

Comments Concerning the Ranking of Thailand by the United States Department of State in the 2016 Trafficking in Persons Report

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I. Introduction

The US Department of State has ranked Thailand in Tier 3 of its Trafficking in Persons (TIP) Report since 2014 and should continue to do so in 2016 because the Government of Thailand still does not fully comply with the minimum standards for the elimination of trafficking, and is not making significant efforts to do so. Of particular concern is Thailand's large migrant worker population, who remain vulnerable to exploitation because of systemic deficiencies in Thailand's approach to migrant worker protection.

Reports on trafficking in Thailand's seafood industry continued to appear regularly in the media from outlets including the *Associated Press*,¹ the *Guardian*,² *New York Times*,³ *Reuters*,⁴ as well as NGOs including the Environmental Justice Foundation⁵ and Verite,⁶ among others. Though

¹ McDowell, Robin, Mason, Margie, Mendoza, Martha, *Associated Press*, "AP Investigation: Slaves may have caught the fish you bought," March 25, 2015, www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html; McDowell, Robin, Mason, Margie, Mendoza, Martha, *Associated Press*, "AP Exclusive: AP tracks slave boats to Papua New Guinea," July 27, 2015, <http://bigstory.ap.org/article/c2fe8406ff7145a8b484deae3f748aa5/ap-tracks-missing-slave-fishing-boats-papua-new-guinea>; Mason, Margie and Mendoza, Martha, *Associated Press*, "AP investigation prompts new round of slave rescues," July 30, 2015, www.ap.org/explore/seafood-from-slaves/ap-investigation-prompts-new-round-of-slave-rescues.html; Mason, Margie, *Associated Press*, "Myanmar fisherman goes home after 22 years as a slave," July 1, 2015, www.ap.org/explore/seafood-from-slaves/myanmar-fisherman-goes-home-after-22-years-as-a-slave.html; Htusan, Esther and Mason, Margie, *Associated Press*, "More than 2,000 enslaved fishermen rescued in 6 months," September 17, 2015, <http://bigstory.ap.org/article/ceecf8df237e49bf8fe59d47fa3515b0/more-2000-enslaved-fishermen-rescued-6-months>.

² Stoakes, Emanuel, Kelly, Chris, Kelly, Annie, the *Guardian*, "Revealed: how the Thai fishing industry trafficks, imprisons and enslaves," July 20, 2015, www.theguardian.com/global-development/2015/jul/20/thai-fishing-industry-implicated-enslavement-deaths-rohingya; Holmes, Oliver, the *Guardian*, "Thailand dismisses US criticism over human trafficking and slavery," July 28, 2015, www.theguardian.com/world/2015/jul/28/thailand-us-human-trafficking-slavery-report; Townsend, Mark, the *Guardian*, "Hunt on for slave-crewed Thai trawlers whose catches are UK-bound," August 1, 2015, www.theguardian.com/world/2015/aug/01/slave-ships-papua-new-guinea-hunt-burmese-men-trawler.

³ Urbina, Ian, *New York Times*, "'Sea Slaves': The Human Misery That Feeds Pets and Livestock," July 27, 2015, www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html.

⁴ Sawitta Lefevre, Amy and Belford, Aubrey, *Reuters*, "Thailand's trafficking crackdown adds to migrants' misery," May 8, 2015, www.reuters.com/article/us-thailand-rohingya-crackdown-idUSKBNONT0PO20150508; Nguyen, Katie and Tang, Alisa, *Reuters*, "Thai traffickers exposed by campaign group investigating fishing industry," November 30, 2015, www.reuters.com/article/thailand-slavery-fishermen-idUSL8N13L4C220151130#Da1Eq76EcOwfk8md.97.

⁵ Environmental Justice Foundation, "Thailand's Seafood Slaves," November 30, 2015, <http://ejfoundation.org/sites/default/files/public/EJF-Thailand-Seafood-Slaves-low-res.pdf>.

⁶ Verite, "Recruitment Practices and Migrant Labor Conditions in Nestle's Thai Shrimp Supply Chain," November 23, 2015, http://www.verite.org/sites/default/files/images/NestleReport-ThaiShrimp_prepared-by-Verite.pdf.

less publicized, reports also emerged of pervasive migrant worker abuse, including indicators of human trafficking, in canned chicken⁷, fruit processing⁸, infant formula⁹, and hospitality.¹⁰

The regularity and severity of these reports, and the findings of similar types of abuses across multiple sectors, indicates that the size of the problem of trafficking among migrant workers in Thailand, has not decreased since March 2015. The extent of action by the Thai Government falls short of what would be required to be considered a significant effort.¹¹

The Thai Government remains dependent on cheap or free labor to fuel its booming export sector and has repeatedly demonstrated that it lacks the political will to fully institute the reforms needed to dismantle the country's trafficking infrastructure and adequately protect migrant workers from further abuse and exploitation.

