ILRF

TIME FOR A SEA CHANGE

Why union rights for migrant workers are needed to prevent forced labor in the Thai seafood industry

INTERNATIONAL LABOR RIGHTS FORUM

MARCH 2020

ILRF

1634 I ST NW, SUITE 1000
WASHINGTON, DC 20006 USA

T: +1 202 347 4100
LABORRIGHTS@ILRF.ORG
WWW.LABORRIGHTS.ORG

INTERNATIONAL LABOR RIGHTS FORUM (ILRF)

The International Labor Rights Forum is a Washington, D.C.-based human rights organization founded in 1986. ILRF is dedicated to advancing dignity and justice for workers in the global economy.

Author: Kimberly Rogovin
Reviewers: Elena Arengo, Judy Gearhart and Charlotte Tate
Data collection: Pattramon Sukprasert
Editing: Liana Foxvog
Layout: Amy Thesing

ACKNOWLEDGEMENTS

ILRF would like to express sincere thanks to the following organizations who were interviewed for the case studies in this paper: the ITF-Fishers' Rights Network (FRN), the Migrant Workers Rights Network (MWRN), and the State Enterprises Workers' Relations Confederation (SERC). ILRF would also like to thank the individuals who provided extremely valuable information and insight for this paper: Prung Deesri, Benjamin Harkins, Jon Hartough, Jason Judd, Suthasinee Kaewleklai, Sawit Kaewvarn, Ussarin Kaewpradap, Nattawut Kasem, Aung Kyaw, Darian McBain, Sarah Mount, Anna Olsen, Robert Pajkovski, Jackie Pollock, Phil Robertson, David Rousseau, Ame Sagiv, Papop Siamhan, Chonticha Tangworamongkon, Sujira Thiensathaporn, and Roisai Wongsuban. The views in this paper do not necessarily reflect the views of these organizations or individuals.

ILRF carried out this research with the support of Humanity United and The Freedom Fund.

March 2020

COVER PHOTO: On May Day 2019, the State Enterprises Workers' Relations Confederation brought together Thai trade unionists and migrant workers affiliated with the Southern Seafood Industry Workers Group and the Migrant Workers Rights Network to demand full rights to freedom of association and collective bargaining for migrant workers in Thailand. ©SERC

TABLE OF CONTENTS

Aerial view of fishing trawlers transshipping catch at sea, a practice sometimes associated with forced labor because it means workers remain at sea for much longer periods of time. ©Richard Whitcombe

I. INTRODUCTION

Trade union rights are central to preventing forced labor. Industries with strong trade union representation have lower levels of labor abuse, child labor, forced labor, and human trafficking.[1] In Thailand, where migrant workers are legally barred from forming their own unions, labor abuse and exploitation are endemic to the country's migrant-dominated labor sectors, such as seafood processing and fishing.

In 2014, international media attention spotlighting human trafficking and illegal, unreported, and unregulated (IUU) fishing resulted in the threat of international trade sanctions and led the

Members of the Fishers' Rights Network – a democratic, representative union of fishers in Thailand – receive medical kits and health and safety training on a vessel docked in Ranong. ©Fishers' Rights Network

Government of Thailand to undertake legal and policy reforms. However, widespread labor abuse of migrant seafood industry workers continues.

This paper argues that reform will continue to fall short for as long as migrant workers remain without access to basic trade union rights. These fundamental labor rights include freedom of association and collective bargaining, which give workers the ability to form their own unions. Unions allow workers to negotiate for better working conditions on an equal footing with employers, help vulnerable workers protect themselves, and can enable workers to influence the laws and policies that impact them. Without such rights, forced labor and human trafficking will remain prevalent in the Thai seafood industry.

Union participation is desperately low among all workers in Thailand. The country has a trade union density of 1.6%, among the lowest of any country in Southeast Asia.[2] Thailand remains one of the three countries in the region that have not ratified either ILO Convention 87 or 98 — the two core labor conventions governing workers' fundamental rights to association, organizing, and collective bargaining — despite the national and international labor movement's demand for more than four decades.[3]

Extreme worker rights violations are present throughout the Thai economy, with both Thai workers and migrant workers facing repression and abuse. The government severely limits all workers' ability to form and join unions, does not enforce collective bargaining, and prevents certain workers from striking.[4] In October 2019, the U.S. government suspended $1.3 billion USD in preferential tariffs for many Thai imports due to ongoing worker rights violations in the country, particularly weak protection for freedom of association and collective bargaining.[5]

The country's nearly four million migrant workers from neighboring Myanmar, Cambodia, Laos, and Vietnam — 10% of the Thai workforce and comprising a majority in several low wage industries — are legally barred from forming unions and face significant limitations in joining existing unions or engaging in genuine collective bargaining.[6] This is particularly problematic in migrant-dominated labor sectors, such as seafood processing and fishing, since there are almost never existing unions that could represent migrants' interests.[7] Thai workers have the legal right to form their own unions, making the law explicitly discriminatory by creating a different standard for migrant workers.

Migrant workers also lack access to effective labor complaint mechanisms and are further constrained by the threat of prosecution and deportation for reporting labor abuse by companies operating in Thailand.

It is evident that migrant workers want to join unions and other civil society organizations for assistance responding to labor rights abuse.[8] Despite legal repression and discrimination, migrant workers in Thailand have organized, both into traditional unions led by Thai nationals as well as by forming their own organizations. As this policy paper shows, local and international groups have supported seafood industry workers in trying to organize into independent and representative organizations with the aim of achieving their internationally-recognized rights to freedom of association and collective bargaining. Through such organizations, migrant workers in Thailand may begin to see the benefits of organizing and what can be achieved collectively as a group.

Yet, these examples remain limited as workers have been deterred by legal restrictions and the complexity of the law, employer retaliation, an oppressive environment for trade unions in the country, and a lack of awareness among migrants of the benefits of trade unions, with few examples to point to in Thailand or their countries of origin. Internationally-recognized labor rights are needed for all workers in Thailand to remove these barriers and allow unions to grow so that workers can protect themselves against abuse.

This paper provides an overview of the problem of forced labor among migrant workers in the Thai seafood industry (Section II). It explains how

guaranteeing workers' rights to freedom of association and collective bargaining, as well as protecting the activity of trade unions, can prevent forced labor (Section III). The paper analyzes the legal restrictions on freedom of association and collective bargaining faced by all workers in Thailand, highlighting the particular impacts on migrant seafood industry workers, and compares the rights and protections afforded to workers who form registered labor unions, collective bargaining units, welfare committees, and employee committees as set out under Thai law (Section IV). The paper includes five case studies of recent efforts by migrant workers and supporting organizations to organize, engage in collective bargaining, or improve workplace conditions (Section V).

The final section provides recommendations to the Thai government, international brands and retailers, Thai seafood companies, and other concerned stakeholders (Section VI). The most crucial recommendations are:

To the Thai government:

- Reform the Labor Relations Act to allow persons of any nationality the right to establish and lead their own unions, to collectively bargain, and to strike. The law should afford legal protection for those rights so that workers can exercise them without fear of retaliation.
- Reform the Royal Ordinance Concerning the Management of Foreign Workers' Employment to allow migrant workers' representatives to participate in the national committee on foreign workers' management policies.
- Ratify ILO Conventions 87 (Freedom of Association) and 98 (Right to Organize and Collectively Bargain) and bring national laws into compliance with these standards.

To international seafood buyers and Thai suppliers:

- Buyers should publicly call on the Thai government to ratify ILO Conventions 87 and 98 and reform the Labor Relations Act accordingly. In particular, call on the Thai government to remove explicit discrimination in the law and any barriers to migrant workers realizing these rights.
- Buyers should involve worker-led organizations in the process to draft, adopt, and enforce codes of conduct for seafood suppliers that include provisions to ensure all workers enjoy rights to freedom of association and collective bargaining.
- Suppliers should recognize independent and representative migrant worker organizations formed in their workplaces and negotiate collective bargaining agreements with them in good faith.
- All corporate actors should conduct human rights due diligence in their supply chains and workplaces to ensure workers are afforded internationally-recognized rights, and to identify and remedy abuse as needed.

METHODOLOGY

This policy paper is based on an extensive review of Thai labor law and analysis of documents produced by the International Labour Organization (ILO) Committee on Freedom of Association, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and research studies and reports by dozens of non-governmental organizations (NGOs), civil society organizations (CSOs) and United Nations (UN) agencies.

Between March and August 2019, ILRF conducted focus group discussions with groups of worker organizers and workers affiliated with the ITF-Fishers' Rights Network (FRN), the Migrant Workers Rights Network (MWRN), and the State Enterprises Workers' Relations Confederation (SERC). ILRF also conducted key informant interviews during the same period with representatives of trade unions, migrant worker organizations, NGOs, UN agencies, seafood companies, and labor lawyers. The views in this paper do not necessarily reflect the views of these individuals or organizations.

II. UNDERSTANDING THE PROBLEM: FORCED LABOR OF MIGRANT WORKERS IN THE THAI SEAFOOD INDUSTRY

Fishing and related occupations are among the most dangerous of all professions, with more than 24,000 fishers and persons engaged in fish farming and processing killed every year worldwide.[9] A 2012 study on the working conditions in Thailand's fishing sector found that over 10% of the 600 fishers interviewed had been severely beaten on board the boats. The study also found that 17% were in a situation of forced labor — they were coerced to stay in their jobs through restrictions on freedom of movement, withholding of identity documents, threats of denunciation to authorities, physical or psychological violence, debt bondage, illegal wage deductions, or non-payment of wages.[10]

Workers unload fish at a port in Ranong, Thailand. ©Daniel Murphy for ILRF

The exploitation of seafood industry workers is not an aberration. It is the result of global industry efforts to drive down the costs of business and of national legal frameworks and practices that reflect discrimination and deeply entrenched power imbalances — between workers and their employers, and between suppliers and their buyers — and corruption.

SEAFOOD INDUSTRY PROFITS AND DEMAND FOR CHEAP LABOR

Earnings from the seafood and fishing sectors in Thailand are enormous, with fish exports growing from four to seven billion USD between 2000 and 2010.[11] Thailand experienced a decline in seafood exports beginning in 2011, mainly linked to a decrease in marine and inland catch due to overfishing, as well as to reduced shrimp production caused by disease.[12] Yet, exports have been on the rise since 2015 and Thailand remains a major player in the global fisheries trade.[13]

In 2018, Thailand ranked first among global exporters of canned tuna and seventh among global exporters of shrimp.[14] Total exports number 1.56 million tons of seafood worth over $6.9 billion USD, approximately 20% of total Thai food exports. Canned tuna, processed shrimp and prawns, and processed squid and cuttlefish are the top seafood products for export and account for 68% of the total seafood exports. The top five markets for exports are Japan, the United States, Southeast Asia, the European Union, and the Middle East.[15]

TABLE 1:
Total number of migrant workers from Cambodia, Laos, Myanmar and Vietnam permitted to stay and work in Thailand as of October 2019 and unregistered estimate

Category	# Permitted to stay and work
Work permits issued to migrants entering through agreements with country of origin	995,300
Work permits issued to migrants registered in Thailand	1,929,696 - 1,187,803 (clemency) - 729,853 (nationality verification) - 12,040 (Fisheries Ordinance)
Seasonal work permits	62,733
Total registered	2,987,729[16]
Estimated irregular status	811,437*
Total	3,799,166

Source: Foreign Worker Administration Office, Department of Employment, Ministry of Labor, Government of Thailand, October 2019.[17]

* Number of migrant workers in an irregular/unregistered status was provided by the Migrant Working Group (MWG).[18]

TABLE 2:

Numbers of migrant workers in different tiers of the Thai seafood industry (male / female)

	Fishing	Aquaculture	Seafood Processing, including feed mill plant, fish meal plant workers, and sorting	TOTAL
Myanmar (registered)	30,078 (28,925 / 1,153)	44,020 (21,008 / 23,012)	79,289 (33,244 / 46,045)	153,387 (83,177 / 70,210)
Cambodia (registered)	15,583 (15,370 / 213)	7,077 (3,169 / 3,908)	4,165 (1,762 / 2,403)	26,825 (20,301 / 6,524)
Laos (registered)	1,365 (1,255 / 110)	1,338 (924 / 414)	832 (458 / 374)	3,535 (2,637 / 898)
Total (registered)	47,026 (45,550 / 1,476)	52,435 (25,101 / 27,334)	84,286 (35,464 / 48,822)	183,747 (106,115 / 77,632)
Estimated unregistered migrants (13% of the total)*	7,027	7,835	12,594	27,456
Total registered + estimated unregistered	**54,053**	**60,270**	**96,880**	**211,203**

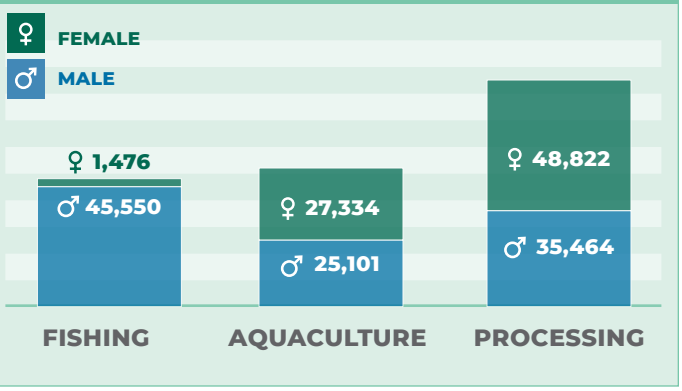
Source: Foreign Worker Administration Office, Department of Employment, Ministry of Labor, Government of Thailand, April 2019.[19]

* The estimated number of unregistered migrants is based on findings in an ILO survey conducted in 2017, which found 13% of respondents interviewed in the seafood and fishing sectors to be working in an irregular status. [20] This may be a conservative estimate; based on the Migrant Working Group estimates (Table 1 above), the number of unregistered migrant workers could be as high at 21% of the total migrant population working in the country.

Thailand's emergence as a leader in recent decades in global seafood export has generated a high demand for labor in fishing and seafood processing activities. With an aging population and Thais tending to avoid work in these industries due to the poor working conditions and low wages, migrant workers from Myanmar, Cambodia, and Laos have increasingly filled the demand.[21] Fishing companies from Thailand have kept down their labor costs by relying on migrant labor, a practice common in other places too such as Japan, South Korea, and Taiwan.[22]

Companies in the fishing sector have often sought cheaper labor to offset increased costs due to

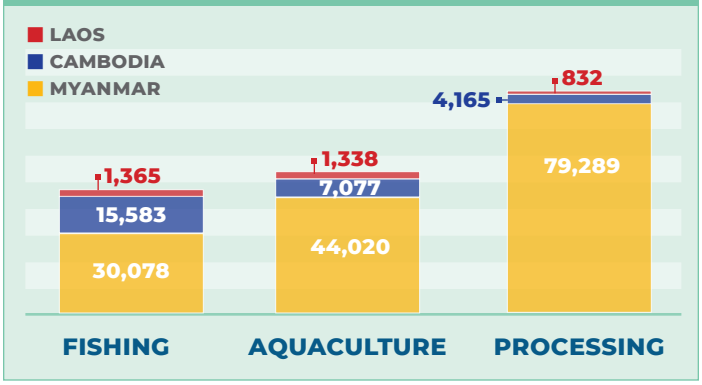
CHART 1: Tiers of Thai seafood industry by gender (registered workers)



Source: Foreign Worker Administration Office, Department of Employment, Ministry of Labor, Government of Thailand, April 2019.

depletion of fish stocks from overfishing, which requires vessels to go further out to sea for longer periods of time. Such ventures often involve illegal and unsustainable methods, which fall under the category of illegal, unreported, and unregulated (IUU) fishing.[23] Thailand has also become a hub for seafood processing, a sub-sector that relies largely on female labor migrants and involves difficult and hazardous work.[24]

CHART 2: Tiers of Thai seafood industry by migrants' country of origin (registered workers)



Source: Foreign Worker Administration Office, Department of Employment, Ministry of Labor, Government of Thailand, April 2019.

REPORTS OF FORCED LABOR AND RESPONSE BY GOVERNMENTS AND THE INTERNATIONAL COMMUNITY

In 2014, international media reported that many of the world's top brands and retailers were selling shrimp and other seafood products that had been produced by workers in situations of forced labor. Investigative journalists unearthed extreme cases of thousands of fishers on Thai-flagged vessels,[25] mostly men from Myanmar, who had been in situations of forced labor for up to ten years, forced to work up to 22-hour shifts, whipped with toxic stingray tails, maimed or even killed at sea.[26] They were catching fish used to feed shrimp that were then sold in leading supermarkets around the world, including the top four global retailers: Walmart, Carrefour, Costco, and Tesco.[27] Reports also surfaced of hundreds of shrimp peeling sheds in one Thai province where migrant workers were handcuffed in small rooms and threatened with being shot if they tried to cease their work, which included removing the guts, heads, tails, and shells of shrimp bound for overseas markets.[28]

In 2014, the U.S. Department of State downgraded Thailand to Tier 3 in its annual Trafficking in Persons Report, the lowest possible status, alongside countries such as North Korea.[29] In 2015, the European Commission issued a 'yellow card' to Thailand, identifying it as a possible non-cooperating country in fighting IUU fishing — with the threat of trade sanctions if key reforms were not made.[30]

Global and U.S. union federations filed complaints through various international mechanisms demonstrating links between worker exploitation and legal discrimination against migrant workers in Thailand, such as denial of their rights to freedom of association and collective bargaining. In an official complaint submitted to the ILO in 2015, IndustriALL Global Union wrote: "The LRA [Thai Labor Relations Act] has in effect barred unionization and migrant workers are vulnerable to poverty, wage theft, poor health and safety standards, dangerous working conditions, exploitation, extortion by police and trafficking for forced labour."[31] Similarly, the AFL-CIO filed multiple petitions with the U.S. Trade Representative (USTR) beginning in 2013, which stated that Thailand should lose preferential trade benefits under the U.S. Generalized System of Preferences (GSP) because it does not protect or provide worker rights up to international standards — a mandatory requirement for the GSP program eligibility.[32] In 2015, the U.S warned Thailand of its failure to meet the eligibility criteria with respect to freedom of association, collective bargaining, acceptable conditions of work, and forced labor.[33]

The exploitation of migrant workers raised concern in migrants' countries of origin too. Both the Myanmar and Cambodian governments discouraged the recruitment of their nationals into the Thai fishing sector due to concerns about working conditions. However, they continued to permit migration, of mostly women, into the Thai

BOX 1: Ongoing evidence of forced labor and human trafficking in 2017 and 2018

In 2017, the ILO interviewed 434 fishers and seafood-processing workers, mainly migrants, across 11 provinces in Thailand and found violations of Thai labor law and indicators of forced labor:

- 55% of workers surveyed paid a recruitment fee (one that should have been born by their employer);
- Only 35% recall signing a contract (and only 50% of those individuals understood their contract);
- 34% were paid less than the legal minimum wage;
- 48% reported illegal deductions from their wages; and
- 22% of workers had experienced one indicator of forced labor and 18% had experienced two indicators, including deception in recruiting or contracting and wage withholding.*

In 2018, the Thai Civil Society Organization (CSO) Coalition for Sustainable and Ethical Seafood interviewed 300 migrant workers employed in the Thai fishing industry in six coastal provinces and found evidence of labor rights abuse:

- Only 31% of individuals surveyed had an opportunity to read their employment contract before signing;
- Between 37-41% did not receive payment for their work at least once a month;
- 62% experienced retention of their personal identity documents by their employers or recruitment agencies; and
- Over 66% did not receive any record of payment or a pay slip.

