

Comments Concerning the Ranking of Thailand by the United States Department of State in the 2017 Trafficking in Persons Report

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

March 30, 2017

Introduction

The U.S. Department of State upgraded Thailand from Tier 3 to the Tier 2 Watchlist in the 2016 Trafficking in Persons (TIP) Report, despite the objections of numerous civil society organizations¹ and evidence that the Thai government was not making significant efforts to prevent human trafficking and forced labor among its migrant worker population.² Evidence from throughout 2016 shows that despite legal reforms made in 2015 and 2016, the reality on the ground has changed little for migrant workers, who are still vulnerable to trafficking. High recruitment fees, limited freedom of movement, degrading and illegal working conditions, and other indications of human trafficking remained prevalent not only in Thailand's seafood sector³, but in construction⁴, domestic work⁵ and food processing.⁶

The U.S. State Department's 2016 Country Report on Human Rights Practices in Thailand⁷ (Human Rights Report) describes the condition of migrant workers, and the Thai Government's role in perpetuating the conditions that allow trafficking to flourish, and is worth quoting at length:

Migrant workers often assumed debts to informal labor brokers or local moneylenders, some of whom charged interest rates as high as 20 percent.

¹ Hodal, Kate, and Annie Kelly, *The Guardian*, "Thailand's improved status in US human trafficking report sparks fury," June 30, 2016, www.theguardian.com/global-development/2016/jun/30/thailand-us-trafficking-in-persons-report-2016-fury

² International Labor Rights Forum, "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2016 Trafficking in Persons Report," February 23, 2016, www.laborrights.org/publications/comments-concerning-rankings-thailand-united-states-department-state-2016-trafficking

³ Errughim Lorenza, Ivanka Mamic and Birgitte Krogh-Poulsen, International Labour Organization Asia-Pacific Working Paper Series, "Global Supply Chains: Insights into the Thai Seafood Sector," April 2016, www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_474896.pdf

⁴ Napier-Moore, Rebecca, and Kate Sheill, International Labour Organization, "High rise, low pay: experiences of migrant women in the Thai construction sector," 2016, <http://un-act.org/wp-content/uploads/2017/01/High-rise-low-pay-1.pdf>

⁵ Anderson, Bridget, International Labour Organization, Regional Office for Asia and the Pacific "Worker, helper, auntie, maid? : Working conditions and attitudes experienced by migrant domestic workers in Thailand and Malaysia," 2016, <http://un-act.org/wp-content/uploads/2017/01/Worker-Helper-Auntie-Maid.pdf>

⁶ Hodal, Kate, *The Guardian*, "Thailand: poultry workers cry fowl amid claim they 'slept on floor next to 28,000 birds'," August 1, 2016, <http://apmigration.ilo.org/news/thailand-poultry-workers-cry-fowl-amid-claim-they-slept-on-floor-next-to-28-000-birds>

⁷ www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dclid=265376

These practices led migrant workers, in some cases, into conditions of debt bondage. Migrant labor advocates reported that employers, subcontractors, and brokers (both formal and informal) charged excessive fees to workers to acquire documentation, such as transportation or identity documents from origin countries, exacerbating vulnerability to debt bondage. There were reports some employers confiscated migrant registration cards, work permits, and travel documents of migrant workers, thus restricting internal movement and contributing to their vulnerability to forced labor with little recourse under the law. Work permits that tied workers to a single employer and required burdensome procedures to change an employer made it difficult for migrant workers to leave unscrupulous employers. The law limited noncitizens in their choice of occupation. To avoid deportation, illegal migrants often paid additional fees or bribes to police and immigration officers.

These conditions were also documented in an ILO report produced in response to a representation to the International Labour Office by the International Trade Union Confederation (ITUC) and International Transport Workers Federation (ITF) alleging that Thailand is not observing the Forced Labor Convention, 1930 (No. 29).⁸ 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.” 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.”

Thailand’s continuing difficulty in addressing widespread forced labor and human trafficking takes place in the context of decreasing civil space and increasingly authoritarian tendencies from Thailand’s military-led government, as documented by local NGO’s and U.S. State Department’s 2016 Country Report on Human Rights Practices in Thailand.⁹ The report detailed that, “numerous [National Council for Peace and Order] decrees limit[ed] civil liberties, including restrictions on freedoms of speech, assembly, and the press,” and, “Other human rights problems included arbitrary arrests and detention; poor, overcrowded, and unsanitary prison and detention facilities; insufficient protection for vulnerable populations, including refugees; corruption; violence and discrimination against women; sex tourism; sexual exploitation of

⁸ International Labour Organization, 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), March 28, 2017, www.ilo.org/gb/GBSessions/GB329/ins/WCMS_549113/lang--en/index.htm

