



Human Rights at Sea Briefing Note

On the Call for Ending Exploitative Recruitment Fees for Seafarers and Fishers in the Maritime Sector

Human Rights at Sea

BRIEFING NOTE ON THE CALL FOR ENDING EXPLOITATIVE RECRUITMENT FEES FOR SEAFARERS AND FISHERS IN THE MARITIME SECTOR

“These misleading and exploitative recruitment practices by some labour recruiters and overseas employment agencies are a continued blight on raising social welfare and human rights standards in the global maritime sector”.

INTRODUCTION

Recruitment fees and related costs charged to individuals seeking work in the commercial shipping and fishing industries are unacceptable, and in many jurisdictions, unlawful¹.

From evidence gathered by Human Rights at Sea, workers and especially migrant workers are almost always made to pay for the opportunity of work either directly or indirectly by unscrupulous third-party facilitators operating under the banner of charging ‘standard service costs’ which in reality are often unreasonable at least, and often unlawful at best.

These misleading and exploitative recruitment practices by some labour recruiters and overseas employment agencies are a continued blight on raising social welfare and human rights standards in the global maritime sector.

Fees charged are invariably excessive and underpin an exploitative service industry often bringing life-long debt to workers, their dependants and extended families in the form of debt-bondage. There is also a lack of transparency throughout this human supply chain. **Such abusive and exploitative practices must therefore be continuously publicly challenged and ultimately curtailed, if not stopped throughout the global maritime sector.**

Recruitment fees and related costs should, in the first instance, be borne by the employers and later shared by the buyers of their respective services and products. This is the basis for voluntary guidance such as the Institute of Human Rights at Business (IHRB) ‘Employer Pays Principle’² reflecting Principle 1 of the IHRB Dhaka Principles for Migration with Dignity^{3,4}. The Employer Pays Principle being a commitment to ensure that no worker should pay for a job. Meantime, for an employer such costs will invariably fall as essential business disbursement costs which should be lawfully offset against commercial business tax.


In short, workers should never incur debt-bondage to maintain maritime supply chains when such fees are essential business costs that should be accepted and absorbed by employers as part of any lawful and morally-upright business model.

CALL TO ACTION

Human Rights at Sea calls for an immediate end to the charging of exploitative recruitment fees and related costs to all workers in the commercial shipping and fishing industries throughout the global maritime sector upholding the Employer Pays Principle.

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HUMAN RIGHTS AT SEA

Transparency | Clarity | Accountability

What are your Human Rights?

Human rights are very important and apply to everyone. For example, your rights include:



- the right to life, on land and at sea,
- the right to be free from torture,
- the right to liberty, security, and freedom from slavery.



Never forget; your human rights and fundamental freedoms are guaranteed and cannot be taken away.

Human rights apply to everyone

Human rights apply to everyone, wherever you live, whatever your nationality, ethnic origin, colour, your sex, religion, language, or any other status.

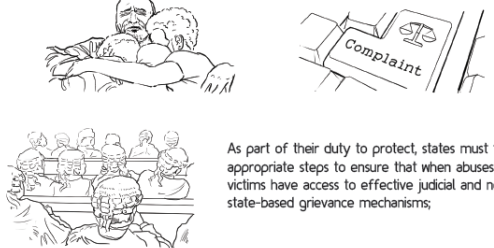


HUMAN RIGHTS AT SEA

Business and Human Rights in the Maritime Environment
Part II

Access to Effective Remedy

Where there have been abuses, affected people must be able to seek redress through effective judicial and non-judicial grievance mechanisms. The third pillar of the Guiding Principles sets out such mechanisms and can be strengthened by both states and businesses.



As part of their duty to protect, states must take appropriate steps to ensure that when abuses occur, victims have access to effective judicial and non-judicial state-based grievance mechanisms;

* Education is fundamental to understanding rights and responsibilities for crew and employment agencies.

ILO AND RECRUITMENT FEES

In 2019, the International Labour Organisation (ILO) approved the publication and dissemination of a document defining recruitment fees and related costs.

The document, entitled **“General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs”**⁵ recognises the general principle that workers must not be charged directly or indirectly, whether in whole or in part, any fees or related costs for their recruitment.

The ILO definition on ‘recruitment fees’ and ‘related costs’ is express and wide-ranging, albeit illustrative and non-exhaustive in its applicability.