Sources: *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand,* ILO, 2018 and *Falling through the Net: A Survey of Basic Labour Rights among Migrants Working in Thailand's Fishing Sector,* Thai CSO Coalition for Sustainable and Ethical Seafood, 2018.

* Forced labor indicators are included in the methodology of the ILO study.

seafood processing sector.[34] Both governments refused to sign agreements with the Thai government to facilitate labor migration of their nationals to work in the fishing sector in Thailand until the end of 2018.[35]

In response to these different pressures, the Thai government overhauled its fishing industry monitoring, control, and management regimes, and established new interagency inspection frameworks and teams tasked with inspecting vessels as they go in and out of ports.[36] This took place alongside a decades-old process of legislative and policy reform focused on managing migration and eliminating human trafficking. These reforms have had mixed results in reaching their stated objectives. The absence of meaningful engagement with trade unions and migrant worker organizations has greatly hampered their success and none of the reforms has contributed to a shift in the balance of power needed for migrant workers to address these problems themselves (see Annex 1).

In light of these shortcomings, labor rights abuse, forced labor, and human trafficking continue to be reported regularly in Thailand's seafood industry. Quantitative surveys conducted in different parts of the country looking at samples of hundreds of migrant workers in fishing, seafood processing, and other parts of the seafood supply chain have repeatedly found evidence of forced labor.[37] Studies in the past two years found that most patterns of labor abuse and forced labor remained largely unchanged (see Box 1). One study shows a decrease in acts of physical violence against fishermen.[38]

In response to reforms undertaken by the Thai government, Thailand's ranking in the U.S. Trafficking

Employment Office in Samut Sakhon Province set up by the government to help register migrant workers in the seafood industry. ©ILRF

in Persons Report has improved in the years since 2015 — to 'Tier 2 Watch List' in 2016 and to 'Tier 2' since 2018. The Tier 2 ranking demonstrates that Thailand does not meet the minimum standards to address human trafficking but is making efforts to do so.[39] The European Commission removed its 'yellow card' in January 2019; however, this indicates progress towards ending IUU fishing, not forced labor.[40] These upgrades should not be taken to mean that forced labor or human trafficking have been substantively addressed in practice.

On October 25, 2019, the U.S. Trade Representative announced that it would suspend $1.3 billion USD in trade preferences for Thailand under the GSP program based on its "failure to adequately provide internationally-recognized worker rights (…) such as protections for freedom of association and collective bargaining." The trade benefits are to be revoked on April 25, 2020 for more than 500 products from Thailand, including all seafood products currently covered under the program, "due to longstanding worker rights issues in the seafood and shipping industries."[41]

THE NEED FOR FORCED LABOR PREVENTION

Prevention of forced labor and human trafficking is far more effective than retroactive responses. Once workers end up in situations of exploitation, lengthy and expensive court proceedings as well as rehabilitation of workers are needed. Exploited workers must cope with trauma and additional financial debt. Sometimes, if they are not properly identified as victims of trafficking, the workers are charged with the crime of illegal immigration and deported to their countries of origin. Then, they need to start the migration process again, often with greater vulnerability to re-trafficking due to financial and familial pressures to pay back debts and secure employment.[42]

BOX 2: Forced labor definition

The ILO Forced Labor Convention No. 29, 1930 (C29), defines forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

Forced labor is work for which a person has not offered themselves voluntarily ("involuntariness") *and* which is performed under the menace of penalty ("coercion") applied by an employer or a third party to the worker. Indicators of involuntariness include deceptive recruitment offers, forced overtime, or an inability to resign in accordance with legal requirements. Indicators of coercion include confiscation of identity papers or travel documents, intentional worsening of working conditions, being locked inside living quarters, physical or sexual violence, among many others. At least one indicator of involuntariness and one indicator of coercion must be present to identify a person as being in a situation of forced labor.*

* To read the full set of indicators, see *Hard to see, Harder to count: Survey guidelines to estimate forced labour of adults and children,* ILO, 2012.

Forced labor is not always apparent and does not always include signs of physical force. Indicators of forced labor may include debt to employers, retention of identity documents, withholding of wages, deception and false promises, financial penalties, threats of denunciation to the authorities, and restrictions on freedom of movement.[43] Multiple labor rights violations can culminate to place workers in a situation of forced labor.

These labor issues exist to varying degrees of severity, creating a continuum of exploitation that ranges from routine labor law violations to forced labor. Workers do not typically become victims of forced labor overnight, but are gradually, increasingly coerced. The most effective way to protect workers against forced labor and trafficking is to address labor rights violations, no matter where they lie on this continuum, in order to prevent them becoming vulnerable to the most severe forms of abuse.[44]

While any person could end up in a situation of forced labor, certain types of workers are disproportionately affected. These include workers with lower skill and education levels, workers who are in jobs with inherent occupational health and safety risks, who migrate from other countries or across regions within countries, and/or who face discrimination and lack legal protection. Workers are most vulnerable to forced labor if they do not know their rights, are excluded from labor protection laws, do not have access to complaint mechanisms, or are in a position where they are too afraid to speak out. Employers, recruiters, and other actors frequently exploit specifically those workers who are much less powerful than they are and when they can do so with impunity.

Workers transport fish in Samut Sakhon. ©ILRF

BOX 3: Ratification of ILO core labor standards across Southeast Asian nations

Rights to freedom of association and collective bargaining are included in the Universal Declaration of Human Rights and in the ILO Conventions on Freedom of Association and Protection of the Right to Organize (C87) and the Right to Organize and Collective Bargaining (C98).

The Thai government is yet to ratify these two core labor conventions and has some of the most restrictive labor laws in Asia when it comes to trade unionism. The Thai government committed to reforming its main labor relations law as a foundation for the ratification of Convention 98, but has yet to reform the law or take further steps towards ratification. Thailand, Laos and Brunei are the only countries in Southeast Asia not to have ratified either of these core labor conventions. Meanwhile, Indonesia, Cambodia, the Philippines and Timor-Leste have ratified both labor conventions and Malaysia, Myanmar, Singapore and Vietnam have ratified one each.

III. HOW TRADE UNION RIGHTS HELP PREVENT FORCED LABOR

One of the most effective ways of preventing the exploitation of workers is by guaranteeing them full rights to freedom of association and collective bargaining. Trade unions play a pivotal role in securing legislated labor protections and rights, such as legally-entitled wages and benefits, occupational safety and health, overtime, and medical leave. Unions help raise the wages for the lowest paid and least skilled workers[45] and lead to fewer hours of unpaid overtime work.[46] Unions play crucial roles in identifying labor violations and enforcing legal rights on the job.[47] Industries with strong trade union representation have lower levels of labor abuse, child labor, human trafficking, and forced labor.[48]

On Decent Work Day 2019, representatives of Thai trade unions and migrant worker organizations march and rally together, advocating for their rights to freedom of association and collective bargaining in Bangkok, Thailand. ©ILRF

TRADE UNION RIGHTS IN BRIEF: FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Freedom of association is the right of *all* workers to build and join organizations of their choosing without previous authorization. In the labor sphere, this is known as the 'right to organize'. Worker organizations, such as trade unions, should be able to draw up their own constitutions and rules, freely elect their representatives, and represent the interests of employees without undue interference. In particular, employers and public authorities should refrain from any actions that would restrict these rights or prevent the organizations from functioning.[49]

Collective bargaining involves negotiation between employers and organized workers with an aim to ensure satisfactory conditions of employment. This can include negotiations over wages and benefits, a grievance procedure, housing and working conditions, and many other issues. Agreements between the workers and employer should then be enshrined in a written, legally-enforceable contract — a collective bargaining agreement (CBA).

National laws should protect workers against acts of anti-union discrimination. This includes legal protection for their union and for its leaders and members from being terminated or otherwise discriminated against for any activities that go into forming a union or engaging in union-related activity, such as collective bargaining or exercising the right to strike.[50] These protections are vital to the emergence and preservation of engaged, pro-worker unions.

Worker and employer organizations should not interfere with each other and a worker organization should never be established under the control of an employer. It is necessary for governments to develop legal structures and practices to ensure respect for the right to organize as well as to encourage and promote structures for voluntary negotiation between employers and workers.[51]

These rights comprise the first of the ILO's four core labor standards, which are minimum standards that should be a right for every worker around the world irrespective of whether their government has signed on to the relevant ILO conventions. It is crucial that governments and businesses, especially international companies operating across multiple jurisdictions, protect and respect these rights. Also referred to as 'internationally-recognized worker rights' or 'fundamental labor rights', these core rights include the right to freedom of association and collective bargaining; the elimination of all forms of forced and compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.[52]

THE UNIQUE POSITION OF TRADE UNIONS IN PREVENTING FORCED LABOR

Worker organizing and collective bargaining help prevent forced labor in several ways. Most fundamentally, they establish a more equal balance of power between workers and employers. Unions, in particular, play an important role in informing workers of their rights and increasing awareness about what constitutes labor abuse, forced labor, or human trafficking. In practice, this means that workers become aware of issues that might constitute or lead to these forms of exploitation and that they are able to address them through collective bargaining and worker-led grievance mechanisms.[53]

Collective bargaining allows for the resolution of most issues between workers and employers without needing to escalate them to more costly, complicated and time-consuming processes in labor courts. This is because workers and employers are obligated to negotiate in 'good faith', which means taking each other's concerns seriously and working to find solutions together. Where the principle of good faith is respected, employers are not able to ignore or drop cases that are ongoing.[54] This process of negotiation and dispute resolution is an organic and systematic way of identifying

and addressing forced labor risks. The benefit of this approach is that it is driven by workers, rather than by outside actors or intermediaries, allowing workers themselves to become agents in forced labor prevention by identifying problems and reporting when they have been resolved.

Trade unions are in a unique position to undertake these activities as they are representative organizations with workers as their members. To be able to fulfill their mandate, they must be free from interference by employers and the government. Union members are afforded legal protection for their union-related work, and, when rule of law is upheld and in force, union members can tackle difficult issues relating to their working conditions. Employers are mandated with engaging in the union-driven collective bargaining processes under national law, which lays out time-bound steps for addressing grievances at the workplace level or for escalating them to labor courts — ensuring workers must ultimately be remedied for abuses. These processes result in legally-enforceable agreements, which workers can use to hold employers accountable.

Trade unions can work to prevent forced labor through various initiatives: (1) policy initiatives, such as promoting international standards, awareness-raising with officials, and encouraging reform of policies and laws; (2) political initiatives, such as monitoring employment agencies or supply chain practices and cooperating with labor inspectors and law enforcement; (3)

At the Fishers' Rights Network organizing center in Ranong Province in Thailand, fishers discuss communications strategy. ©Fishers' Rights Network

solidarity initiatives, such as alliance and coalition forming or cooperation with global union federations to build engagement or pressure with brands and retailers at the international level; and (4) industrial initiatives, such as worker outreach involving worker education and union membership drives, and addressing the factors contributing to forced labor through bipartite (worker-employer) and tripartite negotiations (worker-employer-government).[55]

Trade unions can work to prevent forced labor at three main levels. These are: (1) the national and sub-national level, by recruiting vulnerable groups into existing unions, unionization of vulnerable workers across a labor sector, or advocating for policy change; (2) the regional level, including regional inter-governmental bodies with initiatives aimed at migration management or forced labor prevention; and (3) the international level, via global union federations, together with local trade unions and international labor rights organizations, to engage powerful transnational companies to address forced labor in their supply chains.[56]

Global framework agreements, which are formal agreements between global union federations and multinational companies, can also be designed and targeted to prevent forced labor.[57] Enforceable brand agreements (EBAs) between local unions, national unions, and global union federations — with support from international labor advocates — on the one hand, and brands and retailers on the other, can be especially effective instruments for addressing and preventing forced labor.[58]

The ILO Protocol of 2014 to the Forced Labor Convention further validates the important role of unions in addressing forced labor. The Protocol requires governments to involve unions in both developing national policy and plans of action to suppress forced labor and recommends such policies and plans be implemented in coordination with unions.[59]

THE IMPORTANCE OF GENUINE WORKER REPRESENTATION WHEN LAWS RESTRICT WORKERS' RIGHT TO FORM UNIONS

As is the case in Thailand, certain categories of workers may be discriminated against and restricted from establishing a legal trade union. In this context, groups such as NGOs, private sector actors, or employer/government-influenced worker bodies such as welfare committees are not an adequate substitute and should not attempt to play the role of unions.

In addition to trade unions, independent, grassroots worker organizations can organize workers, build power with their membership, and aim to improve working conditions. Like unions, these worker organizations are democratic organizations or networks, outside the influence of employers and the government. They are led by workers and are able to collectively represent the interests of workers to employers and other actors. However, due to a lack of formal recognition in some national contexts, they may be unable to undertake activities with legal protection or they may face more challenges in representing workers in the wider democratic, political, or legislative landscape.

According to the ILO, collective bargaining does not necessarily require a trade union representative, only that the appointed representative be "genuinely representative of the workers and their interests."[60] If there is no trade union representation of migrant workers allowed by a law, for example, the employer may still be able to bargain collectively with the workers' representatives.[61] As is shown in this paper, independent, grassroots worker organizations can play an important role in serving as workers' legitimate representatives in contexts where workers are unable to be represented by formal unions.[62]

IV. IN-DEPTH: THE LACK OF TRADE UNION RIGHTS FOR WORKERS IN THAILAND

Approximately 75% of Thailand's 38 million workers are not guaranteed full rights to freedom of association and collective bargaining under law. Thai law affords limited forms of these rights to private sector and state enterprise workers, but the relevant laws are very restrictive and fall short of international standards. For certain categories of workers, including civil service, public sector, private school, university, agricultural, temporary, and foreign migrant workers, Thai law either prohibits their rights explicitly or is interpreted as such.[63] Thai law does not provide an adequate framework or effective enforcement mechanism to support genuine collective bargaining between employers and workers. Employers retaliate with impunity against workers who attempt to exercise their rights to freedom of association and collective bargaining.[64] As a result of these factors, Thailand has a trade union density of 1.6%, among the lowest of any country in Southeast Asia and the world.[65]

CHART 3: Percentage of unionized workers among all employed workers in Thailand (2018)

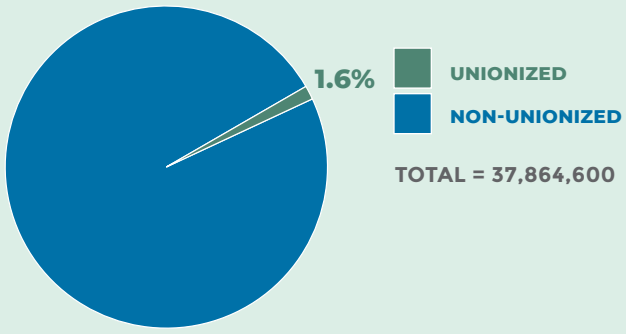
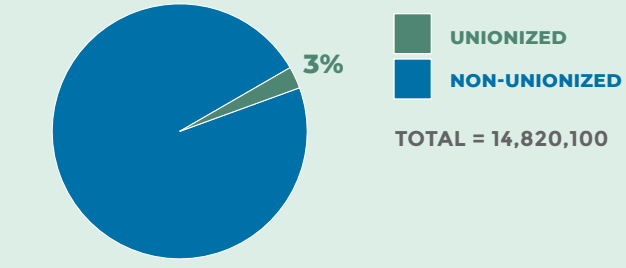


CHART 4: Percentage of unionized workers among those employed in private sector enterprises (2018)



Source: Labor Statistics Yearbook 2018, The Office of Permanent Secretary, Ministry of Labor, Thailand.[66]

LABOR UNIONS FOR PRIVATE SECTOR WORKERS UNDER THAI LAW

The Labor Relations Act B.E. 2518 (1975) sets out the process for establishing a labor union for workers employed in the private sector and governs the collective bargaining relationship between employers and employees as a group. A labor union may be established for the purpose of creating and protecting the 'conditions of employment' within workplaces and promoting better relationships between employers and employees.[67]

Persons who have the right to establish unions must be employees working for the same employer, or employees in the same description of work, and must be Thai nationals by birth. This explicit discrimination is included in Section 88 of the

Labor Relations Act, "Persons who have the right to establish a Labor Union must be (...) sui juris of Thai nationality," as well as in Section 101, "A person eligible for being elected or appointed as a member of the [union] committee or sub-committee shall have the following qualification: (...) being of Thai nationality by birth." Thus, non-Thai nationals are permitted to join unions but cannot form them or play roles as leaders.

Under the law, a labor union is able to (1) demand and negotiate for settlement and acknowledge agreement with an employer or employers' association regarding the activities of its members; (2) manage and carry out activities for the benefit of its members; (3) provide information services regarding employment opportunities for its members; (4) provide advisory services for solving problems or eliminating disagreements relating to administration and working methods; (5) provide welfare services relating to the allocation of funds or properties for its members or for the public benefit; and (6) collect membership fees.[68]

Labor unions must be approved by and registered with the government. Workers who are part of a legal union should enjoy legal protection for their organizing and union-related activities. Specifically, when a labor union carries out the following activities for the benefit of its members, the employees, the labor union, nor the union officials should be liable for criminal or civil charges or other actions: (1) participating in the negotiation for settlement on the demand for rights or benefits to which its members should be entitled with employers, employers' associations, employees, other labor unions, employers' federations, or labor federations; (2) causing a strike or assisting, persuading, or encouraging its members to strike; (3) explaining or publicizing facts concerning labor disputes; or (4) arranging for a rally or peaceful gathering for a strike.[69]

On November 7th 2019, Thai trade unionists marched from the United Nations to the Ministry of Labor in Bangkok to protest criminal charges brought against State Railway Union of Thailand (SRUT) leaders in 2019 for organizing a health and safety initiative in 2009 to address problems that workers believe contributed to a deadly train derailment. This type of retaliation for union activity is a violation of internationally recognized worker rights under ILO Convention 87 on Freedom of Association and Protection of the Right to Organize. ©ILRF

BOX 4: Restrictions on union rights for migrant seafood industry workers and the repressive union context

Foreign migrant workers may join unions led by Thai nationals but cannot establish their own. Non-Thai nationals working in the country include the nearly four million migrant workers from Cambodia, Laos, Myanmar and Vietnam – 10% of Thailand's labor force.[70] This discrimination in the law makes it very difficult for migrants to ensure their specific concerns are represented and communicated to employers and policymakers.

