



THAILAND

A Joint Submission for the Universal Periodic Review (3rd Cycle) the 39th Session of the UPR Working Group, (October -November 2021)

A: Profile of the submitting organizations

(1) **Migrants Working Group (MWG)** is a network of non-governmental organizations working on the issue of health, education and migrant workers' rights in Thailand. The MWG is a platform for exchanging information and analysing the root cause of problems among member organizations. MWG collaborate with members set agendas for mobilizing campaigns and advocacy activities with state sectors, academic institutions, and civil society organisations (CSO) for migrant workers' fundamental rights to ensure a better quality of life. This submission is endorsed by following members of MWG: **Environmental Justice Foundation, Proud Association, Foundation for AIDs Rights, Human Rights for Development Foundation, Migrant Workers Rights Network, and Raks Thai Foundation.** The methodology of this report is based on (1) a literature review of current domestic and international laws and policies (2) consultation and consolidation of inputs from MWG members who provide services to migrant workers and monitor government and corporate practices with regard to migrant workers' rights.

B: Overview of migrant workers management situation in Thailand

(2) Thailand's exported-oriented industrial development in the past decades significantly rely on migrant workers from neighbouring countries i.e., Cambodia, Laos PDR, Myanmar and Vietnam. It is estimated that migrants from these countries currently constitute over 10% of Thailand labour force.¹ As of December 2020 there were approximately 2.3 million migrant workers registered in Thailand – 68% are from Myanmar, 22% Cambodia, and 10% from Laos; about 45% of these migrant workers are women.²

(3) Thailand has recently adopted policies and amended regulations on the recruitment and employment of migrant workers which introduced some favourable policy changes in migrant workers management such as adopting a zero-recruitment fee for workers, a prohibition on retention of workers' identity document and improvements on fishery workers' welfare and working conditions. There remain gaps in law and in implementation that negatively affect migrant workers' employment, working and living conditions. Migrant workers experienced in discrepancies and discriminations in law and policy implementation among law enforcements officials. For instance, despite the Department of Employment (DOE) having announced that it is the employer's responsibility to notify the DOE when there is a termination of employment, some DOE offices still require migrant workers to submit a notification of employment termination from their former employer before being able to be registered with a new employer. Migrant workers also face difficulties and potential retaliations when reporting abuses and unlawful practices. With complexity of the law, procedures and bureaucratic system, migrant workers who already lack language proficiency have very limited avenues to assert their rights, leaving them highly dependent on employers and recruitment agencies and increasing their vulnerability to exploitation. Such circumstances combining with an increasing economic pressure, migrant workers have limited bargaining power to negotiate with their employers. As a result, migrant workers are forced to continue working under exploitative employment and working conditions. Some migrant workers reportedly have to shoulder excessive recruitment cost when they wanted to change an employer.

¹ United Nations Thematic Working Group on Migration in Thailand, Benjamin Harkins, ed., "Thailand Migration Report 2019," p. xi, retrieved from https://thailand.iom.int/sites/default/files/document/publications/Thailand%20Report%202019_22012019_LowRes.pdf, 22 March 2021.

² Ministry of Labour, Department of Employment, Statistics of the Employment of Foreign Workers Nationwide, 25 December 2020, retrieved from, https://www.doe.go.th/prd/assets/upload/files/alien_th/a0bf3232bdb42f5fe6dbe66cfa75b02c.pdf, 22 March 2021.

(4) Migrant workers are also left to face job insecurity and precarious employment conditions, particularly an unlawful practice of hiring migrant workers as sub-contractors – leaving workers at risk of having their basic rights violated i.e., unfair wage deduction and sudden dismissal without severance pay. This practice is prohibited by Thai law, but the prohibition remains weakly enforced by officials. In 2020, CSO documented that 21 Cambodian factory workers in Pathumthani were forced and intimidated by the subcontractor to sign a resignation letter as they did not want to convert themselves to MOU workers due to high processing fees. These migrant workers were initially let go with no severance pay.³

(5) Despite Thailand's ratification of many international conventions and protocols, the country still requires a more robust efforts in modifying its legislation and mechanisms to correspond with international standards on the protection of migrant workers. The issue is especially critical in the area of migrant workers management.

