

**Comments Concerning the Ranking of Thailand
by the United States Department of State in the
2022 Trafficking in Persons Report**

Submitted by Global Labor Justice-International Labor Rights Forum (GLJ-ILRF)
on behalf of the Seafood Working Group (SWG)

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FOREWORD

The Seafood Working Group (SWG) has submitted *Comments Concerning the Ranking of Thailand by the U.S. Department of State in the Trafficking in Persons (TIP) Report* each year since 2014. These submissions are the product of a collaborative effort between civil society organizations based in Thailand and international organizations participating in the SWG, under the leadership of Global Labor Justice - International Labor Rights Forum (GLJ-ILRF).

The TIP Report has for years been a central tool in the persistent struggle to make Thailand a safer and more equitable space for migrant workers. Year on year, the TIP report has led to tangible progress for reform of Thai policies and practices that contribute to human trafficking in the seafood industry. It has now been nearly eight years since Thailand's deeply exploitative seafood industry and its endemic dependence on human trafficking first came to light. However, despite constant pressure from civil society, the media, and processes such as the TIP mechanism, abuses continue, and many of the underlying problems persist.

Like its predecessors, the SWG's 2022 Comments on Thailand aim to provide the U.S State Department's Office to Monitor and Combat Human Trafficking in Persons (TIP Office) with current information on the human trafficking and forced labor situation from the perspective of frontline organizations supporting Southeast Asian migrant workers laboring in a range of industries, particularly fishing and seafood processing. The submission presents and analyzes information under the U.S.State Department's "3P" paradigm for combatting human trafficking (Prosecution, Protection, and Prevention) and makes a recommendation for the country's Tier Ranking in the forthcoming TIP report.

In particular, the SWG comments focus on the 'Prevention' prong of the "3P" paradigm. Prevention of forced labor and human trafficking is naturally more effective than retroactive response. Once workers end up in a situation of exploitation, effective remedy involves lengthy and expensive court proceedings as well as rehabilitation of workers. Ensuring workers' labor rights, particularly freedom of association and collective bargaining, is the most effective method for pre-empting and removing the conditions in which forced labor arises in the modern economy.

In Thailand, and other countries where GLJ-ILRF works, we find that while effective criminal justice mechanisms are important, the root causes of forced labor are discriminatory legal and policy frameworks and government failure to ensure the labor rights for vulnerable categories of workers. These are arguably the most critical areas of focus for successful prevention. This year's report highlights persistent and emergent issues impeding trafficking prevention, such as the legal ban on foreign migrant workers' right to unionize; a complex migration management scheme; COVID-19 policies that restrict migrants' movement and bar them from social protection schemes; ineffective labor inspections; and retaliatory lawsuits brought by employers and the government against workers and their advocates.

Thailand is the main destination country for migrant workers from Myanmar, Cambodia, and Laos, who work in a range of service and export-oriented industries, including seafood processing, fishing, garments, construction, hotels, and domestic work. Thailand has long struggled to effectively manage migration and combat human trafficking and forced labor of these vulnerable workers.

Affording migrant workers their internationally recognized rights to freedom of association and collective bargaining is necessary to address the power imbalances that drive labor exploitation. Governments and corporate actors have a responsibility to respect and protect these rights and have a strong interest in doing so if they seek to finally end forced labor in the seafood and other industries in Thailand.

It is of pivotal importance that the TIP mechanism continue to apply pressure on Thai policy makers and companies to take even bolder steps to eradicate human trafficking and forced labor from supply chains. It is necessary that Thailand takes unprecedented steps to reform its legislative framework to address the persistent root causes of abuse within the seafood and other industries, including to provide trade union rights for migrants. Without a serious shift in the way that Thailand conceptualizes the residency and labor rights of migrants, we will see the same patterns of abuse repeat themselves year after year.

It is our hope that the SWG's 2022 TIP Report submission on Thailand will provide insight into the root causes of forced labor and human trafficking in the modern economy. We look forward to a 2022 TIP report from the U.S. State Department that gives adequate attention to labor rights as critical to preventing human trafficking.



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1. INTRODUCTION

This report contains the comments of the Seafood Working Group (SWG) concerning the Government of Thailand's ranking in the United States Department of State's 2022 Trafficking in Persons (TIP) Report.¹ The TIP Report is a requirement of the Trafficking Victims Protection Act (TVPA). In 2021, the U.S. Department of State downgraded Thailand from its Tier 2 to Tier 2 Watchlist ranking because the government "did not demonstrate overall increasing efforts compared to the previous reporting period, even considering the impact of the COVID-19 pandemic on its anti-trafficking capacity."²

In 2022, the SWG finds that Thailand was appropriately downgraded in 2021 and recommends that the country remain at Tier 2 Watchlist. Our research shows that numerous factors determining the downgrade have not shifted and that the Government of Thailand continues to fall short of the TVPA's minimum standards.

The Government of Thailand has not increased its efforts to combat the problem of forced labor among migrant workers in proportion to the scope of the problem. It has maintained policies that make migrant workers more vulnerable to labor trafficking, such as short-term, ad hoc migration management policies. The government has also continued to deny migrant workers the fundamental rights of freedom of association and collective bargaining, making it very challenging for migrant workers to address labor rights abuses and prevent forced labor. In addition, the government has introduced draft legislation during the reporting period that would restrict the operations of non-governmental organizations (NGOs) and have damaging impacts on migrant worker organizations and other organizations working to combat human trafficking.

Meanwhile, the Government of Thailand has continued to be ineffective in identifying victims and prosecuting labor trafficking cases in a victim-centric and trauma-informed manner. It has failed to conduct regular, effective labor inspections of fishing vessels and seafood processing factories, and it has still yet to issue guidelines for the Prevention and Suppression of Human Trafficking Act, B.E. 2551 (2008) (Anti-Trafficking in Persons Act). As a result, the government has not fully met the TVPA's minimum standards, and there is not sufficient evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, especially with regards to labor trafficking.

1.1 Methodology

This report focuses on issues and incidents during the 2022 TIP Report reporting period, April 1, 2021–March 31, 2022, but provides some information from before this time period where relevant. The information in this report is based on 14 consultations between October 2021–February 2022, including an initial focus group discussion with CSOs, 12 individual interviews with eight CSOs and four international NGOs and U.N. agencies based in Thailand, and one focus group discussion with migrant workers, in addition to several follow-up interviews and email communications with the organizations. The report was reviewed by SWG members in February 2022.

¹ The submission was filed with the U.S. State Department on March 11, 2022. In this public version, names have been censored to protect the identity of sources and other minor edits have been made.

² Office to Monitor and Combat Trafficking in Persons, *2021 Trafficking in Persons Report: Thailand* (June 2021), UNITED STATES DEPARTMENT OF STATE, <https://www.state.gov/reports/2021-trafficking-in-persons-report/thailand/>.

The report analyzes relevant Thai laws and policies; includes information from available research, reports, and news articles; and showcases 33 cases of instances of abuse during employment and recruitment and possible forced labor and human trafficking experienced by migrant workers across a range of labor sectors and geographic regions in Thailand. These cases are highlighted in boxes throughout the report, and the majority were collected during interviews with CSOs that work directly with migrant workers or with migrant workers themselves. Specifically, 20 cases were collected during interviews conducted by GLJ-ILRF, while 13 were compiled from secondary sources. When one source provided information relating to multiple instances of abuse, they are divided into different parts but labeled with the same case number. In this public version of the submission, sources have been censored for their security, using a coding system of CSO #1–#8 and International Organization #1–#4.

All of the recommendations outlined in the report, including the Priority Reforms listed in Section 1.4 and the full set of recommendations listed in Section 5, were collected during consultations with CSOs and international organizations.

1.2 About the Authors

Founded in 2014, the Seafood Working Group (SWG) is a global coalition of more than 30 labor, human rights, and environmental organizations collaborating to develop and advocate for effective government policies and industry actions to end forced labor in the international seafood trade. It is led by an Advisory Body of 11 leading labor, human rights and environmental organizations that help determine the strategic advocacy priorities of the coalition and guide its expansion to support workers in the seafood industry throughout Asia.³

Global Labor Justice-International Labor Rights Forum (GLJ-ILRF) is a 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 and 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

1.3 Key Findings

This report documents the Government of Thailand's inadequate efforts to make progress in the areas of Prevention, Protection, and Prosecution during the reporting period. The key findings are as follows:

➔ Prevention (Section 2)

- The government instituted a series of COVID-19 policies that increased the vulnerability of migrant workers to labor trafficking and exploitation, including imposing lockdowns on migrant communities; charging migrant workers with COVID-19 costs; exclusion from social protection programs; and forcing migrant fishers to quarantine aboard vessels. These policies deprived migrant workers of their basic needs, led to greater reliance on brokers, and increased their financial debt. The government also failed to compel employers to compensate workers for unpaid wages and benefits during COVID-19,

³ For more information on the SWG, see *Seafood Working Group*, GLJ-ILRF, https://laborrights.org/industries/seafood?qt-quicktabs_seafood=3#qt-quicktabs_seafood.

⁴ For more information, see the organization's website pages at <https://laborrights.org/> and <https://globallaborjustice.org/>.

despite orders from labor inspectors. This increased workers' financial precarity and made them more vulnerable to exploitation. (Section 2.1)

- The government has yet to take any steps towards establishing a long-term, comprehensive migration management policy for migrant workers from neighboring Southeast Asian states, and instead continues to institute short-term policies that increase human trafficking risks associated with recruitment. (Section 2.2)
- The government continues to deny the rights of freedom of association and collective bargaining to many categories of workers, particularly migrant workers. It has not ratified International Labour Organization (ILO) Conventions on Freedom of Association and Protection of the Right to Organize, 1948 (C87) or on the Right to Organize and Collective Bargaining (C98). It has not reformed the Labor Relations Act (1975) to remove the discriminatory provisions prohibiting non-Thai workers from the right to form and lead unions, which violates the right to freedom of association. The government has attempted to further restrict these rights by prohibiting worker strikes entirely under the COVID-19 emergency decree, which is still in force. Furthermore, current drafts of the amended Labor Relations Act continue to include Thai nationality requirements for the formation of unions. (Section 2.3)
- The government has put forward the Draft Act on the Operations of Not-for-Profit Organizations (NGO Law), which would have a deeply damaging impact on both donors and NGOs working to address human trafficking and labor rights in Thailand. (Section 2.4)
- The government has failed to protect workers from Strategic Lawsuit Against Public Participation (SLAPP suits) brought by employers, which impede efforts to combat forced labor due to their chilling effect on individuals seeking to report labor rights abuses. The government itself brought SLAPP suits against trade unionists seeking to improve health and safety standards and migrant workers' advocates. The report documents four cases brought by employers or the government impacting at least 19 workers, unionists, and advocates across the seafood processing, poultry, state railway, and other industries, which provides evidence that Thailand's anti-SLAPP legislation enacted in 2019 has not been effective. (Section 2.5)
- The Thai government has not reformed policies that allow migrant workers to be charged recruitment fees and related costs that put them into debt; migrant workers also face difficulties changing employers, and there are loopholes in the law that leave certain categories of workers with fewer labor rights and social protections. (Section 2.6)
- The long-standing practice of bribery and extortion of undocumented migrant workers has worsened during the pandemic. (Section 2.7)
- The government has not taken sufficient steps to systematically address labor abuses and indicators of forced labor in the fishing and seafood processing sectors, such as the retention of identity documents, abusive working and living conditions, intimidation and threats, physical violence, excessive overtime, and wage theft. (Section 2.8)
- The government has continued to not fully implement the ILO Working in Fishing Convention No. 188 (C188), leaving migrant fishers vulnerable to exploitation by employers. (Section 2.9)
- There is a lack of diversity in the National Anti-Trafficking in Persons Committee, making it less capable of effectively addressing the root causes of trafficking. (Section 2.10)

➔ Protection (Section 3)

- One of the government's greatest shortcoming in its anti-trafficking efforts is victim identification. Law enforcement officials have routinely arrested and deported migrant workers who entered Thailand through irregular channels, even when indicators of human trafficking were apparent. (Section 3.1)

- The government has neglected to provide protection for Thai nationals who have returned to their home country after having been subjected to labor abuses possibly amounting to forced labor while abroad. (Section 3.2)
- The government has failed to protect prisoners from extremely abusive working conditions likely amounting to forced labor, including in the production of fishing nets for export to the United States. (Section 3.3)
- The government has not provided accessible, trauma-sensitive shelters for victims. (Section 3.4)
- The government has not ensured that court proceedings are trauma-sensitive. Victims, including minors, have not been informed about the judicial process or their rights, have not been given a meaningful choice of whether or not to participate in prosecution proceedings, and have been forced to testify in court at the risk of re-traumatization. (Section 3.5)

➔ Prosecution (Section 4)

- Overall, the government prosecuted labor trafficking and forced labor cases at a low rate compared to the known prevalence of these abuses in migrant worker-dominated labor sectors. While there was an increase in the total number of investigations of potential trafficking cases (from 133 in 2020 to 182 in 2021), the majority of these cases (134) are related to sex trafficking, rather than labor trafficking and forced labor. The number of investigations of potential forced labor cases increased slightly (from 12 in 2020 to 18 in 2021), still marking a decrease compared to 2018 and 2019 (35 cases each year). (Section 4.1)
- There were significant delays in prosecution and judicial proceedings for migrant workers who are potential victims of human trafficking. The processes for trafficking investigations and the issuance of arrest warrants by law enforcement have been delayed for periods much longer than could be justified by COVID-19. (Section 4.2)
- Law enforcement officials have demonstrated weak capacity to implement the Anti-Trafficking in Persons Act (2008) and effectively prosecute forced labor. There is widespread confusion among officials regarding how to identify and investigate human trafficking cases and how to distinguish between labor trafficking and forced labor. This is due to the absence of implementing guidelines to clarify Section 6 and Section 6/1 of the Anti-Trafficking in Persons Act and inadequate training of law enforcement. (Section 4.3)
- The Anti-Trafficking in Persons Act prescribes weaker penalties for the crime of forced labor compared to the crime of human trafficking. This may weaken the deterrent effect of the law and is especially problematic considering law enforcement officials' struggle to distinguish between the two charges. (Section 4.4)
- Corruption and complicity among law enforcement officials have impeded trafficking investigations (Section 4.5).

1.4 Priority Recommendations

In order for Thailand to be upgraded to a Tier 2 ranking, the SWG recommends that the Government of Thailand undertake the following reforms, taking concrete steps to do so by June 2022:

1. **Full rights to the freedom of association and collective bargaining for all workers.** The government should ratify the ILO Conventions on Freedom of Association and Protection of the Right to Organize, 1948 (C87) and on the Right to Organize and Collective Bargaining (C98), as well as reform the Labor Relations Act (1975), so that all

workers, including migrant workers, have the right to organize, form and lead labor unions, bargain collectively, and strike, with legal protection.

2. **Comprehensive migration management policy.** The government should establish a long-term, comprehensive labor migration management program for migrants from neighboring Southeast Asian nations that provides avenues for migrant workers to work and reside in Thailand for longer periods of time to reflect the reality of their experiences. The program should be faster and affordable, have reduced administrative requirements, and provide greater flexibility in employment. It should remove private employment agencies from the process and effectively ban recruitment fees and related costs to migrants. Development of this program could be led by the committee on migration policy mentioned in the Royal Ordinance Concerning the Management of Foreign Migrant Workers (2017), which should have adequate representation from worker organizations and civil society.
3. **Withdrawal of the draft NGO Law.** The government should withdraw the Draft Act on the Operations of Not-for-Profit Organizations (2021) and ensure any future laws and regulations pertaining to NGOs strictly adhere to international human rights law and standards.
4. **Victim-centered and trauma-informed prosecutions.** The Ministry of Social Development and Human Security (MSDHS) should ensure that the prosecution proceedings are victim-centric and trauma-informed. Victims should be informed of the judicial process and of their rights and should be given the choice not to participate in investigations or court proceedings. The court should use victim impact statements to avoid unnecessary, repeated in-court testimony by the victim and develop specific safeguard policies for minor victims.
5. **Labor inspections.** The Ministry of Labor (MOL) should establish regular, rigorous labor inspections, during which inspectors should engage directly with workers in a meaningful way, particularly in high-risk workplaces dominated by migrant workers. Worker organizations and civil society organizations should be involved in the inspection process. The MOL should conduct a comprehensive review of the challenges to effective inspection and work in collaboration with the MSDHS to create a protocol for other relevant agencies to join the case when there are indicators of forced labor present.
6. **Legal guidance on human trafficking and forced labor.** The MSDHS and MOL should cooperate to clarify Sections 6 and 6/1 in the Anti-Trafficking in Persons Act by issuing implementing guidelines to help law enforcement officials distinguish between the crimes of human trafficking and forced labor in order to support easier identification of these crimes.

2. PREVENTION

The “Prevention” prong of the U.S. Department of State’s “3P” paradigm asks governments to “address the tactics of human traffickers head on.”⁵ Examples of prevention methods include dissemination of information; strategic intervention programs to reach at-risk populations; amending and robustly enforcing labor laws; developing and monitoring labor recruitment programs to protect workers from exploitation; strengthening partnerships among law enforcement, government, and NGOs; and monitoring supply chains to address cases of forced labor.

The Government of Thailand has not demonstrated adequate efforts to prevent human trafficking. It has continued to restrict the rights of freedom of association and collective bargaining for migrant workers and their advocates, despite decades of advocacy by civil society. The government has also instituted COVID-19 policies that have rendered migrant workers more vulnerable to labor trafficking and exploitation, and it has failed to establish a comprehensive, sustainable migration management policy. The government has failed to protect victims from retaliatory SLAPP suits by employers and has even pursued SLAPP suits in acts of retaliation itself. In addition, the government has continued to allow migrant workers to be charged certain types of recruitment fees and related costs, and it has not addressed issues of excessive overtime, low wages, or piece rate pay suffered by migrant workers in the seafood industry. Finally, the government has not reformed the National Anti-Trafficking in Persons Committee to have a more diverse representation of stakeholders.

2.1 COVID-19 Policies Increasing the Vulnerability of Migrant Workers to Exploitation

Various government policies aimed at curbing the spread of COVID-19 have actually increased the vulnerability of migrant workers to exploitation, often discriminatorily targeting migrant workers, in contrast to Thai nationals. COVID-19 measures have increased migrant workers’ risk of infection; limited their access to basic needs and services, such as food, water, and medical treatment; threatened and sometimes eliminated their livelihoods; separated families; and endangered their immigration status. Although these policies cannot be attributed to directly causing the trafficking of migrant workers, these measures have endangered migrants’ physical and mental health and their financial security, putting them in desperate situations and leaving them at greater risk of deceptive and coercive practices that could lead to trafficking.⁶

2.1.1 Restrictions on the Freedom of Movement and Access to Basic Needs

The government has implemented COVID-19 policies that discriminate against migrant workers. Following the COVID-19 outbreak in mid-December 2020 at the Central Shrimp Market in Samut Sakhon Province, where approximately 400,000 migrants work in the seafood processing sector, the government reportedly blamed migrants from Myanmar for spreading the virus in Thailand.⁷ In an effort to curb the spread of COVID-19, the government instituted a

⁵ Office to Monitor and Combat Trafficking in Persons, *3Ps: Prosecution, Protection, and Prevention*, UNITED STATES DEPARTMENT OF STATE, <https://www.state.gov/3ps-prosecution-protection-and-prevention/>.

⁶ Panudda Boonpala, Sarah Knibbs & Julien Garsany, *Human traffickers keep capitalising on Covid-19*, BANGKOK POST (Dec. 18, 2021), <https://www.bangkokpost.com/opinion/opinion/2233915/human-traffickers-keep-capitalising-on-covid-19>.

⁷ Peter Vandergeest, Melissa Marschke & Peter Duker, *Migrant worker segregation doesn’t work: COVID-19 lessons from Southeast Asia*, YORK U. (May 10, 2021), <https://euc.yorku.ca/research-spotlight/migrant-19>

series of measures that discriminate against or have a disparate impact on migrant workers, including lockdowns of migrant worker communities, inter-provincial travel restrictions for migrant workers, and the “bubble and seal” policy for large-scale factories with clusters of infections.

According to U.N. officials in the region, migrant workers in Thailand “have borne the brunt of quarantines, curfews, lockdowns, and slow vaccine rollouts. Border closures and travel restrictions have prevented them from going home or coming back to work.”⁸ In addition, “these conditions have escalated violence against women migrant workers, labour exploitation as well as the risk of human trafficking. The pandemic makes these issues harder to prevent and detect, leaving survivors struggling to access basic support, essential services, and justice.”⁹ A June 2021 study by the United Nations Office on Drugs and Crime (UNODC) “found that women, children and migrants remain particularly vulnerable to exploitation, trafficking and violence during Covid-19.”¹⁰ Below are descriptions of the specific COVID-19 measures implemented by the government and their impact on migrant workers’ vulnerability to labor exploitation.

2.1.1.1 Lockdowns of Migrant Worker Communities

In December 2020, the government closed down the Central Shrimp Market in Mahachai District, Samut Sakhon Province and instituted a lockdown, where infected and uninfected migrant workers were forced to quarantine together in dormitories.¹¹ Sunai Phasuk, a senior researcher for Human Rights Watch in Thailand, was reported as saying, “Enforcing an abusive and discriminatory policy, Thai authorities put migrant workers affected by the COVID-19 outbreak in a ghetto, where infection spreads like wildfire in squalid conditions.”¹²

According to various reports, the quarantine policy endangered migrant workers’ health by forcing them to live in over-crowded and unhygienic living conditions,¹³ and those who were at low-risk of contracting COVID-19 were forced to live among those were at high-risk, thereby increasing their risk of infection.¹⁴ Migrant workers also faced shortages of food and water,¹⁵ and the sudden layoffs at the Central Shrimp Market, restaurants, and factories in Samut

[worker-segregation-doesnt-work-covid-19-lessons-from-southeast-asia/](#); see also Jiraporn Kuhakan and Orathai Sriring, *Thai PM blames virus surge on illegal migration, hints at new curbs*, REUTERS (Dec. 22, 2020), <https://www.reuters.com/article/health-coronavirus-thailand-idUSKBN28W0NJ>.

⁸ Boonpala, Knibbs & Garsany, *Human traffickers keep capitalising on Covid-19*.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Nanchanok Wongsamuth, *Migrant workers face tough quarantine in Thailand as COVID-19 cases surge*, REUTERS (May 28, 2021), <https://www.reuters.com/article/us-health-coronavirus-thailand-migrants/migrant-workers-face-tough-quarantine-in-thailand-as-covid-19-cases-surge-idUSKCN2D9217>.

¹³ *To tackle COVID-19 outbreaks, ASEAN MPs call for more inclusive policies for migrant workers*, ASEAN PARLIAMENTARIANS FOR HUMAN RIGHTS (July 19, 2021), <https://aseanmp.org/2021/07/19/to-tackle-covid-19-outbreaks-asean-mps-call-for-more-inclusive-policies-of-migrant-workers/>.

¹⁴ Sirada Khemanihathai, *Situation on Migrant Workers and Border Crossing During the Covid-19 Pandemic*, MIGRANT WORKING GROUP (Nov. 2021), <https://mwgthailand.org/sites/default/files/2022-02/Situation%20on%20Migrant%20Workers%20and%20border%20crossing%20During%20the%20covid%2019%20pandemic.pdf>.

¹⁵ *Id.*

Sakhon threatened migrants' livelihoods.¹⁶ Many migrant workers struggled to find work as a result of the new restrictions,¹⁷ but could not access state unemployment benefits, nor were they supported by their employers through the provision of monetary compensation, accommodation, or food.¹⁸ Accordingly, migrant workers in Samut Sakhon reported grave concerns about job and health insecurity.¹⁹ Lack of freedom of association for migrant workers exacerbated these problems. The impacts of the outbreak could have been mitigated if migrant workers had adequate labor rights and the agency to shape their working and living conditions, especially through rights to freedom of association and collective bargaining.²⁰

Since then, similar lockdowns have occurred throughout 2021, which Cases 1 and 2 below illustrate.

Case 1²¹

In late June 2021, about 80,000 migrant workers in the construction sector were put under lockdown. More than 600 construction camps in Bangkok and nine provinces were closed off in order to curb the rising number of COVID-19 cases in these densely populated camps, yet the government provided the migrants with little assistance. They were not allowed to leave the camps for food and water or other necessities. In addition, the vast majority of migrants were not given access to the COVID-19 vaccine, nor compensated for lost income during the temporary closure of the construction sites. They were also excluded from government COVID-19 assistance packages, including cash handout remedies.²² Migrant workers in these camps were thus left more vulnerable in their physical and mental health, as well as their finances, with many even falling into debt due to the sudden loss of income. The lack of government action required NGOs and U.N. agencies to step in to provide humanitarian assistance to the isolated migrants.

¹⁶ Migrant Working Group, *Report on the situation of migrant workers amidst the pandemic and Covid-19 restriction measures Focusing on Samut Sakhon from 19 December 2020–31 March 2021*, <https://mwgthailand.org/en/press/1619664349>. See also Grant Peck & Chalida Ekvitthayavechnukul, *After Months of Calm, Thailand Grapples with Virus Outbreak*, DIPLOMAT (Dec. 24, 2020), <https://thedi diplomat.com/2020/12/after-months-of-calm-thailand-grapples-with-virus-outbreak/>.

¹⁷ Nanchanok Wongsamuth, *Migrant workers suffer as coronavirus cases surge in Thailand*, REUTERS (Jan. 8, 2021), <https://www.reuters.com/article/us-thailand-migrants-workers-trfn/migrant-workers-suffer-as-coronavirus-cases-surge-in-thailand-idUSKBN29D11T>.

¹⁸ Migrant Working Group, *Report on the situation of migrant workers*.

¹⁹ *Id.*

²⁰ Kimberly Rogovin, *Grant Union Rights to Migrant Workers*, BANGKOK POST (March 11, 2021), <https://www.bangkokpost.com/opinion/opinion/2081835/grant-union-rights-to-migrant-workers>.

²¹ See, e.g., Mark Sirapob Ruckthongsuk, *Helping hard-to-reach families in crowded camps during COVID-19*, UNICEF (Nov. 3, 2021), <https://www.unicef.org/thailand/stories/helping-hard-reach-families-crowded-camps-during-covid-19>; David Rising, *Volunteers help poorest survive Thailand's worst COVID surge*, AP NEWS (Sept. 5, 2021), <https://apnews.com/article/health-coronavirus-pandemic-thailand-572791cbe7d1ac61db50530504a7c0f>; and Caleb Quinley, *Thailand: Migrants plead for vaccines as COVID takes lives, jobs*, AL JAZEERA (Sept. 21, 2021), <https://www.aljazeera.com/news/2021/9/14/thailand-migrants-plead-for-vaccines-as-covid-takes-lives-jobs>.

