Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report

Comments submitted by Global Labor Justice- International Labor Rights Forum on behalf of the Seafood Working Group

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1. Introduction

This document contains the Seafood Working Group (SWG)'s comments concerning Thailand's ranking in the United States Department of State's upcoming 2021 Trafficking in Persons (TIP) Report. The SWG is a global coalition of labor, human rights, and environmental non-governmental organizations collaborating to hold governments and companies accountable and drive change.[1] COVID-19 further exposed the systematic discrimination facing migrant workers in Thailand. Policies and employer practices that were unchecked by the government prevented migrant workers from accessing social security benefits and in some cases medical care during COVID-19. Nearly a year since COVID-19 hit Thailand, the government has failed to address these issues. Leaving people without employment and access to social protections increases their vulnerability exponentially to human trafficking.

The SWG recommends that Thailand be downgraded to the Tier 2 Watch List ranking, since it has not met the minimum standards as set forth in the U.S. Trafficking Victims Protection Act (TVPA) of 2000[2] and there has been a deterioration of rights related to the government's COVID-19 policies.

This report documents the government's failure to make progress in the following key areas:

- Identification and protection of victims, as well as prosecution of perpetrators, of labor trafficking and forced labor;
- Countering corruption and complicity in human trafficking among government officials on the Thailand-Myanmar border;
- Promotion and protection of the rights to freedom of association and collective bargaining for all workers, and government action inhibiting exercise of these rights;
- Ending employer retaliation and judicial harassment of workers, trade unionists and labor rights defenders who seek to organize, bargain and report labor rights abuses;
- Prohibiting recruitment fees and related costs charged to migrants to prevent debt bondage; and
- Ensuring adequate labor and social protection for vulnerable groups of workers, including sea fishery, agriculture, domestic and informal sector workers.

1.1. Methodology

This report focuses on issues and incidents during the TIP Report 2021 reporting period, April 1, 2020 to March 31, 2021, but provides some information from before this time period where relevant. The information in this report is based on thirteen consultations conducted by Global Labor Justice-International Labor Rights Forum (GLJ-ILRF) with seven civil society organizations, two international non-governmental organizations, one law firm and three key

[11] The coalition has 26 official members and 60 total organizations participating; see "Seafood Working Group" on the GLJ-ILRF website, https://laborrights.org/industries/seafood

[2] 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.

informants in Thailand between November 2020 and March 2021,[3] as well as additional information provided by international members of the SWG. The report also analyzes relevant Thai laws and policies and provides information from available research and reports. It includes 24 cases of labor rights abuse and exploitation of migrant workers across a range of labor sectors and geographic regions in Thailand. Recommendations are included following each section on protection, prevention and prosecution.

Global Labor Justice - International Labor Rights Forum (GLJ-ILRF) is a newly merged organization bringing strategic capacity to cross-sectoral work on global value chains and labor migration corridors. GLJ-ILRF holds global corporations accountable for labor rights violations in their supply chains, advances policies and laws that protect decent work and just migration. The organization strengthens freedom of association, new forms of bargaining, and worker organizations.[4] ILRF was founded in 1986 and formed the SWG in 2014 and has made a submission on Thailand for the TIP Report each year.

2. Overview

2.1. Prominent cases of human trafficking and egregious labor rights abuse

During the reporting period, the government failed to identify and protect workers in situations of egregious labor abuse, forced labor and human trafficking, including children and persons with potential asylum claims. One particularly concerning trend relates to Rohingya people from Myanmar being identified as "illegal aliens"[5] and being indefinitely detained or deported back to Myanmar, despite clear indicators that they were victims of human trafficking and their expressions of fear of return (see Section 3.1.1).

The report also documents nine cases that demonstrate clear patterns of coercive methods being used to keep migrants working under poor and dangerous working conditions. These include methods such as document confiscation, physical violence, wage withholding, forced overtime and forcing people to work while sick. These practices were commonly experienced by seafood processing, fishing, large scale agriculture and other workers (see Section 3.1.2). There was also a pattern of forced overtime and excessive overworking in the seafood processing and fishing sectors due to increases in demand for shelf-stable seafood during COVID-19 (see Section 3.1.3). Government authorities, including police and labor inspectors, failed to identify and protect these workers and improperly identified trafficking cases as labor law violations. The relevant authorities regularly took no action, dropped cases, pressured and intimidated workers and advocates to drop cases, and encouraged informal negotiation between employers and employees even in serious abuse cases, making them in effect complicit to the abuses (see Sections 3.1.2 and 3.2).

During the reporting period, the government continued to allow employers and, in some cases, supported employers to retaliate against workers, trade unionists and labor rights defenders who were seeking to organize and improve working conditions. These retaliations included

[3] Organization and individuals' names are censored as CSO #1-7, Key Informant #1-3 and INGO #1-2.
[4] "International Labor Rights Forum and Global Labor Justice are Joining Forces to Defend Worker Rights and Build Worker Power in the Global Economy," GLJ-ILRF, July 2, 2020, https://globallaborjustice.org/international-labor-rights-forum-and-global-labor-justice-are-joining-forces-to-defend-worker-rights-and-build-worker-power-in-the-global-economy/
[5] Persons who violate the Thai Immigration Act (1979) are referred to officially as "illegal aliens". Except when referring to government classification, this report uses the term "irregular migrants" to refer to those who entered the country without the legal permissions to do so and "unregistered migrants" to refer to those without the official permissions to work and stay in the country.

employers dismissing and 'blacklisting' migrant workers who had attempted to organize and bargain for better working conditions in the garment sector (see Section 4.2.1.2). They also included the sentencing of State Railway Union of Thailand (SRUT) leaders to prison for a health and safety initiative they organized and the bringing of new charges and appeals against workers and labor rights defenders in the infamous Thammakaset poultry farm cases (see Section 4.2.1.3). These cases have posed serious obstacles to preventing human trafficking and protecting potential victims as they represent examples of what can happen when workers speak out and have a chilling effect on others wishing to report labor rights abuses.

2.2. Policy failures and challenges

During the reporting period, the government failed to make progress in reforming the key laws and policies that make workers vulnerable to labor abuse. The most concerning trends include:

1. **Denial of full rights to freedom of association and collective bargaining:** No progress in reforming the Labor Relations Act and State Enterprise Relations Act, which together deny 75% of Thailand's 38 million workers full rights to freedom of association and collective bargaining. In particular, the Labor Relations Act has not been reformed to remove the explicit discrimination against non-Thai nationals for their right to form or lead unions, creating a captive workforce of migrant workers without a legally mandated and protected right to bargain with employers on an equal footing and address workplace abuse. Despite government commitments to UN bodies in previous years,[6] Thailand remains one of three countries in Southeast Asia that has not ratified either ILO Convention 87 (Freedom of Association and Protection of the Right to Organize) or ILO Convention 98 (Right to Organize and Collective Bargaining). The ILO has made clear repeatedly that denying these rights to migrant workers makes them vulnerable to exploitation[7] (see Section 4.2.1).
2. **Lack of progress in addressing loopholes that make migrant workers vulnerable**: No progress reforming provisions of the Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017) that make migrant workers vulnerable to human trafficking and forced labor. These include loopholes that allow recruitment fees and related costs as well as wage deductions to be charged to migrant workers that place them in debt; document withholding practices by employers; and provisions that make it nearly impossible for migrant workers to change employers within the country when in undesirable or even abusive jobs (see Sections 3.1.2 and 4.1.4).
3. **Failure of authorities to identify and prosecute labor trafficking and forced labor**: Law enforcement officials continued to neglect labor trafficking and forced labor cases

[6] Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to the Human Rights Council resolution of 16/21, Thailand, A/HRC/WG.6/25/THA/1," United Nations General Assembly, February 2, 2016, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/025/43/PDF/G1602543.pdf?OpenElement; see also "Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Thailand, CCPR/C/TH/2," United Nations International Covenant on Civil and Political Rights, September 30, 2015, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/224/88/PDF/G1522488.pdf?OpenElement.

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

outside of the sex industry, despite evidence that these abuses remain widespread. There was insufficient progress in use of the 2019 amendment to the Anti-Trafficking in Persons Act (2008), which made forced labor a stand-alone offence with the aim to facilitate additional investigations and prosecutions of forced labor. In 2020, only 12 labor trafficking and forced labor cases were initiated by police inquiry officers,[8] a decrease from the 35 that were initiated each in 2019 and 2018 (3.2 and 5.1).

While the government initiated a number of anti-trafficking and labor measures, they were insufficient in addressing trafficking and compounded vulnerabilities for workers and made others newly vulnerable. These include:

1. A series of crackdowns in border areas on illegal smuggling and trafficking networks, which were ordered by the Prime Minister following the identification of COVID-19 cases among migrant workers. These actions came alongside the establishment of a committee to probe government officials abetting human trafficking networks. Despite a small number of arrests of government officials, experts attest that this campaign is unlikely to break the links that smuggling and trafficking networks have forged with corrupt local officials over many years and consider the effort to be a show. Officials have regularly arrested, detained and charged migrant workers on the grounds of illegal entry, thus failing to identify them as potential trafficking victims and provide protection (see Sections 3.1.1 and 3.2.3).
2. Poor migration governance during COVID-19 that led approximately half a million migrant workers to "disappear" from the official registration system and 60,000 workers who were promised renewed contracts in Thailand to be stranded in Myanmar without remedy. Unregistered migrant workers are more vulnerable because they are less likely to report abuses or fully demand their rights, for fear of being reported to government authorities for their immigration status and possibly detained and deported. In addition, the Ministry of Labor put forward an initiative, approved by the cabinet in December 2020, to allow undocumented migrant workers from Cambodia, Laos and Myanmar to register and temporarily stay in Thailand for two years. This came as part of an effort to prevent the spread of COVID-19 and included plans for surveillance, monitoring, containment and prevention of the outbreak. This "amnesty program" requires migrant workers to pay approximately $300 USD for new requirements for registration, health insurance and COVID-19 testing. Already in debt, these additional financial burdens are expected to incentivize workers to remain outside the legal system and put them at risk of exploitation by brokers and employers (see Sections 4.1 - 4.1.3).
3. A Ministry of Labor announcement banning the use of strikes and lockouts in employment disputes while the COVID-19 Emergency Decree is in Force (most recently extended to February 8, 2021). The announcement also states that strikes or lockouts that commenced before May 8, 2020 must end. Any unsettled disputes under the Labor Relations Act (1975) that occurred during the emergency situation period must now be considered and resolved by the Labor Relations Committee. The prohibition of strikes is in contradiction to international law and has denied workers the primary legal tool that they are usually able to use in negotiations for their rights and benefits (see Section 4.2.1.4).
4. Amendments to the Ministerial Regulation on Labor Protection in Sea Fisheries that could encourage child labor on fishing vessels and lead to workers remaining at sea for up to one year, in contradiction with international standards (see Section 4.2.2).

[8] Nine of these cases are labor trafficking cases, two are forced labor or services and one is forced labor in fisheries.

5. A plan proposed by the Justice Ministry to build industrial estates for housing former prison inmates so they may work in the seafood sector to fill labor shortages. This is contrary to international law and local experts are concerned could lead to forced labor (see Section 4.2.3).

3. Protection

During the reporting period, the government failed to identify and protect migrant workers in situations of serious labor abuse, forced labor and human trafficking. Section 3.1 outlines some of the starkest examples of government failure to identify and protect, including examples of Rohingya trafficking victims with potential asylum claims wrongly identified as "illegal aliens" (3.1.1) and migrant workers across the seafood, fishing and agriculture sectors in situations of severe labor abuse and forced labor (3.1.2). Section 3.2 provides analysis of the underlying reasons for these failures, pointing to the key institutional weaknesses that need to be addressed. Section 3.3. describes immigration status protections for trafficking victims, highlighting policy and gaps in practice.

3.1. Examples of failure to protect

3.1.1. Rohingya wrongly identified as "illegal aliens"

During the reporting period, there were several incidents in which persons of Rohingya ethnicity who appeared to have been trafficked were arrested and charged with illegal immigration and detained in preparation for deportation to Myanmar. In these cases, groups of Rohingya fleeing Myanmar had paid brokers to take them to Malaysia for work but had encountered problems along the way. Evidence indicates that these persons were victims of human trafficking and/or had asylum claims, representing a clear failure on the part of the Thai government to protect these individuals and prevent further abuse. Some of the incidents show evidence of complicity of government officials and former government officials in the illegal movement of Rohingya to work in Thailand or other countries.

As of May 20, 2020, 200 Rohingya were being held in immigration detention and other facilities across Thailand for indefinite periods.[9] The trend of smuggling and trafficking of Rohingya is nothing new. But many of the recent cases come as a direct result of the Prime Minister's stated efforts to crack down on smuggling due to fear of COVID-19 spreading via migrants, particularly since the Samut Sakhon outbreak of December 2020.[10] Rather than focusing on protection of groups vulnerable to both trafficking and COVID-19 infection, the government has handled these cases with no concern for the human rights of migrants who may have legal rights to protection as asylees or survivors of human trafficking, and as workers. Indeed, many of these trafficking victims remain in cramped and unhygienic detention centers where they are further susceptible to catching and spreading COVID-19.[11]

[9] "Thailand: Let UN Refugee Agency Screen Rohingya," Human Rights Watch, May 21, 2020, https://www.hrw.org/news/2020/05/21/thailand-let-un-refugee-agency-screen-rohingya

[10] Zsomber Peter, "Thailand's Prime Minister Orders Crackdown on Officials Abetting Human Traffickers," Voice of America, December 29, 2020, https://www.voanews.com/east-asia-pacific/thailands-prime-minister-orders-crackdown-officials-abetting-human-traffickers

[11] On April 25, 2020, 42 migrant detainees in Sadao's Immigration Detention Center tested positive for COVID-19; see Jasmine Chia, "Thailand's outbreak spike exposes conditions in migrant detention centre," Thai Enquirer, April 30, 2020, https://www.thaienquirer.com/12519/thailands-outbreak-spike-exposes-conditions-in-migrant-detention-centre/

Indeed, this government's crackdown has likely further endangered victims of trafficking as the vast majority of people found in these circumstances are charged with illegal entry, placed in detention centers and then deported. This could be exacerbated by the fact that Thailand's legal framework does not classify migrant smuggling as a crime. Therefore, migrants can only be classed as victims of trafficking or forced labor under the Anti-Trafficking in Persons Act (2008) or as "illegal aliens" under the Immigrant Act (1979) and detained and deported.[12]

The following cases highlight the protection concerns and failure of government authorities to identify trafficked persons and refugees.

Case 1: Rohingya refugees including children trafficked to Malaysia via Mae Sot, May-April 2020

In May 2020, twelve Rohingya (eight men/boys and four women/girls) were arrested and charged with illegal immigration and put in a detention facility in Mae Sot. A local NGO representative interviewed the boy and some of the other migrants. They had hired a broker from within their community in Rakhine State, Myanmar to smuggle them to Malaysia for work; they first travelled to Yangon by bus in a group of thirty. There, they were handed over to a second group of Burmese Muslim brokers and were kept there for one month. The twelve people were then taken to Myawaddy, Myanmar, which is on the border opposite Mae Sot, Thailand.

In Myawaddy, they were handed over to a third group of brokers, this time including Burmese Muslims and Karen, who threatened them with guns, handcuffed them, and placed them in a cell, in what was described as a 'camp'. They saw three other men in the cell who were in very poor health and who died over the next three months. While in the camp, they were beaten, starved and threatened to pressure their family members to send them money. After three months of these abuses and them insisting that their family members did not have money, they were sold to a fourth broker in Thailand. A Karen man (who could speak Karen, Burmese and Thai) transported them in a pickup truck from Myawaddy to Mae Sot and brought them into a Muslim community and dropped them in front of mosque, instructing them to wait there. Some of the community members saw them and, fearful of COVID-19 at the time, contacted a community leader who in turn contacted the police. The police arrived and arrested the seven men and one boy, while the four women/girls were able to escape.

The police charged the victims with illegal migration and charged the Thai broker with facilitating illegal migration. The NGO representative interviewed the victims and provided testimony tracking their entire journey of the case to the Ministry of Social Development and Human Security (MSDHS) and police authorities. According to the NGO representative, the police did not file any charges under the Anti-Trafficking in Person Act (2008). The police did not conduct any further investigations into the network of brokers who had collaborated with the Thai broker nor into the camp, claiming that this was outside their jurisdiction. The victims believe that each of the brokers along the way knew each other and claim that the first broker from their community remained in contact with the others throughout, so they believe he is the main broker.[13]

According to the NGO representative who spoke with government officials, this is one of at least four groups of Rohingya who were brought to Thailand along the same route (Rakhine-Yangon-Myawaddy-Mae Sot) throughout 2020. A second group of women and girls who traveled via the

[12] Thailand is not a party to the 1951 UN Refugee Convention.