(6) In the past years, Thailand attempted to address the problem of undocumented migrant workers by (1) allowing migrant workers to regularize their status through the Nationality Verification (NV) process, which will no longer be enforced by 2022 and (2) adopting the Royal Ordinance on the Management of Foreign Workers Employment to formalize recruitment procedures through Memorandum of Understanding (MoU) schemes. Prior to the pandemic, the MOU recruitment scheme was the only legal channel for workers to come work in Thailand. Its procedure is costly, lengthy and complicated – requiring frequent domestic travel for workers, frequent visits to recruitment offices and completion of numerous forms from employers and workers for the recruitment to complete.

(7) The MOU recruitment cost is also expensive compared to workers' minimum wage rate at 313-336 Thai Baht per day (US\$ 10.5-11.2).⁴ Migrant workers also have to bear the cost of regularised procedure in Thailand i.e., a visa fee, a work permit fee, a medical examination, and a migrant health insurance scheme equivalent to 7,500 Thai Baht (US\$ 250). or about 8% of their annual minimum income.

(8) As a result of this complicated formal labour migration, employers and employees opted for informal migration channels – exposing the workers to greater risks of exploitation and human trafficking. Many migrant workers have to rely on brokers and recruitment agencies which charge them excessive fees. This situation has worsen during the pandemic due to government's closure of borders and restrictive labour movement. Some workers who returned to sending countries could not cross back to Thailand and ended up with no jobs and income to support their families. As corruptions are rife in the immigration system, some workers were able to migrate through informal channels but at the same time potentially exposed other workers and their local communities to health risks and infection. Without proper effort from the government to ensure that a safe migration is easily accessible and cost-effective, migrant workers will always remain at risks of exploitation.

Recommendations:

- Collaborate with the governments of sending countries to simplify and reduce the time and resources required to complete the MOU process.
- Establish cross-border cooperation with labour-sending countries such as Myanmar, Cambodia and Laos to update respective governments on the current situation and protocols that the Thai government will implement once borders re-open.
- Collaborate with the governments of sending countries to set a standard cost for recruitment fee and the cap of service fees to ensure the cost of migration is affordable and reasonable for their citizens.

³ Workers was eventually paid the severance pay by employers, but it remains unclear whether employers will face legal consequences for their actions. More details on the case can be referred to at <http://hrdfoundation.org/?p=2248&lang=e>

⁴ Ministry of Labour, National Wage Committee Announcement on Minimum Wage Rate (No.10), 6 December 2019, retrieved from <https://www.mol.go.th/wp-content/uploads/sites/2/2020/01/Prakadwage10-6Jan2020.pdf>

- Establish a clear guideline for the permitted expense deduction from the income of migrant workers. Even though Thai law allows employers to deduct the lawful expenses not more than 10% of the income, there is no standardized format and regular monitoring and inspection.

To facilitate protection of seasonal workers, the government introduced the **Border pass employment scheme** – amending Section 64 of the Royal Ordinance to facilitate and expedite low-skills migrant workers employment particularly in the border provinces and the Special Economic Zones (SEZs) i.e., Tak and Sra-Kaeo provinces. Migrant workers from neighbouring countries can use border pass to request for work permit in seasonal and temporary work which is subjected to renewal every 90 days. However, some employers have hired migrant workers under border pass scheme to work in regular and long-term industrial work such as garment factories which is contradicting to the law.⁵ Furthermore, some employers failed to provide the guaranteed minimum wages, social protection benefits, and other labour rights that workers are entitled to. For example, migrant workers reported (1) they were not given severance pay at the rate stipulated by Section 118 of the Labour Protection Act, (2) employers did not register workers with the Social Security Fund nor the Workmen’s Compensation Fund.⁶

Recommendations:

- Revise the law to allow workers employed under Article 64 to be employed in industrial commercial and service sectors and provide these workers a work permit for at least one-year period. These workers must also be allowed to enter social security system as self-insurers.
- Conduct a study to review the implementation of border pass employment scheme and its impacts on socio-economic and healthcare of local communities.
- Revise procedures of border pass employment scheme to increase legal protection of workers employed under the scheme.
- Collaborate with CSO to monitor employers’ practice on the compliances of labour protection and foreign workers employment laws and exercise strict law enforcement measures.