²² Human Rights and Development Foundation, *Statement: Calling the Thai Government to Provide COVID-19 Assistance Packages to Migrant Workers without Discrimination* (June 29, 2021), <http://hrdfoundation.org/?p=2597>.

Case 2 – Part 1²³

In June 2021, migrant families living in row houses in Kuraburi Township, Phang Nga Province were put under lockdown for more than three months. The migrants were not able to leave the village, which limited their access to food, health care, and other basic necessities. In order to leave the village, the migrant workers needed to obtain permission from local authorities because they were not vaccinated.

After two to three months of lockdown, the migrant communities reached out to a CSO through their community leader. The CSO contacted local authorities and told them what they had learned from the community leader. They arranged to have a meeting, which was difficult because the CSO staff were not yet vaccinated. In the end, a CSO representative negotiated a five-point agreement between the local authorities and the migrant worker community to allow migrant workers to travel and access health services or emergency needs. These included (1) permitting medical treatment and hospitalization in the case of emergency; (2) permitting families to notify the relevant local authorities for assistance via their community leader if they are not provided with enough food rations; (3) notifying the migrant community about any additional COVID-19 rules and regulations in Myanmar language; (4) helping arrange for migrant workers to purchase supplies; and (5) permitting migrant workers to contact their community leader who is in charge of communications to discuss their emergency needs.

2.1.1.2 Travel Restrictions for Migrant Workers

The “No Movement of Migrant Workers” policy was another discriminatory measure restricting the movement of migrant workers in response to COVID-19. This policy involved a ban on inter-provincial travel for migrant workers, but not for Thai nationals. This measure was first announced by the MOL for Samut Sakhon Province in response to the outbreak in December 2020, and similar measures were adopted in Kanchanburi Province and Rayong Province.²⁴

In Samut Sakhon, the government banned migrant workers from traveling across provinces because they were not vaccinated, in contrast to Thais who could travel with a permit.²⁵ Only migrant workers with two doses of the vaccination could request permission to travel across the provinces, yet the government was slow to administer the vaccine, especially to migrants.²⁶ It was not until November 2021 that there was an announcement by the government that it would set aside 500,000 COVID-19 vaccines for migrant workers.²⁷ Until then, migrant workers were placed in a “Catch-22” situation, leading some migrant workers who failed to adhere to the policy to be arrested, detained, and deported to their home countries.²⁸ Later, during the third wave, which began in April 2021, the government adopted the “No Movement of Migrant Workers” measures on June 28, 2021, controlling workers’ movement in Bangkok, Nakorn Pathom, Nonthaburi, Pathum Thani, Samut Prakan, Samut Sakhon, Pattani, Yala, Narathiwat,

²³ Email communication with CSO #7 (Jan. 24, 2022).

²⁴ Khemanihathai, *Situation on Migrant Workers and Border Crossing*.

²⁵ Interview with CSO #5 (Dec. 9, 2021).

²⁶ Quinley, *Thailand: Migrants plead for vaccines*.

²⁷ Panarat Thepgumpanat & Chayut Setboonsarng, *Thailand offers COVID-19 vaccines to migrant workers*, REUTERS (Nov. 10, 2021), <https://www.reuters.com/world/asia-pacific/thailand-offers-covid-19-vaccines-migrant-workers-2021-11-10/>.

²⁸ Interview with CSO #5 (Dec. 9, 2021).

and Songkhla provinces.²⁹ Other similar measures were adopted by Tak, Phuket, and Chumphon provinces in July 2021.³⁰

These interprovincial travel restrictions have prevented migrant workers from traveling for work or family emergencies.³¹ As a result, many migrants relied on brokers to travel illegally, paying fees constituting thousands of baht (THB). Brokers charge approximately 6,000 THB (180 USD)³² for travel from Phuket, Southern Thailand to Bangkok or Samut Sakhon. Meanwhile, travel to Mae Sot with VIP arrangement³³ costs approximately 8,000–10,000 THB (240–300 USD).³⁴ After arriving in Mae Sot, VIP groups are picked up and sent to the military authorized area on the Thai side of the Muay River, opposite Myawaddy, Myanmar. The Democratic Karen Buddhist Army (DKBA) and Border Guard Forces (BGF), which coordinates with the groups on the Thai side in collaboration with brokers, officials, police, and soldiers, send a raft to pick up VIP migrant returnees to Myawaddy. The reliance on informal brokers has made these migrant workers vulnerable to exploitation.³⁵ Furthermore, the inability to carry out their livelihood and earn a living has required many migrant workers to borrow money from their families or employers, causing them to fall into debt.³⁶

Case 2 – Part 2³⁷

The migrant families living in row houses in fishing villages in Kuraburi District, Phang Nga Province rely on odd jobs for their livelihood, such as collecting or cleaning fish that are unloaded at the pier. However, the strict control of these migrant workers' families prevented them from being able to travel to find odd jobs for months. Instead, they were obliged to rely on emergency humanitarian aid from private donors or to borrow money from their relatives or employer, causing them to go into debt.

2.1.1.3 The “Bubble and Seal” Policy

The government imposed a “bubble and seal” policy beginning in February 2021 in order to control infections in all large-scale workplaces.³⁸ The purpose of the policy is to strictly regulate the travel and movement of workers from their dormitories to their workplaces so that they do

²⁹ Khemanitthathai, *Situation on Migrant Workers and Border Crossing*.

³⁰ *Id.*

³¹ Interview with CSO #7 (Jan. 12, 2022).

³² 1 USD = 33.2965 THB.

³³ Non-VIP arrangements are less expensive and involve taking a regular bus arranged by a broker. VIP arrangements include an air-conditioned bus and food on the way to Mae Sot.

³⁴ Email communication with CSO #7 (Jan. 24, 2022).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See, e.g., Tanutam Thawan, ‘Bubble and seal’ method to contain outbreaks at factories, keep business afloat, THAIGER (June 15, 2021), <https://thethaiger.com/news/national/bubble-and-seal-method-to-contain-outbreaks-at-factories-keep-business-afloat>; Migrant Working Group, *Report on the situation of migrant workers*. Since August 13, 2021, the “bubble and seal” policy has focused on workplaces, businesses, and factories employing 500 or more workers. Target sectors have included automobile, electronic parts, food, and medical equipment, and target provinces have included Nonthaburi, Pathumthani, Samut Sakhon, and Chonburi. Migrant Working Group, *Open Letter Subject Observations and recommendations for the management policy of the Factory Sandbox by the Ministry of Labour* (Sept. 15, 2021), <https://mwgthailand.org/en/press/1631931276>.

not go to other locations.³⁹ Workers are divided into subunits, and their movement is monitored.⁴⁰ If accommodations are not provided on the factory compound, then factories are required to provide direct transportation to the worksite without making any stops.⁴¹ In addition, workers are not allowed to travel, so factories are supposed to provide shops where workers can buy food.⁴² The policy takes effect when 10% of factory workers test positive for COVID-19, upon which the infected workers are sent for treatment at field hospitals set up at the factory site,⁴³ while the rest of the staff who are not infected are kept at the factory for 28 days.⁴⁴

The “bubble and seal” policy has been criticized for requiring workers at factories and in construction camps who live on site—many of whom are low-wage migrant workers—to not leave the workplace even if they are not infected—a policy that does not apply to other workplaces.⁴⁵ This has caused the separation of families, even those with young children.⁴⁶ In addition, the field hospitals set up by the factories for migrant workers⁴⁷ have been found to have terrible living conditions, even leading to a strike by patients, described in Case 4 below. Thus, although the “bubble and seal” policy is facially neutral, its application to worksites predominately composed of migrant workers has led to a disparate impact on migrant workers, who are rendered more vulnerable by being prevented from leaving the workplace for nearly one month and being forced to endure sub-standard living and working conditions.

Case 3⁴⁸

According to a report documenting migrant workers’ experiences in Ranong and Songkhla provinces from June–August 15, 2021, a seafood company was documented as giving its workers inadequate rice and food and expired chicken when implementing the “bubble and seal” policy. The price of fresh food from a food truck permitted to sell on the company grounds was high. Meanwhile, NGOs could not provide relief packages to the workers confined to the factory compound due to the lack of entry regulations. In addition, the quarantine space for workers was crowded, the toilet was unclean, and not enough face masks were provided to workers.

³⁹ Gary Boyle, *Factory staff to be monitored*, BANGKOK POST (Feb. 5, 2021), <https://www.bangkokpost.com/learning/easy/2063175/factory-staff-to-be-monitored>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Wongsamuth, *Migrant workers face tough quarantine*.

⁴⁵ Panarat Thepgumpanat & Chayut Setboonsarn, *Virus outbreaks at Thai factories threaten export sector, recovery*, REUTERS (June 14, 2021), <https://www.reuters.com/world/the-great-reboot/virus-outbreaks-thai-factories-threaten-export-sector-recovery-2021-06-14/>.

⁴⁶ Pichayada Promchertchoo, *New wave of COVID-19 infections in Thailand shines spotlight on employment situation of foreign workers*, CHANNEL NEWS ASIA (Jan. 13, 2021), <https://www.channelnewsasia.com/asia/thailand-covid-19-migrant-workers-shrimp-market-samut-sakhon-399891>.

⁴⁷ Penchan Charoensuthipan, *Myanmar workers help in virus fight*, BANGKOK POST (Jan. 31, 2021), <https://www.bangkokpost.com/thailand/special-reports/2059779/myanmar-workers-help-in-virus-fight>.

⁴⁸ Migrant Working Group, *Migrant Workers During the Pandemic of the Covid-19 in Fishery and Fishery-Related Sector in Ranong and Songkla (June–August 2021)*, at 2, <https://mwqthailand.org/sites/default/files/2021-10/fact%20sheet%20EN%2031-08-64.pdf>.

Case 4⁴⁹

On May 27, 2021, more than 500 COVID-19 patients tried to leave a field hospital set up at Cal-Comp Electronics factory in Phetchaburi Province, where about 1,500 migrant workers were being kept in quarantine. The workers had not received enough food or water, and a power outage worsened the already hot and crowded living conditions of the field hospital. As a result, hundreds of workers went on strike.

2.1.2 Fishers Forced to Quarantine Aboard Fishing Vessels

The government imposed extreme quarantine policies for fishers, forcing many to stay aboard fishing vessels in order to prevent the spread of COVID-19. On August 15, 2021, the Provincial Governor of Phuket issued the Phuket Provincial Authority Order no. 4623/2564 on “Restrictions of fishing workers on commercial boats in Phuket” by invoking Sections 22, 34, and 35 of the Communicable Diseases Act and the Emergency Decree on Public Administration in the State of Emergency (2005).⁵⁰ This order confined fishers to the fishing vessels or fishing ports where they worked and required the quarantine of fishers who are risk groups on board fishing vessels, which were converted to field hospitals.⁵¹ Furthermore, the concerned parties could not challenge the order because it was a matter of urgency, according to Section 30 paragraph 2(1) of the Administrative Procedure Act (1996). One labor migration expert commented, “this is yet another case where COVID-19 containment policies, that would not have been considered acceptable for Thai workers, were implemented because the majority of the labor force are migrants and unable to voice complaints.”⁵²

The Human Rights and Development Foundation (HRDF) and Migrant Working Group (MWG) submitted a letter in August 2021 to the Provincial Governor of Phuket, explaining that fishing vessels are not appropriate for quarantine purposes because it is impossible to ensure sanitation or access to medical care for infected individuals aboard.⁵³ Moreover, the letter highlights that preventing fishing vessels from coming ashore, where they would usually be subject to labor inspections, increases the risk of labor rights violations. Fishers are likely to be subjected to exploitative practices, such as being forced to work longer hours with less time for rest. Forcing these already at-risk workers to remain at sea for quarantine prevents workers who may be victims of forced labor from seeking legal protection.

Case 5⁵⁴

Twenty-four workers on fishing vessels (5 Thai, 19 Burmese) were not permitted to return to

⁴⁹ Tanutam Thawan, *More than 500 Covid patients try to escape field hospital in Phetchaburi*, THAIGER (May 28, 2021), <https://thethaiger.com/coronavirus/more-than-500-covid-patients-try-to-escape-field-hospital-in-phetchaburi>. See also Wongsamuth, *Migrant workers face tough quarantine*.

⁵⁰ Human Rights and Development Foundation & Migrant Working Group, *Press Release: HRDF and alliance submitting letter to Provincial Governor of Phuket Opposing the Phuket Provincial Authority Order on restrictions of fishing workers in commercial boats in Phuket* (Aug. 20, 2021), <http://hrdfoundation.org/?p=2628&lang=en>.

⁵¹ *Id.* Fishers are considered higher risk because of the nature of their work, which involves frequent movement.

⁵² Email communication with International Organization #1 (Feb. 27, 2022).

⁵³ *Id.*

⁵⁴ Interview with CSO #3 (Jan. 11, 2022).

shore at Samut Sakhon Province for six months. Instead, these workers were required to return to shore in Chumphon Province. A CSO found that this situation arose as a result of the Samut Sakhon Order No. 32/2564 on “Port in-Port out measures and the transportation of seafood during the COVID-19 pandemic,” dated January 5, 2021, which prohibits fishing vessel crews who have not tested negative for COVID-19 from going onshore. The employer refused to accept responsibility for the employees’ COVID-19 tests and requested that they change their route and return to the shore in Chumphon, rather than Samut Sakhon.

According to the CSO, all workers were required to remain on board for the majority of the time, except for two hours during the vessel’s fish loading to the port. For nearly six months, the workers were separated from their families. The workers were paid one month’s wage in advance, and their family members were paid at the employer’s office in Samut Sakhon for another five months. The employer deducted 1,500 THB (45 USD) monthly for their housing.

These workers were required to work every day and lacked rest time. Several of them were also injured on board, but still not permitted to rest. They had received no instruction on how to use the fishing and safety equipment on board during that time.

Case 6⁵⁵

In mid-2021 in Phang Nga, Ranong, and Chumphon provinces, fishers were required to quarantine aboard fishing vessels. Each boat had different quarantine times, ranging from 14 days to 20 days to 25 days. The fishers were not permitted to work during the quarantine period since the boats could not operate, so the fishers received no pay during this time. Furthermore, the boat owners deducted 500 THB (15 USD) per worker for food and drink. However, the fishers complained that they did not have enough food to last them for weeks on the fishing boat.

2.1.3 Increased Risk of Debt Bondage Due to Mandatory COVID-19-Related Costs

According to a CSO, the COVID-19 pandemic took a major financial toll on migrant workers. Factories closed temporarily, and some workers were laid off.⁵⁶ Migrant workers in medium-sized factories suffered salary cuts or suspension from work, while some migrant workers at larger factories were not paid overtime.⁵⁷ At the same time, migrant workers were forced to pay additional costs relating to COVID-19. Some migrants who were forced to quarantine at employer-provided accommodation were required to pay for the accommodation, resulting in a doubling of their rent fees. In addition, essential items sold in quarantine zones were sold at higher prices than normal.⁵⁸

Meanwhile, the cost of registration for migrant workers to extend work permits in Thailand while borders were closed during COVID-19 was also very high. For example, in response to the COVID-19 outbreak in Samut Sakhon Province, the MOL adopted a cabinet resolution on December 29, 2020 that allowed migrant workers from Myanmar, Cambodia, and Laos whose work permits have expired to extend their stay in Thailand for two years until February 13, 2023.

⁵⁵ Interview with CSO #8 (Jan. 21, 2022).

⁵⁶ Interview with CSO #5 (Nov. 22, 2021).

⁵⁷ Khemanitthathai, *Situation on Migrant Workers and Border Crossing*.

⁵⁸ *Id.*

However, the costs of the registration process were prohibitive,⁵⁹ as each registrant was required to pay approximately 8,700 THB (261 USD), including 3,000 THB (90 USD) for COVID-19 testing; 3,800 THB (114 USD) for two years of medical insurance; and 1,900 THB (57 USD) for registration fees.⁶⁰ On top of these costs, many migrant workers have had to pay an additional 3,000–4,000 THB (90–120 USD) to receive assistance from agents with the registration process.⁶¹ Such high costs contribute to migrant workers' debt, rendering them more vulnerable to exploitation.

Indeed, COVID-19 tests alone have been extremely expensive for migrant workers. Migrant workers seeking to return to their jobs have had to submit medical certificates with negative COVID-19 test results.⁶² Yet, according to Geraldine Ansar, International Organization for Migration (IOM) Chief of Mission in Thailand, "A migrant worker on minimum wage in Samut Sakhon contributing 100% of their salary for testing would have to work for an estimated nine days to cover the costs of a single COVID-19 test."⁶³ Due to the vagueness of government policies, which do not stipulate whether the employer or workers should bear the costs,⁶⁴ many migrant workers have had to bear the burden of the costs for testing.⁶⁵ For example, smaller and medium-sized seafood processing companies reportedly pass COVID-19-related costs onto workers by making deductions from their salaries.⁶⁶ Boat owners have also reportedly required fishers to pay 1,000 THB (30 USD) per COVID-19 vaccination.⁶⁷

2.1.4 Rigid Employment Categorization Policies Leading to the Arrest and Fine of Workers Who Have Lost and Changed Jobs During COVID-19

During the pandemic, many migrant workers lost their factory jobs and needed to find new jobs, such as in hotels.⁶⁸ However, the government's policies for employment change have made it difficult to adhere to all of the policies, causing some workers to be arrested and fined⁶⁹ and for their permits and visas to be revoked.⁷⁰ Originally, workers were permitted 30 days to change employers, which was insufficient particularly during the pandemic. Thanks to advocacy by CSOs, however, the MOL extended the employer change period to 60 days. Most migrants reportedly are able to find employers within the 60-day time frame.⁷¹ Nonetheless, there are still limitations to the government policy.

While workers with pink cards have no extra conditions to change employers, workers registered under the Memorandum of Understanding (MoU) must prove that the employer was at fault or pay compensation to the employer in order to be permitted to switch employers.⁷² In

⁵⁹ Penchan Charoensuthipan, *Low turnout for migrant registration*, BANGKOK POST (Jan. 17, 2021), <https://www.bangkokpost.com/thailand/general/2052071/low-turnout-for-migrant-registration>.

⁶⁰ *Make it easier for migrants*, BANGKOK POST (Jan. 9, 2021), <https://www.bangkokpost.com/opinion/opinion/2048079/make-it-easier-for-migrants>.

⁶¹ Charoensuthipan, *Low turnout for migrant registration*.

⁶² *Make it easier for migrants*, BANGKOK POST.

⁶³ Wongsamuth, *Migrant workers suffer as coronavirus cases surge*.

⁶⁴ Interview with CSO #5 (Nov. 22, 2021).

⁶⁵ Focus Group Discussion with CSOs (Oct. 26, 2021).

⁶⁶ *Id.*

⁶⁷ Interview with CSO #8 (Jan. 21, 2022).

⁶⁸ Interview with CSO #4 (Nov. 22, 2021).

⁶⁹ *Id.*

⁷⁰ Interview with CSO #5 (Nov. 22, 2021).

⁷¹ *Id.*

⁷² *Id.*

addition, workers must submit additional documentation and incur extra expenses in order to apply to change employers.⁷³ Furthermore, there are seven or eight job categories for migrant workers, which is often confusing for workers and even for officers,⁷⁴ yet workers have been arrested and fined for working in the wrong job category or type of employer.⁷⁵ For example, one CSO described how a former domestic worker who sought new employment as a shopkeeper had to pay a fine for being employed in a job category different from her work permit.⁷⁶ These strict conditions to change employers despite the unique challenges of the pandemic have failed to support migrant workers seeking new jobs. Rather, the conditions have made migrant workers even more vulnerable, as they risk arrest, monetary fines, and revocation of their work permits and visas.

2.1.5 Inadequate Support for Laid-Off Workers During COVID-19

The Government of Thailand has not taken sufficient measures to proactively support workers who have been laid off by their employers during COVID-19, which is needed to reduce their financial precarity and prevent them from falling prey to brokers. The government has failed to compel employers to compensate workers for unpaid wages and benefits during COVID-19. Instead, workers have been awarded a fraction of the compensation package ordered by labor inspectors. The cases from the seafood and garment industries below illustrate this issue.

Case 7⁷⁷

On August 5, 2021, Wandu Tuna Part., Ltd. terminated the employment of 130 workers, including 39 Myanmar migrant workers. The 39 migrant workers were not informed in advance and were denied severance pay. The 39 migrant workers complained to the labor inspector of the Ranong Provincial Office of Labor Protection and Welfare, who ordered the employer to pay 320,879 THB (9,634 USD) for compensation in lieu of advance notice and 2,271,400 THB (68,194 USD) for severance pay, totaling to 2,592,279 THB (77,828 USD), plus interest at 15% per annum, until all the outstanding debt is serviced.

However, Wandu Tuna Part., Ltd. failed to comply with the labor inspector's order. In response, on October 29, 2021, a CSO's attorneys filed a case against the company on behalf of the 39 migrant workers at the Phuket Provincial Court Region 8 to compel compliance. A mediation session was held at this court; and on December 13, 2021, the plaintiffs and defendants reached a settlement agreement, whereby the defendants agreed to pay the 39 plaintiffs 1,814,595 THB (54,483 USD). This meant that the migrant workers are now only entitled to 70% of the damages they were originally awarded by the labor inspector.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Focus Group Discussion with CSOs (Oct. 26, 2021).

⁷⁶ Interview with CSO #4 (Nov. 22, 2021).

⁷⁷ Human Rights and Development Foundation, *Press Release: 39 Myanmar migrant workers reaching a settlement agreement with Wandu Tuna Part Ltd in Ranong regarding the case filed for failure to act in compliance with the labour inspector's order of Ranong Provincial Office of Labour Protection and Welfare and the refusal to provide compensation and severance pay in lieu of advance notice* (Dec. 24, 2021), <http://hrdfoundation.org/?p=2687>.

Case 8⁷⁸

In March 2021, the factory Brilliant Thai Alliance, which made lingerie for brands such as Victoria's Secret and Ann Taylor owner, Ascena Group, unexpectedly closed down. The 1,388 employees, most of whom are women, were laid off without their wages, bonuses, or severance. The labor protection and welfare office of Samut Prakan Province ordered Brilliant Thai Alliance to pay 242 million THB (7.3 million USD), after which its parent company, Clover Group International, moved to liquidate the facility. However, the process is lengthy, and workers are unable to wait due to economic hardship. As a result, IndustriALL Global Union has called on the Government of Thailand to draw from the country's employment welfare fund to pay the sum upfront, plus an annual interest of 15%.

After six former Brilliant Thai Alliance employees were arrested in November 2021 for demonstrating outside the Government House in Dusit district after repeated unanswered pleas to the government for assistance, IndustriALL Global Union sent a letter to Prime Minister Prayut Chan-o-cha and Labor Minister Suchart Chomklin in January 2022, which stated, "Given the urgency, we call on you to make the full payment in advance, and get the reimbursement from the company after the liquidation process is completed. Your government must also take responsibility for bringing in the errant employer and immediately prosecute the company in accordance with the Thai law. Strict enforcement of the laws can deter irresponsible employers from violating workers' rights again."

However, the government's inadequate response has permitted companies to avoid taking legal responsibility. David Welsh, country director for Thailand at the Solidarity Center, commented, "Brands and factory owners throughout the industry have repeatedly used the pandemic as an excuse to avoid paying legally owed salaries and severance to their employees. Consumers in the West will be astonished that a year after the factory's closure none have made any effort to compensate a single worker despite legal orders to do so."

2.1.6 Exclusion of Non-Thai Workers from Social Protection Programs

The Social Security Office of the MOL reported that it provided 18.63 million THB (542,270 USD) of compensation through the Social Security Fund (SSF) for 1,067 insured fishery workers, relating to cases of sickness, maternity, disability, death, child support/welfare, and unemployment.⁷⁹ In addition, 49.23 million THB (1,471,719 USD) of compensation was provided through the SSF for 249 cases relating to suffering, harm, or illness arising from work in fisheries.⁸⁰

These efforts by the government are laudable; however, significant gaps in access to social protection programs for migrant workers remain. In February 2021, the government approved a cash-handout scheme for 9.27 million people covered by Section 33 of the Social Security Act

⁷⁸ Jasmine Malik Chua, *Thai Lingerie Workers Still Fighting for \$7 Million in Wages*, SOURCING J. (Jan. 27, 2022), <https://sourcingjournal.com/topics/labor/brilliant-alliance-thai-clover-group-victorias-secret-garment-wages-325530/>.

⁷⁹ 18 January 2022 Cabinet Resolution, *Subject: Report on the results of the performance under the Labour Protection in Fisheries Act, B.E. 2562 (2019)*.

⁸⁰ *Id.*

of 1990.⁸¹ The COVID-19 relief program, known as the “Section 33, We Love Each Other” scheme, was proposed by the MOL and intended to serve as a relief program during the second wave of COVID-19. However, the cash-handout scheme only applies to Thai nationals, thereby excluding non-Thai migrant workers and leaving them in financially precarious situations during the pandemic without government support.⁸²

On June 8, 2021, migrant workers and stateless workers excluded from the cash handout program filed a complaint, demanding rescission of the requirement that an insured person pursuant to Section 33 be of Thai nationality. On September 15, 2021, the Ombudsman upheld the “Section 33, We Love Each Other” scheme as constitutional because the constitutional provisions prohibiting discrimination on racial grounds do not include nationality.⁸³ As a result, despite the formal complaint submitted to the government, migrant workers and stateless workers remain excluded from the COVID-19 relief program. Yet, such aid is considered a “lifeline” by many migrant workers who have fallen into difficult financial circumstances during the pandemic.⁸⁴

Besides being ineligible for cash handouts, migrant workers have been unable to access other social protection programs, a problem discussed in detail in Section 4.2.5 of the SWG’s previous submission.⁸⁵ For example, according to an IOM study, only 42% of regular migrant workers were enrolled in the Social Security Fund (SSF) in 2020.⁸⁶ Yet, increased need for social protections during the pandemic is highlighted by the fact that the number of claims made to the SSF increased by more than 50% between 2019 and 2020, with unemployment claims increasing 30-fold, from 2% to 42% of all SSF claims.⁸⁷

Barriers to making SSF claims include “lack of information by migrant workers on available schemes and their entitlements, poor enforcement and compliance including among employers, long duration of the claim process, documentation requirements, language barriers, and lack of portability arrangements of social security benefits when migrant workers return to their country

⁸¹ *Cabinet gives go-ahead to latest cash handout scheme*, NATION (Feb. 14, 2021), <https://www.nationthailand.com/in-focus/30402662>.