[13] Information provided to GLJ-ILRF by Key Informant #1 based in Mae Sot, Thailand in February 2021.

same route arrived later, at the end of February or early March 2020. The NGO representative provided them with children's clothes, milk and toys but was not permitted to interview them as she had done with the previous group. The NGO was also not permitted to visit the first group, including the boy she had interviewed, at the detention center in Mae Sot. The NGO tried to explain to the government that the initial group of Rohingya were fearful to return to Myanmar, indicating that they may have legitimate asylum claims, however the NGO has been unable to find out what happened to them after they were placed in the detention center.[14]

Two other relevant cases have also been covered in the media:

- In May 2020, twelve Rohingya (two men and eight women, who were accompanied by a three-year-old boy and nine-year-old girl), were arrested in Mae Sot, Thailand and charged with illegal entry, detained and put in process for deportation. They had come from Rakhine State and had paid brokers to take them to Malaysia for work.[15]

- Nineteen Rohingya were arrested during a police raid on January 3, 2021 in Don Muang District, Bangkok. They were identified as "illegal aliens" and handled by immigration police authorities, who found seven tested positive for COVID-19. They had travelled from Rakhine State, Myanmar to Mae Sot, Thailand before ending up in Don Muang. Seven suspects were being held as part of a Rohingya smuggling probe, with some of the suspects being former police officers. Despite evidence of brokers and police authorities facilitating the movement of a particularly vulnerable group of people, the Rohingya have been identified as "illegal aliens" and slated for deportation.[16] This case shows government corruption and collaboration in trafficking.

3.1.2. Document confiscation, wage withholding, inability to change employer, physical violence and government intimidation or inaction

The government's failure to protect has also manifested in clear patterns of coercive methods being used to keep migrants working under poor and dangerous working conditions. As the cases in this section show, these methods include document confiscation, physical violence, wage withholding, forced overtime and forcing people to work while sick, which are strong indicators of forced labor according to the ILO and other experts. Such practices have been commonly experienced by seafood processing, fishing, large scale agriculture and other workers. These cases highlight the following trends, some of which are analyzed further in Section 3.2:

- Employers use of physical violence, document confiscation and wage withholding among other tactics to coerce people to work or as retaliation for demanding rights;
- Forced overtime and forced to work when sick to meet production quotas;
- Police and other government authority inaction on labor abuse cases or encouraging informal mediation of even serious abuse cases between workers and employers;
- No provision for interpretation services for migrant workers during police investigations;
- Police pressuring and intimidating workers or advocates to drop cases;

[14] Information provided to GLJ-ILRF by Key Informant #1 based in Mae Sot, Thailand in February 2021.
[15] Jack Burton, "12 Rohingya arrested for illegal entry in Tak province," The Thaiger, May 20, 2020, https://thethaiger.com/hot-news/crime/12-rohingya-arrested-for-illegal-entry-in-tak-province
[16] Wassayos Ngamkham, "7 held in Rohingya smuggling probe," Bangkok Post, January 28, 2021, https://www.bangkokpost.com/thailand/general/2058251/7-held-in-rohingya-smuggling-probe

- Inability to change employers due to legal requirements, which traps workers in abusive jobs; and
- Failure of the government to provide or to compel employers to provide remedy to workers, such as compensation for unpaid wages or severance.

Case 2: Impunity for document confiscation and physical abuse of migrant fishers, Pattani, January 2021

On January 6, 2021, with the help of a local civil society organization (CSO), three migrant fishermen of Rakhine ethnicity from Myanmar attempted to report a case with indicators of forced labor, including document confiscation and physical abuse, to a local police office in Pattani, however the police took no further action. According to the informant present with the workers at the police station, the police spent only 15 minutes talking to the workers while mostly spent time speaking to the employer. No interpreter was provided for the workers initially, so the CSO provided one temporarily. Once the police translator arrived, he acted more as a meditator and attempted to informally handle the case between the workers and employers. During the inquiry, the employer presented a document, referred to as a "document release form", which stated that the employees had given the employer permission to maintain their identity documents. The employees claimed it was not their signature on the document. The employees also reported that they did not receive their wages directly from their employer, but rather via a broker, and the wages received were not as initially promised. In one incident, the workers attempted to demand their personal documents back from the broker and one worker was punched in the face. In addition, the workers and CSO representative faced pressure and intimidation by the police for their assistance in this case. In one instance, the police called the parties and explained that there is a distinction between maintaining a workers' documents (which can be legal under the Royal Ordinance on Foreign Workers' Employment, 2017) and document confiscation (an indicator of forced labor under the Anti-Trafficking Act, 2008). The employees claim that they never signed the "document release form", and thus this represents a case of illegal document confiscation. The CSO found the police record to be compromised and that it did not reflect the reality of what was reported at the police station that day. The CSO received a phone call from the police investigation unit asking for the name of the person who had assisted the workers at the police station with regard to interest from the employer, which can be understood as intimidation. Ultimately, the police took no further action and did not file an official case. The CSO urged the workers to request for unpaid salary however the workers only wanted their documents back so they could seek new employment. The CSO informed the Department of Employment (DOE) that the workers were dismissed, however the employer has not paid severance.[17]

Case 3: Document confiscation and forced to work when sick through physical violence, February-April 2020, Samut Sakhon

In February 2020, three Burmese migrant workers on fishing vessels reported that for the previous two years, the employer had withheld their documents and did not allow them to rest even when they were not feeling well. Their employer forced them to work every day and if they slept in an extra hour, the employer hit them. One of the workers became very injured and sick due to the physical abuse and required medical attention. After receiving treatment in hospital for six days, the employers fired him without paying any salary and returned the workers' identity document. In addition, CSOs and workers worried that if the migrant workers reported

[17] Information provided to GLJ-ILRF by CSO #3 in January 2021 (further evidence and records provided as supplementary material).

the case at the Provincial Labor Office or Department of Employment, other employers would refuse to hire them.[18]

Case 4: Document confiscation, physical violence and forced to work when sick, Samut Sakhon, June 2020

In June 2020, a Burmese worker complained that his employer confiscated his document and hit him very often. When he was sick, the employer sent him to work on a fishing vessel instead of sending him to the hospital. The employer threatened the workers' wife that if her husband did not continue to work, he would be physically abused again. A local CSO took up this case by taking the worker to report it at the police station, to get a medical check-up, and to report to the Port-in Port-out Control (PIPO) and the Department of Employment regarding the physical violence and the non-payment of wages. PIPO recommended that the worker could follow up with the police and took no further action.[19]

Case 5: Document confiscation and physical violence, Samut Sakhon, June 2020

In June 2020, a Burmese migrant worker reported that fishing vessel manager injured him with a knife while he was sleeping, explaining that the manager does this to intimidate and control the crew. The worker claimed that the vessel owner had previously confiscated his identity documents. A local CSO took the worker to see a doctor for the knife injury and reported the cases to PIPO and the police at that time. PIPO told the CSO they should report the case to the Department of Employment and suggested the worker should follow up with the police.

In this case and Case #4, the CSO found that PIPO interpreters could not understand the language migrant workers speak as they come from a different region in Myanmar. These two cases were recorded but no further action was taken. The Officers from the Department of Employment informed the CSO that there is no regulation to proceed with the case and the officers from the Department of Labor Protection and Welfare did not accept the case. They suggested migrant workers and the CSO conduct an informal mediation with employers. According to the CSO that documented this case, "this case indicates the government officials' discriminatory practices and attitudes toward migrant workers, which obstruct victim identification. The reason that the case was not accepted by the responsible officers was that the particular migrant worker was not "reliable". They claimed that the worker had reported this kind of case to them many times and concluded that his word was not valid. However, we did not witness the authorities make any further efforts to collect evidence or conduct additional fact-finding to substantiate their claims despite the forced labor indicators present".[20]

Case 6: Document confiscation of Cambodian workers in seafood processing, Songkhla, February-May 2020

On February 22, 2020, a Cambodian migrant worker who worked in a seafood processing factory in Songkhla Province complained that his employer confiscated his document and did not allow him to resign until they got a new worker to replace him. A CSO contacted the Migrant Workers Support Center within the Songkhla Provincial Employment Office to report a violation of the law. The Center informed the employer about the offence and the employer returned the document to migrant workers. The employer was not penalized.[21]

[18] Information provided to GLJ-ILRF by CSO #3 in January 2021.
[19] Information provided to GLJ-ILRF by CSO #3 in January 2021.
[20] Information provided to GLJ-ILRF by CSO #3 in January 2021.
[21] Information provided to GLJ-ILRF by CSO #4 in January 2021.

Case 7: Document withholding, and illegal fees required to terminate job, Songkhla, February-April 2020

On February 18, 2020, a Cambodian migrant fisher working on a vessel in Songkhla Povince reported that his documents were being maintained by their employer. He was fearful for his physical safety due to fighting among crew and informed the employer he wished to quit the job. However, the employer did not return his passport or other work documents. The employer had an insufficient number of crew to undertake fishing (according to the Department of Fisheries requirements). He attempted to prevent the worker from leaving by demanding he provide 40,000 Baht to repay the debt the worker was in for recruitment into the current job. PIPO and a CSO helped the worker negotiate with the employer to return the document. The employer agreed to return the work documents but did not return the passport. The employer reported to the Department of Employment that the worker deserted the job. As a result, the workers could not change employers. To gain new employment, the workers would need to return to Cambodia and return to Thailand under the MOU channel. The CSO helped the workers report the lost passports to the police station, however the police officers informed the CSO that the case cannot be reported as there is no law to protect the loss of foreign workers' documents. The CSO then lost contact with the workers.[22]

Case 8: Wage withholding and inability to change employers in Trang, November 2020

On November 4, 2020, three Burmese migrant fishers working in Trang Province complained to a local CSO that they had requested assistance from PIPO a year prior, on November 29, 2019, to change employers. The current employer had confiscated their documents and had withheld their wages for 10 months. The employer agreed to allow the workers to change employers however informed PIPO that he had paid the workers' wages in full and did not have any debt to them. When attempting to register the workers with a new employer, the Provincial Employment Office found that the employer had not submitted the termination information required and that each worker was in debt to the employer for 20,000 Baht for registration fees. In addition, the previous employer maintained the workers' documents, without which the Employment Office could not support the workers to change employers. As a result, the new employer informed the Office that he cannot provide employment to the workers due to this previous debt. After some time, the original employer returned the workers documents to the Employment Office. However, the CSO was unable to contact or find the three workers, suspecting that they may have been arrested and deported for not being in possession of their travel and work documents.[23]

Case 9: Document withholding and confiscated of wages by labor broker, Songkhla, September 2020

On September 16, 2020, a migrant fisher from Myanmar working on a vessel in Songkhla Province reported that he did not receive his monthly salary of 9,600 Baht (320 USD) in full. The employer had provided it to the labor broker who gave the worker only a small portion. He had worked on the fishing vessel for around three years and wanted to leave the job as he was fearful of ongoing conflicts between the vessel crew. The broker managed the workers identity and work documents and arranged food and accommodation. Each month, the broker would collect the salary from the employer and provide the worker with 60-100 Baht only. The salary was paid directly to the broker and the worker was required to sign a document confirming receipt of the salary, despite not receiving it in full. According to the payment record, the broker received 59,000 Baht ($1,966 USD) in total from the employer. After the worker left the job on the fishing vessel, he spent a month at the broker's house. He tried searching for a new job but

[22] Information provided to GLJ-ILRF by CSO #4 in January 2021.

[23] Information provided to GLJ-ILRF by CSO #4 in January 2021.

was unable to as the broker retained all his identity documents. The broker wanted him to continue working on the fishing vessel. Later, the broker reported to the police officers that this worker did not have the proper documents to work and stay in Thailand. The broker told the worker that if he wanted to receive his documents, he must pay 38,000 Baht ($1,266 USD). A CSO helped the worker report his case to the Provincial Labor Welfare and Protection Office. They informed the CSO that their office is responsible for payment disputes between employers and workers, and that the worker should report the case to the police as confiscation of identity documents is a crime. The labor office took no further action. The CSO lost contact with the worker as he does not have a mobile phone.[24]

Case 10: Document confiscation and complicity of a police officer, October 2020
This case has been redacted from this public version of the submission.

3.1.3. Seafood workers pressured to work overtime during pandemic

Seafood processing workers faced increases in workload between March-December 2020 as the COVID-19 pandemic increased global and domestic demand for shelf-stable products such as canned seafood.[25] This was compounded by labor shortages, after many migrant workers had returned to their home countries in March 2020 due to fears of the pandemic (see section 4.1.2). By the middle of 2020, it was estimated that there was a shortage of 50,000 workers in fishing sector[26] while there are no precise numbers on the labor shortage in seafood processing.

A CSO in Samut Sakhon observed that this caused fish canning factories[27] to demand employees meet higher production quotas and work overtime more often, among other issues. For example, migrant workers working in a tuna canning factory in Samut Sakhon reported the following issues to a CSO in 2020: (1) it is challenging for workers to meet increases in production quotas for fish scaling (from 10 fish to 15 fish per day); (2) they receive PPE only once per year from the company and it is their responsibility to purchase additional gear; (3) workers in the cold storage room have difficulty going to the restroom during short breaks due to the need to wear many layers of clothing; (4) workers in the fish steaming room work in very hot temperatures; although the factories installed cooling systems, it is insufficient. These workers receive an additional 30 Baht ($1 USD) per day and are required to work overtime; and (5) those who work in the cold storage room and fish steaming room do not have an opportunity to rotate to work in other units; the factories prefer to keep workers in the same unit, while workers would prefer to rotate since the work is mundane and to get new experience.[28]

In general, factory managers communicate the need for increases in overtime to employees via unit supervisors. The factories did not rely on the existing Welfare Committees, which include some worker representatives, to communicate this information because they perceive this work to be relevant to production rather than to worker welfare.[29] The overtime work required typically

[24] Information provided to GLJ-ILRF by CSO #4 in March 2021.
[25] For example, see "Thai Union Posts Highest First-Quarter Sales in Three Years," Thai Union, May 5, 2020, https://www.thaiunion.com/en/newsroom/press-release/1163/thai-union-posts-highest-first-quarter-sales-in-three-years
[26] "Fishing Boats Seek 50,000 Workers As Virus Spurs Migrants To Leave," Khaosod English, May 10, 2020, https://www.khaosodenglish.com/news/crimecourtscalamity/2020/05/10/fishing-boats-seek-50000-workers-as-virus-spurs-migrants-to-leave/
[27] There may be between 5,000 – 10,000 workers employed in a canning factory.
[28] Information provided to GLJ-ILRF by CSO #1 in February and March 2021.
[29] Companies claim these provide an adequate substitute for independent labor unions, yet in practice local law does not afford welfare committees with equivalent functions, bargaining rights and legal protections to labor unions; see "Time for a Sea Change: Why union rights for migrant workers in the seafood are needed to prevent forced labor in the seafood industry,"

included two additional hours of work, in addition to the eight hours of regular work. The minimum wage in Samut Sakhon province is 333 Baht (11 USD) per day and workers would receive an additional 124.87 Baht (4.16 USD) for their overtime work.[30]

A large portion of migrant workers prefer to do as much overtime work as possible to gain more income. However, between March 2020 and the present, the CSO received informal complaints that show indication of a deeper problem. The CSO learned that if the workers refuse the overtime work, they are perceived negatively by their supervisors and are portrayed as failing to contribute to the business. In some cases, supervisors may inform workers that they will not offer overtime work in the future, if the workers do not want to do overtime work now.[31] According to the Labor Protection Act (1998), Section 24, employers shall require the consent of workers to undertake overtime on each occasion.

According to a CSO in southern Thailand, the increase in demand for seafood products during the pandemic coupled with the existing labor shortage of fishing sector workers has had impacts on workload for fishermen too. The organization received several complaints from migrant fishers that they were forced to work while they were sick.[32]

3.2. Authority failures to identify victims

Many of the issues discussed in section 3.1 result from government officials failing to identify and properly handle labor trafficking and forced labor cases. Police officers, labor inspectors and PIPO officials are failing to identify victims of labor trafficking and forced labor due to procedural weaknesses, lack of awareness training, corruption, and despondency towards non-sexual forms of exploitation.

In 2020, only twelve labor trafficking and forced labor cases were initiated by police inquiry officers,[33] a decrease from the thirty-five that were initiated each in 2019 and 2018. In 2020 and in previous years, the majority of human trafficking cases prosecuted were related to forms of sexual exploitation. In 2020, 117 of the total 131 cases were related to prostitution, pornography or other sexual exploitation.