1 Employment Agencies Act 1973: <https://www.legislation.gov.uk/ukpga/1973/35>;
Conduct of Employment Agencies and Employment Businesses Regulations 2003: <http://www.legislation.gov.uk/uksi/2003/3319/contents/made>;
Article 6 Paragraph 3 DIRECTIVE 2008/104/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 November 2008 on temporary agency work: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0009:0014:EN:PDF>;
Article 7 Paragraph 1 of the ILO Private Employment Agencies Convention (No. 181) of 1997: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326 (Accessed on 20 November 2019)
2 <https://www.ihrb.org/employerpays/the-employer-pays-principle>
3 <https://www.ihrb.org/dhaka-principles/>
4 https://www.ihrb.org/uploads/member-uploads/DPs_-_English_Short_Version.pdf
5 https://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-migrant/documents/publication/wcms_536755.pdf (Accessed on 13 November 2019)
6 <https://www.business-humanrights.org>

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RECRUITMENT FEES

Recruitment fees may present themselves in the form of payments for recruitment services offered by labour recruiters, public or private employment agencies, third parties, or indeed payments to the ultimate employers themselves. The latter is often found as a reimbursement charge by the employer for the initial outlay for worker recruitment disguised as a 'service cost' and reclaimed at source from wages.

RELATED COSTS

Related costs cover items such as medical costs, insurance costs, costs for skills and qualification assessments, equipment costs, travel and accommodation, and administrative costs such as passports and visa applications. Again, evidence shows such costs are often reclaimed at source as a 'service cost'.

AN ENFORCEMENT PROBLEM?

The ILO definition goes a long way towards encouraging positive change in the maritime sector with respect to worker recruitment fees and related costs. However, the fact that the ILO document is non-binding and only advisory is a significant drawback for achieving the intent and effective enforcement.

Defaulting parties are not obligated to change their unscrupulous practices unless minded to do so voluntarily, or persuaded to by third-parties usually due to a challenge to their business reputation through the likes of civil society action, media articles or organisations such as the Business and Human Rights Resource Centre⁶. Without a financial or legal incentive to remedy an abusive system or cases within a supply chain, it is difficult to see employers pro-actively addressing the issue of exploitative recruitment fees.

ILO CONTRADICTION?

By urging recruiting entities to respect national laws through their policies and procedures, the ILO document seemingly contradicts itself.

Whilst on the one hand the ILO promotes the fundamental principle of no recruitment fees or related costs for workers, on the other hand respecting the national laws of certain countries⁷ patently undermines this principle when the laws of some countries allow for the levying of such fees and costs on prospective workers.

Where these exploitative practices are protected in law, rather than promoting respect for the status quo, national legislatures should instead be encouraged to bring their laws in line with the ILO general principles and definition on recruitment fees and related costs.

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RECRUITMENT FEES AND THEIR ADVERSE EFFECTS

The levying of recruitment fees and related costs on workers is often the root cause of debt and related debt bondage within the maritime sector.

Such circumstances invariably befall the poorest individuals in the commercial shipping and fishing industries. In order to fund the recruitment process and obtain the opportunity of work, prospective workers will often resort to taking out a loan. Occasionally, loans may be obtained through a regulated lending institution such as a bank. However, more often is the case that such loans are taken out on an informal basis through unregulated money lending entities.

The latter method of borrowing clearly gives rise to all manner of risk and exploitation. Financially, the terms and conditions of the loan agreement are heavily slanted in favour of the lender and in some cases result in the lendee paying back significantly more than the amount borrowed.

Contractually, the terms and conditions of the agreement are often subject to the whims of the lender resulting in new more onerous terms being applied part way through the contract.

When repayment of the loan becomes difficult, or if the new terms of the agreement are challenged, the financial and physical safety and security of the worker's family becomes a concern. **Family members will often be used as leverage by unscrupulous money lenders to ensure repayment of the loan on their terms.**

Aside from the illegality of such extortion and threats to physical well-being, the untold psychological effect of taking out these types of loans on the mental health of the worker and their family members cannot be quantified.

Under these circumstances the cycle of recruitment, through to employment and re-employment, is a vicious one. Perversely, having borrowed money to help escape the financial plight they originally found themselves in, workers are consequently placed in a situation of entrenched poverty and debt-bondage.