Migrant workers and Thai workers do not typically organize together. This is due to language barriers, perceived differences in interests, segmentation of Thais and foreigners in different labor sectors, and discrimination, among other factors.

The Thai law governing workers' rights to freedom of association and collective bargaining outlined previously is applicable to seafood processing and fishery workers.[71] However, there are very few Thai nationals employed in the low- or semi-skilled jobs in seafood processing and even fewer in commercial fishing, meaning there are very few workers that are legally able to form, register, or lead a union in these sectors.[72] On aquaculture farms, where the percentage of Thai workers is greater, workers do not have the right to form or join unions whatsoever, as their work is designated by the government as seasonal agricultural work. The combination of these legal barriers makes it nearly impossible for migrant workers in each segment of the seafood industry to organize. Indeed, there are a very small number of unions in seafood-processing factories and no registered unions in the fishing sector or in aquaculture.[73]

The reason for the lack of unions in seafood processing and fishing is not only because of the fact that there are so few Thai nationals employed in these sectors, but also because of the wider union context in Thailand. The ILO and international and local unions have repeatedly expressed the concern that even Thai trade unionists, who should have full rights under law, are routinely discriminated against and are vulnerable to interference and employer retaliation for union participation. Thai trade unionists are often dismissed for attempting to register unions or for submitting demands for collective bargaining,[74] and dismissed workers face pressure from labor courts to accept compensation instead of reinstatement.[75]

In numerous cases, companies have filed civil and criminal charges against trade union leaders for damages, often for allegedly defaming a company's reputation or for financial losses associated with trade union organizing initiatives, protests, or labor disputes.[76] At the time of writing this report, the Thai government is criminally prosecuting leaders of the State Railway Union of Thailand (SRUT) for organizing a health and safety initiative to address problems that workers believe contributed to a deadly train derailment in 2009.[77] This environment is rife with anti-union discrimination and the threat of defamation lawsuits serves to frighten would-be organizers and activists, both Thais and migrants.

LIMITED SCOPE FOR COLLECTIVE BARGAINING

Thailand's Labor Relations Act offers a very limited framework for collective bargaining. Firstly, the law lacks requirements for employers and workers to negotiate in good faith and only mandates that employers attend an initial meeting within three days of workers submitting a demand to bargain. After that meeting, employers are able to ignore the workers or refuse to negotiate without legal consequence.[78] Secondly, there are many limitations on the right to strike,

which normally would be the main way for workers to compel employers to negotiate or meet their demands. This can be very challenging for workers, particularly migrant workers, who do not understand all aspects of the law.[79]

According to the Labor Relations Act, a workplace with 20 or more workers must have a standard agreement relating to conditions of employment.[80] This agreement must include the: (1) employment or working conditions; (2) working days and hours; (3) wages; (4) welfare; (5) termination of employment; (6) submission of complaints by employees; and (7) amendment or renewal of the agreement.[81] The law requires these agreements to be established regardless of whether a union or other worker representative is present, allowing the employer to 'negotiate' them unilaterally without genuine bargaining. In addition, the Labor Relations Act specifies the items to be covered in the agreement rather than leaving it up to the employees and employer to identify them together.[82]

The law allows these agreements to be negotiated between an employer and a labor union, or an employer and a group of non-unionized employees (see Table 3, #1 and #2). In other words, employees can bargain collectively whether they are trade union members or not.[83] If the demand to bargain comes from a non-unionized group of employees, they must represent 15% of the workplace, whereas a union is required to achieve a higher percentage — 20% — to establish workplace representation in order to collectively bargain. In either case, the group of workers is able to elect up to seven representatives to negotiate with the employer on their behalf.[84]

The law does not prohibit non-Thai citizens from forming a non-unionized group; thus, migrant workers can attempt to collectively bargain with employers in this way. However, as explained in the next section, migrant workers who attempt to bargain or undertake other organizing-related activities outside of a registered union do not have adequate legal protection.

LACK OF LEGAL PROTECTION FOR UNION ACTIVITY AND IMPLICATIONS FOR MIGRANT WORKERS

The Labor Relations Act states that when workers' collective demands are in the course of negotiation, settlement, or arbitration, an employer cannot dismiss or transfer employees.[85] This legal protection should cover all employees who have signed the demand (whether part of a union or not) and should apply equally regardless of nationality, provided that they submit their demands in accordance with the law. The law only requires that the demands be submitted to the other party (the employer), not that the employer accept them.[86]

However, before submitting a demand, workers remain vulnerable to retaliation. Preliminary activities necessary for forming a union or even organizing to submit a collective bargaining demand, including holding meetings, inviting workers to join a union, filing grievances, and informal or spontaneous collective action, such as protesting poor working conditions, are unprotected.[87]

This lack of legal protection has particularly strong implications for migrant workers. Unlike Thai workers, if migrant workers are terminated, there is a strong likelihood that they will be deported. Migrant workers, who have often gone into debt or made enormous sacrifices to come to Thailand for work, are not typically willing or able to take this type of risk. As a result, they are likely to refrain from organizing-related activities.

In practice, Thai workers organizing a union generally propose a demand to the employer at the same time as when they submit a request to register the union.[88] Doing it in this way affords the workers legal protection until the union is registered. This strategy is not an option for migrant workers as they do not have a path to unionization under the law when organizing and bargaining without the participation of Thai workers.

It is important to note that the legal protection afforded in the law for collective bargaining or

for unions is typically not afforded in practice. As explained in Box 4, even Thai trade unionists, who should have full rights under law, are routinely discriminated against and are vulnerable to interference and employer retaliation for participation in unions.

The law makes it easier for employers to 'bargain' with non-unionized groups of workers (i.e. those who have less legal protection) than with unions. Thai unions report that employers choose to negotiate with non-unionized groups of workers or favor them with better terms in order to discourage union activity or to encourage workers to leave unions and join these other groups of workers.[89] In addition, Thai law requires employee committees and welfare committees, which some employers have tried to use as substitutes for genuine worker engagement through unions. This means that a system is in place that actively undermines unions and worker-organizing efforts generally, and fills that space with management-controlled groups of workers and bargaining processes that fail to provide workers with adequate independence from employers and legal protections.

EMPLOYEE COMMITTEES

The Labor Relations Act requires an employer who employs at least 50 people to facilitate the establishment of an 'employee committee'. Its purpose is to maintain friendly relations and communication channels between employers and employees through regular meetings. Members can be elected by workers or appointed by a labor union and the number of representatives ranges from five to 21 based on the number of employees in the workplace.[90] There are no nationality or race restrictions on who joins or represents the employee committee.

The law requires the employer to meet with the committee at least once every three months, or when a labor union or more than half of the committee members request such a meeting with reasonable grounds. The following topics may be discussed at such a meeting: (1) provision of welfare for employees; (2) prescription of new working regulations beneficial to both employer and employees; (3) potential employee complaints; and (4) settlement of disputes and compromises in the workplace.[91] Under the law, an employer cannot terminate, reduce the wages, take disciplinary action, or otherwise obstruct the performance of duties by an employee committee member without prior permission of the Labor Court.[92] Unlike a labor union, this entity does not negotiate and sign a binding collective bargaining agreement with the employer. It is not possible to enforce issues or decisions discussed as a part of this committee's work.

WELFARE COMMITTEES

Thai law also mandates the creation of a 'welfare committee' under a different law, the Labor Protection Act B.E. 2541 (1998).[93] Welfare committees are required to be established in enterprises with 50 employees or more and should have at least five worker representatives.[94] Beyond this, there are no requirements in the law on how these committees should be formed or how workers should elect representatives.

Welfare benefits required by Thai law include provision of clean drinking water and restrooms, as well as first aid services and medical supplies for injuries and sickness.[95] While not required by law, manufacturing companies sometimes provide other benefits, including work clothes or uniforms, health insurance, transport to the factory site, a canteen inside the factory, or accommodation.[96]

Welfare committee representatives are able to: (1) liaise with the employer and discuss employees' welfare issues; (2) provide advice and recommendations to the employer on the provision of welfare; (3) inspect, control, and arrange for the welfare contributions approved by the employer; and (4) propose guidelines and options regarding welfare contributions which would benefit the employees.[97] An employer is required to hold a meeting with the welfare committee at least once every three months or based on a request by workers representing half the total committee members.[98]

Among seafood industry workers, this section of the Labor Protection Act is applicable to factory workers, but not to sea fishery and seasonal aquacultural workers.[99]

TABLE 3: Comparison of workers' rights and protections for different worker bodies under Thai law (Labor Relations Act, 1975 and Labor Protection Act, 1998)

Worker entity	Purpose	Worker organization/ Representation	Right to collective bargaining	Right to strike	Legal protection	Exclusions
1. Labor union (Labor Relations Act)	Acquiring and protecting interests relating to the conditions of employment and promoting better relationships between employers and employees, and among employees themselves.	A minimum of ten employees is needed to form a labor union. Persons who have the right to establish a union must be employees working for the same employer, or employees in the same description of work, and must be Thai nationals by birth. For collective bargaining: A union with 20% or more of the employees in a workplace can submit a demand to negotiate the conditions of employment; can elect up to seven representatives to negotiate with the employer.	Yes, leading to a binding collective agreement enforced by law.	Yes, under the conditions prescribed in the LRA.	• When undertaking activities set out in the law as part of a union, the union and its members shall not be liable to criminal or civil charges or actions when: (1) participating in the negotiation for settlement on the demand for rights or benefits to which its members should be entitled; (2) striking; (3) explaining or publicizing labor disputes; or (4) arranging for a rally or peaceful gathering for a strike (Section 99). • When workers' demands are in the course of negotiation, settlement, or arbitration, an employer cannot dismiss or transfer employees (Section 31).	• Non-Thai citizens cannot establish a labor union or serve as union leaders, but can join unions led by Thai nationals. • Applicable to private sector enterprises. Not applicable to part-time, informal, or seasonal workers.
2. Non-unionized group of employees engaging in collective bargaining (Labor Relations Act)	Negotiate the conditions of employment for employees as a group.	A group of employees representing 15% of a workplace can submit a demand to negotiate the conditions of employment; can elect up to seven representatives to negotiate with the employer.	Yes, leading to a binding collective agreement enforced by law.	Yes, under the conditions prescribed in the LRA.	• If workers have submitted a demand to negotiate the conditions of employment, the law is interpreted as affording these workers the same legal protection as in the row above (under Sections 31 and 99 of the LRA).	• Applicable to private sector enterprises. Not applicable to part-time, informal, or seasonal workers.

Worker entity	Purpose	Worker organization/ Representation	Right to collective bargaining	Right to strike	Legal protection	Exclusions
3. Employee committee **(Labor Relations Act)**	Maintain friendly relations and communication channels between employers and employees through regular meetings, including discussing welfare, working regulations, complaints, and settlement of disputes.	Committee must be established in workplaces with 50 or more employees; members can be elected or appointed by a labor union; the number of representatives ranges from five to 21 based on the number of employees.	No	No	• An employer cannot terminate, reduce the wages, take disciplinary action, or otherwise obstruct the performance of duties by an employee committee member without prior permission of the Labor Court.	• Applicable to private sector enterprises. Not applicable to part-time, informal, or seasonal workers.
4. Welfare committee **(Labor Protection Act)**	To discuss welfare provisions for employees. Employees can make recommendations to employers, and inspect and arrange for the welfare contributions provided by the employer.	Committee must be established in workplaces with 50 or more employees; workers can elect a minimum of five worker representatives.	No	No	No[100]	• Not applicable to aquaculture or fishing sector workers.

BOX 5: Challenges with welfare committees

In practice, welfare committees have not served as vehicles for change nor have they been used by workers to address serious labor violations or prevent forced labor. With very few exceptions, welfare committees are not formed independently nor do workers elect the committee representatives. The representatives are handpicked by the factory management, their names are posted in the workplace, and no negotiations occur between the representatives and employers. The committee members do not represent the majority of the workers and are therefore unable to stand up for their interests and concerns. As the representatives have been handpicked by management, they may be unwilling to raise the difficult issues that need to be addressed out of fear of losing their position in the committee or their job.[101] The negotiations do not lead to a legally-binding agreement that the workers can use to hold their employer accountable. Unlike with unions and employee committees, workers do not have legal protection against termination or other retaliation for participating in a welfare committee.[102]

Welfare committees are not treated as serious partners by employers, and they do not provide a meaningful platform for employees and employers to interact on an equal footing. As can be seen in Table 3, the only worker body with the ability to organize outside the influence of the employer and seek a legally-enforceable agreement covering working conditions is a registered trade union. In contrast, the welfare committee is the least powerful and independent of the worker bodies.

One of the most insidious impacts of welfare committees is that, once they are formed, workers become less likely to organize themselves, whether to try to form independent worker organizations or seek to register unions. Particularly in labor sectors dominated by migrant workers, welfare committees are often treated as a substitute for unions without serving equivalent functions or having anywhere near the same power that worker-organized bodies could have.

There are some signs that the government has actively encouraged this to happen in recent years. As migrant workers have initiated collective bargaining processes in multiple workplaces, the government has increasingly reminded companies employing large numbers of migrant workers of the legal requirement to form welfare committees.[103] The government's wariness towards migrant workers' efforts is due to the history in Thailand of the collective bargaining process giving Thai trade unions a legal entry point to begin assisting workers in unorganized workplaces, which has often been the first step towards the formation of new unions.[104] In contrast, welfare committees cannot request this type of assistance from unions.

Problematically, Thai seafood companies and international buyers have claimed that they are upholding rights to freedom of association and collective bargaining because they have instituted welfare committees in their workplaces. Seafood processors are actively promoting them in Thailand and in other countries as satisfactory alternatives to trade unions. This is argued by companies to satisfy their commitment to international labor standards and their company codes of conduct. They use this claim to avoid further scrutiny, maintaining that the presence of welfare committees represents genuine worker organizing and engagement.[105]

As of 2015, there were 14,557 company-level welfare committees represented in businesses and 1,479 trade unions across all sectors in Thailand.[106]

CHALLENGES UTILIZING GOVERNMENT COMPLAINT MECHANISMS

In addition to the restrictions on organizing and collective bargaining, migrant workers face significant obstacles in accessing the government's labor complaint mechanisms. In practice this has meant that migrant workers have very few avenues to make their voices heard, improve working conditions, and prevent abuses.

Workers, both Thai and migrant, are able to submit labor complaints directly to departments under the Ministry of Labor and to other government authorities. However, migrant workers have negative perceptions of these government channels and have had little success in winning redress.

Only a very small portion of migrant workers experiencing labor rights abuses actually lodge complaints.[107] For example, in Samut Sakhon, a province that employs tens of thousands of migrant seafood-processing workers, only 70 migrants filed complaints with the provincial labor office in 2013.[108] A survey of nearly 600 workers in the fishing sector in 2013 found similar results: nearly all (95%) stated that they had never lodged a complaint about a rights violation, and the vast majority (93%) reported that they were unlikely to seek assistance from a government official if they were to do so.[109] In Surat Thani, a province with a major commercial fishing port, only 65 labor complaints were reported by migrant workers to the provincial labor office in 2018.[110]

Migrant workers are unlikely to report labor abuse and, when they do, they are least likely to report it to the government. A 2017 study of seafood and fishing workers found that few workers who experience serious labor abuse actually seek help for their problem at all. Out of 434 respondents across 11 provinces who had experienced serious labor abuse, such as deception about the conditions of work, isolation, or intimidation, only 26% had sought help from any actor.[111] Among those who did seek help, 58% went to friends or family, 52% talked with their employer, and 31% went to a civil society organization. Only 9% said they would report problems with working conditions to the government.[112] Furthermore, when workers do report complaints to the government, it is mainly through the assistance of NGOs or civil society organizations.[113]

Workers sort fish at a market in Samut Sakhon. ©ILRF

TABLE 4: Examples of government complaint mechanisms for reporting labor abuse and exploitation

COMPLAINT TYPE	GOVERNMENT AGENCY RESPONSIBLE
Non-compliance with the Labor Protection Act (e.g. hours, holidays, payment of wages, discrimination)	Department of Labor Protection and Welfare (DLPW) at the Provincial Labor Offices.
Recruitment fees and other issues pertaining to the Royal Ordinance Concerning the Management of Foreign Workers' Employment	Department of Employment (DOE). The DOE has established migrant worker assistance centers in at least 10 of the Provincial Labor Offices, which work in cooperation with DLPW, social security offices, social development and human security offices, and NGOs.
Non-compliance with the Social Security Act (1990) and the Workers' Compensation Act (1994)	Provincial Social Security Offices
Potential human trafficking or related offenses	Anti-Human Trafficking Division (AHTD) of the Royal Thai Police, which screens potential victims and refers them to the Ministry of Social Development and Human Security (MSDHS).
Labor abuse of fishers	The Port-in-Port-Out (PIPO) authority has inspection centers set up in major fishing ports to ensure compliance with IUU fishing laws and is mandated with hearing fishing-related complaints, including those involving forced labor and human trafficking.

Source: For more information about these and other complaint mechanisms, see David Rousseau, *Labor Abuse Complaint Mechanisms in Thailand: Research Report,* USAID Thailand Counter Trafficking in Persons, Winrock International, forthcoming publication in 2020.

There are several reasons for the underuse of government complaint mechanisms by migrant workers. First, migrants struggle to access the mechanisms due to language barriers, as there can be an insufficient number of qualified interpreters at some provincial labor offices. Second, there is a lack of awareness among migrant workers about existing complaint mechanisms or how to access them, particularly for those who work in remote, isolated, and informal workplaces such as on fishing boats or farms. In certain provinces with a very high population of migrant workers, DLPW offices sometimes do not have the staff or resources to reach a sufficient share of migrant workers through their direct outreach and awareness-raising activities. Third, migrant workers are fearful of harming their employment or immigration status and, in turn, of being unable to repay financial debt they incurred in order to take the job.[114]

Workers may also be deterred from reporting labor abuse to government mechanisms due to negative interactions with government authorities or negative perceptions of official proceedings. Civil society organizations report that when workers attempt to visit labor offices to file a complaint, they are sometimes turned away, told to collect evidence sufficient for an enforcement action, or told to come back at a different time.[115] Most of the complaints made to DLPW do not result in court cases, as migrant workers typically choose to avoid taking a case to trial due to costly and lengthy legal proceedings.[116] The time period between registering a complaint and reaching settlement is crucial

Aung Kyaw, co-founder of the Migrant Workers Rights Network, marches together with Thai trade unionists on Decent Work Day (October 7th 2019) in Bangkok, Thailand. ©ILRF

for migrant workers, as their permission to stay in Thailand is tied to their employment. Delays in adjudication can mean that they are denied remedies, as migrants must return home regardless of whether a resolution was reached.[117] Rather, the small number of migrant workers who do report complaints to DLPW prefer that they assist in resolving them with the employer without filing a labor case with a Thai court. Even when a worker does bring a case to a labor court, they are encouraged to mediate with their employer and often end up accepting an out-of-court settlement that is less significant than what they expected or what they would have reasonably been entitled to had their case gone to trial.[118]

Extremely low success rates are seen with regard to fishing labor inspections, during which inspectors can intake labor complaints from fishers. In 2018, 78,623 inspections were conducted by the Port-in Port-out Control Centers, yet the government did not report whether the inspections resulted in the identification of any trafficking victims.[119] There have been almost no enforcement actions resulting from fishing inspections, with 0% resulting in action in 2017 and 1.89% in 2018.[120]

In some cases, migrant workers and labor rights defenders have faced civil and criminal defamation suits for reporting labor rights abuse. [121] On December 24, 2019, Thai courts sentenced a TV journalist to two years in prison for criminal libel for comments she tweeted about a labor case of migrant workers on a poultry farm.[122] This threat of prosecution and other forms of retaliation are known among migrant communities and silences those who may wish to speak out.