⁹ www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265376

children; trafficking in persons; discrimination against persons with disabilities, minorities, hill tribe members, and foreign migrant workers; child labor; and some limitations on worker rights.” The corruption and assault on civil liberties affects the most vulnerable in the society the hardest, and leaves migrant workers more susceptible to exploitation. Human Rights Watch corroborates the detrimental effect of this political landscape on migrant workers in its 2017 World Report, noting “migrant workers from Burma, Cambodia, Laos, and Vietnam are vulnerable to physical abuses, indefinite detention, and extortion by Thai authorities; severe labor rights abuses and exploitation by employers; and violence and human trafficking by criminals, sometimes in collaboration with corrupt officials.”¹⁰

Thailand’s military government has said combatting human trafficking is a top priority,¹¹ but has not put in place the accountability measures necessary to reign in corruption or empower migrant workers to seek legal remedy against abusive employers that would be required 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. In 2016, the government demonstrated it is unwilling, or unable, to undertake sufficient efforts to combat human trafficking in either prosecution, prevention or protection. Based on the evidence included in these comments, we believe Thailand should be placed on Tier 3 in the 2017 Trafficking in Persons Report.

1. Prosecution

Thailand undertook a number of prominent trafficking prosecutions in 2016. However, looking beyond the numbers to the outcomes of those cases reveals ongoing and unaddressed problems with both the legal framework defining human trafficking and the ability of the Thai legal system to hold perpetrators accountable and provide justice to victims. In civil society comments on Thailand’s implementation of the International Covenant on Civil and Political Rights, the Migrant Working Group (MWG) noted that despite an increase in the number of investigations and prosecutions, “access to justice process of the trafficking survivors was still a challenge.”¹² The report also noted that despite intense focus on human trafficking in the seafood sector, “there have still been no court verdicts that clearly penalize the perpetrators and provide for remedies to the survivors of trafficking in persons,” in the fishing industry.

The U.S. State Department itself noted significant deficiencies in its human rights report: “The lack of clarity in law and practice on what constitutes forced labor or debt bondage undermined

¹⁰ Human Rights Watch, www.hrw.org/world-report/2017/country-chapters/thailand

¹¹ Tanakasempipat, Patpicha, *Reuters*, “Thailand hopes for upgrade in U.S. human trafficking report,” February 2, 2017, www.reuters.com/article/us-thailand-trafficking-idUSKBN15H15D

¹² Migrant Worker Group, Civil Society Report on the Implementation of the ICCPR for the Review of the Second Periodic Report of Thailand at the 119th session of the Human Rights Committee, January 31, 2017, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26534_E.pdf

the government's efforts to identify labor trafficking victims and prosecute forced labor." In January of 2017, Thailand enacted a revision to the Prevention and Suppression of Human Trafficking Act that clarified the definition of forced labor. But it does not resolve the deficit in Thailand's legal code that forced labor does not exist as a crime outside of human trafficking. Further, the ILO Committee found in its report to the Governing Body that while the revised law captures more forms of coercion as envisaged by Convention 29, "the definition is still not as broad as Article 2(1) of the Convention, specifically in relation to the 'menace of any penalty,' and would be unlikely to encompass the loss of rights or privileges or the use of financial penalties."¹³ Additional weaknesses of the revised legislation are detailed in Annex A.

Thailand also demonstrated significant problems in the adjudication of trafficking cases that demonstrate victims cannot rely on the judicial system to provide relief, and show it can be manipulated by human traffickers to avoid consequence. Two cases serve as illustrative examples of the ways in which Thailand is still not making sufficient progress in holding human traffickers accountable:

- The case against Lt. Gen. Manas Kongpa and more than a hundred other defendants for trafficking of Rohingya migrants through camps on the Thailand/Malaysia border is one of the most prominent human trafficking cases in Thailand. The government frequently talks about the case as a demonstration that Thailand is serious about prosecuting government officials that engage in human trafficking or aid traffickers. However, rights groups observe that it has been plagued by corruption and interference. The following was documented by the organization Fortify Rights:¹⁴
 - Thai authorities have not exposed or dismantled the full network of human trafficking syndicates. According to information the NGO has collected, many traffickers are likely still free, and some are on the run in other countries. Police Major General Paween Pongsirin, the chief investigator on the high profile case, informed Fortify Rights that the police planned to issue more arrest warrants based on the evidence his team collected, but failed to do so after Paween fled the country following threats by what he termed as "influential people."
 - Allegations of threats against investigators and key witnesses involved with the case, including the lead investigator, raises concern about the trial process and the potential effect on its outcome. Despite approval of Cabinet Resolution no. 11/B.E.2559, which would provide witness protection under the Ministry of

¹³ International Labour Organization, 326th session of the Governing Body, March 2016, Decision on the 16th item on the agenda: Reports of the Officers of the Governing Body Sixth report: 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), http://www.ilo.org/gb/decisions/GB326-decision/WCMS_465055/lang--en/index.htm

¹⁴ Remarks of Ms. Puttanee Kangkun, Thailand Human Rights Specialist at Fortify Rights, delivered at the public forum, "One Year After the Andaman Sea Refugee Crisis: End Detention and Bring Justice to Survivors of Human Trafficking," June 8, 2016, Bangkok, Thailand, www.fortifyrights.org/downloads/Remarks_20160608.pdf

Justice to witnesses in human trafficking trials, witnesses still lack protections. For example, the only protection provided to at least two witnesses is the option to stay overnight at the police station during the trial. Staying with the police is not feasible for their livelihoods as they need to work and care for their families.