Unprecedented international attention on the decades-long plight of migrant workers in Thailand's seafood industry has caused the government to take action in order to avoid both trade sanctions and industry boycotts. While the government's reforms of its fisheries management laws and practices suggest some progress, a closer inspection of the changes reveal minimal effect on eliminating trafficking in its fishing industry.¹² Importantly, these changes also fail to address the root causes of labor trafficking in Thailand. Instead of establishing an environment conducive to robust civil society participation in combating human trafficking and promoting legal accountability for governmental abuse of power, the Thai Government has pressed on with its intimidation tactics towards those who have defended victims of trafficking against unscrupulous employers and corrupt officials. On fundamental issues such as governmental corruption, official impunity, and freedom of opinion and expression, which the State Department rightly emphasized as key reasons for Thailand's Tier 3 ranking in its 2015 report, the Thai Government has continued to ignore the international community and civil society's calls for serious and sustained change.

For the Thai Government to truly demonstrate its commitment to eliminating trafficking in persons, it must act this year on the following issues that have not been sufficiently addressed in 2015 and leave migrant workers vulnerable to human trafficking:

- 1) Governmental corruption and impunity for senior public officials involved in trafficking;

⁷ Bergbom, Kalle, "Trapped in the Kitchen of the World: The Situation for Migrant Workers in Thailand's Poultry Industry," November 25, 2015, www.swedwatch.org/sites/default/files/tmp/76_thai kyckling_151123_ab.pdf.

⁸ Kultalahti, Anu, "On the Borderline of Responsibility," December 15, 2015, <http://finnwatch.org/images/pdf/TokmanniOwnImports.pdf>.

⁹ Ibid.

¹⁰ Nguyen, Katie, *Reuters*, "Thai Hotels Accused of Poor Pay, Ill-Treatment of Migrant Staff," December 9, 2015, www.reuters.com/article/thailand-tourism-exploitation-idUSL8N13Y3H620151209.

¹¹ In addition to the evidence presented below, the Thai Government investigated and prosecuted much less cases in 2015 (317 investigations, 177 prosecutions) than it did in 2013 (674 investigations, 386 prosecutions). See "The Trafficking in Persons Report 2015. The Royal Thai Government's Response."

¹² See Annex A for an analysis of the Thai Government's changes to its fisheries management laws and practices.

- 2) Denial of migrant workers, including migrant fishers', right to organize and collectively bargain;
- 3) Lack of effective oversight over private employment agencies and brokers in Thailand and countries of origin, especially Cambodia, Burma, and Laos, on recruitment fees and in relation to the Thai Nationality Verification Process; and
- 4) Intimidation tactics in the form of criminal defamation and computer crime laws used against researchers, journalists, and whistleblowers in government who disclose information on alleged perpetrators of human trafficking and related crimes.

II. Governmental corruption and impunity

A. Governmental corruption and official impunity continued to undermine anti-trafficking efforts. Though some officials were prosecuted and even convicted of trafficking charges, the overall environment is one in which intimidation and harassment allows Thai officials to engage in trafficking, directly or indirectly, with little fear of consequence.

The Thai Government has stated repeatedly that the fight against trafficking is a national priority, but its actions do not measure up to its words. The deputy government spokesman, Maj. Gen. Sansern Kaewkamnerd, said in March 2015 that “we are serious in prosecuting every individual involved in the network, from the boats’ captains to government officials.”¹³ To support this assertion, the Thai Government recently highlighted two prominent cases of officials being held accountable in 2015: the ongoing prosecution of 29 government officials and the conviction in August 2015 of Anat Hayeemasae, a member of the Satun Provincial Administration Organization. Both of these cases relate to the smuggling of Rohingya Muslims through trafficking camps discovered on the border of Thailand and Malaysia but intense pressure from above has obstructed justice for the victims. Rather than assure the international community that Thailand takes official complicity seriously, these cases highlight the ongoing problems Thailand has in convicting offenders and protecting victims and witnesses.

The conviction of Anat is indeed an important, and rare, case of an official being held accountable for human trafficking. He was sentenced to 22 years in prison in a case in which a Rohingya survivor of a trafficking camp was held at a government center for trafficking victims and told he must pay \$560 to be released.¹⁴

The overall investigation into trafficking camps in Satun Province, however, has been plagued with problems.¹⁵ Police Major General Thatchai Pitaneelabout, who led early investigations in

¹³ Mendoza, Martha, *Associated Press*, “US lets in Thai fish caught by slaves despite law,” April 22, 2015, www.ap.org/explore/seafood-from-slaves/us-lets-in-thai-fish-caught-by-slaves-despite-law.html.

¹⁴ Connell, Tula, Solidarity Center, “Thai Official Gets 22 Years for Human Trafficking,” August 26, 2015, www.solidaritycenter.org/thai-official-gets-22-years-for-human-trafficking/.

¹⁵ Lefevre, Amy Sawitta and Andrew R.C. Marshall, *Reuters*, “SPECIAL REPORT: Inside Thailand's trafficking crackdown,” July 9, 2015, www.reuters.com/article/us-thailand-trafficking-specialreport-idUSKCN0PJ14520150709.

