

Comments Concerning the Ranking of Thailand by the United States Department of State in the 2018 Trafficking in Persons Report

**Submitted by: International Labor Right Forum
on behalf of the Thai Seafood Working Group**

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Introduction

Thailand has been on the Tier 2 Watchlist in the U.S. Department of State's annual Trafficking in Persons (TIP) Report since 2016. Media reports of ongoing problems with human trafficking in Thailand, particularly in the seafood sector, and international pressure from governments and civil society have resulted in numerous legal reforms in Thailand since 2014. Some of the regulatory reforms in this period are significant, but effective implementation has been largely lacking, meaning that actual impact has been far less than claimed by the Royal Thai Government (RTG). After consulting closely with our members, many of whom are directly involved in front-line work on human trafficking in Thailand, the Working Group found that legal reforms have unfortunately not led to significant changes in trafficking patterns in Thailand. This is due to several challenges, including, "complicity amongst some government workers, which prevents an effective and transparent response; a lack of sufficient cooperation and coordination between local Thai law enforcement authorities and Thai prosecutors; and a lack of proactive investigations and meaningful prosecutions for trafficking crimes in Thailand, which leads traffickers to assess there is little risk of being caught or facing consequences for their crimes."¹

In the fishing sector, which has been a focus of U.S. anti-trafficking efforts over the years, Human Right Watch found that, "these reforms have focused primarily on establishing control over fishing operations and tackling IUU fishing. Yet they have had little effect on human rights abuses that workers face at the hand of ship owners, senior crew, brokers, and police officers. Meanwhile, the impact of stronger regulatory controls on improving conditions of work at sea has been limited as a result of poor implementation and enforcement." In addition, discriminatory laws, a complex and expensive registration process and lack of access to justice continue to leave migrant workers vulnerable to exploitation. Though it is now illegal under Thai law, many employers still confiscate migrant workers' passports and work permits and migrant workers who complain have faced retaliation from police, officials and employers.²

These conditions were also documented in an International Labour Organization (ILO) report produced in response to a representation by the International Trade Union Confederation (ITUC) and International Transport Workers' Federation (ITF) to the International Labour Office alleging

¹ International Justice Mission, "Labor Trafficking in the Thai Fishing Industry: Prevalence and the Criminal Justice System Response Summary Report," pg. 11, October 2017.

² Human Rights Watch Press statement, Thailand: Migrant Worker Law Triggers Regional Exodus," July 7, 2017, www.hrw.org/news/2017/07/07/thailand-migrant-worker-law-triggers-regional-exodus

that Thailand is not observing the Forced Labor Convention, 1930 (No. 29). The Committee appointed by the ILO Governing Body (ILO Committee) noted in its report the allegation that, “There are still significant gaps in law and practice that expose fishers to forced labor and trafficking. Of particular concern for the complainant organizations is the poor regulation of recruitment that facilitates the exaction of forced labor by making it impossible for fishers to leave abusive employment relationships.”³ The Committee goes on to observe that, “the non-payment and/or withholding of wages is prohibited and compulsory records of employment and documents concerning payment of wages should be kept, the complainant organizations state that such practices as well as unauthorized deductions are a common practice in the fishing sector.”

While the bulk of international attention has focused on the seafood sector, migrant workers across Thailand’s export-driven economy are made vulnerable by many of the same factors. The ILO found in a 2017 survey that nearly 60 percent of migrant workers passaging into Thailand experienced labor exploitation.⁴ In all sectors studied (domestic work, fisheries, agriculture, manufacturing, construction and hospitality/food services), more than 50 percent of workers reported labor exploitation. The most common exploitation experienced by migrant workers in the sample are identified indicators of forced labor and clearly fall within the “means” element of the definition of human trafficking as outlined in the Palermo Protocol: confiscation of identification documents (21 percent), wages being withheld (17 percent), and restricted movement (17 percent).

Thailand’s military government claims that combatting human trafficking is a top government priority, but it has failed to put in place accountability measures to reign in corruption or empower migrant workers to seek legal remedies against abusive employers, which are necessary to counter the profit motive for ongoing human trafficking. Thailand remains dependent on an inexpensive workforce to fuel its booming export economy and continues to enjoy significant economic benefit from the current system. **Based on the evidence included in these comments, and given that the fundamental vulnerability of migrant workers is unchanged, we believe Thailand has not made sufficient efforts to combat severe forms of trafficking in persons to warrant an upgrade in its current ranking in the Trafficking in Persons Report. We urge the State Department to maintain Thailand at the Tier 2 Watchlist in the upcoming Report.**

³ International Labour Organization Governing Body, Report of the Director General, “Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF),” 329th Session, Geneva, March 9–24, 2017, pg. 11, www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf.

⁴ Benjamin Harkins, Daniel Lindgren, and Tarinee Suravoranon, “Risks and Rewards: Outcomes of Labor Migration in South-East Asia,” International Labour Organization and International Organization for Migration, pg. 55, www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_613815.pdf

1. Prevention

Efforts to prevent human trafficking in Thailand are severely hampered by laws, policies, and practices that have exacerbated migrant workers' risk of exploitation and failed to address systemic issues. As explained in a recent Human Rights Watch Report:

Thailand's policy approach to managing labor migration has increased the vulnerability of migrants to trafficking and exploitation. Policymakers have failed to see migrants as active decision-makers or migration as a long-term, self-sustaining social process upon which both Thailand and its neighboring countries have become structurally dependent. This has led to policies that have had the opposite effect to that which policymakers intended. Since migrant workers from Burma, Laos, and Cambodia were first regularized in Thailand in 1996, successive Thai governments' crackdowns on irregular migration have increased risks and costs to migrants, rather than decreasing migration and permanent settlement as intended by policymakers.⁵

Thai immigration policies have continuously failed to acknowledge chronic labor shortages and the high demand for cheap labor in Thailand's export-oriented economy, or to create a just system to facilitate safe migration that meets that demand. **The absence of affordable and accessible legal channels pushes migrants toward riskier arrangements to travel into and across Thailand to seek work and, in some cases, places them into the hands of brokers involved in trafficking networks.**

A. Thailand's immigration policies increase risk of labor trafficking

Thailand has established memorandums of understanding (MOUs) to formalize recruitment channels with neighboring countries that send migrant workers – including Myanmar, Laos, Cambodia and Vietnam. Migrants who have entered the country outside of the formal MOU process can also obtain temporary passports and undergo a national verification process to achieve regularized status. Both systems are so complicated that migrants typically need recruiters and/or brokers to help them understand the system to seek legal migrant status. Costs for the MOU process average \$560-\$620 for migrants from Cambodia; \$470-\$650 from Laos; and \$650-\$1,100 from Myanmar.⁶ A 2017 survey by the ILO and International Organization for Migration (IOM) found that formal channels were twice as expensive and took three times longer than informal channels.⁷ The restrictions on changing employers are also more stringent for workers who come through the formal MOU process.

⁵ Human Rights Watch, "Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry," January 2018, p. 19, www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry

⁶ Mauro Testaverde, Harry Moroz, Claire Hollweg, and Achim Schmillen, *Migrating to Opportunity: Overcoming Barriers to Labor Mobility in Southeast Asia*, World Bank Publications, October 2, 2017.

⁷ Harkins, et al., "Risks and Rewards:," pg. 36

Formal channels also do not guarantee safe migration: 25 percent of those who immigrated through formal channels reported problems that put them at risk. Twice as many migrants immigrating through informal channels reported such problems, indicating that improving the ease and security of formal migration channels can substantially reduce the risk of labor trafficking. Some manpower agencies in Laos have been reported to force workers going through the MOU process to pay a security deposit to defray costs for the agency in the case that worker runs away from their employer in Thailand. The rationale behind this practice is that some Thai employers require the Lao manpower agency to provide them with a replacement worker for free, or face losing the contract to supply worker in the future.

Today, the majority of employers and workers in the Thai fishing industry prefer to avoid the cost and bureaucratic restrictions of the national verification process by obtaining a “pink card” instead.⁸ In 2015, a cabinet resolution established One Stop Service (OSS) centers and the pink card registration system for migrant workers that allow them to work in the fishing industry for a defined period of time. While increasing the number of migrant fishers with legal registration, the pink card system requires migrant workers to receive permission from employers to travel outside of the province in which they registered (opening up another avenue for potential extortion by government officials), and does not protect migrant workers from the exploitative debt associated with migration into Thailand. The Human Rights Watch report found that the actual cost of a pink card should have been about \$94, but most workers interviewed paid \$15-\$30 more than that to employers or brokers to obtain the document.⁹ Interviews also revealed that few employers or brokers were willing to report passing pink card registration costs onto workers, but that the vast majority of workers reported paying those costs through wage deductions. The report also revealed that pink cards now effectively prevent fishermen from changing employers because their current employer must sign to permit the change, and boat captains and vessel owners are usually unwilling to do so.

