet, even here, there has been no follow up investigation of either the vessels or the fleets to which they belong, or indeed the associated fisheries companies. A quick search of the Fortune 58 and Yeo Shen Fuh Po vessels revealed that both are registered as Taiwan flag bearing vessels and both are still in operation at the time of writing. The seven men who were deployed on these two vessels respectively were all identified by the Philippines Embassy in Singapore as victims of trafficking, before being repatriated to the Philippines. In the case of the four men from Batangas, for example, the men provided the researcher with a copy of their letter to assist their passing through Singapore Immigration upon arrival into the country (see Plate 4, below). This letter names a

Singaporean shipping company as deploying the men onto the Taiwanese vessel to which they were trafficked, a company that has not been investigated and is still in operation in Singapore.

Plate 4: Letter from the Singaporean-registered Shipping Company, Ryukoh Shipping, which deployed the “Batangas Four” onto a Taiwanese-owned fishing vessel. The four were determined by the Philippines Embassy in Singapore to have been victims of trafficking. This researcher made a similar determination after twice interviewing the men (see case summary in Yea, 2013).



In cases where legal proceedings are forthcoming, there can also be important information shared with authorities which is then not acted upon. In the Giant Ocean case, for example, anti-trafficking police seized documentary evidence from the former offices of Giant Ocean. Although many documents had already been destroyed before the police raided the offices, authorities did

nonetheless secure basic information about most of the men recruited and deployed through Giant Ocean; over one thousand men in all. This raises an important question: if there are only seventy-one men who participated as witnesses/plaintiffs in court case against Lin and her associates from Giant Ocean, what has happened to the other nine hundred plus crew? I put this question to one representative of Cambodian NGO LICADHO (one of the five NGOs assisting fishermen victims in this case). He stated:

I believe that the authorities have enough information about these men to be able to trace at least some of them. Actually it is a good question; we don't know how many have been re-trafficked or gone to Thailand to work on fishing vessels or in seafood processing. We don't know anything about their needs or situations now. Until now nobody has asked the question you are asking. (November 2015).

Countries of origin such as Cambodia, Indonesia and the Philippines often lack the capacity to effectively investigate trafficking networks, but the same cannot be said for transit and destination countries. Although the Singapore government, for example, dismisses its responsibility to investigate actors in these networks because they are ostensibly not Singaporean citizens and beyond Singapore's jurisdiction, there is little effort to determine the validity of such claims. With regard to the Aklan case, for example, the Singapore government's TIP Taskforce denied that there was any evidence that Step Up Marine Agency was actively involved in recruiting Filipino fishermen (such involvement would exceed their legally prescribed role as a manning agency providing an administrative service on behalf of Taiwanese fishing companies). Yet, the testimony of the victims in the Aklan case provides powerful evidence to the contrary. As two of the seven victim/witnesses in the case disclosed respectively (see also Appendix B):

I received a phone call from a Filipino man named “Bong” [a known employee of Step Up Marine Agency] when I was in the NAIA Airport in Manila. Bong told me to say I am just a tourist and not to mention about the fishing job. Cathy [illegally-operating agent in Manila] already mentioned the name Bong to me, as the representative of Step Up Marine Agency.

Bong rang us men when we were waiting at Cathy’s house in Manila. He introduced that he is a staff of Step Up. Bong told us to get ready as we need to come to Singapore as soon as possible. He told us that the main fishing boat is in dry dock in Peru and we need to hurry. Bong kept calling us in Manila to make sure we would not make any mistake at NAIA and he told us we needed to pass through a certain immigration counter because Step Up had a connection with the officer at that counter.

It requires little in the way of investigative powers to determine that Step Up Marine Agency is involved in the recruitment of the Filipino men, since some of the men spoke to a representative of the agency whilst still in the Philippines. Further, the Filipino representative of Step Up Marine called “Bong” coached the men on how to clear immigration and evade detection as men migrating abroad for work as fishermen through non-registered agencies (and therefore irregular channels).