During the past two years, the government has claimed the 2019 amendment to the Anti-Trafficking in Person Act (2008) that made “forced labor or services” a stand-alone offense (in addition to labor trafficking) would facilitate the identification and prosecution of forced labor cases. However, this has not happened, and labor trafficking numbers are similarly low, indicating that is more about authority practices and political will than it is about the existence of crimes in the law. Most recently, the government has claimed that low numbers of human trafficking cases are a result of COVID-19 related barriers, as well as the success of eradication efforts in previous years. However, frontline organizations and lawyers working on labor and immigration issues have provided evidence suggesting that these numbers represent a failure to identify cases in the first place. The low numbers of labor trafficking and forced labor cases identified (particularly when compared with sex trafficking) also follow a pattern and have occurred in 2020 and in years prior to COVID-19. Sections 3.2.1 to 3.2.5 analyze these failures in five key areas.

ILRF, March 2020, pp. 23-26, https://laborrights.org/publications/time-sea-change-why-union-rights-migrant-workers-are-needed-prevent-forced-labor-thai

[30] Information provided to GLJ-ILRF by CSO #1 in February 2021.

[31] Information provided to GLJ-ILRF by CSO #1 in November 2020 and February 2021.

[32] Information provided to GLJ-ILRF by CSO #4 in January 2021.

[33] Nine of these cases are labor trafficking cases, two are forced labor or services and one is forced labor in fisheries.

3.2.1. Failure of police to identify forced labor and trafficking

Government agencies participate in multidisciplinary teams (MDTs) to identify victims. Victims of trafficking and forced labor can be identified by provincial police authorities or the Anti-Trafficking Police Department (ATPD) of the Royal Thai police. A range of issues with police identification efforts were reported by multiple CSOs and individual experts interviewed for this submission:[34]

1. **No proactive identification:** In general, the police do not proactively identify labor trafficking cases, but rather wait for such cases to be reported to provincial police offices or the ATPD. The police typically do not undertake research or investigate leads to identify unreported cases.
2. **Perception that labor trafficking and forced labor are not a problem:** There is a common attitude among police authorities, including higher ranking officials in ATPD, that labor trafficking and forced labor are rare occurrences and do not require significant attention compared with sex trafficking cases. They perceive that because these cases are not being reported to them, they do not exist. There is also the understanding that labor trafficking/forced labor cases are more difficult to investigate due to the complexity of the indicators and definitions, which has led to a reluctance to take on this more challenging task among officers.
3. **No Standard Operation Procedure (SOP) with labor inspectors:** There is no referral mechanism between the labor inspectorate and the police through which potential forced labor cases could be identified by labor inspectors and transferred to the police.
4. **No first responder referral system:** There is no first responder referral mechanism, which has been recommended by local experts. In this system, which has been found to be effective in the United Kingdom and elsewhere, frontline responders are trained to use an online form which they submit and is evaluated and coordinated with the government.
5. **Undocumented workers deterred:** Undocumented workers are deterred from coming forward and identifying themselves as victims of trafficking because they risk being charged with crimes under the Immigration Act and deported, if they are not ultimately identified as victims. This is problematic as undocumented workers are understood to be particularly vulnerable to trafficking and forced labor.

3.2.2. The inability of labor and fishing vessel inspectors to identify and refer cases

There are two main bodies responsible for workplace inspections. The labor Inspectorate, which is under the Department of Labor Protection and Welfare (DLPW) within the Ministry of Labor, is responsible for most workplaces. The multi-disciplinary Port-in Port-out (PIPO) Centers are responsible for fishing vessels. They fall under the Department of Fisheries (DOF) but also have around 1000 officers deputized from the DLPW, the Department of Employment (DOE), the Marine Police Division, the Marine Department and the Royal Thai Navy.[35] PIPOs were previously under the command of the Thai Navy but that power was transferred to the DOF in 2019.

[34] Information provided to GLJ-ILRF by CSO #2, INGO #1, and a local law firm in January and February 2021.

[35] Kulanujaree, Salin, Noranarttragoon and Yakupitiyage, "The Transition from Unregulated to Regulated Fishing in Thailand," Molecular Diversity Preservation International, July 20, 2020, https://www.mdpi.com/2071-1050/12/14/5841/pdf

In practice, local experts say that DLPW, DOE and DOF play the role of inspecting vessels. However, these agencies do not have an official mandate to investigate labor trafficking and forced labor. This means they do not look for indicators of involuntariness and coercion and, in cases where such practices are reported, they are recorded simply as violations of the Labor Protection Act (1998) or violations of the Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017), which covers documentation issues. In 2020, labor inspections were conducted in 92,534 workplaces and vessels, where over 1.9 million people work. While 11,177 workplaces and vessels were found to be in violation of Thailand's Labor Protection Act, and other laws, they failed to identify a single case of forced labor or human trafficking.[36]

In particular, law enforcement officials do not dig deeper for signs of intention, force or coercion by the various beneficiaries, which would be crucial to differentiate labor law violations from forced labor. For example, in cases where workers are in debt, the labor inspectors cannot determine if it is forced labor or not, because they cannot prove the intent of the beneficiary to use debt as a means to force someone to work longer.[37]

In addition to giving these bodies an official mandate to identify and handle, or at least refer, such cases, the following issues need to be addressed:

1. **Potential forced labor cases being informally mediated rather than reported:** DLPW and other authorities regularly encourage informal mediation of labor disputes and labor law violations, which may prevent the proper identification of forced labor cases. This takes place even when there are indicators of more serious abuse, such as withholding of identity documents or wages or movement restrictions. These practices are contrary to the Labor Protection Act (1998), under which labor law violations should be officially registered and processed in labor courts.[38]
2. **Intimidation and corruption of local authorities by 'influential' vessel owners:**[39] In the fishing sector, local officials inspecting fishing vessels avoid confronting influential vessel owners, particularly in the southern provinces. This motivates officials to encourage employers and workers to mediate disputes informally. When files are charged, they are usually under the Labor Protection Act (1998) rather than the Anti-Trafficking in Persons Act (2008) even when there are indicators of trafficking. Local organizations have recommended that national-level officers should take greater responsibility in these cases and take the pressure away from provincial officers, because the latter live in the same area as the influential people, and are more susceptible to pressure.[40] Local groups also recommend that central bodies should have a clear referral mechanism/risk mitigation guideline (not case dismissal without pre-screening) to assure safety of local officials.[41]
3. **Loss of PIPO influence since command was shifted from Thai Navy to the Department of Fisheries:** Local experts are concerned the inspection teams have

[36] Royal Thai Government's Country Report on Anti-Human Trafficking Efforts (1 January – 31 December 2020), p. 4.
[37] Information provided to GLJ-ILRF by CSO #2 in January 2021.
[38] Information provided to GLJ-ILRF by CSO #2 in January 2021; see also "Labor Abuse Complaint Mechanisms in Thailand, Research Report," USAID Thailand Counter Trafficking in Persons, March 2020, https://winrock.org/wp-content/uploads/2020/05/Thailand-CTIP-Assessment-of-Complaint-Mechanisms.pdf
[39] 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*.
[40] Information provided to GLJ-ILRF by CSO #2 in January 2021.
[41] Information provided to GLJ-ILRF by CSO #3 in March 2021.

weakened since the PIPOs were transferred in 2019. While a multidisciplinary taskforce under civilian command is the right structure, it is crucial that they are given the leverage and recognition they need to exercise their authority. They are particularly limited in their mandate to cover labor and recruitment issues under the Labor Protection Act (1998) and Royal Ordinance on Foreign Workers' Employment (2017) but less so pertaining to human trafficking and forced labor.[42]

4. **Lack of proper coordination between PIPOs and Ministry of Labor departments:** Workers report that when they make a complaint to PIPO officials, they are told it is not their responsibility and that the workers should report it to DLPW or DOE themselves. In some cases, the PIPO officials will contact one of these labor officials. However, it is not mandatory for PIPO officials to refer cases, so they often take no action.[43]

3.2.3. Increase in smuggling and corrupt government officials on the Thai-Myanmar border

Perhaps the most complex challenge to be addressed is the persistence of trafficking and smuggling networks around the Thailand-Myanmar border,[44] which remain closely connected to corrupt Thai officials. These trafficking and smuggling networks have been in place for many years,[45] and have persisted even as the Thai government closed international land borders in response to COVID-19. These border closures prompted an increase in labor smuggling, as migrants continued to seek employment in Thailand due to poor economic conditions and unstable political situations in their own countries, and with labor agents able to bribe their way through checkpoints and bring migrant workers across the border. For one of the most concerning of such cases, see section 3.1.1.

In the Myanmar-to-Thailand migration corridor, most labor smugglers and traffickers are based in Mae Sot District, Tak Province and in Mae Sai District, Chiang Rai Province, from where they work with counterparts in Myanmar. Smugglers bring people across the border for between 10,000 Baht ($323 USD) and 30,000 Baht ($969 USD) per person. These workers are often taken to a food market in Pathum Thani Province and are sent to other provinces nationwide, remaining irregular.[46]

Smuggling networks in Kanchanaburi (western province of Thailand on the border with Myanmar) and other border provinces have also long been aided and abetted by corrupt police, military officials and local authorities.[47] Three Pagodas Pass, which connects Kanchanaburi Province, Thailand with Karen State, Myanmar has been an active crossing point between the

[42] Information provided to GLJ-ILRF by CSO #2 in January 2021.
[43] Information provided to GLJ-ILRF by CSO #2 in January 2021.
[44] It is important to note that in many cases these individuals are not intentionally seeking to exploit migrant workers and do not see themselves as 'smugglers' but rather as service providers enabling low-income households to participate in labor migration in the absence of cheap, simple channels for regular migration; see Winston Set Aung, "Illegal Heroes and Victimless Crimes Informal Cross-border Migration from Myanmar," Institute for Security & Development Policy, 2009, https://www.isdp.eu/content/uploads/images/stories/isdp-main-pdf/2009_set-aung_illegal-heroes-and-victimless-crimes.pdf
[45] "From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand," Human Rights Watch, 2010, https://respect.international/wp-content/uploads/2010/02/From-the-Tiger-to-the-Crocodile-Abuse-of-Migrant-Workers-in-Thailand.pdf
[46] Wassayos Ngamkham, "Migrant traffickers act in gangs," Bangkok Post, December 24, 2020, https://www.bangkokpost.com/thailand/general/2040223/migrant-traffickers-act-in-gangs
[47] Piyarat Chongcharoen, "Kanchanaburi checking all vehicles for people smuggling," Bangkok Post, January 23, 2021, https://www.bangkokpost.com/thailand/general/2055811/kanchanaburi-checking-all-vehicles-for-people-smuggling; Pravit Rojanaphruk, "Human Smugglers Work With Corrupt Thai Officials: Un Report," Khao Sod English, August 20, 2019, https://www.khaosodenglish.com/politics/2019/08/20/human-smugglers-work-with-corrupt-thai-officials-un-report/

two countries for many years. Despite COVID-19 restrictions, it has been increasingly used by smuggling and trafficking networks to traffic illicit contraband and people in 2020.[48]

In January 2021, at least 33 Thai police officials were found to be implicated in human trafficking of migrant workers across the border in Kanchanburi Province (at the end of the Three Pagoda Pass). The officials ranged from non-commissioned and commissioned officers to the deputy commander level. They were arrested alongside eight Thai civilians who were part of a smuggling network that had been sending workers from Myanmar to Samut Sakhon.[49]

After the initial COVID-19 outbreak in Thailand last year, a large number of Myanmar migrant workers returned home via official checkpoints, but many returned to Thailand to work informally. Smugglers charge 8,000-10,000 Thai baht (about $250 – $320 USD) to transport one person from border towns to the interior of Thailand. Some undocumented people, including Rohingya entering Myanmar from Bangladesh, also sneaked into Thailand, from where they were smuggled to Malaysia. They paid large fees to both Myanmar and Thai smugglers to reach the country.[50]

3.2.4. Failure to distinguish between labor trafficking and forced labor

Frontline police authorities are unable to distinguish between forced labor and labor trafficking, which has impeded their ability to identify these forms of abuse and protect victims. The Anti-Trafficking in Persons Act (2008) was amended in April 2019 to make "forced labor or services" a stand-alone offence. The aim of the reform was to criminalize forced labor in work or service and thereby facilitate prosecutions.[51]

The amended provision states:

> "*Any person who compels another person to work or to provide services by one of the following means: (1) threatening to cause injury to life, body, liberty, reputation or property of the person threatened or any other person; (2) intimidating; (3) using force; (4) confiscation of identification documents; (5) using debt burden incurred by such person or any other person as unlawful obligation; (6) using any other means similar to the above acts. If such act is committed to another person to be in the situation where he or she is unable to resist, such person commits the offence of forced labor or services".*[52]

The challenge is that many of these indicators are also indicators of human trafficking and so law enforcement officials are often unsure when to charge actors with the crime of forced labor, labor trafficking, or both. NGOs have provided training to DSI, ATPD and police authorities to distinguish between these two crimes, clarifying that forced labor is an issue that arises in the

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[48] "New normal: assessing illicit trafficking changes along the Thailand Myanmar border," UNODC, September 25, 2020, https://www.unodc.org/southeastasiaandpacific/en/2020/09/new-normal-illicit-trafficking-thailand-myanmar-border/story.html

[49] "More Than 30 Thai Police Accused of Trafficking Myanmar Migrants," The Irrawaddy, January 15, 2021, https://www.irrawaddy.com/news/burma/30-thai-police-accused-trafficking-myanmar-migrants.html

[50] "More Than 30 Thai Police Accused of Trafficking Myanmar Migrants," The Irrawaddy, January 15, 2021, https://www.irrawaddy.com/news/burma/30-thai-police-accused-trafficking-myanmar-migrants.html

[51] These amendments were made to bring Thai law in compliance with the ILO's Protocol of 2014 to the Forced Labor Convention No. 29, 1930. 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 Labor," ILO, February 2017, https://shiptoshorerights.org/wp-content/uploads/gap-analysis-protocol-2014-english.pdf.

[52] Section 6/1 Anti-Human Trafficking Act (2008).

workplace and is a separate issue from the way that the person was recruited or placed in the job.[53] However, provincial law enforcers have not been adequately trained and so often struggle to identify either abuse or distinguish between them.[54] The government has not provided an official curriculum to assist law enforcement with this challenge.[55]

3.2.5. Failure to identify debt bondage and confiscation of identity documents

Law enforcement have also struggled to investigate and verify crimes related to confiscation of identity documents and debt. Although these issues have been part of the legal definition of forced labor or services since the Anti-Trafficking in Persons Act (2008) was amended in 2019,[56] police rarely classify these cases as forced labor.

This is mainly because law enforcement officials struggle to prove that document confiscation or debt have been used to compel the person to work, which would be necessary in order to meet the definition of forced labor or services under the Anti-Trafficking in Persons Act (2008). It is difficult to prove intention.

Related to this, the Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017) includes situations under which document withholding and certain types of debt to employers are permissible, thereby creating loopholes in the law where these practices are legal.

For example, the Royal Ordinance (2017) allows employers to retain workers' identity documents if the worker agrees and if the employer facilitates access to the documents at all times when requested by the worker.[57] This proves to be problematic in practice. For example, in monitoring compliance with this provision, PIPO officers will ask workers if they requested their documents back, and if the worker concedes that they did not, the officers record this as proof of migrant consent. However, this approach ignores the power imbalances between workers and employers and overestimates the level of awareness workers have regarding the law. In many cases, migrant workers would be too afraid to claim that the employer refused to provide them with their documents upon request and may have little knowledge about what their employers are permitted to do or of their own rights under the Royal Ordinance or other laws and policies[58] (see more in Section 4.1.4).