The pink card process also has been shown to be ineffective at identifying workers in trafficking situations:

Migrant fishers reported being taken to OSS centers by employers, pier managers, skippers, brokers, relatives of brokers, associates of brokers, enforcers and people they did not know. Several vessel owners said they used brokers to register migrant workers. One senior provincial [Department of Employment] DOE official estimated brokers oversaw 60 percent of pink card applications for fishers in her province...Ko Ko Aung, a Burmese trafficking survivor, was taken to the OSS center in Phuket by the brother of his Thai broker...That night, after the broker had confined Ko Ko Aung and his companions to a locked room, a former Burmese police officer among them

⁸ Human Rights Watch, “Hidden Chains,” t pg. 36-38

⁹ Ibid., pg. 38-39

told them they must seize any opportunity to escape. On the second day at the OSS center, the broker gave each of them 3,080 baht (\$94) to pay for the application and pick up their pink cards. As soon as the person supervising them became inattentive, the former police officer fled the OSS center, taking the money with him. The officials did not appear to notice, and the broker's representative took the rest of the men back to the locked room. At no point during the pink card process did a Thai government official speak to Ko Ko Aung or his companions.¹⁰

In the garment sector, employers are also bypassing the MOU and nationality verification channels, favoring instead temporary work permits that creates a constant churn of vulnerable migrant workers:

In May 2015, the National Council for Peace and Order (NCPO) declared Mae Sot and a number of other border areas as Special Economic Zones (SEZs). Section 14 of the Working of Alien Act B.E. 2551 (2008), provides short-term, seasonal work permits which allow migrants to cross the border for work for short periods (90 day periods with 30 day check-ins). This is supposed to create a situation where migrants are allowed to come into the country more easily for work, but are limited to the geographic area of the border and on a short-term basis. In effect, this allows employers to terminate employees without providing severance pay or having to provide any other social benefits... Section 14 (retitled Section 64 in 2017) has undermined the other migrant policies. Anecdotally it has been reported that employers in the area, especially in garment factories, refuse to hire migrants under the new nationality verification program and insist on only accepting those with short-term registration under Section 64.¹¹

Thai government efforts in 2017 did not reduce risks of labor migration, and in fact dramatic changes proposed increased uncertainty of migrants already in Thailand, putting them at even greater risk. The NCPO used emergency powers to promulgate a Royal Decree on the Management of Foreign Workers, which was made public on June 23, 2017. The NCPO-controlled National Legislative Assembly later formally approved the draft and made it a law. The Royal Decree in essence merged two existing laws – the Working of Aliens Act B.E. 2551 (2008) and the Royal Decree on the Placement of Aliens for Work with Employers in Thailand B.E. 2559 (2016). It imposed harsh penalties both for migrants working illegally (up to five years imprisonment and/or fines between 2,000 and 100,000 baht (\$61 to \$3,050) for working without a permit or in a sector outside the list of migrant-approved work, and fines of up to 100,000 baht (\$3,050) for working in employment other than listed on work permit) and for employers who hire workers illegally (fines

¹⁰ Ibid., pg. 41

¹¹ MAP Foundation presentation to the Thai Seafood Working Group, February 2, 2018, notes available from the International Labor Rights Forum upon request.

between 400,000 and 800,000 baht (\$12,203 and \$24,406) for hiring a worker without a permit or for a job/employer not permitted by the work permit).¹²

In response to the release of the law, tens of thousands of migrant workers, many of them undocumented, fled Thailand, attempting to return home because they feared arrest and prison sentences and large fines if they were caught in Thailand.¹³ Almost immediately, civil society groups working with migrants began receiving reports that some Thai officials, as well as officials and armed groups in neighboring countries, were extorting migrant workers attempting to flee to guarantee safe passage without arrest, with about \$100 being the average amount paid.¹⁴ The Prime Minister's office warned that police engaging in such extortion would be punished¹⁵, but to date we have received no information to indicate action was taken against any official for alleged extortion connected to the exodus. Other civil society groups documents that scared employers hurriedly dismissed scared workers, many of who did not receive due back-pay.¹⁶

In response to outcries by employers concerned about losing their migrant workforce or facing heavy penalties or possible prison terms, Prime Minister Prayut Chan-o-cha suspended implementation of four articles of the Royal Decree, which passed nearly unanimously in the military-controlled National Legislative Assembly on July 6, 2017. An inter-agency process is currently underway, with consultations of U.N. agencies, diplomats and civil society organizations, to revise portions of the law before a June 30, 2018, deadline. In addition to reducing punitive measures, including eliminating any provision that provides for criminalization and imprisonment of a migrant solely because of their undocumented status, civil society organizations are seeking to improve gaps in current Thai law that make migrant workers vulnerable. Those gaps include:^{17,18}

- The complexity and expense of registering migrant workers under the MOU process and the nationality verification process, which encourage irregular migration, leave workers dependent on brokers, and increase incidence of debt bondage. In addition, provisions should be made for ethnic minorities who may be stateless or in conflict with the central government of their country of origin — including Rohingya refugees and other ethnic

¹² Department of Employment flier, "Draft Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. ..., " distributed July 2017.

¹³ Assawin Pinitwong, "Exodus of Myanmar migrant workers continues," *Bangkok Post*, July 2, 2017, www.bangkokpost.com/archive/exodus-of-myanmar-migrant-workers-continues/1279626

¹⁴ Statement from the Migrant Workers Rights Network, "Mass migrant worker movements underway from Thailand as alleged extortion also endemic for worker safe return/passage," June 30, 2017.

¹⁵ *Bangkok Biz News*, "Senior Thai police issue orders forbidding officials extorting fleeing migrants but too late as corruption spreads," July 2, 2017, www.bangkokbiznews.com/news/detail/762538

¹⁶ MAP Foundation, "A Dream Out of Reach: A Living Wage for Women Migrant Workers in Thailand," February 23, 2018, pg. 6.

¹⁷ Open letter from the Migrant Working Group, "Observations and Recommendations Regarding the Draft Royal Decree on the Management of Foreign Workers," May 24, 2017.

¹⁸ Open letter from the Migrant Working Group, "Recommendations to the Thai Government Regarding the Review and Revision of the Royal Decree on Foreign Workers Management," August 24, 2017

minorities from Myanmar and the Lao Hmong refugees from Laos — to obtain status even though their country of origin is likely to refuse to verify their national identity;

- The absence of a process for registering dependents, which often forces even registered workers to bring their children and spouses unregistered. This gap increases corruption as workers attempt to bring family in with bribes, hinders the ability of migrant children to access education and increases the risk of hazardous child labor, including forced labor;
- Work permits that bind migrant workers to a single employer. This rigid system is problematic in that it makes it difficult for migrant workers to change employers, even in cases of abuse, and makes them vulnerable to employers bribing workers for the ability to change jobs. The requirement is particularly difficult for seasonal workers (such as agriculture and construction) and domestic workers, who all must frequently work multiple jobs, or change employers for certain parts of the year, to maintain a reasonable standard of living;
- An overly restrictive list of jobs permissible for migrant workers that excludes semi-skilled jobs such as teaching assistants or work in community-based organizations, as well as quotas on particular categories of employment not aligned with actual market demand, and thus likely to fuel corruption;
- Proposed restrictions on where migrant workers are permitted to live, currently contained in the Royal Decree on the Management of Foreign Workers passed in 2017.

B. Practices endemic to Thailand’s seafood sector increase trafficking risks

International attention on the seafood sector, especially the European Union (E.U.) “yellow card” designation, has prompted the Thai Government to adopt several sector-specific laws since 2014. While these legislative changes are important to address decades of lax oversight of Thailand’s fisheries, they have increased operational costs for vessel owners and exacerbated a long-standing labor shortage, which is now estimated to be at 74,000 workers.¹⁹ To date, these changes have failed to address the deficiencies in the Thai labor market outlined above, and according to the 2017 ILO Committee report, Thailand “fails to implement and enforce the legal framework that currently does exist in order to ensure that the system of employment of fishers does not place the workers concerned in a situation of increased vulnerability which might lead to forced labour practices.”²⁰

Abusive conditions, including human trafficking and practices indicative of forced labor, are still common within Thailand’s fishing industry. A prevalence study released in 2017 by the International Justice Mission (IJM) and Issara Institute found that the vast majority of fishers were either clearly identifiable victims of trafficking, or had experiences that put them in a category of

¹⁹ Human Rights Watch, “Hidden Chains,” pg. 27.