#### *Jurisdictional Exceptionalism*

*“The manipulation of legal/ territorial zones and national legislation to delimit the scope of anti-trafficking action, with the aim of avoiding responsibility for prevention of trafficking, protection of victims and prosecution of trafficking crimes.”*

The unwillingness of several states to take responsibility for their involvement in the trafficking of fishermen, and the relative weakness of international law both act as significant barriers to achieving justice for trafficked fishermen and deterrence through legal recourse. Some states circumvent

responsibility by manipulating jurisdictional loopholes and exploiting legal gray zones. The Singapore government exemplifies these strategies. It circumvents its responsibility for the involvement of Singaporean nationals in harbouring and deploying trafficked fishermen in four ways. Singapore's TIP Taskforce argues that:

1. Foreign fishermen transiting through Singapore do not come under the Ministry of Manpower's jurisdiction because the men do not work in Singapore and do not hold work permits for Singapore;
2. The exploitation of fishermen does not take place within Singaporean territorial waters;
3. The vessels do not carry Singaporean flags;
4. The Singapore-registered manning agencies that are involved in the deployment of men onto Taiwanese vessels are not breaching their administrative duties; in other words, these agencies escape legal retribution because there appears to be no evidence that they are actively involved in recruiting fishermen in their home countries or that the agencies themselves are the employers of the fishermen (this last point is strongly inter-related to the evidentiary obfuscation discussion above).

The Singapore government thus falls back on jurisdictional loopholes to deflect their responsibility as the competent authority in one of the major transit points for trafficking of fishermen in Asia. This stance was further confirmed as late as 2015, when the *New York Times* ran a series of articles on trafficking of fishermen that included the unresolved case of Eril Andrade's death. MOM reiterated:

Step Up Marine's main role was to provide temporary accommodation to the workers pending their boarding of the ships," said the ministry's spokesperson. "We established that the employment contracts of the three Filipino nationals in question were not signed in Singapore and their

employment did not take place in Singapore. Consequently, the alleged salary disputes were outside Singapore's jurisdiction.”<sup>34</sup>

The current weakness in the ability of authorities from any country to be able to provide protection for trafficked fishermen relates to issues of policing and surveillance, as suggested in Chapter Five. The Taiwanese long-haul fishing vessels onto which most of the men in this study were deployed fish in international waters (the open seas). This raises the thorny question of who is responsible for undertaking surveillance and monitoring of these vessels in these waters. Fishing vessels can be routinely inspected for adherence to safety standards, sustainable fishing practices, and labour standards by their flag-bearing states, but no state reliably and routinely undertakes this responsibility. When vessels enter the territorial waters of any particular state, they can still escape surveillance and inspections if they carry the flag of a different state. Ultimately, it is the responsibility of the authorities of the state to which the vessel is flagged to carry out these inspections.<sup>35</sup> As Surtees writes about trafficking at sea,

[T]his manifestation of human trafficking is all the more insidious because, despite universal recognition of human trafficking as a serious crime and a violation of human rights, traffickers have found a haven at sea largely immune from official inquiry or prosecution.<sup>36</sup>

The lack of extradition treaties between Singapore or Taiwan and the three main countries of origin of trafficked fishermen – Philippines, Cambodia and Indonesia – is also a jurisdictional challenge for prosecuting these cases. In these circumstances, extradition can take years and is hampered by procedural and substantive obstacles. This is one of the key reasons why traffickers prosecuted are

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<sup>34</sup> Neo Chai Chin (2015). 'Probe into firm linked to Filipino who died found baseless: MOM'. *TODAY Online*, 27 November. Available at: <http://www.channelnewsasia.com/news/singapore/probe-into-firm-linked-to/2297844.html> (Accessed 19/06/16).

<sup>35</sup> As reflected in Part VII, "Compliance and Enforcement", of the ILO's Work in Fishing Convention, 2007 (C188), which, at the time of writing, has yet to come into force, having not attained the ten ratifications (eight by coastal states) that it requires.

<sup>36</sup> Surtees (2014), p. 5.

often nationals of the same source country, and often not the large business owners or managers that are operating the recruiting and manning networks with virtual impunity.