V. CASE STUDIES: WORKER ORGANIZING WITHIN THE CONSTRAINTS OF THE LAW

With the support of national unions and migrant worker organizations, global union federations, and other actors, migrant workers in the Thai seafood industry have engaged in bold efforts to exercise their rights to freedom of association and collective bargaining. These approaches have included forming independent worker organizations of fishers and seafood-processing workers, as well as engaging in collective bargaining with employers in accordance with the law. Migrant workers have also tried to strengthen workplace welfare committees together in the factories of one major seafood processor. The cases profiled below represent several different strategies migrant workers have used to seek protections for their rights and the opportunity to bargain for better treatment and terms of employment. These creative solutions represent the ingenuity and drive of migrant workers to seek some form of protection, despite the legal constraints they face.

Thai unions and migrant worker organizations rally together on May Day 2019, calling for full rights to freedom of association and collective bargaining for migrant workers in Thailand. © SERC

CASE STUDY 1: THE FISHERS' RIGHTS NETWORK

The Fishers' Rights Network (FRN) is a democratic, representative union of more than 2,000 migrant fishermen in Thailand.[123] It was established in 2017 by the International Transport Workers' Federation (ITF), following meetings with hundreds of fishermen in ports across Thailand. The aim is to improve the wages, working conditions, and labor rights of fishers and to build collective power as a counterbalance to the privileged position of exploitative employers. FRN started with an organizing center in Songkhla Province and subsequently opened two more centers in Ranong and Trat Provinces, where they were able to reach out to large numbers of migrant fishers as they docked in ports. With the guidance of ITF, FRN members have democratically elected their own representatives and written their own constitution and bylaws.

According to FRN, there are significant challenges to organizing migrant fishers in Thailand, but they are not insurmountable. Fishermen are isolated on vessels, out to sea for weeks or months at a time. They live in close proximity to supervisors and boat captains. Their personal identification documents are often withheld so, even when at shore, they cannot travel far from the ship. This makes it difficult for them to interact with other fishers or to learn about associations of workers or the available assistance.

FRN organizers needed to cultivate trust with workers to organize them. Migrant fishermen have reason to be fearful of supervisors and vessel owners and of government officers and other people in the Thai jetties, which makes them unlikely to talk to outsiders. Furthermore, most migrant fishermen have limited education, with some unable to read the pamphlets, apps, or posters designed for them. It is also challenging to bring together Burmese and Cambodian fishers due to language barriers or perceived differences in interests. Migrant fishers may also be unaware of what a union is, or the benefits of joining one, as legal barriers to migrant worker organizing mean that there are no positive examples within Thailand to point to.

This means that worker organizing requires a willingness to embark on something new. Workers know the risks: being disciplined or terminated by employers, or deportation, jail, or physical violence. It is not possible to offer complete protection against retaliation by employers or other actors.

To overcome some of these challenges, the ITF identified organizers who are migrant fishers themselves and who are independent and bold individuals. One organizer explained, "I became an organizer because I see that migrant workers, not just fishers and also those on shore, face many problems. There are many laws that support the boat owners and employers, rather than the workers. Something needs to be done about these issues, such as document retention and lack of employment contracts; many fishers work a lot longer than is allowed by law; some even work for 24 hours [per day]."[124]

In order to effectively convey the benefits of joining an independent, democratic worker organization, FRN organizers worked with fishers one-on-one; next in small groups; then building up to larger meetings. To overcome literacy issues, FRN developed images and audio and video files of the messages they wanted to communicate to fishers. During these sessions, they identified the issues most important to fishers and compiled them into a common agenda.

"This is the power of organization and the power of a collective group. In Thailand, we started with nothing, but we organized, moved forward and took action on items important to the majority of fishers. Functioning as a union, fishers have begun to work collectively and feel stronger as a group. They have found the ability to advocate together for their rights and interests, and they have formed their own effective organization," said the ITF-FRN Thailand Project Lead, Jon Hartough.[125]

FRN's work has led to the distribution of fully-stocked medicine and first-aid kits on boats throughout the country, together with training for workers so they are able to properly handle basic emergency situations and use the kits. They have assisted fishermen to ensure that employers adhere to obligations such as on-time payment of salaries and the provision of the social security benefits that fishers are entitled to by law. A key success has been widespread consciousness-raising about the benefits of trade unions among the communities where they work. One migrant fisher from Myanmar said, "It's not about handling individual cases but about building power so we can deal with the problems together and change the system."[126]

The FRN has built alliances with Thai trade unions in other labor sectors, civil society organizations, and the ILO to collectively advocate for change in the fishing industry. This joint advocacy led to an increase to the minimum wage for fishers in 2018.[127] The ITF-FRN also collaborates with organizations in Myanmar (including ITF affiliates) to provide pre-departure training for migrant fishers, so they know what to expect when they arrive in Thailand; they will know their rights and be less vulnerable to exploitation.

The ITF has partnered with Greenpeace and Thai Union Group PCL[128] on an agreement, signed in July 2017, focused on environmental sustainability and labor issues in the tuna industry.[129] This agreement covers fishing vessels and seafood-processing workplaces in Thai Union Group's supply chain, and details a Vessel Improvement Plan and Code of Conduct for independent fishing vessel suppliers.[130] Under this agreement, Thai Union Group has committed to supporting freedom of association and collective bargaining in its own facilities and throughout its global supply chains. At the time of writing

ITF Fishers' Rights Network vessel first aid kit outreach, Songkhla Province, Thailand.
©Fishers' Rights Network

this report, neither Thai Union Group facilities nor vessels supplying to Thai Union Group had signed collective bargaining agreements with workers, but FRN is starting that work with key suppliers.

The ITF and FRN continue to monitor the implementation of the ILO Work in Fishing Convention (C188), which Thailand ratified in January 2019. If implemented fully, the requirements should adequately protect the working and living conditions of fishers.

Fishermen from Myanmar in Ranong Province, Thailand have just become members of the Fishers' Rights Network and receive their membership cards. FRN now has over 2,000 members in Thailand. ©Fishers' Rights Network

FRN organizers are positive about the future: "I hope that, together as FRN, we will have the right to talk to boat owners face to face about what we want; I hope we get that chance." [131]

CASE STUDY 2: THE SOUTHERN SEAFOOD WORKERS' GROUP

The State Enterprises Workers' Relations Confederation (SERC) is a Thai labor organization representing 44 trade unions with a combined total of 200,000 members from state-owned and private companies. SERC has worked for decades to support the rights of migrant workers to organize. One SERC coordinator explained the important role of Thai unions and other actors in supporting migrants' labor rights: "Under the Thai constitution, all people have the right to freely associate. That is a human right. This [organizing migrant workers] is something that SERC has been doing because we think it is everyone's basic human right. All workers are brothers and sisters."

Since 2016, SERC has worked with migrant workers across five seafood-processing factories in Songkhla Province to establish and empower a body to represent their interests — the Southern Seafood Workers' Group (SSWG).[132]

In the five factories, most of the low- and semi-skilled workers are from Myanmar while the entire management is made up of Thai citizens. Working together with SERC (Hat Yai Branch) and Migrant Workers Rights Network (MWRN) representatives based in the area, the SERC project coordinators identified migrant factory workers who were known as active leaders. SERC then trained these leaders in the basics of labor rights and Thai labor laws, including about their right to organize and the benefits of collective bargaining in improving workplace conditions. They also covered processes for reporting complaints to various government agencies with the assistance of NGOs.

This led to the formation of the SSWG, which currently has 20 committee members (effectively functioning as leaders) and estimates 200 to 300 members, all of whom are migrant workers from Myanmar. Within the committee, there are specific departments for complaints, welfare, women,

education, and meeting management, among others. The majority of the committee members are men except for the four female members managing the women's department. These women plan to ensure greater female representation across the committee in the future.

Some seafood-processing companies have requested that the SSWG members serve as the welfare committee in their workplaces, but SERC and SSWG have refused as they do not view these committees to be as effective as an independent group of workers structured like a union, such as the SSWG.

The SSWG identifies common workplace and other issues across the factories, which SERC then brings to the provincial labor offices to discuss with the relevant government authorities focused on labor protection and welfare, employment, and social security. In one case, workers employed by a seafood company lost their legal basis to work and stay in the country due to a broker, who was hired by the company, failing to extend the workers' visas and work permits. The SSWG representative, together with SERC and MWRN, successfully resolved the issue in coordination with the Department of Employment in Songkhla Province as well as the immigration department. In another case, 32 workers employed by a seafood cannery in Songkhla disapproved of new housing arrangements that they were given by the company. A SSWG committee member investigated the housing conditions and then, together with a SERC representative, negotiated with the company management and had the workers moved to more appropriate housing.

The SSWG has not yet attempted to negotiate a collective bargaining agreement with employers, due to the perception that such a request would be rejected. The SSWG still relies on SERC and MWRN to reach out and speak to the government, employers and recruitment agencies, including to bring complaints to the provincial labor offices. However, it plans to start taking on these tasks independently in the near future, following further training from SERC.

On March 13, 2019, SSWG representatives met formally with Thai government labor officials for the first time, alongside the ITF and SERC. They discussed several issues, including the need for factories to employ qualified interpreters who are trusted by the other workers; for pregnant workers to be moved to an appropriate department or production line with less strenuous and safer work; and for improved social benefits. By the end of 2019, SERC and SSWG plan to set up a database to maintain information on the five companies and calculations regarding SSWG membership dues. SERC plans to undertake capacity building with SSWG leaders and develop a sustainable financial plan to maintain the SSWG beyond 2019.

CASE STUDY 3: THE SAMAE SAN FISHERMEN'S ALLIANCE

In one part of Chonburi Province, SERC has helped to establish a network of 200 Cambodian fishermen and their wives, which recently took on the name *Klum Puen Pramong Samae San* (The Samae San Fishermen's Alliance).[133] SERC explained that they faced initial challenges organizing fishers directly, as they do not have regular shifts and are often out at sea, making it difficult for them to attend seminars or other events. It was due to these challenges that SERC shifted its approach to organizing the wives of the fishermen, who work at ports measuring and cutting fish before they are transported for processing or to local markets. SERC found that these women have a very strong understanding of the challenges their husbands face as fishermen, as well as of their own working conditions on the piers and the situation of their children. Among the 200 alliance members, 60% are men and 40% are women.

One of the women leading the alliance established a private Facebook group so that they could maintain communication with fishermen who had gone on to work out of different ports in Thailand.

On May Day 2019, members of the Migrant Workers Rights Network join a rally organized by the State Enterprises Workers' Relations Confederation in Songkhla Province, Thailand. The banner on the left calls on the Thai government to ratify ILO Conventions 87 and 98 on freedom of association and collective bargaining. The banner on the right reads "rights protection policies must not discriminate against migrant workers" in Thai language. ©SERC

Four people now administer the Facebook group, and use it to inform members of upcoming meetings and alert them to new government policies. The alliance is different from the SSWG in that its membership is not static, and some members leave as others join, depending on who is working in Chonburi at the time.

The fishermen in this alliance have benefited from the trainings provided by SERC. For example, six fishers working on a squid boat used their new skills to negotiate for a small increase in pay (an additional 30 Thai Baht (US$1) per kilogram of fish, not just for themselves but for all workers in the area, making it the standard rate.[134] Some of the workers trained through this initiative have been able to assist Cambodian workers in other sectors, including helping nearby construction workers negotiate with their employer for proper overtime payment in line with Thai law. [135]

CASE STUDY 4: COLLECTIVE BARGAINING WITHIN THE CONSTRAINTS OF THE LAW (MWRN AND THE UNICORD CASE)

The Migrant Workers Rights Network (MWRN) is a membership-based organization for migrant workers residing and working in Thailand. Founded in 2009 by nine Myanmar migrant leaders, MWRN has mainly assisted Myanmar migrant workers, but more recently also assists migrants from Cambodia and Laos. MWRN's main office is in Samut Sakhon Province, an important port and a hub of seafood processing for export.[136] Throughout the past decade, MWRN has played a crucial role in investigating workplace problems and negotiating with companies and other actors to remediate issues and to improve working conditions for migrant workers.[137]

As it is unable to register officially as a union, MWRN was established and is continually developed to imitate the structure of a trade union through guidance from leading labor organizers from the Thai labor movement, particularly SERC. Since 2014, it formalized its presence in Thailand under the legal umbrella of the SERC Foundation, which has helped to encourage employers to engage in direct negotiations with MWRN.

In a unique case beginning in January 2017, MWRN assisted more than 2,000 migrant workers employed by Unicord PCL, a leading tuna processor and subsidiary of the Sea Value Group, to organize and submit a collective demand to bargain for improved employee benefits.

The demands of the workers included requests for: (1) an increase in the 'punctuality bonus' for a 15-day period, which is currently provided at the rate of 175 Thai Baht (US$5.80) per wage cycle;[138] (2) an increase in a special payment for work involving handling knives or very hot items; (3) an increase in hardship compensation for night shift workers; (4) a punctuality bonus in the amount of 9,000 Thai Baht (US$298) for those who meet the requirements for the bonus throughout a one-year period; (5) an end to the practice of separating employees by their nationality at the company annual dinner and during the distribution of company uniforms; and (6) provision of an annual bonus for migrant workers in the same manner as all other employees in the company.

This was a unique attempt to organize such a large number of migrant workers to submit a collective labor demand in accordance with Thai law. As explained in Section IV above, Section 13 of the Labor Relations Act permits non-unionized groups of workers comprising at least 15% of those in the

On Decent Work Day 2019, members of MWRN march near the United Nations in Bangkok holding the Myanmar flag. ©SERC

workplace to elect up to seven representatives and submit a demand to begin an official bargaining process with an employer regarding the conditions of employment. It is generally easier for employees in smaller factories to unite, achieve the necessary level of representation, gain consensus around specific problems, and select representatives to negotiate with the company. In larger factories, this poses a much greater challenge.

As the Unicord factory employed 13,500 workers, MWRN needed to collect the names and signatures of 2,200 workers and assist them to elect seven representatives to negotiate with the employer, as specified by law. According to MWRN co-founder, Aung Kyaw, "This was a significant effort; to unify the workers around the same demands; put their signatures together and submit the demand in accordance with the law. Engaging more than 2,000 workers is a very difficult and tedious job." In order to engage such a large number of workers and gain significant buy-in, MWRN had to first educate the workers, which involved covering the complexities of the legal process.

It is not easy to follow the steps and requirements in the law, but MWRN utilized different strategies they had learned over the years. First, they had the employees write their demands in Thai and Myanmar languages and submit them to both the company management and the provincial DLPW office. The law only requires workers to submit their demands to the employer, but MWRN has found it is more effective to also submit the demand to the government so that the employer cannot ignore or drop the demand, as is common practice.[139] Second, they encouraged the workers to be patient through the process and not strike, as that would most likely have nullified their open labor demand.[140]

Third, MWRN employed Section 17 of the Labor Relations Act, which allows two advisors to be appointed to assist with the collective bargaining process. This was necessary as both Thai and migrant worker populations have minimal awareness of the collective bargaining principles. The principles within the law are only understood in detail by labor lawyers, trade unions, employers' associations, and independent labor experts. As MWRN and other labor experts have explained, it would be practically impossible for migrant workers to undertake collective bargaining according to the law without assistance from labor experts.

After the demand was submitted, the company asked Thai labor officials and the Myanmar Labor Attaché (Myanmar Embassy staff) to pressure the workers to withdraw their demands. Subsequently, Thai labor officials spoke to the workers, advising against any disruption to the stability and security of the company, and calling into question the workers' knowledge of the law and their right to collective bargaining and the requested benefits.

Some of the workers began to doubt their effort and wanted to back out, while others wanted to strike. MWRN encouraged them to remain confident in their demands and to hold off on striking at that time, as it would damage the negotiations. The workers collectively agreed to continue and MWRN arranged for additional help from SERC officials.