3.3. Immigration status protections for survivors

The Ministry of Interior (MOI) is the agency responsible for immigration status issues. According to Thai law, migrant workers who are victims or witnesses of human trafficking are able to stay and work in Thailand, "for the purposes of instituting proceedings against the offender, providing medical treatment and/or rehabilitation for the trafficked person, or claiming compensation for

[53] Information provided to GLJ-ILRF by INGO #1 in January 2021.
[54] This perspective was shared with GLJ-ILRF by INGO #1, CSO #2 and a local law firm during consultations in January 2021.
[55] Information provided to GLJ-ILRF by CSO #2 in January 2021.
[56] Article 6/1 states "Any person who compels another person to work or to provide services by one of the following means: … (4) confiscating identification documents; (5) using debt burden incurred by such person or any other person as the unlawful obligation… if such act is committed to another person to be in the situation where he or she is unable to resist, such person commits the offence of forced labor or services"; Emergency Decree Amending the Anti-Human Trafficking Act (2008), 2019, Section 5.
[57] Section 131.
[58] Information provided to GLJ-ILRF by CSO #2 in January 2021.

the trafficked person."[59] MOI regulations in 2016 and 2017 gave similar permissions to "followers" (family members of victims).[60] For those who would like to stay in Thailand to work after the legal process concludes, there is a right and the request must be approved by the MSDHS Permanent Secretary, and then sent to the MOI Permanent Secretary for approval.[61] Starting in 2017, victims and witnesses became eligible for two-year stay permits.[62] Renewals can be requested annually, contingent on certain conditions.[63] Practitioners explained that it is difficult to ascertain the extent to which these rights to stay and work are requested and accessed.

At trafficking shelters, individuals have access to "counseling, legal assistance, medical care, civil compensation, financial aid, witness protection, education or vocational trainings, and employment." According to practitioners, victims may receive compensation or unemployment benefits from the Social Security Fund, if the victim's employer had previously registered them.[64]

Witnesses are legally entitled to, as necessary, "a safe house, 24-hour security protection, THB200 Baht /day (USD5.71) for food and beverage, and THB200/day (USD5.71) for living expense, and change of name, domicile or other identifying information."[65] According to practitioners, victims can receive some cash if they do work in shelters, such as cleaning up the area or helping to cook in the kitchen. The payment in one government shelter is 24 Baht ($ 0.77 USD) per hour. The money comes from the Human Trafficking Protection Fund. In that shelter, victims did not receive cash for food, beverages or living expenses during the reporting period.[66]

According to the 2017 policy, victims and witnesses can work in all sectors and can obtain streamlined work permits within 10 days. Foreign victims with work permits can renew them after the completion of their case.[67] Some legal assistance is available at shelters. The shelters have a legal officer and MSDHS may hire human rights lawyers to assist in more complex cases.[68]

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[59] Per Sections 37 and 38 of the Anti-Trafficking in Persons Act (2008) and a Cabinet decision on December 13, 2016; see also "Legal Analysis of Human Trafficking in Thailand," Liberty Asia to Prevent Human Trafficking, June 2017, p. 25, http://un-act.org/publication/view/legal-analysis-human-trafficking-thailand/

[60] Policies available in Thai language, see http://law.m-society.go.th/law2016/uploads/lawfile/57e34693186ce.pdf, https://www.mwgthailand.org/sites/default/files/2020-02/12.PDF, and http://www.ratchakitcha.soc.go.th/DATA/PDF/2560/E/051/15.PDF

[61] Ibid.

[62] This was based on a cabinet resolution on December 13, 2016, which was announced by the Ministry of Interior on February 17, 2017; see the Government Gazette, February 17, 2017, https://www.mwgthailand.org/sites/default/files/2020-02/12.PDF

[63] According to the Immigration Act (1979), Section 12(7-8) renewals would not be considered in certain cases: "Having behavior which would be indicated possible danger to the public or likelihood of being a nuisance or constituting any violence to the peace or safety of the public or to the security of the public or to the security of the nation, or being under warrant of arrest by competent officials of foreign governments; Reason to believe that entrance into the kingdom was for the purpose of being involved in prostitution the trading of women of children, drug smuggling, or other types of smuggling which are contrary to the public morality, of the Immigration Act B.E.2522 (1979) and compliance with the requirement for working in Thailand." Wattana Kamchu, "Trafficking victims, court witnesses 'able to work,'" The Nation: Thailand Edition, February 6, 2017, http://www.nationmultimedia.com/detail/national/30305750

[64] Information provided to GLJ-ILRF by CSO #7 in March 2021.

[65] "Legal Analysis of Human Trafficking in Thailand," Liberty Asia to Prevent Human Trafficking, June 2017, p. 28, http://un-act.org/publication/view/legal-analysis-human-trafficking-thailand/

[66] Information provided to GLJ-ILRF by CSO #7 in March 2021.

[67] 2017 Trafficking in Persons Report, "Thailand," U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271297.htm

[68] Information provided to GLJ-ILRF by CSO #7 in March 2021.

3.4. Recommendations for improving protection outcomes

The U.S. State Department TIP Office should support the following recommendations to the Thai government to improve protection outcomes:

- In collaboration with NGOs, ensure know your rights materials are provided to all immigrants in detention centers in their own languages, informing them of their right to seek asylum or report recruitment or labor-related abuses. Ensure asylum and other claims are heard by the relevant government authorities in a timely manner.
- Ratify and bring national laws and policies into compliance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.
- Increase law enforcement attention and action to protect people in non-sexual forced labor and labor trafficking cases, and provide training to ensure awareness among law enforcement of the prevalence of non-sexual forced labor cases.
- Provide training to law enforcement officials to ensure a non-discriminatory approach in handling cases involving foreign migrant workers.
- Equip labor inspectors with the operational procedures and tools to identify indicators of forced labor and establish an effective referral mechanism for systematically transferring such cases to the competent authorities (MSDHS and the police) when relevant indicators are surfaced during inspection.
- Develop a coordination mechanism between PIPO, DLPW, DOE and ATPD to ensure that when one agency identifies a violation under the Labor Protection Act (1998), the Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017), the Anti-Trafficking in Persons Act (2008) or other law or policy, it is immediately referred to the correct agency and the burden is not placed on migrant workers to do so.
- To counteract intimidation and corruption of local authorities by influential business owners in southern fishing provinces, mandate national-level police authorities not based in these areas to receive and handle trafficking cases.
- Produce effective guidelines and indicators for interpreting and distinguishing forced labor and labor trafficking under the Anti-Trafficking in Persons Act (2008) and disseminate these through regular trainings. Adopt an "accompaniment model" – embedding relevant experts to mentor relevant officials on the job over extended periods to adequately implement and enforce the law.
- In accordance with international standards, ensure that trafficking survivors are afforded necessary protections, including legal assistance, counseling, shelter, access to other state services, and temporary or permanent residence and work authorization.[69] Ensure the protection services are designed to be responsive to the survivors' specific needs and vulnerabilities, utilizing a victim-centered approach effectively.
- MSDHS should track accessibility of the services and work permissions afforded to victims, including tracking the number submitted by self-application, and make the data public.

4. Prevention

Successful prevention depends on having the right laws, policies and regulations in place to protect migrant workers from the whole spectrum of exploitative practices during recruitment,

[69] See the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) and the Council of Europe Convention on Action against Trafficking in Human Beings (2005).

migration and labor so that they do not become vulnerable to human trafficking and forced labor. This section looks at the key weakness in the existing legal and policy frameworks.

Section 4.1 looks at gaps in the frameworks concerning recruitment, registration and contracting, showing how migrant workers are made vulnerable by recruitment fees that place them in debt, registration/documentation statuses that are short-term, difficult to maintain and afford them fewer labor rights, and a legal framework that makes it nearly impossible for workers to change employers. Section 4.2 looks at denial of labor rights and social protections, particularly the denial of rights to freedom of association and collective bargaining that prevents migrant workers from systematically addressing workplace abuse and preventing forced labor. Section 4.2 discusses three policies that contribute to forced labor risk in the seafood and fishing sectors and for workers under the border employment program.

4.1. Recruitment, registration and contract risks

Thailand's recruitment and employment frameworks contain both new and pre-existing problems that have made migrants more vulnerable to human trafficking. The most striking issues during the reporting period relate to sudden decreases in the number of registered[70] workers due to administrative mishandling of migrant labor during COVID-19 response.

In 2020, more than half a million migrant workers "disappeared" from the registration system due to challenges with the government's policies for extending visas and work permits for workers already in the country, which will be explained in sections below. In October 2019, there were 2,987,729 registered migrant workers (995,300 through the MOU from country of origin; 1,929,696 work permits issues to migrant registered in Thailand, and 62,733 with border employment permits). By December 2020, and following border closures that began in January 2020, a total of 2,305,098 migrant workers were registered (999,696 MOU from country of origin, 1,266,403 via work permits registered in country, and 38,999 with border employment permits).[71]

While local experts have yet to fully account for this drop, there are signs that the majority of these people are still in Thailand but are now unregistered and do not have official permission to work and stay. Furthermore, those who have left have also become more susceptible human trafficking within the region, having been suddenly left without jobs and without many legal routes open for labor migration. Section 4.1.1 looks at the reasons that large numbers of migrants have become unregistered despite remaining in Thailand. Section 4.1.2 then looks at the various ways in which people rapidly lost their jobs and became stranded in their home countries (including 60,000 long-term migrant workers who suddenly lost their jobs due to Thai administrative weaknesses), leaving them vulnerable to human trafficking back to Thailand or to other countries.

Section 4.1.3 looks at the significant obstacles of new measures aimed at registering undocumented workers, which have made the process too costly and complex to provide a clear solution to these problems. Section 4.1.4 outlines key issues with 2017 legislation, which

[70] The terms "registered" and "unregistered" will be used in this report to discuss the workers registered to work and live in the country with the Department of Employment, which is the agency responsible for overseeing the management of migrant workers from Myanmar, Cambodia, Lao and Vietnam under the Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017). They may have entered the country regularly or irregularly.

[71] Foreign Workers Administration Office, Department of Employment, Ministry of Labor, December 2020, https://link.edgepilot.com/s/e272e18c/14mXTJyKPk_XQiVYFAX6Ig?u=https://www.doe.go.th/prd/alien/statistic/param/site/152/cat/82/sub/0/pull/category/view/list-label

leave too many loopholes open for employers to exploit workers and which underpin many of the new challenges.

4.1.1. Workers becoming unregistered due to administrative shortcomings

There are signs that the majority of workers who disappeared from the DOE record in 2020 are actually still in the country. However, the nature of their being unregistered makes it extremely hard to gain specific estimates. Based on review of government data and consultations with local organizations and experts, we identified three factors that have contributed to increases in unregistered migrant labor.

1. The pandemic coincided with the annual work permit renewal period, with many migrant workers' work permits expiring in March 2020. The government granted extension periods due to the border closures, but these were challenging (due to complex bureaucratic requirements) and expensive for workers to navigate in practice, meaning many ended up without work permits but stuck in Thailand. Some interviewees suggested this was the main reason for decreases in registered workers.
2. Business closures in some sectors also led to a number of jobs being terminated. Due to flaws in Thai laws, migrants face challenges changing jobs (see section 4.1.4) and have few legal options available for them to find new employment.
3. Some workers who entered the country shortly before the COVID-19 measures were announced were then dropped by labor brokers without work.

4.1.2. Workers stranded in home countries without remedy

Poor administrative handling of the COVID-19 measures led to tens of thousands of workers being stranded in their home countries suddenly without work, making them highly susceptible to human trafficking as the only options left available to them were illegal. Much of this could have been avoided if Thai law offered full labor protections for migrant workers instead of supporting short-term employment models.

After the Ministry of Interior's sudden closure of 18 border crossings points on March 23, 2020 due to COVID-19, between 60,000 – 200,000 migrant workers rushed to borders and then crossed over in the following months due to fears of becoming infected, lack of social security benefits, and potential arrests and deportation by police authorities.[72] Many of these people had not anticipated needing to remain outside the country permanently. Local experts explain that many of these workers then returned without documentation to work in Thailand or Malaysia.[73]

Additionally, there were 60,000 MOU workers[74] who had returned to Myanmar at the end of 2019 to renew their passports and employment contracts and were rendered jobless without compensation due to COVID-19 border closures. These workers were longtime employees of

[72] "Shutdown sparks exodus of 60,000 migrant workers: official," Bangkok Post, March 25, 2020, https://www.bangkokpost.com/thailand/general/1886280/shutdown-sparks-exodus-of-60-000-migrant-workers-official; local experts working with migrant workers estimate the numbers to be up to 200,000; by December 2020, about 100,000 were trying to return; see "100,000 migrants waiting to re-enter," Bangkok Post, December 20, 2020, https://www.bangkokpost.com/thailand/general/2038155/100-000-migrants-waiting-to-re-enter.

[73] Multiple sources explained this trend to GLJ-ILRF during consultations between December 2020 and February 2021; see also "More Than 30 Thai Police Accused of Trafficking Myanmar Migrants," The Irrawaddy, January 15, 2021, https://www.irrawaddy.com/news/burma/30-thai-police-accused-trafficking-myanmar-migrants.html

[74] Workers recruited from country of origin under bilateral Memorandum of Understanding (MOU) between Thailand and their country are commonly referred to commonly as "MOU workers".

seafood, textile and other businesses in Thailand and had reached the end of their four-year contracts, which is the maximum time permissible for workers recruited under the formal MOU recruitment channel. They were doing what is referred to as the "MOU U-turn", where after the completion of the four-year contract, they are unable to renew their contract in Thailand and are required to return to their country of origin to renew their contracts with the same employer.

They returned to Myanmar between November-December 2019 and waited for the Myanmar Ministry of Labor and the Ministry of Interior to issue new passports with five-year validity to cover the next two-year MOU contracts with their existing employers (which can then be extended by two years in country). However, in January 2020, the Thai government ceased accepting migrant workers from neighboring countries, so the 60,000 workers became stranded in Myanmar.[75] The workers were not compensated for recruitment fees they had paid for their renewals, nor did they receive severance as their four-year contracts had technically ended, despite having only returned to their countries per Thai government policy requirements and hoping to continue working with the same employer.[76]

This means they incurred debts that they would have potentially repaid during employment in Thailand. As explained by one local advocate:

> *"The workers who applied at the agencies have made contracts with their employers … They have borrowed the money to pay the fees, and the interest is increasing. But they can't repay their debt as they aren't employed yet*."[77]

The companies took no responsibility and offered nothing to their former employees who were stranded in Myanmar without jobs and the Thai government did not compel them to do so.

This also caused labor shortages in the seafood industry, which made others vulnerable to trafficking and forced labor. To ease labor shortages, the Thailand Ministry of Labor permitted employers to recruit migrant workers already in Thailand whose work permits had expired, or who were deserted by other employers, or had become jobless due to the work stoppage from COVID-19. The large-scale seafood processing businesses utilized this policy relaxation (March-October 2020) to meet the demand for labor in their workplaces. Seafood assembly lines became full again with newly recruited labor in the country.[78]

Local advocates urged the Myanmar and Thai governments to return the recruitment fees paid by workers to various recruitment agencies and brokers, however this has not happened.[79] This situation, which has placed 60,000 long-term migrant workers whose employers wanted them to continue work in an extremely precarious situation, which could have been avoided if Thai

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[75] Information provided to GLJ-ILRF by CSO #1 and Key Informant #2 (by email) in February 2021; see also Tint Zaw Tun, "Myanmar govt urged to ask Thailand to allow entry of 60,000 workers," Myanmar Times, December 17, 2020, https://link.edgepilot.com/s/98fec2c7/EUBVGQw3h0Go9y4VsoOgrg?u=https://www.mmtimes.com/news/myanmar-govt-urged-ask-thailand-allow-entry-60000-workers.html

[76] Ibid.

[77] Tint Zaw Tun, "Myanmar govt urged to ask Thailand to allow entry of 60,000 workers," Myanmar Times, December 17, 2020, https://link.edgepilot.com/s/98fec2c7/EUBVGQw3h0Go9y4VsoOgrg?u=https://www.mmtimes.com/news/myanmar-govt-urged-ask-thailand-allow-entry-60000-workers.html

[78] Information provided to GLJ-ILRF by Key Informant #2 (by email) in February 2021.

[79] Information provided to GLJ-ILRF by CSO #1 and Key Informant #2 (by email) in February 2021; see also Tint Zaw Tun, "Myanmar govt urged to ask Thailand to allow entry of 60,000 workers," Myanmar Times, December 17, 2020, https://link.edgepilot.com/s/98fec2c7/EUBVGQw3h0Go9y4VsoOgrg?u=https://www.mmtimes.com/news/myanmar-govt-urged-ask-thailand-allow-entry-60000-workers.html.

migration policy was not so focused on forcing migrants into short term contracts and without sufficient rights and protections.

4.1.3. Increases to registration fees and risks under "illegal migrant amnesty" program

In December 2020, following the COVID-19 outbreak in Samut Sakhon, the government approved a cabinet resolution to allow unregistered migrant workers from Cambodia, Laos and Myanmar to register and temporarily stay in Thailand for two years. This was part of an effort to prevent the spread of COVID-19 and included plans for surveillance, monitoring, containment and prevention of the outbreak.[80] However, the process remains extremely expensive for most migrants so will likely leave many workers outside the legal system and could put them at risk of exploitation by brokers and employers.

