

**Comments Concerning the Ranking of Thailand by the United States Department of
State in the 2020 Trafficking in Persons Report**
Submitted by: International Labor Rights Forum
on behalf of the Seafood Working Group
March 10, 2020

TABLE OF CONTENTS

1.	INTRODUCTION	2
1.1.	Methodology	2
2.	PROSECUTION	3
2.1.	Enforcement challenges for forced labor as a crime	3
2.2.	Adequate standard for interviewing victims	4
2.3.	No improvement in number of prosecutions of ‘human trafficking for forced labor’ cases	5
2.4.	Failure to pursue witnesses linked to recruitment or from country of origin	5
3.	PROTECTION	5
3.1.	Failure of law enforcement to identify and assist potential victims of human trafficking	5
3.2.	Failure of the Ministry of Labor to identify and protect exploited workers	9
3.3.	Strategic Lawsuits Against Public Participation (SLAPPs) against labor rights defenders	13
3.4.	Inadequate victims’ services and re-victimization	15
4.	PREVENTION	15
4.1.	Recruitment, documentation, and contract issues	16
4.2.	Ongoing labor rights violations and abuse in the fishing sector	28
4.3.	National Fisheries Association of Thailand advocacy to weaken labor protection for fishers	29
4.4.	Restrictions on freedom of association and collective bargaining	29
5.	CONCLUSION	31

1. Introduction

In 2019, the Government of Thailand amended and enacted laws and policies to bring Thai law in compliance with the International Labour Organization (ILO) Protocol of 2014 to the Forced Labor Convention (P29) and ILO Convention on Work in Fishing (C188). While the policy changes are welcomed by the Seafood Working Group (SWG) coalition members, there has been little actual change on the ground. Even with the legal improvements made over the past year, Thai workers and migrant workers are still vulnerable to forced labor and human trafficking.

The SWG is a coalition of over 60 labor rights, human rights, and environmental non-governmental organizations. The coalition recommends that Thailand be downgraded to the Tier 2 Watch List ranking since it does not fully meet the minimum standards as set forth in the U.S. Trafficking Victims Protection Act (TVPA) of 2000.¹ This report will show the government's failure to make progress in key areas, including:

- Identification and prosecution of forced labor;
- Labor inspections and complaint processing;
- Addressing widespread debt and document retention practices, and inability for workers to change employers;
- Protecting workers and labor rights defenders who report abuse from retaliation and the use of defamation and other lawsuits; and
- Protection of workers' fundamental rights to freedom of association and collective bargaining.

1.1. Methodology

This report focuses on issues and incidents during the reporting period, April 1, 2019 to March 2, 2020, but provides some information from before this time period when relevant as background. The information in this report is based on nine consultations conducted by ILRF with civil society organizations, non-governmental organizations, and labor lawyers in Thailand in January and February 2020, as well as additional information provided by members of the SWG. The report also analyzes relevant Thai laws and policies and provides information from available research and reports. The names of organizations are censored in this public report to protect the security of informants and prevent possible retaliation.

The International Labor Rights Forum (ILRF) is a Washington, D.C.-based human rights organization founded in 1986. ILRF is dedicated to advancing the dignity and justice of workers in the global economy and formed the Seafood Working Group in 2014.

¹ The Tier 2 Watch List ranking is assigned to countries whose governments do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards, and for which: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional steps over the next year.

2. Prosecution

This section describes recent legal reforms to anti-trafficking legislation and challenges with victim identification and prosecution of forced labor and human trafficking for forced labor offenses.

2.1. Enforcement challenges for forced labor as a crime

On April 7, 2019, amendments to the Anti-Trafficking in Persons Act of 2008 were published in the government gazette. These amendments were made to bring Thai law in compliance with the ILO's Protocol of 2014 to the Forced Labour Convention No. 29, 1930.² The aim of the reform was to criminalize forced labor in work or service thereby facilitating prosecutions.³ The amendments offered a victim protection process, to match the protections granted to victims of human trafficking. While the amendments marked an important step in protecting victims of forced labor, significant challenges in implementation remain. Since this amendment, authorities have not identified or prosecuted any case of forced labor as a stand-alone offense. While some charges have been brought connected to other crimes, the fact that no charges have been brought solely for the crime of forced labor shows a lack of willingness by either law enforcement or prosecutors to enforce the new law. 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.⁴

The Migrant Working Group (MWG) issued observations and recommendations on the amendments. MWG indicated that the amendments failed to solidify victim identification, discharge, protection, and victim remedy and rehabilitation. Although the amendments expand the definition of victims in the Anti-Trafficking in Persons Act of 2008 to also include victims of forced labor, MWG found there are still challenges at the practical level. MWG provided examples of protections and services that are governed by subordinate legislation⁵ that define a "victim" as "a victim of human trafficking" or "a victim of human trafficking offence." For example:

- Ministerial Regulation on work permit fee waiver for foreigners who are victims of trafficking in persons or witnesses to the offense against the Anti-Trafficking in Persons Act 2017;
- Notification of the Ministry of Interior on the permission for certain groups of foreigners to reside in the Kingdom on a special circumstance including victims of trafficking in persons;
- Notification of the Coordinating Committee on Anti-Trafficking in Persons on budget allocations and expenses and other criteria and conditions concerning the support of the Anti-Trafficking in Persons Fund;
- Ministry of Social Development and Human Security Rule on access to temporary shelters for victims of trafficking of potential victims of trafficking in persons in temporary shelter 2009;
- Ministry of Social Development and Human Security Rule on the establishment of private relief facility to assist and protect victims of human trafficking 2017; and

² "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.

³ This was one of the recommendations from the ILO in Thailand; see "Situation and gap analysis on the ILO Protocol of 2014 to the Forced Labour," February 2017, <https://shiptoshorerights.org/wp-content/uploads/gap-analysis-protocol-2014-english.pdf>.

⁴ "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.

⁵ Subordinate legislation are legislative instruments, and can include regulations, rules, orders, statutory instruments and by-laws.

- Notification of the Committee of the Anti-Trafficking in Persons Fund on the criteria, methods and conditions on the endorsement of the disbursement of cash and assets of the Anti-Trafficking in Persons Fund.⁶

These examples show the discrepancies in the law and subordinate legislation which can hinder the protection and identification of victims of forced labor.

- Authorities have failed to establish guidelines to identify concrete elements of forced labor and trafficking in persons;
- There are no guidelines for determining damages for forced labor victims; and
- There is a failure to spell out the roles of officials from the Ministry of Labor in assisting victims of human trafficking and forced labor in work or service.

Local sources have explained that insufficient time was taken to educate, train, and build capacity of officials responsible for enforcing the new law on forced labor. There is ongoing confusion among lawmakers regarding the differences and legal distinctions between two different crimes: “human trafficking for forced labor” and “forced labor in work or service.” As such, the Thai government has placed a Thammasat University professor to work with a legal reform sub-committee to identify the distinctions. This process is ongoing as of January 2020 and, until such a decision is reached, the subordinate legislation will not be amended to make it possible to identify or prosecute forced labor independent of human trafficking.⁷

2.2. Adequate standard for interviewing victims

The amendments also failed to set a standard for interviewing victims. Interviews are important in determining if someone is in a forced labor or human trafficking situation. They also provide crucial information for investigations and prosecutions, which can help prevent future victimization. For example, there are reports that a record number of 1,807 victims of human trafficking were identified in 2019.⁸ However, it was also reported that in some cases police misidentified people as victims of trafficking when they are individuals who are being smuggled into the country with their consent.⁹ This also shows a lack of understanding and a need for training of police and government officials enforcing the law. It is also a problem because it means resources and government officials’ time is being misallocated.

The Office of the High Commissioner for Human Rights’ “Recommended Principles and Guidelines on Human Rights and Human Trafficking” explain the importance of the distinctions:

“Trafficking means much more than the organized movement of persons for profit. [...] While the additional elements that distinguish trafficking from

⁶ “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.

⁷ Information provided to ILRF by a Thai labor lawyer on January 28, 2020.

⁸ “Record number of trafficking victims strains resources,” *Bangkok Post*, January 7, 2020,

<https://www.bangkokpost.com/thailand/general/1830439/record-number-of-trafficking-victims-strains-resources>

⁹ Nanchanok Wongsamuth, “Migrants mistakenly held in Thai trafficking shelters: rights groups,” *Reuters*, August 7, 2019,

<https://www.reuters.com/article/us-thailand-trafficking-migrants/migrants-mistakenly-held-in-thai-trafficking-shelters-rights-groups-idUSKCN1UW1ZP>.

migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place."¹⁰

2.3. No improvement in number of prosecutions of 'human trafficking for forced labor' cases

The Anti-Trafficking in Persons Act of 2008 criminalizes human trafficking for the purpose of exploitation. There are seven types of exploitation under the law, and after the amendments in 2019, that includes forced labor or service.¹¹ In 2019, 35 cases of human trafficking for forced labor were litigated, including four in the fishing sector. The same number of human trafficking for forced labor cases were litigated in 2018. As in previous years, human trafficking for prostitution cases comprise the majority (157 out of a total of 286 cases litigated in 2019). These numbers are significantly out of proportion with the prevalence studies on labor trafficking conducted in various labor sectors across the country, particularly in the seafood and fishing sectors.¹²

2.4. Failure to pursue witnesses linked to recruitment or from country of origin

Local sources explain there is a lack of willingness by police and prosecutors to pursue witnesses from other countries to prosecute cases of human trafficking and identify related smuggling rings. One example, in August 2019, a potential human trafficking case of a female domestic worker was reported to the police and involved a series of recruitment agents, brokers, and the woman's father. The father was summoned to testify, but law enforcement officials made no efforts to investigate or summon any other witnesses from Myanmar or Thailand who were involved in the recruitment process.¹³

3. Protection

This section describes human trafficking protection issues, including victim identification measures, victim services and care, and repatriation procedures. It also describes how defamation and other intimidatory lawsuits exacerbate protection concerns.

3.1. Failure of law enforcement to identify and assist potential victims of human trafficking

Based on the interviews ILRF conducted, there are several issues preventing the proper identification of and assistance for human trafficking victims by law enforcement officials.

- Officers focus on signs of physical violence or force and ignore other indicators of human trafficking and forced labor; focus on one aspect of the case, instead of looking at the coercive or exploitative situation of the worker more holistically; or make assumptions about the recruitment or migration

¹⁰ "Recommended Principles and Guidelines on Human Rights and Human Trafficking," Office of the High Commissioner for Human Rights, <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

¹¹ According to Section 4 of the Anti-Trafficking in Persons Act (2008), these include prostitution; production or distribution of pornographic materials; other forms of sexual exploitation; slavery; causing another person to be a beggar; forced labor or service; or coerced removal of organs for the purpose of trade.

¹² See Jason Judd, Supavadee Chotikajan, and Karen Emmons, "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; see also "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, http://ghre.org/downloads/Falling-through-the-net_en-version.pdf.

¹³ Information provided to ILRF by a Thailand-based civil society organization on January 17, 2020.

journey of a particular worker once learning certain details of the case, instead of allowing the victim to fully describe their experience.¹⁴

- Officers allow employers to be present during victim screening interviews, even in cases when the employer is the potential perpetrator, and do not provide witness protection to victims during trials, leading to bribery and rescinding of victim testimony (Case 2);
- Several cases of misidentification of smuggled migrants as human trafficking victims potentially due to pressure on police authorities to increase trafficking identification numbers and related negative impacts on services available to trafficking victims in state-run shelters (Cases 3 and 4);
- In interviews and cases, instances of corruption leading to impunity; fear among law enforcement in connection with influential fishing boat owners has led to acquittals, particularly in the southern provinces and areas such as Pattani (Cases 1, 2, 5 and 6); and
- A case highlights the need for special protections and consideration for unique needs and vulnerabilities of potential child trafficking victims (Case 2).