²⁰ International Labour Organization Governing Body, “Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29),” pg. 2.,”.

suspected trafficking victims.²¹ The report developed prevalence estimates for many disturbing practices that migrant workers have anecdotally reported were common for some time, and which have been confirmed in other research reports. These include:

- Debt bondage: The need to rely on labor brokers to navigate both formal and informal recruitment channels, as described above, leads to high rates of debt bondage. The report found that 76 percent of respondents entered employment in debt to an employer, broker or someone acting on behalf of one of these actors. Alarming, 53 percent of respondents did not know how much debt they had accrued or for what they had been charged.²²
- Restricted freedom of movement: The IJM report found several instances of workers being confined upon return to port to ensure they could not escape, and of local police colluding with vessel owners to watch fishers and fine them if they stray too far. Even without these extreme measures, Thai law enables employers to prevent migrant workers from leaving. To change employers, migrant workers must receive written permission from their current employer. With the labor shortage, this permission can be difficult or impossible to obtain, and makes workers vulnerable to being forced to pay bribes to boat owners or captains in order to obtain permission to change employers and leave the vessel. Interviews conducted by Human Rights Watch found workers asked to pay from \$92 to \$610 to change employers, and others whose employers withheld months or years of wages that workers would have to forfeit in order to leave.²³ The IJM report found that more than 30 percent of respondents reported being unable to leave a job they disliked because they were unable to obtain permission to change employers.²⁴ Fishermen who leave an employer without permission effectively forfeit their ‘pink card’ that extends legal permission to work, and must re-apply for a new card, at considerable expense.
- Document confiscation: This practice, a recognized indicator of forced labor that restricts workers’ ability to leave employment, is widespread in the seafood sector and leaves workers vulnerable to arrest if they leave port. Though nearly 80 percent of respondents in the IJM survey were registered, only 11 percent had access to their registration documents.²⁵ Again, these findings are confirmed by the Human Rights Watch report, which found that many employers gave their fishers laminated copies of registration documents.²⁶ There was a perception among fishers and employers that this practice was explicitly to prevent workers from leaving. A fisher interviewed recounted how when he asked his employer for his registration card, he was told no because the employer did not trust him and thought he would disappear with the document and not return. Vessel owners and boat captains told Human Rights Watch that a benefit of the new “pink card”

²¹ International Justice Mission, “Labor Trafficking in the Thai Fishing Industry,” pg. 3-4.

²² Ibid.

²³ Human Rights Watch, “Hidden Chains,” pg. 47-48.

²⁴ International Justice Mission, “Labor Trafficking in the Thai Fishing Industry” pg. 3-4.

²⁵ Ibid.

²⁶ Human Rights Watch, “Hidden Chains,” pg. 43-46

registration system was that workers would not be able to “run away” anymore. While the new Royal Decree on the Management of Foreign Workers makes it illegal to seize a migrant worker’s identification documents, to date it has not been effectively implemented in Thailand’s fishing fleets.

- Excessive working hours: The Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014), requires employers to provide crew a rest period of not less than 10 hours in a 24-hour period, and not less than 77 hours in any 7-day period, and provide fishers with 30 days paid annual leave and 30 days paid sick leave per year. However, as the ILO has documented, “In practice, there is little or no enforcement by officials of hours of work, rest, annual leave and paid sick leave for fishers.”²⁷ In IJM’s sample more than 90 percent of respondents reported that they had to work seven days a week, and nearly 75 percent were forced to work 16 hours or more per day.²⁸ “Many fishers are working hours that challenge human endurance in exchange for the legal minimum wage, or less,” according to the Human Rights Watch report, which recounted the stories of many fishers who are at sea all day and throughout the night, then made to unload fish in the morning before they are able to rest.²⁹
- Physical and psychological abuse: The IJM report found that about 36 percent of workers in its random sample had experienced or witnessed physical abuse on the job.³⁰ This remains a very serious issue, with six percent of those workers witnessing the murder of a crewmate at sea and another 14 percent hearing specific stories of murder occurring on their vessels. Human Rights Watch’s interviews with dozens of trafficking survivors indicated that violence onboard fishing vessels was extreme, systematic and sometimes conducted with the tacit knowledge, or even assistance, of local police.³¹ The Thai government did not provide evidence of its efforts to address allegations of violence against seafarers when explicitly asked to do so during an investigation by the ILO Governing Body,³² and without effective legal recourse, migrant workers are seemingly still vulnerable to violence with impunity from brokers, skippers, boatswains and others.
- Withholding of wages: According to Thai law and regulations, employers are obliged to pay fishers in full no less than one time per month. Employers who willfully fail to pay wages to fishers are legally obligated to settle outstanding payments in addition to a penalty interest rate calculated at 15% of the outstanding monies and accruing every seven-day period. In practice, withheld wages and unauthorized deductions are a common practice in

²⁷ International Labour Organization, “Gap analysis of the Work in Fishing Convention, 2007 (No. 188), and Thai national laws, regulations and other measures concerning conditions of work on board fishing vessels,” March 13, 2017, pg. 27, www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_557738.pdf

²⁸ International Justice Mission, “Labor Trafficking in the Thai Fishing Industry,” pg. 3-4.

²⁹ Human Rights Watch, “Hidden Chains,” pg. 53.

³⁰ International Justice Mission, “Labor Trafficking in the Thai Fishing Industry,” pg. 3-4.

³¹ HRW report, pg. 83-87

³² International Labour Organization Governing Body, “Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29),” pg. 14.

the fishing sector.³³ According to the Human Rights Watch report, “Illegal payment systems that withhold fishers’ earnings are frequently used to impose control over fishers and keep them working. Fishers reported having some or all of their earnings withheld by employers, both until and after contract termination, and asserted employers used this practice to force them to continue working under abusive conditions.” According to the report, it is common for employers to pay workers in one lump sum every six months, for example, and in the interim provide loans for purchasing supplies, or sell them directly to workers at a dramatic markup. Very few workers whom Human Rights Watch researchers interviewed were able to keep track of the complicated web of partial wage advancements, lump sums promised, expenses and debts between themselves and their employer and/or brokers, who create these complexities to increase profits and reduce labor costs.

- Low wages: A 2014 Ministerial Regulation mandates that fishers receive at least the minimum wage of 9,000 baht (\$257) per month. Within the IJM sample, however, the average wage was 5,957 baht (\$170), and about half reported receiving wages less than what they had agreed to when they began working, an identified indicator of human trafficking (deception).³⁴
- Dangerous and degrading conditions: Work on fishing vessels is inherently dangerous, with slippery decks, poor visibility, exposure to the elements, regular use of dangerous machinery and risk of falling overboard. In addition, many Thai flagged vessels are older and small, lacking accommodations like toilets, and often forcing crew to sleep in proximity to the boiler room. The Ministerial Regulation concerning Safety, Health and Welfare System for Seamen, enacted in 2016, attempted to provide protections for fishers, mandating adequate supplies of clean water, fresh food and medical supplies. The reality documented by Human Rights Watch and others is that this regulation continues to hardly be implemented on many of the boats in the Thai fishing fleet. A gap analysis by the ILO also noted a number of deficiencies.³⁵ The regulation applies only to vessels 30 gross tons or larger and there are no guidelines for what quantity of medicine, food and water are sufficient for vessels given days at sea, number of crew, etc. In practice, Human Rights Watch found frequent fatal and non-fatal injuries, spotty access to medical care and diseases associated with malnutrition and over work such as beri-beri disease to be a threat for workers on Thai vessels.³⁶ Issues like provision of toilets still are lacking on many boats. The Human Rights Watch report did find that employers usually pay for emergency medical treatment or funeral expenses when required for work related injuries, but fishers are also excluded from both the Social Security Act and Workmen’s Compensation Act, making it difficult to receive any compensation or aid afterward.

³³ Ibid.

³⁴ International Justice Mission, “Labor Trafficking in the Thai Fishing Industry,” pg. 3-4.

³⁵ International Labour Organization, “Gap analysis,” pg. 38-42.

³⁶ Human Rights Watch, “Hidden Chains,” pg. 71-75.

- Lack of contract protections: The Ministerial Regulation Concerning Labour Protection in Sea Fishery Work, B.E 2557 (2014), requires employers to prepare written contracts of employment for fishers, and provides a template that lists key rights of fishers in a dual-language format in Thai and five other languages to improve understanding among migrant fishers. This law is a positive achievement that, if implemented properly, could help protect workers from human trafficking. Unfortunately, it is simply not being effectively implemented since vast majority of fishermen are unaware that they ever signed a written contract; have not read the provisions in the contract; and have never been given a copy of the contract, as required by regulation. Human Rights Watch found that even though every industry representative interviewed reported all fishers had signed contracts, almost all the workers interviewed said they did not know about the contract provisions and/or had not received such a contract.³⁷ About a third recalled signing a dual-language document, but did not know what it was, and one worker reported knowing what the contract was, but being prohibited by his employer from reading it or retaining a copy. The contract often appears to be part of the DOE procedures to seek registration, and is presented as part of a large stack of registration documents that migrant workers sign but do not read. Inspectors ensure that vessel operators can present contracts for each worker, but not that workers themselves have copies, and government officials themselves admit shortcomings, “One senior [Department of Labour Protection and Welfare] official acknowledged that the de facto terms of employment in the fishing sector are likely not commensurate with those detailed in the contracts, and that the documents were, ‘a waste of paper,’ designed to meet regulatory requirements.”