Satun, was told that his work was damaging Thailand's image.¹⁶ He felt otherwise, telling *Reuters* that "if we want to eradicate human trafficking, we can't hide it. We must put it on the table."¹⁷ Other anti-trafficking experts have also warned that without transparency and full legal accountability, the Thai trafficking infrastructure will remain in place and vulnerable populations will continue to be exploited. Steve Galster, director of FREELAND Foundation, an anti-trafficking NGO that has worked with the Thai police, noted, "The question remains ... if anyone higher up the chain ... will be investigated." If that doesn't happen, he warned, "trafficking in this region will remain a big problem."¹⁸

The 2015 TIP Report noted that for the 2014-2015 reporting period, "[The Thai Government] made some efforts to address official complicity, but corruption and official complicity in trafficking crimes continued to impede anti-trafficking efforts."¹⁹ A year later, it appears that little progress has been made on governmental corruption and complicity and the Thai Government may actually be discouraging its law enforcement from carrying out thorough investigations and revealing the depth of governmental involvement in trafficking and related crimes.

The Council on Foreign Relations astutely noted that "the clearest evidence that the Thai government is not fully committed to the fight against trafficking emerged [in December 2015 when] one of Thailand's most senior anti-trafficking investigators, Police Major General Paween Pongsirin, fled the country and asked for asylum in Australia ... [claiming that remaining in Thailand would put his life in jeopardy since senior officials implicated in ongoing cases want to silence him]."²⁰ Police Major General Paween, who has received accolades from General Prayut for his efforts to combat trafficking, led the investigation into the death camps at the Thai-Malaysia border and the mass trafficking of Rohingyas which was revealed by *Reuters* in 2013.²¹ The case, which involves 91 defendants, including one of the most senior officials to be tried yet, is currently in the pre-trial phase.²² The trial is scheduled to begin in March, but its integrity is now in doubt as Police Major General Paween has revealed that his investigation was prematurely terminated after five months and no action has been taken to bring several alleged

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ United States Department of State, 2015 Trafficking in Persons Report, Thailand: Tier 3, p. 332, July 27, 2015, www.state.gov/documents/organization/243562.pdf.

²⁰ Kurlantzick, Joshua, Council on Foreign Relations, "Thailand's Mounting Trafficking Problem," December 15, 2015, <http://blogs.cfr.org/asia/2015/12/15/thailands-mounting-trafficking-problem/>.

²¹ Chananthorn, Kamjan and Prangthong, Jitcharoenkul, *Bangkok Post*, "Govt still under fire over trafficking, fishing," January 4, 2016, www.bangkokpost.com/news/general/815012/govt-still-under-fire-over-trafficking-fishing.

²² Ibid.; Fortify Rights, "Thailand: Threats Continue in Human Trafficking Trial," December 24, 2015, <http://us10.campaign-archive2.com/?u=f15b18127e37f74088063b773&id=56418b1130&e=81f058f248>.

traffickers to justice.²³ He has stated publicly that if his trafficking investigation report and evidence gathered were presented to prosecutors and the court, all major suspects in the case, including “big military officers,” would be brought to justice.²⁴

The upcoming trial of Senior Army General Manas Kongpan and other defendants is seen by international observers to be a test of Thailand’s commitment to hold all officials involved in human trafficking legally accountable for their crimes. The outlook is not promising. Police Major General Paween’s revelation and subsequent asylum claim,²⁵ the transfer of other investigators in the same trafficking inquiry,²⁶ and recent news that witnesses involved in the trial are under threat and not receiving adequate protections²⁷ suggest that forces within the Thai Government may be interfering with the justice system and could deny victims a just verdict.

Concerns over how inspectors and police handle trafficking cases when they do arise remains a serious concern. In December 2015 the *Associated Press* published an extensive report on workers sold to the Gig shrimp peeling factory and forced to work in appalling conditions. The story followed one worker who escaped, Tin Nyo Win, and his wife, and attempted to inform the authorities. The story ends with Tin Nyo Win and his wife in jail on a \$4,000 bond and the factory operating essentially as normal after a police raid that was promoted in the media, but according to the story, was not handled as a trafficking case:

No one at the Gig shed was arrested for human trafficking, a law that's seldom enforced. Instead, migrants with papers, including seven children, were sent back there to work. Another 10 undocumented children were taken from their parents and put into a shelter, forced to choose between staying there for years or being deported back to Myanmar alone. Nineteen other illegal workers were detained.

An epilogue to the story noted that after officials were alerted to how the case was being handled, the Gig factory was closed and several arrests made. Tin Nyo Win and his wife were transferred to a facility for trafficking victims. However, rather than acknowledge problems and

²³ Chananthorn, Kamjan and Prangthong, Jitcharoenkul, *Bangkok Post*, “Govt still under fire over trafficking, fishing,” January 4, 2016, www.bangkokpost.com/news/general/815012/govt-still-under-fire-over-trafficking-fishing.

²⁴ Ibid.

²⁵ Alcorn, Gay, Reynolds, Keryn, Simons, Margaret, the *Guardian*, “Revealed: Thailand’s most senior human trafficking investigator to seek political asylum in Australia,” December 9, 2015, www.theguardian.com/world/2015/dec/10/thailands-most-senior-human-trafficking-investigator-to-seek-political-asylum-in-australia.