⁸² Human Rights and Development Foundation, *Press Release: Migrant workers and stateless persons to file case with Constitutional Court concerning access to Ministry of Labour’s “Section 33, We Love Each Other” Covid-19 handouts for constitutional breach* (Dec. 8, 2021), <http://hrdfoundation.org/?p=2679>. See also Human Rights and Development Foundation, *Press Release: In its reply to migrant workers, the Ombudsman finds “Section 33, We Love Each Other” scheme” Does not constitute a discrimination and not breach Constitution’s Section 27 given its discrimination based on race, not nationality* (Sept. 27, 2021), <http://hrdfoundation.org/?p=2645>.

⁸³ The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which Thailand ratified in 2017, also does not prohibit discrimination based on nationality.

⁸⁴ Penchan Charoensuthipan, *Workers’ aid ‘discriminatory’*, BANGKOK POST (Dec. 10, 2021), <https://www.bangkokpost.com/thailand/general/2229563/workers-aid-discriminatory>.

⁸⁵ Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021), https://laborrights.org/sites/default/files/publications/SWG%20Thailand%20TIP%20Report%202021%20Submission_SWG%20Publication_final.pdf.

⁸⁶ International Organization for Migration, *Thailand Social Protection Diagnostic Review: Social protection for migrant workers and their families in Thailand* (2021), <https://publications.iom.int/books/thailand-social-protection-diagnostic-review-social-protection-migrant-workers-and-their>.

⁸⁷ *Id.*

of origin.”⁸⁸ Employers play a significant role, often failing to register migrant workers into social protection schemes for their financial gain.⁸⁹ Nonetheless, the government has yet to hold employers accountable and close these implementation gaps to ensure that migrant workers have the social protections necessary to reduce their vulnerability during the pandemic.

Furthermore, many migrant workers have only received a fraction of their wages while they are off work recovering from COVID-19; and many are cut-off from state assistance, including COVID-19 vaccines, due to language barriers, yet many have not been allowed to return to work until they are vaccinated.⁹⁰ Employers have also been found to deduct the days taken off to recover from COVID-19 from annual leave and sick leave.⁹¹ This has resulted in many workers using up all their leave entitlements, which is capped at 30 days, due to COVID-19.⁹²

2.2 Challenges Managing Migration from Neighboring Countries

The Government of Thailand has failed to prevent human trafficking by not effectively managing migration into the country and allowing brokers, recruitment agencies, and unscrupulous actors to take advantage of the unclear migration policies. The suspension of MoUs with neighboring countries since March 2020, coupled with the military coup in Myanmar in February 2021, prompted a rise in informal labor migration, causing many migrants to leave Myanmar while labor demands in migrant-dominated sectors in Thailand remain high. During this time, the Government of Thailand did not coordinate with the Government of Myanmar to manage migration. In addition, the Government of Thailand has not established a comprehensive migration management policy, instead relying on short-term cabinet resolutions that have led to widespread confusion and permitted deceptive practices by brokers preying on the vulnerability of migrants.

2.2.1 Lack of Coordination with the Government of Myanmar

In March 2020, Thailand’s MoUs governing migration with neighboring countries (Myanmar, Cambodia, and Laos)⁹³ were suspended due to the COVID-19 pandemic, closing the official channel for bringing workers into the country.⁹⁴ This meant that migrants could no longer legally enter Thailand, making informal migration the only option for those seeking to work.⁹⁵

⁸⁸ Géraldine Ansart, *Migrants key to pandemic rebuild*, BANGKOK POST (Dec. 22, 2021), <https://www.bangkokpost.com/opinion/opinion/2235747/migrants-key-to-pandemic-rebuild>.

⁸⁹ This is illustrated by Cases 22 and 24 in the SWG’s previous submission. Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021), at 40–43.

⁹⁰ Maya Taylor, *Workers’ rights group calls for “special leave” for Covid-19 patients*, THAIGER (Oct. 11, 2021), <https://thethaiger.com/coronavirus/workers-rights-group-calls-for-special-leave-for-covid-19-patients>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Verité, *Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR* (May 2019), at 17, <https://s38965.pcdn.co/wp-content/uploads/2019/05/Thailand-Bound-An-Exploration-of-Migration-Infrastructures-in-Cambodia-Myanmar-Lao-PDR-1.pdf>.

⁹⁴ Khemanitthathai, *Situation on Migrant Workers and Border Crossing*.

⁹⁵ *Id.* See also, Maya Taylor, *Officials to get tough on people smugglers, use MoUs to bring workers in legally*, THAIGER (Nov. 10, 2021), <https://thethaiger.com/hot-news/crime/officials-to-get-tough-on-people-smugglers-use-mous-to-bring-workers-in-legally>. While MoUs with Cambodia and Laos have been formed, the Thai government has yet to finalize a MoU with the Government of Myanmar. Interview with CSO #7 (Jan. 12, 2022).

At the same time, political instability in Myanmar following the February 2021 military coup made migration into Thailand necessary for many people.⁹⁶ The coup led to political turmoil in the country, including violence and killings during military crackdowns.⁹⁷ Following the coup, “more than 380,000 women, men and children have been internally displaced, while tens of thousands have crossed international borders to flee fighting and persecution or to secure work to save themselves and their families from destitution and starvation.”⁹⁸ Many became destitute as food and fuel costs spiked, the value of Myanmar’s currency plummeted, and few work opportunities remain.⁹⁹ This heightened political instability, combined with the COVID-19 border restrictions, caused many individuals from Myanmar to enter Thailand through irregular channels.¹⁰⁰

Meanwhile, employers in Thailand pressured the Government to Thailand to quickly fill the major labor shortage that arose due to border closures during the pandemic.¹⁰¹ In mid-2021, the Department of Employment reported a demand from the private sector for 424,703 migrant workers (256,029 Myanmar, 130,138 Cambodian, and 38,536 Laotian), mostly in the agriculture, livestock, construction, service, and textile industries.¹⁰²

The Government of Thailand’s coordination with the Government of Myanmar to manage migration has been reportedly weak, leading many Myanmar people to resort to informally entering Thailand.¹⁰³ For example, according to the government, the police ended up arresting 42,443 migrant workers found to have crossed the border through irregular channels during the period December 29, 2020–December 15, 2021.¹⁰⁴ In addition, the police arrested 293 smugglers and 841 suspects who provided them with shelter; and they raided 221 migrant smuggling networks, made 154 arrests, and apprehended 402 ringleaders.¹⁰⁵ A CSO report provides higher estimates of the number of people smuggled across the border: 85,661 people crossed the border and were pushed back during the period from January 1–September 30, 2021.¹⁰⁶

Informal migration can sometimes result in human trafficking.¹⁰⁷ While some brokers only take fees from migrants to facilitate informal travel across borders and job placement, they may

⁹⁶ Russell Goldman, *Myanmar’s Coup, Explained*, N.Y. TIMES (updated Nov. 29, 2021), <https://www.nytimes.com/article/myanmar-news-protests-coup.html>.

⁹⁷ Roisai Wongsuban, *In limbo: Migrant workers struggle with the Myanmar coup and COVID-19*, NEW MANDALA (June 9, 2021), <https://www.newmandala.org/in-limbo-migrant-workers-struggle-with-the-myanmar-coup-and-covid-19/>.

⁹⁸ *NGO calls for the protection of Myanmar migrants and refugees*, MIZZIMA (Dec. 18, 2021), <https://www.mizzima.com/article/ngo-calls-protection-myanmar-migrants-and-refugees>.

⁹⁹ *‘No legal pathways’: Myanmar poverty pushes thousands to Thailand*, FRANCE 24 (Jan. 6, 2022), <https://www.france24.com/en/live-news/20220106-no-legal-pathways-myanmar-poverty-pushes-thousands-to-thailand>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Interview with CSO #7 (Jan. 12, 2022).

¹⁰⁴ *42,000 illegal migrants caught this year*, BANGKOK POST (Dec. 22, 2021), <https://www.bangkokpost.com/thailand/general/2235699/42-000-migrants-nabbed-in-2021>. The problem of migrant workers being arrested for informally entering Thailand will be discussed further in Section 3.1.1.

¹⁰⁵ *Id.*

¹⁰⁶ Khemanitthathai, *Situation on Migrant Workers and Border Crossing*.

¹⁰⁷ *Id.*

unintentionally place workers in exploitative jobs, while other brokers may work in a more coordinated manner and intentionally seek to profit from migrant exploitation.¹⁰⁸ By not effectively coordinating with the Government of Myanmar to manage migration patterns, the Government of Thailand helped foster a rise in the use of informal broker networks and, thereby, caused migrants to become more vulnerable to trafficking.

2.2.2 Lack of a Comprehensive Migration Management Policy

Despite the pattern of irregular migration into Thailand, the Government of Thailand has yet to establish a comprehensive migration management framework that provides clear policies to manage migrant workers in the country.¹⁰⁹ Instead, new policies and procedures regarding migration management have been announced nearly every two months over a span of 10 months,¹¹⁰ which has been described as “overly complicated and changing.”¹¹¹ A MWG coordinator was quoted as saying, “They’ve issued 13 resolutions about migrant workers during the [pandemic], which have been very confusing and causing damage. It’s disorienting even for employers. Wouldn’t that be worse for employees?”¹¹² According to an international organization, this series of policies are not unique to COVID-19; instead, it is simply an extension of the ad hoc approach to policymaking on labor migration that Thailand has taken since 1992, which leaves migrants in a perennial state of legal precarity.¹¹³

As a result, migrant workers, Thai citizens, and even local officers are confused about the government’s migration policy.¹¹⁴ Such confusion, coupled with the fact that the online registration system is only in Thai,¹¹⁵ has led many migrants to turn to agents to assist them with registration and documentation.¹¹⁶ This has made it easier for brokers to deceive migrant workers and give false promises that the migrants can work in Thailand.¹¹⁷

For example, a recent news article reported, “On January 18, there was a rush by migrant workers to a factory in Maha Chai [Samut Sakhon], Thailand, prompted by false information. The story was that the factory needed workers and more than 300 Myanmar workers lined up in front of the factory during the night hoping to get a job offer.”¹¹⁸ The General Manager of Aid Alliance Committee (AAC), Ko Ye Min, was quoted as saying, “Right now, though there is no

¹⁰⁸ Sirada Khemanitthathai, *Situation on Migrant Workers and Border Crossing During the COVID-19 Pandemic*, MAHIDOL UNIVERSITY INSTITUTE FOR POPULATION AND SOCIAL RESEARCH (IPSR) IN-HOUSE SEMINAR #1166 (Feb. 23, 2022), <https://www.theprachakorn.com/newsDetail.php?id=593>. See also Interview with International Organization #1 (March 8, 2022).

¹⁰⁹ Migrant Working Group, Save the Children Thailand, Human Right and Development Foundation & Foundation for AIDS Rights, *Open Letter: Subject Recommendations on the implementation concerning anti-trafficking in persons and protection mechanism* (Aug. 6, 2021), <http://hrdfoundation.org/?p=2606>.

¹¹⁰ Interview with CSO #1 (Nov. 8, 2021).

¹¹¹ Jintamas Saksornchai, *Migrant Workers’ Arrest Calls Attention to Thailand Legal Negligence*, VOD (Nov. 9, 2021), <https://vodenglish.news/migrant-workers-arrest-calls-attention-to-thailand-legal-negligence/>.

¹¹² *Id.*

¹¹³ Email communication with International Organization #1 (Feb. 27, 2022).

¹¹⁴ Saksornchai, *Migrant Workers’ Arrest Calls Attention to Thailand Legal Negligence*.

¹¹⁵ Interview with CSO #3 (Nov. 17, 2021).

¹¹⁶ Migrant Working Group, Save the Children Thailand, Human Right and Development Foundation & Foundation for AIDS Rights, *Open Letter*.

¹¹⁷ *Id.*

¹¹⁸ *Illegal Myanmar migrant workers struggle to avoid Thai authorities*, MIZZIMA (Jan. 25, 2022), <https://www.mizzima.com/article/illegal-myanmar-migrant-workers-struggle-avoid-thai-authorities>.

legal way open for more workers to enter into Thailand, brokers (smugglers) are tricking people that there is a way with the MOU agreement. Before, about 300 people were victims of such fraud in Myawaddy. People are being tricked, losing money and even getting arrested even though they have spent so much money just to get a job. This is happening because of the current situation in Myanmar.”¹¹⁹

The lack of a clear migration management policy, particularly in the context of the pandemic and the political crisis in Myanmar, has led to increased smuggling and deceptive practices by brokers, such as high recruitment fees, fraudulent contracts, and document confiscation.¹²⁰ The extent of the complexity and confusion of the government’s policies is illustrated in Case 9 below, where a migrant worker who adhered to the government migration policy was wrongly accused and arrested. This case contradicts comments made by the Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (CMP Committee) that describe the registration process as having been straightforward for migrant workers.¹²¹

Case 9¹²²

On June 22, 2021, officials from the Bangkok Office of Employment Region 2 and the Bangkok Internal Security Operations Command conducted a labor inspection of a company where migrant worker Ms. P worked. The officials charged Ms. P for being an alien and working with an expired work permit, a violation of the Royal Ordinance Concerning the Management of Foreign Workers’ Employment (2017), which could result in a fine of up to 50,000 THB (1,501 USD) and prohibition from working in Thailand for two years. The police later fined her and held her in custody pending deportation. It turned out, however, that Ms. P was actually a legally registered migrant worker whose work permit had expired on February 20, 2021, but who had applied to renew her work permit prior to its expiry, as required by Section 64/1 of the Royal Ordinance. The renewal was not complete because the official processing her application could not retrieve her information from the depository of migrant workers.

Acting Sub Lt. Watchirawit Wutthipatchara, lawyer from HRDF’s Chapter in Samut Sakhon, was reported to have commented that “this case reflects the flaws of the documentation system of the renewal of work permit and employment of the migrant workers, particularly during the COVID-19 pandemic which has become an obstacle for the migrant workers to renew their work permits. Such flaws have made the migrant worker a victim being deprived of her liberty and rights even though she has done nothing wrong.”¹²³

¹¹⁹ *Id.*

¹²⁰ Focus Group Discussion with CSOs (Oct. 26, 2021).

¹²¹ Ministry of Foreign Affairs, *Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee clarified on allegations made by the Seafood Working Groups linked to the U.S. Department of State 2021 Trafficking in Persons Report (TIP Report)* (July 1, 2021), <https://www.mfa.go.th/en/content/tip07012564-2?page=5d5bd3da15e39c306002aaf9&menu=5d5bd3cb15e39c306002a9b0>.

¹²² Human Rights and Development Foundation, *Press Release: Female migrant worker released from custody after it could be established that her renewal of work permit had not been properly recorded* (Oct. 11, 2021), <http://hrdfoundation.org/?p=2655&lang=en>.

¹²³ *Id.*

2.3 Continued Denial of the Rights of Freedom of Association and Collective Bargaining

Prevention of forced labor and human trafficking is far more effective than retroactive responses.¹²⁴ When it comes to Prevention, one of the most common issues cited by the organizations interviewed was the government's continued denial of migrant workers' right to organize and collectively bargain.¹²⁵ This is because no amount of improvements in port inspections or rescue programs for victims of human trafficking is sufficient to combat the widespread problem of human trafficking if victims of forced labor and their advocates cannot organize and speak out.¹²⁶ Trade unions are critical to preventing forced labor because they help create a more equal balance of power between workers and employers, as well as improve working conditions to prevent deceptive, coercive, and exploitative from arising in the first place.¹²⁷

According to a CSO, when there are serious abuses or problems, it may be difficult for workers to negotiate with the government or their employer alone, yet a union can represent workers to more effectively address these issues collectively.¹²⁸ Unions can give workers the platform to collectively bargain an agreement with their employer on important issues such as health and safety, payment structure, or legal immigration status provision.¹²⁹

Nonetheless, foreign migrant workers in Thailand are legally prohibited from forming unions or serving as union leaders, and foreign migrant workers who engage in organizing or collective bargaining activities are not granted legal protection unlike workers who are part of a registered union.¹³⁰ Because of the legal restrictions under the Labor Relations Act (1975), there are no legally registered unions in the migrant-dominated seafood processing or fishing sectors, although migrant workers have formed worker organizations modeling unions to represent themselves.¹³¹ The current law discriminates against migrant workers by imposing a Thai nationality requirement to establish a union or to be a union leader through appointment as a committee member.¹³²

Initial versions of a revised Labor Relations Act guaranteed non-Thai workers the right to establish a union and serve as a committee member.¹³³ However, the February 2019 submission to the Cabinet does not include the right to establish a union but permits non-Thai

¹²⁴ Kimberly Rogovin, *Time for a Sea Change: Why union rights for migrant workers are needed to prevent forced labor in the Thai seafood industry*, INTERNATIONAL LABOR RIGHTS FORUM (March 19, 2020), <https://laborrights.org/publications/time-sea-change-why-union-rights-migrant-workers-are-needed-prevent-forced-labor-thai>.

¹²⁵ Judy Gearhart, *Is the Thai government punishing anti-human trafficking advocates?*, THOMSON REUTERS FOUNDATION NEWS (Nov. 5, 2021), <https://news.trust.org/item/20211105170721-mjdr1>.

¹²⁶ *Id.*

¹²⁷ Rogovin, *Time for a Sea Change*.

¹²⁸ Interview with CSO #8 (Jan. 21, 2022).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Rogovin, *Time for a Sea Change*.

¹³² Labor Relations Act, B.E. 2518 (1975) Section 88. *Persons who have the right to establish a Labor Union must be (...) sui juris of Thai nationality.* Section 101. *A person who is eligible for election or appointment as a member of Committee or Sub-committee under Section 100 must possess the following qualifications: (1) be a member of such Labour Union; (2) have Thai nationality by birth; and (3) be not less than twenty years of age.*

¹³³ CSO Briefing to the U.S. Embassy (Jan. 25, 2022).

nationals to be elected for not more than one of the five committee member seats.¹³⁴ As a result, the current draft of the proposed law continues to discriminate against migrant workers by maintaining the Thai nationality requirement to establish a union, denying their full rights to freedom of association.¹³⁵

The Government of Thailand has demonstrated that it has no real intention to ratify ILO Convention No. 87 Freedom of Association and Protection of the Right to Organise Convention, 1948, or Convention No. 98 Right to Organise and Collective Bargaining Convention, 1949. In fact, the government did not mention ratification of either Convention in the Third Cycle of the Universal Periodic Review (considered November 10, 2021),¹³⁶ whereas it had during the Second Cycle (considered May 11, 2016).¹³⁷ The government's annual report on anti-trafficking efforts also only offered a vague description of its plans to ratify these conventions.¹³⁸

2.3.1 COVID-19 Policy Restricting the Freedom of Association

The right to freedom of association in Thailand has been further restricted in the past year. On March 26, 2020, the Government of Thailand invoked the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) following the onset of the COVID-19 pandemic and has continually extended it ever since.¹³⁹ Most recently, on January 24, 2022, the government announced its sixteenth extension of the state of emergency until March 31, 2022.¹⁴⁰

¹³⁴ Interview with International Organization #4 (Jan. 26, 2022); Email communications with International Organization #4 (March 2022).

¹³⁵ *Id.*

¹³⁶ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (Aug. 17, 2021), A/HRC/WG.6/39/THA/1, Human Rights Council Working Group on the Universal Periodic Review Thirty-ninth session 1–12 November 2021, <https://undocs.org/A/HRC/WG.6/39/THA/1>.

¹³⁷ “49. Thailand has put effort to implement the voluntary pledge on the ratification of the ILO Conventions No. 87 on Freedom of Association and Protection of the Right to Organize and No. 98 on Right to Organize and Collective Bargaining. MOL has amended the Labour Relation Act to be consistent with the said Conventions and submitted for the Cabinet's approval. Nevertheless, due to concerns raised by the Employees' associations, MOL decided to withdraw the draft so that thorough discussions can be arranged to reach the agreement among all groups.” National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21” (Feb. 12, 2016), A/HRC/WG.6/25/THA/1, Human Rights Council Working Group on the Universal Periodic Review Twenty-fifth session 2–13 May 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/025/43/PDF/G1602543.pdf?OpenElement>. The SWG's previous submission also discusses other previous public commitments made by the government regarding these two conventions in Section 4.2.1.1.

¹³⁸ “Further progress continued to be pursued in the revision of related legislations to further strengthen labour protection and pave the way for the ratification of the ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise Convention and Convention No. 98 on the Right to Organise and Collective Bargaining. Specifically, the revised draft Labour Relations Act B.E. ... (...), which was approved by the Cabinet in February 2019, is currently being reviewed by the Council of State.” Royal Thai Government, *Royal Thai Government's Country Report on Anti-Human Trafficking Efforts 1 January–31 December 2021*, at 64.

¹³⁹ *State of emergency extended until March 31*, NATION THAILAND (Jan. 26, 2022), <https://www.nationmultimedia.com/in-focus/40011547>.

¹⁴⁰ *Id.*

Under its emergency decree, the government announced prohibitions of public gatherings of five or more people on multiple occasions with the intention of curbing the spread of COVID-19, but also to crack down on peaceful pro-democracy demonstrations.¹⁴¹ The government also banned employers and both Thai and non-Thai workers from participating in protests and strikes across the country.¹⁴² Employers and workers involved in any ongoing protests or strikes prior to the announcement were required to resume work immediately, and non-compliance with the policy could result in a fine of up to 40,000 THB (1,201 USD) and/or imprisonment for up to two years.¹⁴³ This policy is effective for the duration of the COVID-19-related emergency decree, and it has prevented advocacy groups from providing basic rights education for migrant workers, as they would risk arrest if they did so.¹⁴⁴

2.4 Draft NGO Law's Negative Impacts on Counter-Trafficking Efforts

The government threatens to further restrict rights to freedom of association in Thailand by drafting legislation that would control the operations of NGOs. NGOs play a critical role in the anti-trafficking movement, such as by supporting the government's inter-agency teams for victim identification; running shelters for victims; providing legal assistance and translation for migrant workers; and exposing abuses and identifying legal and policy gaps that contribute to human trafficking.¹⁴⁵ However, in February 2021, the Government of Thailand put forward the Draft Act on the Operations of Not-for-Profit Organizations ("NGO Law").¹⁴⁶ This law would "pose serious threats to the functioning of Thai civil society as well as have a deeply damaging impact on both donors and international non-governmental organizations...working to address human trafficking and labor rights in Thailand."¹⁴⁷ This is because the law (1) permits broad discretion to arbitrarily deny CSOs that are critical of the government's anti-trafficking efforts; (2) requires

¹⁴¹ See IOM Thailand, *COVID-19 Flash Update: Government Guidance Affecting Migrant Workers and their Employers in Thailand and Neighbouring Countries*, Vol. #8 (May 8, 2020), copy in Annex; see also *Nationwide ban on public gatherings declared in Thailand from Nov 1*, THAI PBS (Oct. 29, 2021), <https://www.thaipbsworld.com/nationwide-ban-on-public-gatherings-declared-in-thailand-from-nov-1/>. See also, Amnesty International, *Thailand: More arrests amid 'drastic' emergency order banning gatherings* (Oct. 15, 2020), <https://www.amnesty.or.th/en/latest/news/858/>; Human Rights Watch, *Thailand: State of Emergency Extension Unjustified* (May 27, 2020), <https://www.hrw.org/news/2020/05/27/thailand-state-emergency-extension-unjustified>.

¹⁴² Thai Royal Gazette no.137, special no. 110. "Effective from 6 May and for the duration of the Emergency Decree (until 31 May at the time of writing), the Royal Thai Gazette announced a regulation forbidding employers and both Thai and non-Thai workers from participating in protests and strikes across the country. Employers and workers involved in any ongoing protests or strikes prior to this announcement must resume work immediately. Non-compliance will result in a fine of up to THB 40,000 and/or imprisonment for up to two years."

¹⁴³ *Id.* See also, IOM Thailand, *COVID-19 Flash Update: Government Guidance Affecting Migrant Workers and their Employers in Thailand and Neighbouring Countries*, Vol. #9 (May 15, 2020), copy in Annex.

¹⁴⁴ Interview with CSO #3 (Nov. 17, 2021).

¹⁴⁵ *Id.*

¹⁴⁶ *Thailand's NGO law: Uprooting foreign influence or gagging govt critics?*, THAI PBS WORLD (April 21, 2021), <https://www.thaipbsworld.com/thailands-ngo-law-uprooting-foreign-influence-or-gagging-govt-critics/>; see also Human Rights Watch, *Thailand: NGO Law Would Strike 'Severe Blow' to Human Rights* (April, 2, 2021), <https://www.hrw.org/news/2021/04/02/thailand-ngo-law-would-strike-severe-blow-human-rights>.

¹⁴⁷ *Joint Letter: Proposed Thailand Law Threatens Civil Society Organizations Combating Trafficking* (June 17, 2021), GLJ-ILRF, https://laborrights.org/sites/default/files/docs/English_SWG%20Letter%20to%20US%20DOS%20on%20hai%20NGO%20Bill_June%2017%202021.pdf.

prior government approval for activity supported by foreign funding; (3) permits government officials to enter the offices of non-profit organizations for inspection and seizure of electronic intimidation, which threatens to violate the privacy of victims and their families and endanger members of organizations working on trafficking cases involving complicit government officials; and (4) will likely have a chilling effect on the free speech of NGOs.¹⁴⁸

The MSDHS has opened a public consultation process on the draft act, and it is possible to submit comments between January 18 and March 25, 2022.¹⁴⁹

2.5 SLAPP Suits by Employers and the Government

A Strategic Lawsuit Against Public Participation (SLAPP suit) is a civil, criminal, or administrative lawsuit filed against human rights defenders exercising their freedoms of expression, association, and/or peaceful assembly to speak about and/or act on matters related to a business' operations in order to silence or intimidate them from further engaging in criticism, opposition, public participation, and similar activities.¹⁵⁰ They create a challenging environment to prevent labor trafficking and exploitation due to their chilling effect on individuals seeking to report labor rights abuses.