Local sources estimate that between 600,000 and 800,000 migrants could be eligible to register under the new measures. They will need to sign up online and be registered by an employer. Each worker will need to pay for a mandatory COVID-19 test (3,000 Baht), purchase two years' medical insurance (3,800 Baht) and pay the registration fees (1,900 Baht), a total of about $300 USD.[81] Due to challenges with the application process, agents have begun assisting migrant workers with the registration process, which costs workers a further 3,000-4,000 Baht.[82] It is unreasonable and unhelpful for the Thai government to expect the most vulnerable category of migrants to be able to front these costs and there is a strong need to make this process of registration easier and cheaper.

4.1.4. Loopholes for employers in the 2017 Royal Ordinance

As described in the Seafood Working Group's 2020 submission,[83] key provisions in the Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017) and its 2018 amendment make workers vulnerable to human trafficking. These problematic provisions, which underpin many of the challenges discussed in earlier sections, relate to:

1. ***Recruitment fees:*** The ordinance allows recruitment fees and related costs to be borne by migrant workers, including for passports, work permits, health check-ups and other related costs. It also includes loopholes allowing employers to deduct fees from workers' wages in certain cases. Permitting migrant workers to be charged recruitment fees and related costs goes against ILO standards, which state that all recruitment fees and related costs should be borne by the employer to prevent migrant workers from becoming vulnerable to debt bondage and other forms of exploitation;[84]

[80] Penchan Charoensuthipan, "More rules for illegal migrant amnesty," Bangkok Post, January 5, 2021 https://www.bangkokpost.com/thailand/general/2045543/more-rules-for-illegal-migrant-amnesty

[81] "Make it easier for migrants," Bangkok Post, January 9, 2021, https://www.bangkokpost.com/opinion/opinion/2048079/make-it-easier-for-migrants

[82] Information provided to GLJ-ILRF by the CSO #7 in January 2021.

[83] The three issues are explained in detail in the SWG's 2020 submission; see "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," ILRF, March 10, 2020, pp. 18-19, https://laborrights.org/sites/default/files/publications/SWG_TIP_Comments_2020_Thailand_Public_Version_1.pdf.

[84] Please note that the ILO affords the competent authority some flexibility to determine exceptions to the related costs under certain conditions; see Article 2(11) "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.

2. ***Inability to change employers:*** The ordinance only allows workers to change employers under specific conditions which are rarely fulfilled in practice, leaving workers unable to leave undesirable or even abusive jobs. The ordinance requires the first employer to provide a resignation letter to the Department of Employment, which they often fail to do in practice. The ordinance provides 30 days for migrant workers to change employers, which is nearly impossible for most workers; and
3. ***Document withholding:*** The ordinance includes a loophole under which employers are permitted to maintain workers' documents if the worker consents and if the employer allows and facilitates access to the retained documents. This ignores power imbalances between migrant workers and employers that prevent workers from defending themselves when labor disputes over document withholding arise.[85]

There was no progress addressing these three key issues during the reporting period and they remain regular features of the failure to prevent human trafficking.

4.1.5. Sub-contracting practices

The Royal Ordinance 2017 prohibited the practice of sub-contracting migrant labor;[86] however, these practices are ongoing. Sub-contracted workers are prone to rights violations, including wage deductions, forced resignations or being suddenly laid off without severance pay, and employers are typically not held accountable except in the instances that local NGOs take up the case of migrant workers and compel labor courts to act.[87]

Case 11: Labor inspector compels company to pay outstanding wages to sub-contracted workers, Samut Prakan, November 2020

Beginning in February 2020, a CSO received complaints that 12 migrant workers from Myanmar employed by a subcontractor had been laid off and not paid for their outstanding wages and severance pay according to the Labor Protection Act. The workers demanded that the company return the document processing fee that had been deducted from their wages, as well as their personal documents retained by the company and compensation as provided for by law. The CSO supported the workers to file a complaint with the Migrant Workers Assistance Center of the Ministry of Labor and the Samut Prakan Labor Welfare and Protection Office asking that the labor inspectorate compel the company to act in compliance with the law. The labor inspector summoned the company for examination twice, but the company failed to show up and did not provide a reason for the absence. On November 17, 2020, the labor inspector issued an order instructing the company management to pay 121,400 Baht to 12 migrant workers for severance pay proportionate to their durations of employment and other 59,000 Baht for the outstanding wages, altogether 181,400 Baht plus interest at 15% per annum until the debt in completely serviced.[88] This is a rare example of success in the courts for migrant workers and was only possible with the help of NGOs.

[85] "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," ILRF, March 10, 2020, pp. 16-20, https://laborrights.org/sites/default/files/publications/SWG_TIP_Comments_2020_Thailand_Public_Version_1.pdf

[86] Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017), Section 41, 46 and 110/1.

[87] According to CSO #2, email, December 21, 2020.

[88] According to CSO #2, email, December 21, 2020.

4.2. Denial of labor rights and social protection

Migrant workers are denied labor rights and social protections in many ways under Thai law and through the practices of government officials and employers. This makes individuals highly vulnerable to trafficking and also makes it very difficult to develop and establish legal and policy frameworks that would support prevention. The following sections discuss denial of trade union rights and retaliation against workers, trade unionists and labor rights defenders (4.2.1); sub-standard labor protection afforded to fishery workers, with loopholes on child labor (4.2.2); a policy to use prison inmates to fill labor shortages, due to COVID-19 supply needs in the seafood processing sector (4.2.3); the border employment program, which is used to register long term migrant workers and denies them social protection and labor rights (4.2.4); denial of social protection to migrant workers (4.2.5); and lack of labor and social protection for seafood processing workers in COVID-19 impacted Samut Sakhon (4.2.6).

4.2.1. Continued denial of rights to freedom of association and collective bargaining

Freedom of association and collective bargaining are central to ensuring decent working conditions and preventing forced labor. Thailand has an extremely restrictive legal framework on trade unionism and employers retaliate with impunity against workers who attempt to exercise their rights to freedom of association and collective bargaining.[89] 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.[90] Failure on the part of governments to robustly protect freedom of association is a key indicator of labor trafficking.

Thailand remains one of three countries in the Southeast Asia that have not ratified either ILO Convention 87 (Freedom of Association and Protection of the Right to Organize) and 98 (Right to Organize and Collective Bargaining).[91] Thailand has also not ratified ILO core convention 111 (Discrimination in Employment and Occupation). In contradiction to the minimum international norms included in C87, C98 and C111, migrant workers are legally barred from forming unions. The explicit discrimination is included in Section 8 of the Labor Relations Act, which states "Persons who have the right to establish a Labor Union must be … sui juris of Thai nationality," as well as in Section 101, which states "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."[92]

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[89] 75% of Thailand's 38 million workers are not guaranteed full rights to freedom of association and collective bargaining under law. Thai law affords limited forms of these rights to private sector and state enterprise workers. For 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; "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. 1-9, https://www.regulations.gov/docu- ment?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

[90] As of 2018, 616,492 of the 37,864,600 workers comprising the employed labor force in Thailand were members of labor unions; see Labor Statistics Yearbook 2018, The Office of the Permanent Secretary, Ministry of Labor, Government of Thailand, 2018, pp. 13 and 154, https://www.mol.go.th/wp-content/uploads/sites/2/2019/11/sthitiaerngngaanprac-chamaapii_2561-biibad.pdf?fbclid=IwAR3U9vMWxamMLOiu_mUHO0fLgr9UcJQTYXlGbZ_MrOan7u-9pzLjdB5YW74; for trade union densities of other countries, see https://ilostat.ilo.org/data/.

[91] Laos and Brunei have also not ratified either convention.

[92] Labor Relations Act (1975).

In practice, this means that migrant workers can join unions formed by Thai nationals but cannot play leading roles in them, nor can they form their own unions. This is problematic in migrant-dominated labor sectors, such as seafood processing, fishing, and the garment sector among others, since there are very few Thai nationals and no established unions to join.

For rights to be fundamental, they must be universal; where they are given to citizens, they should not be denied to other workers. The ILO has made clear, repeatedly, that denying these rights to non-Thais — migrant workers comprising 10% of the workforce and the majority in low wage industries — based on race or country of origin is a violation of core labor standards and leaves workers vulnerable to exploitation.[93]

4.2.1.1. No progress made in reforming labor relations acts

During the reporting period, the Thai government made no progress in reforming the laws governing industrial relations and trade union rights. Since at least 2015, the Thai government has made repeated public commitments to United Nations bodies that it would reform the Labor Relations Act (1975) and State Enterprise Labor Relations Act (2000) in preparation for the ratification of ILO core conventions 87 and 98.[94] However, it has not made clear how these laws would be reformed nor announced a timeline for reform. Some trade unions associated with the government have been consulted in the reform process,[95] while migrant worker organizations have been excluded.

In a strong indication of backsliding in 2020, the Thai government has dropped its public commitments to ratify Convention 87 and has committed only to ratify Convention 98.[96] It is understood that Article 2 of ILO Convention 87, which states all people without distinction should be permitted to form unions, is the reason for Thailand's refusal to ratify 87.[97] In this sense, the Thai government is recognizing the enormous population of migrant workers in the

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

[94] See "Press Release : Thailand's Response to the Comments of Human Rights Watch on the Protection of Labour in Fisheries Sector," Ministry of Foreign Affairs, Government of Thailand, April 30, 2018, https://thaiembdc.org/2018/04/30/press-release-thailands-response-to-the-comments-of-human-rights-watch-on-the-protection-of-labour-in-fisheries-sector/; see also Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to the Human Rights Council resolution of 16/21, Thailand, A/HRC/WG.6/25/THA/1," United Nations General Assembly, February 2, 2016, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/025/43/PDF/G1602543.pdf?OpenElement; see also "Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Thailand, CCPR/C/TH/2," United Nations International Covenant on Civil and Political Rights, September 30, 2015, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/224/88/PDF/G1522488.pdf?OpenElement

[95] A trade union representative (Key Informant #3) explained that only "yellow unions", those under the influence of the government and employers, participate in these consultations while the independent trade unions are not invited or refuse to participate.

[96] See ILO Committee on Freedom of Association, 392 Report of the Committee on Freedom of Association, Governing Body 340th Session, Geneva, October-November 2020, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_760123.pdf; see also "Royal Thai Government's Country Report on Anti-Human Trafficking Efforts, 1 January – 31 December 2020," Draft, Ministry of Foreign Affairs, January 2021.

[97] Article 2 states: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."

country and actively sustaining the denial of their basic rights. This is a clear indication that Thailand is not serious about addressing persistent labor abuse and forced labor of migrant workers in its economy.

In October 2019, the U.S. Trade Representative (USTR) suspended $1.3 billion in preferential tariffs for many Thai imports under the Generalized System of Preferences (GSP) program, with specific reference to weak protection for freedom of association and collective bargaining, and gave Thailand six months, until April 2020, to make reforms in order to have trade benefits reinstated.[98] The Thai government took no steps to reform legislation and address key cases of trade union harassment identified by the USTR.

4.2.1.2. Retaliation against migrant workers for organizing and bargaining

Migrants remain highly susceptible to retaliation (including termination of their jobs) for exercising their labor rights. Below are two cases from within the reporting period of garment workers being penalized for invoking their rights under Section 13 of the Labor Relations Act (1975), which permits non-unionized groups of workers comprising at least 15% of those in the workplace to elect up to seven representatives and submit a "demand" to begin an official bargaining process with the employer to negotiate or re-negotiate the conditions of employment. The law does not prohibit non-Thai citizens from forming the non-unionized group; thus, migrant workers can attempt to collectively bargain in this way.

With the help of a local CSO, migrant workers in garment factories in Tak Province have employed this strategy more regularly over the years. However, workers who do are routinely harassed, intimidated and sometimes dismissed. In many cases, employers exploit the "border employment" program in the Royal Ordinance on Foreign Workers' Employment (2017) as a cover for such retaliation (also discussed in 4.2.4). The Seafood Working Group's 2019 submission to the TIP office includes six similar cases.[99]

Meanwhile, this organizing strategy has not been pursued in the seafood sector since 2017, when 2,000 migrant workers in a seafood processing factory who tried it, were intimidated by the company and government officials to drop their demands. Since then, the government has begun actively advocating for seafood companies to set up welfare committees in workplaces, which are employer-controlled units that provide workers with no real voice or negotiating power.[100]

Case 12: Termination of migrant workers for organizing and collective bargaining, Mae Sot, March 2019-January 2021

Beginning in March 2019, 186 employees in a garment factory owned by Rosso Co., Ltd in Mae Sot organized and submitted a demand to renegotiate the conditions of employment. In accordance with Section 13 of the Labor Relations Act, the demand was signed by not less than

[98] "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

[99] See "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," ILRF, March 10, 2020, pp. 9-12, https://laborrights.org/sites/default/files/publications/SWG_TIP_Comments_2020_Thailand_Public_Version_1.pdf

[100] "Time for a Sea Change: Why union rights for migrant workers in the seafood are needed to prevent forced labor in the seafood industry," ILRF, March 10, 2020, pp. 35-37, https://laborrights.org/publications/time-sea-change-why-union-rights-migrant-workers-are-needed-prevent-forced-labor-thai.

15% of employees in the workplace. The workers sought to address the issue of working hours over the legal limit, high workload, and to treat migrant workers without discrimination, among many other issues. The employer initially did not arrange for a negotiation within three days by required by law and the employees filed a labor dispute complaint with the conciliation officer in Tak Province. A mediation session resulted in a written agreement with new employment conditions proposed. Between July and August 2019, the company dismissed the nine employees (seven men and two women, including five leaders), most of whom had three-month employment contracts (in accordance with Section 64 of the Royal Ordinance on Foreign Workers) and did not have renewal for their employment contracts. On September 23, five of the dismissed leaders filed a complaint to the Labor Relations Committee to request the company reemploy and reinstate the dismissed workers with the same wages and pay for compensation of wages from the termination of employment until they return to work, and requested the company be fined for unfair conduct. On December 12, the LRC concluded that the employer's conduct was not considered unfair because the employment contract was terminated by the specific period (i.e. Section 64 was interpreted to have a three-month employment period for each employment contract).

Beginning in December 2020, a lawyer was appointed to four of the dismissed workers and requested a copy of the case documents from the LRC, arguing that the Rosso Co., Ltd. Managing director had terminated the workers and targeted them specifically for seeking to organize and improve working conditions with the company. The LRC issued an order stating the employer's conduct was understood to be in relation to expiration of an employment contract and not persecution of the workers. The LRC officer refused to provide the attorney with the case files. The attorney appealed this decision on January 6, 2021 and was initially told the rejection was not official as it was not in writing, the lawyer then requested an official answer. On January 18th, the lawyer received a letter from the Office of the Permanent Secretary of the Prime Minister's office stating that the "request could not be regarded under any legal provisions since not of the provisions allow foreigners to access official information as equal to Thai citizens".[101] This decision sets the norm that border employment workers (Section 64) are unable to access the legal entitlement to unfair termination and employment under the Labor Protection Act. This case highlights the efforts from local officials to the highest office in the country to suppress the rights of migrant workers to organize, bargain and improve their own working conditions.

Case 13: Retaliation against migrant worker leaders for reporting labor law violations in garment factory, Mae Sot, October 2019-December 2020

With the help of two CSOs, 26 migrant workers previously employed in a garment factory owned by Kanlayanee Ruengrit in Mae Sot reported complaints to DLPW in October 2019. The labor inspector found violations of Thailand's Labor Protection Act and ordered the employer to compensate the workers for unpaid wages in the amount of 3.48 million Baht ($115,945 USD). On March 13, 2020, the employer appealed the labor court order, claiming that she did not have enough money to comply with the compensation order as her factory did not receive sufficient orders and had closed down.

Beginning in October 2019, the employer began to retaliate against the workers who reported the abuse to CSOs and DLPW, in essence blacklisting the workers and preventing them from obtaining further employment. The employer posted the photograph and name of the worker

[101] Case provided to GLJ-ILRF by CSO #5 in January 2021; see also Nanchanok Wongsamuth, "Migrant factory workers in Thailand launch legal action after wages expose," Reuters, September 22, 2020, https://www.reuters.com/article/us-thailand-workers-pay-idUSKCN26D00F

leaders in front of the three factories in Mae Sot saying that no factory should recruit this group of workers because they are demanding, radical and will cause the factory to close down. In one incident, some of the workers applied to jobs in a different factory and were about to be offered the position, however the human resources officer checked their application and once finding out their roles at the Kanlayanee factory, they were declined the job. In January 2020, one of the workers got a job at a supermarket and subsequently the owner found out the workers' former employer, the worker was fired. The local CSO supporting these workers received several complaints that factories in the area refuse to hire these workers. Ultimately, some of the 26 workers got jobs in the agricultural sector or in small and medium size factories, and received warnings from their new employers that they should not create any problems. Some of the workers were unable to find additional employment due to their older age and due to COVID-19, thus they needed to work in the informal agricultural sector earning about 80 Baht ($2.50 USD) per day while others work as daily wage laborers two-four days per week for odd jobs earning around 100-200 Baht (3-6 USD) per day.