Case 1: Labor abuse of fishermen and corruption in Trang, 2019

In early 2019, a Myanmar fisherman contacted a civil society organization (CSO) requesting that they rescue him and other workers from a fishing boat in Kantang, Trang province, as well as to collect unpaid wages and find another job. They knew their employer was an influential person¹⁵ and thus did not seek any other form of justice. The CSO coordinated with the police and Thai Navy in this case, but no charges were pressed against the employer.¹⁶

Case 2: Labor trafficking of children from Myanmar in the fishing sector in Pattani, late-2018

Seven children between the ages of 14-17 (from a region in Myanmar on the border near to Sangkhla Buri in Thailand) were recruited by a labor broker and told that they would be brought to work in a poultry slaughterhouse, but were instead brought to work on a fishing boat in Pattani province. After experiencing horrible working conditions and witnessing physical violence of other workers, one 17-year-old child jumped off of the boat into the sea.

He was rescued by another fishing boat and brought to a Port-In Port-Out (PIPO) center for preliminary investigation before being handed over to the police. The incident occurred on a Friday when it was a religious holiday and many government offices were closed. The child was brought to a juvenile detention center and interviewed by a human trafficking multi-disciplinary team (MDT) on Monday. The employer discovered the child was missing and transferred the remaining children on a boat back to Myanmar.

A CSO served as a translator and observed many irregularities in the police investigation process. The employer was allowed to be present when they interviewed the child. The MDT contacted the six boys who had returned to Myanmar through a monk in their village and asked them to return to Thailand to provide testimony. Only one boy and his family agreed, while the remaining families were afraid and

¹⁴ Information provided to ILRF from a Thai labor lawyer on January 28, 2020 who oversaw the investigation of cases by police throughout 2019.

¹⁵ The term “influential person” is used commonly in Thailand to refer to wealthy individuals who commit criminal or other illegal acts, and use their financial situation, position of power in society, and connections with law enforcement and government authorities, to do so with impunity. These individuals are sometimes referred to as *mafia*.

¹⁶ Information provided to ILRF by a Thailand-based civil society organization on January 21, 2020.

had already received money from a broker to remain silent. The CSO wanted the case to be handled by the central Thai police and brought the MDT to Sangkhla Buri to speak to the only witness in mid-2018.

Once it came time to testify in late 2018, the witness changed his testimony. They had not requested witness protection and the broker was able to contact the family and make some type of arrangement. The child who jumped ship was kept at a trafficking shelter in Songkhla province. The charges against the boat owner were human trafficking of a minor, but the judge acquitted him at the end of 2018, based on an assessment that the worker had jumped voluntarily. No other charges were brought against the boat owner, despite employing a person under the age of 18 on a fishing vessel which is against Thai law. The boat owner was known to have connections with the Internal Security Operations Command (ISOC) – the main security agency operating in Southern Thailand, which is why the CSO had tried to request that the central police handle the case to avoid such issues. The boat owner also began harassing the CSO's staff during this case.¹⁷

Case 3: Smuggled migrants identified as human trafficking victims, 2019

Prosecutors rejected 20% (64 of 364) of the human trafficking cases transferred to them by police in 2019 due to improper handling of cases from the point of screening and identification. Prosecutors have reported that Thailand's central police have put pressure on provincial police commanders to increase the number of trafficking cases identified to enhance Thailand's global image in addressing the issue. In turn, commanders have put pressure on frontline officers.¹⁸ This has been observed by local informants in Chiang Mai, Mae Sot, Songkhla, Ranong, Phuket, and Pattani provinces in 2019.¹⁹ In some cases, the police know that they are misidentifying a smuggling case as trafficking; yet, in other cases officers do not properly investigate the case to distinguish between the crimes.²⁰ This shows very plainly that there have not been proactive or genuine efforts by police authorities to identify victims of human trafficking in 2019.

In addition, some state resources for court proceedings and state-run shelters intended for trafficking victims were being spent on migrants.²¹ As was reported in April 2019, the nine government trafficking shelters were hosting very high numbers (1,496) of workers, many of who were believed to be smuggled migrants, which put the shelters at near capacity. These were mostly migrants from Myanmar, transiting through Thailand to work in Malaysian factories.²² These identification problems have other human

¹⁷ Information provided to ILRF by a Thailand-based civil society organization on January 21, 2020.

¹⁸ Nanchanok Wongsamuth, "Exclusive: Thailand police under scrutiny as record number of trafficking cases dismissed," Reuters, January 28, 2020, <https://www.reuters.com/article/us-thailand-trafficking-migrants-exclusi/exclusive-thailand-police-under-scrutiny-as-record-number-of-trafficking-cases-dismissed-idUSKBN1ZR03Y>.

¹⁹ This information provided to ILRF by a Thailand-based civil society organization and a Thai labor lawyer during interviews in January 2020.

²⁰ Ibid.

²¹ Thailand rescued 1,807 trafficking victims in 2019, up from 622 in 2018, most of whom were migrants from Myanmar on the way to Malaysia, which campaigners have questioned whether many had in fact been smuggled; see Nanchanok Wongsamuth, "Exclusive: Thailand police under scrutiny as record number of trafficking cases dismissed," Reuters, January 28, 2020, <https://www.reuters.com/article/us-thailand-trafficking-migrants-exclusi/exclusive-thailand-police-under-scrutiny-as-record-number-of-trafficking-cases-dismissed-idUSKBN1ZR03Y>.

²² Nanchanok Wongsamuth, "Migrants mistakenly held in Thai trafficking shelters: rights groups," Reuters, August 7, 2019, <https://www.reuters.com/article/us-thailand-trafficking-migrants/migrants-mistakenly-held-in-thai-trafficking-shelters-rights-groups-idUSKCN1UW1ZP>.

rights implications too, as smuggled migrants, who intended to migrate for work in another country, are being detained and placed in human trafficking shelters and face movement restrictions.²³

Case 4: Misidentification of smuggled migrants as trafficking victims, 2019

In 2019, a group of 100 migrant workers from Myanmar were identified as trafficking victims by Thai police and the case was transferred to a public prosecutor. The Thai Ministry of Social Development and Human Security (MSDHS) coordinated with the Myanmar Department of Rehabilitation, Ministry of Social Welfare, Relief and Resettlement (MSWRS) to arrange for the safe repatriation of the 100 workers. Subsequently, it was determined that the migrants were not trafficked, but were being smuggled to Malaysia for work via Thailand. The public prosecutor dropped the case. Despite the Thai government having informed the Myanmar government that the 100 migrant workers would be repatriated with legal protections, only two were repatriated. For the remaining workers, their immigration status was changed to illegal migrants and they were placed in detention centers and deported in December 2019.²⁴

Case 5: Trafficking of a Thai fisherman and fear of authorities in Songkhla, 2019

In May 2019, a Thai man jumped out of a second-floor window of a Karaoke bar in Songkhla province, and contacted a local CSO, who transferred the case to MSDHS. The worker was from Northeastern Thailand and had worked for the same boat owner for many years and was in debt to him. The worker wanted to return home because he was over 50 years old and did not wish to work anymore. He asked the employer for permission to leave the job and was initially given permission and then the employer locked him in a Karaoke bar. The worker overheard a conversation between the bar owner and employer that they would sell him to another fishing boat, which is when he walked up to the second floor and jumped out of the window, injuring his knee, and then went to a doctor. While this appears to be a case of human trafficking, the worker decided not to pursue the case because he did not want to go through the screening process with the police officers present. According to our sources, the CSO attempted to persuade the worker to participate in the legal process, but the worker remained afraid of the employer and authorities and declined.²⁵

Case 6: Impunity for human trafficking in southern Thai provinces, 2019

According to an interview conducted, there are particular challenges in addressing human trafficking of fishermen in Thailand's southernmost provinces, particularly Pattani. This is due to different administrative laws, pervasive corruption, influential fishing boat owners, as well as the complexity of fishing practices. As fishing regulations have tightened in Thailand, some boat owners have reflagged their vessels to Malaysia to avoid scrutiny. In some cases, these vessels transport workers across the Narathiwat water channel, fish in Malaysian waters, and bring back the catch to Thailand. Fishers labor under particularly threatening and oppressive conditions in these areas because of the lack of rule of law and an awareness that boat owners are influential people and all cases will be dropped. Many Cambodian and Myanmar migrants work illegally on Malaysian flagged vessels and have no legal protection under Malaysian or Thai law. Workers obtain tourists visas in Thailand, which sources explain is a joint

²³ Thailand does not have a migrant smuggling law but does lay out penalties and prison sentences for individuals who illegally recruit foreigners to work in Thailand under the Royal Ordinance Concerning the Management of Foreign Workers' Employment 2017/2018. Such penalties are not as severe as those under the Anti-Human Trafficking in Persons Act (2008).

²⁴ Information provided to ILRF by a Thai labor lawyer on January 28, 2020.

²⁵ Information provided to ILRF by a Thailand-based civil society organization on January 21, 2020.

decision by the workers and employers. In 2019, two migrant fishermen died from tuberculosis and kidney problems and their bodies were sent home to their families without any further reparations. In southern provinces such as Pattani, MSDHS officials and MDTs do not want to be responsible for identifying cases of human trafficking, as this would lead to the confiscation of assets of perpetrators (who are very powerful and influential people).²⁶

3.2. Failure of the Ministry of Labor to identify and protect exploited workers

This sub-section describes the failure of the Ministry of Labor to identify and protect exploited workers, including ineffective labor inspections and allowing employer retaliation against workers who report abuse (3.2.1); informal mediation of labor complaints resulting in inadequate remedy (3.2.2); and lack of cooperation with CSOs and service providers (3.2.3).

3.2.1. Ineffective labor inspections and employer retaliation against workers who report abuse

The Labor Protection Offices (LPOs) under the Department of Labor Protection and Welfare (DLPW) are responsible for conducting labor inspections; however, officers in some locations are known to abet employers in the exploitation of migrant workers and evade punishment. In Mae Sot, Tak province, an area with a high population of migrant workers from Myanmar,²⁷ local organizations report that factories may receive advance warning of DLPW labor inspections when a complaint is received, and interviews are conducted in factories, leaving interviewees to feel intimidated into providing false information as primed by employers. During labor investigations conducted by an independent organization, it was found that shadow receipts and accounting books are kept in garment factories with falsified information showing proper wages without deductions, which is presented as the legitimate accounts.²⁸ Similar problems are reported to occur during labor inspections in other labor sectors and geographies.²⁹

The six cases below show a pattern of rampant labor law violations in workplaces in the Mae Sot area as well as harassment, intimidation and retaliation against workers who try to organize and improve working conditions. These labor abuses are persistent despite labor inspections being conducted in these areas.³⁰

Case 7: Thai TNC Ltd – labor law violations and retaliation against workers, 2018-2019

In a South Korean-owned electronics factory in Mae Sot, migrant workers were paid well below the minimum wage, receiving 100 to 250 Baht (\$3 to \$8 USD) per day when the minimum wage for the

²⁶ Information provided to ILRF by a Thailand-based civil society organization on January 21, 2020.

²⁷ Mae Sot is a district in Tak province on the border with Myanmar and is part of a Special Economic Zone. There are 430 registered factories in Mae Sot (40% of which produce garments and textiles), which employ about 44,500 workers according to government data; see "Thai factory probed by Starbucks," Reuters, September 5, 2019, <https://www.bangkokpost.com/thailand/general/1743539/thai-garment-factory-investigated-by-starbucks-after-illegal-wages-expose?fbclid=IwAR24D2206DSQaCoPJ--ZoV-aK8vI9G7opW8W4rmMYmJNkN6IEkrffiHE228>.

²⁸ Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.
²⁹ "Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry," Human Rights Watch, 2018, pp. 104-109, <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry>.

²⁹ "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>.