- Some witnesses recanted their confessions in court, noting that the interpreters instructed them to lie to the police officers during the initial police interviews to avoid criminal charges, such as illegal entry. Defendants in the case allegedly attempted to bribe witnesses to refuse to testify. In one particular case, an interpreter told a Rohingya witness to stop making allegations against a powerful trafficker in exchange for 400,000 Thai Baht (US\$1,1305).

Moreover, this prosecution may not have stopped the trafficking of Rohingya refugees across Thailand. There are some indications that different routes are being used for the same purpose,¹⁵ and the U.S. State Department Human Rights Report documents ongoing government collusion, “media reports, Human Rights Watch, and other sources alleged government officials took bribes from and colluded with human smugglers and traffickers who detained Rohingya on islands and other locations in the south.”¹⁶

- On February 22, 2017, the Ranong Provincial Court acquitted a fishing boat captain and fish market owner of human trafficking in a case brought by 15 Cambodian fishers. According to the workers, they were tricked into working on the fishing boats and forced to work 22 hours per day continuously for 13 months with only two meals each day. They also alleged that they were not paid properly in accordance with Thai labor law. According to the Human Rights Defense Foundation (HRDF), which represented the workers, the court determined that the actions did not constitute an offence of trafficking in persons through the use of forced labor because:¹⁷
 - 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 that had told workers they needed to pay him 30,000 baht (\$870) to purchase their freedom was taking care of the workers, buying them things, and had not locked them into their accommodations before they boarded the vessel;

¹⁵ *ibid*

¹⁶ www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dldid=265376

¹⁷ HRDF 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>

- 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 other times;
- 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;”
- Whether the workers were compensated as they should have been is a matter for the labor court; and
- The court expressed its belief that the workers only brought the case as a means to receive their overdue wages and overtime pay.

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 interpretation of human trafficking in subsequent cases.

Recommendations for improving prosecution outcomes:

- 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.
- Thailand should take a survivor-centered approach to prosecution that places protecting the rights of those victimized as its highest priority.
- 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.
- Thoroughly investigate all allegations of Thai official complicity in human trafficking and prosecute suspected government perpetrators, including those who attempt to cover up that crime or intimidate witnesses, based on the same evidentiary requirements needed to indict non-government actors accused of trafficking crimes and with sufficiently stringent sentences for those found guilty.
- The Ministries of Social Development and Human Security should make an attempt to cooperate with civil society organizations, particularly organizations providing legal assistance to survivors of trafficking in persons, to provide capacity building that will develop expert lawyers who can work on trafficking cases.
- Ratify and implement the Rome Statute of the International Criminal Court, 1998.

2. Protection

Trafficking victims in Thailand lack access to key protections, beginning with the difficulty of being accurately identified as a victim. Numerous research reports in 2016 documented the Thai government's screening processes for trafficking victims is inadequate to protect victims, and can instead label them as criminals. The NGO Fortify Rights reports, "We initially became concerned with the [screening] process when we learned that Thai authorities categorized Rohingya who came from the same boat and experienced similar situations differently: the authorities considered some as survivors of trafficking and others as 'illegal migrants.'"¹⁸

In response to international pressure, Thailand has particularly focused on improving screening and monitoring systems in its seafood sector. Yet two well-researched, multi-year investigations released in 2016 show critical flaws in Thailand's inspection regime that cast serious doubt on the ability of the government to thoroughly and accurately identify trafficking victims:

- **Assessing Government and Business Responses to the Thai Seafood Crisis:**¹⁹ This report documented shortcomings in both Thailand's land-based Port-in Port-out (PIPO) inspection process and at-sea inspections that render them ineffective in identifying trafficking victims. The report found inspections varied widely between PIPO centers visited, but that, "The majority of the PIPO inspections observed failed to cover all 16 of the inspection criteria specified by the NCPI. In many ways, a poor PIPO system both facilitates and potentially indicates the presence of serious issues regarding seafarer welfare, as well as corruption or undue influence by an individual or individuals in a particular area." According to the findings, avoiding detection of trafficked workers is as simple as commanding them to hide on the boat, and inspectors will let vessels depart from port despite discrepancies in crew manifests that may indicate risk of trafficking.