Another significant jurisdictional loophole that affects the possibility of fishers seeking compensation and restitution in Singapore concerns the prosecution of contracts. A Singaporean employment contract (in these cases prepared by and for the Singaporean manning agencies) cannot be prosecuted in the Philippines; it must be prosecuted in Singapore. However, Singapore's MOM will not recognize these contracts because the fishers are not to be employed in Singapore and are therefore not covered by the Employment of Foreign Manpower Act (EFMA) or Employment Act (EA). Further, even for foreign workers employed in Singapore, MOM considers breaches of contract as a private dispute between two private parties (employer and employee) and will not intervene in such cases. In the words of a representative of Singapore's MOM, "If a fisher wants to dispute a contract with a manning agency, he can hire a lawyer and take the matter to court. It has nothing to do with us." It is, however, a practical and financial impossibility for a trafficked fisher to pay for the significant court and lawyers' fees to recover lost salary which is unlikely to exceed US\$1,500.

#### *Off-Shoring Victims*

*"The process by which potential or identified victims are removed from the territory of one country (normally a transit or destination country of human trafficking) and deported to another country (normally the victim's country of origin, though not necessarily to the port of entry nearest their residence). This process occurs in ways that confound efforts to identify and support victims, including through co-operative intergovernmental or third sector arrangements."*

Transit or destination states of trafficking in the fisheries sector have a responsibility to identify and support victims, and undertake investigations in order to both prosecute human trafficking offences and related crimes, and also ensure trafficked fishermen are given the opportunity to secure economic justice through compensation. However, transit and destination states often remove victims before they have a chance to make a complaint, seek legal advice, or provide testimony for authorities. The



only measure undertaken by the Singaporean government to address trafficking in the fisheries sector, for example, has been the establishment of a drop-in centre at Jurong Fisheries Port for fishermen in distress. The centre, opened in 2013, is managed by the Migrant Workers' Centre with S\$500,000 funding from MOM. Its role appears to be to manage a problem rather than work towards its reduction and eventual elimination. Fishermen in distress who appeal for assistance at the drop-in centre are dealt with in a manner that provides them with little redress and does not lead to any investigations of fishing companies or vessels. They are provided with an air ticket back to their country of origin and safe passage to the airport. Fishermen are not given important information in their own language about legal redress, alternative sources of assistance or advice in Singapore or contact information for support organisations in their home countries that may be able to further assist them once they return home. It is clear from this response that the Singapore government has an active interest in offshoring the problem of trafficked fishermen who enter Singaporean territory. Furthermore, the fact that the drop-in centre is located in clear view of the fishing vessels on which the men are deployed can make it difficult for men to discuss their situations openly and frankly with the staff, even if there were translators available, which there are not (see Box 5, below).

*Box 5: The Drop-In Centre at Jurong Fisheries Port and the “Off-Shoring” of Victims*

At the Drop-in-Centre at the Jurong Fisheries Port, staff members of seafarer's missions have informed the researchers that some captains keep a close watch over the fishermen who are allowed to use the services and facilities at the centre through binoculars so that these fishermen are cautious not to be seen spending too much time talking to the staff members of the mission out of fear of repercussions.<sup>37</sup> For victim identification to be successful in these cases, it requires that fishermen are able to feel comfortable in disclosing their situations to authorities or outreach workers without fear of repercussions and/or in the absence of surveillance from senior officers and captains on the fishing

<sup>37</sup> Reverend Schmidt of the Lutheran Seafarers' Mission told the *Straits Times* that the drop-in centre “lacks an enclosed counseling room where men can air their grievances in private”. See Danson Cheong (2015) “Safe harbour for abused migrant fishermen,” *Straits Times*, 14 March.

vessels. In cases where fishermen indicate that they are not willing to re-join the vessel, arrangements are made for their expedient deportation from Singapore. In some cases, a fisher's onward ticket is paid by the manning agency (if the agency is based in Singapore and admits liability). However, if the agency is unwilling to assume responsibility, it is usually left to the seafarer's missions or the relevant embassy to raise the necessary funds to cover the transport costs of sending the fisher home. It is unheard of for fishers to receive restitution or compensation in these situations.