³⁰ The Tak province Labor Protection Office said it aimed to inspect 260 factories in 2019 and so far about 50 owners have been ordered to comply with labor laws or risk fines as high as 20,000 baht and/or up to a year in prison. Since 2016, the office has filed 26 lawsuits against companies over issues from not paying the minimum wage to compensating fired workers. "Thai factory probed by Starbucks," Reuters, September 5, 2019, <https://www.bangkokpost.com/thailand/general/1743539/thai-garment-factory-investigated-by-starbucks-after-illegal-wages-expose?fbclid=IwAR24D2206DSQaCoPJ--ZoV-aK8vI9G7opW8W4rmMYmJNkN6IEkrffiHE228>.

province is 310 (\$10 USD) per day; worked overtime with insufficient pay; worked seven days per week and during national holidays without additional pay; did not get paid sick leave; and some female workers were dismissed when they became pregnant. The company-provided accommodation provisions were small, overcrowded, and poorly ventilated. The food was of poor quality, unclean, and inadequate amounts were served. Each month employees had 1,000 Baht (\$32 USD) deducted from their wages for accommodation and 1,300 Baht (\$41 USD) deducted for food without being informed in advance. Contrary to the initial agreement, workers' wages were deducted for work permits and other fees.

In September 2018, 464 workers (219 men, 245 women) filed a complaint for better employment conditions, including electing seven workers to negotiate their demands with the employer.³¹ The employer stalled, and the Labor Dispute Resolution and Conciliation Department staff were called upon. An agreement was made in mid-Oct 2018, but the company retaliated against workers who signed the petition. Those workers were not allowed to work overtime; they were moved to different departments; and some of the production materials were also moved to another factory located in a different area which paid sub-par wages. As a result, there was less work at the main factory and workers suffered financially.

Unhappy with the situation, 236 employees filed a complaint at the Mae Sot Labor Protection Office in March 2019 to claim their unpaid wages, overtime pay, and holiday pay retroactively over the past two years, demanding 43,000,000 Baht (\$1.4 million USD). In June 2019, the Labor Protection Office issued an order recognizing the workers' claims and ordered the employer to pay 3,496,298 Baht (\$111,910 USD). On September 30, 2019, employees and employers negotiated at the factory but could not agree because the employer proposed to pay workers 2 million Baht out of the 43 million the employees had claimed.

On September 30, 2019, CSO staff were threatened during an outreach visit to workers at the TG Group factory, which was sub-contracted by TNC. The person was previously a military officer and said he was affiliated with the company's owners. He shot a gun threatening one of the CSO's staff. On October 24, a complaint was lodged with the Dhamrongdham Center, a public grievance mechanism operated by the Ministry of Interior. The charge was "the organization exercised influence to provoke and incite alien workers of Myanmar nationality, to drive a wedge and to coerce for wage rise, inflicting grievance among factory owners." The CSO provided testimony, as was required procedurally, but there were no consequences as it was a spurious claim.³²

Case 8: Yong Hern Co. Ltd – labor law violations and retaliation against workers at a garment factory, 2019

In a garment factory in Mae Sot, workers were paid 180 Baht (\$6 USD) per day, well below the minimum wage. In July 2019, the employer installed a fingerprint machine and required workers to scan their hands before 8:00 a.m., at 12:00 p.m., 1:00 p.m., 5:00 p.m., 5:30 p.m., and 9:00 p.m. The company did not comply with many legal standards with regard to rest days, leave, wages, overtime pay, pay for public holidays, working conditions, safety equipment, and other issues. The 46 workers decided to file a complaint to change the conditions of employment; however, the company asked them to negotiate first. The company agreed with all demands during the negotiations but retaliated against the workers afterwards.

³¹ While migrant workers are not permitted to form unions, they are permitted to submit a demand to negotiate for better employment conditions under the Labor Relations Act (1975), Section 13.

³² Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.

The workers were not allowed to come to work, or their workload was reduced or changed daily, and they were made to collect rubbish in the factory. Finally, the company dismissed five worker representatives, in some cases, by allowing their border passes to expire (under Section 64 of the Foreign Workers Ordinance). The workers decided to file a complaint with the Mae Sot Labor Protection Office to claim compensation for unfair dismissal, dismissal without notice, unpaid wages, overtime pay, and pay for public holidays and rest days retrospectively for two years.³³

Case 9: PA Limited Partnership Mae Sot – labor rights complaint and garment factory closure, 2019

In a garment factory in Mae Sot, 115 workers (31 men, 84 women) submitted a demand to the employer to negotiate for better employment conditions. The employer closed down the factory in response. Workers filed a complaint to the Labor Protection Office for unpaid wages and compensation. The Labor Protection Office ordered the employer to pay workers 25 million Baht (\$800,205 USD), of that, 8 million Baht (\$256,065 USD) was paid in September 2018 by the ordering company. On February 28, 2019, the labor court declared that the owner of the PA Mae Sot Partnership was the employer (not the subcontracting agent) and must take responsibility to pay for the 17,352,893 Baht ordered by the Labor Protection Office within 15 to 30 days. The money was not paid. Legal proceedings have taken place and the land and factory have been seized and will be put up for auction. The proceeds should be used to compensate the workers.³⁴

Case 10: King Knitting Ltd – Unpaid wages and challenges with compensation, 2019

In this factory, workers were paid below the minimum wage and underpaid for overtime work. The employer confiscated their documents and deducted 500-800 Baht (\$16-25 USD) from workers' salaries as compensation for the costs of their work permits and border pass registrations. Between January and May 2019, the company did not have as much work for employees to do, and workers only received around 2,000 Baht (\$64 USD) per month. On June 1, 2019, a total of 37 workers (19 men, 18 women) submitted a complaint to the Mae Sot Labor Protection Office for two years of unpaid back wages. On June 2, the employer proposed to pay one and a half months' wages in compensation, to which the workers did not agree. On June 9, the employer and workers negotiated, and the workers agreed to receive two months and 15 days' worth of compensation (23,250 Baht, or \$744 USD, per person) for a total of 860,250 Baht (\$27,535 USD) for 37 people.³⁵

Case 11: Abec Ltd – Labor law violations and intimidation, 2019

In this factory, the employer did not pay adequate wages or overtime or give days off. On January 27, 2019, a CSO met with 51 workers (16 men, 35 women), who signed documents to submit a complaint to the employer for better working conditions and chose representatives for negotiation. On February 1, 2019, the owner of the factory went to the CSO's office with soldiers to announce that they did not want the workers to file a claim but wanted to negotiate first. On February 25, the company laid off five workers under a false pretense. An appointment was made at the Labor Protection Office for April 1 for the employers and workers' representatives to negotiate wages. On April 26, the company agreed to increase workers' wages by 30 Baht (\$1 USD) from the current wage of 130-170 Baht (\$4-5 USD) per day, but workers were not satisfied with such a small increase. During the month of May 2019, there were more

³³ Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.

³⁴ Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.

³⁵ Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.

negotiations, but no agreement was reached. Workers decided to file a claim at the Mae Sot Labor Protection Office for unpaid wages over the last two years. On August 15, 2019, five workers who had been dismissed received 27,900 Baht (\$893 USD) each. The remaining workers continue to work in the factory, and are now paid the minimum wage.³⁶

Case 12: Rosso Ltd – Labor law violations and retaliation, 2019

At an undergarment factory in Mae Sot, workers complained of labor law violations in terms of proper payment of wages, overtime, days off and other issues. On March 1, 2019, the 186 workers (80 men, 106 women) elected seven worker representatives and submitted a claim to the company to improve the employment conditions. The employer did not respond within three days as stated by law. The workers' representatives filed a claim at the Mae Sot Labor Protection Office on March 4. The company retaliated and laid off nine worker representatives by not renewing their contracts after three months (they had been employed under Section 64 of the Foreign Workers Ordinance). On September 23, 2019, five worker representatives filed a complaint for unfair dismissal to the Labor Relations Committee, asking that the workers be reinstated in the same positions and with the same wages, and to compensate the workers for unemployment until they start working again, as well as compensations for unfair dismissal.³⁷

3.2.2. Informal mediation of potential forced labor cases

Government authorities regularly encourage informal mediation of labor disputes, which may prevent the proper identification of forced labor cases. As explained above, the DLPW, under the Ministry of Labor, is responsible for labor inspections in most workplaces in the country. In the fishing sector, DLPW undertakes labor inspections at port through the 31 Port-in Port-Out (PIPO) Centers in 22 coastal provinces. It is common for DLPW to recommend informal mediation of labor law violations between workers and employers, even when violations that are indicators of forced labor or human trafficking are reported, including withholding of identity documents, withholding of wages, or movement restrictions. Encouraging a victim of a crime to mediate with their abuser goes against standards of practice. These practices are also contrary to the Thai Labor Protection Act (1998), under which labor law violations should be officially registered and processed in labor courts. While informal mediation of labor disputes is reported to be common practice throughout the country in migrant-dominated sectors such as fishing and seafood processing, as well as among underage workers in agriculture and service work in Chiang Mai and Mae Sot,³⁸ it is not appropriate for forced labor victims.

When labor specialists have questioned inspectors regarding these practices, they explain that the workers prefer informal mediation or that the children will just return to the employers as they need work.³⁹ Yet, even when a worker does bring a case to a labor court, they are typically encouraged to mediate with their employer and often end up accepting an out-of-court settlement which is lower than what victims expect or to which they may be entitled.⁴⁰

³⁶ Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.

³⁷ Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.

³⁸ Information provided to ILRF by a Thai labor lawyer on January 28, 2020.

³⁹ Information provided to ILRF by a Thai labor lawyer on January 28, 2020.

⁴⁰ David Rousseau, *Labor Abuse Complaint Mechanisms in Thailand: Research Report*, USAID Thailand Counter Trafficking in Persons, Winrock International, forthcoming publication in 2020.

3.2.3. Lack of cooperation between government agencies and Civil Society Organizations (CSOs)

CSOs consistently report that government agencies do not properly handle the intake of labor complaints and do not effectively cooperate with CSOs or other government agencies. When CSOs report a case to one government department, the authorities will often explain that it is not their mandate to handle the case and will fail to transfer it to the proper authority. This is even the case within Ministry of Labor departments. For example, if a worker or CSO brings a case regarding overcharges for a worker's document fees to DLPW, they will typically inform the claimant that handling such cases is not within their mandate and that the claimant should report the issue to the Department of Employment (DOE) themselves.⁴¹ This is discouraging for workers, particularly migrant workers, who have already suffered abuse and may fear their employer and/or government authorities. This problem has also been raised with regard to DLPW-led labor inspections. When DLPW labor inspectors identify issues relating to sub-contracting of workers (or other issues covered under the Foreign Workers Ordinance), they do not record it. Another issue is that, since DOE has no remit to conduct regular labor inspections, abuses of foreign workers related to document and certain contract issues may not be detected through official channels.⁴²

3.3. Strategic Lawsuits Against Public Participation (SLAPPs) against labor rights defenders

In 2019 and 2020, the Thai government and companies continued to use SLAPPs to intimidate and silence trade unionists, workers, and other labor rights defenders. SLAPPs pose a serious obstacle to protecting against human trafficking as they have had a chilling effect on those wishing to report labor rights abuses due to fears of reprisals.⁴³

Under Thai law, defamation is both a criminal and civil offense. Sections of Thailand's Criminal Code, the Computer Crime Act, and the Civil and Commercial Code have been the main laws used against workers and other labor rights defenders for bringing light to labor rights problems.⁴⁴ Criminal defamation suits threaten freedom of expression rights as they lead to people being imprisoned for their speech.⁴⁵ Contrary to international standards, Thai law does not prohibit public bodies either in the legislative, executive, or judicial branches from initiating defamation cases.⁴⁶ Criminal defamation suits are commonly used as a form of legal harassment due to several factors: relatively low court fees to file a case; the claimant is allowed to file charges at different localities where the impugned statements have been published, making cases more threatening; and the claimant can use police and state prosecutors

⁴¹ Information provided to ILRF by multiple organizations and service providers in January and February 2020.

⁴² Information provided to ILRF by a Thailand-based civil society organization on January 17, 2020.