Inspectors at PIPO centers lack the proper training in identifying forced labor, and do not work from common indicators that would standardize identification of trafficking victims nationwide. In one example of inspector misconceptions that may lead to incorrect identification, the report found that, "there appears to be a widespread assumption that migrant workers in possession of basic documentation – namely the migrant workers' 'pink card' – are unlikely to be victims of abuse and therefore don't require further investigation; however, recent cases in Phuket demonstrate that migrant ID cards are not necessarily a barrier to exploitation or abuse." These shortfalls, the report notes, may explain the incongruity that NGO researchers and journalists are still able to find cases of

¹⁸ Remarks of Ms. Puttanee Kangkun, Thailand Human Rights Specialist at Fortify Rights, delivered at the public forum, "One Year After the Andaman Sea Refugee Crisis: End Detention and Bring Justice to Survivors of Human Trafficking," June 8, 2016, Bangkok, Thailand, www.fortifyrights.org/downloads/Remarks_20160608.pdf

¹⁹ Freedom Fund and Humanity United, "Assessing Government and Business Responses to the Thai Seafood Crisis," May 26, 2016, <https://humanityunited.org/report-finds-despite-progress-forced-labour-thai-seafood-significant-gaps-remain/>

human trafficking on Thai vessels, but that more government vessel inspections had not identified a single case of trafficking at the time the report was written.

At-sea inspections also face significant shortfalls, according to the report, including a shortage of resources to pay inspectors and fuel for inspection vessels. The Thai government is reporting a higher-than-expected number of vessel inspections to date, but interviews with vessel owners indicated that vessels near to shore might be inspected multiple times while vessels further out, on the edge of Thailand's exclusive economic zone might not be inspected at all, which, "if true, cast[s] significant doubt on the credibility of the government's stated inspection figures. Of particular concern is that the highest risk vessels – those spending long periods at sea and potentially illegal trawlers – are managing to avoid inspection, while much lower risk vessels are being inspected multiple times." The report also documents weak inspection practices in which vessels were "inspected" by a cursory review of documents, without inspectors ever boarding the fishing vessel or speaking to crew.

- **Turn The Tide: Human Rights Abuses and Illegal Fishing in Thailand's Overseas Fishing Industry.**²⁰ Greenpeace's year-long investigation documented abusive conditions on four Thai vessels fishing in an area of the Indian Ocean called the Saya de Malha Bank.

- **Sor Somboon 1 and Sor Sapsingtai 20-** These two vessels made news across Thailand when they landed at a port in Ranong with 32 crew affected by beriberi disease,²¹ which proved fatal for six of the crew. A government investigation into the deaths determined they occurred because of poor nutrition, overwork and long periods without return to port enabled by transshipment at sea. A senior member of the crew described to Greenpeace researchers how Cambodian fishers were recruited. The company paid \$85 per worker to a Cambodian recruiter, who made \$14-\$17 in profit per worker after transportation and food expenses. The employer or broker must also ensure the worker has a valid Cambodian passport for migrant laborers, which costs \$4, and a Thai Seaman Book, which costs \$14. These costs are passed onto workers who, despite the actual costs of recruitment, all come onto the vessel with about \$571 in debt to the broker and accrue another \$857 in a first advance for supplies or money to send to their families. It takes a worker about six months to pay this off before being eligible to request another advance from the vessel operator. Workers had to request advances because they were paid one lump sum at the end of a two-year work period that amounted to

²⁰ Greenpeace, "Turn The Tide: Human Rights Abuses and Illegal Fishing in Thailand's Overseas Fishing Industry," December 15, 2016, www.greenpeace.org/seasia/Press-Centre/publications/Turn-The-Tide/

²¹ Beriberi disease is caused by thiamine (vitamin B1) deficiencies. It occurs most often among people whose diets consist primarily of rice or other milled grains and has become relatively rare with improved nutrition around the globe. Symptoms can include swelling and pain in the limb, numbness and paralysis, muscular atrophy, shortness of breath and cardiovascular failure.

\$228 per month, which is both an illegally low sum given the hours the crew worked and a violation of a 2014 regulation from the Ministry of Labor that workers be paid at least once a month. None of the workers had a contract, also in violation of Thai law.

- **Kor Navamongkolchai 1 and Kor Navamongkolchai 8-** Greenpeace interviewed 15 trafficking survivors who had been rescued from these vessels and were staying in a Thai trafficking shelter.²² Similarly to the other case, the workers had all entered employment in debt to a labor broker who had charged excessive fees for registration documents and had been promised land-based jobs, but found themselves confined in fishing ports, waiting to be put to sea on vessels. They reported regular physical and verbal abuse, brutal work schedules, restrictions on movement (such as being denied restroom breaks) and arbitrary punishments. When talking to other crew during transshipments,²³ they heard such conditions were also common on other vessels, and crew had been at sea as long as five years without returning to port. All but one of the crew interviewed by Greenpeace had boarded the vessel in late 2014, part of a cohort of 27 workers, and did not know when they would return to port. Then in late 2015 the Thai government recalled all overseas fishing vessels back to port for inspection.

As the vessels returned to shore in early 2016, they were inspected. They boarded Thai Navy vessels and gave interviews to officials from the Department of Labor Protection and Welfare (DLPW), then were returned to their vessels while the Thai Navy accompanied them back to shore. While on the vessel, workers were told that those who lied about conditions to say everything were fine would be paid immediately and allowed to return home. These coercive tactics continued on shore in front of inspectors, the workers reported, and in fact worked. The crew began debating among themselves whether to believe the promises or not. These 15 told their stories and were identified as trafficking victims, but they did not know what happened to the other 12 workers.