C: Migrant workers situation during the COVID-19 pandemic and their inability to access social welfare and protection

(5) In response to the pandemic, the Thai Government has invoked the state of emergency in March 2020 and adopted several law and policy measures in relation to migrant workers management. The Government halted new cross-border recruitment and restricted movement of migrant workers since March 2020. In addition, the government adopted the Cabinet Resolutions in August and December 2020, permitting undocumented migrants from Myanmar, Cambodia, and Laos PDR to register for a work permit for the period of up to two years by completing an online registration process and purchased medical examination and health insurance. MWG estimated that about 700,000 migrant workers have not been able to renew their documentation during this period. The pandemic does not cause only economic disruption but also directly affects millions migrant workers across Thailand in many aspects as following:

- **Migrant workers have limited access to health care and disease prevention measures during the pandemic.** Migrant workers’ access to public healthcare services, personal protective equipment, and

⁵ Asian Institute of Technology and Mekong Migration Network, Jobs in SEZs: Migrant Garment Factory Workers in the Mekong Region, June 2019, retrieved from <http://www.mekongmigration.org/wp-content/uploads/2019/10/Jobs-in-SEZs-23-Sep-2019.pdf>

⁶ Human Rights and Development Foundation (2020) ‘A call for the enforcement of Thailand’s Social Security Act towards employers of migrant workers in the Special Economic Zone’, statement of 7 August 2020, <http://hrdfoundation.org/?p=2383>.

COVID-19 screening and testing process are significantly limited because of insufficient numbers of interpreters, healthcare service providers, and financial resources. Due to language barriers, migrant workers have less access to updated information on COVID-19 transmission and prevention as such information is not available in their languages. They are also not eligible for some of COVID-19 economic relief programs. The majority of these programs are designed and reserved only for Thai nationals.

- **Migrant workers are excluded and discriminated from a number of social protections benefits because of their nationalities and documentation status. Most of social protection schemes introduced during the pandemic are not designed with consideration to serve migrant workers:**
 - a. During the pandemic, migrant workers are qualified for compensations from force majeure situations like sudden employment dismissal if they are registered under Social Security System. However, less than 50% of migrant workers are currently in the system. Leaving them with no access to compensation and social welfare when unemployment rate and job insecurity is on the rise as the economy suffers from the pandemic.
 - b. Workers who are not eligible to enrol under the SSA such as agricultural workers and domestic workers or workers whose social security status has expired are provided with 5,000 Thai Baht per month for a period of six months; however, this measure is only applicable to Thai nationals.
 - c. Another example of a discriminative welfare scheme is the ‘No One Left Behind’ scheme that provide financial remedies for Thai citizens affected by the pandemic who are not in the social security system and ‘We Love Each Other’ scheme that provide the citizens under SSF section 33.⁷
- **Social Protection**– Migrant workers who have already registered and paid monthly contribution to the SSF for at least six months are entitled to the unemployment benefits. Yet, they have faced legal, procedural and language barriers in claiming these unemployment benefits as the Royal Ordinance on the Management of Foreign Workers requires that migrant workers from four neighbouring countries find a new job within 30 days after their current employment is terminated. Afterwards, their visa and work permit will be expired, and they must return to the country of origin. The process to claim for these benefits and the document required are mostly available only in Thai language.
- **Migrant workers were subjected to arrests, prosecutions, and hefty fines for violating the Emergency Decree** and its measures due to lack of awareness and full access to information. The Government imposed several restrictions under the Emergency Decree including the ban on public gathering and assembly,⁸ the imposition of a night-time curfew,⁹ and the prohibition of cross-provincial movement of migrant workers.¹⁰ CSO documented that factory workers and informal workers were arrested and fined for violating the night time curfew while they were commuting home