The CSO that documented this case found that three workers had to reduce their cost of living, find foods like vegetables from the street or forest and are unable to access foods with protein. Many of them are in debt. The CSO supporting these workers cooperated with an international organization to negotiate with global brands sourcing from Kanlayanee factory to compensate these workers. On November 17, 2020, Tesco provided 640,000 Baht and on December 20, 2020, Starbucks, Walt Disney paid 600,000 Baht each in compensation; the companies are still in the process of negotiating with Universal.[102] This case shows how easy it is for employers to target migrant worker leaders, as they have no legal union to defend their efforts. It also shows how difficult it would be for migrant workers to gain remedy without the support of local and international NGOs.

4.2.1.3. SLAPPs against workers, unionists and labor rights defenders

During the reporting period, the Thai government and companies continued to use Strategic Lawsuits Against Public Participation (SLAPPs) to intimidate and silence trade unionists, workers, and other labor rights defenders. SLAPPs make it very difficult to prevent human trafficking and protect potential victims as they have a chilling effect on those wishing to report labor rights abuses due to fear of reprisals.[103]

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.[104] Criminal defamation suits threaten freedom of expression rights as they lead to

[102] Case provided to GLJ-ILRF by CSO #5 in January 2021.

[103] SLAPPs have been used increasingly to block the exercise of the right of freedom of expression of the people since the coup d'etat 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.businesshumanrights.org/en/thailand-recommendations-to-protect-defenders-from-strategic-lawsuits-against-public-participation

[104] 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

people being imprisoned for their speech, even when they are simply highlighting where other laws have been broken.[105] Contrary to international standards, Thai law does not prohibit public bodies either in the legislative, executive, or judicial branches from initiating defamation cases.[106]

Criminal defamation suits are commonly used as a form of legal harassment due to several factors. Firstly, there are relatively low court fees required to file a case. Secondly, the claimant is allowed to file charges at a different locality to that where the impugned statements were published. Thirdly, the police and state prosecutors lead the investigation and prosecution process, relieving the individual who brought the charges of the burden of spending their own money on legal fees.[107]

Despite some efforts to put anti-SLAPP policies and laws into place, which began in 2019, the Thai government has not made enough progress. 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.[108] 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" and covers the period 2019-2022.[109]

Despite such reforms, SLAPPs continue. The following cases demonstrate the initiation and continuation of civil and criminal cases in 2020 and 2021 and lack of implementation of anti-SLAPP policies:

Case 14: Conviction of 13 State Railway Union of Thailand (SRUT) leaders for organizing health and safety initiative, October 2020

On October 21, 2020, the Central Criminal Court for Corruption and Misconduct Cases in Bangkok convicted 13 SRUT leaders and sentenced them to three years in prison for charges brought against them in 2019 by Thailand's National Anti-Corruption Commission (NACC) 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.[110] In 2009, following deadly train derailments, SRUT members organized a health and safety initiative calling on the State Railway of Thailand to address outdated and broken safety measures. The ILO found that the union leaders' actions were in line with international

[105] 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.

[106] "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

[107] Ibid., pp. 6-7.

[108] 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

[109] "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

[110] See "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," ILRF, 10, 2020, p. 14, https://laborrights.org/sites/default/files/publications/SWG_TIP_Comments_2020_Thailand_Public_Version_1.pdf

standards on the role of unions in occupational safety and health.[111] Despite this, the union leaders were prosecuted in Thai courts for over a decade. In 2017, the Supreme Labor Court upheld an earlier ruling that ordered seven of the union leaders to pay a fine of 15 million ($500,000 USD) plus accrued interest, which has led to the garnishment of wages and confiscation of union assets, harming workers and their families.[112]

The 2020 decision continues setbacks on freedom of association and health and safety protections in Thailand. As explained by a labor union expert in Thailand,

> *"This case has significant importance as the SRUT leaders convicted are national trade union leaders, democratically elected by worker members. The judicial harassment that they, as well as other national trade union leaders have endured for over a decade strikes fear in the entire trade union movement. If national trade union leaders are not protected, there is little chance for local trade union leaders and activists to exercise their rights freely. This strikes at the heart of freedom of association. … the government never prosecuted SRUT directly, only the leaders. This reinforces the impression that the courts and the NACC are being used to target and persecute individuals, which has a chilling effect on other trade union leaders."*[113]

Case 15: Thammakaset cases update

Since 2016, Thammakaset has filed a total of 39 criminal and civil cases against 23 defendants, including human rights defenders, workers, and journalists, for alleged defamation of the company, including initiating a new case and appealing multiple cases in 2020. The complaints stem from the defendants' documentation, communication, and advocacy in connection with labor rights violations committed by Thammakaset, which have been validated in courts.[114]

- Thammakset vs. Suchanee Cloitre: On October 27, 2020, the Criminal Appeals Court in Lopburi Province overturned charges against Thai TV journalist Suchanee Cloitre who had been sentenced to two years in prison for criminal libel charges brought by Thammakaset. The court cited Criminal Code Section 329(3), Good Faith Statement. Thammakaset appealed the decision, continuing the more than two years of judicial harassment, including a criminal conviction, faced by Ms. Cloitre for a Tweet.
- Thammakaset vs. Nan Win: On June 8, 2020, the Court found Mr. Nan Win not guilty of defamation and dismissed the case against him. The Court ruled that the information Mr. Nan Win gave in the two interviews to Fortify Rights was true and provided in good faith for the protection of a legitimate interest – an exemption from defamation under Article 329(1) of the Criminal Code. Thammakaset appealed the decision of the first court on October 19, 2020, continuing the more than two years of judicial harassment faced by Mr. Nan Win for publicizing the labor abuse he himself faced.
- Thammakaset vs. Sutharee Wannasiri and Nan Win: Regarding charges based on Sutharee's social media posts that included interview with Nan Win, the Criminal Court in Bangkok dismissed the charges against them on June 8, 2020 citing exemptions

[111] Report in which the committee requests to be kept informed of development – Report No. 372, June 2014.
[112] "Thai Court Ruling Against Thai Railway Union Leaders Continues Setbacks on Freedom of Association and Health and Safety Protections," GLJ-ILRF, October 23, 2020, https://laborrights.org/releases/thai-court-ruling-against-thai-railway-union-leaders-continues-setbacks-freedom-association
[113] Email correspondence with international trade union expert based in Thailand, November 2020.
[114] "Thailand: Thammakaset Watch," FIDH, February 13, 2020, https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch#ancre2

under article 329 of the Criminal Code. Thammakaset appealed the decision on November 15, 2020.[115]

- Thammakset vs. Thanaporn Saleephol: On March 30, 2020, Thammakaset filed new charges with the Bangkok South Criminal Court for criminal defamation (Article 326 of Criminal Code) and libel (Article 328) against Ms. Thanaporn Saleephol, former Communications Associate at Fortify Rights, for five social media engagements between November 2019 and January 2020 where she expressed support for other labor rights defenders involved in criminal defamation cases filed by Thammakaset. On August 17, 2020, the court rejected a petition filed by her legal team to dismiss the charges.[116]

4.2.1.4. COVID-19 response increasing restrictions on freedom of association

The COVID-19 Emergency Decree, which began March 8, 2020 and was recently extended to February 8, 2021, has imposed further restrictions on freedom of association rights for workers.

On May 18, 2020, the Ministry of Labor published an announcement preventing the use of strikes and lockouts in employment disputes while the COVID-19 Emergency Decree is in force.[117] The announcement also states that strikes or lockouts that commenced before May 8, 2020 must end, and that all employees must return to work or employers must reinstate the employees. Any unsettled disputes under the Labor Relations Act (1975) that occurred during the emergency situation period must now be considered and resolved by the Labor Relations Committee.[118] The prohibition of strikes has denied workers the primary legal tool that they are usually able to use in negotiations for their rights and benefits. While business owners are prohibited from using lockouts, they are permitted to terminate workers' employment or temporarily suspend their operation due to COVID-19 impacts.[119] This sends a message that speaking out against abuses at the workplace are not supported, which could discourage reporting of human trafficking abuses.

4.2.2. Loophole on child labor in Sea Fisheries Regulation

Thailand's Labor Protection Act (1998) sets out the standards for employment practices related to wages, working hours, welfare, and other topics. It is applicable all workers including undocumented workers, but only some provisions apply to sea fishery and seasonal agriculture and other work.[120] For this reason, separate regulations have been created to cover fishing and agriculture, which presents a number of problems.

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[115] SLAPP data center hosted by the Human Rights Lawyer Association here https://link.edgepilot.com/s/a52fd245/anzotiFJzkK_NqHSi4uTvA?u=https://naksit.net/2019/12/legal-threats-database/

[116] "Thailand: Thammakaset Watch," FIDH, February, 13, 2020, https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch#ancre2

[117] Ministry of Labor, the Announcement on Determination of Unsettled Disputes to be Resolved by Labor Relations Committee and Forbidding Lock Outs or Strikes during the Announcement of Emergency Situation under the Law Regarding Public Administration in Emergency Situations, 8 May 2020, http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/110/T_0002.PDF

[118] Tilleke & Gibbins, "COVID-19: Thailand Eases Provident Fund Requirements and Prohibits Strikes and Lockouts," May 13, 2020, https://www.tilleke.com/resources/covid-19-thailand-eases-provident-fund- requirements-and-prohibits-strikes-and-lockouts

[119] Migrant Workers Rights Network (MWRN), "Thailand Situation Update on Covid-19 Emergency Response," May 2020 (provided as supplementary material).

[120] Labor Protection Act (1998), Sections 92 and 97; for additional analysis, see "Time for a Sea Change: Why union rights for migrant workers in the seafood are needed to prevent forced labor in the seafood industry," ILRF, March 2020, p. 51, https://laborrights.org/publications/time-sea-change-why-union-rights-migrant-workers-are-needed-prevent-forced-labor-thai.

In 2020, the Ministry of Labor began amending the Ministerial Regulation concerning Labor Protection in Sea Fishery Work (2014) and a prior amendment no. 2 in 2018. The aims of these reforms are to ensure that the labor law concerning fishery workers is on par with international standards and to enhance Thailand's capability to combat human trafficking.[121] The government held public hearings with civil society organizations, the private sector, lawyers and other stakeholders to share the draft regulation and take input.

However, the Migrant Working Group (MWG) found that many provisions in the draft are incompatible with the Labor Protection Act (1998) and international treaties ratified by Thailand. In particular, CSOs expressed concern that the proposed law includes a loophole that will encourage child labor on fishing vessels.[122] Key gaps and areas of policy incoherence include:

- Use of a legal definition of "fishery work" that may exclude artisanal fishers and fishers who operate for self-substance.
- Imposition of a provision to allow a descendant of a boat owner or captain (who is a Thai national, at least 16 years old and with a seaman book according to Thai navigation law) to work as an apprentice. CSOs explain that despite these parameters, it would likely be used in practice to employ migrant children to work on commercial vessels.[123] This provision is incompatible with certain national and international laws.[124]
- Fails to afford fishery workers with satisfactory unemployment benefits pursuant to Section 118 of the Labor Protection Act (1998).
- Fails to ensure limitations on working hours and rest period in compliance with ILO Convention 188 (at least ten hours of rest for every 24 hours work and not less than 77 hours for every seven days).
- Fails to regulate wage payments and prohibit employers from imposing interest rates on advance payments.
- Removed a provision giving workers the right to hold employers accountable by paying interest on wages not paid on time.
- Lacks a robust mechanism to ensure all bank transfers of wage payments are made faithfully and according to the condition set forth in contracts.
- Removes a provision for fishery workers that required them to report themselves annually to labor inspectors and relevant government officials, which provided a critical opportunity for labor inspectors to assess workers' situation.
- Includes no provision to require employers to provide contracts and pay slips in workers' own languages.

[121] Recommendations are based on "Observations and Recommendations on the Draft Ministerial Regulation Concerning Labor Protection in Sea Fishery Work B.E…", Migrant Working Group, October 2020 (provided as supplementary material).
[122] Nanchanok Wongsamuth, "New law to protect Thai fishermen seen boosting child labour," Thomson Reuters Foundation, September 17, 2020, https://www.reuters.com/article/us-thailand-fishing-labour-idUSKBN26824I
[123] Reported to GLJ-ILRF during a meeting of practitioners on the draft law, October 2020.
[124] According to MWG, "This provision is incompatible with the Child Protection Act, B.E. 2546's Section 26(6) regarding subjecting a child to work which will likely cause physical or mental harm. Please note that the National Committee for the Eradication of the Worst Forms of Child Labour opines that fishery work is among the worst forms of work for a child. Provisions in the ILO C188 require that in order to allow a child at least 16 years of age to work on board a fishing vessel, a prior consultation has to be made taking into account all possible risks that could be inflicted on a child. Until now, the Ministry of Labour has yet to conduct a consultation with either the workers or civil society organizations. By allowing a child worker to work on board a fishing vessel, it breaches Thailand's obligation to the International Labour Organization Convention C182 - Worst Forms of Child Labour Convention (ILO C182)"; see Recommendations are based on "Observations and Recommendations on the Draft Ministerial Regulation Concerning Labor Protection in Sea Fishery Work B.E…", Migrant Working Group, October 2020 (provided as supplementary material).

- Allows for wage deductions with no requirement that the wage deduction is made with written consent of the employee and with a written agreement in the language of the worker (i.e. a different standard than in the Labor Protection Act, Section 76).
- Allows for working period of up to 1 year at sea,[125] which is understood to cause mental and physical harm to human beings and would significantly limit the ability of civil society to monitor working conditions at sea.[126]

4.2.3. New policy to use prison inmates to fill labor shortages in the seafood processing sector

The Ministry of Justice has proposed a plan to use former prison inmates to work in the seafood sector to fill labor shortages, which is contrary to international law and CSOs are concerned could lead to forced labor. The Ministry of Justice is planning to set up industrial estates for inmates to work in seafood processing, instead of relying on unregistered migrants. The Ministry formed a subcommittee in June 2020 to study the possibility of setting up industrial estates to relieve prison overcrowding and provide occupational and skills training for inmates that they view would prevent reoffending. Thailand's prison population more than tripled within the past decade, with more than 350,000 current inmates. The government said that tens of thousands of inmates who have three to five years left in prison will be recruited on a voluntary basis to work at two pilot estates in Samut Sakhon and the eastern provinces of either Chon Buri or Ranong.[127]

Replacing vulnerable migrant workers with released prisoners will not address the abusive working conditions and many other problems in the seafood or fishing sectors. The use of prison labor for commercial, for-profit purposes and for a predetermined type of work is in violation of international standards and norms.[128] In addition, ILO Convention No. 29 on Forced Labor, which Thailand has ratified, states that prison labor for private entities may be only undertaken by consent of the prisoner.[129] However, it will be extremely difficult in practice to determine if prisoners are voluntarily recruited for the project as people in prison are often subjected to different forms of coercion and are in a very vulnerable position. This proposal shows a lack of political will on behalf of the Thai government to truly address the poor working conditions and exploitation in the seafood processing sector, and instead find alternative ways to continue to support exploitation.

[125] The International Transport Workers Federation (ITF) recommends maximum 90 days at sea.

[126] Recommendations are based on "Observations and Recommendations on the Draft Ministerial Regulation Concerning Labor Protection in Sea Fishery Work B.E…", Migrant Working Group, October 2020.

[127] ""สมศักดิ์"ชงครม.ตั้งนิคมราชทัณฑ์ใช้นักโทษ"แกะกุ้ง"แทนแรงงานต่างด้าว," Post Today, December 22, 2020, https://www.posttoday.com/politic/news/640978; see also "Poll: Huge support for corrections industrial estate plan," Bangkok Post, September 20, 2020, https://www.bangkokpost.com/thailand/general/1994191/poll-huge-support-for-corrections-industrial-estate-plan

[128] Under the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the U.N. as guidance, prison labor must be of a vocational nature, not used as punishment, and prisoners should be allowed to choose the type of work they wish to perform. The work must not be driven by financial motives, and no prisoner should be forced to work for private entities.