As the Greenpeace report notes, “by putting victims of exploitation and abuse back aboard fishing vessels unsupervised and into the hands of their tormentors, labor inspectors invite coercion as well as reprisals that may pose risks to the personal safety of victims they are seeking to protect.” Alarmingly, that is not the first time these workers had witnessed Thai government officials acting with reckless disregard for the lives of potential trafficking victims. At port, before their vessel had departed, nine workers tried to escape. They were apprehended at

²² These are the same workers referenced earlier in the HRDF acquittal case: <http://hrdfoundation.org/?p=1816>

²³ Transshipment is a common practice in the seafood industry in which a fishing vessel stays out to fish in an area too far to conveniently make regular trips to port. Instead, a transport vessel called a mothership brings goods from port to the high seas, and transports fish back to port. Labor is sometimes also carried on such ships.

a police checkpoint and returned to their employer, who used the occasion to demand 30,000 baht (\$872) from workers' families to buy back their freedom.

Greenpeace research found that among 50 at-sea inspections of vessels returning from the Indian Ocean, violations of labor and/or immigration laws were documented for almost half of the 996 crew members, but those inspections did not document a single case of human trafficking. It led the authors to conclude that, "Greenpeace's observations undermine confidence in the ability of the Thai authorities to effectively screen for indicators of trafficking for forced and bonded labor."

Problems with identifying victims are not limited to the seafood sector, however. Poor labor inspections cause exploitation to go unreported in many sectors in which migrant workers are the majority. The Migrant Worker Group describes in its ICCRP submission²⁴ problems including lack of interpreters, improper understanding of the definition of human trafficking by those who screen potential victims, and disagreements within the multidisciplinary teams tasked with screening leading to victims going unidentified. The U.S. State Department Human Rights Report also documents serious shortcomings:

Limited numbers of inspectors, the practice of interviewing employees at workplace locations, reliance on document-based inspection, and lack of interpreters to accompany inspection teams resulted in ineffective inspections ... Despite efforts at regularization and renewal of work permits, migrant workers, in particular undocumented migrants, did not enjoy many labor protections accorded to citizen workers and remained vulnerable and without recourse under the law. NGOs reported poor working conditions for both documented and undocumented migrant workers. Companies employing migrant workers reportedly made unlawful deductions from migrant worker wages to repay the costs of cross-border travel, registration, permits, and other expenses. Workers also reported several other violations by contractors, including failure to pay holiday overtime; provide equipment, uniforms, or adequate drinking water; or pay daily minimum wages for less than eight hours of work. Workers further reported deductions from wages for sick leave absences and bribes to officials to ignore undocumented workers.

Even if victims are identified, they are often not adequately protected due to Thailand's practice of detaining victims of human trafficking. This was a particular problem in 2016 for the Rohingya survivors of human trafficking, found the NGO Fortify Rights. As of June 2016, there were more than 400 Rohingya detainees in Thailand, who had stayed in Immigrant Detention

²⁴ Migrant Worker Group, Civil Society Report on the Implementation of the ICCPR for the Review of the Second Periodic Report of Thailand at the 119th session of the Human Rights Committee, January 31, 2017, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26534_E.pdf

Centers (IDCs) longer than they were intended to, “the IDC facilities are designed for stays of no longer than 15-days; however, many Rohingya have been detained for more than a year, enduring inhumane conditions that fail to meet international standards.”²⁵ Fortify Rights researchers visited an IDC facility in Sonkhla and found, “40 Rohingya refugees, including unaccompanied children, are confined to a cell 24-hours a day with inadequate personal space and a single functioning toilet.”²⁶ The poor conditions put victims at risk of being re-trafficked²⁷ and can lead to deadly consequences. Thai police shot and killed a Rohingya man in May 2016 as he attempted to escape an IDC facility.²⁸

Finally, Thailand demonstrated again in 2016 that corruption among police remained a serious threat to the security of migrant workers, hindering Thailand’s ability to protect victims, despite agreements with the government of Myanmar to address police harassment.²⁹ Migrant workers reported having to pay bribes to police,³⁰ and the NGO Human Rights Watch reported that migrant workers, “remain fearful of reporting trafficking crimes or cooperating with Thai authorities due to lack of effective protection.”³¹ The ILO Committee concluded that, “corruption of government officials can create an environment of impunity that exacerbates the vulnerability of migrant fishers and constitutes a major obstacle in the identification of the victims of forced labor and trafficked victims.”³²

Recommendations for improving protection outcomes:

- Strengthen the capacity 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, the hiring of more labor inspectors able to speak the languages spoken by migrant workers and 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