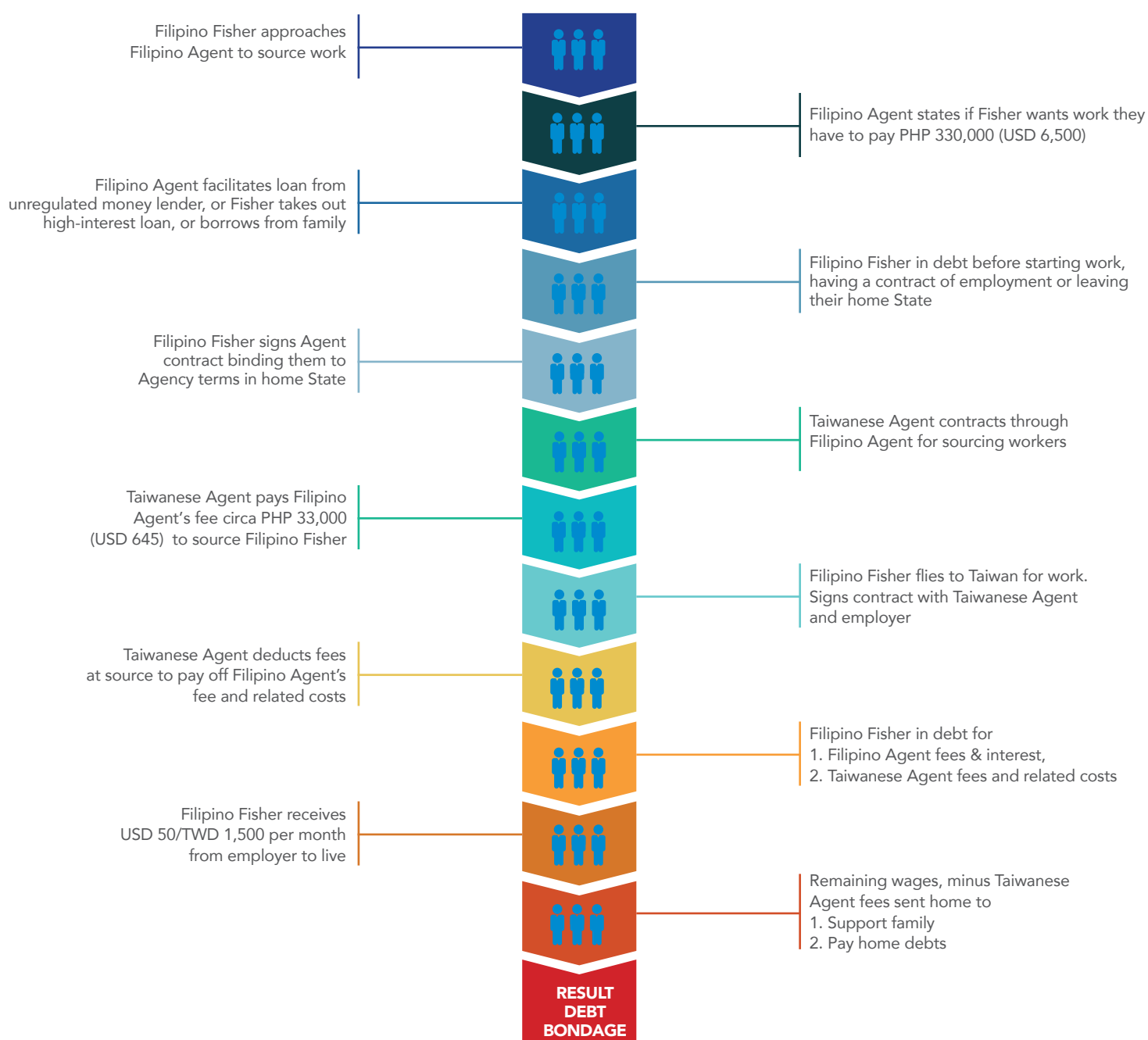
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EXAMPLES

Taiwan

Human Rights at Sea visited Yilan fishing port, Taiwan, in October 2019 and spoke with fishermen's representatives who outlined common examples of worker exploitation. In one case, the headline was that a single migrant Filipino fisher had to pay circa PHP 332,850 (USD 6,554⁸, TWD 200,000⁹) to a local Filipino Agent to come to Taiwan, with an additional re-payment of TWD 60,000 (USD 1,966¹⁰) to undertake employment through a local Taiwanese Agent. Filipino Fisher wants to work abroad to support family.



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UK Fisheries Sector

Through its work within the UK fisheries sector, Human Rights at Sea has variously come across a number of cases of systematic charging of recruitment fees for non-EEA crew. These fees have been charged both at the outset of the recruitment process and on a recurring basis throughout the contract period.

Albeit nominal in sum, proportionately these fees constitute an additional burden on the workers' financial position when reviewed in the light of their annual salaries and in the context of their family separation and value of the sums in their home country. **Furthermore, it appears that fees are charged with the interests of the recruiting entity in mind (business profit), but with no benefit passed onto the workers at any stage as a result of the charges, other than the promotion of the privilege of being able to work.** Human Rights at Sea investigations have further uncovered that migrant Filipino fishermen working in the UK were paying the Philippines -based recruitment entity \$50 per month¹². Many of the workers in this instance were unaware that this fee was unfairly and unnecessarily levied and therefore did not challenge the exploitative practice. **Further, many workers simply had no knowledge at all of the fact such a charge was levied against them at first instance.**

There have been cases of Indian and Sri Lankan fishermen working in the UK fisheries sector whom have been subject to high recruitment fees. In order to facilitate the opportunity of work, recruiting entities in India and Sri Lanka have charged prospective workers up to £3000 per contract¹³. In order to raise this sum of money, loans were taken out in each of the above cases. **Often the employer was unaware of the fact, however, even when knowledge did exist, little has been done to weed out such practices, transparently audit the recruitment agencies, and publish the findings.**

OTHER EXAMPLES IN THE GLOBAL FISHING INDUSTRY

This type of exploitation and the extent to which self-seeking recruitment entities will go to further their own business ends is not a recent phenomenon.