[129] ILO Forced Labor Convention, 1930 (No. 29), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

4.2.4. Border employment program means fewer rights and protections for workers

Section 64 of the Royal Ordinance Concerning the Management of Foreign Workers' Employment, B.E. 2560 (2017) created a registration status for migrant workers temporarily entering the country to work in 25 types of work[130] for specific periods of time or for seasonal work. The conditions for work depend on the bilateral agreements between Thailand and Myanmar, and Thailand and Cambodia, while no current agreement exists with Lao PDR. However, in practice frontline organizations have found that migrant workers registered under Section 64 are in fact working in long term and permanent jobs, typically in agriculture, factory and fishery sectors. Migrant workers from Lao PDR are registered under Section 64 despite no bilateral agreement between the two countries. In April 2020, 39,864 migrant workers were registered under Section 64.[131] The pandemic provided an unfortunate set of circumstances that served to highlight the serious deficiencies with this program, because workers were left without social benefits and medical care.

Section 64 is problematic both because it affords workers fewer rights and legal protections and because in practice these fewer rights and protections are afforded to permanent workers. As explained by a Thai university professor,

> *"Firstly, it degrades human beings, as it [Section 64] is flexible but offers no legal protection for work. Secondly, the flexibility of the employment in border area is not equal for all groups of migrant workers. […] Thirdly, there is paradox in managing the migrant workers in Thailand since the country needs the laborers but bars them from the access to social, cultural and political rights of the country, due to nationalism. Human rights principles should be considered. Protection of migrant workers should be systematic."*[132]

The registration fee under Section 64 is cheaper than other recruitment and employment channels, thereby incentivizing both employers and workers to utilize this method.[133] In some cases, employers pressure workers to register under this category or do so without their full knowledge and consent.

Workers under this category are afforded lesser labor protection and face administrative and logistical challenges in the following main ways:

1. **No social security benefits:** While Section 64 workers are eligible for Social Security, employers do not register them with the Social Security Fund in practice by claiming that they are seasonal workers. Seasonal workers are not eligible for the Workmen's Compensation Fund or the Social Security Fund and therefore cannot access benefits such as medical treatment for on-the-job injury or for healthcare, retirement, disability,

[130] These types of work are set out according to the Regulation of the Department of Employment on Criteria for the Consideration of Allocation of Foreign Workers (No.2) B.E. 2559.
[131] Department of Employment, Ministry of Labor, April 2020, https://www.doe.go.th/prd/assets/upload/files/alien_th/7050600de4b6bf9404ae725614521081.pdf
[132] Official Meeting Record from a Public Conference on "Findings and Recommendations to the employment of works in border area in case of a temporary work in a specific time period or a seasonal work," Migrant Working Group, December 22, 2020, Bangkok (provided as supplementary material).
[133] Section 64 costs about 1,325 Baht ($44USD), including 500 Baht for medical check-up, 500 Baht for health insurance, 100 baht for service fee, and 225 Baht for three-month work permit).

maternity, child, or unemployment benefits.[134] They can be registered under the Compulsory Migrant Workers' Health Insurance Scheme (CMHI) and receive some healthcare services, but often employers fail to register them even for this program. This means these workers were unable to receive most benefits during the COVID-19 pandemic.[135]

2. **No rights to organize:** Section 64 workers are not guaranteed rights to freedom of association, as the Labor Relations Act (1998), as it is interpreted, does not apply to temporary and seasonal workers.[136] This registration status has also been used as an excuse to dismiss migrant workers that seek to organize (see case 12 in Section 4.2.1.2).
3. **Contract manipulation:** Employers of Section 64 workers are reported to prepare two documents showing workers' wages, one showing the payment in accordance with the minimum wage under law and the other showing the real payment. The former is shown to the labor inspectorate, so workers are unable to claim wages.
4. **Logistical challenges:** The Section 64 work permits allows migrant workers to work for 90 days, however the stay permit allows them to remain in Thailand for 30 days. In practice, this means migrant workers to travel back and forth across the international border every 30 days, creating interruptions for work, logistical challenges and the need to pay fees regularly.[137]

The following cases across four provinces in South, West, East and Northeast of the country exemplify these issues.

Case 16: Undocumented workers from Laos undertake temporary work without legal protection in Mukdahan Province, 2020-present

There is no bilateral agreement between Thailand and Laos permitting use of the border employment program (Section 64), however migrant workers are found working in Mukdahan in agriculture work, such as rice, sugar cane, and cassava. The cycle of agriculture in northeast Thailand starts with rice from May to November, chili in December and January and post-agriculture plants and sugar cane from December to April. Migrant workers doing this type of work are mainly female workers from Lao between the ages of 18-30. They have no working documents and travel between the two countries and stay with employers to work for about 20 days at a time. The wage is about 200 Baht ($6 USD)/day (below the legal minimum). They are provided with accommodation but not food. Employers will pay for their medical care in clinics when they are ill of no more than 1,000 Baht ($32 USD) and workers need to pay the rest. Employers utilize this informal method (Section 64) rather than the official MOU channel due to

[134] The Workmen's Compensation Act B.E. 2537 and its amendment B.E. 2561 and the Social Security Act B.E. 2533 and its amendments are applicable to regular migrant workers in the formal sector (professional workers or workers with MOU and completed national verification).

[135] "Concept Note: Access to Social Protection for Migrant Workers in Thailand. Background paper of the Social Protection Diagnostic Review for enhancing the social protection contribution to Thailand's security, prosperity and sustainability," IOM Thailand, 2019, p. 5-10, https://thailand.iom.int/sites/default/files/Recruitment/Annex%201_Concept%20Note%20on%20Access%20to%20SP%20for%20Migrant%20Workers%20%20in%20Thailand.pdf

[136] "Time for a Sea Change: Why union rights for migrant workers in the seafood are needed to prevent forced labor in the seafood industry," ILRF, March 2020, https://laborrights.org/publications/time-sea-change-why-union-rights-migrant-workers-are-needed-prevent-forced-labor-thai.

[137] Official Meeting Record from a Public Conference on "Findings and Recommendations to the employment of works in border area in case of a temporary work in a specific time period or a seasonal work," Migrant Working Group, December 22, 2020, Bangkok (provided as supplementary material).

the 15,000 Baht ($484 USD) fees employers are required to pay per worker (in addition to fees paid by workers). Some of the products farmed in the region are for international export.[138]

Case 17: Challenges for workers under Section 64 in Tak Province, 2020

Migrant workers from Myanmar work in three districts of Tak province comprising a special economic zone (SEZ). They work in factory, construction, commercial, service sector (Mae Sot) and agriculture work (Phop Phra and Mae Ramat). Workers in these areas are registered under Section 64 per a bilateral agreement between Thailand and Myanmar. Registration fees include: a one-year border pass (1,500-3,000 baht); fees for moving their household registration in Myanmar if they are not residents in the border town; three-month work permit (225 Baht); one-month visa and fee (120-130 Baht), unknown rates for travel costs and agent fee; medical check-up (500 Baht); one year and three-month health insurance (500 Baht). Migrant workers report paying a total of 7,700 – 10,400 Baht ($256 to $536 USD) in total. In practice, the nature of work is greater than three months and employers deduct expenses from workers' wages. When labor disputes occur, there is no clear contract or document spelling out the relationship between the employer and the employee. These workers do not know their rights and face problems when trying to exercise them, such as accessing medical care. They are unable to organize and engage in collective bargaining to submit a collective claim to negotiate working conditions. These workers are typically not registered into the social security system, which has created enormous challenges during the COVID-19 pandemic. There are different opinions among government authorities regarding border employment. The Department of Employment and the Social Security Fund view border employment as a three-month period, however the Department of Labor Protection and Welfare claim that the duration of the work for this group needs to be continuously counted as per the Civil and Commercial Code. A CSO uses pay slips to prove that the jobs are long-term. During the pandemic, these workers were unable to renew their visa, work permit or health insurance due to the border closure and could not access medical care. Factories reduced working days and dismissed workers, however workers under Section 64 were unable to claim benefits of any kind under social security and other laws. This prompted workers to find daily labor, which is informal and dangerous work, while also struggling to find new jobs and getting their previous employers to confirm they were let go.[139]

Case 18: Challenges for seafood workers registered under Section 64 in Ranong, 2020

Many workers in shrimp and fish factories are registered under Section 64. The employers do not register these workers into the social security system because they do not want to pay the 5% contribution fee and prefer the workers buy health insurance. The Ranong Hospital asks migrant workers to pay fees before receiving medical treatment. In some cases, workers are unaware of their healthcare options and only find out once they have health issues that the employer did not register them into the social security system. Women workers are unable to claim benefits during pregnancy and maternity.[140]

[138] University researcher presentation, Official Meeting Record from a Public Conference on "Findings and Recommendations to the employment of workers in border area in case of a temporary work in a specific time period or a seasonal work," Migrant Working Group, December 22, 2020, Bangkok (provided as supplementary material).

[139] Presentation from civil society organizations, Official Meeting Record from a Public Conference on "Findings and Recommendations to the employment of workers in border area in case of a temporary work in a specific time period or a seasonal work," Migrant Working Group, December 22, 2020, Bangkok (provided as supplementary material).

[140] Presentation from a volunteer from Ranong, Official Meeting Record from a Public Conference on "Findings and Recommendations to the employment of workers in border area in case of a temporary work in a specific time period or a seasonal work," Migrant Working Group, December 22, 2020, Bangkok (provided as supplementary material).

Case 19: Inability to access benefits in a garment factory, Samut Sakhon, March 2020
A garment factory in Samut Sakhon terminated employment with 19 Myanmar workers at the end of March 2020 due to fear that the workers' identity documents were going to expire and as a result of the economic disruption of COVID-19. Of this number, some had been working with the factory for six years and received a daily wage of 331 Baht. Despite efforts by the employer to convince the workers to submit a resignation letter, the workers refused. After the factory terminated their employment, the workers did not have other sources of income but had to cover living cost. In April 2020, the workers submitted a labor complaint to the Labor Protection and Welfare Office requesting severance pay as a result of the termination of employment under Article 118 of the Labor Protection Act B.E.2541 (1998). A local NGO provided translation and legal assistance to the workers because the paperwork and procedures were available mostly in Thai, which the workers do not speak or write fluently. On May 12, 2020, the labor inspector ordered the employer to give severance pay of 933,420 Baht plus 15% interest for the 19 workers because the termination of employment did not fall under the exemptions under Article 119 of the Labor Protection Act. However, the employer planned to appeal the decision of the labor inspector. Therefore, the workers have not received compensation. These workers are also eligible for unemployment benefits from the Social Security Fund, but the benefits of payment were delayed because initially the employer did not provide a certificate of termination of employment.[141]

Case 20: Migrant workers employed under Section 64 in fishery, agriculture and day laborer work on Thai-Cambodia border cannot access social security benefits, Trat Province, May 2020
In Trat Province, on the border with Cambodia, migrant workers are employed under Section 64 for jobs lasting a season or year-round. The top three jobs for migrant workers in this province are sea fishery, agriculture and day laborer. These workers are recruited through the MOU channel, the nationality verification process or under Section 64. Workers with all of these registration statuses in fishery, agriculture and laborer work have problems accessing the social security system. Workers incur recruitment costs in both Cambodia and Thailand. In Thailand, the expense is 1,325 Baht, while the border pass costs 200-300 Baht. If the worker travels from another region, an additional 1,500-3,000 Baht fee has to be paid or the move of household registration; in total the costs amount to about 4,000-5,000 Baht ($134 - $157 USD). One challenge is with the interpretation of temporary work permit by provincial government officials; agriculture is easier to calculate compared with other types of work. As mentioned previously, employers with Section 64 registered workers often fail to register them with the social security fund. In addition, the sea fishery law makes registration with the social security fund or purchase of health insurance optional. This is despite the fact the work-related incidents in the sea fishery sector are reported most commonly. Employers often avoid notifying the workmen's compensation fund when there are on-the-job accidents and instead pay the health care costs themselves, in order to not incur an increased contribution rate to the fund. This also led to enormous problems beginning in March 2020 with the COVID-19 pandemic, when workers had no ability to access healthcare in Thailand and no savings to pay for it on their own. When the Thai-Cambodia border was closed in March, workers faced many challenges registering their personal documents and health insurance within the time specified.[142]

[141] Case included in "Thailand Situation Update on Covid-19 Emergency Response," MWRN, May 2020 (provided as supplementary material).
[142] MWG researcher presentation, Official Meeting Record from a Public Conference on "Findings and Recommendations to the employment of workers in border area in case of a temporary work in a specific time period or a seasonal work," MWG, December 22, 2020, Bangkok (provided as supplementary material).

4.2.5. Denial of social protection

It is very important for migrant workers to be able to access social security benefits, particularly severance and unemployment benefits, in order to prevent them from going into debt and taking risky and dangerous work in times of crisis. The social protection offered to migrant workers is dependent on their immigration status and characteristics of work performed, thus certain categories of migrant workers are partly or completely excluded from the social protection systems. Unregistered/undocumented migrants are completely excluded from the social protection schemes in Thailand.

Table 1: Social Protection for Migrant Workers in Thailand[143]

Social protection program	Benefits	Law/regulation
Documented migrant workers in the formal sector (professional workers or workers with MOU and completed nationality verification); sea fishery, domestic work, and seasonal work in agricultural and forestry sectors are excluded[144]		
Social Security Fund	Medication treatment compensation for non-occupational injuries; Retirement benefits; Disability benefits; Funeral grant; Maternity benefits; Child allowance; Unemployment	Social Security Act and its amendments (Social Security Office and Ministry of Labor)
Workmen's Compensation Fund	Medical treatment for on-the-job accidents and injuries	Workmen's Compensation Act and its amendment (Social Security Office and Ministry of Labor)
Documented migrant workers in the informal sector (workers with MOU, completed nationality verification, or seasonal workers); undocumented migrants excluded		
Compulsory Migrant Workers' Health Insurance Scheme (CMHI)	Healthcare services	Ministry of Public Health Announcement on Health Examinations and Insurance for Migrant Workers (2019)

Key areas of exclusion from social protection

- The 800,000 to 1,000,000 estimated unregistered migrant workers have no access to social protection benefits under Thai law.
- Informal sector and seasonal workers are entitled only to the CHMI, which they must pay for themselves.
- Employers commonly fail to register migrant workers into the legally entitled social protection schemes because it is financially beneficial for employers (see cases 22 and 24 below).
- Employers of fishers or migrant workers registered under Section 64 of the Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017) are

[143] Adapted from "Concept Note: Access to Social Protection for Migrant Workers in Thailand," Annex 1, IOM Thailand, 2019, https://thailand.iom.int/sites/default/files/Recruitment/Annex%201_Concept%20Note%20on%20Access%20to%20SP%20for%20Migrant%20Workers%20%20in%20Thailand.pdf

[144] "COVID-19 Flash Update: Government Guidance Affecting Migrant Workers and their Employers in Thailand and Neighbouring Countries," Vo1. #17, IOM, August 14, 2020, https://thailand.iom.int/sites/default/files/COVID19Response/14-Aug-2020%20IOM%20Flash%20Update%20on%20COVID-19%20for%20Migrant%20Workers%20in%20Thailand.pdf

able to choose between registering workers under the Social Security Fund and the CMHI; most employers select the latter because it is less expensive.[145]

Challenges during COVID-19

COVID-19 caused large scale unemployment among migrants and all workers in Thailand. During the first wave of the pandemic (March – June 2020), the largest levels of job loss among migrant workers were seen in garment and textile, electronics and automobile manufacturing, and service and hospitality, respectively.[146] During the second wave of the pandemic (December 2020 – present), when COVID-19 was detected in the seafood processing hub of the country, Samut Sakhon, tens of thousands of workers lost their jobs overnight, became infected with COVID-19 and struggled to access social protection schemes. This caused a humanitarian crisis with migrant communities across the country unable to meet their basic needs (see more in Section 4.2.6 below).

According to local experts, systematic policy discrimination has prevented migrant workers from accessing social security benefits during COVID-19. After the first wave of COVID-19, it was apparent that there were many challenges and gaps with regard to migrant workers accessing the social protection schemes. The government failed to address these issues and imposed social policies that specifically excluded migrant workers. Key issues include:

- The online system for requesting social security benefits is in Thai and English languages only and no interpretation services are provided.
- The government introduced plans on March 10, 2020 and on December 19, 2020 to provide compensation to workers who were suspended or dismissed from jobs related to COVID-19, including provision for 45%-70% of their salaries for 2-6 months.[147] Only a small number of migrant workers would be eligible, as they must be registered with the Social Security Fund for no less than six months to receive the compensation and many migrant workers are not, due to their former employer's failure to register them.
- A Social Security Fund government directive prohibits migrant workers from taking part in the governance committee and therefore migrant workers have no ability to input to the social policies that impact them.
- Insufficient effort by the government to compel employers to register employees into the Social Security Fund or other scheme.
- Migrant workers are excluded from the "We Love Campaign" launched in January 2021, under which only Thai nationals are provided 4,000 Baht as part of a COVID-19 cash program.[148]

As can be seen in Table 2, the number of migrant workers requesting unemployment benefits was significantly higher in 2020 during COVID-19 compared to years prior. This table also shows the small number of migrant workers able or willing to apply from unemployment benefits given the scope of the crisis in Samut Sakhon (400,000 migrant workers impacted) and the country.