²⁵ Remarks of Ms. Puttanee Kangkun, Thailand Human Rights Specialist at Fortify Rights, delivered at the public forum, “One Year After the Andaman Sea Refugee Crisis: End Detention and Bring Justice to Survivors of Human Trafficking,” June 8, 2016, Bangkok, Thailand, www.fortifyrights.org/downloads/Remarks_20160608.pdf

²⁶ Fortify Rights press release, “Thailand: Implement Cabinet Resolution to Protect Survivors of Human Trafficking,” April 19, 2016, www.fortifyrights.org/publication-20160419.html

²⁷ Fortify Rights press release, “Thailand: One Year After Boat Crisis, Protection Still Lacking for Rohingya Refugees and Human Trafficking Survivors,” June 8, 2016, www.fortifyrights.org/publication-20160608.html

²⁸ Fortify Rights press release “Thailand: Investigate Fatal Shooting of Rohingya Refugee, End Indefinite Detention

²⁹ Chiangrai Times, Myanmar Officials Claim Thai Police Harassing Migrant Workers,” December 15, 2016, www.chiangraitimes.com/myanmar-officials-claim-thai-police-harrasing-migrant-workers.html

³⁰ www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265376

³¹ Human Rights Watch, World Report 2017: Thailand, www.hrw.org/world-report/2017/country-chapters/thailand

³² International Labour Organization, 326th session of the Governing Body, March 2016, Decision on the 16th item on the agenda: Reports of the Officers of the Governing Body Sixth report: 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), http://www.ilo.org/gb/decisions/GB326-decision/WCMS_465055/lang--en/index.htm

case numbers and details accurately and indemnified against prosecution from vessel owners, powerful government and industry actors, or others for accurately identifying victims for trafficking for forced labor.

- At-port inspections must be standardized to ensure confidence in the verification process nationally. The government should undertake a review of PIPO operations across different provinces and ensure consistency in the training and information provided to frontline staff.
- Extend the current temporary controls on transshipment at sea outside of Thai waters indefinitely. Scrutinize Vessel Monitoring Systems (VMS) data to verify observer reports and declarations concerning transshipment at sea. Require vessels to install Automatic Identification System (AIS) transmitters and ensure they are transmitting at all times.
- 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 deportations.
- Ensure that workers aboard distant water fishing vessels are able to regularly report on their working conditions through both formal and informal channels in a manner completely free from coercion or intimidation.

3. Prevention

Thailand did continue efforts to prevent human trafficking by facilitating legal labor migration and registration of migrant workers in 2016. As demonstrated above, however, migrant workers remained vulnerable to exploitative recruitment processes that result in debt bondage. In addition, the Thai government's labor migration policies and initiatives are unstable and confusing, which continues to make migrant workers vulnerable to abuse. Policies often change, and migrant workers are not aware of the changes. Initiatives and policies for work documents are introduced rapidly and then withdrawn in a matter of months sometimes - after many migrant workers paid for the new documents.

Crackdowns on human rights defenders and migrant workers who reported on crimes committed against them, meanwhile, seemed aimed at preventing the reporting of human trafficking rather than prevention of the crime itself. In particular, Thailand continued to use criminal defamation and the Computer Crimes Act to punish people who documented and publicized forced labor conditions:

- The Bangkok South Criminal Court found Andy Hall guilty of criminal defamation and violations of the Computer Crimes Act on September 20, 2016.³³ He was given a 3 year suspended prison sentence and a fine of 150,000 baht (\$4,353). Hall is appealing the verdict to the Appeals Court.

³³ Fisher, Jonah, *BBC News*, "Andy Hall: Thai court finds UK activist guilty of defamation," September 20, 2016, www.bbc.com/news/world-asia-37415590

The charges stem from research Hall conducted that uncovered a number of abuses against migrants working for the Thai fruit exporting company Natural Fruit Ltd. Finnwatch, a Finnish non-governmental organization, published a report in 2013 using the interviews Hall had done with workers in a Natural Fruit factory, which exposed violence against workers, child labor, forced overtime and the confiscation of passports. Rather than inquiring into the allegations published in the report, Natural Fruit brought criminal charges.

The verdict has received international condemnation from civil society groups,³⁴ the European Union,³⁵ the UN Human Rights Office for South-East Asia,³⁶ the International Labour Organization.³⁷ Abusive employers have taken note of the case and begun to use criminal defamation and the Computer Crimes Act to bring cases against migrant workers who speak out when trapped in illegal working conditions and against activists who work to protect these individuals. These laws have a dangerous chilling effect and punish victims for seeking remedy, rather than those who commit crimes against them. For example, Hall was forced to flee when faced with additional legal charges brought against him.³⁸

- In June of 2016, 14 Burmese workers in Thailand escaped from a chicken farm in 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 that inspired them to leave.³⁹ The workers were paid far below the nationally mandated minimum wage and were not provided overtime wages. They had 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.