In sum, of the four legal cases considered in this report, only two have been successfully prosecuted: the Giant Ocean case in Cambodia and the Indonesian case. Legal proceedings can fall apart for several reasons, including lack of evidence, disappearance of traffickers, lack of knowledge by victims themselves of important information about their movement and deployment, and lack of bilateral cooperation between countries to investigate and prosecute cases. The lack of knowledge by victims about key circumstances relating to their trafficking experience is a significant stumbling block in having them act as witnesses or as informants in the investigation process. Many of the fishermen interviewed for this research could not recall the name of the fishing vessel on which they were deployed, the flag of that vessel, or the name of the counterpart agency in the transit country. Important details about who met them at various airports and transferred them to the counterpart agency and the vessel are often also lacking. What this often means is that the prosecutors may not be able to bring charges against key members of trafficking networks. In all four cases considered in this report, the charges were against either individual recruiters or recruitment agencies normally operating within the home countries of the victims. Recruitment agencies in transit and destination countries, fishing companies, and individual boat owners almost always escape prosecutorial scrutiny. Yet lack of information or knowledge is only part of the problem. This chapter has argued that lack of political will constitutes a far more powerful explanation for the inertia that currently surrounds investigations of trafficking at sea.

*RECOMMENDATION 8 (OVERARCHING): Within the ASEAN region, whether through ASEAN or other multilateral or bilateral channels, there should be greater commitment to build a more effective criminal justice system to facilitate investigation and prosecution of perpetrators of trafficking in persons. This should include improved information exchange, including the sharing of investigation findings and facilitation of the supply of relevant documentation, subject to reasonable limitations on legitimate grounds of privacy and security. National legislation that might impede this process should be re-examined and amended. The ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases<sup>38</sup> sets out sound bases for extradition, mutual legal assistance and assistance in recovering the proceeds of crime, but it is evident that there is some way to go to secure their implementation.*

*RECOMMENDATION 9 (SINGAPORE GOVERNMENT): The Prevention of Human Trafficking Act should be reviewed to ensure that it is fully consistent with the UN Anti-Trafficking Protocol, to which Singapore acceded in 2015, including the protective provisions of Article 6. It should also be determined whether the Act's provisions adequately cover cases in which a Singapore-based company participates in any way in trafficking or other forms of exploitation that occur partially or wholly outside the territory of the Republic of Singapore. Just as a Singaporean national who commits a sexual offense against a minor while outside Singapore can be prosecuted upon his return to Singapore, so should it be possible under state law to prosecute nationals or residents complicit in the offence of trafficking, even if no specific illegal action takes place under Singaporean jurisdiction.*

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<sup>38</sup> (2010) [https://www.unodc.org/documents/human-trafficking/ASEAN\\_Handbook\\_on\\_International\\_Legal\\_Cooperation\\_in\\_TIP\\_Cases.pdf](https://www.unodc.org/documents/human-trafficking/ASEAN_Handbook_on_International_Legal_Cooperation_in_TIP_Cases.pdf)

## Appendix A: List of Key Informant Interviewees

Table 4: Key Informant Interviews

Name(s)	Organisation
Amihan Abueva, Hazel Bitana	Asia-ACTS (Philippines)
Public Prosecutor Chris Gonzales	Attorney General's Office (Philippines)
Confidential	Inter-Agency Council Against Trafficking (I-ACAT) (Philippines)
Sokchar Mom, Vichuta Ly	Legal Support for Children and Women (LSCW) (Cambodia)
Marc Borg	LICHADO (Cambodia)
Sara Piazzano	Winrock International (Cambodia)
Brett Dickson	IOM (Cambodia)
Nurul Qoiriah	IOM (Indonesia)

## Appendix B: Affidavit of a Trafficked Filipino Fishermen

### AFFIDAVIT

I, ***NAME DELETED*** 36 years old, married, security guard and a resident of Barangay PLACE DELETED Cavite, after having been duly sworn in accordance with the law, do hereby depose and say:

That sometime in September 2009, I met ***Ms. Rhodora Paoa Aquino***, of Ilocos, who was on leave in Cavite at the time. I understand that ***Ms. Rhodora Paoa Aquino*** is employed as a domestic helper (DH) in Singapore. She offered me a job through the Singapore-based ***Step Up Marine Enterprise*** to work as a fisherman on board a Taiwanese fishing vessel on contract, with a promised salary of US\$150 per month from Step Up Marine Enterprise, plus a monthly allowance of US\$200 paid by the ship's Captain.