⁴³ SLAPPs have been used increasingly to block the exercise of the right of freedom of expression of the people since the coup d'état in 2014; see "Recommendations on the Protection of Those who Exercise Their Rights and Freedoms from Strategic Lawsuits Against Public Participations," Human Rights Lawyers Association, October 2019, <https://www.business-humanrights.org/en/thailand-recommendations-to-protect-defenders-from-strategic-lawsuits-against-public-participation>.

⁴⁴ For a list of these laws, see "FACT SHEET: Thammakaset vs. human rights defenders and workers in Thailand," The Observatory for the Protection of Human Rights Defenders, May 2019, pp. 12-13, <https://www.fidh.org/IMG/pdf/obsthailande2019web.pdf>; see also ICJ and TLHR, Joint Submission to the UN Human Rights Committee in advance of the Committee's examination of Thailand's second periodic report under Article 40 of the Covenant, 6 February 2017, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26602_E.pdf.

⁴⁵ Internationally, there has been strong condemnation of criminal defamation laws as a result of the very negative impact they have on freedom of expression. A growing number of countries around the world have decriminalized defamation, while international human rights bodies and authorities, such as the UN Special Rapporteur on Freedom of Opinion and Expression, have been increasingly vocal about the dangers of criminal defamation law.

⁴⁶ "Impact of Defamation Law on Freedom of Expression in Thailand," Article 19 and The National Press Council of Thailand, July 2009, p. 3, <https://www.article19.org/data/files/pdfs/analysis/thailand-impact-of-defamation-law-on-freedom-of-expression.pdf>.

for pursuing defamation cases in court, relieving them of the burden of spending their own money to pursue a case.⁴⁷

The Thai government has made some efforts to put anti-SLAPP policies and laws into place. On March 17, 2019, Article 161/1 of the Criminal Procedure Code went into force, which gives courts the right to dismiss cases where private complainants have filed lawsuits in “[...]bad faith or distorted facts in order to harass or take undue advantage of a defendant, or to procure any advantage to which the complainant is not rightfully entitled[...]” However, this legislation has not yet been used and there are several weaknesses with it, including lack of clarity around the definition of “bad faith”, lack of application to civil suits, and other issues.⁴⁸ In addition, Thailand released its first National Plan of Action on Business and Human Rights in December 2019, which includes an “Action Plan for Human Rights Defenders.”⁴⁹ Despite such reforms, in 2019 and 2020, SLAPPs continue, new civil and criminal cases were initiated, and one person was found guilty of criminal libel.

Case 13: Criminal charges against State Railway Union of Thailand (SRUT), 2019

In October 2019, Thailand’s National Anti-Corruption Commission (NACC) announced that it would begin to investigate 22 State Railway Union of Thailand (SRUT) leaders (active and retired) for allegedly “abandoning the duties or acting in any manner that causes work stoppage or damage, which constitute criminal offenses” during a health and safety initiative they organized in 2009. If found guilty, they could face fines and prison sentences up to five years.⁵⁰ Such charges amount to judicial harassment and a clear breach of the principles of freedom of association, especially since the NACC’s mandate is to investigate corruption among high-level political figures – not trade union members and leaders or even civil servants.

The SRUT organized a health and safety initiative following a deadly train derailment on October 5, 2009, calling on the State Railway of Thailand (SRT) to address outdated and broken safety equipment that had led to that and previous derailments and deaths. SRT terminated the employment of six trade union leaders, which was upheld in Thai courts in 2011, leading SRT to dismiss seven additional SRUT leaders. The Supreme Court handed down a verdict that seven of the employees are liable to compensate the financial damage to the SRT and ordered them to pay 15 million baht plus 7.5 percent annual interest.⁵¹ As of early 2020, the salary and retirement benefits of the seven SRUT leaders and members continue to be garnished and the court hearings for the new criminal charges initiated in October 2019 were also ongoing.⁵² This and cases involving anti-union discrimination and retaliation serve to frighten and intimidate other workers and potential organizers.⁵³

⁴⁷ Ibid., pp. 6-7.

⁴⁸ For an overview of this and other anti-SLAPP legislation, see Letter to the Ministry of Justice, ICJ, March 15, 2019, pp. 3-5, <https://www.icj.org/wp-content/uploads/2019/03/Thailand-SLAPP-Analysis-Advocacy-Analysis-brief-2019-ENG.pdf>.

⁴⁹ “1st National Action Plan on Business and Human Rights (2019-2022), Rights and Liberties Protection Department, Ministry of Justice, pp. 102-108, <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/nap-thailand-en.pdf>

⁵⁰ Criminal Code, Section 166, <http://library.siam-legal.com/thai-law/criminal-code-maleficance-in-office-sections-158-166/>.

⁵¹ The case was submitted to the ILO Committee on Freedom of Association, which can be read here:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3173680.

⁵² State Enterprise Workers’ Relations Confederation (SERC), “SRUT Factsheet,” available in PDF format upon request; see also Prachatai, “Four international unions confederations call on Thai government to address labour violations,” December 2, 2019, <https://prachatai.com/english/node/8290>.

⁵³ For all complaints on Thailand submitted to the ILO Committee on Freedom of Association, see <https://www.ilo.org/dyn/normlex/en/f?p=1000:20030::FIND:NO::>

Case 14: Thammakaset Farms defamation cases, 2016-2020

Since 2016, Thammakaset Co. Ltd, a poultry farm in Lopburi province has used criminal defamation laws to intimidate and silence workers and other labor rights defenders who exposed labor rights issues at its poultry farm. Thammakaset Farms owner, Mr. Chanchai Pheamphon, has filed complaints with the police, the Criminal Court, and the Civil Court against at least 22 individuals in 14 cases – including the abused workers, human rights defenders, and two reporters – for alleged defamation of the company.⁵⁴ On December 6, 2019, Thammakaset filed a complaint against Ms. Puttanee Kangkun, a human rights specialist working for Fortify Rights, for 14 social media engagements expressing support for labor rights defenders involved in shedding light on the case. According to the 14 actions, Puttanee faces up to 28 years' imprisonment and/or 2.8 million Thai Baht (US\$ 93,300) in fines for alleged violations under Thailand Criminal Code sections 326 and 328.⁵⁵ On December 24, 2019, Thai courts sentenced a TV journalist, Ms. Suchanee Cloitre, to two years in prison for criminal libel for comments she tweeted on the Thammakaset case. She was released on bail after sentencing and will appeal the verdict.⁵⁶

3.4. Inadequate victims' services and re-victimization

Local organizations assisting victims in government shelters explain that victims are not provided with adequate mental health care or other services at shelters. Victims are not provided with one-on-one counseling by trained psychologists, but rather receive counseling in a group setting with NGO staff or social workers.⁵⁷ Official procedures for the safe repatriation of trafficked persons are rarely followed and the shelters serve only as platforms for workers to be repatriated. Government authorities will confirm when the victim reaches their home country/destination, but additional assistance by the Thai or victims' government is rarely provided. Trafficking victims are not provided with mental health care or other assistance once they arrive home to fully address issues of trauma or the reasons they were trafficked in the first place. It is common that trafficked people will be re-victimized because of this lack of reintegration services for victims. Reintegration assistance, with a view to empowering victims in their State of origin, should be an integral part of repatriation. It can help address the root causes of trafficking and avoid potential re-victimization. There is also no assistance for trafficking victims who need to work and see returning to Thailand as their only viable option, increasing the likelihood that they will be exploited by traffickers again.⁵⁸

4. Prevention

This section describes gaps in governmental measures to prevent human trafficking, including ongoing issues with recruitment fees, document withholding, and contract issues that put workers at risk. It also describes ongoing labor rights abuse and exploitation of migrants, particularly in the garment and fishing sectors, as well as restrictions on rights to freedom of association and collective bargaining, which silence workers and prevent them from addressing labor abuse issues themselves.

⁵⁴ For summaries of all cases except the recent charges against human rights specialist, Puttanee Kangkun, see "FACT SHEET: Thammakaset vs. human rights defenders and workers in Thailand," The Observatory for the Protection of Human Rights Defenders, May 2019, <https://www.fidh.org/IMG/pdf/obsthailande2019web.pdf>.

⁵⁵ Fortify Rights, "Thailand: Drop Criminal Complaint Against Fortify Rights Senior Human Rights Specialist Puttanee Kangkun," January 29, 2020, <https://mailchi.mp/fortifyrights/thailand-drop-criminal-complaint-against-fortify-rights-senior-human-rights-specialist-puttanee-kangkun?e=90f2f8ff40>.

⁵⁶ Associated Press, "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>.

⁵⁷ Information provided to ILRF by a Thailand-based civil society organization on January 17, 2020.

⁵⁸ Information provided to ILRF by a Thailand-based civil society organization on January 17, 2020.

4.1. Recruitment, documentation, and contract issues

The Royal Ordinance Concerning the Management of Foreign Workers, B.E. 2560 (2017) and the 2018 amendment (hereafter referred to as “Foreign Workers Ordinance”) lay out the rules governing how foreigners can legally enter Thailand to work. The Ordinance was issued to reduce irregular employment of migrants and prevent violations of basic labor rights, including human trafficking.⁵⁹ As of October 2019, there were a total of 2,987,729 migrant workers from Myanmar, Cambodia, and Laos registered to work legally in Thailand under four main avenues: 1) “the MOU system”: recruited from their country of origin through a bilateral Memorandum of Understanding (MOU) on labor migration between their country and Thailand (995,300 persons registered); 2) for those who entered irregularly/informally, through a process of nationality verification they can be issued a work permit in Thailand (729,853 persons); 3) clemency for current workers to continue employment (1,187,803 persons); 4) workers registered under Section 83 of the Fisheries Decree (12,040 persons); and 5) seasonal/temporary workers (62,733 persons).⁶⁰

The Foreign Workers Ordinance led 1.7 million migrant workers to be registered to work between July 2017 and October 2019. However, it is estimated that between 1 to 2.5 million additional migrants – including those who entered the country irregularly or those who were working legally but fell out of the system – are working unregistered due to several reasons,⁶¹ including the complexity of the legal channels, to avoid high recruitment costs that often put them in debt,⁶² and the perception that the legal recruitment channels will not afford them better or safer jobs,⁶³ among other factors.

4.1.1. Recruitment fees and wage deductions

Despite earlier policies prohibiting recruitment fees, the Foreign Workers Ordinance allows for recruitment and related fees to be borne by foreign workers. The policy prohibits an employer from requesting or accepting money or other assets related to migrant workers’ recruitment, *except* if the expenses were paid by the employer beforehand. This includes fees for things like the issuance of a passport, work permit, health check-up, or other fees. The employer is permitted to deduct up to 10% of the worker’s monthly wage for these fees. This also applies to traveling expenses for the employee from their country of origin; if the travel expenses have been paid beforehand without a specific agreement that the employer would pay, the employer may also deduct those costs from the worker’s wages.⁶⁴ This is contrary to ILO guidelines, which make clear that all recruitment fees and related costs, including all

⁵⁹ “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://mwigthailand.wordpress.com/testimonial/885/>.

⁶⁰ “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, https://www.doe.go.th/prd/assets/upload/files/alien_th/57eb135053d1d4815301012994bc5879.pdf.

⁶¹ See an overview of the migration context in Thailand by the International Organization for Migration, here: <https://thailand.iom.int/migration-context>.

⁶² *Ibid.*

⁶³ *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.

⁶⁴ As per the Royal Ordinance Concerning the Management of Foreign Workers’ Employment (No. 2), B.E. 2561 (2018), Section 24: “An employer who brings a foreigner to work with him or her in the country shall not request or accept money or other assets relating to bring a foreigner to work except if it is for the expenses paid by the employer beforehand, such as, passport fee, health checkup fee, work permit fee, or other fees... The employer shall deduct from the wage, overtime wage for working days off or overtime during day off, and the employer shall deduct from the money the foreigner has the right to receive under the actual paid expense but shall not deduct more than ten percent of the money the foreigner has the right to receive each month... In the case where there is no arrangement that the employer will be paying for the traveling expense of the employee and the employer has paid for such travelling expense beforehand, the employer may deduct the money the employee has the right to receive...”

of the above mentioned fees, should be borne by the employer to prevent migrant workers from becoming vulnerable to debt bondage and other forms of exploitation.⁶⁵ Furthermore, as the Thai government has announced that the policy prohibits recruitment fees, it has led to confusion among migrant workers about their rights and legal responsibility for fees.