²⁶ Ramzy, Austin, *New York Times*, “Fleeing Thailand, Top Investigator of Human Trafficking Says He Fears for His Safety,” December 10, 2015, www.nytimes.com/2015/12/11/world/asia/thailand-human-trafficking-asylum-australia.html?_r=1.

²⁷ Fortify Rights, “Thailand: Threats Continue in Human Trafficking Trial,” December 24, 2015, <http://us10.campaign-archive2.com/?u=f15b18127e37f74088063b773&id=56418b1130&e=81f058f248>; Achara, Ashayagachat, *Bangkok Post*, “Human trafficking pre-trials press on,” January 7, 2016, www.bangkokpost.com/news/general/818292/human-trafficking-pre-trials-press-on.

note any progress being made, the Thai Government immediately held a press conference denying the account of how the case was handled and insisting current efforts were succeeding.²⁸

B. Recommendations to the Thai Government on tackling governmental corruption and official impunity

- Thoroughly investigate all allegations of Thai official complicity in human trafficking and prosecute suspected government perpetrators based on the same evidentiary requirements needed to indict non-government actors accused of trafficking crimes.
- Ensure all witnesses in the case of Senior Army General Manas Kongpan and future cases against government officials are given adequate protections in accordance with international standards on witness protection.
- Establish an independent body to complete the investigation started by Police Major General Paween. The body should be tasked with investigating, among others, the financial trail that connects government officials to human traffickers. Ensure all investigators and witnesses in this probe are adequately protected. Publicly release the findings of the investigation and hold all who participated or facilitated in the trafficking legally accountable for their crimes.
- Create a zero-tolerance policy for corruption among the Anti-Human Trafficking Division (AHTD), other enforcement agencies responsible for the prevention and suppression of trafficking crimes, and for all officers who interact with migrant workers.
- Ratify and implement the Rome Statute of the International Criminal Court, 1998.

III. Denial of migrant workers' right to organize and collectively bargain

A. Without the rights to collective bargaining and freedom of association, migrant workers in some of Thailand's biggest export industries remain especially vulnerable to poverty, dangerous working conditions, exploitation, trafficking and forced labor, and extortion by police.

The 2015 US TIP Report recommended the Thai Government improve the rights of migrant workers to minimize their risk of trafficking. This necessarily includes amending the Labor Relations Act B.E. 2518 (1975) to allow all migrant workers to form and lead their own unions, and to collectively bargain with their employers. Currently, the law prohibits anyone except Thai nationals by birth from organizing or serving on a union committee or office. Civil society has long stressed the need for this reform but the Thai Government continues to deny migrant workers this fundamental right.

The ILO has noted that anti-trafficking interventions that employ border control and criminal justice-centric approaches can take agency away from identified victims and divert attention

²⁸ Jikkham, Patsara, *Bangkok Post*, "Govt denies AP report on shrimp-peeling 'slaves'," December 21, 2015, www.bangkokpost.com/news/general/801696/govt-denies-ap-report-on-shrimp-peeling-laves.

from key structural inequities that make migrant workers especially vulnerable to abuses.²⁹ One of the key structural inequities in Thailand is its business dominated labor market where the power imbalance between migrant workers and employers, especially in the seafood industry, has been well-documented by NGOs and the press.

Trade unions have an important role to play in the fight against labor trafficking,³⁰ but Thailand has effectively banned unionization in the sectors most prone to labor trafficking, including seafood, by refusing migrants the right to organize and collectively bargain.³¹ The Migrant Workers Rights Network (MWRN), a representative migrant worker organization, has successfully assisted migrant workers in resolving cases of forced labor, human trafficking and other egregious rights abuses, but is limited by its lack of legal designation as a union. An example is the Golden Prize tuna canning factory, where workers engaged in days of protests and work stoppages over unreasonably long working hours and high wage deductions from recruitment fees. MWRN was able to negotiate a resolution in which the employer said it would repay the workers, but when the company reneged on the deal and pulled out of negotiations, MWRN had no legal standing to continue attempts to resolve the situation.³² Without reform of the Labor Relations Act, migrant workers will continue to face challenges in representation and protection of their rights and interests that only migrant-led unions can overcome.³³

The Thai Government's anti-trafficking policy responses have only plugged in holes in their criminal, labor, and fisheries legal frameworks; inequities in the labor market, one of the root causes of labor trafficking, will persist until migrant workers are allowed to protect their voice on the job and collectively negotiate for better working conditions.

B. Recommendations to the Thai Government on improving migrant workers' rights

- Reform the Labor Relations Act B.E. 2518 (1975) to bring it into compliance with ILO labor standards, including the right to freedom of association and collective bargaining.
- Allow all migrant workers, including migrant fishers, to form their own labor unions and serve in leadership positions within them, thereby granting them the legal authority to form independent labor committees within their workplace. Ensure these migrant-led labor committees have unfettered access to effective grievance mechanisms with enforceable remedies.