C. Inability to form trade unions

The largest U.S. trade union confederation, American Federation of Labor & Congress of Industrial Organizations (AFL-CIO), has alleged that Thailand is not fulfilling its obligations as a member of the ILO to ensure fundamental labor rights are respected in a petition to the United States Trade Representative to remove trade privileges under the generalized system of preferences. According to a brief the AFL-CIO submitted in advance of a hearing on the matter:

Thailand’s labor laws do not afford internationally recognized worker rights, and the weak protections that do exist are not enforced. The law fails to guarantee the right to freedom of association and collective bargaining for about 75 percent of Thailand’s approximately 38.3 million workers. Thailand’s unionization rate, about 1.6 percent, is the lowest of any country in Southeast Asia, including Bangladesh, Cambodia, Indonesia, Malaysia, Pakistan and Sri Lanka. Employers

³⁷ Ibid., pg. 50-53

retaliate with impunity against workers who attempt to exercise their rights. Human trafficking and forced labor are widespread.³⁸

The situation is particularly bad for migrant workers, who cannot form or lead trade unions or engage in collective bargaining. Under the Labor Relations Act B.E. 2518 (1975) (LRA) only Thai nationals by birth may organize a union. The LRA allows migrant workers to join pre-existing unions led by Thai nationals by birth, but they cannot hold leadership positions, such as serving on union committees or offices. In practice, migrant workers are usually concentrated in industries that employ very few Thai nationals, such as commercial fishing, and therefore there are no unions to join. It is no coincidence that these industries are rife with abuses, and put workers at high risk of wage theft, dangerous working conditions, exploitation, extortion by police, and trafficking and forced labor.

The discriminatory provisions in the LRA that prohibit union organizing for particular categories of workers violate international human rights conventions to which Thailand is a party. Both the International Covenant on Civil and Political Rights (article 22(1))³⁹ and International Covenant on Economic, Social and Cultural Rights (article 8(1)(a))⁴⁰ clearly articulate the right to form and join trade unions of one's choice, without regard to "national or social origin." As a member of the ILO, Thailand is obliged to respect and promote the Fundamental Principles and Rights at Work, including freedom of association and the effective recognition of the right to collective bargaining, which it fails to do. Improving the rights of migrant workers and minimizing their risk of trafficking necessitates amending the LRA to allow migrant workers to form and lead their own unions and collectively bargain with employers.

Recommendations for improving prevention outcomes:

- Establish regular migration channels that are inexpensive, simple and efficient, reducing the cost to workers and employers and enabling workers to navigate the process without labor brokers. Relax requirements so migrant workers do not have to register with employers as their primary means of registration, or at the very least can register with multiple employers to reflect the reality of today's flexible labor market. Extend the duration of the period in which migrant workers can find new employment while also retaining legal status from the current 15 days to 90 days. Establish OSS centers to help facilitate these services at minimum cost.

³⁸ AFL-CIO, "Update to the Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462(D) of the Generalized System of Preferences (GSP)," submitted to the U.S. Trade Representative on September 12, 2017.

³⁹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 99 U.N.T.S. 171, entered into force March 23, 1976.

⁴⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976.

- Drop prohibitions on changing employers and/or requirements for workers obtain permission from their current employer to change employers in all forms of registration, including the MOU process. Develop effective complaint mechanisms to ensure migrant workers can change employers without obstruction or payment to employers, governments, or others.
- Ensure that recruitment is based on an “employer pays” principle and that migrant workers are not required to pay back the cost of recruitment and movement to Thailand, except for passport fees. Develop systems in which new employers can reimburse previous employers for work permit costs, based on time remaining, in the case of a worker who changes employers. Establish effective grievance mechanisms for workers made to pay recruitment costs.
- Ensure there are no legal restrictions on migrant workers’ rights to freedom of movement, including eliminating the requirement that migrants with pink cards must seek permission to travel outside of their province of registration and abandoning proposed measures within the Royal Ordinance on Foreign Workers Management B.E. 2559 (2016) that restrict where migrant workers can live.
- Ensure that all forms of work (including domestic work) is included under formal protections of the labor law, guaranteeing a minimum wage and proper overtime payment, proper working hours and rest days, regardless of the sector.
- Amend the Labour Relations Act, B.E. 2518 (1975) to 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 in line with international law.
- Ensure protection of human rights defenders including researchers, advocates, and journalists, in accordance with the U.N. Declaration on Human Rights Defenders.
- Ratify ILO conventions 87 (Freedom of Association), 98 (Collective Bargaining), 181 (Private Employment Agencies), 188 (Work in Fishing), 189 (Domestic Workers) and the Protocol of 2014 to the Forced Labor Convention, 1930. Bring Thai legislation and practices in line with these international labor standards.
- Ratify and implement the International Maritime Organization Cape Town Agreement on the Safety of Fishing Vessels.
- Ratify and implement the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- Amend the Labor Protection in Sea Fishery Work, B.E. 2557 (2014) to:
 - Ensure that exceptions to minimum rest hours are temporary, limited and done for only clearly specified reasons set out in the regulation, and that hours of rest are split into no more than two periods, one of which is at least six hours long.

- Require employers to provide an oral explanation of key terms of employment detailed within employment contracts. Ensure strict penalties against employers who do not provide workers with copies of signed employment contracts.
- Clearly state that wages must be paid directly to the fisher in full at least once per month, regardless of what other conditions of wage payment are negotiated.
- Require officers to orally explain protections afforded by the standard fishery worker contract and Thai law, with the assistance of government-employed interpreters, to migrant workers in the fisheries sector applying for or renewing documents at Department of Employment Offices. Make written materials on those protections widely available in migrant workers' languages at government offices and ports.
- Promote and support adoption of community-based monitoring systems and grievance mechanisms within all sectors that rely on migrant labor.
- Engage in ILO-facilitated dialogue with the Cambodian and Myanmar governments, Thai, Cambodian and Burmese trade unions and civil society organizations, and Thai, Cambodian, and Burmese employer associations and recruitment agencies, on ending the informal ban on recruitment and placement of Cambodian and Burmese migrant workers in the Thai commercial fishing industry.
- In addition to requiring vessels over 30 gross tons to install vessel monitoring systems (VMS), require installation of satellite-based communications that give crew the means to report trafficking situations and request assistance in real time. Enact strict laws prohibiting tampering with monitoring and communications systems, confiscation of electronic communication devices, and retaliation for reporting violations or requesting assistance.
- Prohibit unobserved transshipment of both seafood and labor at sea.

2. Protection

Trafficking victims in Thailand lack access to key protections, beginning with the difficulty of being accurately identified as a victim, and in interactions with Thai authorities at many levels. **Research and NGO analysis of cases completed in 2017 show that despite years of focus on this issue within the Thai government, many Thai officials continue to be either unaware of how to identify victims of human trafficking or prone toward profiting off of the corruption that continues to plague the lives of migrant workers in Thailand.** Drawn-out trial proceedings, distrust of authorities because of corruption and possible prosecution under the Immigration Act all serve as powerful disincentives for potential victims of human trafficking to report cases to authorities.⁴¹

⁴¹ John Quinley III, "Why Does Human Trafficking Persist in Thailand?", *IAPS Dialogue: The Online Magazine of the Institute of Asia & Pacific Studies*, January 11, 2018, <https://iapsdialogue.org/2018/01/11/thailands-anti-trafficking-framework-is-strong-so-why-does-the-crime-persist>.

A. Ineffective and Arbitrary Victim Identification

IJM conducted interviews with 72 stakeholders with direct knowledge of Thailand’s criminal justice system regarding its response to forced labor and human trafficking in the seafood sector. Among its conclusions, the report found that Thailand continues to rely heavily on NGOs to identify victims, rather than government inspectors, in part because of distrust and avoidance of the Thai government by migrant workers.⁴² A report from the U.N. Office on Drugs and Crime (UNODC) and Thailand Institute of Justice found that reliable data on how victims are identified in the course of official trafficking investigations does not exist, but that, “Interviews conducted for the purpose of this report similarly identified that it is more frequent for migrants to escape situations of exploitation themselves than for them to be rescued by Thai authorities or other individuals.”⁴³

Since 2014, journalists and NGOs have documented gross failures in labor inspections of fishing vessels, and research from Human Rights Watch released in 2017 confirms that problems remain: “Human Rights Watch interviews with officials revealed that assessments based on information from workers, when gathered at all, were limited to a small number of unstructured questions around recruitment, pay, welfare or working hours...[Department of Labour Protection and Welfare] DLPW officials conducting inspections tended to focus on overt or objective indicators of exploitation, such as evidence of physical abuse or forcible confinement, at the expense of identifying subtler forms of deception and coercion, such as withholding identity documents or wages.”⁴⁴

2014	2016
<i>Police inspector, head of subcommittee on trafficking in the fishing industry explaining method assessing forced labor on vessel</i>	<i>DLPW labor specialist, senior professional level, when asked how he assesses forced labor among fishing crew</i>
“From what we saw, there was no lock-up or detention room. We saw no signs of harm on their bodies or in their facial expressions. By looking into their faces and their eyes they didn’t look like they had been forced to work.” ⁴⁵	“We ask them to smile—and mostly people smile.” ⁴⁶

In the garment sector the Migrant Action Project reports the following based on research focused on garment factories along the Thai/Burma border in Mae Sot:

⁴² International Justice Mission, “Labor Trafficking in the Thai Fishing Industry,” pg. 11.

⁴³ United Nations Office on Drugs and Crime (UNODC) and the Thailand Institute of Justice (TIJ), “Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand,” August 2017, pg. 205.