Unicord management met with the worker representatives within three days of workers having submitted the request to negotiate their demands. Among the six demands, the company agreed in full to the fifth demand and partially to the sixth demand, saying that certain annual bonuses would be provided to migrant workers. The company said they would consider the remaining demands at a later time. Two months later, the company initiated the provision of those two benefits.[141]

Since this case, the Ministry of Labor has been increasingly reminding companies employing large numbers of migrant workers to form welfare committees. This seems to be part of an intentional effort to discourage migrant workers in

non-unionized workplaces from collectively bargaining, which the government views as a threatening step towards unionization.[142]

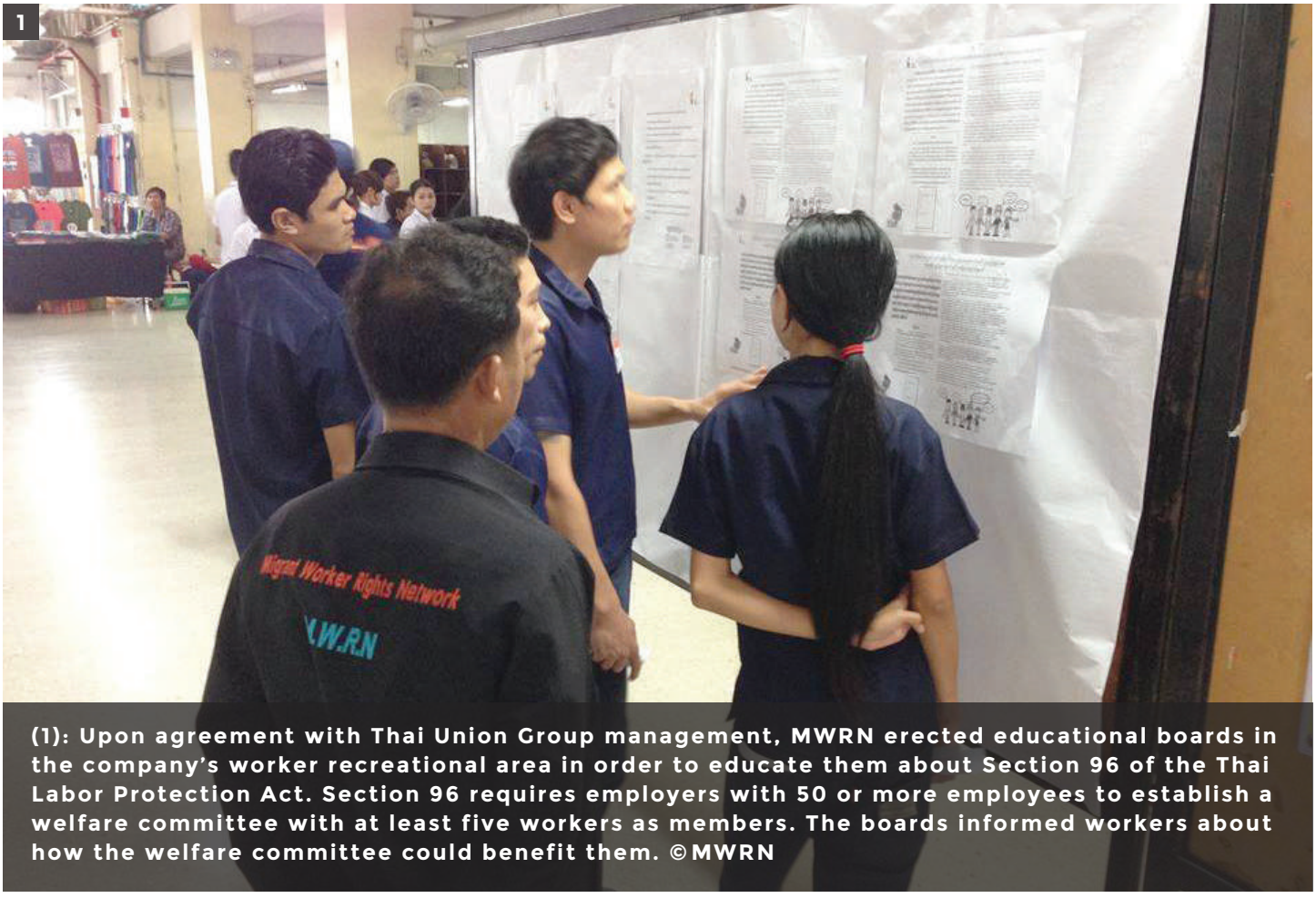
CASE STUDY 5: WELFARE COMMITTEES IN SEAFOOD-PROCESSING FACTORIES (MWRN AND THAI UNION GROUP)

In Samut Sakhon, the same province as the above case, Thai Union Group PCL, a major seafood processor and exporter, maintains factories processing fish products, prawn products, and ready-made food products. Much of the low- and semi-skilled work in these factories is performed by approximately 10,000 migrant workers, a majority of who come from Myanmar and a smaller number from Cambodia and Laos. Over the years, MWRN has regularly informed Thai Union Group of labor rights issues reported by migrant workers in their factories.

Since 2016, MWRN and Thai Union Group have worked together to strengthen the welfare committee system in three workplaces. As described in Section IV of this report, these committees are not typically that useful to workers. However, with organizational and capacity-building assistance from MWRN, some workers have been able to screen for and identify workplace problems and discuss them with management. MWRN has visited workplaces and educated workers about the purpose of the committee and the process for electing representatives.

MWRN has supported Thai Union Group to develop an election process for the welfare committees that ensures representation of migrant workers from different countries on the committee and

1



(1): Upon agreement with Thai Union Group management, MWRN erected educational boards in the company's worker recreational area in order to educate them about Section 96 of the Thai Labor Protection Act. Section 96 requires employers with 50 or more employees to establish a welfare committee with at least five workers as members. The boards informed workers about how the welfare committee could benefit them. © MWRN

Clockwise from above (2): Despite MWRN providing official information about the formation of a welfare committee to migrant workers, most did not know what to do next. Some workers were worried about possible harassment and feared losing their jobs if elected as a welfare committee member. MWRN's leader, Aung Kyaw, provided speeches on the purpose and benefits of the welfare committee. (3): Thai Union Group agreed to a date for the election of welfare committee members, yet workers remained cautious and fearful about participating. Thus, MWRN continued educating and organizing the workers to build up their confidence. MWRN highlighted the opportunity to serve as workers' representatives through this committee. (4): MWRN members explained the roles of the welfare committee to interested workers, including which issues could be negotiated with company management and how they could inform management about migrant workers' feelings and requests. Some workers felt confident and enrolled as candidates for the welfare committee. ©MWRN

for which guidelines are posted in each workplace. Under the initiative, in 2019, nineteen representatives were elected to welfare committees across the three workplaces, from a total of 60 candidates. In two of the locations — a shrimp-processing factory and a ready-made-products factory — the committees had five members each, the minimum standard required by Thai law. For the third location, a fish-processing factory, MWRN lobbied for the committee to have nine representatives due to a larger number of total workers. Once workers are elected as representatives, MWRN provides additional training to build their capacity to identify problems, represent workers, and engage with employers to resolve issues. "For a welfare committee to function properly, workers need the capacity to understand the law and the company has to be flexible and willing to engage with workers," said Aung Kyaw, Co-Founder of MWRN.[143]

These welfare committees have successfully negotiated for workers to have longer bathroom breaks, the provision of adequate parking for workers' vehicles, the creation of designated areas for rest periods, and the provision of additional fans in the summer.

5

7

(5): The candidate's names, pictures, and working sections were advertised on boards in the workplace. (6): Boards were also posted with the names of all employees in the workplace and procedures for voting. (7): Workers queued to register for voting for the welfare committee members on the company's designated general election day. ©MWRN

6

(8): Workers filled in their voting forms privately at covered tables and placed their votes in ballot boxes. ©MWRN

These welfare committees are an improvement on those in the majority of workplaces in Thailand, as most migrant workers have not received adequate training to be able to utilize the full potential of the welfare committees. As agreed upon with Thai Union Group management, MWRN will continue to build the capacity of the welfare committee representatives, as well as of the employees in these workplaces, to undertake negotiations with company management in the future.

At the same time, MWRN sees these efforts as a means to test the welfare committee model with a willing employer. They found that, while certain welfare benefits could be gained with significant support from MWRN, these committees are not a substitute for the work that could be done through independent worker organizing and collective bargaining with legal protection under the Labor Relations Act. "Welfare committees are not a replacement for full rights to freedom of association and collective bargaining, and we continue to advocate for these rights for migrant workers in Thailand," said Suthasinee Kaewleklai, Chief Administrative Officer at MWRN.[144]

VI. CONCLUSION & RECOMMENDATIONS

Affording migrant workers their internationally-recognized rights to freedom of association and collective bargaining is necessary to address the power imbalances that allow exploitative employers, recruiters, and other players to hold workers captive and profit from their labor.

The explicit discrimination written into the Labor Relations Act and the Thai government's refusal to reform it have fostered a system of structural inequality that has kept migrant workers captive and exploited throughout enormously profitable labor sectors, including in the seafood industry. This places millions of migrants in jobs that fall short of minimum international labor standards. Blocks on migrant worker organization remain in place, in defiance of clear evidence that organized labor sectors have lower levels of forced labor and human trafficking. Severe exploitation of migrant workers in the seafood and other industries in Thailand continues despite three decades of legal reform. As a result, Thailand has jeopardized its trade relations with the United States and the European Union and its reputation in the global economy. Having had its preferential trade status under the U.S. GSP program suspended in October 2019, Thailand risks further losses to Thai business and the economy if it does not initiate meaningful reform.

As this paper has shown, migrant workers in the seafood industry have organized despite severe restrictions on their fundamental rights, without legal protection, and at great risk to their jobs and status in Thailand. There are a few notable cases in which migrant workers have sought to exercise their rights to freedom of association and collective bargaining. However, given the oppressive climate, many of the lessons from these cases relate to the barriers they expose more than to the positive examples they provide. Even where migrant workers have exercised their right to freedom of association and formed entities modeling unions such as the Fishers' Rights Network — complete with elections of their own members and written constitutions and bylaws — they are unable to register them as unions under Thai law and are therefore denied core protections and benefits.

Even where migrants and their supporters have initiated collective bargaining processes to the letter of the law — as in Case 4 above — they have been unable to secure collective bargaining agreements with employers and have won only a tiny portion of their demands. Migrant workers have sought to strengthen welfare committees to serve as representative bodies of workers and to win some improvements in workplaces, even knowing they cannot enforce the outcomes. Yet even these committees, which came about through labor-intensive projects requiring a lot of support from external organizations and the company, resulted in minor workplace improvements, such as more time for bathroom breaks, which workers should have had anyway. More problematically, welfare committees end up being used by companies and the government to say that freedom of association rights have been afforded.

The restriction on freedom of association has impacted migrant workers in Thailand more

broadly. This right is not just about organizing and forming unions or serving on them as union leaders. It is also about the right to rally, demonstrate or take collective action — with legal protection — to draw attention to labor abuses. Migrant workers do not have an independent voice in the workplace and are also prohibited in a broader sense from participating in the democratic, political, and legislative processes to advocate for better treatment and protection.

Migrants need to be able to form their own unions particularly in industries where there are few Thai workers. But in other labor sectors the laws and policies should facilitate and allow for migrant workers and Thai workers to organize *together*. There are important Thai labor groups, such as the State Enterprise Workers' Relations Confederation and the Thai Labor and Solidarity Committee, which have been supporting legislative change for migrant workers' right to organize and organizing migrants into Thai-led unions to the greatest extent possible for many years. If laws were reformed, these Thai labor organizations could be key to building solidarity between Thai and migrant workers. In many cases, these workers' concerns and grievances are the same, but a false perception remains that their struggles are distinct and that there is not much benefit to organizing together. Under the current climate, with Thai workers facing such significant retaliation and anti-union discrimination, it may be a stretch to expect many of them to organize migrants into their unions as well. This is why the laws need to be reformed in accordance with international standards to make it easier for any worker to form a union and to be able to serve as a union lead. This would allow union leaders to emerge who are actually representative of the workplace and workforce as a whole.

According to the UN Guiding Principles on Business and Human Rights, corporations have a responsibility to respect internationally-recognized rights independently of a host government's willingness to fulfill its own human rights obligations.[145] In other words, even though the Thai government has been slow to make the necessary legal reforms, companies are still obligated to respect the rights of the workers whose labor they profit from. These include rights to freedom of association and collective bargaining and the right to not be discriminated against in regard to employment and occupation.[146] The current situation is such that both companies operating in Thailand and multinational corporations hide behind the national law in Thailand, claiming that it is not possible to allow workers to exercise these rights due to the legal restrictions. These excuses and side-stepping of the corporate responsibility to respect human rights underpin the large-scale exploitation of seafood industry workers worldwide. Meanwhile, a vast proportion of the wealth created by these enterprises is extracted to other countries.

International brands and retailers that source fish and seafood products from Thailand have codes of conduct that include non-discrimination clauses, both in their individual codes with suppliers and through their collective commitment with the Seafood Task Force.[147] The latter states: "All workers, irrespective of their nationality, legal status, or other personal characteristics, shall be treated fairly and equally."[148] The company codes also include the rights of workers to freedom of association and collective bargaining.[149]

The International Labour Organization has made clear, repeatedly, that denying rights to non-Thais — the vast majority of seafood and fishing workers in Thailand — based on race or country of origin is a violation of core labor standards and leaves workers vulnerable to exploitation.[150] Companies that choose to source from Thailand must acknowledge that due to its national legal framework, they are violating international minimum labor standards and their own codes of conduct on an ongoing basis if they do not allow non-Thai workers to exercise their rights to freedom of association and collective bargaining.[151]

Local and international organizations have been calling for reform of the Labor Relations Act (1975) for four decades to end structural discrimination against workers and limits on their fundamental labor rights.[152] Thailand has a long-overdue obligation to respect, protect and fulfill human rights and fundamental freedoms, in particular to bring Thai law in compliance with ILO Conventions 87 and 98. After many years of reaping financial benefits, it is now time for international brands and retailers sourcing seafood from Thailand to call publicly for the Thai government to make these legal reforms and to place clear requirements on employers.

The following recommendations are for the Thai government, international brands and retailers sourcing seafood from Thailand, Thai seafood companies, international agencies and civil society organizations, and donors. They provide specific guidance on changes needed to the legal framework and to company practices in order to bring them in line with international standards. The recommendations aim to be consistent with those put forth by dozens of other NGOs, CSOs, and UN agencies, including those that participate in ILRF's Seafood Working Group. The recommendations are mainly focused on ensuring workers' rights to freedom of association and collective bargaining, but also touch on on related issues covered in this paper, such as ending legal and judicial harassment of workers and trade unionists, ensuring accessible and effective labor complaint mechanisms, and reforming recruitment policies to prevent migrants from ending up in debt bondage.

On March 3rd 2020, Fishers' Rights Network members rallied outside the United Nations in Bangkok together with the Thai labor movement calling for the Thai government to get U.S. GSP trade privileges reinstated by addressing labor rights violations. ©ILRF

RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND

1. The Prime Minister of Thailand and the Ministry of Labor should reform the Labor Relations Act to remove legal discrimination against foreign migrant workers and ensure that full rights to freedom of association and collective bargaining are afforded to all workers. In particular:

    1.1. Amend Article 88 of the Labor Relations Act to remove the words "of Thai nationality" to allow migrant workers to form their own unions.

    1.2. Amend Article 101 of the Labor Relations Act to remove the entire sub-article (2), which states "have Thai nationality by birth," to allow migrant workers to be eligible for election or appointment as a member of a union committee or sub-committee.

    1.3. Amend the law to require all parties to engage in collective bargaining in "good faith."

    1.4. Protect the right to organize through reinstatement and remedy in cases of anti-union or anti-organizing-related retaliation.

    1.5. After amending the law, make a policy commitment to place no additional legal or policy obstacles to legally-registered and documented migrant workers in Thailand exercising their right to organize and establish labor unions, and register those unions with the Ministry of Labor.

2. The Prime Minister of Thailand should make time-bound commitments to ratify ILO Conventions 87 and 98, and amend the Labor Relations Act to bring it into compliance with those standards.

3. The Ministry of Labor should amend the Royal Ordinance Concerning the Management of Foreign Workers' Employment, B.E. 2560 (2017) to remove "being of Thai nationality" from Section 18 to allow migrant workers' representatives to join the Foreigners' Working Management Policy Commission so that they may have a say in the policies that impact them.

4. The Thai Ministry of Justice should decriminalize defamation under both the Penal Code and Computer Crime act and enact anti-Strategic Lawsuits Against Public Participation (SLAPP) legislation to ensure that workers and human rights defenders are not subjected to criminal or civil liability for exercising rights to freedom of expression and reporting or speaking out about labor rights abuse.

5. The Ministry of Labor should encourage and promote negotiation between employers and workers (via trade unions, migrant worker organizations, or workers' representatives) to develop binding collective bargaining agreements on working conditions and benefits.

6. The Ministry of Labor should not promote, or encourage companies to promote, the establishment of welfare committees as a substitute to independent worker organizing and collective bargaining.

7. The Ministry of Labor should introduce an 'employer pays' policy – as part of the Royal Ordinance Concerning the Management of Foreign Workers' Employment or other regulation – to prohibit any recruitment fees or related costs charged to, or otherwise borne by, migrant workers in accordance with the ILO General Principles and Operational Guidelines for Fair Recruitment (2019).

8. The Royal Thai Navy, the Department of Fisheries and the Ministry of Labor should fully implement the ILO Convention on Work in Fishing (C188) into national law and ensure that the law covers fishers on all commercial vessels. The government should monitor the implementation and enforcement of the law and share findings with unions, worker organizations, and civil society partners.

9. The Ministry of Labor should strengthen complaint mechanisms to ensure that migrant workers' complaints are taken seriously and handled efficiently and in accordance with the law. In particular:

    9.1. The Department of Labor Protection and Welfare and the Department of Employment should ensure the proper intake of complaints submitted by migrant workers at provincial labor offices throughout the country. Migrant workers' cases should not be minimized, ignored, dropped, or referred to informal complaint-handling systems outside the remit of the government.

    9.2. The Ministry of Justice should enforce the provision of compensation by companies to workers recommended by labor inspectors as outlined in the Labor Protection Act.

10. The Ministry of Labor should facilitate collaboration between the Port-in Port-out Control Center labor inspectors and workers (via trade unions, worker organizations, or workers' representatives). This will ensure that migrant workers understand what they can report to labor inspectors and that they are not coerced by their employers or other actors into reporting incorrect information.

On March 3rd 2020, the Thai Labour Solidarity Committee organized a rally for Thai labor organizations and migrant worker organizations, calling for the Thai government to get U.S. GSP trade privileges reinstated by addressing labor rights violations. © SERC

RECOMMENDATIONS TO INTERNATIONAL BRANDS AND RETAILERS

1. Buyers should publicly call on the Thai government to ratify ILO Conventions 87 and 98 and reform the Labor Relations Act accordingly. In particular, call on the Thai government to remove explicit discrimination in the law and any barriers to migrant workers realizing their full rights to freedom of association and collective bargaining.

2. Buyers should collaborate with suppliers and workers to draft, adopt, and enforce codes of conduct for suppliers that include provisions to ensure all workers enjoy rights to freedom of association and collective bargaining. Within those codes:

    2.1. Require suppliers to recognize independent and representative worker organizations formed in their establishments, irrespective of the workers' nationality, and sign binding collective agreements with them in good faith.

    2.2. Require suppliers to ensure all workers are fully informed, in a language that they understand, of their right to form or join a trade union or, at least, to elect representatives and engage in collective bargaining via this group with management. This should be separate from information on welfare committees and other grievance mechanisms, which perform different functions.

    2.3. Prohibit suppliers from interfering with or retaliating against workers who try to organize, collectively bargain, strike, protest, report labor abuse to the government or to other actors, or who have joined unions in previous jobs. Require suppliers to withdraw any open civil or criminal defamation cases against their current or former employees or other individuals who exercised their rights to freedom of expression and reported labor abuse in the supplier's workplace. Prohibit suppliers from bringing any new defamation charges against their employees or other individuals who report labor abuse in their workplaces.

    2.4. Require suppliers to permit trade unions, worker organizations and civil society organizations access to workplaces in order to provide workers with information and training on labor rights, particularly on freedom of association and collective bargaining.

    2.5. Require suppliers to honor and execute any legal decision by the Thai government to compensate workers.

3. Buyers should integrate an 'employer pays' clause into all legally-enforceable contracts with suppliers and work with suppliers to share and absorb all recruitment and related costs in accordance with the ILO General Principles and Operational Guidelines for Fair Recruitment (2019).

4. Buyers should adopt and enforce codes of conduct for supplier fishing vessels with requirements in accordance with ILO Convention 188 and the Thai Labor Protection in Sea Fishery Work Act (2019). In addition, buyers should ensure seafood processors are conducting human rights due diligence on all fishing vessels supplying to them, irrespective of the vessel's flag.

5. Buyers should ensure effective and transparent company grievance-handling systems at the supplier and buyer level, which involve workers in their design and implementation and that guarantee remediation and non-retaliation for workers who file complaints of labor or other abuse.