As mentioned earlier, there is a lack of clarity on which government agency is responsible for investigating and monitoring the wage deductions permissible under law. The Department of Employment (DOE) is responsible for handling these issues; however, it is the Department of Labor Protection and Welfare (DLPW) that undertakes labor inspections and does not regularly transfer such cases to DOE.⁶⁶

Actual costs:

For workers recruited under the MOU system, common charges amount to approximately 21,785 Baht (\$700 USD), although the legal fees only amount to approximately 6,224 Baht (\$200 USD).⁶⁷ Workers who undertake the nationality verification process should pay about 6,700 Baht (\$214 USD) for visas, work permits, and health checks; however, workers report paying between 3,000 (\$96 USD) and 30,000 Baht (\$958 USD).⁶⁸ It is not clear to workers which process will be more expensive; however, on the whole, the verification process is more likely to result in workers paying only a moderate amount.⁶⁹ These are very large sums of money for Southeast Asian migrant workers and require them to go into debt both to recruiters and employers. As a reference point, fishers are paid about 10,000 Baht (\$322 USD) per month before wage deductions, which could (legally) be up to 10% of the workers' monthly wage. In addition, workers recruited from abroad are permitted to work for two years and extending their contracts for another two years means additional costs; in some cases, employers ask workers to pay all the fees up to four months in advance of contract extension.⁷⁰

The registration costs and bureaucratic processes are serious obstacles for workers and employers. Employers do not want to take on the burden of lengthy registration processes and turn to middlemen. Migrant workers face mounting debts with no guarantee that the terms of repayment will be transparent or fair.

Wage deductions for fishermen

Local sources explain that there are additional wage deductions for fishermen because of the nature of their work. Some boat owners will cooperate with local brokers (from Myanmar) and rely on them to make arrangements for workers when they are onshore, including providing accommodation and recreational activities. The arrangements between the employers and brokers are unclear and, in practice, the agents deduct housing costs from wages and sell various items to the workers, with the

⁶⁵ "General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs," ILO, May 22, 2019, https://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm.

⁶⁶ Information provided to ILRF by a Thailand-based civil society organization on January 17, 2020.

⁶⁷ For example, Myanmar recruitment agencies are permitted to charge 150,000 Kyat (\$103 USD) for services, including providing the workers' passport and other documents. In Thailand, the legal costs include 500 Thai Baht (\$16 USD) for visa and 500 Baht for health checkup, and 1,900 Baht (\$61 USD) for the work permit, as well as transportation fees both within the country of origin and as well as to and within Thailand.

⁶⁸ Thomson Reuters Foundation, "Slavery fears rise for migrant workers," Bangkok Post, August 30, 2019, <https://www.bangkokpost.com/thailand/general/1739551/new-rules-new-debts-slavery-fears-rise-for-migrant-workers-in-thailand>.

⁶⁹ Cavan Blau, Independent Research Consultant, "The Conditions of Khmer Labor Migration to Thailand," March 2019 draft.

⁷⁰ Information provided to ILRF by a Thailand-based civil society organization on January 15, 2020.

worker accumulating additional debt. One local source witnessed fishers' housing, visiting one building contracted by boat owners and rented out to brokers to provide to workers. The rooms were about 4x2 meters and cost 2,500 Baht (\$79 USD) per/month per room (about 25% of a fishers' monthly wage).⁷¹

The result is that the majority of migrant workers are in debt, making them vulnerable to forced labor in a myriad of ways. As explained by one researcher who carried out in-depth studies with Cambodian migrant workers in Thailand in 2019:

“It [debt] acts as a disciplinary measure, forcing workers to think in terms of risk and reward and to thus tolerate a degree of unfavorable work conditions. Indebted workers do not want to risk losing their jobs and are fearful of bargaining with their employer in relation to work issues. Workers get their wages garnished, up to several thousands of baht per month, but even still, many face repayment periods lasting several years or even their entire allowable working period in Thailand. Many workers do not receive any statement of account on their debts and must simply rely on their employers' calculations, unaware if this is being done fairly or if extra payments and “interest” are being imposed. It is currently legal for employers to recoup money from workers' wages paid for migration documents and the practice is widespread...

Overall, the most striking aspect of migrant worker indebtedness is that it normalizes a whole range of direct and indirect practices of unfree labor. Debt situations are exploitative to varying degrees, but many situations overlap with categories of debt bondage, forced labor and human trafficking. The overall effect is that workers come to accept such practices as different only by degree, so serious cases of unfree labor can appear to workers as being within the norms of general migrant labor conditions.”⁷²

4.1.2. Inability to change employer

Until recent policy developments, the work permits issued to foreigners were strictly tied to one employer.⁷³ This lack of flexibility often resulted in migrant workers becoming irregular in the act of changing workplaces. The Foreign Workers Ordinance affords migrant workers a greater opportunity to change their employment, though still only under certain conditions and in practice it has been nearly impossible to rely on these provisions to leave undesirable or even abusive jobs.

Migrant workers face serious challenges changing employers:

1. Exercising this right relies upon obtaining permission from the Registrar, which may be a difficult process for migrant workers to complete. Workers then need to find a new employer. After that they must have their current employer submit a resignation notification and have their new employer register their employment all within 30 days.⁷⁴

⁷¹ Information provided to ILRF by a Thailand-based civil society organization on January 15, 2020.

⁷² Cavan Blau, Independent Research Consultant, “The Conditions of Khmer Labor Migration to Thailand,” March 2019 draft.

⁷³ Section 70 of the Royal Ordinance on the Management of Foreign Workers' Employment B.E. 2560 (2017), which required the work permits of foreign workers to be tied to a specific employer, was repealed in March 2018.

⁷⁴ Royal Ordinance on the Management of Foreign Workers' Employment (No. 2) B.E. 2561 (2018), Section 12: “any person who employs a foreigner shall inform the Registrar the name and nationality of such foreigner and the characteristics of the work within fifteen days from the day of employment and when such foreigner resigns from work, the Register shall be informed within fifteen days as from the day such foreigner has resigned including specifying the reasons for such resignation of the foreigner.” However, there is confusion among migrant workers and local organizations regarding how long workers have in practice to change employers.

2. According to the policy, workers can change employers in cases where certain conditions are in place, which are referred to as “5+1”. First, one of these conditions must be present: (1) physical abuse of the worker, (2) employer dishonors the work contract or violates the Labor Protection Act (1998), (3) work environment that is potentially harmful to the life, physical, mental health and sanitation of the employee, (4) worker’s contract is terminated without a proper reason, or (5) in the case of employer’s death or bankruptcy. In addition (the +1), the MOU fee must be repaid to the former employer by either the new employer or the worker.⁷⁵ These five permissible reasons for changing employer can be difficult for migrant workers to verify or prove. Migrant workers will not have specific details or proof of the bankruptcy of an employer. They will often not know if the Labor Protection Act has been violated. If they do not maintain a written copy of their contract as is very common, they will not know if the terms have been violated. In cases of abuse or exploitation in the workplace, workers may be reluctant to approach authorities. It is also unclear how much migrant workers know about their rights and how to assert them in these cases.

Even if one or more of the above five conditions are met, it can be very difficult to change jobs as most migrant workers are in financial debt to their employer due to the nature of the recruitment process. The worker may not be able to repay the recruitment fees to their current employer, and the new employer may be unwilling to accept the damages, or actual recruitment costs incurred by the previous employer.

If the migrant worker is unable to do any of the above, then they must return to their country of origin and start the lengthy and expensive recruitment process again, thus incentivizing workers to “fall out” of the legal system and work informally in order to remain in the country.

Lastly, it is not possible for workers to change their jobs when the working conditions are poor or undesirable yet do not amount to violations of the Labor Protection Act. A local worker organization explained that many migrant workers from Myanmar are not fully informed or prepared for the reality of the working conditions in seafood processing factories. Even though some information is provided during pre-departure trainings, workers struggle in the positions due to exposure to very cold temperatures and touching frozen seafood items, standing all day on the factory floors, and exposure to smells both from fish and chemicals.⁷⁶ With the combination of debt, they have no way to leave these two-year contracts.

4.1.3. Document and ATM card withholding

Provisions in the Foreign Workers Ordinance were intended to prohibit document retention – as this practice is associated with movement restrictions and controlling working and living situations – yet fails to do so in practice. Section 62 states: “[...] any person who confiscates a work permit or identification card of a foreigner shall be liable to imprisonment for a term not exceeding six months or a fine of ten thousand Baht to one hundred thousand Baht or to both. ...in the case where a foreigner agrees to have any person keep the work permit or document, such person must agree and facilitate the foreigner to access such document at all times as requested by the foreigner [...]”⁷⁷

⁷⁵ Ministry of Labor directive to employers.

⁷⁶ Information provided to ILRF by a Thailand-based civil society organization on January 15, 2020.

⁷⁷ Royal Ordinance Concerning the Management of Foreign Workers’ Employment (No. 2), B.E. 2561 (2018), Section 62.

As local informants explain, the second clause provides a loophole because of power imbalances between workers and employers. Migrant workers are unable to prove if they did or did not agree to allow the employer to maintain their documents, and in most cases migrant workers would be fearful to report this problem to authorities. Employers in Thailand commonly hold the view that if they do not maintain the workers' documents, they will run away, which can be an indicator that the employee is not voluntarily working. According to our sources, in many cases, employers will provide the workers with their documents only in advance of labor inspections or after labor inspectors or service providers inform employers that the practice is illegal. This sometimes means the employer will give the worker their document for a certain period of time but confiscate it again. A 2019 study found that the majority of fishers interviewed indicated that their documents were kept by their employer.⁷⁸ This practice prevents workers from going anywhere and restricts their freedom of movement when they are on shore.⁷⁹ The Thai government has not produced data on the numbers of employers penalized under this provision, despite the widespread practice of document withholding in migrant-dominated industries.⁸⁰

In 2018, amendments to the Ministerial Regulation on Labor Protection in Sea Fishing Work B.E. 2557 mandated that fishers be paid on a monthly basis via a bank account to address issues such as withholding of salaries and illegal salary deductions. This has helped to ensure that worker payments are more regular and secure; however, in practice it has contributed to employers maintaining control over workers. One study conducted in 2019 among 703 migrants in the fishing and seafood processing sectors found that workers did not have control over their bank accounts: about 80% of those interviewed were accompanied by their employer to open an account and 20% had their bank account opened when they were not physically present.⁸¹ In addition, only 21% of fishers interviewed kept their ATM card and knew how to use it, and 53% did not have any control over their ATM card, needing to borrow it from their employer to use it. This is a strong indication that workers do not have full control over their pay, even though they have a bank account.⁸² Similar findings were reported in another 2019 study, which found that the majority (55%) of fishers interviewed had their ATM card held by their employer or captain.⁸³ This has implications on workers' ability to track what debt re-payments are made from their salary and therefore they may lose track of what they still owe. There are also limitations to this e-payment system for fishers who work in areas without a bank branch nearby, or for those with low levels of knowledge of digital financial services.⁸⁴

Fishing sector cases:

Case 15: Document holding, debt, and inability to change employer of a fisherman in Songkhla, 2019

A male migrant worker, Mr. Thong (alias) got a job on a fishing boat through a woman who claimed to be a recruitment agent. He worked on a long-haul fishing boat four times in 2019, each time for about 3

⁷⁸ "Tracking Progress: Assessing Business Responses to Forced Labour and Human Trafficking in the Thai Seafood Industry," Praxis Labs, 2019, p. 59, http://www.praxis-labs.com/uploads/2/9/7/0/29709145/09_hu_report_final.pdf.

⁷⁹ Information provided to ILRF by a Thailand-based civil society organization on January 15, 2020 and by a Thailand-based civil society organization on January 17, 2020.