⁴⁴ Human Rights Watch, “Hidden Chains,” p. 7

⁴⁵ Becky Palmstrom, “Forced to Fish: Slavery on Thailand’s Trawlers,” BBC News, January 23, 2014, www.bbc.com/news/magazine-25814718.

⁴⁶ Human Rights Watch, “Hidden Chains,” p. 113

It has been estimated that there are at least 60,000 workers in over 300 garment factories and upwards to 300,000 workers in all occupations in the Mae Sot area. There are only three known labour inspectors in Mae Sot area. On average, migrants work almost 11 hours a day in garment factories - only receive on average 170 THB per day, when the minimum wage is 300 THB. The lowest wage we have heard is 80 - 100 THB per day. The average is closer to 180. Overtime was paid at less than half the legal rate (which is additional 56 THB per hour). . . In cases where garment factories have suddenly closed without any prior notification, migrant workers commonly suffer wage theft and rarely receive severance pay. Many of the owners are from foreign countries with shell owners in Thailand who have no money to provide compensation. Cases include seizing assets to pay migrants, but take years to resolve in the courts and often do not result in sufficient compensation.⁴⁷

In a complaint to the ILO alleging Thailand is failing to meet its obligations under the Forced Labour Convention, 1930 (No. 29), the International Trade Union Confederation (ITUC) and ITF state that ineffective labor inspections and weak enforcement of existing law is the most significant issue in Thailand's failure to adequately address ongoing forced labor. The Thai government responded by highlighting the establishment in 2015 of the multidisciplinary inspection and a project with the ILO that had produced a standardized training curriculum for inspectors that by June 2016 had trained nearly 500 inspectors.⁴⁸ But the outcome of those inspections remains woefully weak given the size of the problem, with only 160 victims rescued since May 2015, when the EU issued its "yellow card" warning about seafood products.⁴⁹ The Human Rights Watch report showed that well-established deficiencies in labor inspections persisted into 2017. Researchers observing inspections found that workers were drilled in how to respond when inspectors are present, and that inspectors rarely engaged with workers directly and/or workers were too scared or unable to report conditions to inspectors. A lack of protections for those who raise concerns and fear of retaliation is also a significant problem. In some instances, workers mistakenly believed inspectors were police working with their employer to keep them on vessels and that as long as skippers have the proper paperwork and crew are identified as present, no further investigation is conducted. Moreover, there is still no consistency between inspectors at different ports as to identification of trafficking victims; a common screening tool has been available to the multidisciplinary screening teams since early 2016, but not a single inspector interviewed referenced it when asked how potential victims are screened for and identified.⁵⁰

⁴⁷ MAP Foundation presentation to the Thai Seafood Working Group, February 2, 2018, notes available from the International Labor Rights Forum upon request.

⁴⁸ International Labour Organization Governing Body, "Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29)," pg. 15

⁴⁹ AFP news agency, "Thailand to scan eyes of workers in notorious seafood industry," *Geo Television Network*, February 15, 2018, www.geo.tv/latest/182121-thailand-to-scan-eyes-of-workers-in-notorious-seafood-industry

⁵⁰ Human Rights Watch, "Hidden Chains," pg. 114

Even if potential trafficking victims come to the attention of authorities, that is no guarantee of protection. Organizations reported last year on the arbitrariness of being designated a trafficking victim or an “illegal migrant,” with some people designated a trafficking victim and others illegal migrants, despite having very similar experiences.⁵¹ The fear of deportation and withholding of wages keeps many irregular migrants in jobs where they earn much less than the legal minimum wage and their salaries are paid with long delays, if they are paid at all.⁵²

B. Deportation

Civil society actors have raised concerns about Thailand’s practice of “soft deportations,” a process through which Thai authorities arbitrarily deport, and in some cases forcibly return, refugees and survivors of trafficking to areas along the border, often directly into the hands of traffickers.⁵³ A 2017 report from the UNODC explains how this practice increases trafficking risks of migrants to Thailand:

Based on the available data, tens of thousands of irregular migrant workers are deported each year. In some years, more than 100,000 people were deported to Cambodia and more than 25,000 to Lao PDR. The number of deportations usually rises in periods following the end of registration rounds for irregular migrants. Once these rounds end, Thai authorities move to identify, arrest, detain and return irregular migrants who failed to register...Fear of deportation makes unregistered irregular migrant workers more vulnerable to exploitation and trafficking. Many go into hiding to avoid detection by authorities, which also makes it more difficult for them to seek help if they are abused or injured. Refugees from Myanmar are particularly fearful of deportation, especially because they potentially face persecution in the country...

If the causes and circumstances that led migrants to be trafficked to Thailand in the first place are still the same when they return, they remain vulnerable to exploitation and trafficking. The available research contains many accounts in which returning and deported migrants are preyed upon by traffickers and other groups once they return from Thailand to Cambodia, Lao PDR and Myanmar. Some of the recruiters and traffickers initially responsible for bringing migrants to Thailand often await their return and ask them to repay outstanding debts. This is a particular risk for deportees who return to their country of origin before they are able to repay their loans and discharge the debt they may owe to their recruiters.

⁵¹ Fortify Rights, “A Work in Progress: Thailand’s Compliance with the International Covenant on Civil and Political Rights,” March 8, 2017, pg. 17

[www.fortifyrights.org/downloads/Fortify_Rights_Thailand_A_Work_in_Progress_\(March%202017\).pdf](http://www.fortifyrights.org/downloads/Fortify_Rights_Thailand_A_Work_in_Progress_(March%202017).pdf).

⁵² UNODC and TIJ, “Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand,” pg. 161, www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Trafficking_in_persons_to_Thailand_report.pdf

⁵³ Quinley, “Why Does Human Trafficking Persist in Thailand?”

Upon return, migrants may be forced to work to pay off their debts, often at an interest, or may feel compelled to move to Thailand again to earn money. Local people, drivers and third parties have also deliberately targeted deportees to extort money, coerce them or rob them of their sparse belongings or to facilitate their re-trafficking.⁵⁴

C. Detention Centers

Another factor deterring migrant workers from speaking out is the Thai practice of holding victims of trafficking until all legal proceedings have concluded or the victims decide they do not want seek justice – in either case, it can be more than a year.⁵⁵ IJM found that, “In practice, victims of human trafficking identified by Thai authorities are not consistently provided with the services they are entitled to by Thai laws and policies, such as psychosocial counseling, employment assistance, and qualified interpretation assistance. Rather, as Thai government officials pursued the prosecution of some trafficking cases, stakeholders reported some victims were kept in shelters against their will for long periods of time.”⁵⁶

In addition to the inconvenience of not being able to work while in detention centers, these centers are often not safe. Some of the victims of the trafficking “death camps” discovered on the Thai/Myanmar border were Rohingya refugees who were let go from immigration detention, handed over to brokers, and were then re-trafficked.⁵⁷ (More details on that case in the Prosecution section below.) Refugees held in detention centers, particularly Rohingya refugees from Myanmar and Lao Hmong refugees from Laos, are systematically denied legal status as victims and are at high risk of (re)trafficking while in detention.⁵⁸ Fortify Rights documented in a recent report that a Thai broker who promised to assist one Lao Hmong refugee in obtaining Thai documents later raped her. Fearing potential charges for illegal entry or being re-deported to Laos, she did not report the rape to the Thai authorities.

At least one young trafficking victim died in detention in 2017. Thai authorities detained Zainab Bi Bi, a 16-year-old Rohingya refugee, for more than three years in government-run shelters and Immigration Detention Centers (IDCs) after she was trafficked from Myanmar to Thailand in 2014. She had a blood clotting disorder for which she had to be treated several times during the

⁵⁴ UNODC and TIJ, “Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand,” pg. 210, www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Trafficking_in_persons_to_Thailand_report.pdf.

⁵⁵ Ibid, pg. 203.

⁵⁶ International Justice Mission, “Labor Trafficking in the Thai Fishing Industry,” pg. 11.

⁵⁷ Fortify Rights, “A Wok in Progress,” pg. 6

⁵⁸ [Ibid.](#), pg. 18 & 34.

months before her death. Zainab Bi Bi reportedly fainted and bled from her nose and ears on October 27, 2017, while detained in the Sadao IDC, and died six days later on November 6.⁵⁹

D. Failure to protect victims for speaking out Judicial harassment against human rights defenders and migrant workers who reported on crimes committed against them prevent the reporting of human trafficking and make it easier for perpetrators to get away with their crimes. **In particular, Thailand continued to allow employers to use criminal defamation to punish people who document and publicize forced labor, sending a chilling effect through migrant communities.**

i. Thammakaset poultry farm case:⁶⁰ Hearings commenced on February 7, 2018, on criminal defamation charges against 14 Burmese workers in Thailand. In June of 2016, the workers had escaped from a chicken farm in Lopburi Province on which they had worked 20 hours a day for almost 5 years. The chicken farm owner had confiscated their passports so that they would not flee, but one worker saw a Facebook post by the Migrant Workers Rights Network (MWRN) that inspired them to leave.⁶¹ The workers were paid far below the nationally mandated minimum wage and were not provided overtime wages. They had only short periods of rest, sleeping alongside the chickens. In addition, they were only allowed one weekly, supervised, two-hour trip away from the farm to the closest market for groceries. With support from MWRN, the workers reported their conditions to the DLPW, and were awarded 1.7 million baht (\$52,000) in back wages by a ruling in Region 1 Labour Court. Nineteen months later, despite winning two appeals, the workers have not received any compensation. The Thai government added an additional level of appeal to labor dispute cases in 2017, and Thammakaset requested its third appeal on October 10, 2017. The workers estimate their actual uncompensated wages according to Thai law to be more like 44 million baht (\$1.4 million), and had appealed the labor court's decision to reconsider the amount, but their case was dismissed and they have decided not to continue the appeals process.