SLAPP suits have been very common in Thailand in the past decade. Since 2014, 58 criminal defamation SLAPP suits have been filed in Thailand by companies and powerful individuals against 116 individuals (workers, activists, journalists, human rights defenders, environmental defenders, whistleblowers, academics, and politicians) who have raised concerns about matters of public interest, including human rights abuses, labor rights violations, and corruption.¹⁵¹ Fifty-four of 58 of the suits involved criminal defamation charges brought under Section 326 or Section 328 of Thailand's Criminal Code; three cases were brought under the 2017 Computer Crimes Act (CCA); one case was brought under Section 327 of the Criminal Code; and 23 cases were brought under both section 326 or Section 328 of the Criminal Code and the CCA.¹⁵² SLAPP suits have also been brought in the form of civil defamation charges, which are provided for under Section 423 of the Thai Civil and Commercial Code.¹⁵³ This threat of prosecution and other forms of retaliation are known among migrant communities and silences those who may wish to speak out.

The Government of Thailand has not only been unsuccessful in protecting workers from SLAPP suits brought by employers, but it has itself actively retaliated against workers by filing SLAPP

¹⁴⁸ *Id.*

¹⁴⁹ *Form for expressing opinions on the Draft of Non-Profit Organizations Act B.E. ...*, <https://docs.google.com/forms/d/e/1FAIpQLSdNX6QEO337-eTskDWwP9YM7dbO3OHraTCnl714Ybjqfp9MBw/viewform>.

¹⁵⁰ Business & Human Rights Resource Centre, *STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION: Southeast Asia cases & recommendations for governments, businesses, & civil society* (March 2020), https://media.business-humanrights.org/media/documents/files/documents/SLAPPs_in_SEA_2020_Final_for_website.pdf.

¹⁵¹ ARTICLE 19, *TRUTH BE TOLD: Criminal defamation in Thai law and the case for reform* (March 2021), https://www.article19.org/wp-content/uploads/2021/03/Thailand_Truth_be_told_decriminalise_defamation-1.pdf. Note that Section 326 "permits individuals who feel that they have been defamed may either report the case to the police or file a complaint directly with the court, giving private parties great power to initiate criminal proceedings against others."

¹⁵² *Id.*

¹⁵³ *Id.* See the Thammakaset lawsuits.

suits against them and their advocates. The sections below describe six SLAPP suits brought by employers or the government, which were either initiated or are ongoing during the reporting period, impacting at least 19 workers, trade unionists, and advocates. Two of the cases (Cases 10 and 12) illustrate the inefficacy of Thailand's anti-SLAPP legislation.

2.5.1 SLAPP Suits by Employers

This section includes four SLAPP suits by employers that were either first filed or continue to be active during this reporting period.

Case 10¹⁵⁴

On August 17, 2021, Siam International Food (SIF) Company, a Thai seafood processing company located in Chana District, Songkhla Province, filed a criminal defamation lawsuit against Thai journalist Mr. Wanchai Phutthong with the Bangkok Criminal Court. The defamation charges were brought under Section 326 and 328 of the Thailand Criminal Code, the former which carries a sentence of up to one year of imprisonment and/or a fine of up to 20,000 THB (600 USD) and the latter which carries a sentence of up to two years of imprisonment or a fine of up to 200,000 THB (6,002 USD). On October 11, 2021, Mr. Wanchai and his team of lawyers from Community Resources Center Foundation (CRCF) attended a preliminary hearing and submitted a petition under Section 161/1¹⁵⁵ to the Criminal Court in Bangkok. Despite this attempt to use Thailand's anti-SLAPP legislation, the Thai court accepted the charge on January 18, 2022.

This SLAPP suit was in retaliation for Mr. Phutthong's reporting on SIF's discriminatory treatment of migrant workers during the COVID-19 outbreak in the tuna canning factory in Songkhla Province in June and August 2021. The lawsuit claimed that Mr. Phutthong's two social media posts on his *Sue Thuen* ("Wild Media") Facebook Page tarnished the company's reputation and damaged its business. The first Facebook post, published on June 13, 2021, described how a Myanmar woman migrant worker at SIF had recently died of COVID-19 and that migrant workers did not receive adequate medical care or COVID-19 testing following reports of infections in the factory. The post also theorized that powerful shareholders of the factory deterred inspection of the factory by health and labor authorities. The second Facebook post, published on August 1, 2021, included an image of the SIF company with the message, "Songkhla province now has the fifth highest COVID-19 cases nationwide."

Case 11¹⁵⁶

Since 2016, Thammakaset Co., Ltd., a Thai-owned poultry company, has filed a total of 39 criminal and civil cases against 23 defendants, including migrant workers, their lawyers, and human rights defenders. Below are three cases that are ongoing:

¹⁵⁴ *Briefing Criminal Defamation Case of Mr. Wanchai Phutthong*. Document maintained with GLJ-ILRF and available upon request.

¹⁵⁵ Part of a 2019 amendment to Thailand's Criminal Procedure Code, Section 161/1 permits a court to dismiss a criminal case filed by private parties in "bath faith"; this is explained further in Section 2.5.3.

¹⁵⁶ See International Federation for Human Rights, *Thailand: Thammakaset Watch* (updated Dec. 28, 2021), <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch>.

- The Appeal Court verdict's reading on *Thammakaset Company v. Nan Win and Sutharee Wannasiri*, a criminal defamation suit filed in October 2018, has been postponed to March 30, 2022. This amounts to more than three years of judicial harassment faced by human rights defenders Mr. Nan Win and Ms. Sutharee.¹⁵⁷
- The preliminary hearing on Thammakaset's criminal defamation suit filed against human rights defender Ms. Angkhana Neelaphajit on December 6, 2019 has been postponed to March 21, 2022. This amounts to more than two years of judicial harassment faced by Ms. Angkhana.
- The preliminary hearing on Thammakaset's criminal defamation filed against human rights defender Ms. Thanaporn Saleephol on March 30, 2020 has been postponed to March 21, 2022. This amounts to two years of judicial harassment faced by Ms. Thanaporn.

2.5.2 SLAPP Suits by the Government

The Thai government has also actively initiated SLAPP suits against trade union leaders and human rights defenders. This section highlights two cases from this reporting period.

Case 12¹⁵⁸

In connection with Case 20 below, when migrant workers were deported after filing a complaint with the MOL, the government brought a SLAPP suit against a human rights defender present at the scene. Ms. Thanaphon Wichan, a representative of the Union of Workers who visited the MOL to submit a letter advocating for the rights of migrant workers during the COVID-19 pandemic, was arrested and charged with “harbouring, hiding or in any manner assisting aliens to evade arrest.”¹⁵⁹ Even though the seven Cambodian migrant workers testified that they did not know Ms. Thanaphon and had visited the MOL on their own, the inquiry officials charged Ms. Thanaphon with gathering an illegal assembly that violated the emergency decree during the COVID-19 pandemic. Ms. Thanaphon pleaded not guilty to all charges. MWG has called for the release of the seven migrant workers and to drop all charges against Ms. Thanaphon, a human rights defender.

On January 6, 2022, prosecutors of the Department of Special Litigation 2 of the Kwaeng Court (Office of Attorney General) prosecuted Ms. Thanaphon for “being complicit in organizing a gathering, an activity, an illegal meeting [that] may likely lead to the spread of diseases in the areas designated by the Notification or the Order as a maximum and strict control zone except when permission has been obtained from a competent official and it is thereby a breach of the issued [sic] under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005).” Ms. Thanaphon and her attorney submitted a letter of petition to the prosecutors, “urging the prosecutors to decide to not

¹⁵⁷ This case was pending at the time of filing this submission with the U.S. Department of State TIP Office. However, Thailand's Appeal Court dismissed the case on March 30, 2022.

¹⁵⁸ Migrant Working Group, *Press Release: Unionist indicted on breaches of Emergency Decree from handing letter to Ministry of Labour concerning foreign worker management* (Jan. 7, 2022), <https://mwgthailand.org/en/press/1641545850>.

¹⁵⁹ Migrant Working Group, *Press Release by the Migrant Working Group (MWG) Ministry of Labour urged to help the seven migrant workers being detained and to immediately drop cases against Human Rights Defender* (Dec. 11, 2021), <https://mwgthailand.org/en/press/1639313913>.

prosecute the case since it is tantamount to a Strategic Lawsuit Against Public Participation or SLAPP.” The letter of petition explained that “[h]er act was simply the use of a mechanism to complain with concerned agencies, the right of which is recognized in the Constitution.” Although the prosecutors accepted the letter of petition, they have continued the prosecution.

The MWG press release explains, “Ms. Thanaphon is a labor right [*sic*] defender and has accompanied a group of workers whose rights have been violated to lodge the complaint pursuant to a grievance mechanism provided by the state. Instead, she was victimized by the state which used the law as a tool to impede access to justice and it was a process of revictimization made possible by law. She demands that the state grievance mechanism be made a safe space to which all workers must have an easy access based on an equal basis...the prosecutors in this case have become part of the process to weaponize the law to stifle people’s rights and freedoms.”

Case 13¹⁶⁰

On October 21, 2021, Mr. Sawit Kaewvarn, president of the State Railway Union of Thailand (“SRUT”) and head of SERC, along with 12 other national and local union leaders, were convicted and sentenced to three years in prison. These convictions arise from criminal charges brought by the National Anti-Corruption Commission (NACC) in 2019 for “omission of official duties or commission to disrupt or cause damage” related to union activity 10 years prior.

In 2009, following deadly train derailments, SRUT members organized a health and safety initiative calling on the State Railway of Thailand (SRT) to address outdated and broken safety equipment. These convictions follow the 2017 Supreme Labor Court decision upholding an earlier ruling that ordered the seven union leaders to pay a fine of 15 million THB (450,150 USD), plus accrued interest, which has led to garnishment of wages and confiscation of union assets harming workers and their families.¹⁶¹

The 13 union leaders were freed on bail and filed an appeal in December 2021, for which a ruling is expected in April 2022. According to David Welsh, Thailand Country Director for the Solidarity Center, “criminalising basic freedom of association activities would have a chilling effect on other workers. They are targeting the most senior figure in the trade union movement. The message to rank-and-file trade union members or leaders is: this is what we do to the most senior leader in the movement, regardless of outside pressure, national or international.”¹⁶²

¹⁶⁰ Rebecca Ratcliffe, *Top Thai union leader ‘targeted’ with jail for rail safety campaign*, GUARDIAN (Sept. 21, 2021), https://www.theguardian.com/global-development/2021/sep/21/top-thai-union-leader-targeted-with-jail-for-rail-safety-campaign?fbclid=IwAR2j3oLLOG_33OYth-vPPtwCV2xLwKAktcZ8JzaUnwt4-B2XojCBSAgtkrs. See also Sawit Kaewwan, *The Labor Link - Sawit Kaewwan, the secretary general of the State Enterprises Workers’ Relations Confederation (SERC) in Thailand*, EMPATHY MEDIA LAB (Nov. 7, 2021), <https://empathymedialab.podbean.com/e/the-labor-link-sawit-kaewwan-the-secretary-general-of-the-state-enterprises-workers-relations-confederation-serc-in-thailand/>.

¹⁶¹ Global Labor Justice, *Thai Court Ruling Against Thai Railway Union Leaders Continues Setbacks on Freedom of Association and Health and Safety Protections* (Oct. 21, 2020), <https://globallaborjustice.org/glj-ilrf-stands-with-convicted-leaders-of-the-state-railway-workers-union-of-thailand-and-calls-on-us-brands-to-ensure-freedom-of-association-in-their-supply-chains-in-thailand/>.

¹⁶² Ratcliffe, *Top Thai union leader ‘targeted’ with jail for rail safety campaign*.

2.5.3 Weak Anti-SLAPP Legislation

Despite the pervasiveness of SLAPP suits against workers and their advocates, the government has not developed adequate anti-SLAPP legislation.¹⁶³ Anti-SLAPP laws are important in protecting against retaliation because they increase the burden on plaintiffs seeking to initiate malicious prosecution against labor rights and human rights defenders.¹⁶⁴ In responding to the SWG's comments about SLAPP suits in its previous submission,¹⁶⁵ the CMP Committee pointed to Thailand's anti-SLAPP legislation.¹⁶⁶ The government amended Articles 161/1¹⁶⁷ and 165/2¹⁶⁸ of Thailand's Criminal Procedure Code and Article 21 of the Public Prosecution Organ and Public Prosecutors Act¹⁶⁹ in 2019 as part of Thailand's National Action Plan on Business and Human Rights, adopted in October 2019.¹⁷⁰

Yet, according to the International Commission on Jurists (ICJ), Thailand's anti-SLAPP laws are inadequate in protecting individuals against harassment.¹⁷¹ Article 161/1 does not provide a clear definition for "bad faith," so it is difficult to enforce. In addition, it allows full judicial discretion of defamation cases, instead of allowing parties to submit evidence to guide the court's decision. Moreover, Article 161/1 only protects against criminal cases filed by private parties in bad faith, not civil complaints or public prosecutions.¹⁷² Similarly, Article 165/2 is limited to criminal cases filed by private parties; courts are not required to provide a preliminary hearing for criminal cases brought by a public prosecutor.¹⁷³ As for Article 21, the fact that the non-prosecution decision must be made by the Attorney-General makes the process outlined time-consuming and less effective in preventing SLAPP suits.¹⁷⁴

During the reporting period, anti-SLAPP legislation introduced in 2019 was not effective in preventing SLAPP suits, as illustrated by Cases 10 and 12 above. Due to Thailand's weak anti-SLAPP legislation and a lack of other protective measures, such as a safe grievance mechanism process to report abuses, migrant workers and their defenders remain wary of reporting labor abuses out of fear of retaliation by both employers and government. As a result, they remain more vulnerable to being subjected to practices of forced labor without recourse.

¹⁶³ *Slapped into Silence*, BANGKOK POST (July 20, 2020), <https://www.bangkokpost.com/business/1954199/slapped-into-silence>.

¹⁶⁴ *Id.*

¹⁶⁵ Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021).

¹⁶⁶ Ministry of Foreign Affairs, *Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee clarified on allegations*.

¹⁶⁷ Article 161/1 permits a court to dismiss a criminal case filed by private parties in "bad faith."

¹⁶⁸ Article 165/2 requires a preliminary hearing for defendants to submit evidence to a court to show that a case filed by a private complainant lacks merit and ought to be dismissed.

¹⁶⁹ Article 21 requires public prosecutors who find that a criminal prosecution "will be of no use to the general public, will affect the national safety or security, or will impair significant interest of the State" to inform the Attorney-General, who may then order non-prosecution.

¹⁷⁰ Rights and Liberties Protection Department, *Thailand's 1st National Action Plan on Business and Human Rights (2019–2022)*, MINISTRY OF JUSTICE (Dec. 2020), <https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-en.pdf>.

¹⁷¹ International Commission of Jurists, *Thailand: ICJ submits recommendations to strengthen Thailand's Anti-SLAPP Law* (March 20, 2020), <https://www.icj.org/thailand-icj-submits-recommendations-to-strengthen-thailands-anti-slapp-law/>.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

2.6 Failure to Eliminate Recruitment Fees and Related Costs to Migrant Workers

The 2018 amendment to the Royal Ordinance Concerning Management of Employment of Foreign Workers (2017) nominally does not allow zero recruitment fees.¹⁷⁵ However, the law does not define “recruitment fees” and explicitly permits brokers to charge migrant workers with related costs, such as the cost for passports, work permits, and health check-ups.¹⁷⁶ The main problem is that employers in Thailand are not responsible for fees related to documentation, which research has shown is by far the largest category of expenses for migrant workers.¹⁷⁷ This authorization of recruitment fees contravenes ILO guidelines, which recommend that all recruitment fees and related costs be borne by the employer.¹⁷⁸ Fundamentally, workers should not bear the cost of recruitment because they are providing a service to employers.¹⁷⁹ Furthermore, worker-borne fees should be eliminated because the practice of charging recruitment fees renders migrant workers more vulnerable to debt bondage and other forms of exploitation. The ILO explains:

To pay their recruitment related costs, many workers sell family assets, borrow money at high rates from lenders or go into debt with their employers. Some choose to go through an irregular channel, often perceived as a cheaper option, while others overstay their visa duration, thereby becoming irregular migrants. Both these strategies rendering them vulnerable to further exploitation, including forced labour or human trafficking.¹⁸⁰

As illustrated above, brokers have, on average, have been charging migrants 20,000 THB (600 USD) to help them cross the border and find jobs in Thailand during the reporting period.¹⁸¹

¹⁷⁵ Amendment of 2018 to the Royal Ordinance Concerning Management of Employment of Migrant Workers B.E. 2560 (2017), INTERNATIONAL LABOUR ORGANIZATION (last updated March 24, 2021), https://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=207.

¹⁷⁶ Foreigners' Working Management Emergency Decree (No. 2), B.E. 2561 (2018), https://www.doe.go.th/prd/assets/upload/files/legal_th/e64d9efe6d8cb299501a5e07bf9da569.pdf.
Section 24. The provision of Section 49 of the Foreigners' Working Management Emergency Decree, B.E. 2560 shall be repealed and the followings shall be replaced:

Section 49. An employer who brings a foreigner to work with him or her in the country shall not request or accept money or other assets relating to bring a foreigner to work except if it is for the expenses paid by the employer beforehand, such as passport fee, health checkup fee, work permit fee, or other fees in the same manner as prescribed in a notification by the Director-General. The employer shall deduct from the wage, overtime, wage for working during day off or overtime during day off, and the employer shall deduct from the money the foreigner has the right to receive under the actual paid expense but shall not deduct more than ten percent of the money the foreigner has the right to receive each month.

In the case where there is no agreement that the employer will be paying for the travelling expense of the employee and the employer has paid for such travelling expense beforehand, the employer may deduct from the money the employee has the right to receive under paragraph one”.

¹⁷⁷ International Labour Organization, *Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand* (2020), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_740400.pdf.

¹⁷⁸ International Labour Organization, *General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs* (May 22, 2019), https://www.ilo.org/global/topics/labour-migration/publications/WCMS_536755/lang--en/index.htm.

¹⁷⁹ Email communication with International Organization #1 (Feb. 27, 2022).

¹⁸⁰ International Labour Organization, *Recruitment fees and related costs*.

¹⁸¹ Interview with International Organization #1 (Dec. 8, 2021).

Such exorbitant fees by unscrupulous recruitment agencies cause many migrant workers to fall into debt and to become at greater risk of debt-based coercion and forced labor.

2.7 Bribery and Extortion of Migrant Workers

One long-standing practice that has worsened during the pandemic is for police officers to arrest migrant workers for being undocumented and to require them to pay bribes in order to be released.¹⁸² According to a CSO, arrested migrant workers are required to pay a monthly fee of 500 THB (15 USD) in order to receive an A4-sized paper permitting their release, after which they must pay another 500 THB (15 USD) the next month in order to renew the release paper.¹⁸³

Another CSO also reported examples of migrant workers in Mae Sot being arrested and threatened with deportation if they do not pay the officers bribes.¹⁸⁴ This corrupt practice of forcing migrant workers to pay bribes exacerbates migrants' financial insecurity and debt, further increasing their risk of exploitation and trafficking.¹⁸⁵ Case 14 illustrates this problem of bribery and extortion of migrant workers.

Case 14¹⁸⁶

Five female Myanmar seafood processing workers in Samut Sakhon Province reported the common practice of police officers stopping migrant workers, especially men, and asking to see their personal identity documents, checking the workers' personal mobile phones, and demanding payments ranging from 2,000–20,000 THB (60–600 USD). Migrants who do not pay the bribe are immediately arrested and taken to the detention center at the police station.

One 54-year-old migrant worker was apprehended by police and informed the police officer that he had left his personal identity documents in the factory in order to have his passport extended. He told the police that he could retrieve the documents right away, but the police officer refused and arrested him. The migrant worker was taken straight to the detention center at the police station, which was reportedly crowded at the time. There, the migrant worker was kept on the fourth floor, which is designated for individuals who commit higher-level crimes and requires higher payments for release. The migrant worker ended up paying a 10,000 THB (300 USD) fee and was only released later in the evening.

2.8 Indicators of Forced Labor on Vessels and in Seafood Processing Factories

The Government of Thailand has not taken adequate measures to address various indicators of forced labor, such as the retention of identity documents, abusive working and living conditions, intimidation and threats, physical violence, excessive overtime, and wage theft. In addition, the government failed to enforce its minimum-wage laws in the fishing and seafood processing

¹⁸² Interview with CSO #1 (Nov. 9, 2021).

¹⁸³ *Id.*

¹⁸⁴ Interview with CSO #4 (Nov. 22, 2021).

¹⁸⁵ *Id.*

¹⁸⁶ Focus group discussion with five female seafood processing workers in Samut Sakhon Province (Jan. 23, 2022).

sectors, where workers continue to receive wages below the minimum wage and piece rate pay. This is in violation of the Labor Protection Act (1998).¹⁸⁷

2.8.1 Retention of Identity Documents

According to a CSO, it is common practice for fishermen to have their documents retained by their employer.¹⁸⁸ In Ranong Province, for example, it is estimated that 85–95% of fishers do not have their personal identification and work documents in their possession (e.g., passport, work permit, seaman’s book, etc.). The boat owners retain the fishers’ documents without their consent because they are afraid the fishers will move on to work on other boats otherwise. Accordingly, many fishers who wish to change jobs are unable to leave their employment and find work on another boat because they do not possess their documents. As a result, fishers typically only carry around a copy of their documents, and can be fined when stopped by the police because they do not have their original documents in their possession. However, fishers end up having to pay these fines themselves and are not compensated by their employer.¹⁸⁹ Furthermore, many employers do not obtain official documentation for fishers once they arrive in Thailand in order to avoid paying SSF contributions, other social protections, or insurance at all.¹⁹⁰

In addition, the Royal Ordinance Concerning Management of Employment of Migrant Workers (2017) allows employers to retain workers’ identity documents if the worker agrees and the employer grants access to the documents when requested by the worker, creating a legal cover for retention of identity documents, which is an indicator of forced labor.¹⁹¹ Ignoring the power imbalance between workers and employers, Port-in Port-out (PIPO) officers construe an absence of request by migrant workers for their documents back as evidence of consent to document retention.¹⁹² Moreover, according to an international organization, inspectors have commented that they simply do not see the retention of identity documents as a serious concern because the practice is so widespread; as a result, they usually do not feel that it is necessary to act when they find document retention during PIPO inspections.¹⁹³ The practice of document retention has also been reported in the seafood processing industry. Case 15 – Part 1 provides an example.

Case 15 – Part 1¹⁹⁴

A 21-year-old female migrant worker from Myanmar who has been working in a seafood processing facility in Samut Sakhon Province for more than one year reported that her employer charged her 1,950 THB (59 USD) to apply for her first work permit when she began

¹⁸⁷ Labour Protection Act, B.E. 2541 (1998),

https://www.labour.go.th/attachments/article/47756/Labour_Protection_Act_BE2541.pdf

¹⁸⁸ Interview with CSO #8 (Jan. 21, 2022).

¹⁸⁹ *Id.*

¹⁹⁰ Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021), at 40–43.

¹⁹¹ Royal Ordinance (2017), Section 131; see also Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021), at 18.

¹⁹² Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021), at 18.

¹⁹³ Email communication with International Organization #1 (Feb. 27, 2022).

¹⁹⁴ Focus group discussion with five female seafood processing workers in Samut Sakhon Province (Jan. 23, 2022).

the job in 2021. However, she never received the work permit, and this year, in 2022, she was required to pay another 1,000 THB (30 USD) in order to extend the work permit. The migrant worker is uncertain whether her employer is retaining her work permit, or if the government never issued the work permit in the first place. She said she is not alone in this situation and that some of her friends are facing the same issue.

2.8.2 Abusive Living and Working Conditions

Abusive living and working conditions have been documented both on fishing vessels and in seafood processing facilities. Health and safety issues on fishing vessels are particularly of deep concern. According to a CSO, there is not enough food or clean drinking water for fishers on the vessels.¹⁹⁵ The fishers have to sleep in tiny cabins, and the toilet is unsanitary. Furthermore, there are not enough crew members on board, so fishers have had to work harder and for longer hours, an issue discussed in further detail in Section 2.8.4. Unsurprisingly, when fishers do not have enough resting hours, more accidents occur. Nevertheless, fishers who become injured or fall ill are often ordered to continue working, and they are not permitted to take sick leave. An example is below.¹⁹⁶

Case 16¹⁹⁷

Around November 2021, a fisherman in Kuraburi District, Phang Nga Province suffered an injury while using a winch to take the net out of the ocean and onto the boat. He told the captain that his finger was broken and that he needed to see the doctor. However, the captain forced him to continue working until they finished catching the fish and refused to take the boat to shore to provide medical treatment for the fisher.

Abusive working conditions have also been reported in large-scale seafood processing facilities. The case below illustrates the type of abuse some seafood processing workers have had to endure.

Case 17 – Part 1¹⁹⁸

A 28-year-old female migrant worker from Myanmar who has been working in a seafood processing facility in Samut Sakhon Province since March 2017 described the abusive working conditions in the facility. Her task involves preparing the raw materials, including removing the bones from the fish and cleaning out the blood. One time, she was asked to carry heavy loads of processed fish that weighed about 7–10 kilograms and to put the trays on a trolley to deliver to another facility. She told her supervisor that the loads were too heavy for her to handle, but he refused and forced her to continue the task anyway. She tried her best, but her glove got caught in a tray, and she ended up dislocating a joint in her finger. Her bone had cracked, so she was taken immediately to the hospital. The woman chose not to

¹⁹⁵ Interview with CSO #8 (Jan. 21, 2022).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Focus group discussion with five female seafood processing workers in Samut Sakhon Province (Jan. 23, 2022). The supervisors within the factories are all Thai nationals, compared to the migrant-majority workforce, and they rely on workers who can speak Thai to interpret for other workers.

rest at home because her employer said she would not get paid if she took rest. She officially had four paid leave days, but she had already used them up to go to the Myanmar Embassy to extend her passport. As a result, she felt compelled to continue working and accepted a “lighter” job at the facility’s security checkpoint.

2.8.3 Intimidation, Threats and Physical Violence

Women seafood processing workers from Myanmar have described the intimidation, threats, and physical violence they have received by their superiors during the reporting period. The two cases below illustrate the kind of harassment and disciplinary measures the workers have received to compel them to work harder.