⁸⁰ Information provided to ILRF by an NGO on January 21, 2020.

⁸¹ "Evaluation of the Electronic Payment system in the Thai Fishing Industry," Rapid Asia, September 2019, p. 9, https://humanityunited.org/wp-content/uploads/2019/11/FINAL-E-payment-study_2019.11.08.pdf.

⁸² *Ibid.*, pp. 9-10.

⁸³ "Tracking Progress: Assessing Business Responses to Forced Labour and Human Trafficking in the Thai Seafood Industry," Praxis Labs, 2019, p. 59, http://www.praxis-labs.com/uploads/2/9/7/0/29709145/09_hu_report_final.pdf.

⁸⁴ "Evaluation of the Electronic Payment system in the Thai Fishing Industry," Rapid Asia, September 2019, p. 8, https://humanityunited.org/wp-content/uploads/2019/11/FINAL-E-payment-study_2019.11.08.pdf.

months and 18 days with 4 docking periods. When on shore, Mr. Thong lived at accommodation provided by the agent, who also provided him with food and a spending allowance. His salary was paid directly from the employer to the agent and he did not know how much the agent had been paid in total. Unhappy with the job and the payment arrangement, he stopped working but continued to live at the accommodation. The agent pressured him to continue working. When he refused, she reported him to the police on the grounds that he was not in possession of identity documents, a violation under Thai law. When the police arrived to investigate, Mr. Thong informed them that the employer maintained his identity documents. After the police visit, Mr. Thong requested his documents from the agent but she informed him that he would have to repay the loan of 38,000 Baht (\$1,213 USD).

Mr. Thong made a complaint to the provincial Department of Labor Protection and Welfare office. The labor Inspector agreed to process the complaint but stated that they only had the authority to notify the employer of the allegations, not to investigate the agent; the latter would need to be reported to the police as a criminal case of fraud. The labor inspector gathered information and contacted the employer, who brought evidence of payments for the worker and claimed that the worker had withdrawn his wages from an ATM. The employer showed the debt/loan balance of the payments that Mrs. Wan received for the worker, as well as other document processing fees and unspecified service charges that the employer claims to have paid for the worker (see table below). The officials failed to recognize indebtedness as a means of coercion.

The employer claimed that the Mr. Thong's wages were deducted in the amount of 24,000 Baht (\$766 USD) and the debt remaining was 38,200 Baht, which he reduced to 38,000. The labor inspector did not take any action regarding the debt or wage withholding. The employer brought bank deposit slips as proof of payment into Mr. Thong's Thai bank account, however Mr. Thong did not have access to the bank book or ATM card, which was kept by the agent. Mr. Thong contacted a CSO to negotiate with the employer to reduce the debt and request that the employer complete the paperwork necessary for him to change employers. Mr. Thong even offered to repay 20,000 Baht (\$638 USD) of the debt and said that he would not report any criminal activity. The CSO contacted the Songkhla Provincial Office of Labour Protection and Welfare to notify them of the worker's request for assistance, and a labor inspector informed them that, according to the law, the office was unable to negotiate for the outstanding debt that arose between the employer and the employee, saying it was between the affected parties.⁸⁵

Case 16: Wage withholding and document fees of Myanmar fishermen in Songkhla, 2019

In interviews conducted, it was indicated that 28 cases of wage withholding of Myanmar fishers were documented in Songkhla province in 2019. Employers informed these workers that they would have to wait until they could sell their fishing boats to be paid their wages. Some employees did not change jobs in order to wait for their payments, while others left without receiving their outstanding wages to work on other fishing boats or in other countries. The PIPO labor inspectors, who inspected the ships and conducted crew interviews, did not successfully identify wage withholding as an issue, despite

⁸⁵ Case information provided to ILRF from a Thailand-based civil society organization via an NGO in February 2020.

undertaking employment contract and proof of payment inspections.⁸⁶ DLPW should advise employees about their rights to change employers and receive wages from former employers in such cases.⁸⁷

Case 17: Recruitment fee issues for fishermen recruited under the MOU system, 2019

In 2019, Myanmar workers were recruited to work in the fishing sector under a MOU signed between Thailand and Myanmar. Their employment contracts specified a minimum wage of 10,000 Baht/month (\$319 USD). The MOU document processing took approximately 45 days. To do this, the employers, in general, offered the workers an advance payment of 15,000 Baht/person (\$479 USD) for the document processing fee, and when the workers began the jobs, the employers would deduct the document processing fee from their monthly wages. In some cases, the workers were paid in cash or in partial payments, then the employer would make deductions for these fees as well for the documents in accordance with the Royal Ordinance on Foreign Workers. After the government made it possible for fishing sector workers to extend their work permits in 2019, employers collected document processing fees again. All types of wages deductions were determined by employers and made on their terms, regardless of provisions in the Royal Ordinance on Foreign Workers giving workers such rights. It was also found that the PIPO Center officials did not conduct any specific crew interviews regarding this practice of illegal money collection for document processing fees.⁸⁸

Case 18: Document retention and inability to change employers of a Myanmar fisher, 2019

Mr. Bak (alias), a Myanmar fisher on a trawler, wanted to change employers because he had not received wages regularly. The employer kept his identity and working documents and when he asked to get his documents back, the employer refused, claiming that the workers would just leave the job to work for other fishing boats. The employer had agreed that the worker would receive a monthly salary of 9,500 Baht (\$303 USD). Mr. Bak had worked on the trawler for about two years, receiving 9,500 Baht per month per their agreement until July 2019. At that time, the trawler was docked for one month for maintenance and Mr. Bak received only 3,000 Baht (\$96 USD) by the accounting clerk. The employer explained that, because the trawler was docked on shore that month, the worker could have only worked seven days. However, Mr. Bak was unaware of how much he should be paid if working on a daily basis. Every time he was paid, the clerk managed the payment, on behalf of the employer, in cash with an attached document detailing the payment for Mr. Bak to sign. Each payment was delayed. Despite this, Mr. Bak still owed to the employer approximately 10,000 Baht (\$319 USD) for his advance payment.

Mr. Bak wanted to pay the remainder of his loan to the employer (10,000 Baht), resign and work on another fishing boat, and insisted this in front of a government official (staff at the provincial Labor Welfare and Protection office) who witnessed that he had repaid the debt to the employer. This situation was preventing Mr. Bak from taking a new job. A new fishing boat owner was willing to recruit him; however, Mr. Bak did not have his identity/working documents in his possession nor had his former employer reported his resignation to the government authorities, both of which are required by law. Mr.

⁸⁶ A local informant who observed the PIPO labor inspectors explained the inspectors use a check-list and do not consider the information received. They put little effort to investigate the reality of the situation or ask for additional information. In addition, local authorities do not view certain practices as violated the law (norms) and view some practices as non-serious issues that do not need to be addressed. They might also fear taking action against the employer, or they may not want to be viewed as an incompetent authority. Thirdly, the monitoring of PIPO labor inspection performance by the new Flying Inspection Teams is not sufficient to make improvements. They rely on observing the interview and do not review cases file nor undertake intelligence gathering. Case information provided to ILRF from a Thailand-based civil society organization via an NGO in February 2020.

⁸⁷ Case information provided to ILRF from a Thailand-based civil society organization via an NGO in February 2020.

⁸⁸ Case information provided to ILRF from a Thailand-based civil society organization via an NGO in February 2020.

Bak only had a Proof of Nationality document. Mr. Bak filed a complaint at the Migrant Workers Provincial Service Center. The Center official contacted the employer with orders to give back the workers' identity/working documents. The employer seemed willing to return the documents, but informed Mr. Bak he had to see Mrs. Mey (alias) first (one of the people who provided him with accommodation while on land). Mrs. Mey informed him that there was a 10,800 Baht (\$345 USD) outstanding debt that had to be paid in order to get the documents back. Mr. Bak paid this debt and the documents were returned.

When Mr. Bak went to re-register with his new employer, he was unable to do so because the former employer had not yet notified the Department of Employment of his resignation. The Migrant Workers Provincial Service Center informed him that he had to bring the new employer in person to the service center in order to proceed with a notification of a new employment in accordance with related laws, and that the worker must do this within 15 days after the notification of resignation by the former employer. As such, Mr. Bak brought the new employer to the Provincial Employment Office again. An official tried to contact the former employer, but was informed that he was abroad and therefore unable to sign the notification of resignation. The official told the worker to write a request and to make an appointment together with the former employer at the Provincial Employment Office once he returned to Thailand in order to complete the process of terminating his employment. However, the potential new employer said he was no longer interested in employing Mr. Bak due to the difficult process. The former employer continued to delay and, unable to wait any longer, Mr. Bak decided to leave for another province where he later found a new employer, who re-registered him under Section 83 of the Fisheries Ordinance.⁸⁹

Case 19: Identity document and phone withholding on the basis of outstanding debt and physical violence of a Myanmar fisher in Ranong, 2019

Mr. Rik (alias), a 23-year-old migrant worker from Myanmar, applied for a job on a fishing boat in 2019 in Ranong. He had a certificate of Identity (CI) but Mr. Mon (alias), a fishing foreman, asked him to apply for a Pink Card (worker registration under Section 83 of the Fisheries Ordinance) for the cost of 12,000 Baht (\$383 USD). Mr. Rik would receive a salary of 9,500 Baht (\$303 USD) in cash with the conditions that the foreman would maintain his ATM card and would visit the worker's home to pay him.

Mr. Rik worked on a trawler for 15 days at sea each trip, with 2 to 3 days off when the trawler was ashore. On shore, he would undertake work, such as preparing ice and net repairs, working from 8:00 a.m. to 5:00 p.m. Mr. Rik went out on the trawler with the employer six times; for the first trip, he was paid 10,000 Baht (\$319 USD). For the second through fourth trips, he received advance payments of 1,000 Baht (\$32 USD) per trip. The payments would be cleared after five trips and he would be paid every two months. For five trips during the two-month period, they agreed to 9,500 Baht paid every two months (19,000 Baht /\$604 USD for two months). The advance payments of 1,000 Baht were deducted from his wages three times, so ultimately, he was paid 16,000 Baht (\$509 USD) for the two months' work. On the sixth trip, he received the advance payment of 1,000 Baht but the remaining wages were withheld upon returning to shore. The foreman said his wage was withheld because the money had to be deducted for a document processing fee: 2,000 Baht/month for document processing fees over two months and another deduction of 3,500 Baht when starting the sixth trip (amounting to a total of 7,500 Baht/ \$739 USD). The

⁸⁹ Case information provided to ILRF from a Thailand-based civil society organization via an NGO in February 2020.

employer claimed that he did not receive the document processing fees collected by Mr. Mon, and stated that the worker's debt/loan for document processing fees remained at 12,000 Baht (\$381 USD).

Specific incidents occurred that made Mr. Rik want to change employer. On the trawler, Mr. Mon asked him to get a certain roll of nets, but he brought the wrong roll. Mr. Mon punched Mr. Rik in his mouth in front of the other crew. On a different day, Mr. Mon hit Mr. Rik's neck twice. During the sixth trip, Mr. Rik became sick. The employer and the skipper gave him some medicine, but he had to work continuously.

One day, Mr. Mon came to see him and said that the boat owner wanted to see him and took him to a raft boat. Once they reached the raft, he realized that the owner had not called. Mr. Mon asked for Mr. Rik's documents to make photocopies for a visa. Mr. Mon gave him only the copies and took his mobile phone (bought at the price of 7,500 Baht). Mr. Mon would not allow Mr. Rik to work anymore. The documents and the phone were seized for about 15 days. Mr. Rik and his father asked the employer to return the documents and the phone. The employer denied that he knew about the matter. Mr. Rik went to see Mr. Mon and told him that, if they would not return his documents and his phone, he would file a lawsuit. Mr. Mon challenged the worker to do so. While the worker was trying to change employers, a potential new employer went to talk to the Mr. Mon, who claimed that Mr. Rik was mentally unstable, which made the potential employer reconsider and then reject his application.