²⁹ E Marks & A Olsen, 'The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion', *Anti-Trafficking Review*, issue 5, 2015, pp. 111-128, www.antitraffickingreview.org.

³⁰ Ibid.

³¹ Complaint to the ILO Committee on Freedom of Association on Thailand, submitted October 7, 2015.

³² Ramsden, Neil, "Thai cannery Golden Prize shuts down negotiations over labor abuses," December 23, 2015, www.undercurrentnews.com/2015/12/23/thai-cannery-golden-prize-shuts-down-negotiations-over-labor-abuses/

³³ E Marks & A Olsen, Ibid.

- Ratify ILO conventions 87 (Freedom of Association), 98 (Collective Bargaining), 188 (Work in Fishing), and the Protocol of 2014 to the Forced Labor Convention, 1930. Bring Thai legislation and practices in line with these international labor standards.

IV. Lack of effective oversight over private employment agencies, labor brokers, and government officials in Thailand and countries of origin

- A. Migrant workers remain vulnerable to human trafficking because of high recruitment fees, lax enforcement of laws regulating the recruitment industry, expensive and confusing regulatory systems, and corrupt officials.

In 2015, the Thai Government again failed to address two major problems related to private employment agencies and labor brokers and their recruitment practices: (1) recruitment fees which lead to debt bondage; and (2) ineffective policies and procedures for providing legal status to irregular migrant workers that increase their risk of trafficking. These two problems have been identified by civil society, the Department of State, and the ILO as key drivers of labor trafficking in Thailand, especially in its seafood industry, and were included in the 2015 TIP Report’s list of recommendations to the Thai Government.

The Thai Government has made some welcome tweaks to the current system, including reducing the official cost of registration from 1,800 baht to 900 baht, temporarily waiving fees for the migrant worker repatriation fund, and reducing the time migrant workers must spend in the country of origin before renewing work documents from four years to one month. However, the current system, governed by the Recruitment and Job Seekers Protection Act of 1985, still allows employers to shift the cost of recruitment to workers, in violation of international norms, and functions via a network of poorly regulated labor brokers. An assessment by the ILO found that Thailand lacks any effective grievance mechanism for inbound migrant workers to report recruiter abuse.³⁴ The report also found that “limitations contained within the provisions of the Act and inadequate enforcement have allowed for frequent offences and infractions to take place,” that in the rare case of a complaint only minor penalties were imposed, and that despite widespread recruitment abuses only six recruiters lost their licenses from 2004 to 2010.

Even migrant workers who find employment in Thailand through official government channels (Government-to-Government MOUs) must use labor recruiters to access the process. A 2015 report from the European NGOs Finnwatch and Swedwatch and a 2016 report from the US NGO Verite both found that MOU workers still had to pay exorbitant recruitment fees that left them in

³⁴ Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project), ILO Regional Office for Asia and the Pacific, and Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, “Regulating recruitment of migrant workers: an assessment of complaint mechanisms in Thailand,” 2013, www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_226498.pdf.

situations of debt bondage.³⁵ Although Thailand and the sending countries are only supposed to use licensed recruiters to complete the MOU process, “the system is plagued by sub-agents, corruption and the monitoring or regulation of recruiters is near non-existent. Recruiters charge high fees for their services and may even collect bribe money for authorities from migrant workers.”³⁶ Verite’s research indicates that corrupt or improper payments minimally amount to the equivalent of \$65-\$530 per worker deployed and the payments cover, among others, the illegal “kickbacks” given by Burmese agents to their Thai counterparts to secure demand letters or job orders for workers.³⁷ NGO researchers documented licensed recruitment agencies on both sides of the border charging many times the legal amount for registration, Thai employers allowing illegally high wage deductions to pay off the resulting worker debt, and, in some cases, employers or recruiters confiscating identification documents.³⁸ The high costs of recruitment which, under the MOU process, should be borne by the employer are in reality collected from workers by their Thai employers’ appointed agents in Burma.³⁹ In response to the Finnwatch and Swedwatch report, migrant rights activist Andy Hall confirmed, “The MoU system has become a legal system of debt bondage and trafficking ... It’s completely unregulated and out of control. The debt bondage is a serious issue leading to forced labor.”⁴⁰

Many workers do not enter Thailand through the formal channels, however, or become undocumented in the course of their time in Thailand. Plentiful documentation in 2015 of unscrupulous brokers and employment agencies taking advantage of loose oversight by Thai authorities to prey on vulnerable migrant workers from Burma, Cambodia, and Laos show that the problems remain systemic. One such expose from the *Associated Press* in March 2015 described Burmese migrant workers who were trapped in debt bondage after local brokers charged them recruitment fees and lied about the jobs and wages they would have in Thailand. Martha Mendoza, one of the reporters who covered the story, told *National Public Radio*, “the men had pledged to pay the brokers a fee for finding them the job, but when they arrived, they found out the work was in fishing, which they hadn’t signed up for. And they were obliged to not

³⁵ Telkki, Henri, Sonja Vartiala, Kalle Bergholm and Sanna Ristimäki, Swedwatch and Finnwatch, “Employment available in exchange for debt: Working conditions in the Thai broiler industry,” November 2015, www.finnwatch.org/images/pdf/chickenproductionThailand.pdf; Verite, “An Exploratory Study on the Role of Corruption in International Labor Migration,” January 2016, https://www.verite.org/sites/default/files/images/Verite-Report-Intl-Labour-Recruitment_0.pdf.