In Cambodia in 2011 almost 1000 workers were recruited by a company based in East Asia. Through systematic deception, work-seekers were purportedly sent as far as West and Southern Africa to ply their trade as fishermen.

On arrival the workers were faced with a very different reality. Reduced earnings, poor conditions of work, vague contractual terms, and retention of wages, were just some of the abuses of trust the investigation into the case revealed. More distressing still was the fact that some workers stated that when they expressed their desire to leave the employing company, they were denied permission, held onboard against their will and subsequently deprived of their liberty.¹⁴ Similar accounts of abuse of migrant fishermen onboard Thai registered vessels were reported in 2016.¹⁵ **These are clear examples of the insidious nature of the system of exploitation that exists in the maritime industries, exploitation that more often than not begins at the recruitment stage.**

7 Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E.2560 (2017), Thailand: <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107728/132775/F1245017527/THA107728%20Eng.pdf> (Accessed on 21 November 2019)

8 Exchange rate as time of publication 1 TWD = 0.0327715 USD.

9 Ibid.

10 Ibid.

11 Minimum wage in Taiwan is US\$770 for both Taiwanese and migrant workers in all occupations, while the minimum wage for fishermen under the Overseas Employment Scheme is US\$450, the only exception among all industries. P10, https://www.humanrightsatsea.org/wp-content/uploads/2019/10/HRAS_Taiwanese_Human_Rights_Baseline_Study_October_2019_SP_LOCKED.pdf

12 <https://www.humanrightsatsea.org/wp-content/uploads/2017/08/HRAS-ANIFPO-NON-EEA-PROJECT-REPORT-FINAL-LOCKED-Issued-20170803.pdf>; <https://www.humanrightsatsea.org/wp-content/uploads/2019/05/20180716-HRAS-ANIFPO-HUMAN-RIGHTS-AUDIT-REPORT-FINAL.pdf>; <https://www.humanrightsatsea.org/wp-content/uploads/2018/08/HRAS-Philippines-UK-Fisheries-Manning-Agents-Report-August-2018-SECURED.pdf>

13 https://www.humanrightsatsea.org/wp-content/uploads/2019/05/HRASi_ANIFPO_FISHING_BUSINESS_HR_AUDIT_2019_SP_LOCKED.pdf

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HUMAN RIGHTS AT SEA RECOMMENDATIONS

The following recommendations are suggested based on current evidence of Fisher exploitation:

1. Employers.

Acceptance by employers of all costs associated with worker recruitment as a standard business disbursement following the example of the Employers Pays Principle.

2. Employers.

Due diligence on all suppliers in relation to their recruitment policies and procedures, fees and any related costs.

3. Buyers.

Buyers sharing the burden of recruitment fees and related costs as an embedded cost passed on to consumers in the market-place.

4. Buyers.

Due diligence on suppliers in relation to recruitment policies and procedures for employing fishermen and seafarers, especially migrant fishermen and seafarers, including transparent exposure of any levy imposed for recruitment fees and related costs.

5. Corporate Social Responsibility.

Transparent supply chain due diligence and reporting under the 2011 UN Guiding Principles on Business and Human Rights¹⁶ 'know and show' principle identifying where charges are levied, the amounts, and public reporting on remedial actions taken to remove any such a levy by employers.

¹⁴ Greenpeace East Asia, 2016, "Made in Taiwan - Government Failure and Illegal, Abusive and Criminal Fisheries": <https://storage.googleapis.com/planet4-international-stateless/2016/04/1f3e47c1-taiwan-tuna-rpt-2016.pdf>; Buth Reaksmeay, Kongkea & Barron, Laignee, The Phnom Penh Post, 2014, "Trafficker gets 10 years": <https://www.phnompenhpost.com/national/trafficker-gets-10-years>; Legal Support for Children and Women, 2017, Presentation on the "Giant Ocean Case" at the 3rd International Symposium on FishCRIME: <https://bluejustice.org/fishcrime/wp-content/uploads/2017/11/Vichuta-Ly.pdf> (Accessed on 21 November 2019)

¹⁵ "Thai fishing industry: abuses continue in unpoliced waters, Greenpeace claims", The Guardian: <https://www.theguardian.com/global-development/2016/dec/15/thai-fishing-industry-human-rights-abuses-continue-in-unpoliced-waters-greenpeace-claims> (Accessed 21 November 2019)

¹⁶ https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (Accessed 21 November 2019)

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Who We Are

BACK GROUND

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

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **E**ducation, **A**dvocacy and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

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

OUR MISSION

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



STAY IN CONTACT



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



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