The criminal defamation charges stem from a complaint the workers filed to the National Human Rights Commission of Thailand (NHRCT) alleging forced labor in August 2016. Thammakaset owners have used their testimony to file criminal defamation charges against them and against Andy Hall, MWRN's international advisor who helped workers seek justice. If convicted of the charges, the workers each face up to 1.5 years of imprisonment and/or a fine of 30,000 baht (\$955). After three days of testimony from February 7-9, 2018, the case was adjourned to April 5, 6 and 11 April at Don Muang Magistrates Court in Bangkok to allow sufficient time for more extensive witness testimony.

⁵⁹ Fortify Rights news release, "Thailand: Investigate Death of Rohingya Girl in Immigration Detention Center," Bangkok, November 10, 2017, www.fortifyrights.org/publication-20171110.html.

⁶⁰ Information on the Thammakaset criminal defamation trial comes primarily from direct communications with migrant rights activist Andy Hall. Additional information, and the original correspondence, is available from the International Labor Rights Forum upon request.

⁶¹ Alisa Tang, Thomas Reuters Foundation, "Facebook post inspires landmark case for migrant workers in Thailand," September 14, 2016, www.reuters.com/article/us-thailand-labour-rights-idUSKCN11L00F.

Thammakaset owners have also filed theft charges against two of the workers and one MWRN staff for “stealing” their time cards to present to DLPW as evidence in their wage theft complaint. On June 21, 2017, the Lopburi Public Prosecutors Office refused to prosecute, despite a recommendation from the Lopburi Police, on a June 2016 criminal accusation of theft brought by Thammakaset Farm Co. Ltd. Thammakaset Farm proceeded on October 24, 2017, to launch multiple criminal prosecutions concerning theft against the same two migrant workers as a private criminal prosecution at Lopburi Court. Court proceedings are scheduled to begin February 19, 2017.

ii. Natural Fruit case against Andy Hall: On February 1, 2017, proceedings began on a civil defamation prosecution of Andy Hall. The case was initiated in 2013 by a Thai pineapple exporter Natural Fruit Company Ltd., which is seeking 100 million baht (\$3.2 million) from Hall in damages following an interview Hall gave to Aljazeera English news channel in Myanmar in 2013. This is the first civil case to reach the trial stage of altogether four interrelated, civil and criminal defamation cases filed by the pineapple company against Hall since the publication in 2013 of a Finnwatch report that alleged serious human rights violations at a Natural Fruit factory in Southern Thailand. Hall coordinated field research for the Finnwatch report.

Between 2014 and 2016, the Prakanong Court and then Thailand's Appeals Court and Supreme Court dismissed the criminal defamation case related to Hall's 2013 Aljazeera interview due to a flawed interrogation process and given that the alleged defamatory comments were made overseas in Myanmar where Thai courts do not have jurisdiction. In November 2016, the Prakanong Court also dismissed the civil defamation case related to the same Aljazeera interview on the basis of jurisdiction of the court. Natural Fruit then appealed the dismissal of the civil case to Appeals Court, which on August 22, 2017, ruled that Prakanong Court had jurisdiction over the case and ordered the Court to begin to hear the case in full.

In both of these cases, workers and their advocates are paying very high costs for speaking out about abuse. In the Thammakaset case, the workers have already spent in legal fees about twice what the DLPW awarded them in backwages, and are unlikely to recover. Sonja Vartiala, Executive Director of Finnwatch, described the problem facing those trying to decide how to report problems like human trafficking in business operations in Thailand, "As a consequence of having helped to expose systematic human rights violations against migrant workers in Thailand, Hall has been battling for his freedom and dignity within Thailand's justice system and courts since 2013. A new civil trial concerning the same Aljazeera interview for which a criminal prosecution has already been dismissed as unlawful is a sign that this judicial harassment against a human rights defender is being allowed to continue endlessly... **Thailand's criminal defamation laws and the way they are applied send a clear message to human rights defenders and victims of**

corporate abuse – be silent or you will be buried in never-ending court proceedings forever.”⁶² [emphasis added]

Two additional cases adjudicated with support from the Human Rights and Development Foundation (HRDF) in 2017 demonstrate how the Thai judicial system can be used to obfuscate human trafficking and punish potential victims rather than perpetrators:

- On March 23, 2017, the Ranong Provincial Court read a verdict acquitting a fishing boat captain and fish market owner of human trafficking in a case brought by 11 Cambodian fishers. The court determined that the actions did not constitute an offence of trafficking in persons through the use of forced labor because:⁶³
 - The workers were actually not deceived, based on the court’s determination that they willingly boarded a vessel that was clearly outfitted with fishing gear and when they encountered police after trying to escape their employer, even though they did not speak Thai, they “did not make any gesture to indicate that they had been lured or forced to work and boarded a pickup truck to return to their accommodation,”
 - The labor broker who told workers they needed to pay him 30,000 baht (\$870) to purchase their freedom was also made responsible for taking care of the workers, buying them things, etc. -- but he had not locked them into their rooms before they boarded the vessel;
 - Working hours on fishing vessels have to be long to prevent fish from spoiling but the workers would have been able to rest after putting out nets and at other times;
 - The court believed the testimony of the captain and Abhisit Techanithisawat that the workers’ passports were only confiscated while workers are at sea, for the purposes of having all documents together for inspection, and redistributed to the workers while at port, rather than the workers’ allegation that passports were confiscated at all times to prevent workers from escaping;
 - As to the claim that the workers were physically and verbally abused, since the workers were working in the fishing industry for the first time they lacked skills and the reason they were “scolded” “stemmed from their clumsiness in their work rather than being a part of an act of exploitation through forced labor;” and
 - Overdue wages are to be expected on fishing vessels, “which is distinctly different from other kinds of work, and the payment can be arranged with the mutual consent of the employer and employee.”

HRDF is concerned that this case, which is not in compliance with the principles set forth in ILO Convention 29 on forced labor, could set a precedent that will affect the

⁶² Finnwatch press release, “Judicial harassment waged against migrant workers' rights defender Andy Hall gathers new momentum in Thailand,” August 28, 2017.

⁶³ Human Rights and Development Foundation press release, “Provincial Court of Ranong acquitting defendants in Black Case no.KM2,4.2559 in trafficking cases against 11 migrant fishing workers from Cambodia,” March 24, 2017, <http://hrdfoundation.org/?p=1816>.

interpretation of human trafficking in subsequent cases. Ms. Kanchana Akkarachart, assistant to the coordinator of HRDF's Anti-Human Trafficking in Labor Project said, "The verdict is a back-step contrary to the effort by the government of Thailand to ensure compliance of Thailand's fisheries with international standards. It indicates a lack of understanding among law enforcement officials about the employment of migrant workers, their working conditions and relevant laws concerning fisheries. Such a lack of understanding fails to correspond to the need at present to proactively move toward preventing forced labor or exploitation."

- On November 23, 2017, a pro-bono lawyer with HRDF filed an appeal on behalf of nine Cambodian defendants sentenced to six years' imprisonment for using fraudulent passports and immigration stamps. Surin Provincial Immigration Police arrested the migrants on April 28, 2017, after they had presented the fraudulent passports and immigration stamps at Chongjom checkpoint in Surin Province. On July 24, 2017, the Provincial Court of Surin convicted and sentenced all ten workers for multiple offences of 4-year imprisonment each, resulting in 12-year imprisonment in total for each worker. Since the workers pled guilty to all charges, the sentences were reduced by half, leaving each worker with a six-year sentence.

HRDF contends that the migrants were victims of a fraud syndicate, and that without access to lawyers or interpreters when being interrogated by police, they did not fully understand what they were pleading guilty to. Further, three of the defendants were under the age of 18, but charged with the adults in violation of both Thai law and the nation's obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), to which Thailand is party.

HRDF learned from the defendants that they had contacted a broker recommended to them by acquaintances for the purpose of migrating to work in Thailand. The broker then arranged all relevant documents for the defendants, charging each of them 2,500 baht. They thought the documents were legitimate. After their arrest, the workers were made to understand that if they admit to the charges, they would be released back to Cambodia, not sentenced to imprisonment in Thailand. In their interrogation with police, they then admitted to the charge of using fraudulent passports, but did not realize that they also admitted to the charge of making fraudulent documents.