On October 10, 2019, Mr. Rik contacted the Migrant Workers Service Center at the Provincial Employment Office in Ranong province. An official from the Center contacted the employer, and the employer claimed that he had retained Mr. Rik's identity and documents and phone because the employee was indebted to him. The employer said he would return the documents and the phone if a new employer or the employee himself repaid the debt. The official at the center informed Mr. Rik that the center could help with negotiation between the employer and worker. The official also introduced the worker to a new employer, so the new employer could bear the burden of his debt and he would be able to extend his identity or working documents. After reviewing the incident, a civil society organization found that the interpreter, who was responsible for examining the facts with the worker, was not actually an official representative of the center.⁹⁰ This case highlights the power imbalances between worker and employer and the related difficulties workers have in changing employers.

Other sector cases:

Case 20: Cal-Comp Electronics: Excessive recruitment fees charges to Myanmar migrant workers

More than 10,000 Myanmar migrant workers were charged excessive recruitment fees to secure jobs at an electronics manufacturer in Thailand, Cal-Comp, and were provided some compensation in late 2019. The repayments totaled about 300 million Baht (\$9.6 million USD) to cover the average some of 20,000 Bath (\$643 USD) each worker paid – more than six times the amount of the legal limit in Myanmar.⁹¹ An investigation by Electronics Watch found that Thai recruitment agencies supplying workers to Cal-Comp had demanded kickbacks from brokers in Myanmar, with the costs then passed on to the Burmese

⁹⁰ Case information provided to ILRF from a Thailand-based civil society organization via an NGO in February 2020.

⁹¹ "Thai electronics firm compensates exploited workers in rare award," Bangkok Post, December 11, 2019, <https://www.bangkokpost.com/thailand/general/1813584/thai-electronics-firm-compensates-exploited-workers-in-rare-award>.

migrants who had to take out loans to cover the outlay.⁹² These practices are commonplace with regard to excessive recruitment fees charges and the corruption between Thai employers/recruitment agencies and Myanmar recruitment agencies, while the award of compensation is extremely rare. The Electronics Watch report documented excessive recruitment fees between 2016 to 2018 and revealed that while working conditions had improved in some respects following buyer intervention, industry attempts to detect, remedy, and prevent excessive recruitment fees and related forced labor risk have not yet been effective.⁹³ Local sources report that changes to recruitment fees and practices have not changed in 2019.⁹⁴

4.1.4. Ongoing sub-contracting practices

The Foreign Workers Ordinance prohibited, for the first time, the practice of sub-contracting migrant workers.⁹⁵ However, we found this provision has not been enforced and sub-contracting practices have also evolved. Sub-contracting is associated with human trafficking risk, as sub-contracted workers are not afforded full legal rights and protections and it is more difficult to hold the actual employer accountable for working conditions or any abuse.

The prohibition on sub-contracting has led to other practices which put workers at risk. Individuals with registered business entities have started to act informally as sub-contractors, hiring workers and then sending them to other employers. These entities are not registered as recruitment agencies and have not paid the 5 million Baht (\$161,447 USD) deposit to the government, which registered recruitment agencies are required to pay. Instead, individual employers are only required to pay 1,000 Baht (\$32 USD) per worker with a monetary cap at 100,000 Baht (\$3,229 USD), regardless of how many workers they recruit. Thus, there is a strong incentive to recruit many workers, and place them with another entity, with very little financial risk. The penalties for sub-contracting in the law are significant, but there are no mechanisms in place for inspection or to detect sub-contracting or similar practices.⁹⁶

Sub-contracting of migrant workers continues to be prevalent, particularly in industrial estates. As explained by the Human Rights and Development Foundation (HRDF):

“Subcontracted workers are vulnerable to the violation of their fundamental rights including having their wage deducted for various reasons instituted by the subcontractor. The workers are usually forced to resign or are simply laid off without advance notice while not receiving severance pay. They are required to arrange for MOU recruitment process, but they have been denied their rights according to the law.”⁹⁷

⁹² “Compliance Report Update Cal-Comp Electronics, Thailand Brands: HP, Western Digital, Seagate Products: Printers, scanners, photocopiers, external hard disk drives, satellite boxes, other computer peripherals,” Electronics Watch, October 2018, http://electronicswatch.org/compliance-report-update-cal-comp-samut-sakorn-and-petchaburi-thailand-october-2018_2555998.pdf.

⁹³ “Compliance Report Update Cal-Comp Electronics, Thailand Brands: HP, Western Digital, Seagate Products: Printers, scanners, photocopiers, external hard disk drives, satellite boxes, other computer peripherals,” Electronics Watch, October 2018.

⁹⁴ Information provided to ILRF by a Thailand-based civil society organization on January 15, 2020.

⁹⁵ Section 22 of the Royal Ordinance on the Management of Foreign Workers’ Employment (No. 2) B.E. 2561 (2018): “A licensee to bring foreigners to work may specifically bring workers in when there is a contact to bring foreigners to work with that person who will be an employer of the foreigner including the list of names, nationalities and passport numbers and such employer shall not be a business operator in labor or wage contracting and may bring foreigners for the numbers and under the name list.”

⁹⁶ Information provided to ILRF by a Thailand-based civil society organization on January 17, 2020.

⁹⁷ “Press Release: Large Electronics Manufacturer Ordered To Pay 822,250 THB to 21 Subcontracted Migrant Workers from Cambodia as Severance Pay,” Human Rights and Development Foundation, January 10, 2020, <http://hrdfoundation.org/?p=2248>.

Case 21: Illegal sub-contracting in the Techman Electronic (Thailand) Co. Ltd, November 2019

In November 2019, 300 migrant and Thai workers had their contracts terminated by Techman Electronic Company in Ayutthaya. These workers were not employed directly by Techman, but by Sub-global, a sub-contracting agency, which had recruited and placed workers at the Techman factory for about three years prior to the dismissals, including recruiting some workers two to three months prior. The migrants were working informally (without proper documentation). They had left jobs with previous employers in Thailand and, instead of returning to their origin countries as is required under the MOU, they were recruited and placed into the new job with Techman by Sub-global. Techman terminated their contracts due to the new provision in the Foreign Workers Ordinance, yet the company and sub-contracting firm did not provide the workers with any severance pay or other remedy. The workers were not registered for social security benefits, as the sub-contracting firm could not make those arrangements. The local CSO took up the case and reported it to the relevant agencies under the Ministry of Labor, and requested severance pay, pending wages, and other compensation. Techman agreed to pay the pending wages, but not the severance. The CSO assisted the workers in submitting a further complaint to the Ministry of Labor on the issue of severance pay and other remedy, but has not yet received a reply.⁹⁸

Case 22: Illegal sub-contracting Cambodian workers in the Pathumthani Navanakorn Industrial Zone, August 2019

In late August 2019, 21 Cambodian workers were laid off by their employer, a sub-contracting company, without receiving severance pay or compensation (in lieu of advance notice as required by law). The sub-contractor claimed that the public company limited, which is an electronic parts manufacturer in Navanakorn Industrial Zone, wanted to “return” the workers to the sub-contracting company due to a decline in their production orders. The workers said that the sub-contractor intimidated them into signing a resignation letter, as the only other option was to pay high fees to convert to MOU workers. The Human Rights and Development Foundation (HRDF) assisted the workers to file a complaint the local labor office resulting in a decision that explains: 1) the sub-contracting practice was illegal under Thai law and 2) both the public company and the subcontracting firm should be held accountable for the severance pay and other compensation. Yet, it is unclear if the labor inspector is going to hold the sub-contractor liable and penalize them with a fine and/or imprisonment. In this case, the sub-contractor had continually deducted their wages, claiming it to be for a monthly contribution to the Social Security Fund, but the amount was never paid into that fund. As a result, the sub-contractor has been fined by the Social Security Office for this breach following the workers’ complaints.⁹⁹

Case 23: Informal sub-contracting in Songkhla, 2019

In 2019, a female migrant worker from Myanmar was recruited legally under the MOU system to work for a construction company in Songkhla province. However, she never worked for that employer, but instead as a domestic worker. She paid the equivalent of 30,000 Baht in recruitment fees in Myanmar and 30,000 Baht in Thailand (total of 60,000 Baht / \$1,938 USD). This included expenses for her travel from her hometown in northern Myanmar to Yangon to process her passport, although there was such an office near her hometown. A person from her village who used to live in Thailand offered to lend

⁹⁸ Information provided to ILRF by a Thailand-based civil society organization on January 15, 2020.

⁹⁹ For further details on the case, see “Press Release: Large Electronics Manufacturer Ordered to Pay 822,250 THB to 21 Subcontracted Migrant Workers From Cambodia as Severance Pay,” Human Rights and Development Foundation, January 10, 2020, <http://hrdfoundation.org/?p=2248>.

money for these expenses. She was brought directly to the home of the employer and worked as a domestic worker. Her passport was confiscated, and regular deductions were made from her monthly wage (of 5,500 Baht / \$178 USD) to pay her debt. This issue is particularly prevalent among domestic workers because there are no labor inspections of workplaces.¹⁰⁰

4.1.5. Challenges recruiting migrants into the commercial fishing sector

Due to a labor shortage of 53,649 workers in the Thai fishing sector, the Thai government signed individual Memorandums of Understanding (MOUs) in 2018 with Myanmar, Cambodia, and Laos to import workers, including 42,000 workers from Myanmar.¹⁰¹ As of October 2019, only 7,212 of these workers, including 741 from Myanmar, have been recruited under the MOU process – meaning there remains a labor shortage of more than 46,000 workers in the fishing sector.¹⁰² There are two main reasons for these low numbers:

1. The MOU system is undesirable for both workers and employers because of the expenses and bureaucracy involved. Instead of using the MOU, 12,040 migrant fishers have been given temporary permission to work under Section 83 the Royal Ordinance on Fisheries as of October 2019.¹⁰³ In addition, 62,733 migrant workers were afforded border passes for seasonal workers under Section 64 of the Foreign Workers Ordinance.¹⁰⁴ It is not clear how many of these are in the fishing sector; however, local sources explain that seasonal passes are being used to register workers into the fishing sector in Ranong (southern Thailand on border with Myanmar) and in Trat (eastern Thailand on border with Cambodia). These workers have limited legal protection and rights under Thailand law compared with MOU workers, which is explained further in section 4.1.6 below.
2. The Myanmar and Cambodian governments have been hesitant to send workers to the fishing sector due to ongoing worker rights problems and a lack of coordination and clarity among relevant authorities within and across countries has led to significantly fewer numbers of workers being recruited, particularly in the case of Myanmar.¹⁰⁵

4.1.6. Limited legal protection for border pass holders

Section 64 of the Foreign Workers Ordinance was approved for use explicitly at border areas and Special Economic Zones (SEZs). A temporary border pass provides a three-month work permit and monthly renewable visa. The border pass scheme permits allow nationals of countries that share a land border

¹⁰⁰ Information provided to ILRF by a Thailand-based civil society organization on January 17, 2020.

¹⁰¹ Up until this point, neighboring governments had been hesitant to send workers into the Thai fishing industry due to worker rights issues. See "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 2018, <http://www.mfa.go.th/main/en/news3/6886/95148-Thailand-uses-MOU-system-to-recruit->; see also Penchan Charoensuthipan, "Govt to seek migrants for fish industry," Bangkok Post, August 6, 2018, <https://www.bangkokpost.com/thailand/general/1516410/govt-to-see-migrants-for-fish-industry>.

¹⁰² As of October 2019, 741 workers from Myanmar (726 male and 15 female); 5,266 from Cambodia (5,193 male and 73 female); and 1,205 from Laos (271 male and 934 female). Data gathered from official Thai government sources by local informant; provided to ILRF by email in January 2020.

¹⁰³ Including 6,762 from Cambodia, 4,993 from Myanmar and 285 workers from Laos. "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, https://www.doe.go.th/prd/assets/upload/files/alien_th/57eb135053d1d4815301012994bc5879.pdf.