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[145] Information provided to GLJ-ILRF by INGO #2 in February 2021.

[146] "Thailand Situation Update on Covid-19 Emergency Response," MWRN, May 2020 (provided as supplementary material).

[147] "Flash Update: Migrant Worker - Related Government Guidance on COVID-19 Measures in Thailand," IOM, March 27, 2020, https://thailand.iom.int/sites/default/files/COVID19Response/27-03-2020%20IOM%20Flash%20Update%20on%20COVID-19%20for%20Migrant%20Workers%20in%20Thailand.pdf; see also "Flash Update: Migrant Worker - Related Government Guidance on COVID-19 Measures in Thailand," Vol. #26, IOM, January 21, 2021, https://thailand.iom.int/sites/default/files/COVID19Response/21-01-2021%20IOM%20Flash%20Update%20on%20COVID-19%20for%20Migrant%20Workers%20in%20Thailand.pdf.

[148] Information provided to GLJ-ILRF by INGO #2 in February 2021.

Table 2: Number of migrant workers requested unemployment from the Social Security Fund

Month	Year		
	2018	**2019**	**2020**
March	270	345	512
April	291	406	5,365
May	343	556	22,005
June	366	556	22,272

Source: Labor Economy Data, July 2020, Division of Labor Economy, Office of Permanent Secretary for Ministry of Labor

On April 17, 2020, the Ministry of Labor published two ministerial regulations to introduce social security relief measures to mitigate the impacts of the COVID-19 pandemic. The regulations authorized the Social Security Office to provide unemployment benefits for workers due to economic crisis[149] and due to force majeure (as a result of the pandemic).[150] However, due to the types of benefit set out for workers who are terminated by the employer compared with if a worker resigns, employers were incentivized to pressure workers to resign. The regulation stated:

"Insured employees under the SSA [Social Security Act] are entitled to receive benefits during periods of unemployment caused by the economic crisis between March 1, 2020, and February 28, 2022 as follows:
• If *employment is terminated by the employer*, the employee can receive compensation at the rate of 70% of their daily wages for up to 200 days per termination.
• If *an employee resigns, or their fixed-term employment contract ends*, the employee can receive compensation at the rate of 45% of their daily wages for up to 90 days per unemployment period."[151]

In addition, employers were required to provide a certificate of unemployment for workers to be eligible for unemployment benefits. In practice, many employers did not provide this certificate promptly to the Social Security Office, resulting in delays to workers receiving unemployment benefits.[152]

[149] Ministry of Labor, Regulation on Entitlement to Compensatory Benefits in the Event of Unemployment Due to the Effect of Economic Crisis B.E. 2563 (2020) (the Economic Crisis Regulation), April 17, 2020. http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/A/029/T_0005.PDF
[150] Ministry of Labor, Regulation on Entitlement to Compensatory Benefits in the Event of Unemployment Due to Force Majeure from the Pandemic of Dangerous Communicable Disease Under Relevant Law Relating to Communicable Diseases B.E. 2563 (2020) (the Force Majeure Regulation), 17 April 2020. http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/A/029/T_0008.PDF
[151] Tilleke & Gibbins, "Thailand's Ministry of Labour Formalised Further COVID-19 Relief Through Social Security Fund," 21 April 2020, https://www.tilleke.com/resources/thailand%E2%80%99s-ministry- labor-formalizes-further-covid-19-relief-through-social-security-fund
[152] "Social Security Office Explained Delay in Reliefs Benefits Payment Due to 540,000 Employers Did Not Provide Certificate," Workpoint News, May 1, 2020, https://workpointnews.com/2020/05/01/social- security/

Case 21: Migrant workers cannot access social security systems online or at provincial offices, March-May 2020

Between March-May 2020, a local NGO received complaints from 995 migrant workers whose places of employment were suspended due to COVID-19 and they became unemployed. They reported that they were unable to apply for the compensation benefits program introduced by the government, as the provincial Department of Employment and Social Security offices were not accepting in person visits. The DOE required all requests for unemployment benefits to be submitted online, however the online system is available only in Thai and English, which Burmese and Cambodian migrant workers are unable to use.[153]

Case 22: Employer fails to register workers with Social Security Fund, Nakhon Prathom, April 2020

After a garment factory in Nakhorn Prathom Province announced temporary suspension of operations in April 2020, 180 workers (Thai and migrant) found that their employer had not registered them into the Social Security Fund despite regularly deducting payments from their wages for the Fund. They were therefore unable to access compensation unemployment benefits under the government schemes.[154]

Case 23: Employer terminated migrant workers to avoid providing unemployment benefits, Samut Sakhon, Month Year

19 workers employed in a garment factory in Samut Sakhorn were terminated from their jobs in March 2020. The factory had received significantly fewer orders due to COVID-19 and the migrant workers work permits were about to expire. The employer did not provide adequate documentation of termination and their unemployment and the workers were unable to apply for compensation and other benefits under the Social Security Fund. Some of the 19 workers had been working with the factory for six years with a daily wage of 331 Baht ($11 USD).[155]

Case 24: Garment factory shuts down and fails to give salary and compensation, Tak Province, May 2020

In May 2020, the Royal Knitting factory in Mae Sot closed down due to economic disruption during the pandemic. The factory stopped paying wages from April until it closed down in May and provided no further salary or compensation to its 195 workers. Most of these workers are foreign migrants, registered under the Border Employment Program (Section 64) and the employer had not registered them into the Social Security Fund. A local NGO supported the workers to submit a complaint to DLPW and the department ordered the factory to provide the workers with 32 million Baht (about $1.1 million USD) in compensation which has not yet been provided. The local NGO provided food and supplies for around 2,000 migrant workers in the Mae Sot area that lost their job during COVID-19 and did not receive any compensation.

4.2.6. Lack of protection for migrant workers in COVID-19 affected Samut Sakhon (December 2020-February 2021)

The government's poor handling of the COVID-19 crisis in Samut Sakhon put migrant workers at high risk of becoming infected. It has also made them more vulnerable to exploitation due to sudden job loss and lack of access to social security protections, as was discussed in the previous section. Since December 2020, COVID-19 cases in Thailand increased from 3,900 to

[153] Information provided to GLJ-ILRF by CSO #1 during a phone consultation in February 2021.
[154] Information provided to GLJ-ILRF by CSO #1 during a phone consultation in February 2021.
[155] Information provided to GLJ-ILRF by CSO #1 during a phone consultation in February 2021.

27,876.[156] The majority of those infected are migrant workers in Samut Sakhon working in the seafood industry. Migrant workers in this area are made to live in crowded and unhygienic accommodation and have limited access to personal protection equipment, healthcare and other services.[157] Their working hours had become longer and more intense with higher production quotas due to increases in demand for shelf-stable seafood from people in Thailand and around the world beginning in March 2020. These conditions made migrants very vulnerable to infection and other problems when the pandemic hit. Once the first cases were detected in a shrimp market and neighbouring apartment complex in December, migrants were subjected to harsh lockdowns. Government authorities used barbed wire to seal off an area housing more than 3,000 migrants, collectively quarantining infected and non-infected workers together, while providing very limited information or space for discussion about their prospects.[158] Workers suffered sudden job loss or had working hours drastically reduced. They became unable to afford even basic necessities or were locked out of their apartments unable to pay rent,[159] creating a humanitarian crisis requiring the Red Cross and other humanitarian agencies to become involved. As these workers are banned from forming unions and therefore do not have official workplace representatives, it was almost impossible for workers to demand better workplace protections, housing or healthcare when the pandemic hit.

As explained in an NGO report, *"the focus of the Thai Government and industry has in many cases been containment and not the health and human security of quarantined workers. Foreign migrant workers have reported being tested but not notified of their results, creating very distressing situations at both the individual and group level. Some workers reported being notified that they tested positive, but because they were asymptomatic they were not separated from other COVID-negative workers forced into quarantine – provoking a lot of anxiety amongst all workers forced into quarantine, while also exhibiting extremely poor compliance with public health measures. Workers seem to be unaware of the national COVID hotline 1422… Workers have recently raised issues around the conditions of quarantine centers as well, both those set up by their employers and by the government (workers often may not know what type of center they are at), including appropriate cleanliness, spacing, and quantity and quality of food provided."*[160]

4.3. Recommendations for improving prevention outcomes

The U.S. State Department TIP Office should support the following recommendations to the Thai government to improve prevention outcomes:

- Ratify ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining and bring domestic labor laws in compliance with these conventions.

[156] Thai Ministry of Public Health Facebook Page, March 22, 2021, https://www.facebook.com/thaimoph.
[157] "Situation Update and Policy Recommendations on the Current COVID-19 Outbreak among Migrant Workers in Thailand's Seafood Supply Chain – January 2021," CSO Coalition for Ethical and Sustainable Seafood, January 2021, http://hrdfoundation.org/?p=2477
[158] Pravit Rojanaphruk, "Watchdog Alarmed to See Healthy and Infected Migrant Workers Locked in Together," Khao Sod English, December 23, 2020, https://www.khaosodenglish.com/news/crimecourtscalamity/2020/12/23/watchdog-alarmed-to-see-healthy-and-infected-migrants-locked-in-together/
[159] "Situation Update and Policy Recommendations on the Current COVID-19 Outbreak among Migrant Workers in Thailand's Seafood Supply Chain – January 2021," CSO Coalition for Ethical and Sustainable Seafood, January 2021, http://hrdfoundation.org/?p=2477
[160] "Update on the COVID-19 Situation for Migrant Workers and Business Responses in Thailand," Issara Institute, February 1, 2021 (provided as supplementary material to this report).

- Amend the Labor Relations Act and the State Enterprise Labor Relations Act to allow all workers, without distinction, the right to organise, to collectively bargain, and to strike, with legal protection.
- Amend the Labor Relations Act (1975) to allow non-Thai workers to form a union, to be a sub-committee or committee member of a union, and to be a union advisor in a collective bargaining process.
- Repeal the Ministry of Labor policy (May 18, 2020) that prohibits the use of strikes and lockouts in employment disputes while the COVID-19 Emergency Decree is in force.
- Decriminalise defamation under both the Penal Code and Computer Crimes Act and enact anti-Strategic Litigation Against Public Participation (SLAPP) legislation to ensure that workers and human rights defenders are not subjected to criminal or civil liability for exercising rights to freedom of expression and speaking out about labor rights abuse.
- Under the Royal Ordinance Concerning the Management of Foreign Workers' Employment (2017),
    - Effectively ban the charging of all recruitment fees and related costs to migrant workers and require that employers pay all fees and related costs related to the employment of migrant workers. This includes ensuring that employers cover costs for their employees' passports, work permits and health check-ups, to prevent migrant workers from ending up in situations of debt bondage.
    - Ensure migrant workers can change employers and not lose their immigration status or permission to work. Allow migrant workers to seek new employment as desired (not only under certain conditions) and expand the time period for changing employers to more than 30 days.
    - Effectively ban document withholding by employers. Remove the loophole that permits employers to maintain workers' documents if the employer agrees to facilitate access to the retained documents.
    - Allow workers employed under Section 64 to be employed in industrial, commercial and service sectors and provide these workers a work permit for at least a one-year period. Increase legal protection of workers employed under Section 64 and ensure they can enter the social security system as self-insurers.
- Compel employers to effectively compensate (for lost recruitment fees and wages) the 60,000 migrant workers from Myanmar who were rendered jobless and became stranded in Myanmar due Thai government border closures and migration policy requirements; the government should ensure these workers are able to return to Thailand for employment should they wish to.
- Regarding the draft Ministerial Regulation on the Protection of Labor in Fisheries:
    - Remove the section permitting individuals aged 16 and over to work on fishing vessels as apprentices, as these provisions may be exploited to employ migrant children on commercial fishing vessels, which is incompatible with national and international law.
    - Ensure the maximum time at sea for all fishers is three months (90 days), including for the distant water fleet, as per recommendations by the International Transport Workers' Federation (ITF).
- Rescind the policy proposed to use prison inmates to fill labor shortages in the seafood processing sector, which is contrary to international law and could lead to forced labor.
- Ensure migrant workers do not bear any registration fees or related costs associated with the COVID-19 migrant worker amnesty program introduced in December 2020.
- Make information related to COVID-19 symptoms, preventive measures, and government's responding regulations available in migrants' languages and circulate the

information among migrant communities through the channels that can be easily accessed by migrant workers including online platforms, social media, and community outreach sessions.
- Ensure that public healthcare services including COVID-19 tests and treatments are available and accessible for all migrant workers regardless of documentation status.
- Ensure that migrant workers have equal access to all social protection programs under the Social Security Act.

5. Prosecution

This section highlights key challenges with prosecution of labor trafficking and forced labor during the reporting period, including the low numbers of prosecutions (5.1) and the lesser penalties for perpetrators of forced labor compared with labor trafficking (5.2).

5.1. Prosecution of forced labor as a stand-alone offence

Prosecution of human trafficking decreased from 288 cases in 2019 to 131 cases in 2020. During the same period, the number of offenders prosecuted decreased from 276 to 179 and the number of victims in cases decreased from 1,499 to 229 people. In 2020, authorities initiated two cases of forced labor or services under the Anti-Trafficking in Persons Act. While the government has asserted that COVID-19 impeded prosecutions, local experts explain that the low number of labor-related trafficking prosecutions is due to the failure of local authorities to identify cases (see Section 3.2 in this report).

5.2. Lesser penalties for perpetrators of forced labor

The penalties for forced labor or service are less than those prescribed for human trafficking. This is problematic because the two crimes are not clearly defined and distinguished and thus perpetrators of human trafficking could be charged with forced labor and receive lesser penalties.

- **Persons guilty of the offence of trafficking in persons** are liable to imprisonment from 4 years to 12 years and a fine from 400,000 Baht ($13,351) to 1,200,000 Baht ($40,053). If the victim(s) of the trafficking is a person of age between 15-18 year, the penalty shall increase to imprisonment for 6 to 15 years, and fine from 600,000 Baht to 1,500,000 Baht. The highest penalty of imprisonment for 8 to 20 years and fine for 800,000 Baht to 2,000,000 Baht are for the trafficking crime against person under 15 years old or persons with disabilities or mental impairment.[161]
- **Persons guilty of the offence of forced labor or service** shall be liable for a term of 6 months to 4 years or to a fine of 40,000 Baht ($1,668) to 400,000 Baht ($13,342) per person or to both. If the victim is seriously injured or develops a fatal disease, the penalty increases to 8 years to 20 years and a fine of 800,000 Baht to 2,000,000 Baht or to life in prison. If the crime results in the victim's death, the perpetrator shall be liable to

[161] The Prevention and Suppression of Human Trafficking Act, B.E. 2551 (2008), as amended by the Prevention and Suppression of Human Trafficking (No.2) Act, B.E. 2558 (2015) and the Prevention and Suppression of Human Trafficking (No.3) Act, B.E. 2560 (2017); see Legal Analysis of Human Trafficking in Thailand, Liberty Asia, 2017, http://un-act.org/publication/view/legal-analysis-human-trafficking-thailand/#:~:text=The%20Anti%2DTrafficking%20Act%20identifies,%2C000%20to%20THB1%2C200%2C000.

life imprisonment or death penalty. The provision does not specify harsher penalties for children under 18.[162]

5.3. Recommendations for improving prosecution outcomes

The U.S. State Department TIP Office should support the following recommendations to the Thai government to improve prosecution outcomes:

- Ensure that the penalties for forced labor or service are the same as those prescribed for human trafficking.
- Allocate adequate resources to effectively train provincial MDTs and all law enforcement officials, including police, public prosecutors and judges, to have a clear understanding of forced labor elements and available remedies and protections.
- Deploy MDTs to establish strategic forced labor cases, with some involving migrant workers.
- Make the number of cases investigated and prosecuted, clearly disaggregated by type of exploitation, publicly available to support monitoring and accountability, while ensuring the protection of victims.

[162] Anti-Human Trafficking in Persons Act (2008), Section 52/1 per the 2019 amendment.