Case 15 – Part 2¹⁹⁹

The female Myanmar migrant worker described in Case 15 – Part 1 described physical violence and gender discrimination at the workplace. At the previous seafood processing factory where she worked, in early 2021 before the reporting period, she and other female workers would receive a knuckle knocking or finger flicking to the head or be pinched on their cheeks by the work leader while they were working. The work leader would only commit such physical acts on female workers, and one time when she complained to the work leader that it was painful, he said he was only kidding and that he had only done it softly.

Case 17 – Part 2²⁰⁰

The female Myanmar migrant worker described the intimidation and threats she and other workers receive at the seafood processing facility. The workers have a quota of processing 40 kilograms of seafood. If they do not reach the quota, they are scolded and punished. For example, if a worker only finishes processing 30 kilograms, then the work leader would be unhappy and refuse to pay the worker the extra 50 THB (1.50 USD) “knife fee,” which is compensation for the danger of working with a knife. In addition, the work leader would require the worker to wash all of the blood, throw away the garbage, and clean the work area after processing was over.

The work leader would also punish the interviewed worker and her co-workers by forcing them to take their lunch break around 9:00 a.m. and complaining whenever they went to the restroom. The leader would also hurl verbal insults, such as “We don’t need you here; you are useless.” Although the woman interviewed said she did not frequently suffer such abuses, she mentioned that a sickly 43-year-old woman in her work unit did. For example, when the middle-aged woman had a medical operation for her stomach and asked the work leader to be transferred to another sector or to have her workload reduced, he refused and continued to commit the same abuses.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

2.8.4 Excessive Overtime

The problem of excessive overtime has been documented on both commercial fishing boats and in seafood processing facilities. In the past year, some fishing boats have reportedly been understaffed.²⁰¹ For example, boats that require 10 fishers only have 6–7 fishers working onboard.²⁰² As a result, these fishers have had to work harder with fewer resting hours. At best, fishers get 4–5 hours of rest per day; and if there are a lot of fish to catch, the fishers must work for 24 hours without rest.²⁰³ The captains, instructed by the boat owners, order the fishers to work this hard.²⁰⁴ This is in contradiction to the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work, B.E. 2557 (2014), which mandates a minimum of 10 hours of rest in any 24-hour period.²⁰⁵ For seafood processing workers, the Labor Protection Act (1998) prescribes a maximum of nine hours of work per day and a maximum of 48 hours work per week.²⁰⁶

In its previous submission, the SWG reported on how workers were forced to work excessive hours due to an increased demand for seafood products internationally during the pandemic in 2020²⁰⁷—a trend that continued in 2021 for many, although not all, work units in seafood processing factories, such as cooking, loading, canning, packaging, and transportation.²⁰⁸ Many workers have had to work from 5:00 a.m.–8:00 p.m. seven days per week due to increases in international orders.²⁰⁹ According to a CSO, some workers have been happy with the opportunity for overtime pay because they seek to send more money home due to the political crisis in Myanmar.²¹⁰ However, many workers have become exhausted from the excessive work, and they have been pressured to continue working overtime by their supervisors.²¹¹ Workers seeking rest would be told by their supervisor that if they took rest, then they would not get overtime pay the following week, so rest was not a real option.²¹²

2.8.5 Wage Theft

Wage theft, which is “a number of different types of labour rights abuses related to the denial of remuneration or benefits to a worker to whom they are owed or entitled,”²¹³ is a problem that

²⁰¹ Interview with CSO #8 (Jan. 21, 2022).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector, B.E. 2557 (2014). *Clause 5 An employer shall provide a rest period of not less than 10 hours in any 24-hour period and not less than 77 hours in any 7-day period for an employee. An employer shall prepare a rest period's record to be inspected by a labour inspector. In case of emergency or necessity, an employer may require an employee to work during a rest period, however, a compensatory rest shall be immediately given to an employee. An employer shall prepare a rest period's record.*

²⁰⁶ Labour Protection Act, B.E. 2541 (1998), Section 23,

https://www.labour.go.th/attachments/article/47756/Labour_Protection_Act_BE2541.pdf

²⁰⁷ Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021).

²⁰⁸ Focus group discussion with five female seafood processing workers in Samut Sakhon Province (Jan. 23, 2022).

²⁰⁹ Interview with CSO #3 (Nov. 17, 2021).

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ Benjamin Harkins, *Base Motives: The Case for an Increased Focus on Wage Theft Against Migrant Workers*, ANTI-TRAFFICKING REVIEW 15, 42-62 (2020), <https://doi.org/10.14197/atr.201220153>.

pervades both the fishing and seafood processing industries in Thailand. Wage theft can take many forms, such as employers failing to pay workers' overtime; paying less than the minimum wage; not allowing employees to take meal and rest breaks; forcing employees to work "off the clock"; making illegal deductions from wages; and not providing worker compensation when an employee is injured.²¹⁴

Informality of payments facilitates wage theft. Clause 10/2 of the Ministerial Regulation on the Protection of Labour in Sea Fisheries, B.E. 2561 (2018) requires that fishery workers be paid directly into a bank account.²¹⁵ However, according to one study, 83% of interviewed fishers and 67% of interviewed seafood processing continue to be paid in cash, often without advice slips.²¹⁶ In fact, only 47% of the interviewed workers reported receiving any documentation of their wage payments, making it easier for employers to commit wage theft.²¹⁷ One loophole in the law regarding electronic payment has been for employers to directly withdraw money from ATM cards or bank accounts and to obtain advice slips, then to pay workers in cash, leading to discrepancies in recorded and actual payments to workers.²¹⁸

Furthermore, a CSO reported that fishers often receive payment much later than is promised in their employment contract.²¹⁹ They are also often paid lower than what was agreed to before or what is authorized under Thai law. The problem of under-compensation is also present in the seafood processing industry, as illustrated below in Case 18.

Case 18²²⁰

The female Myanmar migrant was not paid for all of the work that she performed. For example, if she was expected to take five hours to finish preparing the fish, but took five hours and 20 minutes, she would not be compensated for the extra 20 minutes she worked. In addition, she and the other workers would often be asked to start working earlier than the set schedule, and their one-hour lunch break would be cut short to 40 minutes.

Similarly, another female Myanmar migrant worker, who is 21-years-old and has been working at a seafood processing facility in Samut Sakhon for three months, said that she has to start working 15 minutes earlier than the set schedule and that she is always asked to work about 20 minutes extra at the end of the day. However, she is never paid for the extra time spent working.

²¹⁴ Lisa Rowan, *How To Spot Wage Theft And What To Do If It Happens To You*, FORBES (Feb. 2, 2022), <https://www.forbes.com/advisor/personal-finance/wage-theft-what-to-do/>.

²¹⁵ Josh Stride and the CSO Coalition for Ethical and Sustainable Seafood, *Precurity and the Pandemic: A Survey of Wage Issues and COVID-19 and COVID-19 Impacts Among Migrant Seafood Workers in Thailand*, OXFAM (July 30, 2021), at 15, <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621193/bp-precarity-pandemic-thailand-seafood-workers-300721-en.pdf?sequence=1>.

²¹⁶ *Id.*, at 2.

²¹⁷ *Id.*

²¹⁸ Interview with CSO #8 (Jan. 21, 2022). See also CSO Coalition for Ethical and Sustainable Seafood, *Falling through the Net: A Survey of Basic Labour Rights Among Migrants Working in Thailand's Fishing Sector*, at 28, <https://www.greenpeace.org/static/planet4-thailand-stateless/2020/07/b15e85ec-falling-through-the-net-ii-eng.pdf>.

²¹⁹ *Id.*

²²⁰ Focus group discussion with five female seafood processing workers in Samut Sakhon Province (Jan. 23, 2022).

Furthermore, minimum wage laws are widely violated in the fishing and seafood processing industries. According to a study by the CSO Coalition for Ethical and Sustainable Seafood (CSO Coalition), most workers across the fishing, pre-processing, processing factory, and aquaculture sectors are paid less than the minimum wage.²²¹ Of the workers surveyed, 58% received less than the daily minimum wage multiplied by 30 per month, or 9,699 THB (291 USD).²²² Meanwhile, 20% of processing factory workers and 45% of pre-processing workers earned an average of 6,789 THB (204 USD) or less per month.²²³ The low income is fueled by the absence of a guaranteed number of working days per month.²²⁴ There is also a significant gender gap in the seafood industry, with female workers earning an average of nearly one-third less than their male coworkers.²²⁵

2.8.6 Piece Rate Pay

Piece rate pay, where workers are not paid a daily minimum wage but paid based on production,²²⁶ is common in the seafood industry, with 14% of processing factory workers and 33% of pre-processing workers being paid through a piece rate payment system.²²⁷ However, this irregular payment system shifts most of the employer's commercial risk onto the workers, who must bear any shocks in the market.²²⁸ According to the CSO Coalition report, "[t]heir income relies on supply and demand, which can be easily disrupted by several uncontrollable factors; and they seem to live more hand-to-mouth, and have less savings."²²⁹

During the pandemic, piece workers have been unable to earn the minimum wage.²³⁰ They have also received little to no support from their employers; and consequently, many have been pushed into debt or other precarious situations.²³¹ The CSO Coalition report explains, "Despite soaring company profits, executive salaries and shareholder payouts, those providing the labour that creates both the wealth and the food on which so many depend live on precariously low wages and suffer insecure employment, making them vulnerable to debt and more serious forms of exploitation."²³²

²²¹ Under Thai law, the minimum wage is set at a daily rate, which varies between provinces, from the lowest (THB 313 or \$10) in Pattani, Narathiwat and Yala, to the highest (THB 336 or \$10.73) in Phuket and Chonburi. The rate is calculated, set and periodically reviewed by the National Wage Committee, which describes itself as a 'tripartite organization pursuant to the Labor Protection Act B.E. 2541 (1998)... with an equal number (5) of employer, employee and government representatives'. Stride, *Precaarity and the Pandemic*, at 1 and 10.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ 1.7 *Piece rate pay*, INTERNATIONAL LABOUR ORGANIZATION (last accessed March 11, 2022), https://www.ilo.org/global/topics/wages/minimum-wages/definition/WCMS_439067/lang--en/index.htm.

²²⁷ Stride, *Precaarity and the Pandemic*, at 2.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* at 3.

2.9 Labor Protection of Fishery Workers (Implementation of C188)

The Government of Thailand ratified the ILO Working in Fishing Convention No. 188 (C188) in January 2019, and it came into force in January 2020.²³³ However, the government has not fully implemented or enforced the Convention, and migrant fishers continue to be exploited and face conditions of employment that do not meet international standards of decent work. For example, fishers regularly report inadequate hours of rest, lack of clean drinking water or adequate food onboard, and lack of access to their passport or identity documents.²³⁴ The government also still does not allow migrant fishers full freedom of movement, as vessel owners' signatures are required to change vessels.²³⁵ Furthermore, C188 references fisher's right to freedom of association and collective bargaining (ILO Conventions No. 87 and 98), yet the government continues to prohibit migrant workers—who make up the majority of commercial fishery workers in Thailand—the legal right to form their own union.²³⁶

Current Thai labor law only allows Thai nationals to legally form a labor union, and prevents migrant workers from organizing to protect their rights and help prevent forced labor. The Fishers' Rights Network (FRN)—which is officially recognized by the International Transport Workers' Federation (ITF), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the State Enterprises Workers' Relations Confederation (SERC), and other domestic and global union federations—has not legally registered as a labor union in Thailand, even though they represent thousands of migrant fishers. As a result, fishers and their representatives are in many cases excluded from national consultations, as set out in the ILO Convention on Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which discusses an effective consultation process among representatives of the government, employers, and workers. Without the protection of a union, it is extremely difficult for migrant workers to organize and collectively bargain or strike, in part due to fear of reprisals from the employer, including termination and/or loss of legal immigration status.²³⁷

2.10 Lack of Diversity in the National Anti-Trafficking in Persons Committee

On August 6, 2021, MWG, HRDF, Save the Children Thailand, and Foundation for AIDS Rights submitted an open letter to the Chairperson of the National Anti-Trafficking in Persons Committee with recommendations for anti-trafficking efforts.²³⁸ One of the three major issues that they highlighted was the structure of the National Anti-Trafficking in Persons Committee. The structure of the Committee is codified in Sections 15–26 of Thailand's Anti-Trafficking in Persons Act.²³⁹

²³³ Migrant Working Group, *The Implementation of Laws and Policies relevant to the Fisher Rights' Protection under the ILO Working in Fishing Convention 2007 (No. 188) in Thailand* (Sept. 2021), at 4, <https://mwgthailand.org/en/press/1638929322>.

²³⁴ *Id.* at 31–40.

²³⁵ Email communication with CSO #8 (March 10, 2022).

²³⁶ Migrant Working Group, *The Implementation of Laws and Policies*, at 22–27.

²³⁷ *Id.*

²³⁸ Migrant Working Group, Save the Children Thailand, Human Right and Development Foundation & Foundation for AIDS Rights, *Open Letter*.

²³⁹ Section 15. *There shall be an Anti-Trafficking in Persons Committee to be called "ATP Committee" in brief, consisting of the Prime Minister as chairman, the Deputy Prime Minister, who acts as Chairman of the CMP Committee, as vice chairman, the Minister of Defense, the Minister of Foreign Affairs, the Minister of Tourism and Sports, the Minister of Social Development and Human Security, the Minister of Interior, the Minister of Justice, the Minister of Labour, and four qualified persons appointed by the Prime Minister from experts who have had no less than seven years demonstrable professional experiences in*

The letter explains that the Committee “is composed of ex officio members from various public agencies without the sufficiently diverse representation of stakeholders including those from CSOs, experts with specialized knowledge, and people who could be affected by the law enforcement.”²⁴⁰

Due to the Committee’s lack of diversity in membership, it is less capable of effectively addressing the root causes that underlie the problem of human trafficking in Thailand. In order to prevent trafficking in persons, the Committee will need to balance its membership to include both public agencies and CSOs, including migrant workers, migrant worker organizations, human rights organizations, and children’s organizations.

the fields of prevention, suppression, rehabilitation and international cooperation on the issues of trafficking in persons, one from each field, provided that not less than one half appointed from the private sector, as members, and the Permanent Secretary for Social Development and Human Security shall be the secretary and the Director-General of the Department of Social Development and Welfare and the Director-General of the Office of Welfare Promotion, Protection and Empowerment of Vulnerable Groups shall be the assistant secretaries.

²⁴⁰ *Id.*

3. PROTECTION

The “Protection” prong of the “3P” paradigm requires governments to take a victim-centered approach to combatting human trafficking by “identifying victims, providing referrals for a comprehensive array of services, directly providing or funding NGOs to provide those services, and supporting these individuals as they rebuild their lives.”²⁴¹ During the reporting period, the Government of Thailand has continued to be ineffective in identifying migrant workers as victims of labor trafficking. The government has also not afforded adequate protections to Thai migrant workers returning to Thailand after being exploited abroad. The government has also allowed extremely abusive working conditions to persist in public prisons, with strong indications of forced labor. Lastly, the government has failed to take a trauma-informed approach to victim shelters or court proceedings.

3.1 Inadequate Victim Identification

One of the most significant shortcomings of the government in its anti-trafficking efforts is victim identification. Instead of regularly screening migrant workers who enter Thailand via brokers as potential victims of trafficking, law enforcement officials have established the common practice of arrest and immediate deportation of migrants. This failure to screen potential victims is compounded by the institution of a 14-day mandatory quarantine COVID-19 policy, in which screening often does not occur after the quarantine period. Even for victims who do undergo screening for trafficking, officials also tend to not provide potential victims with sufficient time to recover from their trauma so that they can effectively present their case, nor do they collect evidence beyond worker testimonials. Victim identification is also rare due to the lack of regular, rigorous inspections of fishing vessels and factories.

3.1.1 The Arrest and Deportation of Migrant Workers

Thai authorities continue to categorize many potential survivors of human trafficking as “illegal migrants,” arresting and deporting them back to their home countries instead of properly screening them as potential victims of trafficking or other abuses and giving them the assistance that they need.²⁴² A Cabinet Resolution from December 11, 1998, which provides guidelines for the implementation of the Immigration Act (No. 11), B.E. 2522, authorizes law enforcement officers to arrest undocumented workers on the offence of illegal entry to be processed for deportation without the requirement of a court order.²⁴³ As a result, a major number of migrants charged with illegal entry are processed for deportation without status screening.²⁴⁴

While this has been a long-standing problem, the practice has become more common during the COVID-19 pandemic, as the government has sought to manage the increase in migrant workers informally crossing the border into Thailand, a trend discussed in Section 2.2.²⁴⁵ The number of arrests of migrants entering Thailand informally tripled in the months following the

²⁴¹ Office to Monitor and Combat Trafficking in Persons, *3Ps*.

²⁴² John Quinley III, *Why Does Human Trafficking Persist in Thailand?*, ASIA DIALOGUE (Jan. 11, 2018), <https://theasiadialogue.com/2018/01/11/thailands-anti-trafficking-framework-is-strong-so-why-does-the-crime-persist/>.

²⁴³ Email communication with International Organization #3 (March 10, 2022).

²⁴⁴ *Id.*

²⁴⁵ *Thailand Tries to Stem the Tide of Illegal Migrants from Myanmar*, CHIANG RAI TIMES (Oct. 27, 2021), <https://www.chiangraitimes.com/thailand-national-news/thailand-tries-to-stem-the-tide-of-illegal-migrants-from-myanmar/>.

military coup in Myanmar, and the numbers peaked in November 2021 with more than 6,000 migrants intercepted.²⁴⁶ In October 2021, the government announced its intention to crack down on smuggling to prevent the illegal entry of migrants into the country,²⁴⁷ including enlisting the army to strengthen border security.²⁴⁸ Under the government policy, “there is no tolerance in Bangkok for illegal migration, and those arrested making the attempt are sent ‘for legal processing followed by... repatriation’.”²⁴⁹ This crackdown was stated to be part of efforts to curb the spread of COVID-19²⁵⁰ and to combat human trafficking.²⁵¹

Penalization of human trafficking victims has come from the highest levels of the government. Thai Labor Minister Suchart Chomklin warned that the government would issue arrest warrants for smugglers and that those convicted of human trafficking, money laundering, or other crimes would have their assets seized;²⁵² in addition, state officials suspected of being complicit in human trafficking activities would be investigated and face severe punishment.²⁵³ Meanwhile, General Kongcheep Tantravanich of the Defense Ministry said that any migrant workers caught trying to enter Thailand illegally would be deported immediately.²⁵⁴ As mentioned earlier, in 2021, the police reported having arrested 42,443 migrant workers who crossed the border through irregular channels.²⁵⁵ Under Section 45 of the Royal Ordinance Concerning Management of Employment of Migrant Workers (No. 2), B.E. 2561 (2018), the penalty for these migrants includes fines of 5,000–50,000 THB (150–1,501 USD), deportation, and prohibition of having a new work permit issued for the following two years.²⁵⁶ Meanwhile, complicit employers may be fined 10,000–100,000 THB (300–3,002 USD) per informal migrant, and those who have breached the law twice will be arrested and barred from employing migrant workers for three years.²⁵⁷

The lack of respect for the basic rights of migrant workers, including the occurrence of immediate deportation without status screening, is highly concerning considering that many

²⁴⁶ *Id.* See also *Illegal Myanmar migrants seek safety, work in Thailand*, UNION OF CATHOLIC ASIAN NEWS (Jan. 11, 2022).

²⁴⁷ Maya Taylor, *Thailand renews crackdown on illegal migrants ahead of re-opening*, THAIGER (Nov. 1, 2021), <https://thethaiger.com/coronavirus/thailand-renews-crackdown-on-illegal-migrants-ahead-of-re-opening>.

²⁴⁸ Wassana Nanuam, *Army told to secure border*, BANGKOK POST (Dec. 3, 2021), <https://www.bangkokpost.com/thailand/general/2225775/army-told-to-secure-border>.

²⁴⁹ *'No legal pathways': Myanmar poverty pushes thousands to Thailand*, FRANCE 24 (Jan. 6, 2022),

²⁵⁰ Taylor, *Thailand renews crackdown on illegal migrants*.

²⁵¹ Maya Taylor, *Crackdown on human trafficking as Thailand tries to upgrade its ranking*, THAIGER (Nov. 30, 2021), <https://thethaiger.com/news/national/crackdown-on-human-trafficking-as-thailand-tries-to-upgrade-its-ranking>.

²⁵² *Thailand steps up crackdown on human traffickers*, UNION OF CATHOLIC ASIAN NEWS (Nov. 11, 2021), <https://www.ucanews.com/news/thailand-steps-up-crackdown-on-human-traffickers/94924>.

²⁵³ Wassana Nanuam, *Drive to keep illegal migrants out*, BANGKOK POST (Nov. 1, 2021), <https://www.bangkokpost.com/thailand/general/2207191/drive-to-keep-il>. See also *Thailand Tries to Stem the Tide*, CHIANG RAI TIMES. The corruption of Thai government officials along the Thai-Myanmar border was described in “3.2.3. Increase in smuggling and corrupt government officials on the Thai-Myanmar border” of SWG’s submission last year. Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021), at 16.

²⁵⁴ *Thailand Tries to Stem the Tide*, CHIANG RAI TIMES.

²⁵⁵ *42,000 illegal migrants caught this year*, BANGKOK POST.

²⁵⁶ *Foreigners’ Working Management Emergency Decree (No. 2)*, B.E. 2561 (2018) (also known as the *Royal Ordinance Concerning Management of Employment of Migrant Workers (No. 2)*).

²⁵⁷ *Id.*

migrants from Myanmar are known to enter into Thailand through informal broker networks. Typically, migrants are required to pay recruitment fees to brokers and fall into debt even prior to beginning to work in Thailand, creating a situation of debt bondage and significantly increasing their risk of forced labor.²⁵⁸ One international organization interviewed estimated the average broker fees to be around 20,000 THB (600 USD).²⁵⁹ Moreover, those who are sent back to their country of origin return with even fewer resources than before, making them even more vulnerable to trafficking in their home country.²⁶⁰

Below are a series of cases of migrants from Myanmar and Cambodia who were arrested by Thai authorities since the government's announcement of its crackdown on smuggling. The migrants were charged with illegal entry and violation of the emergency decree, after which they faced likely deportation to their home countries.

Case 19

On October 24, 2021, Thai police arrested 120 Myanmar migrants (65 men and 55 women) from Dawei, Yangon, Moulmein, and Bago townships in Myanmar for informally crossing the border into Sai Yok District in Thailand. They had each paid 17,000–20,000 THB (510–600 USD) to Myanmar brokers in order to find jobs in Bangkok, Samut Sakhon Province, and Nakhon Pathom Province in Thailand. The migrants were taken to Sai Yok Police for legal proceedings on charges of illegal entry and violating the emergency decree, while their deportation was pending.²⁶¹

On October 25, 2021, Thai police arrested a total of 48 Myanmar migrants (30 men and 18 women) who crossed the border informally into Thailand in two different groups. The first group consisted of 10 men and 4 women from Yangon who had paid 20,000 THB (600 USD) each to Myanmar brokers in exchange for a job in Thailand. The second group was composed of 20 men and 14 women from Myanmar who also had paid 20,000 THB (600 USD) each to Myanmar brokers for jobs in Samut Sakhon, Thailand. Both groups were sent to the immigration police station to be charged with illegal entry and violating the emergency decree.²⁶²

On November 5, 2021, 23 Myanmar migrants (11 men, 5 women, 7 children) were detained for having informally crossed the border into Fang District, seeking work in Chiang Mai, Thailand. That same day, 46 Cambodian nationals (22 men, 24 women) were detained for informally crossing the border into Thailand. One group (16 men, 19 women) were detained in Ban Thap Phrik in Aranyaprathet District, Sa Kaeo Province. The migrants had each paid brokers between 6,000–9,000 THB (180–270 USD) to be smuggled across the border and to work at a bread-making factory in Rayong, a construction site in Bangkok, a barbecue shop in Chon Buri, and a company in Pathum Thani. The second group (6 men, 5 women) were

²⁵⁸ *Id.*

²⁵⁹ Interview with International Organization #1 (Dec. 8, 2021).

²⁶⁰ *Id.*

²⁶¹ Piyarat Chongcharoen, *120 border crossers arrested*, BANGKOK POST (Oct. 25, 2021), <https://www.bangkokpost.com/thailand/general/2203739/120-border-crossers-arrested>.

²⁶² *168 Migrant Job Seekers Arrested for Illegal Entry*, CHIANG RAI TIMES (Oct. 26, 2021), <https://www.chiangraitimes.com/thailand-national-news/168-migrant-job-seekers-arrested-for-illegal-entry/>.

arrested in Khlong Hat District, Sa Kaeo Province.²⁶³

From November 9–12, 2021, more than 400 Myanmar migrants were arrested for informally crossing the border into Thailand. These include 238 Myanmar migrants arrested in Kanchanaburi; 20 Myanmar migrants, including 10 Muslims from Rakhine State, arrested in Mae Sot, Myawaddy; 61 Myanmar migrants arrested in Chiang Rai; 101 Myanmar migrants arrested in Sankhla Buri; and 13 Myanmar migrants arrested in Mae Sot. Each paid at least 20,000 THB (600 USD) to brokers who helped smuggle them into the country due to rumors that Certificate of Identity (“CI”) were being issued to undocumented migrant workers. Those detained were charged with illegal entry and violating the emergency decree.²⁶⁴

On November 17, 2021, the Cambodian Consulate General in Thailand deported 32 Cambodian migrants (19 men, 13 women) back to Cambodia immediately after their arrest. These migrant workers were seeking jobs in Thailand or were scammed by brokers.²⁶⁵

On November 21 and November 22, 2021, Cambodian migrants were arrested for having informally crossed the border in order to obtain jobs in Thailand. Nine were arrested on November 21, and 13 were arrested on November 22. Immediately after the migrants’ arrest, the Cambodian Consulate General in Sa Kaeo Province, Thailand, deported the Cambodians to Cambodia on November 22.²⁶⁶

On November 23, 2021, 60 Myanmar migrants (35 men, 25 women) were arrested for having informally crossed the border into Thailand through Muang and Sangkhla Buri districts. Individuals the first group (9 men and 4 women) each paid between 17,000–25,000 THB (510–750 USD) to brokers to secure jobs in Chon Buri, Nonthaburi, Samut Sakhon, and Samut Prakan provinces. Those in the second group (16 men, 15 women) each paid 20,000 THB (600 USD) to brokers for jobs in Nakhon Pathom and Samut Sakhon. Finally, the migrants in the third group (10 men, 6 women) each paid 18,000 THB (540 USD) to brokers to obtain work in Samut Sakhon. The migrants were sent to the police station for legal proceedings, which could lead to deportation.²⁶⁷

On December 12, 2021, 57 Myanmar nationals (30 men, 27 women) were arrested after informally crossing the border into Sai Yok District of Kanchanaburi Province. They each had paid brokers between 18,000–25,000 THB (540–750 USD) in exchange for jobs in Bangkok, Kanchanaburi, Pathum Thani, and Samut Sakhon. The migrants were charged with illegal entry and could be deported.²⁶⁸

²⁶³ 69 more illegal migrants arrested crossing borders, BANGKOK POST (Nov. 6, 2021), <https://www.bangkokpost.com/thailand/general/2210539/69-more-illegal>.