The Thai government has ordered that the workers be paid \$50,000 in back wages, but the farm owner has refused and appealed the order. The workers, meanwhile, filed a

³⁴ Open letter to Thai Prime Minister Prayut Chan-o-cha regarding conviction of Andy Hall, December 10, 2016, www.laborrights.org/publications/open-letter-thai-prime-minister-prayut-chan-o-cha-regarding-conviction-andy-hall

³⁵ Bacchi, Umberto, Thomson Reuters Foundation, "EU official says activist defamation ruling casts 'deep shadow' on Thai labor reforms," October 2, 2016, www.reuters.com/article/us-europe-thailand-rights-idUSKCN1261S9

³⁶ UN Human Rights Office for South-East Asia, "UN Human Rights Office concerned by sentencing of labour rights activist by Bangkok court," September 20, 2016, <http://bangkok.ohchr.org/news/press/AndyHall.aspx>

³⁷ Bussi, Maurizio, ILO Country Director for Thailand, Cambodia and Lao PDR, "Statement - Conviction of labour rights activist Andy Hall in Thailand," September 21, 2016, www.ilo.org/asia/info/public/pr/WCMS_526122/lang-en/index.htm

³⁸ Hall, Andy, "Thailand: Andy Hall's Statement on His Departure From Thailand," November 7, 2016, www.lrwc.org/thailand-andy-halls-statement-on-his-departure-from-thailand/

³⁹ Tang, Alisa, 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

\$1.25 million compensation case in an attempt to make up for the damaging conditions they experienced, which was dismissed March 17, 2017.⁴⁰ In response, the chicken farm has filed criminal defamation charges against them and against Andy Hall, as well as theft charges against two of the workers for “stealing” their time cards as evidence in their case.

The Computer Crimes Act is increasingly being used to silence human rights defenders and dissent against the military government. There were 399 prosecutions between January and August 2016 - compared to a total of 321 in 2015, 71 in 2014, 46 in 2013, 13 in 2012, and six in 2011.⁴¹ Also in October 2016, amendments were brought before Thailand’s National Legislative Assembly that would, if adopted, maintain high penalties for acts considered peaceful expression and fail to protect the privacy of individual computer users.

The Thai government also used other means to intimidate advocates of migrant workers and trafficking victims. Two organizations, Aid Alliance Committee for Myanmar Workers (AAC) and Myanmar Association in Thailand (MAT), were shut down after reporting on the arrest and deportation of tens of thousands of Burmese migrant workers.⁴²

Thailand also failed to take action on an important and consistent recommendation in the TIP Report to regulate labor recruitment. As demonstrated above, migrant workers are still vulnerable to labor recruiters charging exorbitant fees that amount to debt bondage. The ILO Committee underlined that, “the involvement of brokers in the recruitment process of migrant fishers could contribute to increasing their vulnerability and potentially leads them to fall into situations that amount to forced labor and trafficking. The Committee also considers the payment of recruitment fees by migrant workers is a serious and widespread problem that induces workers into indebtedness and increases their vulnerability.”⁴³ The Thai government told the ILO Committee that it was working on a draft order on recruitment of migrant workers that would limit recruitment to registered agencies or direct hiring by the employer, specify requirements for registered brokers, require all recruitment fees to be paid by employers, and establish fees or imprisonment for those who illegally trade in labor. Such legislation, if true, is an important step forward and it is critical the Thai government seek input from civil society and other stakeholders to ensure effective, enforceable legislation to regulate labor recruitment.

⁴⁰ Tang, Alisa, Thomas Reuters Foundation, “Thai court dismisses labor abuse suit against chicken farm,” March 17, 2017, www.reuters.com/article/us-thailand-workers-idUSKBN1601HX

⁴¹ <http://www.fortifyrights.org/downloads/2016.10.25%20-%20Thailand%20CCA%20Joint%20Statement.pdf>

⁴² CIPD Asia, “Myanmar workers’ rights groups banned in Thailand for criticizing recruitment practices,” www.cipd.asia/people-management-magazine/hr-news-opinion/myanmar-groups-banned-thailand#

⁴³ International Labour Organization, 326th session of the Governing Body, March 2016, Decision on the 16th item on the agenda: Reports of the Officers of the Governing Body Sixth report: 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), http://www.ilo.org/gb/decisions/GB326-decision/WCMS_465055/lang--en/index.htm

Finally, Trade unions have an important role to play in preventing labor trafficking, but Thailand has effectively banned unionization in the sectors most prone to labor trafficking by refusing migrants the right to organize and collectively bargain. The ILO has noted that anti-trafficking interventions focused on border control and criminal justice-centric approaches can take agency away from identified victims and divert attention from key structural inequities that make migrant workers especially vulnerable to abuses. 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. 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. Improving the rights of migrant workers and minimizing their risk of trafficking necessitates amending the Labor Relations Act B.E. 2518 (1975) to allow migrant workers to form and lead their own unions and collectively bargain with employers.