RECOMMENDATIONS FOR THAI SUPPLIERS

To seafood processors, vessel operators, fish farm owners, and other seafood industry-related companies operating in Thailand:

1. Recognize independent and representative worker organizations formed in your establishments, irrespective of the workers' nationality, and sign binding collective bargaining agreements with them in good faith.

2. Provide clear information to workers on their rights to freedom of association and collective bargaining in ways and in a language that they can understand, and ensure that workers have access to trade unions and worker organizations and related information. This should be separate from information on welfare committees and other grievance mechanisms, which perform different functions.

3. Allow trade unions, worker organizations, and other civil society organizations to provide training for workers on labor rights, particularly on freedom of association and collective bargaining.

4. Do not interfere with or retaliate against workers who try to organize, engage in collective bargaining, strike, protest, report labor rights abuse to the government or other actors, or have joined unions in previous jobs.

5. Drop all defamation lawsuits against workers who reported labor abuse or forced labor in your workplaces and do not undertake any new defamation suits.

RECOMMENDATIONS FOR UN AGENCIES, NON-GOVERNMENTAL ORGANIZATIONS, AND CIVIL SOCIETY

1. Support capacity-building of workers to understand their internationally-recognized rights to freedom of association and collective bargaining, and the benefits of organizing and representing themselves independently and directly.

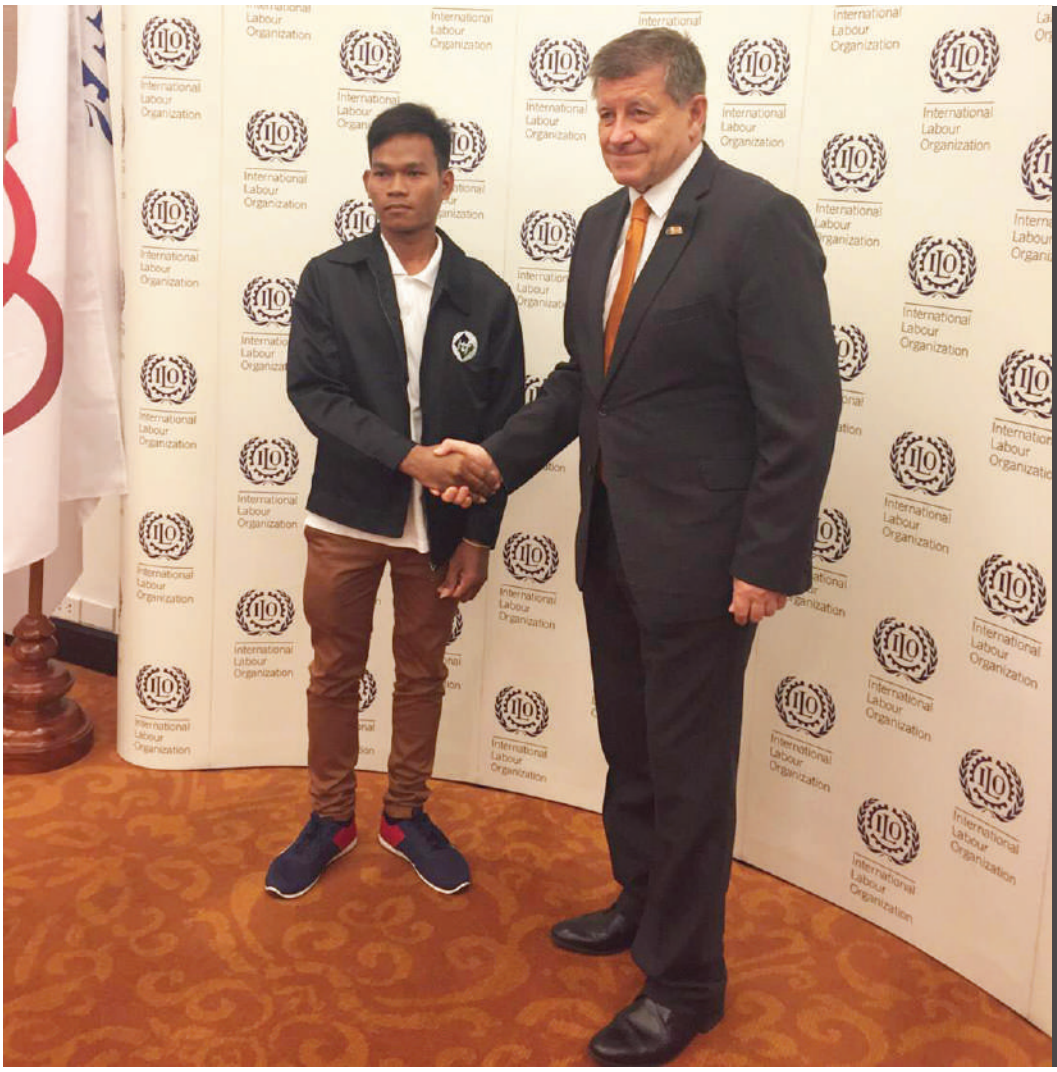
2. Avoid developing or recommending third-party complaint or worker voice mechanisms carried out or managed by corporate actors or NGOs without governance by trade unions, worker organizations or workers. In practice, these allow companies to side-step their responsibility to ensure workers' rights to freedom of association and collective bargaining. Instead, promote the development of worker-led and worker-driven complaint mechanisms, which are designed, implemented, and monitored by workers themselves.

3. Avoid recommending that migrant workers join welfare committees or other employer-controlled worker bodies as a temporary solution to migrants' lack of trade union rights, as these committees have not provided a path to independent worker organizing or unionization for migrant workers.

RECOMMENDATIONS FOR DONORS

1. Provide funding to support capacity building for workers to understand their internationally-recognized rights to freedom of association and collective bargaining, and the benefits of organizing and representing themselves independently and directly.

2. Provide funding to support genuine worker organizing and collective bargaining efforts carried out by independent, democratic worker organizations and workers' representatives, in coordination with national or global unions.



Cambodian fisher and Fishers' Rights Network member-organizer Chith Poth meets ILO Director-General Guy Ryder at ILO Ship to Sore Rights Joint Task Force meeting in Bangkok. Together with Thai trade unions and other migrant worker organizations, FRN continues to advocate for the Thai government to ratify ILO Conventions 87 and 98 on freedom of association and collective bargaining. ©Fishers' Rights Network

ANNEX I:
Recent legal and policy reforms related to preventing forced labor and IUU fishing

MIGRATION MANAGEMENT: The Royal Ordinance Concerning the Management of Foreign Workers' Employment, B.E. 2560 (2017) lays out the rules governing how foreigners are brought into Thailand for employment. It was issued to reduce irregular employment of migrants and prevent violations of basic labor rights, including human trafficking.[153] The policy was drafted with limited consultation with trade unions, worker organizations, or any stakeholders outside the government, and instituted harsh penalties on undocumented workers and the employers that hire them. It led to a mass exodus of hundreds of thousands of migrant workers from Thailand to their home countries in July 2017.[154] The government amended the policy in March 2018, which reduced the harsh penalties. The policy established a Foreigners' Working Management Policy Commission, which is responsible for formulating policies and strategies on the management of foreign workers. Yet, non-Thai citizens are not allowed to be members.[155] In addition, the policy still allows wage deductions for recruitment fees and related costs; allows employers to maintain workers' identity documents in some cases; and makes it very difficult to change employers — three key areas that have been repeatedly linked with forced labor and human trafficking risk.[156] The policy led to an increased number of migrant workers registered legally to work: 1.2 million migrants completed the registration process during a window in June 2018.[157] However, it is estimated that more than 800,000 additional migrants are working unregistered due to several reasons, including the complexity of the legal channels, to avoid high recruitment costs that often put them in debt, and the perception that the legal recruitment channels will not afford them better or safer jobs, among other factors.[158]

Due to a labor shortage of 53,649 workers in the Thai fishing sector, the Thai government signed Memorandums of Understanding (MOUs) in 2018 with Myanmar, Cambodia and Laos to import workers, including 42,000 workers from Myanmar. As of October 2019, 7,212 of these workers, including only 741 from Myanmar, have been recruited under the MOUs. These low numbers are due to the MOU system being undesirable by both workers and employers because of the bureaucracy and costs involved. The Myanmar and Cambodian governments have remained hesitant to send workers to the fishing sector due to ongoing worker rights problems.[159]

ADDRESSING LABOR ABUSE OF FISHERS: The Thai government has made efforts to address forced labor aboard shipping vessels as part of a wider crackdown on IUU fishing. The government approved the Marine Fisheries Management Plan (2015-2019) and the National Plan of Action to Prevent, Deter and Eliminate IUU Fishing, and enacted the Royal Ordinance on Fisheries (2015), which includes measures for fisheries management and stakeholder engagement, improved oversight of fishing operations and transshipments at sea, enhanced traceability systems, prevention and sanction for IUU fishing, improving welfare and working conditions of seamen, and eliminating unlawful labor practices.[160] Since then, labor inspections have been undertaken by multidisciplinary teams at sea and at ports.[161] The government describes the Port-in Port-out (PIPO)

labor inspections as a mechanism for upholding the rights of workers and addressing trafficking and forced labor in the fishing industry.[162] Several of the transparency and enforcement tools such as installation of Vessel Monitoring Systems (VMS) on commercial vessels over 10 gross tons and portside inspections have restricted the ability for operators to crew their vessels with unregistered workers or transfer crews between boats at sea.[163] However, these processes are found to be superficial, do not engage workers directly or effectively, and identify very few cases of wage and hours violations, for example, let alone instances of forced labor or human trafficking.[164] The PIPO inspection centers conducted 78,623 inspections in 2018, yet the government did not report whether labor inspections resulted in the identification of any trafficking victims.[165] Some experts note that the majority of the interventions are improvements to the transparency of fishing practices but may not have an impact on the labor conditions in the industry.[166] In 2019, serious concerns have been raised about efforts by the National Fisheries Association of Thailand to abolish several critical enforcement regulations that are essential to Thailand's fight against IUU fishing as well as associated human rights abuse on board fishing vessels.[167]

LABOR PROTECTION: The Labor Protection Act (1998) sets out the standards for employment practices related to wages, working hours, welfare, and many other topics. It applies to workers regardless of their nationality or legal status; however, undocumented migrants often face greater difficulties in accessing these rights in practice due to discrimination by employers. The Ministerial Regulation on Labor Protection for Sea Fishers (2014) sets forth specific requirements regarding records of employees, payment of wages, annual leave, sick pay, and repatriation of fishers, and prohibits employers from employing a person under 18 years of age from working on a fishing boat.[168] It also states that only some sections of the Labor Protection Act (1998) apply to the fishing sector, including employment contract requirements and minimum wage. Actors in the informal sector, including seasonal agricultural workers on fish farms, are also only guaranteed a select number of basic rights and protections under the Labor Protection Act. This distinction is also applied within other laws in Thailand, including the Social Security Act, the Workmen's Compensation Act, and the Occupational Safety, Health and Environment Act. Year-round agricultural workers are covered under the Labor Protection Act, but those workers represent only eight percent of the industry. Seasonal agricultural workers are covered under the Ministerial Regulation Concerning Labor Protection in Agricultural Work (2014).[169]

In January 2019, the Thai government ratified the ILO Work in Fishing Convention No. 188, 2007 (C188), thereby committing to ensure acceptable living and working conditions for fishers aboard ships.[170] In June, the government enacted the Labor Protection in Sea Fishery Work Act (2019), which sets out requirements regarding recruitment, social benefits, and working conditions for fishers. The law also requires vessel owners and fishery workers to comply with the Labor Relations Act (1975), which should give fishing sector workers rights to freedom of association and collective bargaining as defined under this law.[171] Recently, the National Fisheries Association of Thailand called for C188 to no longer apply to vessels that fish for longer than three days and to only apply to vessels over 24 meters in length. If this were successful, it would reduce the coverage rate of C188 and the new Sea Fishery Work Act to just 570 vessels out of a total of 10,400 commercial vessels (5% of the Thai commercial fleet).[172]

FORCED LABOR: Thailand ratified the ILO Protocol of 2014 to the Forced Labor Convention, 1930 (P29) in 2018, which requires the ratifying state to provide protections and compensation to forced labor victims and to penalize the perpetrators appropriately.[173] To bring national legislation in compliance with the Protocol, Thailand amended the Anti-Trafficking Act (2008) in April 2019 to include forced labor as a stand-alone criminal offense. Yet, concerns have been raised that the sub-regulations associated with the Act make identifying victims of forced labor and prosecuting the crime of "forced labor in work or service" practically impossible.[174]

ANNEX II:
Number of labor unions and union members in Thailand, 2018

ตาราง 5.10 จำนวนองค์การแรงงาน จำแนกตามภาค ณ ธันวาคม ปี 2555 - 2561

TABLE 5.10 NUMBER OF LABOUR ORGANIZATION BY REGION AT DECEMBER , 2012 - 2018

ภาค Region	องค์การแรงงาน Labour Organization									
	นายจ้าง Employers			ลูกจ้าง Employees	แรงงาน Labour					
	สมาคมนายจ้าง Employers Associations	สหพันธ์นายจ้าง Employers Association Federation	สภาองค์การนายจ้าง Employers Councils	สภาองค์การลูกจ้าง Labour Union Councils	สหพันธ์แรงงาน Labour Union Federation		สหภาพแรงงาน Labour Union		จำนวนสมาชิกสหภาพแรงงาน Member of Labour Union	
					รัฐวิสาหกิจ State Enterprise	กิจการเอกชน Private Enterprise	รัฐวิสาหกิจ State Enterprise	กิจการเอกชน Private Enterprise	รัฐวิสาหกิจ State Enterprise	กิจการเอกชน Private Enterprise
2561 (2018)	**318**	**2**	**14**	**15**	**1**	**21**	**47**	**1,384**	**171,895**	**444,597**
กรุงเทพมหานครและปริมณฑล Bangkok and Vicinities	207	2	14	14	1	17	47	871	171,895	259,178
ภาคกลางส่วนกลาง Sub-central Region	11	-	-	1	-	1	-	86	-	31,844
ภาคตะวันออก Eastern Region	10	-	-	-	-	1	-	385	-	141,723
ภาคตะวันตก Western Region	9	-	-	-	-	-	-	3	-	108
ภาคเหนือ Northern Region	14	-	-	-	-	-	-	6	-	562
ภาคตะวันออกเฉียงเหนือ Northeastern Region	41	-	-	-	-	-	-	22	-	8,032
ภาคใต้ Southern Region	26	-	-	-	-	2	-	11	-	3,150
ข้อมูลย้อนหลัง Retrospective data										
2560 (2017)	316	2	14	15	1	21	47	1,365	171,070	441,789
2559 (2016)	318	2	14	15	1	21	47	1,398	175,315	448,515
2558 (2015)	317	2	14	15	1	21	48	1,472	180,097	454,681
2557 (2014)	343	2	14	14	1	21	47	1,450	183,808	431,881
2556 (2013)	350	2	14	13	1	21	47	1,411	178,281	420,943
2555 (2012)	344	2	12	13	1	20	44	1,366	166,541	402,633

ที่มา : กรมสวัสดิการและคุ้มครองแรงงาน กระทรวงแรงงาน

Source : Department of Labour Protection and Welfare, Ministry of Labour

ENDNOTES

1 Anne Gallagher, *The International Law of Human Trafficking,* Cambridge University Press, New York, 2012, p. 439; see also Jeroen Beirnaert, "A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe," p. 483, in Conny Rijken (ed.), *Combatting Trafficking in Human Beings for Labour Exploitation,* The Netherlands: Wolf Legal Publishers, 2011, https://www.ilo.org/global/topics/forced-labour/WCMS_155937/lang--en/index.htm.

2 As of 2018, 616,492 of the 37,864,600 workers comprising the employed labor force in Thailand were members of labor unions; see *Labour Statistics Yearbook 2018,* The Office of the Permanent Secretary, Ministry of Labor, Government of Thailand, 2018, pp. 13 and 154, https://www.mol.go.th/wp-content/uploads/sites/2/2019/11/sthitiaerngngaanprac-chamaapii_2561-biibad.pdf?fbclid=IwAR3U9vMWxamMLOiu_mUHOofLgr9UcJQTYXlGbZ_MrOan7u-9pzLjdB5YW74; for trade union densities of other countries, see https://ilostat.ilo.org/data/.

3 To read the ILO Committee on Freedom of Association's recommendations to the Thai government dating back to the 1980s, see https://www.ilo.org/dyn/normlex/en/f?p=1000:20030::FIND:NO. Brunei and Laos are the other two countries that have ratified neither convention; see "Ratification by country," ILO, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11001:0::NO.

4 Cassandra Waters, "Egregious Worker Rights Violations Cause Thailand to Lose Trade Benefits," AFL-CIO, October 28, 2019, https://aflcio.org/2019/10/28/egregious-worker-rights-violations-cause-thailand-lose-trade-benefits.

5 "USTR Announces GSP Enforcement Actions and Successes for Seven Countries," Office of the United States Trade Representative, October 25, 2019, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement.

6 *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, p. XI, https://thailand.iom.int/thailand-migration-report-2019-0.

7 "Right of organizations to elect their representatives in full freedom," Compilation of decisions on the Committee of Freedom of Association, ILO, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3944982,3.

8 See Jason Judd, Supavadee Chotikajan, and Karen Emmons, *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand*, ILO, 2018, pp. 42-43, https://www.ilo.org/asia/publications/WCMS_619727/lang--en/index.htm.

9 "Fishing among the most dangerous of all professions, says ILO," ILO, December 13, 1999, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_071324/lang--en/index.htm. More recent estimates of deaths in the fishing sector alone are even higher; see "Safety for fishermen," Food and Agriculture Organization of the United Nations (FAO), http://www.fao.org/fishery/safety-for-fishermen/en/.

10 Supang Chantavanich, Samarn Laodumrongchai, Benjamin Harkins, Waranya Jitpong, Podesakorn Yothinneeranath, Max Tunon, and Anna Olsen, *Employment practices and working conditions in Thailand's fishing sector,* ILO Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project) and the Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, 2013, https://www.ilo.org/dyn/migpractice/docs/184/Fishing.pdf.

11 Stephen Golub and Abir Varma, *Fishing Exports and Economic Development of Least Developed Countries: Bangladesh, Cambodia, Comoros, Sierra Leone and Uganda,* Swarthmore College, Prepared for UNCTAD, February 2014, p. 7, https://www.swarthmore.edu/sites/default/files/assets/documents/user_profiles/sgolub1/UNCTAD.fisheries.final.pdf.

12 In the previous decade, overfishing depleted fish stocks and caused Thai vessels to have to fish further and further out at sea. For more information on this and on Early Mortality Syndrome (EMS), which impacted shrimp aquaculture farms, see Srisuman Ngamprasertkit, "Thailand Seafood Report, Gain Report #TH8067," USDA Foreign Agricultural Service, May 8, 2018, https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Seafood%20Report_Bangkok_Thailand_5-8-2018.pdf.