²⁶⁴ About 300 Myanmar entering Thailand illegally arrested, ELEVEN MEDIA (Nov. 13, 2021), <https://elevenmyanmar.com/news/about-300-myanmar-entering-thailand-illegally-arrested>.

²⁶⁵ More than 30 Cambodians sent back from Thailand, KHMER TIMES (Nov. 18, 2021), <https://www.khmertimeskh.com/509733333/more-than-30-cambodians-sent-back-from-thailand/>.

²⁶⁶ More than 20 Cambodians arrested by Thai authorities for illegally crossing border (Nov, 23, 2021), KHMER TIMES, <https://www.khmertimeskh.com/50975755/more-than-20-cambodians-arrested-by-thai-authorities-for-illegally-crossing-border/>.

²⁶⁷ 60 more Burmese nationals arrested for illegal crossing of Thai border, THAIGER (Nov. 24, 2021), <https://thethaiger.com/news/60-more-burmese-nationals-arrested-for-illegal-crossing-of-thai-border>.

²⁶⁸ Thailand’s border patrol arrest more illegal migrants on Sunday (Dec. 13, 2021), PATTAYA MAIL, <https://www.pattayamail.com/thailandnews/thailands-border-patrol-arrest-more-illegal-migrants-on-sunday-382713>.

On January 3, 2022, 24 Myanmar nationals were arrested after informally crossing the border into Sangkhla Buri District. They were from Bago Township in Myanmar and had paid 20,000 THB (600 USD) each to brokers for jobs promised in Bangkok, Samut Sakhon, and Chon Buri.²⁶⁹

On January 5, 2022, about 50 Myanmar nationals were arrested after crossing the border informally into Kanchanaburi Province. They had each paid between 18,000–25,000 THB (540–750 USD) each to brokers who promised them jobs in Bangkok, Kanchanaburi, Pathum Thani, and Samut Sakhon. All arrested were charged with unlawful entry.²⁷⁰

On January 8, 2022, 43 Myanmar nationals (23 men, 20 women) were arrested after crossing the border informally into Muang and Sai Yok districts. They traveled from Dawei, Yangon, Bago, and Mawlamyine in Myanmar and had each paid between 17,000–22,000 THB (510–660 USD) to brokers, who promised them jobs in Samut Prakan, Samut Sakhon, Kanchanaburi, Ratchaburi, and Bangkok. The migrants were handed over to police for legal proceedings, pending deportation.²⁷¹

On January 16, 2022, 126 Myanmar nationals were arrested for informally crossing the border into Chiang Mai and Kanchanaburi provinces. They included 12 migrants (4 men, 8 women) caught in Sangkhla Buri District; 76 migrants (38 men, 38 women) in Sai Yok District; and 40 migrants (19 men, 21 women) in Fang District. The migrants had each paid or promised to pay between 5,000–20,000 THB (150–600 USD) to brokers for jobs in Bangkok, Nakhon Prathom, and Samut Sakhon, for jobs they had been promised. They will be deported after the legal proceedings.²⁷²

The above cases illustrate how migrants found to have informally crossed the border are often arrested and deported without status screening. The government has gone a step further in its failure to protect trafficking victims by not preventing the arrest and deportation of seven Cambodian migrant workers who helped report labor abuses to the MOL. This case is documented in detail below.

²⁶⁹ *Cat-and-mouse game on Thai border as illegal Myanmar migrants seek work*, MIZZIMA (Jan. 3, 2022), <https://www.mizzima.com/article/cat-and-mouse-game-thai-border-illegal-myanmar-migrants-seek-work>.

²⁷⁰ *About 50 Myanmar citizens illegally entering Thailand arrested*, ELEVEN MEDIA (Jan. 7, 2022), <https://elevenmyanmar.com/news/about-50-myanmar-citizens-illegally-entering-thailand-arrested>.

²⁷¹ *43 Myanmar migrants arrested*, BANGKOK POST (Jan. 7, 2022), <https://www.bangkokpost.com/thailand/general/2244207/forty-three-myanmar-migrants-caught-in-kanchanaburi>.

²⁷² *126 Burmese migrants seeking jobs arrested in Kanchanaburi, Chiang Mai for illegal entry*, THAIGER (Jan. 17, 2022), <https://thethaiger.com/news/national/126-burmese-migrants-seeking-jobs-arrested-in-kanchanaburi-chiang-mai-for-illegal-entry>.

Case 20²⁷³

On October 29, 2021, migrant workers, migrant workers' representatives, the Union of Workers, MWG, and the Labour Network for People's Rights visited the MOL to submit a petition letter to MOL asking for clarity about the September 28, 2021 Cabinet Resolution on the registration procedure for migrant workers, as well as raising other issues, such as forced bribery of migrant workers and expenses incurred by migrant workers during the regularization process. However, as the migrant workers' advocates handed over the letter and negotiated with MOL officials, police officials, immigration officials, and other unidentified officials checked the personal documents of eight migrant workers waiting at the MOL and took their photos. The MOL failed to prevent the migrant workers from being arrested for not having documentation and being taken immediately to Din Daeng Police Station. While held in custody at the police station, the migrant workers were denied access to legal counsel or an interpreter they could trust. Of the eight migrant workers, seven Cambodian migrant workers (4 men, 3 women) ended up being charged with illegal entry under the immigration law. [information redacted from the public version for security].

Afterwards, the police at Din Daeng Police Station notified the Suanplu Immigration Office to prepare to immediately deport the workers, despite efforts by a lawyer to explain to the police that the September 28 Cabinet Resolution granted amnesty to undocumented workers and provided for a registration procedure. At Suanplu Immigration Office, the workers underwent an investigation for about one hour without the presence of MWG or their lawyers to observe. The workers were forced to sign confessions, which they did not understand because they were only written in Thai. The migrant workers' lawyer ended up only being able to meet with three out of seven of the Cambodian workers, all of whom did not understand the legal proceedings, nor were informed of their legal rights. The immigration officers agreed to not press charges, but said they would proceed with the deportation process, which would require the seven Cambodian migrant workers to be placed in a government detention facility for 14 days under COVID-19 security measures or until the September 28 Cabinet Resolution became effective prior to repatriation. The workers were deported on December 18, 2021.

This case is especially egregious because it involves migrant workers and a human rights defender who directly brought to the MOL's attention concerns about labor exploitation of migrant workers. Indeed, according to an MWG coordinator, the MOL "serves as a grievance mechanism" and "should be a safe space without discrimination...to ensure access to all persons to complain and demand justice equally..."²⁷⁴ The government's duty to provide these people with access to justice is enshrined in Section 68 of the Constitution of the Kingdom of Thailand, B.E. 2560, and the government's duty to respect human rights and provide remedy in the case of human rights violations is included in Thailand's National Action Plan on Business

²⁷³ Migrant Working Group, *Public Statement of the Migrant Working Group (MWG): The government urged to replace the Minister of Labour to show their responsibility for failure in the management of foreign workers and to address human trafficking* (Oct. 31, 2021), <https://mwgthailand.org/sites/default/files/2021-11/31-10-2021%20MWG%20press%20release-7%20MW%20arrestd%20at%20MOL-ENG.pdf>. See also, *Thai government urged to free Cambodian migrant advocates*, UNION OF CATHOLIC ASIAN NEWS (Nov. 5, 2021), <https://www.ucanews.com/news/thai-government-urged-to-free-cambodian-migrant-advocates/94838>; Saksornchai, *Migrant Workers' Arrest Calls Attention to Thailand Legal Negligence*.

²⁷⁴ *Id.*

and Human Rights.²⁷⁵ Thus, the government's criminalization of potential trafficking victims reveals their failure to protect victims.

3.1.2 Mandatory Quarantine Policy Impeding Victim Identification

The government has created a mandatory 14-day quarantine to address COVID-19 that prevents effective screening and identification of migrants for human trafficking. Many undocumented migrant workers who have entered Thailand through irregular channels are potential victims of trafficking, as many have been recruited to work in Thailand through deceptive practices. However, since the COVID-19 pandemic, many informal migrants caught and arrested by law enforcement often are not screened for trafficking and are instead routinely deported to their home countries.²⁷⁶ This is because the migrants are first required to quarantine for 14 days, and screening often does not occur after the 14-day quarantine period.²⁷⁷ Migrant workers are arrested are placed in quarantine facilities along the border, where the understanding of human trafficking among officers is limited.²⁷⁸ During this time, NGOs and service providers are not given access to migrants, so migrant workers are unable to receive the assistance they may need to prepare for the screening.²⁷⁹ After 14 days of quarantine, the migrant workers come under the care of the immigration office, instead of human trafficking officers, and they are deported without screening if they confess to having illegally entered the country.²⁸⁰

Furthermore, the government's detention of migrants does not provide adequate process for identifying victims of human trafficking. For migrant workers who are not deported and who are given the option to go through screening, they are placed in an immigration detention center.²⁸¹ According to one CSO and one international organization interviewed, those who decide to go through screening are not given enough time to recover from the trauma of their exploitation before being screened, which likely impacts their success in effectively explaining their situation and being properly identified as a victim of human trafficking.²⁸² In addition, even when given a choice, many migrant workers prefer to return to their home country instead of undergoing screening after 14 days of quarantine.²⁸³ This decision is likely impacted by the fact that they are not given enough time to recover from their trauma before making the decision to undergo screening and the fact that they do not receive any guidance or support by NGOs and service providers during the quarantine period.²⁸⁴

3.1.3 Insufficient Victim Reflection and Recovery Period

Victim reflection and recovery period is a well-recognized best practice for supporting victims of trafficking. Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings recommends that victims of human trafficking be given a "recovery and reflection" period of at least 30 days "to recover and to escape the influence of traffickers and/or

²⁷⁵ *Id.*

²⁷⁶ Interview with CSO #5 (Nov. 22, 2021).

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Interview with CSO #6 (Jan. 11, 2021); Interview with International Organization #2 (Dec. 9, 2021).

This issue is discussed further in Section 3.1.3.

²⁸³ Interview with CSO #5 (Nov. 22, 2021).

²⁸⁴ *Id.*

to make an informed decision on cooperating with the authorities,” during which they are protected from detention and deportation measures.²⁸⁵ Meanwhile, the Bali Process’s *Policy Guide on Protecting Victims of Trafficking* recommends an “appropriate” reflection period for victims of trafficking, citing 30–90 days as the typical length of reflection periods amongst States.²⁸⁶

As referenced above, however, potential victims in Thailand are often not given enough time to recover from their traumatic experiences of trafficking and exploitation prior to undergoing the screening process.²⁸⁷ As a result, many may not be properly identified as human trafficking victims. This is largely due to the misunderstanding among Thai officials of Section 29 of the Anti-Trafficking in Persons Act,²⁸⁸ which authorizes law enforcement officials to take into custody a potential victim during a 24-hour period, plus another 7 days following a court order.²⁸⁹ According to a CSO, this policy simply designates the time period during which officers may provide shelter for victims as a form of protection.²⁹⁰ Many officials, however, misconstrue this law as meaning that the victim identification process, including all of the fact-finding interviews, must be completed within 24 hours and 7 days.²⁹¹ Consequently, many trafficking cases involve rushed victim identification processes that can lead to misidentification.²⁹² Instead, one CSO recommends that the screening process only take place once the potential victim is ready, based on evaluations from psychologists and social workers.²⁹³

While Thailand has taken steps to implement a reflection period, it has not yet been implemented. In 2021, the MSDHS appointed a Working Group, including relevant government agencies, international organizations, and NGO partners, to develop guidelines for protection

²⁸⁵ David Rousseau, *Review of Models of Care of Trafficking Survivors in Thailand*, USAID THAILAND COUNTER-TRAFFICKING IN PERSONS (2019), at 12, https://winrock.org/wp-content/uploads/2019/10/20191023-Thailand-CTIP-Shelter-Report.pdf?mc_cid=05f3c2f3ff&mc_eid=96ce13ad78.

²⁸⁶ *Policy Guide on Protecting Victims of Trafficking*, THE BALI PROCESS ON PEOPLE SMUGGLING, TRAFFICKING IN PERSONS AND RELATED TRANSNATIONAL CRIME (May 2015), [https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20Policy%20Guide%20on%20Protecting%20Victims%20of%20Trafficking%20\(1\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20Policy%20Guide%20on%20Protecting%20Victims%20of%20Trafficking%20(1).pdf).

²⁸⁷ *Id.*

²⁸⁸ *Section 29. In case of necessity, for the purpose of fact finding in relation to human trafficking and security protection of a person, where there is a reasonable ground to believe that he or she is a victim of human trafficking offence, the competent official may temporarily take such person into his custody which shall not be longer than twenty four hours and shall report to the Commissioner-General of the Royal Thai Police, the Director-General of the Department of Special Investigation, the Director-General of the Department of Social Development and Welfare or the Provincial Governor, as the case may be, without Delay. In case it is necessary to provide protection to a person who may be a victim for a longer period of time than provided in paragraph one, the competent official shall file a petition to the Court for an order of permission. Permission granted by the Court shall not be longer than seven days and with or without any conditions imposed thereon. The temporary custody of the person who may be a victim under this section shall be made in an appropriate place which shall not be a locked-up room or a detention place, which shall be in accordance with the regulations prescribed by the Minister. In performing the duties under this section, principle of human rights shall be strictly taken into account.*

²⁸⁹ Interview with International Organization #2 (Dec. 9, 2021).

²⁹⁰ Interview with CSO #6 (Jan. 25, 2022).

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

services for victims during the reflection period.²⁹⁴ In January 2022, the Working Group drafted a proposal for a 30–45-day reflection and recovery period, which will be presented to the National Trafficking-in-Persons Committee.

3.1.4 Inadequate Collection of Evidence for Victim Identification

Victim identification has also been ineffective due to law enforcement’s procedures for collection of evidence that are inadequate to demonstrate required facts for human trafficking and to protect victims. Law enforcement officials often limit the collection of evidence to worker testimonials when trying to identify victims of labor trafficking and forced labor.²⁹⁵ Yet, most workers interviewed have suffered traumatic experiences. Consequently, they can sometimes provide inconsistent testimonials, especially when they are interviewed before they are emotionally and mentally ready, in a setting that is not trauma-sensitive, or with interview techniques that are not trauma-informed. These factors can all lead the workers to fail the screening process.²⁹⁶ Consequently, it is critical for officers to seek other evidence, such as bank statements or satellite data, in conducting trafficking investigations and identifying victims.²⁹⁷

Furthermore, when gathering worker testimonials, law enforcement officers often conduct the interviews in a cursory manner, failing to ask a comprehensive set of questions to effectively identify victims of trafficking. According to a CSO, police inquiry officers use simple questionnaires when interviewing potential human trafficking victims, in contrast to the CSO’s comprehensive questionnaires.²⁹⁸ As a result, the police fail to identify victims of human trafficking. Meanwhile, another CSO’s perspective is that while the police questionnaires are comprehensive enough, they are simply not used effectively, with officers failing to ask all of the necessary questions listed on the questionnaire.²⁹⁹ This notion is supported by the fact that some PIPO inspectors reportedly do not use both victim identification questionnaires available to them during interviews with workers, nor do they ask migrant workers every question listed on the questionnaire that they do use.³⁰⁰ Instead, they simply ask standard questions to all workers and only ask about 15% of workers additional questions during random checks.³⁰¹

3.1.5 Lack of Regular and Effective Labor Inspections

Another major factor impeding the identification of human trafficking victims is the lack of regular, effective labor inspections. This is the case for both seafood processing facilities and fishing vessels. CSOs repeatedly express that the labor inspections in their current form do not result in protection for migrant workers.

According to a CSO, few labor inspections of seafood processing facilities have been conducted.³⁰² Instead of instituting regular inspections, the government has carried out ad hoc

²⁹⁴ Royal Thai Government, *Royal Thai Government’s Country Report on Anti-Human Trafficking Efforts*, at 41.

²⁹⁵ Interview with International Organization #3 (Jan. 6, 2022).

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ Interview with CSO #3 (Nov. 17, 2021).

²⁹⁹ Interview with CSO #6 (Jan. 11, 2022).

³⁰⁰ Interview with International Organization #2 (Dec. 9, 2021).

³⁰¹ *Id.*

³⁰² Interview with CSO #3 (Nov. 17, 2021).

inspections, which are only triggered by the filing of labor complaints.³⁰³ For the past 40 years, the MOL has attributed this lack of regular inspections to the dearth of human resources.³⁰⁴ Yet, even when inspections are conducted, labor violations are rarely found due to the lack of rigor of the inspections.³⁰⁵ For example, between October 2020–September 2021, a total of 105 seafood processing factory inspections were conducted.³⁰⁶ Of the 105 inspections, however, only about eight inspections (7.62%) resulted in findings of labor violations.³⁰⁷ Even then, the reports only involved minor violations of workplace requirements, such as requirements for employers to have a worker registration list or a record of wage payments; none of the inspections led to findings of labor trafficking.³⁰⁸

The lack of regular, rigorous labor inspections also applies to fishing vessels. At least two organizations interviewed described the PIPO inspections for fishing vessels conducted during the reporting period as “superficial.”³⁰⁹ The following issues were identified:

- The inspections are often conducted in the presence of fishing boat captains, preventing migrant workers from speaking freely, and interpreters for migrant workers who do not speak Thai are not always provided.
- The inspections often only check for documents, rather than looking for other less tangible indicators of forced labor, such as abuse of vulnerability, deception, and intimidation and threats. The inspectors also do not employ techniques to verify the data in the documents presented by employers.
- The inspectors tend to only ask close-ended questions.³¹⁰
- Inspectors also sometimes engage in intimidation practices and are frequently in alliance with the fishing boat captains, who are usually influential members of the community and intentionally ingratiate themselves with the inspectors.
- The frequent rotation system of the inspectors prevents the formation of trust between the inspectors and the local community, as well as long-term capacity building of inspectors who receive human trafficking training from CSOs or U.N. agencies, but end up leaving their post after a short period of time.
- There is no clear mechanism for case referral among the agencies, which prevents labor inspections from leading to trafficking investigations.³¹¹

According to a Cabinet Resolution from January 18, 2022, the MOL, in collaboration with the Department of Fisheries (DOF) and the Thai Maritime Enforcement Command Center, facilitated 60,288 PIPO inspections from October 2020–January 2022.³¹² However, only 20

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ Interview with International Organization #1 (Dec. 8, 2021).

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* See also Interview with CSO #8 (Jan 21, 2022). This description of the PIPO inspections is similar to a description by a 2018 Human Rights Watch report, which called the inspections “largely a theatrical exercise for international consumption” because they “often prioritize form over results.” The report explains, “officials speak to ship captains and boat owners and check documents but rarely conduct interviews with migrant fishers.” Human Rights Watch, *Thailand: Forced Labor, Trafficking Persist in Fishing Fleets* (Jan. 23, 2018), <https://www.hrw.org/news/2018/01/23/thailand-forced-labor-trafficking-persist-fishing-fleets#>.

³¹⁰ Migrant Working Group, *The Implementation of Laws and Policies*, at 15.

³¹¹ *Id.* at 14.

³¹² 18 January 2022 Cabinet Resolution, *Subject: Report on the results of the performance under the Labour Protection in Fisheries Act B.E. 2562 (2019)*.

vessels (0.03%) were found to be in violation,³¹³ and no victims of trafficking or forced labor were identified during these inspections. Meanwhile, for the at-sea inspections run by the DOF and the Department of Labour Protection and Welfare (DLPW), 431 fishing vessels at sea were inspected, yet only 8 vessels (1.9%) were found to be in violation, and no trafficking or forced labor victims were identified.³¹⁴

An international organization interviewed stated that the labor inspectors are clearly missing cases of forced labor and human trafficking.³¹⁵ However, the problem is that the inspectors lack the training necessary to view the inspections not just as routine inspections, but as a critical means to identify victims of human trafficking.³¹⁶ Although part of their mandate is to screen for human trafficking and forced labor, many of the labor inspectors do not understand the nature of these abuses. This is a problem discussed more thoroughly in Section 4 (Prosecution) of this report. Furthermore, the inspectors are not trained in key soft skills, such as techniques in conducting interviews and data verification.³¹⁷

Lastly, the COVID-19 pandemic has exacerbated the problem of weak labor inspections. Already infrequent and ineffective to begin with, labor inspections of fishing vessels have been even less effective during this reporting period due to the pandemic.³¹⁸ Inspectors conducted fewer in-person inspections and instead conducted the inspections online, which likely diminished their efficacy.³¹⁹ For the online inspections, the fishing vessel owners merely took photos of the fishers and their documents and sent these photos to the labor inspectors.³²⁰ The officers did not speak with the workers, even virtually, so the fishers could not raise issues or file complaints during the inspections.³²¹

3.2 Failure to Protect Thai Potential Victims of Trafficking

The Government of Thailand has neglected to provide sufficient protection for Thai nationals returning to their home country after having been subjected to forced labor abroad. The government has reported that 592 Thais were repatriated in 2021, of which 225 were identified as victims of human trafficking, including 232 victims of forced labor or services.³²² According to an international organization, these Thai migrant workers are often overlooked, sometimes even more so than non-Thai workers working in Thailand.³²³

³¹³ The violations pertained to requirements of evidence of rest hours, provision of employment contracts, and payroll documents. The government's annual report on anti-trafficking efforts cites slightly different figures for the number of inspections of fishing vessels: 44,857 vessels at ports and at sea were inspected, of which 17 vessels were found to be in violation. 12 offenders were issued rectification orders while the other 5 offenders were prosecuted. Royal Thai Government, *Royal Thai Government's Country Report on Anti-Human Trafficking Efforts*, at 62.

³¹⁴ The offenses included lack of documentation of rest hours, lack of provision of employment contracts in three languages, and lack of employee signatures for documents relating to wages and holiday payments.

³¹⁵ Interview with International Organization #1 (Dec. 8, 2021).

³¹⁶ *Id.*

³¹⁷ Email communication with International Organization #3 (Feb. 16, 2022).

³¹⁸ Interview with International Organization #1 (Dec. 8, 2021).

³¹⁹ Email communication with International Organization #3 (Feb. 16, 2022).

³²⁰ Interview with CSO #8 (Jan. 21, 2022).

³²¹ *Id.*

³²² Royal Thai Government, *Royal Thai Government's Country Report on Anti-Human Trafficking Efforts*, at 47.

³²³ Comment by International Organization #3 during interview with CSOs (Jan. 13, 2022).

The Thai workers typically have to bear the costs of repatriation, which leads to debt amounting to more than 10,000 THB (300 USD).³²⁴ This is because in the Royal Ordinance Concerning the Management of Employment of Migrant Workers (2017), “there is no explicit designation as to who bears the cost of repatriation, which in effect allows the agency who recruited or placed the worker or the employer to require payment for repatriation in advance from workers that will be kept in reserve, sometimes in the form of ‘forced savings.’”³²⁵

In addition, during the screening and investigation process, Thai potential victims of trafficking are not given access to shelters and are sent back to their hometown, which makes it difficult for service providers to reach them.³²⁶ This also makes it possible for the victim to encounter the same broker again and to be re-trafficked to work for the same or another employer.³²⁷ Cases 21 and 22 illustrate the failure of the government to protect Thai nationals seeking to return to Thailand after suffering labor exploitation abroad. In both cases, the victims were not considered as potential victims of trafficking, despite the presence of forced labor indicators, and they were expected to pay for the costs of repatriation.

Case 21³²⁸

In August 2018, a case was filed by a CSO on behalf of 32 Thai fishers who had worked in Somalia on a fishing vessel called *Wadani* for about one year. They had been recruited to work on the fishing vessel by a Thai recruiter. The fishermen, however, were not paid wages throughout the course of the year, and they sought the CSO’s assistance to be able to return to Thailand. The government officials did not identify this case as one of forced labor, but only as a labor rights violation. As a result, the case only went to Thailand’s labor court, and, as of February 2022, is at the witness hearing stage. One of the issues before the court is who should be responsible for the cost of repatriation. The CSO has made an appeal that the employer should pay for the cost of returning to Thailand, rather than the workers.

Case 22³²⁹

In July 2020, a CSO filed a case on behalf of four Thai fishers (different fishers from those described in Case 21), who had worked on the fishing vessel *Wadani* in Somalia for about half a year. They had been recruited to work on the fishing vessel by a non-Thai broker. The conditions on the fishing boat were unhygienic, and there was not enough food to eat onboard. In addition, the workers were not paid the required wages and worked excessive hours. Nonetheless, government officials did not identify this case as one of forced labor and instead required the fishermen to undergo mediation with their employer. Furthermore, the workers were required to sign a contract promising to repay the Thai Ministry of Foreign Affairs for the cost of repatriation, which totaled to 100,000 THB (3,001 USD) per person. The workers are currently in debt to the government, so the case is not yet closed.

³²⁴ *Id.*

³²⁵ Verité, *Thailand Bound*, at 6.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ Interview with CSO #6 (Jan. 25, 2022).

³²⁹ *Id.*

3.3 Indicators of Forced Labor in Thai Public Prisons

According to research conducted by human rights organizations and journalists, the Government of Thailand has facilitated abusive working conditions in public prisons that may amount to forced labor. The CMP Committee cited the Minister of Justice's denial of the government's role in facilitating forced prison labor,³³⁰ yet evidence indicates that the practice continues in prisons in Thailand. For example, the International Federation of Human Rights (FIDH) and other NGOs have reported on the inhumane conditions of detention in Thai prisons for years, including terrible prison labor conditions and punishment of prisoners that could amount to torture.³³¹

In addition, at the end of 2021, a *Reuters* journalist documented the widespread practice of prisoners being forced to make fishing nets and other commodities for private companies under threat of punishment, including beatings and delayed release.³³² A couple months later, in February 2022, organizations participating in the SWG submitted a petition³³³ to U.S. Customs and Border Protection (CBP) pursuant to Section 307 of the U.S. Tariff Act of 1930.³³⁴ The details are described in Case 23.