³⁶ Swedwatch and Finnwatch, *Ibid.*

³⁷ Verite, *Ibid.*

³⁸ Swedwatch and Finnwatch, *Ibid.*

³⁹ Verite, *Ibid.*; Thai employers’ costs for hiring Burmese migrant workers is conservatively estimated to be \$500-\$1,000 per worker. Those who work in the formal sector typically pay \$530-\$825 in fees *prior* to deployment.

⁴⁰ Barron, Laignee and Nyan Lynn Aung, *Myanmar Times*, “For migrants, the legal route brings few benefits,” December 23, 2015, www.mmtimes.com/index.php/national-news/nay-pyi-taw/18264-for-migrants-the-legal-route-brings-few-benefits-report.html.

only pay back the broker fee but now they're being told they must pay for food and shelter as they work 22-hour days. The debt becomes bottomless."⁴¹

The Thai Nationality Verification Process (NVP), touted as an effective response to the risks associated with irregular migration, has been instead costly, complicated, lengthy, and exclusionary. Reports suggest the NVP's complicated 13-step procedure is plagued with corruption and costs migrant workers 2-4 times what they should pay under the program.⁴² The deadline for completing the verification process, originally set for March 2015, has been delayed twice, first to June 2015, and now to [March] 2016.⁴³ U Tun Tun Lwin, a member of the Thai-based Migrant Workers Rights Network, has raised doubts about how effective the scheme will be in protecting the vast majority of Burmese migrant workers. Lwin remarked, "From my perspective this scheme will only help the few pink-card holders who have their household registration and national IDs with them. But what about the other pink-card holders who don't have all the right cards, or the undocumented workers?"⁴⁴ Of the estimated 2 to 3 million Burmese migrant workers in Thailand, only a portion of the approximately 660,000 who hold temporary Thai residency cards, or "pink cards," will be eligible for passports.⁴⁵

The Thai Government began issuing "pink cards" in May 2014, but the program has stopped and started several times, with multiple rules changes for migrant worker applicants. As a result, migrant workers report that they have little confidence in the process and human rights organizations have said that rather than help the migrant workforce, the registration system has, "instead enabled officials and brokers to profit by extorting money from the vulnerable workforce."⁴⁶ Many Burmese migrant workers, like those who live in Burma, lack household registration documents. Some, particularly ethnic minorities and those who fled conflict zones, also lack valid national IDs.⁴⁷ Others hold mismatched documents that contain incongruous names and addresses that were incorrectly listed by employers or brokers.⁴⁸ These are all practical barriers to nationality verification and obtaining a passport that Thai authorities have yet to address. Nationality verification has also become a contentious political issue that

⁴¹ *National Public Radio*, "Was Your Seafood Caught By Slaves? AP Uncovers Unsavory Trade," March 27, 2015 (updated: April 8, 2015), www.npr.org/sections/thesalt/2015/03/27/395589154/was-your-seafood-caught-by-slaves-ap-uncovers-unsavory-trade.

⁴² Verite, *Ibid.*; The NVP should cost migrant workers around THB 5,000 (\$140) but actually costs them in the range of THB 10,000-20,000 (\$280-\$560).

⁴³ Aung, Nyan Lynn, *Myanmar Times*, "Verification program begins but most migrants frozen out," July 23, 2015, www.mmtimes.com/index.php/national-news/15625-verification-program-begins-but-most-migrants-frozen-out.html.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Aung, Nyan Lynn, *Myanmar Times*, "Government targets restart of migrant registration," November 24, 2015, www.mmtimes.com/index.php/national-news/17786-government-targets-restart-of-migrant-registration.html.

⁴⁷ Aung, Nyan Lynn, *Myanmar Times*, "Verification program begins but most migrants frozen out," July 23, 2015, www.mmtimes.com/index.php/national-news/15625-verification-program-begins-but-most-migrants-frozen-out.html.

⁴⁸ *Ibid.*

ultimately caused Thailand to suspend negotiations of a new MOU with the Burmese government.⁴⁹ As long as those talks remain suspended, migrant workers are in limbo and unable to renew documents that expire.

Migrant workers are also made more vulnerable to the process to obtain a work permit, which binds the worker to that employer. A worker can only apply to transfer to a new job if he can prove the employer has gone bankrupt, has violated the worker's rights according to the labor law, or the employer agrees to terminate the worker and sign a transfer form allowing him to go to another employer. In practice, proving any of these to the Ministry of Labor is not feasible for most migrant workers, and they must convince the employer to complete the work transfer form to keep their legal status. Often, workers are charged a bribe for this form. If the employer initiates the termination, a worker has only seven days to find a new employer before their status lapses and they have to complete the entire registration process all over again. Faced with the possibility of arrest and deportation, workers often find themselves unable to leave an employer, even in the face of severe abuse, a legal gap that enables forced labor in migrant-dominated industries. Under intense pressure to improve its seafood sector, the Thai Government has allowed workers in that industry to change employers. While this demonstrates such a change is possible, migrant workers in the seafood industry are only permitted to find new employers within the fisheries or seafood processing sectors. The Thai Government has refused to extend even that limited right to change employers to migrant workers in other sectors, many of whom are also prone to forced labor.