⁷ Migrant workers urging Thai government to ensure migrant insured persons have access to “Section 33, We Love Each Other” handouts <http://hrdfoundation.org/?p=2507>

⁸ Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 1), 25 March 2020, retrieved from <https://www.caat.or.th/wp-content/uploads/2020/04/regulation16-issued-section-9-no.1-by-MFA.pdf>, 22 March 2021

⁹ Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 2), 2 April 2020, retrieved from http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/076/T_0001.PDF, 22 March 2021.

¹⁰ Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 15), 25 December 2020, retrieved from http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/302/T_0068.PDF, 22 March 2021.

after finishing their night shifts at the factory.¹¹ In another example, 21 migrant workers in Pathum Thani province were arrested and prosecuted for violating the ban on public gathering while they were gathering to play volleyball outdoor.¹²

Recommendations:

- Make information related to COVID-19 symptoms, preventive measures, and government's responding regulations available in migrants' languages and circulate the information among migrant communities through the channels that can be easily accessed by migrant workers including online platforms, social media, and community outreach sessions.
- Ensure that public healthcare services including COVID tests and treatments are available and accessible for all migrant workers regardless of documentation status.
- Ensure that migrant workers have equal access to all social protection programs under the Social Security Act.
- Amend national law and regulations such as the Royal Ordinance on the Management of Foreign Workers and the Social Security Act to address discrepancies in regulatory framework and implementations

D: Thailand's obligations and compliances with international treaties on the protection of migrant workers' rights.

(7) Most recently, Thailand has ratified numerous international labour rights conventions and protocols which obliged the state to complete an internal review process to modify legislation and mechanism to uphold state's legal obligations in accordance with the international standards. As per the third cycle of the country's Universal Periodic Review (UPR), MWG has raised the following concerns with regards to Thailand's compliance with international standards on the protection of migrant workers:

The Management of Migrant Workers

(8) Thailand attempted to address the problem of undocumented migrant workers by (1) allowing migrant workers to regularize their status through the Nationality Verification (NV) process, which will no longer be enforced by 2022 and (2) adopting the Royal Ordinance on the Management of Foreign.

Forced labour and Trafficking in Persons

(9) In 2018, Thailand ratified the Protocol of 2014 to the 1930 Forced Labour Convention reinforces the international legal framework for combating all forms of forced labour, including taking measures to prevent forced labour, protect victims, and ensure their access to remedies and compensation. Thai government adopted the 2019 amendments of the Anti-Trafficking in Person Act, B.E. 2551 (2008) to include provisions separating and penalizing an act of "forced labour or services", which carry a sentence of six months' to four years' imprisonment, a fine of 50,000 to 400,000 baht (\$1,680 to \$13,440) per victim, or both.¹³ The legal amendment has broaden the definition of human trafficking and forced labour from the original definition – which was traditional and narrow, focusing only on confinement and physical violence against workers neglecting other potential forms of exploitations.

¹¹ CIVICUS, Freedom of Association in Thailand: An Assessment of the Enabling Environment for Civil Society, retrieved from https://www.civicus.org/documents/reports-and-publications/eena-reports/thailand-CIVICUS-FOA-assessment_en.pdf, October 2020

¹² Khao Sod Online, "Authorities arrested 21 migrant workers for not wearing masks and gathering to play volleyball, violating the Emergency Decree," 16 April 2020, https://www.khaosod.co.th/around-thailand/news_3962760

¹³ See Section 6 (1) and 52 (2) of the amended Anti-Trafficking in Person Act. B.E. 2551 (2008)