Case 23

In April 2020, a Thai investigative journalist submitted Freedom of Information Act (FOIA) requests to 142 prisons in Thailand, requesting all contracts with private companies for prison labor. The journalist received nearly 900 contracts from 83 prisons. The contracts represent agreements between the public prisons and private companies in the garment, textile, and fishing industries regarding the hiring of prisoners to produce goods for the companies.

³³⁰ Ministry of Foreign Affairs, *Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee clarified on allegations*.

³³¹ See, e.g., International Federation for Human Rights and Union for Civil Liberty, *Thailand Annual Prison Report* (March 2022), <https://www.fidh.org/IMG/pdf/thailande791angweb.pdf>; International Federation for Human Rights, Union for Civil Liberty (UCL) & Internet Law Reform Dialogue (iLaw), *Assessment of Thailand's follow-up actions for the implementation of the UN Human Rights Committee's recommendations* (April 27, 2020), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_NGS_THA_42149_E.pdf; International Federation for Human Rights, *FLAWED MODELS Implementation of international standards in Thailand's 'model' prisons for women* (Dec. 2019); International Federation for Human Rights, *BEHIND THE WALLS: A look at conditions in Thailand's prisons after the coup* (Feb. 2017), <https://www.refworld.org/pdfid/58b593dd4.pdf>; and Raviwan Rakthinkamnerd, *Thai prisoners the victims of slave labour*, BANGKOK POST (Oct. 4, 2016), <https://www.bangkokpost.com/opinion/opinion/1101921/thai-prisoners-the-victims-of-slave-labour>.

³³² Nanchanok Wongsamuth, *EXCLUSIVE - Jails in Thailand force prisoners to make fishing nets under threat of violence*, THOMAS REUTERS FOUNDATION NEWS (Dec. 23, 2021), <https://news.trust.org/item/20211223055726-yhrid/>.

³³³ GLJ-ILRF, *Organizations urge U.S. to block imports of fishing nets from Thai companies over evidence of forced prison labor* (Feb. 22, 2022), <https://laborrights.org/Organizations-urge-US-block-imports-of-fishing-nets-from-Thailand-over-evidence-forced-labor>; see also Nanchanok Wongsamuth, *U.S. urged to ban Thai fishing net suppliers using prison labour*, REUTERS (Feb. 18, 2022), <https://www.reuters.com/article/thailand-labor-prison/u-s-urged-to-ban-thai-fishing-net-suppliers-using-prison-labour-idUSL8N2US4QY>.

³³⁴ 19 U.S. Code § 1307. Section 307 allows anyone who has reason to believe that certain goods imported into the United States have been made by convict labor, forced labor, and/or indentured labor under penal sanction to submit a petition to CBP to issue a WRO to prohibit importation of these goods.

Focusing on contracts for the production of fishing nets, the journalist found that of the 83 prisons, at least 54 prisons have contracts with at least 15 private companies or individuals to produce fishing nets for export to other countries. The journalist also interviewed 16 former prisoners who have either made fishing nets in prison or at the company worksite, or witnessed other prisoners making fishing nets. The interviews revealed that prisoners were punished for not working or failing to meet the production quota, including through:

- Verbal abuse that they have no rights and that there is no use in filing a complaint;
- Threats that their prison sentences would be extended;
- Threats of physical punishment;
- Physical abuse (e.g., hit, kicked, or beat by batons, rattan sticks, and baseball bats);
- Being detained in individual cells and not permitted visitors in order to prevent relatives from seeing the prisoner's wounds;
- Being put through military-type training, such as running or doing squats to the point of exhaustion; being forced to sit or stand under the hot sun for extended periods of time or to roll on the hot concrete ground while shirtless;
- Being ordered to collect garbage; and
- Not being allowed to shower.

In addition, while Thailand's minimum wage ranges from 313–336 THB (9–10 USD) per day, most of the former prisoners interviewed reported earning about 30 THB (0.90 USD) per month, while some reported receiving no pay at all. In addition, a Ministerial Regulation from 2020 states that prison inmates ought to be paid 70% of the total profits of work they are assigned.³³⁵

After further investigating the abuses uncovered by the journalist, organizations participating in the SWG submitted a petition under Section 307 of the U.S. Tariff Act to CBP on February 11, 2022. The petition called on CBP to issue a Withhold Release Order (WRO) to prohibit the importation of fishing nets produced by two Thai companies—Khon Kaen Fishing Nets Factory Co., Ltd. and Dechapanich Fishing Net Factory Ltd.—that were found to have imported fishing nets into the United States.

Presenting several contracts between the public prisons and the private companies, interviews with former prisoners, and online import and corporate supply chain research, the petition showed that the prisoners worked involuntarily and under the menace of penalty, meeting the definition of forced labor under the U.S. Tariff Act. There was also much evidence of several ILO indicators of forced labor, including abuse of vulnerability, restriction of movement, isolation, physical and sexual violence, intimidation and threats, withholding of wages, and abusive working and living conditions. Besides the severe punishments described above, prisoners were paid extremely low wages, and their wages were deducted for meal

³³⁵ “Ministerial Regulation Calculation of monetary income and the payment of reward for inmates where work carried out generates income that can be translated to monetary value B.E. 2563 (2020).”

Clause 3 Where the work assigned to an inmate generates income that can be calculated in terms of monetary value, such inmate may be entitled to the reward from such work. For the monetary income calculation in the first paragraph, the work price shall be calculated into capital, expenses, and profit.

Clause 4 The prison superintendent shall pay reward to inmates at the rate of 70% of the total profit. The inmates shall receive an equal amount of the share. The rest shall be deposited to the Treasury as state revenues.

allowance and transportation. Their workplace and sleeping area were also overcrowded, and food was meager and of poor quality.

In response, the Thai Department of Corrections issued an order prohibiting forced labor in prisons and has committed to establish labor advisors and labor committees in all of Thailand's prisons, which will assess the prison labor system against international standards.³³⁶ It is too early to assess the effectiveness of this initiative.³³⁷

The prevalence of forced labor among prisoners could increase if the government moves ahead with plans announced in March 2021 to build industrial estates, where inmates near the end of their sentences can work for companies in factories in order to fill the labor shortages created during the pandemic.³³⁸

3.4 Lack of Accessible, Trauma-Sensitive Shelters for Victims

The MSDHS is responsible for assisting victims of human trafficking, but is not providing accessible, trauma-sensitive shelters. The MSDHS operates nine TIP-specific government shelters named "Welfare Protection Centers for Victims of Trafficking" under the Division of Anti-Trafficking in Persons (DATIP).³³⁹ According to the government, "shelters implemented the 'Happy Shelter' project with enhancing trauma-informed care approach to ensure that victims feel safe and secure throughout their stay until reintegration into society."³⁴⁰ Yet, contrary to the government's proclamation, interviews with CSOs and international organizations reveal that these government-operated shelters fall short in protecting victims because of their restrictions of personal freedoms and lack of trauma-sensitivity. In addition, the challenges described with victim identification above mean that there is limited access to shelters for potential victims.

3.4.1 Restriction of Personal Freedoms

The strict policies of government-operated shelters restrict victims' personal freedoms and are not adequately trauma-informed or sensitive, which may serve to re-traumatize victims during their stay.³⁴¹ For example, the shelters restrict victims' freedom of movement by prohibiting them from venturing outside without officers' permission, so the conditions are not too dissimilar from detention centers.³⁴² If they need to visit the hospital or the court, for instance, an officer must

³³⁶ Nanchanok Wongsamuth, *Thailand pledges to ban forced prison labour after expose*, REUTERS (March 2, 2022), <https://www.reuters.com/article/thailand-prison-workers-idAFL8N2V53BL>.

³³⁷ GLJ-ILRF, *Statement from organizations in the Seafood Working Group on Thai Government announcement that it will ban the practice of using forced prison labor to make fishing nets* (March 3, 2022), <https://laborrights.org/releases/statement-organizations-seafood-working-group-thai-government-announcement-it-will-ban>.

³³⁸ *Prisoners put to work in factories desperate for labour*, STAR (March 6, 2021), <https://www.thestar.com.my/aseanplus/aseanplus-news/2021/03/06/prisoners-put-to-work-in-factories-desperate-for-labour>. See also Sarah O'Connor, *'Orange collar' workers are not the best solution to labour shortages*, FINANCIAL TIMES (Sept. 6, 2021), <https://www.ft.com/content/974a0520-bd9e-4069-bb2e-b28f8150c4d3>.

³³⁹ Rousseau, *Review of Models of Care of Trafficking Survivors*.

³⁴⁰ Royal Thai Government, *Royal Thai Government's Country Report on Anti-Human Trafficking Efforts*, at 49.

³⁴¹ Office to Monitor and Combat Trafficking in Persons, *2021 Trafficking in Persons Report: Thailand*.

³⁴² Interview with CSO #2 (Nov. 9, 2021).

accompany them.³⁴³ In addition, the government-operated shelters restrict victims' freedom of communication. They do not allow outsiders to visit the shelters,³⁴⁴ and they restrict victims' access to phones early on during their shelter stay, preventing them from contacting their families.³⁴⁵ This is even true for minors.³⁴⁶

Although these policies are instituted for security purposes, they make the shelters uncomfortable for victims and are insensitive to their trauma.³⁴⁷ Victims are also prohibited from working while staying at a shelter, which impacts their financial security. Furthermore, shelters have also been reported to infringe on victims' freedom of religion. One CSO explains that Muslim victims who have special dietary needs and religious rituals are unable to observe their religion while staying in government-operated shelters, where shelter guests are required to follow the same lifestyle, for example by eating the same food.³⁴⁸ Below are three cases illustrating these restrictions on victims' personal freedoms.

Case 24 – Part 1³⁴⁹

In Nonthtanburi, a domestic worker from Laos under the age of 18, who first arrived in Thailand in 2014, entered a government-operated shelter for potential victims of trafficking. The minor victim wanted to contact her family after having been held in the house of her perpetrator for many years. However, the shelter did not allow her to contact her family, as they were afraid that she might say something that could negatively impact the case. The shelter also did not inform the victim when she would be permitted to leave. The case was filed in August 2019 and is ongoing.

Case 25³⁵⁰

In Pitsanaluk, a Thai woman who had worked as an agricultural worker on a mango farm was required to enter a government-operated shelter. She did not want to stay in the shelter during the investigation because she wanted the freedom to live elsewhere and to work, as working was not an option while at the shelter. However, the woman was not permitted to leave. The case was filed in October 2020 and is ongoing.

Case 26³⁵¹

In Pathumthani, migrant workers from Myanmar who had worked on a fishing vessel—some beginning as early as 1993—were admitted into a government shelter. They wanted to find employment outside the shelter, as they had resided there for two years during the investigation of their case. However, the shelter prohibited them from obtaining longer-term employment. The case was filed in February 2021 and is ongoing.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ Interview with International Organization #2 (Dec. 9, 2021).

³⁴⁶ Interview with CSO #6 (Jan. 11, 2022).

³⁴⁷ Interview with CSO #2 (Nov. 9, 2021).

³⁴⁸ *Id.*

³⁴⁹ Interview with CSO #6 (Jan. 11, 2022).

³⁵⁰ *Id.*

³⁵¹ *Id.*

3.4.2 Inadequacy of Trauma-Informed, Individualized Services

Government shelters also do not adequately provide trauma-informed, individualized services. The victim compensation fund administered by the government appears to be very limited in supporting victim's needs, where the committee's interpretation of what medical procedures for victims are covered by the fund are strictly narrow.³⁵² Furthermore, the ratio of case managers to victims is high, even for underage victims who require more care and attention.³⁵³ However, according to a CSO, one case manager should manage no more than three victims at a time due to the high quality of care necessary to build trust between the manager and the victim.³⁵⁴ Case 24 – Part 2 illustrates both of these problems concerning the subpar quality of services to victims in government-operated shelters.

Case 24 – Part 2³⁵⁵

The minor victim from Laos who had worked as a domestic worker in Nonthtanburi had been physically abused by her employer. As a result, she suffered severe injuries, including broken bones around her eyes, and needed surgery, which she hoped would be paid for by the victim compensation fund. However, the shelter officer said that this surgery to her eye socket was not covered by the victim compensation fund because it was not truly necessary and only cosmetic. A CSO had to intervene by petitioning the anti-trafficking department, arguing a broader interpretation of what medical procedures are “necessary” as not only including those that are “life or death,” but also including procedures that help victims to lead normal lives. The CSO ultimately managed to convince the victim compensation fund committee to cover the eye surgery, but the victim ended up having to wait one and a half years for the procedure, likely adding to the physical and psychological trauma of this minor. The case manager overseeing this case was handling more than 10 other cases involving minor victims at the same time.

3.4.3 Limited Access to Shelters for Victims

Because the government sometimes does not identify victims of human trafficking as such, access to government operated shelters for such victims is limited. Government-operated shelters in Thailand are limited to individuals who have been formally identified as victims of human trafficking.³⁵⁶ Yet, as explained above, victims of human trafficking are not always properly identified as victims by Thai law enforcement officials, meaning that they would not be permitted access to government-operated shelters. In addition, the distinction between the charge of forced labor and human trafficking under Thai law means that individuals who will be identified as victims of forced labor under Section 6/1, but not victims of human trafficking under Section 6, will be prevented from accessing government-operated shelters.³⁵⁷ This large gap in victim identification leaves individuals who ought to have access to government-operated shelters to instead seek refuge in shelters operated by NGOs. The reliance on NGOs to protect these victims reflects the government's failure to fulfill its duty to protect victims of trafficking.

³⁵² Interview with CSO #6 (Jan. 25, 2022).

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ Interview with CSO #2 (Nov. 9, 2021).

³⁵⁷ Interview with CSO #6 (Jan. 11, 2022).

During the pandemic, the cost of COVID-19 tests has created an additional barrier to accessing shelters for human trafficking victims.³⁵⁸ Before being allowed entry into a shelter, victims must be checked for COVID-19. However, they are required to bear the cost of the test, and this financial burden may serve as a barrier to accessing government-operated shelters for some victims.³⁵⁹

3.5 Lack of Trauma-Sensitive Court Proceedings

The Government of Thailand does not provide trauma-sensitive court proceedings for human trafficking victims. The government claimed in its annual report on anti-trafficking efforts that “[t]he Court of Justice continued to support the development of victim-centric and trauma-informed approaches among judges overseeing human trafficking cases, ensuring that victims are treated with dignity, understanding and safety, taking into account the potential impact that the court proceedings may have on the victims.”³⁶⁰ Yet, one CSO revealed that court proceedings for trafficking cases also prove to be insensitive to victims’ trauma. According to the CSO, victims are not informed about the judicial process or their rights, and they do not have a choice about whether or not to participate in the trafficking investigation, including whether or not to testify in court.³⁶¹ This is the case even for minor victims. Instead, victims are required to obey the officers’ orders, such as being told to show up at court or go to the hospital on a certain day.³⁶² They are even required to repeatedly testify in court if ordered, and even minor victims are not granted protections from forms of harassment or intimidation during the court proceedings.³⁶³ These issues are illustrated in Case 24 – Part 3 below.

Case 24 – Part 3³⁶⁴

In the Nonthtanburi case involving the minor victim from Laos who suffered severe physical injuries, the victim was forced to testify in criminal court and confront her trafficker. The CSO that supported the victim tried to argue that the victim should not have to present in court, considering her young age and serious injuries. However, the court said that the victim had no choice but to testify. The trafficker’s family members were also present in the courtroom and harassed the victim, calling out that she was a liar. The CSO spoke with the officers of the court, asking why they allowed the family to enter the victim’s room, and the officers defended themselves, saying that people were allowed to walk through the room. After presenting in criminal court, the victim was forced to testify again before the labor court. The CSO argued that a victim impact statement should be used in order to present the victim’s testimony at one time in order to minimize the victim’s trauma. In response, the shelter officer said that they did not know how to write such a statement. The CSO spoke with the Attorney General, who made an order to the shelter officer. However, the shelter officer refused to comply. While this case was filed three years ago, the hearings were postponed until 2021, and took place throughout the year, which extended the victim’s retraumatization.

³⁵⁸ Interview with CSO #5 (Nov. 22, 2021).

³⁵⁹ *Id.*

³⁶⁰ Royal Thai Government, *Royal Thai Government’s Country Report on Anti-Human Trafficking Efforts*, at 36.

³⁶¹ Interview with CSO #6 (Jan. 11, 2022).

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

4. PROSECUTION

Under the “Prosecution” prong of the “3P” paradigm, governments have the duty to “criminalize all forms of human trafficking, vigorously investigate and prosecute cases of human trafficking, and convict and sentence those responsible for such acts with prison sentences that are sufficiently stringent to deter the crime and adequately reflect the heinous nature of the offense.”³⁶⁵ However, based on the information collected for this submission, there is strong indication that the Government of Thailand has not upheld its responsibility of prosecution by not vigorously investigating and prosecuting cases of human trafficking, nor providing adequate sentences for the crime of forced labor in the law. The government has continued to prosecute few labor trafficking and forced labor cases³⁶⁶ despite the prevalence of forced labor in numerous industries; has unreasonably delayed prosecution proceedings; has not issued implementing guidelines following the 2019 enactment of the amended Anti-Trafficking in Persons Act (2008); has not provided law enforcement officers with adequate training on human trafficking and forced labor; has continued to give weaker penalties for forced labor cases; and has not effectively addressed the issue of corruption and complicity among government officials.

4.1 Insufficient Number of Prosecutions

Overall, the government prosecuted labor trafficking and forced labor cases at a low rate compared to the known prevalence of these abuses in migrant worker-dominated labor sectors. The government reported investigating 182 human trafficking cases against 356 alleged offenders in 2021.³⁶⁷ While there was an increase in the total number of investigations of potential trafficking cases from 133 cases in 2020 to 182 cases in 2021, the majority of the cases (134) were for sex trafficking. In contrast, the number of forced labor cases initiated only totaled to 18 cases in 2021, 17 of which were for labor trafficking and 1 of which was for forced labor or services.³⁶⁸ These included two cases in the fishing sector and 16 cases in non-fishing sectors. Considering the well-documented and widespread labor abuses in Thailand’s fishing sector and other sectors like domestic work, construction, and agriculture, it is unlikely that there were so few forced labor cases for the government to investigate and prosecute in 2021. Furthermore, while investigation of 18 cases is a slight improvement from 2020, during which only 12 forced labor cases were initiated, this is only about half the number of forced labor cases brought in 2018 and 2019 (35 cases each year). This indicates a lack of sufficient progress on the part of the government to prioritize the prosecutions of human trafficking crimes, especially cases of forced labor.

4.2 Delayed Legal Proceedings and Access to Justice for Victims

There has been a noticeable delay in prosecution and judicial proceedings for migrant workers who are potential victims of human trafficking during this reporting period. The government highlighted that human trafficking cases only took, on average, 67 days to be completed in

³⁶⁵ Office to Monitor and Combat Trafficking in Persons, *3Ps*.

³⁶⁶ Under Thailand’s amended Anti-Trafficking in Persons Act, Section 6 sets out the offence of human trafficking, while Section 6/1 provides for a stand-alone offence of forced labor.

³⁶⁷ Royal Thai Government, *Royal Thai Government’s Country Report on Anti-Human Trafficking Efforts*, at 5.

³⁶⁸ *Id.* The government report highlights that 32 labor-related cases were brought. This is because they totaled the number of cases for the categories of “enslavement,” “forced begging,” “general forced labour,” “forced labour in fisheries,” and “extortion/other,” whereas we only considered cases in the “general forced labour” and “forced labour in fisheries” categories.

2021.³⁶⁹ However, our interviews with two CSOs show not only delays in prosecutions and judicial proceedings, but specifically, in the processes for trafficking investigations and the issuance of arrest warrants by law enforcement as well. This problem is illustrated in three example cases below.

Case 27³⁷⁰

In January 2021, two migrant workers from Myanmar, Mr. A and Mr. B, who worked on a construction site in Hat Yai District, Songkhla Province, had their work permit and travel confiscated by a worker leader. The worker leader, who was a woman from Myanmar, frequently abused the workers, claiming that they were incapable of performing their tasks. She tied up the two workers, hit their heads with a wooden stick, placed a hard object in their mouth, drenched them in hot water, poured hot candle wax on their skin, and often confined them in a room.

Mr. A worked for worker leader for more than five years and had never been paid. He did not know the name of the company or employer that he was working for. Mr. A did not have a work permit or other personal documents, whereas Mr. B did. They managed to escape to another construction site and then traveled to a CSO's office.

The CSO's staff accompanied Mr. A and Mr. B to the police station to report the incident. The investigation officers claimed they were unable to proceed because Mr. A did not have documentation and was a foreigner. The police officers were also unable to identify the employer. In addition, Mr. B's wounds had since healed, and he was unable to provide proof the physical violence endured.

Currently, Mr. A resides at the CSO's shelter while his case is in process. According to the CSO, the investigation was not thorough and has gone on for too long. The nearly one-year delay in the investigation prevented the migrant workers from accessing the victim compensation fund for an extended period of time. In addition, because they were not in possession of their legal documents, they could not move to another province in Thailand or change employers.

Case 28³⁷¹

The SWG's previous submission to the U.S. Department of State for its *2021 Trafficking in Person Report* documented a potential human trafficking case that occurred in Pattani Province in January 2021.³⁷² The case involved three migrant fishermen of Rakhine ethnicity from Myanmar who 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

³⁶⁹ Royal Thai Government, *Royal Thai Government's Country Report on Anti-Human Trafficking Efforts*, at 8.

³⁷⁰ Interview with CSO #2 (Nov. 10, 2021).

³⁷¹ Interview with CSO #1 (Nov. 9, 2021).

³⁷² The case was numbered "Case 2" and titled "Impunity for document confiscation and physical abuse of migrant fishers, Pattani, January 2021" in Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021).

police took no further action. Nearly one year later, this case still has not been identified by the police as a human trafficking case, despite follow-up from a CSO and continued reassurances from the police officer who insists that he has been in contact with the migrant fishermen's employer to collect evidence.

Case 29 - Case Redacted

The extensive delay in judicial proceedings is highly concerning, as it means delays to victims' access to justice, including the prosecution of their traffickers and their access to the victim compensation fund. Moreover, one CSO has observed that the delay in trafficking investigations and prosecution of cases has led many victims to feel discouraged about continuing with the judicial process and to contemplate giving up altogether.³⁷³ This may cause a decrease in the number of prosecutions in Thailand in the future. Instead, the government ought to encourage victims to participate in criminal prosecutions by ensuring a speedy judicial process.

COVID-19 has often been cited as the main reason for the delays in legal proceedings for trafficking cases. For example, the same CSO described how police in Songkhla Province—identified as a “red zone” province in Thailand due to the high number of COVID-19 cases—were very concerned about becoming infected by the migrant worker population.³⁷⁴ This fear of contracting the virus impeded screening and investigations of trafficking cases in migrant worker communities. In addition, court hearings have been postponed for all cases, not only for trafficking cases, due to the lockdowns and restrictions on government buildings.³⁷⁵

However, it is questionable whether COVID-19 can explain the full extent of the delays in legal proceedings. One CSO and one international organization expressed the belief that COVID-19 is more likely an excuse that does not justify nearly one-year delays in trafficking investigations.³⁷⁶ This theory is supported by the fact that the government has expedited the prosecutions of political crimes,³⁷⁷ such as violations of *lèse-majesté*³⁷⁸ or the Emergency Decree.³⁷⁹ The speed of the prosecution proceedings for these political cases, compared to potential forced labor cases, suggests a lack of political will on the part of the government to efficiently carry out human trafficking prosecutions and deliver justice to migrant worker victims.³⁸⁰

³⁷³ Interview with CSO #2 (Nov. 10, 2021).

³⁷⁴ *Id.*

³⁷⁵ Interview with International Organization #2 (Dec. 9, 2021).

³⁷⁶ Interview with CSO #2 (Nov. 10, 2021); Interview with International Organization #4 (Jan. 26, 2022).

³⁷⁷ Interview with International Organization #4 (Jan. 26, 2022).

³⁷⁸ “In recent weeks, the Thai government has launched numerous new investigations against perceived critics of the monarchy and has moved quickly to conclude cases that have laid dormant for several years,” said ARTICLE 19. “The authorities’ renewed enthusiasm for *lèse-majesté* cases marks a dark turn in an already disturbing crackdown on freedom of expression in Thailand.” ARTICLE 19, *Thailand: Record-breaking lèse-majesté sentence highlights need for legal reform* (Jan. 21, 2021), <https://www.article19.org/resources/thailand-record-breaking-lese-majeste-sentence-highlights-need-for-legal-reform/>. See also International Federation for Human Rights, *Lèse-majesté epidemic reaches new milestone* (June 11, 2021), <https://www.fidh.org/en/region/asia/thailand/lese-majeste-epidemic-reaches-new-milestone>.

³⁷⁹ See Case 12 above.

³⁸⁰ Interview with International Organization #4 (Jan. 26, 2022).

Besides a lack of political will, there may be other explanations for the failure to prosecute human trafficking cases. These include confusion among law enforcement officials on how to enforce Thailand's amended anti-trafficking law and the role of corruption in delaying prosecution proceedings. These issues are outlined in Sections 4.3–4.5 below.

4.3 Weak Capacity to Enforce the Anti-Trafficking in Persons Act

One major explanation for the lack of prosecutions of forced labor cases in Thailand is the weak capacity of law enforcement officers to implement the Anti-Trafficking in Persons Act. One CSO and two international organizations interviewed cited widespread confusion among government officials on how to identify and investigate human trafficking cases.³⁸¹ This is due to the complexity of Thailand's anti-trafficking laws, in addition to the lack of implementing guidelines or sufficient human trafficking training of officers by the government.

4.3.1 The Absence of Implementing Guidelines to Clarify Section 6 and Section 6/1

The Government of Thailand has yet to issue guidelines to support law enforcement officers in enforcing the charges of human trafficking and forced labor. The crime of human trafficking is listed under Section 6 of the Anti-Trafficking in Persons Act.³⁸² Similar to the U.N. Trafficking Protocol,³⁸³ Thai law contains the three required elements of the crime of human trafficking, which are Act, Means, and Purpose. *Act* includes “procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of any person”; *Means* includes “threat or use of force, abduction, fraud, deception, abuse of power, or giving money or benefits to a guardian or caretaker of the person to achieve the consent of the guardian or caretaker of such person to allow the offender to exploit the person under his or her control”; and *Purpose* is one of exploitation, which includes “seeking benefits from prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or services, forced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.”