B. Recommendations to the Thai Government on improving labor recruitment practices for migrant workers

- Ratify ILO Private Employment Agencies Convention, 1997 (No. 181) and amend the Recruitment and Job-Seekers Protection Act, B.E. 2528 (1985) to bring it into compliance.
- Prohibit the practice of requiring workers to cover the costs of their employment, including the payment of fees for their recruitment and to obtain documents, and require employers to reimburse migrant workers for any fees paid up front associated with registration.
- Allow migrant workers to independently register themselves for work permits and find employment, and expand the right of migrant workers to change employers to include sectors other than fisheries and seafood processing.
- Eliminate the requirement for workers to return to their country of origin, and allow these workers to re-register at their local labor center in Thailand.
- Develop rights-based alternatives to the current requirements for obtaining passports and certificates of identification through the Thai Nationality Verification Process.

⁴⁹ Aung, Nyan Lynn, *Myanmar Times*, "Thailand urged to resume CI process," January 8, 2016, www.mmtimes.com/index.php/national-news/yangon/18382-thailand-urged-to-resume-ci-process.html.

- Introduce enhanced penalties for corrupt officials who charge migrant workers illegal fees for processing or expediting their applications for permanent Thai residency documents.

V. Use of criminal defamation and computer crime laws against researchers, journalists, and government whistleblowers

- A. Ongoing legal cases against people who documented and published instances of human trafficking continued to create a chilling effect in 2015 that hindered the ability of victims to speak out.

The 2015 TIP Report recommended the Thai Government cease prosecuting criminal defamation cases against researchers or journalists. Thailand has made no progress and actually regressed on this issue. It has not only continued to prosecute both researchers and journalists under its criminal defamation law and Computer Crimes Act, it has also begun exploring a potential criminal defamation case against a senior government whistleblower.

The first criminal defamation case against Andy Hall, initiated by Natural Fruit Company and the Thai Attorney General in 2013, was dismissed by Prakanong Court on October 29, 2014, due to unlawful investigation and prosecution. The Thai Attorney General and Natural Fruit appealed that decision, but the Appeals Court rejected their appeal on September 18, 2015. The Thai Attorney General has refused to let the process end and has since decided to appeal the case to the Thai Supreme Court.⁵⁰

The second criminal case against Hall is now proceeding through the Thai justice system. Hall was indicted in December 2015 on criminal defamation and computer crimes charges relating to the 2013 Finnwatch report, “Cheap Has a High Price,” and his trial is set to begin in May 2016.⁵¹

The criminal cases against Hall follow on the heels of another high-profile case in which Alan Morison, the Australian editor of the media outlet Phuketwan, and Thai journalist Chutima Sidasathian were charged with criminal defamation and computer crimes based on their reproduction of a paragraph from a Reuters report on alleged official complicity in the mass trafficking of Rohingyas.⁵² After a year-long case brought by the Thai Navy, the two journalists were finally acquitted in September 2015. The Phuket Provincial Court ruled that the Computer

⁵⁰ Information on the status and chronology of the case against Andy Hall is available on his blog:

<https://andyjhall.wordpress.com/>

⁵¹ Larsson, Naomi, the *Guardian*, “Human rights in Thailand: Andy Hall’s legal battle to defend migrant workers,” January 22, 2016, www.theguardian.com/global-development-professionals-network/2016/jan/22/human-rights-thailand-andy-hall-legal-battle-migrant-workers.

⁵² Hodal, Kate, the *Guardian*, “Australian journalist faces jail after refugee report angers Thai navy,” March 10, 2014, www.theguardian.com/world/2014/mar/10/australian-journalist-facing-jail-thailand.

Crimes Act with which they were charged should be used against hackers and cybercrime – *not journalists*.⁵³

The latest sign that the Thai Government is not committed to establishing an environment conducive to combatting trafficking is its consideration of criminal defamation charges against the government whistleblower, Police Major General Paween. Rather than opening a transparent investigation into the veracity of Police Major General Paween's claims, Thai officials have publicly stated that they are considering pressing charges against him.⁵⁴

International observers warn that the cases against Morison, Sidasathian, and Hall have had a chilling effect on both foreigners and Thais reporting on human trafficking and doing research on supply chains in Thailand.⁵⁵ The recent threat issued by the Thai Government against one of their most senior anti-trafficking investigators is another signal to potential whistleblowers in government that they will face serious repercussions if they reveal the true extent of official complicity in human trafficking.