"In Cambodia, it is very common for people living in rural areas to pay a broker to help with making a passport," said Chhan Sokunthea, Head of Women's and Children Rights Section at the Cambodian Human Rights and Development Association, which also assisted the migrants. "People, especially those with low education, normally don't even know what a passport actually is, let alone being able to tell the difference between a legal one from a fake one." To date, there has been no action either from the Thai or Cambodian

authorities to bring to justice actors within the broker syndicate that produced the fraudulent documents.

Recommendations for improving protection outcomes:

- Strengthen the capacity and accountability of labor inspectors, including through the proactive undertaking of random inspections not based on complaints, development of effective screening protocols to detect forced labor and training for labor inspectors on using it to identify victims, and the hiring of more labor inspectors able to speak the languages spoken by migrant workers. Conduct regular verification of matters such as passport confiscation, presence of written contracts, and conditions of work, including hours of rest, accommodation, and timely wage payments. Officials should be incentivized to report case numbers and details accurately.
- Labor inspectors, potential victims, civil society organizations, and others reporting potential violations of anti-trafficking and labor laws should be indemnified against prosecution from vessel and factory owners, powerful government and industry actors, and others for identifying potential victims and accurately reporting alleged incidents of abuse.
- Decriminalize defamation-related offenses, including those proscribed under articles 326 - 328 of Thailand's Criminal Code and the Computer-related Crimes Act. Use international best practice to develop and implement legislation to reduce strategic lawsuits against public participation (anti-SLAPP legislation).
- Ensure adequate levels of labor inspectors, with trained interpreters, in every province. Increase the role of labor inspectors in actively and consistently screening for potential victims of forced labor, using a standardized set of indicators developed by the DLPW with support from the ILO and other relevant organizations and agencies. Promote and support community-based monitoring and grievance mechanisms that incorporate the migrant community and civil society networks.
- Revise policies for assisting survivors to limit the time spent in Thai custody as much as feasible. Provide compensation to survivors, facilitate work opportunities and freedom of movement for survivors, and end the practice of informal deportation.
- Implement the existing Ministry of the Interior regulation requiring that trafficking cases be completed within six to twelve months of the first hearing of a case. Introduce randomized screenings of migrant workers in the fishing sector applying for or renewing documents at Department of Employment offices. Conduct screenings using a standardized sector-specific set of indicators of forced labor and trafficking, including compliance with recruitment practices, and ensure screenings are conducted in a private, secure setting with the help of a trained government-employed interpreter.
- Introduce systematic screenings for forced labor under the Port-in Port-out (PIPO) framework by competent officials from relevant agencies, with government-hired

interpreters, using a standardized set of indicators of forced labor. Ensure such screenings are conducted in a private, secure setting with protocols in place to protect potential victims once identified. Particularly increase efforts in locations and on vessels identified to be at higher risk, including trawlers and pair trawlers in Songkhla and Samut Sakhon.

- Develop and issue protocols for ensuring the protection of workers who may be victims of human trafficking or forced labor during inspections at sea. Publically support investigations and prosecutions of major players in trafficking networks including complicit company owners, government officials and police and other security officers.

3. Prosecution

On July 20, 2017, a Thai criminal court sentenced 62 defendants, including senior government officials, to up to 94 years' imprisonment for crimes including human trafficking and murder of Rohingya migrants through camps on the Thailand/Malaysia border in one of the most prominent human trafficking cases in Thailand. The conviction is an important step forward in fostering government accountability for human trafficking in Thailand. Ensuring more convictions of Thai officials complicit in human trafficking will be critical to ending the practice. **While it is important to acknowledge this achievement, it is equally important to note the ways in which the conduct of this case demonstrates the same problems with corruption and official obstructionism that has plagued other Thai efforts to curtail human trafficking.** Civil society organizations had indicated that the scale of the trafficking that occurred is much larger than suggested by the indictments in this case, and the trial was, "beset by unchecked threats against witnesses, interpreters, and police investigators. Threats against the chief investigator, Major General Paween Pongsirin, caused him to flee Thailand and seek political asylum in Australia. Thai authorities also arbitrarily detained Rohingya witnesses, some of whom were physically assaulted."⁶⁴

In other ways, Thailand's judicial system continued to demonstrate in 2017 that its ability to provide relief for victims of human traffickers is severely limited. Research from Human Rights Watch showed that the absence of legislation prohibiting forced labor as a stand-alone offense separate from human trafficking made it difficult for victims who entered into the fishing sector willingly, but subsequently found themselves in situations of forced labor, to access justice.⁶⁵ Practitioners on the ground note that cases involving wage theft and confiscation of documents are often tried as violations of Thailand's Labour Protection Act, though these abuses also violate the Anti-Trafficking Act (Section 6/2). Litigation using the Anti-Trafficking Act, as opposed to solely using the Labour Protection Act, or both, would lead to harsher punishments for individuals and companies who take advantage of migrant workers and refugees, many of whom lack legal status.⁶⁶

⁶⁴ Fortify Rights, "A Work in Progress," pg. 16.

⁶⁵ Human Rights Watch, "Hidden Chains," pg. 7

⁶⁶ Quinley, "Why does human trafficking persist in Thailand?"

A. Corruption and official complicity

Corruption plays a major role in perpetuating human trafficking onto fishing vessels. Phil Robertson, deputy director of Human Rights Watch's Asia division, told *South China Morning Post Magazine* in July 2017, "This is part of a larger problem of extortion of migrant workers by police that has been a consistent problem but which no government has really been willing to touch."⁶⁷

IJM concluded in its review of the criminal justice system response to trafficking that a major challenge was, "Complicity amongst some government workers, which prevents an effective and transparent [criminal justice system] response."⁶⁸ HRW found in multiple interviews that brokers would threaten to turn migrant workers over to police if they refused to accept illegal working conditions, and would point out particular police officers with whom they were associated.⁶⁹ One group of 11 trafficking victims, part of a group of 35 who were rescued in the port city of Phuket, described how police participated in their trafficking journey:

The men said they were taken to a nearby sugarcane plantation, where they had their photos taken. Most were then put on pickup trucks where they had to lay together head-to-toe, covered with a black plastic sheet punched with breathing holes. Some men were concealed in the luggage compartments of long-distance coaches operated by private companies and covered with goods. The men in pickups were driven by a uniformed police officer—they passed through dozens of checkpoints, sometimes seen but never stopped. One man told Human Rights Watch: "The [soldiers] told me and another two guys to come down from the cargo bed. They checked our faces without saying anything and then told us to return to the pickup truck."...All said they were locked in a room before boarding fishing vessels. Each time their boats came into port after that, the brokers received them at the pier and returned them to confinement until they were finally rescued in January 2016."⁷⁰

Outside of the seafood sector, two major cases in sex trafficking uncovered in 2017 show the alarming extent of police involvement in human trafficking:

- **Mae Hong Son sex trafficking ring:** In April 2017, media reports began to emerge that a mother had accused police officials in the remote northern province of Mae Hong Son of luring her daughter into a sex ring of trafficked

⁶⁷ Laura Villadiego, "Tackling slavery in the Thai fishing industry, one victim at a time," *South China Morning Post Magazine*, July 13, 2017, www.scmp.com/magazines/post-magazine/long-reads/article/2102498/tackling-slavery-thai-fishing-industry-one-victim.

⁶⁸ Fortify Rights, "A Wok in Progress," pg. 11

⁶⁹ Human Rights Watch, "Hidden Chains," pg. 85.

⁷⁰ *Ibid*, pg. 34.

teen girls operated by local police.⁷¹ She had sought action from local officials for six months, but an investigation was only opened when she went to local media, and then to national outlets in Bangkok, to make her allegations public. She was subsequently brought under government protection.⁷² The unfolding investigation has uncovered a system of patronage in which junior officers were expected to lavish hospitality on visiting bureaucrats and superiors with fine food, luxurious accommodations, and young women or girls offered for “dessert.” The practice even had a well-known term, “treat to food, lay down the mat.”⁷³ Initial reports say that police acting as pimps forced as many as 20 women and girls into sex work. The victims were reportedly marked with a tattoo of an owl.⁷⁴ The case has received international attention, and under pressure from the press, a Mae Hong Son police sergeant has been arrested and accused of trafficking girls into the sex ring. Eight other officers have been charged for sleeping with the minors and five administrators from a different province have been charged for allegedly hiring teens for sex with government funds during an official visit to Mae Hong Son.⁷⁵ These actions come despite an allegation from the Federation of Assistant District Chiefs of Thailand that evidence in the case has been “lost” on its way to the National Anti-Corruption Commission (NACC).⁷⁶ Local police had originally tried to close the investigation before it could begin,⁷⁷ and at least one victim disappeared in the course of the investigation.⁷⁸ While the case shocked many, local anti-trafficking activists warned that this is not an isolated incident. One activist told *Vice News*: “I’ve been doing this for 15 years, and I can tell you that every case I have done, there have been [police] officers behind those cases. By that I mean they either support the traffickers, they take bribes, or even run the business... In

⁷¹ CityNews staff writer, “Secret Child Prostitution Ring Run by Mae Hong Son Policeman Being Investigated by DSI, Public Prosecutor, After Ignored by Local Authorities,” *CityLife Chiang Mai*, April 24, 2017, www.chiangmaicitylife.com/news/secret-child-prostitution-ring-run-by-mae-hong-son-policeman-being-investigated-by-dsi-public-prosecutor-after-ignored-by-local-authorities/.