³⁸¹ Interview with CSO #6 (Jan. 11, 2022); Interview with International Organization #1 (Dec. 8, 2021); and Interview with International Organization #2 (Dec. 9, 2021).

³⁸² *Whoever, for the purpose of exploitation, commits any of the following acts:*

(1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of any person, by means of threat or use of force, abduction, fraud, deception, abuse of power, or giving money or benefits to a guardian or caretaker of the person to achieve the consent of the guardian or caretaker of such person to allow the offender to exploit the person under his or her control; or
(2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of a child; shall be guilty of human trafficking.

³⁸³ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Article 3(a): *"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*

In April 2019, Thailand amended the Anti-Trafficking in Persons Act by adding a stand-alone offense of forced labor under Section 6/1.³⁸⁴ This amendment indicated that the crime of forced labor is not considered equivalent to the crime of labor trafficking, as the penalties for forced labor are lesser.³⁸⁵ According to a CSO, the difference between the two charges can generally be understood as follows. While Section 6 (human trafficking) requires proof of Act, Means, and Purpose, Section 6/1 (forced labor) only requires a showing of Means and Purpose.³⁸⁶ This makes the crime of forced labor broader than the crime of labor trafficking, and the threshold to prove forced labor is lower.³⁸⁷

According to international human rights expert and Chulalongkorn law professor, Vitit Muntarbhorn, “the amended law does not clearly spell out the differences in definition, the process of investigation and the gathering of evidence.”³⁸⁸ This lack of clarity regarding the difference between the crimes of human trafficking and forced labor has led to confusion among law enforcement officers about whether to charge a defendant with the crime of human trafficking, forced labor, or both. Many frontline officers thus struggle to know when to apply Section 6, Section 6/1, or both.³⁸⁹ As a result, only one case was initiated under Section 6/1 in 2021—a decline from the two cases initiated under this section in 2020.³⁹⁰

Case 30³⁹¹

On March 3, 2021, attorneys of HRDF and International Justice Mission (IJM) representing five migrant fishers from Myanmar met with the public prosecutors in charge of the investigation of human trafficking and forced labor case on fishing boats in Si Chon District, Nakhon Si Thammarat. From 1995 to March 2020, the migrant fishers were subject to exploitation by their employers, who were the owners of fishing boats in Nakhon Si Thammarat. The employer confiscated the workers’ personal documents, subjected them to physical abuse and intimidation, and deducted the cost of processing the documents from their wages. This caused the workers to fall into enormous debt, and the employers used this debt to prevent the workers from quitting. The boat owners and captains (seven individuals in total) were charged with the crimes of labor trafficking and forced labor or services on March

³⁸⁴ Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019), <https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/row-humantrafficking-eng-23april2019.pdf>.

³⁸⁵ Janie A. Chuang, *EXPLOITATION CREEP AND THE UNMAKING OF HUMAN TRAFFICKING LAW*, 108 AM. J. INT’L L. 4 (2014): 609–49. <https://doi.org/10.5305/amerjintellaw.108.4.0609>.

³⁸⁶ Interview with CSO #6 (Jan. 11, 2022).

³⁸⁷ *Id.* An example of a scenario that would count as forced labor, but not labor trafficking, is one where a migrant worker willingly gets hired to work, knowing that the working conditions may be abusive. However, once employed, the migrant worker is then forced, coerced, or deceived, such as being forced to work overtime, not being paid the agreed-upon wages, or not having their confiscated documents returned so that they can change employers.

³⁸⁸ Vitit Muntarbhorn, *Grappling with human trafficking, forced labour*, BANGKOK POST (Sept. 16, 2021), <https://www.bangkokpost.com/opinion/opinion/2182711/grappling-with-human-trafficking-forced-labour>.

³⁸⁹ Interview with International Organization #2 (Dec. 9, 2021).

³⁹⁰ Royal Thai Government, *Royal Thai Government’s Country Report on Anti-Human Trafficking Efforts*, at 10. This issue was also discussed in Section 3.2.4 of the Seafood Working Group’s previous submission to the U.S. State Department. See Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021).

³⁹¹ Human Rights and Development Foundation, *Press Release: HRDF lawyer meet with public prosecutors in charge of human trafficking and forced labor cases on fishing boats in Nakhon Si Thammarat* (March 9, 2021), <http://hrdfoundation.org/?p=2492>.

10, 2021. The trial has yet to take place, so it remains to be seen whether the defendants will be convicted under Section 6, Section 6/1, or both.

Besides amending the legal codes to be more coherent and clear, a more short-term solution, according to Professor Muntarbhorn, would be “to publish clear and easy to understand guidelines on the commonalities and differences between human trafficking and forced labour, with key examples drawn from real life, and explanations on the value-added of each notion for the purpose of protecting victims.”³⁹² These guidelines should be published alongside guidelines “on what kind of evidence to gather and how to proceed with investigations, referrals, prosecutions and sentencing.”³⁹³

However, nearly three years after the passage of Section 6/1 of the Anti-Trafficking in Persons Act in 2019, the government has still not finalized its Standard Operating Procedure (SOP) guidelines on how to implement the amended anti-trafficking law.³⁹⁴ In fact, there is confusion regarding which government agency ought to be in charge of drafting and issuing the guidelines: while MSDHS has the mandate to enforce the Anti-Trafficking in Persons Act, some MSDHS officials view the issue of forced labor as falling under the MOL’s mandate because the problem is labor-related.³⁹⁵ Furthermore, there are no case management protocols between government agencies on how to handle human trafficking and forced labor cases, such as protocols outlining when other government agencies should join a potential trafficking case to examine the case file, following a labor inspection that reveals indicators of forced labor.³⁹⁶ As a result, frontline officers less often accurately identify victims of labor trafficking and/or forced labor or services.³⁹⁷

4.3.2 Inadequate Training of Law Enforcement Officers

The Government of Thailand has not provided adequate training for law enforcement officers in order for them to understand how to handle trafficking cases. The government claimed they made progress on officer training in 2020,³⁹⁸ yet it was reported by a CSO that only one official training with the Royal Thai Police and one smaller training with the Multidisciplinary Team (MDT) took place in 2021 due to COVID-19.³⁹⁹ The quality of training was also unsatisfactory, according to the CSO.⁴⁰⁰ Even after five days training, the officers still did not know how to do victim identification properly.⁴⁰¹

Furthermore, training for a broader range of relevant stakeholders in government and civil society is also necessary in order to increase identification of human trafficking. Another CSO

³⁹² Muntarbhorn, *Grappling with human trafficking, forced labour*.

³⁹³ *Id.*

³⁹⁴ Office to Monitor and Combat Trafficking in Persons, *2021 Trafficking in Persons Report: Thailand*.

³⁹⁵ Interview with CSO #6 (Jan. 11, 2021).

³⁹⁶ Interview with International Organization #2 (Dec. 9, 2021).

³⁹⁷ *Id.*

³⁹⁸ Ministry of Foreign Affairs, *Thailand’s Position on the U.S. State Department’s 2021 Trafficking in Persons Report* (July 2, 2021), <https://www.mfa.go.th/en/content/tip2021-2?cate=5d5bcb4e15e39c306000683e>. “Capacity-building and training programmes were held regularly through various channels to enhance the efficiency of law enforcement officers and promote awareness among the vulnerable groups about risks of human trafficking and possible exploitation in different forms.”

³⁹⁹ Interview with CSO #6 (Jan. 11, 2022).

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

explained that only senior-level staff tend to be invited to TIP training sessions and workshops, while junior-level officers, field officers, community migrant volunteers, and those on the frontline are not invited to participate.⁴⁰² In addition, contractors at the MOL are only considered temporary staff, instead of officers, so they are excluded from capacity building programs.⁴⁰³ However, these groups of people excluded from capacity building programs often work closely with migrant workers and trafficking victims, so they should be included in TIP training sessions if the government seeks to improve victim identification.⁴⁰⁴

Due to this insufficient anti-trafficking training, many law enforcement officers lack understanding regarding the indicators of forced labor, such as debt bondage, excessive overtime, or withholding of wages. Instead, they tend to categorize what ought to be identified as potential labor trafficking cases as labor rights violation cases. As a result, many potential forced labor cases seem to either be handled in informal mediation sessions between the employer and workers, or are heard before the labor court, rather than the criminal court in charge of handling human trafficking cases. This phenomenon is illustrated in Cases 21 and 22 above.

Specifically regarding debt bondage, many cases involving debt bondage have not been investigated as potential human trafficking cases because debt in the employer-employee relationship is widely perceived to be normal.⁴⁰⁵ According to a CSO, it is common practice in the commercial fishing sector for workers to borrow money from their employer and to owe their employers debt.⁴⁰⁶ As a result, when cases involving debt bondage are filed with the police, the officers will sometimes dismiss the debt as normal and even require the migrant workers to pay back money owed to their employer before they can have their confiscated documents returned.⁴⁰⁷ The police then end up not investigating further into whether the case is one of human trafficking. The normalization of debt bondage showcases the lack of human trafficking training among law enforcement officers in Thailand, where officers are not trained to recognize that debt bondage is an ILO indicator of forced labor and to make sure to conduct a trafficking investigation when they see instances of debt bondage. This issue is illustrated in the case below.

Case 31⁴⁰⁸

On March 17, 2021, a CSO received a complaint from four Burmese workers who worked on a fishing vessel in Samut Sakhon province from December 20, 2020–March 12, 2021, stating that their employer had confiscated their identity documents and that they would prefer to work for a new employer. The workers had signed employment contracts for a wage of 11,000 THB (330 USD) per person and had been paid in cash. However, the CSO found that the employer had failed to pay the workers as agreed. The employer claimed that she needed to deduct payment for operating costs and other expenses and that the workers could only reclaim their documents and work for a new employer once they had paid off their debt. However, the workers' documents that had been confiscated to guarantee a debt of

⁴⁰² Interview with CSO #2 (Nov. 11, 2021).

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ Interview with CSO #1 (Nov. 8, 2021).

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

100,000 THB (3,001 USD) were lost and could not be found. The employer insisted that the documents were returned to the employees on the employee's last working day, March 12, 2021.

On May 6, 2021, the CSO staff took the vessel employees to report a complaint at the Samut Sakhon Police Station pursuant to Section 6/1 of the Anti-Trafficking in Persons Act. However, the police officer did not accept the report under the Act and informed the staff that the report must be considered by the Provincial Committee of the Anti-Trafficking in Persons Act first before the case could continue through the legal process. The police officer contacted the MSDHS officer in Samut Sakhon Province as the Provincial Committee of the Anti-Trafficking in Persons Act to meet with the complainants and conduct an interrogation with the police officer and the labor inspector.

After a joint consultation interview of the MSDHS officer and the labor inspector, the officers informed the CSO staff that the case was not in accordance with the crime of forced labor, so the officers asked everyone to go back and wait for mediation about the workers' documents and debt with the employer and the Provincial Employment officer. The MSDHS officer explained that the migrant workers must repay their debts to their employer to cover the document processing expenses before they could request their documents back from the employer because this was the general practice; if the complainants disagreed, they could forward the case to the Provincial Employment Office for further investigation. Meanwhile, the police officer claimed that he could not file a forced labor report according to the Anti-Trafficking in Persons Act because only the Provincial Anti Trafficking in Persons Committee is responsible for filing such complaints.

The CSO staff took the employees to file a complaint about their documents at the Samut Sakhon Provincial Employment Office on May 7 and to give additional testimony at the Samut Sakhon Provincial Labor Protection Welfare Office on May 10. The labor inspector in charge of the case, however, refused to investigate the issue of identity document confiscation or debt bondage due to a lack of understanding of labor trafficking. The officer informed the workers that while the Provincial Labor Welfare and Protection Office could assist with the payment dispute, it lacked the authority to compel the employer to return the migrant workers' documentation, and the workers should report the case to the Provincial Employment Office. The Provincial Employment Office's solution was to invite the worker's previous and new employers to meet and resolve issues regarding the worker's document and debt on May 10. The Provincial Labor Protection and Welfare Office served as the mediator for the mediation between the workers and their former employer. During the mediation, the employer threatened the workers, "Don't let me know where you are; I'll find and kill you."

The labor inspector in Samut Sakhon Province concluded that the employer had already paid their salary according to the contract, and thus, the employees would not be paid nor compensated further. The workers raised two issues on appeal: that the labor inspector's order was unlawful and that the employees should be paid by the employer. The employer and the labor inspector went to the Labor Court Region 7th with the CSO staff. The initial appointment for October 6, 2021 ended up being canceled, and the court has yet to arrange another appointment to consider the labor case.

Besides debt bondage, many law enforcement officers seem to not be trained to recognize other indicators of forced labor, such as excessive overtime or withholding of wages. As a result, the cases are not brought under Section 6 or Section 6/1 of the Anti-Trafficking in

Persons Act and are instead categorized as a labor rights violation. This is illustrated by Case 32.

Case 32⁴⁰⁹

There was a potential case of forced labor on a chicken farm in Lopburi Province in 2021. The employer forced the workers to work overnight to take care of the chickens and warned that the workers would not receive any wages, including for the work they performed during the day, if they did not acquiesce to working throughout the night. The CSO working on the case does not believe this is a case of human trafficking because the workers were initially willing to work on the chicken farm, and they had the freedom to leave the farm. However, it identifies this case as one of forced labor because the workers were coerced to work excessively overtime under the threat of withholding wages. Nevertheless, the Attorney General did not identify the case as one of forced labor because he viewed working overnight as simply working overtime and believed this was merely a labor rights violation case involving unpaid wages. As a result, no charge was brought under Section 6 or Section 6/1 of the Anti-Trafficking in Persons Act.

4.4 Weak Penalties for the Crime of Forced Labor Under Section 6/1

The Government of Thailand has pointed out that it has administered substantial rates of severe sentences for offenders.⁴¹⁰ However, the penalty for the crime of forced labor is noticeably weak compared to that for the crime of human trafficking.⁴¹¹ The penalty for the offense of trafficking in persons is 4–12 years of imprisonment and a fine of 400,000–1,200,000 THB (12,004–36,013 USD). In comparison, the penalty for the offense of forced labor is 0.5–4 years or a fine of 40,000–400,000 THB (1,200–12,003 USD). This means that individuals convicted of forced labor or services (Section 6/1) are not given sentences as heavy as individuals convicted of labor trafficking (Section 6) because forced labor is distinct from labor trafficking under Thai law.

This reduced punishment for the crime of forced labor likely reduces the deterrence effect of Thailand's Anti-Trafficking in Persons Act. According to an international organization, the difference in penalties has also institutionalized some of the gender biases inherent in the anti-trafficking framework, where women and children are considered to be trafficked and men subjected to forced labor, with the latter being considered a less serious offense.⁴¹²

4.5 Corruption and Complicity of Law Enforcement

At least two CSOs have attributed the failure to carry out trafficking investigations to corruption and complicity among law enforcement officers⁴¹³—an issue highlighted in the State Department's 2021 TIP Report. According to one CSO, the high rates of smuggling of migrants into Thailand could not possibly occur without the involvement of corrupt officials.⁴¹⁴ Media

⁴⁰⁹ Interview with CSO #6 (Jan. 25, 2022).

⁴¹⁰ Ministry of Foreign Affairs, *Thailand's Position*.

⁴¹¹ Seafood Working Group, *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report*, GLJ-ILRF (March 31, 2021), at 46–57.

⁴¹² Email communication with International Organization #1 (Feb. 27, 2022).

⁴¹³ Interview with CSO #1 (Nov. 8, 2021); Interview with CSO #7 (Jan. 12, 2022).

⁴¹⁴ Interview with CSO #6 (Jan. 12, 2022).

reports also discuss how state officials have allegedly been directly involved in human trafficking rings.⁴¹⁵

In October 2021, the Government of Thailand expressed its intention to investigate state officials for corruption and complicity in human trafficking networks.⁴¹⁶ Gen. Kongcheep Tantravanich, of the Defense Ministry said, “If state officials are implicated, police will arrest them and seize all their assets. Even more, state officials would face criminal punishment and be removed from their office.”⁴¹⁷ In 2021, 17 law enforcement officials were found to be complicit.⁴¹⁸

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⁴¹⁵ Nanuam, *Drive to keep illegal migrants out; see also Thailand Tries to Stem the Tide*, CHIANG RAI TIMES.

⁴¹⁶ *Thailand Tries to Stem the Tide*, CHIANG RAI TIMES.

⁴¹⁷ *Id.*

⁴¹⁸ Royal Thai Government, *Royal Thai Government’s Country Report on Anti-Human Trafficking Efforts*, at 34.

5. RECOMMENDATIONS

Below are a set of recommended reforms for the Government of Thailand, suggested by the CSOs and international organizations consulted by the SWG for this report. Among these recommendations, the six priority recommendations presented in the Introduction of this report are marked below with an asterisk (*).

5.1 Recommendations for Prevention

The U.S. State Department TIP Office should support the following recommendations to the Government of Thailand to improve Prevention outcomes:

1. *The government should ratify the ILO Conventions on Freedom of Association and Protection of the Right to Organize, 1948 (C87) and the Right to Organize and Collective Bargaining (C98), as well as reform the Labor Relations Act (1975), so that all workers, including migrant workers, have the right to organize, form and lead labor unions, bargain collectively, and strike with legal protection.
2. *The government should establish a long-term, comprehensive labor migration management program for migrants from neighboring Southeast Asian nations that provides avenues for migrant workers to work and reside in Thailand for longer periods of time to reflect the reality of their experiences. The program should be affordable, faster, with reduced administrative requirements, and provide greater flexibility in employment. It should remove private employment agencies from the process and effectively ban recruitment fees and related costs to migrants. Development of this program could be led by the committee on migration policy mentioned in the Royal Ordinance Concerning the Management of Employment of Migrant Workers (2017), which should have adequate representation from worker organizations and civil society.
3. *The government should withdraw the Draft Act on the Operations of Not-for-Profit Organizations (2021) and ensure any future laws and regulations pertaining to NGOs strictly adhere to international human rights law and standards.
4. The government should amend COVID-19 policies banning public gatherings of five or more people as well as the prohibition of the right to strike. While workers can be required to respect social distancing and COVID-19 measures, they should not be outright banned from exercising the right to association or the right to strike. These are fundamental human rights and labor rights under international law and should be respected to the greatest extent possible.
5. The government should end discriminatory COVID-19 policies that severely restrict migrant workers' freedom of movement within Thailand and their access to basic needs and services.
6. The MOL should prohibit employers from directly or indirectly charging workers for COVID-19-related costs, such as the cost of testing equipment or vaccinations.
7. Under the Royal Ordinance Concerning Management of Employment of Migrant Workers (2017):
 - a. Migrant workers should be able to change employers and not lose their immigration status or permission to work. They should be permitted to seek new employment as desired (not only under the certain conditions currently prescribed in the law) so that they do not need to remain in undesirable or even abusive jobs.

- b. The loophole permitting employers to maintain workers' documents if the employer agrees to facilitate access to the retained documents should be removed.
 - c. Workers employed under Section 64 should be allowed to be employed in industrial, commercial, and service sectors and should be provided a work permit for at least a one-year period. Legal protection of workers employed under Section 64 should be strengthened, and workers should be ensured that they can enter the Social Security system as self-insurers.
8. The mandate to manage the employment of migrant fishers should be shifted from the DOF to the MOL. The DOF should play an interagency role in cooperation with MOL on fishing sector issues, while the MOL should be responsible for managing the process of registering migrants as employees on fishing vessels.
 9. Under the Royal Ordinance on Fisheries (2015), fishery workers should be permitted to change employers and seek new employment in other labor sectors.
 10. The government should ensure equal access to social services related to COVID-19 for migrant workers as Thai nationals, including access to vaccines, financial support, or other interventions. Migrant workers should be granted access to the "Section 33, We Love Each Other" COVID-19 relief program and be given extra non-monetary benefits, such as additional sick days.
 11. The government should prohibit the quarantine of workers on fishing vessels, as it is not possible to provide workers with hygienic and safe spaces with access to adequate medical care on vessels.
 12. The Ministry of Justice (MOJ) should decriminalize defamation under both the Penal Code and Computer Crimes Act, and strengthen anti-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 abuses.
 13. The MOL should effectively enforce the ban on charging migrant workers recruitment fees under the Royal Ordinance Concerning Management of Employment of Migrant Workers (2017) by administering labor inspections to identify when recruitment fees or costs related to the employment of migrant workers have been charged to migrant workers and penalizing any employer that passes along the costs to workers in the form of wage deductions. 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.
 14. The government should enact secondary legislation that more clearly defines recruitment costs and fees so that they are not charged to workers.
 15. The MOL should ensure compliance with the Labor Protection Act (1998) provisions regarding wages, working hours, and overtime to ensure that seafood processing workers are not pressured to work excessive overtime, subjected to wage theft, or given piece rate pay instead of the minimum wage.
 16. The MSDHS should strengthen collaboration between the government and NGOs to address human trafficking cases through official channels that are inclusive of a wide range of organizations representing workers. Membership of the Anti-Trafficking in Persons Committee should be diversified to include a wide range of stakeholders, including migrant workers, experts, and CSOs, including those that have been critical of government policies.

5.2 Recommendations for Protection

The U.S. State Department TIP Office should support the following recommendations to the Government of Thailand to improve Protection outcomes:

1. *The MOL should establish regular, rigorous labor inspections, during which inspectors should engage directly with workers in a meaningful way, particularly in high-risk workplaces dominated by migrant workers. Worker organizations and CSOs should be involved in the inspection process. The MOL should conduct a comprehensive review of the challenges to effective inspection and work in collaboration with MSDHS to create a protocol for other relevant agencies to join the case when there are indicators of forced labor present.
2. *The MSDHS should ensure that the prosecution proceedings are victim-centric and trauma-informed. Victims should be informed of the judicial process and of their rights and should be given the choice not to participate in investigations or court proceedings. The court should use victim impact statements to avoid unnecessary, repeated in-court testimony by the victim and develop specific safeguard policies for minor victims.
3. The immigration authorities should improve victim identification by systematically screening individuals who enter Thailand through irregular channels in order to identify potential victims of human trafficking, instead of the routine practice of arrest and deportation. They should conduct the screening process prior to the 14-day quarantine period (or at a minimum, guarantee that screening occurs immediately after the quarantine period), and create a separate screening process specifically for minors.
4. The MSDHS should train officers to use questionnaires for victim identification in a comprehensive way and to recognize all indicators of forced labor, such as debt bondage, retention of identity documents, and withholding of wages.
5. The MSDHS should provide an appropriate period for victim reflection and recovery that may range from 30–90 days, prior to initiating the screening process.⁴¹⁹
6. The MOL should undertake a review of the challenges to effective labor inspection, including relating to inspectors' powers and capacity; the performance appraisal process; the limited collection, sharing, and analysis of data; corruption; and restrictions on the ability to engage interpreters. After the study is completed, MOL should develop a comprehensive plan for systems change.
7. The DOF should coordinate with the MSDHS, the MOL, and other agencies to strengthen PIPO inspections so that they result in effective identification of labor law violations, forced labor, and labor trafficking cases, including:
 - a. Decrease the rotations of PIPO inspectors and consider designating one point-person who would not be rotated.
 - b. Put measures in place to ensure protection against retaliation, such as firing or worsening of working conditions by the employer, for fishers who report issues to PIPO.
 - c. Allow fishers who have quit their jobs due to filing a complaint to remain in Thailand during the complaint process and to access the justice system.
 - d. Create a safe space for fishers to report violations. This could include using trailers or spaces that are already designated or set up to provide privacy for fishers during interviews. Fishers should all be interviewed individually for a similar amount of time to ensure confidentiality and safety.
 - e. Identify routine labor law violations in order to address abuses early on before they may turn in to situations of forced labor. For example, PIPO inspectors should identify instances of document retention and ascertain whether fishers understand their employment contracts, particularly provisions pertaining to payment and hours of rest.

⁴¹⁹ *Policy Guide on Protecting Victims of Trafficking*, THE BALI PROCESS.

- f. Undertake serious and sustained efforts to investigate reports of missing fishery crew.
- g. Prioritize identifying violations, enforcing the law, and pursuing remediation measures. The goal of inspection should be to find violations and change behavior, not to reinforce a “no violation” false narrative.
8. The MSDHS should create a standard policy for all trafficking victims shelters that guarantees the personal freedoms of victims and minimizes re-traumatization, including by giving them the choice to leave the shelter, permitting them to communicate with their families, and granting them opportunities to work while staying as a guest in the shelter. Ensure trauma-informed care for trafficking victims in shelters by increasing the number of shelter officers per victim, especially child victims.
9. The MOL should strengthen its online complaint mechanism for labor law violations, including intaking complaints involving indicators of forced labor. Workers who report violations into this complaint mechanism should be guaranteed protection against retaliation, such as termination of employment contracts or defamation lawsuits. The MOL should coordinate with frontline migrant worker organizations so that they can help monitor cases and follow up in the case of extensive delays or police refusal to accept cases.
10. The MOJ should address the vulnerability of prisoners to forced labor by improving working conditions in prisons so that they meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Nelson Mandela Rules”). The Department of Correction’s proposed labor committees should include independent monitors and should publicly release findings.⁴²⁰

5.3 Recommendations for Prosecution

The U.S. State Department TIP Office should support the following recommendations to the Government of Thailand to improve Prosecution outcomes:

1. *The MSDHS and MOL should cooperate to clarify Sections 6 and 6/1 in the Anti-Trafficking in Persons Act by issuing implementing guidelines to help law enforcement officials distinguish between the crimes of labor trafficking and forced labor in order to support easier identification of these crimes.
2. The CMP Committee should prioritize capacity building of officers to increase their skills and knowledge of the crimes of human trafficking and forced labor. In collaboration with MOL and other government agencies, MSDHS should provide training and workshops for officers of all levels, not only senior staff, and create labor inspection specialist teams to guide TIP agencies with labor trafficking cases.
3. Law enforcement officials should expedite legal proceedings for human trafficking cases, and investigate and prosecute any cases of officer corruption and complicity that are found to delay or impede human trafficking cases.
4. The government should strengthen penalties for the crime of forced labor so that they match the penalties for the crime of labor trafficking.

⁴²⁰ For more detailed recommendations to the Thai government regarding forced prison labor, see GLJ-ILRF, *Organizations urge U.S. to block imports of fishing nets from Thai companies over evidence of forced prison labor* (Feb. 22, 2022), <https://laborrights.org/Organizations-urge-US-block-imports-of-fishing-nets-from-Thailand-over-evidence-forced-labor>.