¹⁰⁴ Including 35,653 from Cambodia and 27,080 from Myanmar. "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 (Thai language publication).

¹⁰⁵ 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>.

with Thailand to enter on a temporary basis or for seasonal work at a specified location. Of a total of around 69,643 migrants registered in a SEZ in Mae Sot, Tak province, over 34,000 were registered under Section 64.¹⁰⁶ Migrants have reported that even when hired on a continuous basis for factory work, employers now prefer the temporary status of the Section 64 pass because they do not have to make contributions for workers' social security and because it is easy to release workers without having to pay severance, even if the worker has been working long enough to make them eligible for the benefits.¹⁰⁷

This is in conflict with the rights provided to workers under the Thai Labor Protection Act and is an example of immigration policy undermining labor law. Factory work is considered formal work, which under the Labor Protection Act entitles workers to participate in social security and receive related benefits including workers' compensation. Section 64 undermines this by making migrants "temporary" workers, which disqualifies them from social security, even though they may extend their temporary status repeatedly.¹⁰⁸ As shown in cases 8 and 12 above, employers use Section 64 as a mechanism to dismiss migrant workers who demand proper rights under Thai law.

4.2. Ongoing labor rights violations and abuse in the fishing sector

The CSO Coalition for Ethical and Sustainable Seafood conducted research in July and August 2019 among 475 Myanmar and Cambodian fishers across 10 provinces – a follow up to a similar study conducted on the labor rights of fishers in 2018.¹⁰⁹ The research indicates that fishers continue to work under abusive and exploitative conditions, often in violation of Thai labor laws. Key findings include:

- More than half of fishers interviewed did not receive information about their job and the content of the contract before starting employment. More than 75% were not able to read the contract before signing it, which was a higher proportion compared to the previous survey conducted in 2018. 85% were not able to access the original or copy of their contract, which indicates that workers remain largely powerless in the employment process;
- Despite the legal requirement for fishers to be paid electronically, over two-thirds still received wages in cash, and more than 40% had to wait longer than a month to receive the full payment amount. Vessel owners still engaged in traditional payment practices, including direct payment by cash and paying in a lump sum at intervals spanning 2-6 months, and more than one in five respondents received lump sum wages in a period of 7-24 months. This practice makes fishers more dependent on their employers since they need to borrow cash from them for daily expenses over long periods of time;
- More than a third of those interviewed wanted to see improvements in vessel conditions, including adequate sleeping areas, sufficient food and drinking water, and hygienic toilets on board vessels;
- Compliance with certain labor laws had not improved since 2018: 67% of those interviewed were able to rest continuously and regularly for six hours and 9% faced issues of verbal abuse, physical abuse, and wage deductions as forms of punishment;

¹⁰⁶ Among the other migrants, 6,415 were registered under the MOU system, 4,300 were registered under the Nationality Verification system, which is a step in the MOU process, and another 24,000 were under the temporary One-stop service, which is the first step in the regularization process. Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.

¹⁰⁷ Information provided to ILRF by a Thailand-based civil society organization by email on February 12, 2020.

¹⁰⁸ Ibid.

¹⁰⁹ An advance research summary of the 2019 study was provided to ILRF in February 2020. For the 2018 study, see *Falling through the Net: A Survey of Basic Labour Rights among Migrants Working in Thailand's Fishing Sector*, CSO Coalition for Ethical and Sustainable Seafood, 2018, http://ghre.org/downloads/Falling-through-the-net_en-version.pdf.

- Workers reported several barriers to changing jobs or employers, including employers refusing to let them resign (21%), exorbitant costs (13%), and workers' fears of reprisal, such as the seizure of their identity documents (12%); and
- More than two-thirds of fishers felt they were not adequately informed about their rights.¹¹⁰

4.3. National Fisheries Association of Thailand advocacy to weaken labor protection for fishers

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.¹¹¹ 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 covers workers' rights to form unions and engage in collective bargaining.¹¹²

The National Fisheries Association of Thailand (NFAT) had previously advocated against the ratification of C188¹¹³ and has continued its efforts to weaken labor protection for fishers. In 2019, NFAT sought to abolish several fishery enforcement regulations that are crucial to Thailand's fight to end illegal, unreported, and unregulated (IUU) fishing and human rights abuse aboard fishing vessels. These include permitting at-sea crew transfers and at-sea trans-shipment of seafood catch between fishing vessels, which would increase the chances of workers being exploited and rotated amongst vessels without any chance of oversight from authorities. It could also extend the time period in which vessel operators can revise vessel crew lists after they have left port, which could allow for additional workers to board vessels after official portside inspections have finished, facilitating human trafficking and labor exploitation.¹¹⁴ NFAT has also 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).¹¹⁵

4.4. Restrictions on freedom of association and collective bargaining

Severe restrictions on workers' fundamental rights to freedom of association and collective bargaining have contributed to egregious labor abuse throughout the Thai economy.¹¹⁶ This is important to note, because limiting access to justice for workers against abuses of their employers can increase risk factors for forced labor. Approximately 75% of Thailand's 38 million workers are not guaranteed these rights under Thai law. Thai law affords limited forms of these rights to private sector and state enterprise

¹¹⁰ *Brief Research Summary - Falling through the Net II*, CSO Coalition for Ethical and Sustainable Seafood, advance copy provided to ILRF in February 2020.

¹¹¹ "Thailand ratifies Work in Fishing Convention," ILO, January 30, 2019, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_666581/lang--en/index.htm.

¹¹² Labor Protection in Sea Fishery Work Act (2019), Article 6.

¹¹³ "Fisheries leaders threaten protests in the capital," Bangkok Post, June 13, 2019, <https://www.bangkokpost.com/thailand/general/1694068/fisheries-leaders-threaten-protests-in-the-capital>.

¹¹⁴ "Joint open letter on the preservation of fisheries regulations and reforms in order to prevent illegal, unreported and unregulated fishing," Environmental Justice Foundation, September 19, 2019, <https://ejfoundation.org/reports/joint-open-letter-on-the-preservation-of-fisheries-regulations>.

¹¹⁵ *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>.

¹¹⁶ 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>.

workers, but the relevant laws are very restrictive and fall short of international standards.¹¹⁷ 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.¹¹⁸ 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.¹¹⁹ 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.¹²⁰

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.¹²¹ This is particularly problematic in migrant-dominated labor sectors, such as seafood processing and fishing, as well as in border areas such as Mae Sot with numerous light-industry factories including garment manufacturing, since there are almost never existing unions that could represent migrants' interests.¹²² Thai workers have the legal right to form their own unions, making the law explicitly discriminatory by creating a different standard for migrants.¹²³

The very low levels of unionization in Thailand mean that the majority of workers do not have a voice in the workplace or in policy making. They do not have independent worker representatives who can communicate labor problems to employers or seek to address, via bi-partite or tri-partite structures, gaps in labor legislation that contribute to exploitation by the government through. This has prevented all workers, but particularly migrant workers, from having the right to rally, demonstrate, or take collective action – with legal protection – which could help them draw attention to labor abuses that may amount to forced labor. Ironically, non-Thai nationals are explicitly prohibited from being part of the Foreigners' Working Management Policy Commission, comprised of government and employees' organizations, which is responsible for formulating policies and strategies on the management of foreign workers.¹²⁴

¹¹⁷ The Labor Relations Act (1975) and the State Enterprise Labor Relations Act (2000).

¹¹⁸ "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.

¹¹⁹ 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.

¹²⁰ 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/sthithiaernngaanpracchamaapii_2561-biibad.pdf?fbclid=IwAR3U9vMWxamMLOiu_mUHO0fLgr9UcJQTYXIGbZ_MrOan7u-9pzLjdB5YW74; for trade union densities of other countries, see <https://ilostat.ilo.org/data/>.

¹²¹ The explicit discrimination in the law is included in Section 88 of the Labor Relations Act, "Persons who have the right to establish a Labour 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."

¹²² "Right of organizations to elect their representatives in full freedom," Eligibility conditions, Nationality, 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.

¹²³ For more information on this topic, see Kimberly Rogovin, *Time for a Sea Change: Why union rights for migrant workers are needed to prevent forced labor in the Thai seafood industry*, ILRF, March 2020, <https://laborrights.org/timeforaseachange>.

¹²⁴ Royal Ordinance Concerning the Management of Foreign Workers' Employment, B.E. 2560 (2017), Sections 17-22.

In October 2019, the U.S. Trade Representative (USTR) suspended US\$1.3 billion in preferential tariffs for many Thai imports due to ongoing worker rights violations in the country, particularly the weak protection for freedom of association and collective bargaining.¹²⁵ Thailand was given six months, until April 25, 2020, to take steps to have these trade benefits reinstated. There have been no reported changes to key pieces of legislation nor to ongoing legal and judicial harassment cases, which have been identified as specific areas of concern in relation to this General System of Preferences (GSP) decision.¹²⁶ In 2018, the Thai government announced a commitment to amend the Labor Relations Act as a foundation for the ratification of ILO core labor Convention 98 on Collective Bargaining within 2018,¹²⁷ yet has failed to take those steps nor ratify ILO core labor Convention 87 on Freedom of Association.

5. Conclusion

The Seafood Working Group recommends that Thailand be downgraded to the Tier 2 Watch List ranking in the U.S. Department of State's Trafficking in Persons Report 2020 since it does not fully meet the minimum standards as set forth in the U.S. Trafficking Victims Protection Act (TPVA). As this report has shown, there has been a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year and the government has not made significant efforts to bring itself into compliance with minimum standards and commitments made in previous years.

With regard to prosecution, the Thai government did not undertake adequate measures to enforce the amendment to the Anti-Trafficking in Persons Act that made forced labor a crime, nor create an adequate standard for interviewing victims of forced labor. There were also no improvements in the number of prosecutions of human trafficking for forced labor cases compared with previous years.

With regard to protection, there was a failure of law enforcement to identify and assist potential victims of forced labor and human trafficking. There was also a failure by the Ministry of Labor to identify and protect exploited workers due to ineffective labor inspections, allowing employer retaliation against workers who reported labor abuse, informal mediation of potential forced labor cases, and a lack of cooperation between government agencies and with civil society organizations to handle labor complaints. Strategic Lawsuits Against Public Participation (SLAPPs) were ongoing; new cases were initiated; and a guilty verdict was handed down during the report period, intimidating and silencing others who may wish to come forward with reports of abuse. Inadequate services were provided to trafficking victims in state-run shelters, making them vulnerable to re-victimization.

With regard to prevention, loopholes in the Royal Ordinance Concerning Foreign Workers' Employment undermine the ability of the government to prevent forced labor from the stage of recruitment. While recruitment fees, document withholding practices, and sub-contracting were

¹²⁵ "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>.

¹²⁶ See: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20030:0::NO:::>; see also "Four international unions confederations call on Thai government to address labour violations," Prachatai, December 2, 2019, <https://prachatai.com/english/node/8290>; see also "Reports of the Committee on Freedom of Association: 389th Report of the Committee on Freedom of Association," International Labour Office, June 22, 2019, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711394.pdf.

¹²⁷ "Press Release : Thailand's Response to the Comments of Human Rights Watch on the Protection of Labour in Fisheries Sector," Ministry of Foreign Affairs of the Kingdom of Thailand, 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>.

allegedly banned, such practices continue unabated. Serious obstacles remain to workers' ability to change employers even when laboring under abusive employment arrangements. Ongoing labor rights abuse and exploitation of migrant workers was documented in 2019, particularly among fishers and garment factory workers. The National Fisheries Association of Thailand remains an obstacle to the Thai government's commitment to the full implementation of ILO Convention 188 in order to offer adequate labor protection for fishers. Finally, the Thai government's refusal to comply with minimum standards by ratifying ILO core labor Conventions 87 and 97 and reform its labor relations laws prevents the majority of its workforce from exercising fundamental rights to freedom of association and collective bargaining. This has created particular structural vulnerabilities for foreign workers in migrant-dominated industries and remains a key barrier to forced labor and human trafficking prevention.