⁷² AFP-JIJI, “‘Girls-as-dessert’ scandal exposes grim Thai tradition,” *Japan Times*, June 25, 2017, www.japantimes.co.jp/news/2017/06/25/asia-pacific/social-issues-asia-pacific/girls-dessert-scandal-exposes-grim-thai-tradition/#.Wob8FyXwbIV

⁷³ Ibid.

⁷⁴ Caleb Quinley, “A Sex Trafficking Bust Has Sent Shockwaves Through Thailand,” *Vice*, May 16, 2017, www.vice.com/en_id/article/gvz8n7/a-sex-trafficking-bust-has-sent-shockwaves-through-thailand.

⁷⁵ AFP-JIJI, “‘Girls-as-dessert’ scandal exposes grim Thai tradition.”

⁷⁶ *Bangkok Post* staff reporter, “Sex-ring evidence ‘getting lost’,” May 9, 2017, www.bangkokpost.com/archive/sex-ring-evidence-getting-lost/1246034.

⁷⁷ AFP-JIJI, “‘Girls-as-dessert’ scandal exposes grim Thai tradition.”

⁷⁸ Caleb Quinley, “A Sex Trafficking Bust Has Sent Shockwaves Through Thailand,” *Vice*, May 16, 2017, www.vice.com/en_id/article/gvz8n7/a-sex-trafficking-bust-has-sent-shockwaves-through-thailand.

all 77 provinces they have this kind of ring, more or less, and even more in provinces that are in tourist areas."⁷⁹

- **Victoria massage parlor scandal:** On January 12, 2018, investigators from the Department of Special Investigations (DSI), raided the Victoria's Secret massage parlor in Bangkok. Minors were among the 113 women identified as sex workers and apprehended during the raid.⁸⁰ The majority of the women were Burmese nationals, and they are now being screened for potential trafficking victims. The raid was the result of a tip from an anti-trafficking NGO, which had assisted a 12-year-old Burmese girl who had been forced into prostitution there. Former national police chief Somyot Poompunmuang has been pulled into the investigation, when investigators uncovered that he purportedly borrowed 300 million baht from the owner of the massage parlor, Kampol Wirathepsuporn.⁸¹ Stock market trades and business deals between Mr. Kampol, Pol Gen Somyot and another businessman have raised the possibility an investigation is warranted to determine if the Thai Stock Market was used to launder illicit funds from the massage parlor.⁸² The raid also uncovered a list of "special guests" that included officials from the Royal Thai Police and Revenue Department – including officers from virtually every department at the Wang Thonglang police station near where the parlor was located, including the human trafficking division – who allegedly received discounted or free services.⁸³ A similar list was found in a 2016 raid of another Bangkok massage parlor and brothel for human trafficking.⁸⁴ The frequency with which these connections are uncovered has led to doubt among stakeholders about how seriously such cases are being addressed. Said one columnist for the *Bangkok Post*, "It is not the first time such a list has been found. And Victoria's Secret will not be the last place where bribery and corruption among Thai state officials turns up. What followed the raid and the media's disclosure of the list is also familiar. After the raid, five senior police officers from Wang Thonglang police station were transferred to inactive posts pending a probe. Will we ever

⁷⁹ Ibid.

⁸⁰ King-Oua Laohong, "Bangkok parlour raid shows human trafficking still rife," *Myanmar Times*, January 19, 2018, www.mmtimes.com/news/bangkok-parlour-raid-shows-human-trafficking-still-rife.html.

⁸¹ Soonruth Bunyamee, "Somyot loans expose patronage roots," *Bangkok Post*, February 7, 2018, www.bangkokpost.com/opinion/opinion/1408830/somyot-loans-expose-patronage-roots.

⁸² Dumrongkiat Mala, "Calls to track 'brothel king' cash," *Bangkok Post*, February 19, 2018, www.bangkokpost.com/news/crime/1414167/calls-to-track-brothel-king-cash.

⁸³ Atiya Achakulwisut, "A raid on a massage parlour in Thailand unveils what's wrong with the country," *Today Online*, January 17, 2018, www.todayonline.com/commentary/raid-massage-parlour-thailand-unveils-whats-wrong-country.

⁸⁴ Panarat Thepgumpanat, "Fifteen underage sex workers freed in Bangkok brothel raid," *Reuters*, www.reuters.com/article/us-thailand-humantrafficking/fifteen-underage-sex-workers-freed-in-bangkok-brothel-raid-idUSKCN0YW1EJ

hear about the probe's result? Or what measures will be put into place to prevent such a corrupt practice from recurring? Probably not."⁸⁵

The picture that emerges from these cases is one in which police do not uncover the case – it was the mother of a victim who spoke out over the objections of police in one case and an NGO in the other – but it emerges that police were involved in the cover-up or even perpetration of the crimes. They underscore the extent to which government corruption are undermining Thailand's efforts to combat human trafficking, as described in an editorial in the *Bangkok Post*:

The story of the friendship between Pol Gen Somyot and Mr Kampol reflects how strong the connections between business operators and law enforcement authorities can be. In fact, his case is an example of the patronage system entrenched in this country. This is just the latest example to come to light. How many other similar cases have not been uncovered? How many law enforcement authorities have maintained close relationships with businesses which are the subjects of their law enforcement efforts? These officers could offer privileges to certain groups, foster the patronage system and operate largely unchecked.⁸⁶

Recommendations for improving prosecution outcomes:

- Adopt legislation prohibiting use of forced labor as a standalone offense, giving due consideration to the various means by which people enter and are held in forced labor. Ensure new legislation has appropriate criminal and civil penalties and protections for victims.
- Implement Cabinet Resolution no. 11/B.E.2559, which would provide automatic witness protection to witnesses involved in human trafficking cases as well as temporary legal protection to survivors of human trafficking.
- Investigate all allegations of harassment, intimidation, and threats against witnesses involved in human trafficking cases.
- Revisit the Prevention and Suppression of Human Trafficking Act that was amended in Jan. 2017 to engage in genuine dialogue with civil society, informed by the ILO gap analysis, to determine how it should be improved, which at a minimum should bring it into compliance with Convention 29 in defining critical terms like “coercion” and “menace of penalty,” and decrease the evidentiary burden on the prosecution to prove intent.
- Set as a policy objective ensuring that the costs of recruitment between Thailand and neighboring countries are based on actual costs, and take legal action against brokers, manpower agencies and government officials found to be complicit in inflating fees charged to migrants.

⁸⁵ Achakulwisut, “A raid on a massage parlour in Thailand unveils what’s wrong with the country.”

⁸⁶ Bunyamane, “Somyot loans expose patronage roots.”

- Establish an independent commission of respected government officials, civil society leaders, including migrant worker groups and independent labor organizations, to impartially investigate allegations that police and other government officials are involved in trafficking and forced labor, and when called for, to issue subpoenas to obtain testimony and recommend specific criminal investigations. Mechanisms for oversight of local-level investigations, when they appear to be corrupted, should be included.
- Utilize the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters to strengthen investigation and prosecution of transnational trafficking networks in the ASEAN region.
- Ratify and implement the Rome Statute of the International Criminal Court, 1998.

Conclusion

Thailand does not fully meet the minimum standards as set forth in the Trafficking Victims Protection Act, and it has not made sufficient efforts to combat severe forms of trafficking in persons. Despite significant legal reforms at the national level, enforcement has not followed. Local officials and investigators have shown they are still unable, or unwilling, to take systematic steps that would protect workers vulnerable to labor trafficking. Thailand’s migration policies are inadequate to prevent forced labor among migrant workers, one of the most vulnerable populations in Thailand, and discriminatory laws prohibiting migrant workers from organizing into trade unions leave them even more vulnerable. Perpetrators are easily able to escape punishment because victims lack access to judicial remedy.

While Thailand has laid out ambitious goals to ratify applicable conventions, bring laws into compliance with international standards, and improve inspection regimes, the situation for migrant workers on the ground has changed little. The enforcement promises Thailand has made have not been realized, and the Thai government actively represses migrant workers or their advocates who attempt to empower migrant workers as a population. IJM found that political will at the upper levels of government had not translated to significant changes at the mid- and local-levels of government needed for improvements in enforcement. Moreover:

Many stakeholders believed that top-level political will arises mainly from a desire to protect the seafood export industry, and to maintain a good image internationally, but they worried that the political will would not translate into significant, sustainable progress without continued international pressure. In particular, this included pressure from the U.S. State Department’s Trafficking in Persons (TIP) Report and the European Union’s “yellow card” designation for Thailand’s seafood exports.⁸⁷

Thailand must be assessed not on its stated intentions, but on its actions when measuring effective response to counter trafficking. We thus urge you to maintain Thailand on the Tier 2 Watchlist of the Trafficking in Persons Report, and not upgrade the country until

⁸⁷ International Justice Mission, “Labor Trafficking in the Thai Fishing Industry,, pg. 10

demonstrable improvements to the conditions for migrant workers have been made and can be documented by researchers on the ground.