Recommendations for improving prevention outcomes:

- 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.
- 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, particularly Labor Relations Act B.E. 2518 (1975), and practices in line with these international labor standards.
- Enact legislation to regulate labor brokers and protect migrant workers developed with civil society that would require employers to pay all costs associated with labor recruitment, allow migrant workers to independently register themselves for work permits and find employment, expand the right of migrant workers to change employers, allow these workers to re-register at their local labor center in Thailand rather than return to their country of origin, and introduce enhanced penalties for corrupt officials who charge migrant workers illegal fees for processing or expediting their applications for documents.
- 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.

- Ensure protection of human rights defenders including researchers, advocates, and journalists, in accordance with the UN Declaration on Human Rights Defenders.

Conclusion

Thailand does not fully meet the minimum standards as set forth in the Trafficking Victims Protection Act, and it is not making significant efforts to do so. Thailand's laws are inadequate to prohibit forced labor among migrant workers, one of the most common trafficking risks in Thailand. 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.

Thailand must be assessed not on its stated intentions, but on its actions when measuring effective response to counter trafficking. A final quotation from the Humanity United/Freedom Fund report details why:

Thailand's poor record for fully implementing such [anti-trafficking] plans necessitates both healthy skepticism and maintained pressure in order to ensure that commitments are followed through. A senior United Nations official interviewed for this report said 'That's always the issue here: on paper, everything looks pretty impressive...[but] it either gets twisted or just not implemented.' While these action plans and public commitments represent positive developments in Thailand's approach to dealing with these issues, they should not be viewed as an end in themselves.

We thus urge you to place Thailand on Tier 3 of the Trafficking in Persons Report until demonstrable improvements to the conditions for migrant workers have been made and can be documented by researchers on the ground.

Annex A

I. Prevention and Suppression of Human Trafficking Act (Third Edition) B.E. 2560 (2017)

The Prevention and Suppression of Human Trafficking Act (Third Edition) B.E. 2560 (“PSHT Act”) came into force on January 28, 2017. While the amended law is a sign of some progress on bridging the gap between Thailand’s anti-human trafficking framework and international standards, there are several provisions in it which fall below the U.S. Trafficking Victims Protection Act (TVPA)’s minimum standards for the elimination of human trafficking. It also remains to be seen whether the Thai authorities will strictly enforce the new provisions of the law as the drafters intended.

That uncertainty, the following gaps and weaknesses in the law, and the government’s failure to prohibit labor recruiters from charging migrant workers excessive fees, a practice specifically mentioned in the 2016 Trafficking in Persons Report, suggest the recent changes to the law are not sufficient to merit a finding of “serious and sustained efforts to eliminate severe forms of trafficking in persons.”

A. The PSHT Act requires a higher burden of proving intent rather than the TVPA’s lower knowledge standard for acts of severe forms of trafficking in persons.

The PHST Act states that any person committing an act under Section 6 “with the aim of wrongful exploitation” is guilty of human trafficking. The TVPA’s minimum standards for the elimination of trafficking in persons, however, states, “For the *knowing* commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense” (emphasis added). The acts included under Section 6 of the PHST Act mirror the TVPA’s definition of severe forms of trafficking and as such, the Thai government should not have required intent for conviction since this makes it unduly difficult for prosecutors to prove their case.

B. The PHST Act does not clearly define debt bondage nor expressly prohibit debt bondage linked to excessive recruitment fees.

The PHST Act states that “[f]orced labour or service ... means coercing someone to work or to provide service by ... *wrongfully binding* that person with his own debt or other’s debt” (emphasis added). The Act neither explains what shall be considered “wrongfully binding” nor expressly prohibits the use of excessive recruitment fees to place migrant workers in situations of debt bondage. This ambiguity in the law exists despite the U.S. State Department’s explicit reference last year to excessive recruitment fees as a contributing factor to human trafficking that governments should curb. The Thai government should have clearly addressed this concern in its drafting of the Act, but instead it chose to leave it to the courts, whose understanding of labor trafficking is questionable, to interpret what constitutes “wrongfully binding” for the purpose of enforcing this law.

C. The PHST Act does not clearly prohibit abuse or threatened abuse of law or legal process as a means of coercion, especially with respect to detention and removal proceedings used or threatened against asylum seekers, refugees, and undocumented migrant workers.

The PHST Act states that “[f]orced labour or service ... means coercing someone to work or to provide service by using these following means: (1) frightening that danger would occur to his life, body, *freedom*, reputation, or property, or to that of another person; (2) threatening by using *any other means*; (3) physically assaulting; (4) forfeiting his identity document, or wrongfully binding that person with his own debt or other’s debt; (5) putting that person in a *situation that he cannot resist*” (emphasis added). While the terms “freedom,” “any other means,” and “situation that he cannot resist,” could be interpreted as encompassing abuse or threatened abuse of law or legal process which is prohibited by the TVPA, there is no indication in the text of the Act or other legal sources that the National Legislative Assembly intended this law to protect asylum seekers, refugees, and undocumented migrant workers who may also be victims of human trafficking. This gap in the law continues to leave these groups vulnerable to abuse and exploitation, and falls below international standards for protecting all individuals regardless of immigration status from forced or child labor.