The continued use of criminal defamation and computer crime laws to silence those who expose human trafficking networks and official complicity is in direct opposition to the recommendations of the Department of State. Permitting such repressive practices to continue without serious consequences will undermine the international pressure that has compelled Thailand to begin adopting policies and practices that protect migrant workers against trafficking.

B. Recommendations to the Thai Government on establishing an environment conducive to robust civil society and governmental participation in all facets of combating human trafficking

- Ensure protection of human rights defenders including researchers, advocates, and journalists, in accordance with the UN Declaration on Human Rights Defenders.
- Cease prosecuting criminal defamation and computer crimes cases against researchers, journalists, government whistleblowers, and all others who report on human trafficking or official complicity.
- De-criminalize defamation and amend the Computer Crimes Act so its object, purpose, and scope is explicitly limited to hackers and cybercrime.

⁵³ Holmes, Oliver, the *Guardian*, "Australian and Thai journalists found not guilty of defaming Thai navy," August 31, 2015, www.theguardian.com/world/2015/sep/01/australian-and-thai-journalists-found-not-guilty-of-defaming-thai-navy.

⁵⁴ Holmes, Oliver, the *Guardian*, "Thailand considers defamation case against human trafficking investigator," December 11, 2015, www.theguardian.com/world/2015/dec/11/thailand-considers-defamation-case-against-human-trafficking-investigator.

⁵⁵ Larsson, Naomi, the *Guardian*, "Human rights in Thailand: Andy Hall's legal battle to defend migrant workers," January 22, 2016, www.theguardian.com/global-development-professionals-network/2016/jan/22/human-rights-thailand-andy-hall-legal-battle-migrant-workers.

- Adopt and enforce stronger laws, policies, and practices to protect government whistleblowers from retaliation.

VII. Conclusion

Thailand does not currently comply with the minimum standards of the Trafficking Victims Protection Act (TVPA) and did not make significant efforts to do so from March 2015 to present. The Government does have a written plan that would make some effort toward addressing human trafficking, but it cannot be considered significant because it does not address the root causes of trafficking problems among its most vulnerable communities.

The Thai Government has not progressed on several key recommendations made last year and it has actually regressed on many of the fundamental issues the Department of State pointed to in justifying its Tier 3 ranking of Thailand. While it has taken some notable actions to fight trafficking in persons, its omissions impede serious progress on this growing threat to human security in the region. These omissions include *not* eradicating governmental corruption and holding all public officials complicit in trafficking legally accountable; *not* permitting migrant workers to form and lead their own trade unions; *not* effectively regulating labor brokers and private employment agencies; and *not* establishing an environment conducive to robust civil society and governmental participation in combatting trafficking.

While all of these issues are crucially important to the fight against trafficking, the one that has the potential to completely undermine any positive progress Thailand may make is governmental corruption and impunity for public officials involved in severe forms of trafficking. The revelations of Police Major General Paween and harassment of witnesses must be taken seriously if the international community, civil society, and most importantly, the victims, are to maintain hope in the reforms promised by the Thai Government.

On the basis of this evidence, we strongly urge the US Department of State to keep Thailand in Tier 3 until it has truly demonstrated significant progress on the issues highlighted above.

Annex A

I. Royal Ordinance on Fisheries B.E. 2558 (2015)

The Royal Ordinance on Fisheries B.E. 2558 came into force on November 14, 2015. While the new law is a sign of some progress, it remains to be seen whether the Thai authorities will strictly enforce it. That uncertainty, the following gaps and weaknesses in the law, and the government's failure to address root causes suggest these recent changes may have minimal effect on eliminating trafficking in the Thai seafood industry.

A. The Ordinance does not have sufficient penalties for illegally employing migrant workers.

Under the Ordinance, “any owner of a fishing vessel who employs the labor of a workers without a valid work permit is now liable to a fine of up to 800,000 THB (22,437 USD) per worker.” Although the new law does increase the penalty for illegally employing migrant workers, the enhanced penalty is actually less than the penalty imposed for illegal fishing.

B. The Ordinance does not have sufficient penalties to effectively deter abuse and exploitation of migrant workers by small factory operators.

Under the Ordinance, only factories employing more than 5 migrant workers are subject to permanent closure and revocation of their license if found to be illegally employing workers. For factories employing 5 or less migrant workers, the Director-General of the Fisheries Department has the power to order the suspension of the factory for a period of ten to thirty days. The application and severity of this penalty is discretionary and small factory operators may not be punished under the law even if they violate it.

C. The Ordinance does not provide sufficient protections for forced, trafficked, or bonded laborers.

The Ordinance states that all port in, port out inspections must include checks of workers documents. The Ordinance, however, does not require screening for forced, trafficked, and bonded labor. Furthermore, it is unclear what verification of compliance with the Labor Protection Law entails. It is also unclear if observers on board Thai fishing vessels operating outside Thai waters will have the power to inspect and punish vessel operators who violate labor laws.

II. Measures to integrate labor inspections into fishing inspections

The Thai Government organized two training workshops in December 2015 and plans to have two more in 2016. It is too early to tell if these recent trainings will be operationalized effectively and lead to an actual reduction in trafficking of migrant workers in the Thai seafood industry.