That I paid a placement fee of ₱ 17,000 to ***Ms. Rhodora Paoa Aquino*** in cash, and she remitted this money to Singapore by Western Union, consigned to herself, for collection after her return from Manila.

That I traveled to Manila on 5 October 2009 where I met ***Mrs. Liza Lim***, aged 45-50, at Pareña Bus Terminal together with three other Filipinos, two of us from Cavite, one from Batangas and one from Alabang. She took us by van to NAIA where we boarded the flight to Singapore. ***Mrs Liza Lim*** provided our tickets and instructed us to use a lane on the right hand side of Immigration.

That on arrival in Singapore, we informed the immigration officer at Changi International Airport that the purpose of our visit was to join our ships. We were initially not allowed to proceed through Immigration. We contacted Step Up Marine Enterprise by cell phone and Mrs. Lim told us that she would ring someone in Immigration to resolve this problem. After five minutes, we were allowed to enter. The Singapore immigration officer stamped our passports with an arrival stamp annotated with the words, "To join ship". We were then driven to the office of Step Up Marine Enterprise by a Singaporean Chinese man.

That we were met at the Agency by ‘**Mrs. Lim alias Ong Tee Hong, the wife of Mr. Victor Lim**’, the Manager of Step Up Marine Enterprise. **Ms. Lina**, a Singaporean Chinese, who spoke fluent Tagalog translated for Mrs. Lim. We were asked to sign our contracts, from which we noted that our salaries were reduced to US\$200 per month, including US\$50 allowance, with US\$10 deducted for “Insurance”. I managed to take a photograph of my contract using my cell phone camera. We were then taken to an apartment on the 16<sup>th</sup> floor of the building, where we joined at least 20 other male Filipinos, mostly Ilocanos who slept on the floor of the living room, and one Singaporean Chinese woman “**Lina**”.

That I flew to Mauritius on 9 October 2009 together with seventeen other Filipinos, where I joined a temporary ship before transferring at sea to my assigned ship **MV Hwachin No. 112**. I remained with this ship for 23 months.

That after eight months at sea, I received my first payment of US \$200 from the Ship’s Captain. The Captain of the ship was Taiwanese and he was very strict and cruel. Any minor fault was punished with verbal abuse from the Captain followed by, a slap on the back of the head or a kick to the back or chest, and occasionally he would hit the offender on the head with the butt of his pistol. The crew comprised a mix of Filipinos, Indonesians and Chinese. The crew worked shifts of 18 or 24 hours, with only four to five hours sleep. The conditions on board were intolerable.

That on arrival in Capetown, I contacted the Agency by fax and asked them to terminate my contract. Step Up Marine Enterprise arranged and paid for my return passage via Dubai and Singapore to Manila on 14/15 September 2011. While in transit in Singapore, I visited the Agency and Mrs. Lim informed me that, having only completed 23 months of my 3-year contract, the balance of my salary was only US\$81, which she paid me in cash. I complained to her verbally. She said nothing, but when I got to Changi International Airport, ‘**Lina**’, who arranged my ticket for the flight to Manila, gave me US\$200 as ‘pocket money’.

That I am executing this affidavit to establish the truthfulness of the facts narrated and to support the filing of criminal charges against **Mr. Victor Lim Chang Khoo and Mrs. Lim** Owner and Manager of Step Up Marine Enterprise, Singapore respectively, alias “**Bong**”, **Rhodora Paoa Aquino, Mrs. Liza Lim**,



alias “*Lina*” and other persons involved in illegally recruiting me pursuant to trafficking me abroad to work under conditions of forced labor and slavery without proper compensation contrary to their deceitful machinations and false promises of decent and legitimate overseas employment.

IN WITNESS WHEREOF, I have hereunto affixed my signature this\_\_<sup>th</sup> day of October 2011, at Maragondon, Cavite, Philippines.

**NAME DELETED**

Affiant

### **C E R T I F I C A T I O N**

SUBSCRIBED AND SWORN to before me this \_\_\_\_<sup>th</sup> day of October 2011 at Maragondon, Cavite, Philippines. I hereby certify that I have personally examined the Affiant and it appears that he voluntarily executed his affidavit and that I am satisfied that he fully understood the contents of the foregoing statements.