13 Srisuman Ngamprasertkit, "Thailand Seafood Report, Gain Report #TH8067," USDA Foreign Agricultural Service, May 8, 2018.

14 *Globe Fish Highlights: A Quarterly Update on World Seafood Markets,* FAO, April 2019 Issue, with Jan. - Dec. 2019 Statistics, p. 15 and 21, http://www.fao.org/3/ca5307en/ca5307en.pdf.

15 *Thailand's Road to Reform: Securing a sustainable, legal and ethical fishery,* Environmental Justice Foundation, October 23, 2019, p. 14, https://ejfoundation.org/resources/downloads/ThailandRoadToReform.pdf.

16 There are four main ways that migrant workers from Myanmar, Cambodia, Laos, and Vietnam can work legally in Thailand: (1) recruited from their country of origin through a bilateral Memorandum of Understanding (MOU) between their country and Thailand; (2) for those who entered the country informally, they can go through a process of nationality verification and be issued a work permit in Thailand, and may be given clemency to continue working based on cabinet resolutions; (3) through a seasonal work permit for border areas; and (4) some fishers are registered under Section 83 of the Fisheries Ordinance.

17 "Statistics of foreigners permitted to work that are remaining in the Kingdom as of October 2019," Foreign Workers Administration Office, Department of Employment, Ministry of Labor, p. 3, https://www.doe.go.th/prd/assets/upload/files/alien_th/57eb135053d1d4815301012994bc5879.pdf.

18 "Open Letter to the Prime Minister: Observations and Recommendations for the Operations of Migrant Worker Registration after 30 June 2018," Migrant Working Group, Thailand.

19 See: https://www.doe.go.th/prd/assets/upload/files/alien_th/2e6a75ce1ebcd9bd74b6380ea293742a.pdf.

20 See Jason Judd et al., Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand, ILO, 2018, p. 15, https://www.ilo.org/asia/publications/WCMS_619727/lang--en/index.htm

21 Harry Smith, Reuben Lim, and Benjamin Harkins, "Thailand Migration Profile," *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, p. 10, https://thailand.iom.int/thailand-migration-report-2019-0.

22 In the fishing sector, direct labor cost accounts for 50-60% of total fishing costs, including wages, crew transport, insurance, and meals on board; see Ellen Boccuzzi, *Migrant and Child Labor in Thailand's Shrimp and Other Seafood Supply Chains,* The Asia Foundation and ILO, 2015, p. 46, https://asiafoundation.org/resources/pdfs/MigrantChildLaborinThailandsShrimpandOtherSeafoodSupplyChains.pdf.

23 *Pirates and Slaves: How Overfishing in Thailand Fuels Human Trafficking and the Plundering of Our Oceans,* Environmental Justice Foundation, 2015, https://ejfoundation.org//resources/downloads/EJF_Pirates_and_Slaves_2015_0.pdf.

24 Ellen Boccuzzi, *Migrant and Child Labor in Thailand's Shrimp and Other Seafood Supply Chains,* The Asia Foundation and ILO, 2015, https://asiafoundation.org/resources/pdfs/MigrantChildLaborinThailandsShrimpandOtherSeafoodSupplyChains.pdf.

25 Vessels sail under the flag of the country of registration and may operate in national or international waters.

26 Robin McDowell, Margie Mason, and Martha Mendoza, "AP Investigation: Slaves may have caught the fish you bought," *Associated Press,* March 25, 2015, https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html.

27 Kate Hodal, Chris Kelly, and Felicity Lawrence, "Revealed: Asian Slave Labour Producing Prawns for Supermarkets in US, UK," *The Guardian,* June 10, 2014, https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour.

28 Margie Mason, Robin McDowell, Martha Mendoza, and Esther Htusan, "Global supermarkets selling shrimp peeled by slaves," *Associated Press,* December 14, 2015, https://www.ap.org/explore/seafood-from-slaves/global-supermarkets-selling-shrimp-peeled-by-slaves.html.

29 *Trafficking in Persons Report 2014,* U.S. Department of State, 2014, https://2009-2017.state.gov/j/tip/rls/tiprpt/2014/226649.htm.

30 "EU acts on illegal fishing: Yellow card issued to Thailand while South Korea & Philippines are cleared," European Commission, April 21, 2015, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_4806. This trade sanction is in response to illegal, unreported, and unregulated (IUU) fishing only; however, organizations and advocates have increasingly linked the prevalence of IUU fishing to forced labor on fishing vessels; for example, see "Forced labour and human trafficking in fisheries," ILO, December 7, 2019, https://www.ilo.org/global/topics/forced-labour/policy-areas/fisheries/lang--en/index.htm.

31 "Report in which the committee requests to be kept informed of development – Report No 380, October 2016, Case No 3164 (Thailand) – Complaint date: 07-OCT-15," ILO Committee on Freedom of Association, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302068.

32 Celeste Drake, "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," AFL-CIO, October 4, 2013, https://www.regulations.gov/document?D=USTR-2013-0024-0009; Cassandra Waters, "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," October 16, 2015, https://www.regulations.gov/document?D=USTR-2015-0013-0026; Cassandra Waters, "Update to the Petition to Remove Thailand from the List of Eligibility Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," AFL-CIO, September 13, 2017, https://www.regulations.gov/document?D=USTR-2015-0018-0013; and Celeste Drake, "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," AFL-CIO, November 13, 2018, https://www.regulations.gov/document?D=USTR-2015-0018-0025.

33 "USTR Uses Trade Preference Programs to Advance Worker Rights," Office of the United States Trade Representative, November 25, 2015, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/november/ustr-uses-trade-preference.

34 Supavadee Chotikajan, Jason Judd, Susana Siar, and Tomomi Ishisa, "Working Conditions for Migrants and Illegal, Unreported and Unregulated Fishing in Thailand's Fisheries Sector," *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, p. 81, https://thailand.iom.int/thailand-migration-report-2019-0; Mary Grimwade and Petra Neumann, "Migration Policy and Practice in Thailand," *Thailand Migration Report 2019,* p. 31; and Lawi Weng, "Gov't Opens Office in Thailand to Assist Myanmar Fishing Boat Workers," The Irrawaddy, September 24, 2018, https://www.irrawaddy.com/news/burma/govt-opens-office-thailand-assist-myanmar-fishing-boat-workers.html.

35 "Press Release: Thailand uses MOU system to recruit migrant workers to fill jobs in marine fisheries sector," Ministry of Foreign Affairs of the Kingdom of Thailand, September 23, 2018, http://www.mfa.go.th/main/en/news3/6886/95148-Thailand-uses-MOU-system-to-recruit-migrant-worker.html.

36 "Thailand's fisheries reform: Progress and way forward in the fight against IUU fishing and forced labor," Royal Thai Embassy, Poland, Warsaw, http://www.thaiembassy.org/warsaw/en/information/65449-Thailands-Fisheries-Reform-Progress.html.

37 For example, see Supang Chantavanich et al., *Employment practices and working conditions in Thailand's fishing sector,* ILO GMS TRIANGLE project and the Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, 2013, https://www.ilo.org/dyn/migpractice/docs/184/Fishing.pdf; Ellen Boccuzzi, *Migrant and Child Labor in Thailand's Shrimp and Other Seafood Supply Chains,* The Asia Foundation and ILO, 2015; and Jason Judd et al., *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand,* ILO, 2018, https://www.ilo.org/asia/publications/WCMS_619727/lang--en/index.htm.

38 Jason Judd et al., *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand,* ILO, 2018, p. 37, https://www.ilo.org/asia/publications/WCMS_619727/lang--en/index.htm.

39 "Country Narrative: Thailand," 2019 Trafficking in Persons Report, U.S. Department of State, June 2019, https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf.

40 "Top Stories : EU Announced the Lifting of a Yellow Card for Thailand," Thailand Ministry of Foreign Affairs, January 8, 2019, http://www.mfa.go.th/main/en/news3/6885/98154-EU-Announced-the-Lifting-of-a-Yellow-Card-for-Thai.html.

41 "USTR Announces GSP Enforcement Actions and Successes for Seven Countries," Office of the United States Trade Representative, October 25, 2019, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement. Trade preferences were suspended for all seafood products currently covered under the GSP program, which does not include some of the country's main seafood exports, such as tuna; see "Thai Union: No Business Impact From U.S. Government Decision To Rescind Thailand's Benefits Under The Generalized System Of Preferences," Thai Union, October 27, 2019, https://www.thaiunion.com/en/newsroom/press-release/1104/thai-union-no-business-impact-from-us-government-decision-to-rescind-thailands-benefits-under-the-generalized-system-of-preferences.

42 Alison Jobe, *The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database,* International Organization for Migration (IOM), 2010, pp. 36-37, https://publications.iom.int/system/files/pdf/causes_of_retrafficking.pdf.

43 *Hard to see, Harder to count: Survey guidelines to estimate forced labour of adults and children, ILO Special Action Programme to combat Forced Labour,* ILO, 2012, http://ilo.org/global/topics/forced-labour/publications/WCMS_182096/lang--en/index.htm.

44 Jeroen Beirnaert, "A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe," in C Rijken (ed.), *Combatting Trafficking in Human Beings for Labour Exploitation,* The Netherlands: Wolf Legal Publishers, 2011, p. 472.

45 Lawrence Mishel, "Inequality, and Faltering Middle-Class Wages," *Economic Policy Institute,* Issue Brief 342, 2012, http://www.epi.org/publication/ib342-unions-inequality-faltering-middle-class.

46 Alex Bryson, "The added value of trade unions: A review for the TUC of existing research," Trade Union Congress, 2017, https://www.tuc.org.uk/added-value-trade-unions.

47 Matthew Walters and Lawrence Mishel, "How unions help all workers," Economic Policy Institute, 2003, https://www.epi.org/files/page/-/old/briefingpapers/143/bp143.pdf; see also Michele Ford, "Trade Unions, Forced Labour and Human Trafficking," Anti-Trafficking Review, issue 5, 2015, pp. 11–29, http://www.antitraffickingreview.org/index.php/atrjournal/article/view/134/135; see also Eliza Marks and Anna Olsen, "The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion," Anti-Trafficking Review, issue 5, 2015, pp. 111–128, https://www.antitraffickingreview.org/index.php/atrjournal/article/view/84/141.

48 Anne Gallagher, *The International Law of Human Trafficking,* Cambridge University Press, New York, 2012, p. 439; see also Jeroen Beirnaert, "A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe," in C Rijken (ed.), *Combatting Trafficking in Human Beings for Labour Exploitation,* The Netherlands: Wolf Legal Publishers, 2011, p. 483.

49 ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (C87).

50 ILO Right to Organize and Collective Bargaining Convention, 1949 (C98); see also "Collective bargaining: a policy guide," ILO, Geneva, 2015, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/instructionalmaterial/wcms_425004.pdf.

51 ILO Right to Organise and Collective Bargaining Convention, 1949 (C98).

52 See the "ILO Declaration on Fundamental Principles and Rights at Work (1998)," http://libguides.ilo.org/c.php?g=657806&p=4649148.

53 Eliza Marks and Anna Olsen, "The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion," *Anti-Trafficking Review,* Issue 5, 2015, http://www.antitraffickingreview.org/index.php/atrjournal/article/view/134/135.

54 The principle of negotiation in good faith takes the form in practice of various obligations on the parties involved, namely: (1) recognizing representative organizations; (2) endeavoring to reach agreement; (3) engaging in real and constructive negotiations; (4) avoiding unjustified delays in negotiation; and (5) mutually respecting the commitments made and the results achieved through bargaining; see "Collective bargaining: a policy guide," ILO Geneva, 2015 p. 14; see also ILO Committee on Freedom of Association Digest of Decisions, 934 and 935.

55 Michele Ford, "Trade Unions, Forced Labour and Human Trafficking," *Anti-Trafficking Review,* issue 5, 2015, pp. 11–29, http://www.antitraffickingreview.org/index.php/atrjournal/article/view/134/135.

56 For example, the International Transport Workers' Federation (ITF) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) ran a campaign to expose slave labor in the Thai prawning industry. The campaign criticized the Thai government for voting against the new ILO protocol to fight forced labor and also backed a Norwegian retailer in its decision to remove scampi products linked to companies involved in human trafficking; see "ITF-IUF Press Release: Unions welcome Thai fisher slavery exposé," ITF, July 3, 2014, https://www.itfglobal.org/en/news/itf-iuf-press-release-unions-welcome-thai-fisher-slavery-expose; for examples in other countries, see Michele Ford, "Trade Unions, Forced Labour and Human Trafficking," *Anti-Trafficking Review,* issue 5, 2015, pp. 11–29, http://www.antitraffickingreview.org/index.php/atrjournal/article/view/134/135.

57 For examples of agreements with industry associations and international framework agreements, see *How to Combat Forced Labour and Trafficking: Best practices manual for trade unions,* ITUC, 2010, pp. 33-34, https://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf; see also Michele Ford, "Trade Unions, Forced Labour and Human Trafficking," *Anti-Trafficking Review,* issue 5, 2015, pp. 4-7, http://www.antitraffickingreview.org/index.php/atrjournal/article/view/134/135.

58 Enforceable brand agreements (EBAs) differ significantly from corporate-led models because they seek to address the features of the supply chain that are at the root of poor working conditions and labor rights violations: namely, the absence of binding and enforceable commitments, lack of transparency, sidelining of workers and their elected trade union representatives, and how the brands' purchasing practices contribute to labor rights violations. For examples of EBAs in the fashion industry, see Elena Arengo, *Future of Fashion: Worker-Led Strategies for Corporate Accountability in the Global Apparel Industry,* ILRF, February 2019, https://laborrights.org/sites/default/files/publications/Future_of_Fashion_ILRF.pdf. See also the resources in: "Tools for Practitioners," Worker-driven Social Responsibility Network, https://wsr-network.org/type/tools-for-practitioners.

59 ILO Protocol of 2014 to the Forced Labor Convention, 1930.

60 "Q&As on Business and freedom of association," ILO, https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FOA_FAQ_EN/lang--en/index.htm#Q12

61 Ibid.

62 In this report, "trade union", "labor union", and "union" are used interchangeably to refer to registered trade unions with the Thai government, unless otherwise noted. The terms "worker organization" or "migrant worker organization" are used to refer to entities that are structured as unions, but are unable to register legally as such under Thai law. ILO Convention 87 uses "organization" to "mean any organization of workers or of employers for furthering and defending the interests of workers or of employers," https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232.

63 "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," AFL-CIO, November 13, 2018, pp. 1-5, https://www.regulations.gov/document?D=USTR-2015-0018-0025; see also "Internationally Recognised Core Labour Standards in Thailand: Report for the WTO General Council Review of the Trade Policies of Thailand," International Trade Union Confederation (ITUC), Geneva, 28 and 30 November, 2011, https://www.ituc-csi.org/IMG/pdf/tpr_thailand_final.pdf.

64 Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," AFL-CIO, November 13, 2018, pp. 6-9.

65 See Endnote 2.

66 The Labor Statistics Yearbook 2018 can be found here: https://www.mol.go.th/wp-content/uploads/sites/2/2019/11/sthitiaerngngaanpracchamaapii_2561-biibad.pdf?fbclid=IwAR2ywhABexiBBXpX5PssxJ7wPtJe5KG87THPwa1VJ4jhGsneZGEBeIjesq4. Chart 3 uses the total number of unionized workers (616,492) and the total number of employed persons (37,864,600) in 2018 (see pages 154 and 13, respectively). Chart 4 uses the total number of private sector employees who are members of a union (444,597) and the total number of private sector workers employed (14,820,100) in 2018 (see pages 154 and 31, respectively).

67 Labor Relations Act (1975), Section 86.

68 Labor Relations Act (1975), Section 98.

69 "That is, except where the activities constitute criminal offences in the nature of offences endangering the public against life and body, offences against liberty and reputation, offences against property and civil infringements resulting from the commission of the said criminal offences"; Labor Relations Act (1975), Section 99.

70 *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, p. IX, https://thailand.iom.int/thailand-migration-report-2019-0.

71 The Labor Relations Act (1975) is understood to apply to private sector factory work, including seafood processing. Article 6 of the Labor Protection in Sea Fishery Work Act (2019) states that vessel owners and fishery workers must comply with the Labor Relations Act unless it has been otherwise provided.

72 Thai government data includes statistics on agricultural/fishing, plant operations, transportation, and elementary occupations; however, the data is not disaggregated for the fishing sector, aquaculture farms, or seafood processing for Thai workers. Labor experts in the country estimate 80% of all fishing workers to be migrants and 70% of seafood-processing workers to be migrants, with the remaining workers being of Thai nationality and in mid-level or managerial roles.

73 While the total number of unions in seafood-processing factories is unknown, an ILO study found that two percent of 434 respondents (migrant seafood processing and fishing workers) had joined a trade union; see Jason Judd et al., *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand,* ILO, 2018, p. 43, https://www.ilo.org/asia/publications/WCMS_619727/lang--en/index.htm.

74 For examples, see Celeste Drake, "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," AFL-CIO, November 13, 2018, pp. 6-10, https://www.regulations.gov/document?D=USTR-2013-0024-0009; see also "Report in which the committee requests to be kept informed of development - Report No 383," ILO Committee on Freedom of Association, October 2017, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3523627.

75 "Report in which the committee requests to be kept informed of development - Report No 380," ILO Committee on Freedom of Association, October 2016, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302068.

76 For examples, see Celeste Drake, "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," AFL-CIO, November 13, 2018, pp. 10-13; "Report in which the committee requests to be kept informed of development - Report No 380," ILO Committee on Freedom of Association, October 2016, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302068; and "Report in which the committee requests to be kept informed of development - Report No 381," ILO Committee on Freedom of Association, March 2017, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3327410.

77 "Four international unions confederations call on Thai government to address labour violations," *Prachatai,* December 2, 2019, https://prachatai.com/english/node/8290.

78 *Memorandum on Labor Relations Act and State Enterprises Labor Relations Act,* Solidarity Center, October 2017.

79 For example, workers cannot strike before submitting a demand to negotiate with their employer nor when an ongoing labor dispute can be settled by a conciliation officer; see Labor Relations Act (1975), Sections 22 and 34. In addition, striking is prohibited in certain undertakings that pertain to the seafood industry, including in ports and sometimes in export-oriented seafood-processing factories, when determined as such by the government; see Labor Relations Act (1975), Section 23.

80 Labor Relations Act (1975), Section 10. This agreement is required in workplaces with 20 or more employees, although permissible in workplaces with fewer employees.

81 Labor Relations Act (1975), Section 11.

82 *Memorandum on Labor Relations Act and State Enterprises Labor Relations Act,* Solidarity Center, October 2017.

83 See 'The Government's reply', Para 1014 in "Report in which the committee requests to be kept informed of development - Report No 380, October 2016," Case No 3164 (Thailand), ILO Committee on Freedom of Association, October 7, 2015 Follow-up, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302068.

84 Labor Relations Act (1975), Sections 13 and 15, respectively.

85 Except in cases when employees "(1) perform their duties dishonestly or intentionally commit a criminal offence against the employer; (2) intentionally cause damage to the employer; (3) violate the rules regulations or lawful orders of the employer; or (4) neglect their duties for three consecutive days without reasonable ground;" see the Labor Relations Act (1975), Section 31 (1-4); or when they strike illegally, Labor Relations Act (1975), Section 31.

86 In practice, workers do request that their employer sign the document to confirm its receipt. Workers typically submit a copy to the provincial government labor office as well.

87 "Report in which the committee requests to be kept informed of development - Report No 380, October 2016," Case No 3164 (Thailand), ILO Committee on Freedom of Association, October 7, 2015, Follow-up, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302068; see also Celeste Drake, "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)," AFL-CIO, November 13, 2018, p. 4, https://www.regulations.gov/document?D=USTR-2013-0024-0009.

88 "Report in which the committee requests to be kept informed of development – Report No 380, October 2016," Case No 3164 (Thailand), ILO Committee on Freedom of Association, October 7, 2015, Follow-up, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302068.

89 *Memorandum on Labor Relations Act and State Enterprises Labor Relations Act,* Solidarity Center, October 2017.

90 Chusert Supasitthumrong, "Thai Labor Law: The Employee Committee Explained," *Bangkok Post,* Corporate Counsellor Column, August 9, 2013, https://www.tilleke.com/resources/thai-labor-law-employee-committee-explained.; see also Labor Relations Act (1975), Sections 45-53.

91 Ibid.

92 Labor Relations Act (1975), Section 52.

93 The Labor Protection Act (1998) governs the relationship between employers and individual employees and is not to be confused with the Labor Relations Act (1975), which governs the collective bargaining relationship between employers and employees as a group.

94 Labor Protection Act (1998), Section 96.

95 "Employees' Welfare under the Thai Labour Protection Act," Lorenz & Partners, September 2018, https://lorenz-partners.com/download/thailand/NL146E-Employees-Welfare-under-the-Labour-Protection-Act-Sep18.pdf.

96 Ibid.

97 Labor Protection Act (1998), Sections 92 and 97.

98 Ibid., Section 98.

99 Sea fishery and seasonal agricultural work are covered by other pieces of labor protection legislation, as well as by certain sections of the Labor Protection Act (1998); see Supavadee Chotikajan et al., "Working Conditions for Migrants and Illegal, Unreported and Unregulated Fishing in Thailand's Fisheries Sector," p. 85 and Charlotte Junghus et al., "Working Conditions for Migrants in Thailand's Agricultural Sector," p. 62 in *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, https://thailand.iom.int/thailand-migration-report-2019-0.

100 See Endnote 102 for additional information.

101 Findings based on consultations with trade unions, migrant workers organizations, and UN agency representatives conducted between March and August 2019.

102 Welfare committees are prescribed under the Labor Protection Act and, within that law, welfare committee members are not afforded legal protection against termination for participation in the committee. However, Section 96 of the same law states that "when a business has an employee committee under the law on labor relations [Labor Relations Act], the employee committee shall act as the welfare committee at the place of business as prescribed under this Act." Thus, some have interpreted the law to mean that the legal protection afforded to employee committee members under Section 52 of the Labor Relations Act covers welfare committee members as well.

103 Reported to ILRF by multiple labor experts and civil society organizations in the country during interviews conducted between March and August 2019.

104 Section 17 of the Labor Relations Act (1975) allows employees to appoint advisors to advise them regarding the collective bargaining process; these advisors have often been representatives of the Thai Trade Union Congress or other Thai labor organizations.

105 Observed by ILRF in multi-stakeholder conferences and workshops on corporate social responsibility; also reported to ILRF during key informant interviews conducted for this paper between March and August 2019.

106 "Report in which the committee requests to be kept informed of development - Report No 380, October 2016," ILO Committee on Freedom of Association, Case No 3164 (Thailand) – Complaint date: 07-OCT-15 – Follow-up, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302068.

107 Benjamin Harkins, "Complaint mechanisms for migrant workers in Thailand", *Thailand Migration Report 2014,* United Nations Thematic Working Group on Migration in Thailand, 2014, edited by Jerrold W. Huguet, pp. 27–43, https://thailand.iom.int/thailand-migration-report-2014.

108 "Policy brief: Equality of treatment for migrant worker complaints and benefit claims in Thailand," ILO, February 9, 2015, https://www.ilo.org/asia/WCMS_343798/lang--en/index.htm.

109 Supang Chantavanich et al., *Employment practices and working conditions in Thailand's fishing sector,* ILO GMS TRIANGLE project and the Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, 2013, https://www.ilo.org/dyn/migpractice/docs/184/Fishing.pdf.

110 David Rousseau, *Labor Abuse Complaint Mechanisms in Thailand: Research Report,* USAID Thailand Counter Trafficking in Persons, Winrock International, forthcoming publication in 2020, https://www.winrock.org/project/strengthening-rights-safeguarding-survivors/.

111 Jason Judd et al., *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand,* ILO, 2018, p. 40, https://www.ilo.org/asia/publications/WCMS_619727/lang--en/index.htm.

112 Ibid.

113 Findings based on consultations with trade unions, migrant workers organizations, and UN agency representatives in March and August 2019.

114 David Rousseau, *Labor Abuse Complaint Mechanisms in Thailand: Research Report,* USAID Thailand Counter Trafficking in Persons, Winrock International, forthcoming publication in 2020; see also Benjamin Harkins and Meri Åhlberg, *Access to justice for migrant workers in South-East Asia,* ILO Bangkok, July 28, 2017, pp. 16-18, https://www.ilo.org/asia/publications/WCMS_565877/lang--en/index.htm.

115 Reported to ILRF during focus group discussions and key informant interviews for this report conducted between March and August 2019.

116 David Rousseau, *Labor Abuse Complaint Mechanisms in Thailand: Research Report,* USAID Thailand Counter Trafficking in Persons, Winrock International, forthcoming publication in 2020.

117 Benjamin Harkins and Meri Åhlberg, *Access to justice for migrant workers in South-East Asia,* ILO Bangkok, July 28, 2017, https://www.ilo.org/asia/publications/WCMS_565877/lang--en/index.htm.

118 David Rousseau, *Labor Abuse Complaint Mechanisms in Thailand: Research Report,* USAID Thailand Counter Trafficking in Persons, Winrock International, forthcoming publication in 2020.

119 "Country Narrative: Thailand," *2019 Trafficking in Persons Report,* U.S. Department of State, https://www.state.gov/wp-content/uploads/2019/06/2019-TIP-Report-Narratives-T-ZSpecial-Case.pdf.

120 "Draft Report, ILO Ship to Shore Rights Project of the Seventh Project Steering Committee (PSC)," ILO, June 25, 2018, https://shiptoshorerights.org/wp-content/uploads/7th-PSC-Report-EN.pdf.

121 AFP, "Activist sued, poultry farm promises more defamation cases," *Bangkok Post,* November 28, 2018, https://www.bangkokpost.com/thailand/general/1584042/activist-sued-poultry-farm-promises-more-defamation-cases; see also "Thailand Fact Sheet," The Observatory for the Protection of Human Rights Defenders, May 2019, https://www.omct.org/files/2019/05/25357/obsthailande2019web.pdf.

122 "Reporter gets jail in libel case filed by poultry farm," *Bangkok Post,* December 24, 2019, https://www.bangkokpost.com/thailand/general/1823424/reporter-gets-jail-in-libel-case-filed-by-poultry-farm.

123 The Fishers' Rights Network is structured as a union and refers to itself as such, although it is not currently able to register as a legal union in Thailand as it is led by migrant workers. For more information on FRN, see https://justiceforfishers.org/thailand/.

124 Focus group discussion with FRN organizers, Thailand, June 8, 2019.

125 Key informant interview with Jon Hartough, Thailand Project Lead, ITF, May 20, 2019.

126 Focus group discussion with FRN members, Thailand, June 8, 2019.

127 The minimum wage, which varies by province, was increased on April 1, 2018; see Price Sanond, "Minimum Daily Wage Increased for 2018," PriceSanond Lawyers, http://www.pricesanond.com/knowledge/employment-and-labour/minimum-daily-wage-increased-2018.php. This increase was a result of the advocacy and lobbying work of many organizations, including the ITF-FRN, and other factors.

128 Thai Union Group PCL is a Thailand-based company producing seafood products for domestic and international markets; for more information, see their website: https://www.thaiunion.com/en.

129 Greenpeace and Thai Union Group Agreement, July 11, 2017, http://www.thaiunion.com/files/download/sustainability/policy/Thai-Union-Greenpeace-Summary-of-Agreement.pdf.

130 "Thai Union Fishing Vessel Improvement Plan and Code of Conduct 2018," Thai Union Group, December 27, 2017, http://www.thaiunion.com/files/download/sustainability/20171222-tu-vessel-code-of-conduct-en.pdf.

131 Focus group discussion with FRN organizers, Thailand, June 8, 2019.

132 This initiative was supported by the ILO's Ship to Shore Rights project.

133 This initiative was supported by the ILO's Ship to Shore Rights project.

134 As of December 19, 2019, US$1 was equivalent to 30.19 Thai Baht.

135 Information for case studies 2 and 3 collected during a key informant interview with SERC organizers, Thailand, July 6, 2019.

136 Due to requests for assistance from migrant workers in other provinces, MWRN's team also makes trips to these provinces to support migrants all over Thailand. MWRN has also opened a branch office in Yangon, Myanmar.

137 For several case studies, see *Building A Rights Culture: How workers can lead sustainable change in Thailand's seafood processing sector,* edited by Abby McGill, Hong Sar, Matthew Fischer-Daly, Judy Gearhart, and Andy Shen, ILRF, March 2016, https://laborrights.org/publications/building-rights-culture-how-workers-can-lead-change-thai-seafood.

138 The 'punctuality bonus' (or bia kahian in Thai language) is a bonus payment for an employee who has not taken leave and has not been late during a certain perio*d* of time. Thus, the workers are requesting this type of payment to be offered for 15-day periods. Migrant workers are able to take leave for one day per month according to the law, but, as this is unpaid leave, they rarely take it.

139 The Labor Relations Act (Section 16) stipulates that the two parties shall begin negotiation within three days from the date of receiving the demand. In cases when the DLPW officer is not involved, the employer often ignores and delays the negotiation with the employees. A key informant explained to ILRF that, by simultaneously submitting the employees' demand formally to the DLPW officer, it enables DLPW to order the employer to start the negotiations within three days of the formal submission of the employees' demand.

140 The Labor Relations Act allows workers to strike if negotiations are unconcluded (Section 22); however, the law also identifies specific types of business undertakings in which striking is not lawful if the negotiations are ongoing for more than three days past the demand submission (Section 23). Export-oriented companies get special protection from the Thailand Board of Investment (BOI) to ensure non-disruption of their export process and are included under Section 23(8) (i.e. "other undertakings as prescribed by the Ministerial Regulations"). Thus, those employed in seafood-processing facilities that are export-oriented may not have the right to strike when the government makes such a determination.

141 Information for this case study was collected from MWRN members during two interviews on April 25, 2019 and August 14, 2019 in Thailand, as well as from a key informant via email communication during the same period.

142 Explained by multiple key informants via email communication between March and August 2019. See Section IV of this report for more information and analysis on welfare committees.

143 Interview with MWRN members, Thailand, April 25, 2019.

144 Presentation at the SeaWeb Seafood Summit, Bangkok, Thailand, June 8, 2019.

145 *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,* UN Human Rights Office of the High Commissioner, 2011, p. 13, https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf.

146 Ibid.

147 The Seafood Task Force is a multi-stakeholder initiative of seafood processors, feed producers, buyers, retailers, government representatives and NGOs formed to address issues surrounding labor and illegal fishing in seafood supply chains, currently focusing on the seas around Thailand; see https://www.seafoodtaskforce.global/.

148 See the Seafood Task Force Code of Conduct, December 12, 2018, https://www.seafoodtaskforce.global/wp-content/uploads/2018/12/STF_Code-of-Conduct-V.2_20181212.pdf.

149 For examples of international buyers' supplier codes of conduct with provisions ensuring non-discrimination and freedom of association and collective bargaining, see Costco, Waitrose, Morrison's, Ahold Delhaize, Tesco, Sainsbury's, Albertsons, Darden, Kroger, Carre Four, Mars, and Nestle.

150 "Report in which the committee requests to be kept informed of development - Report No 380, October 2016, Case No 3164 (Thailand) — Complaint date: 07-OCT-15 — Follow-up," ILO Committee on Freedom of Association, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302068.; see also Compilation of Decisions of the Committee on Freedom of Association, "Right of workers and employers, without distinction whatsoever, to establish and to join organizations," ILO Committee on Freedom of Association, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO:70002:P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3943847,1; see also "ILO-Thai Trade Unions Meeting on Trade Unions Agenda for Decent Work in Thailand," ILO, May 17, 2016, https://www.ilo.org/asia/countries/thailand/WCMS_478498/lang--en/index.htm.

151 In 2017, the Thai government ratified the ILO Discrimination in Employment and Occupation Convention (C111), thereby committing to "equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination." In 2018, the Thai government also committed to reforming its labor relations law as a foundation for the ratification of the Right to Organise and Collective Bargaining Convention (C98), but is yet to do so; see "Press Release: Thailand's Response to the Comments of Human Rights Watch on the Protection of Labour in Fisheries Sector," Thailand Ministry of Foreign Affairs, April 27, 2018, http://www.mfa.go.th/main/en/news3/6886/88578-Thailand%E2%80%99s-Response-to-the-Comments-of-Human-Right.html. Thus, the Thai government has made some progress in bringing national law in line with international standards; however, the standards currently set out under Thai law are below the standards that companies should be upholding throughout their supply chains.

152 The ILO Committee on Freedom of Association has been making this recommendation to Thailand since at least the 1980s. For example, see "Report in which the committee requests to be kept informed of development - Report No 208, June 1981, Case No 1015 (Thailand) - Complaint date: 12-SEP-80 — Closed," ILO Committee on Freedom of Association, https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2900459.

153 "Urgent Statement: Government urged to review root causes of the management of migrant workers to restore confidence in the management of migrant workers and sustainable economic development," Migrant Working Group, June 30, 2017, https://mwgthailand.wordpress.com/testimonial/885/.

154 Amy Sawitta Lefevre, "Thailand's new labor rules send thousands of migrant workers fleeing," *Reuters,* July, 3 2017, https://www.reuters.com/article/us-thailand-migrants/thailands-new-labor-rules-send-thousands-of-migrant-workers-fleeing-idUSKBN19O0B6.

155 Royal Ordinance Concerning the Management of Foreign Workers' Employment, B.E. 2560 (2017), Sections 17-22.

156 Royal Ordinance Concerning the Management of Foreign Workers' Employment (No. 2), B.E. 2561 (2018), Section 24, 62 and 25, respectively. For additional information, see Seafood Working Group, "Comments Concerning the Ranking of Thailand by the U.S. Department of State in the Trafficking in Persons Report 2020," ILRF, March 2020, https://laborrights.org/publications/comments-concerning-ranking-thailand-united-states-department-state-2020-trafficking.

157 Harry Smith, Reuben Lim, and Benjamin Harkins, "Thailand Migration Profile," *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, p. 16, https://thailand.iom.int/thailand-migration-report-2019-0.

158 *Review of the Effectiveness of the MOUs in Managing Labour Migration Between Thailand and Neighbouring Countries,* ILO GMS TRIANGLE project, 2015, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_356542.pdf; see also Mary Grimwade and Petra Neumann, "Migration Policy and Practice in Thailand," *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, p. 31, https://thailand.iom.int/thailand-migration-report-2019-0.

159 Local organizations report that the Myanmar government has not given full authorization to recruitment agencies to send workers to the fishing sector in Thailand. On Cambodia, see "Government: Thousands of migrant workers 'not received rights'," *The Phnom Penh Post,* December 13, 2018, https://www.phnompenhpost.com/national/government-thousands-migrant-workers-not-received-rights.

160 Supavadee Chotikajan et al., "Working Conditions for Migrants and Illegal, Unreported and Unregulated Fishing in Thailand's Fisheries Sector," *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, p. 85, https://thailand.iom.int/thailand-migration-report-2019-0.

161 A total of 31 PIPO Centers were established in 22 coastal provinces to monitor the movement of commercial fishing vessels; see ibid., p. 86.

162 *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry,* Human Rights Watch, 2018, p. 104, https://www.hrw.org/sites/default/files/report_pdf/thailand0118_report_web.pdf.

163 Thailand's Road to Reform: Securing a sustainable, legal and ethical fishery, Environmental Justice Foundation, October 23, 2019, p. 21, https://ejfoundation.org/resources/downloads/ThailandRoadToReform.pdf.

164 *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry,* Human Rights Watch, 2018, pp. 104-109.

165 "Country Narrative: Thailand," *2019 Trafficking in Persons Report,* U.S. Department of State, June 2019, https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf.

166 Paul Buckley and Ubonwan Boonrattanasamai, "Trafficking in Persons in Thailand," *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, p. 163.

167 "Joint Open Letter on the Preservation of Fisheries Regulations and Reforms in order to prevent Illegal, Unreported and Unregulated Fishing," EJF, September 19, 2019, https://ejfoundation.org/reports/joint-open-letter-on-the-preservation-of-fisheries-regulations.

168 Ministerial Regulation concerning Labor Protection in Sea Fishery Work B.E. 2557 (2014), https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103610/125958/F-603819930/THA103610%20Eng.pdf.

169 Charlotte Junghus, Kuanruthai Siripatthanakosol, and Tomomi Ishida, "Working Conditions for Migrants in Thailand's Agricultural Sector" and Supavadee Chotikajan et al., "Working Conditions for Migrants and Illegal, Unreported and Unregulated Fishing in Thailand's Fisheries Sector," *Thailand Migration Report 2019,* United Nations Thematic Working Group on Migration in Thailand, edited by Benjamin Harkins, 2019, https://thailand.iom.int/thailand-migration-report-2019-0.

170 "Thailand ratifies Work in Fishing Convention," ILO, January 30, 2019, https://www.ilo.org/global/about-the-ilo/news-room/news/WCMS_666581/lang--en/index.htm.

171 Labor Protection in Sea Fishery Work Act (2019), Article 6.

172 *Thailand's Road to Reform: Securing a sustainable, legal and ethical fishery,* EJF, October 23, 2019, p. 10, https://ejfoundation.org/resources/downloads/ThailandRoadToReform.pdf.

173 "Thailand joins the global movement to combat forced labour," ILO, June 4, 2018, https://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_631435/lang--en/index.htm.

174 "Observations and recommendations concerning the reform of subordinate legislations related to the Anti-Trafficking in Persons Act 2008 amended in 2019," Migrant Working Group, July 23, 2019.

Fishermen sorting fish in harbor, Thailand. ©Sura Nualpradid

ILRF is dedicated to advancing dignity and justice for workers in the global economy.