(10) However, the problems remain in the state official interpretation of forced labour elements and sustainable knowledge transfer and skills building for officials. Effective identification forced labour victims and elements requires well- trained and experienced officials and a clear and precise set of guidance. In practice, the provincial multi-disciplinary team (MDT) which comprises of officials from Ministry of Social development and Human Security (MSDHS), Ministry of Labour (MOL), police and immigration officers are frequently shuffled or replaced. This undermines a collective knowledge accumulation and skill transfer. This situation subsequently also led to frequent allocation financial resources to train new arriving officials. Most importantly, as a result of this flux in personnel in charge, a number of forced labour and labour trafficking cases has been misidentified. In such scenarios, a potential victim of forced labour would end up being repatriated as an illegal migrant, without receiving any adequate assistance and protections. In addition, the Anti-Trafficking in person Act currently under enforcing responsibility of the officials of the MSDHS whilst some MSDHS officials may not have expertise in labour rights and welfare protection – in comparison to the MOL officials who work closely with workers in labour inspections. This has resulted in cases of officials failing to effectively identify, assist, and protect the victims of forced labour.

(11) Despite an introduction of the Inquisitorial System in the procedural law for the offences under the Anti-Trafficking in Person Act, at the investigation stage, the survivor or potential survivor still bears a burden to provide information or evidence to support the charge. Given a complexity of the offence's factors and considering the superior power of the perpetrator over the survivors in most cases, the survivors especially foreigners tend to turn down the case and choose to return their countries of origin.

(12) Referring to the humanitarian principle, the Anti-Trafficking in Person Act allows the foreign survivors to temporarily stay and work in Thailand as they are waiting for a completion of the case and of their medication, rehabilitation and remuneration. However, in reality, there was only a small number of survivors who were able to work during this process.

Recommendations:

- Develop a clear and precise scope of procedure, criteria, and protection measures in human trafficking and labour trafficking case identification, execution, and protection to be distributed nationwide. This can be done in a format of Standard Operating Procedures (SOP), which details the appropriate procedures for the identification, screening and protection of forced labour victims. This SOP should in also indicate which agency is responsible for each stage of the identification, investigation and prosecution phase of potential cases.
- Allocate adequate resources and effectively train provincial MDT and all law enforcement officials ranging from the police, public prosecutors to judges to have a clear understanding of forced labour elements and available remedies and protections.
- Increase its efforts and active interventions through the deployment of MDT to establish strategic forced labour cases and ensure migrant workers access the complaint mechanism.
- Allocate There a reasonable and acceptable recovery and reflection period for potential survivors to recover from their experience and regain their strength prior to undergoing a judicial process.

Working in the Fishing Sector

(13) Thailand is the first country in Asia to ratify the Work in Fishing Convention, 2007 (No.188) in 2019. The Thai fishing and seafood processing sectors together employed more than 600,000 workers in 2017, of whom 302,000 were registered migrant workers. The Thai fishing industry alone registered more than 57,000

migrant fishery workers in 2017 on approximately 10,550 commercial fishing vessels.¹⁴ However, there are gaps when it comes to implementation of international obligations to promote worker protection in the fishing sector as follow:

- **Social security program**– the 12 November 2019, Ministerial Announcement in pursuant of the Fishery Workers Protection Act B.E. 2562 (2019) about the change of welfare policy guideline for fishery workers stipulates specific health care insurance and welfare and compensation benefits for fishery workers and permits the employers to choose between obtaining private health insurance scheme or enrolling fishery workers in state social security scheme.¹⁵ However, the healthcare benefits and welfare adopted in the law is still below the benefits prescribed in Article 34 of the C.188.¹⁶ For example; the benefits of child allowance, old age pension, and unemployment benefits were not included. The Ministerial Announcement also allows a gap for employers to provide benefits less than what workers are entitled to under social security program.¹⁷ Currently, there are a significant number migrant fishery workers still cannot access social security programs even though Thailand has ratified the C188 for over two years.
- **Minimum age**– according to article 9 of C188, a child at minimum age of 16 who engaged in vocational training in fishing is allowed to work on a fishing vessel though that permission must be decision of the competent authority, after consultation, on condition that the health, safety and morals of the young persons concerned are fully protected. In 2018, MOL had attempted to amend the minimum age of fishery workers from 18-year-old to 16-year-old following the influencing request of commercial vessel operators. Subsequently, the lobbied MOL set off to reform its Ministerial Regulation Concerning Protection of Workers in Sea Fishery Work to allow children as young as sixteen to work on-board fishing vessels as apprentices last year. CSO believes that the introduction apprenticeships are a dangerous risk to Thailand’s efforts to combat forced labour and human trafficking that post a seriously risk to worker welfare onboard fishing vessels because this amendment is under consideration of the cabinet whilst a clear monitoring, complaint and grievance mechanisms as well as a structure or plan for the apprenticeships including specific working hours have not been defined.
- **Fishery work is currently classified as hazardous child labour**¹⁸ in ILO Convention No. 182 on the Worst Forms of Child Labour - ratified by Thailand in 2001 - and the ‘worst form of work for children’ by the Thai National Committee for the Eradication of the Worst Forms of Child Labour in 2012. By taking a rash decision to permit this amendment, Thailand would also be violating its commitment to an international convention. A lack of thorough consideration on risk to health and safety of a child could lead to a promotion of worst form of child labour.
- **Employment contract**– according to article 20 of the C188, it is required that the contract shall be the responsibility of the fishing vessel owner to ensure that each fishery workers has a written fishery workers’ work agreement signed by both the fishery workers and the fishing vessel owner or by an authorized representative of the fishing vessel owner. In practice, most fishery workers have signed contract under duress situations to secure job opportunities without fully understanding their rights

¹⁴ International Labour Organization, “Thailand Ratifies Work in Fishing Convention, News, 30 January 2019, retrieved from https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_666581/lang-en/index.htm, 22 March 2021.

¹⁵ Ministry of Labour, Ministerial Announcement on the provision of healthcare benefits and welfare for fishery workers, 12 November 2019, http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/005/T_0030.PDF

¹⁶ See Article 34 of the Work in Fishing Convention, 2007 (No.188) which stipulates that “Each Member shall ensure that fishery workers ordinarily resident in its territory, and their dependents to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favorable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory”

¹⁷ See 7) and 8) of the Ministerial Announcement on the provision of healthcare benefits and welfare for fishery workers, 12 November 2019,

¹⁸ The convention defines hazardous child labour as work that may be conducted in legitimate sectors, but is likely to harm the health, safety or morals of children.

under the employment contract. It is imperative that the MOL mandate the provision of bilingual contracts for all workers to ensure that migrant workers understand their rights and employment terms to reduce their vulnerability to exploitation.

- **Occupational health and safety**– fishery workers in Thailand are not being properly provided with occupational health and safety trainings and services. Despite the fact that the Occupational Health and Safety Act. B.E. 2554 (2011) states that employer is obligated to provide adequate occupational health and safety training as well as clean water and food to their employees, the law, however, did not mention the minimum standard of food and water required on fishing vessels. CSO documented that some fishery workers have to pay for their own food and water whilst working onboard fishing vessels. They also reported that many work-related accidents occurred while fishery workers did not wear or have access to safety equipment and did not receive adequate training on using fishing equipment.¹⁹ Safety equipment such as life jackets, life rafts, and fire extinguisher were also found to be below required standard set by the Marine Department in various provinces when CSO observed the vessel inspections conducted by responsible authorities. In the past two years, the case of fishers falling overboard and/or being lost at-sea have grown to be more common occurrences.

Recommendations:

- Eliminate policy and implementation barriers that prevent fishery workers from gaining full access and utilization of services under the Social Security Fund and ensure workers and their families have access and received appropriate compensation after experiencing accidents or fatalities.
- Conduct public hearing and a thorough study related to the appropriate minimum age of fishery workers working on fishing vessel and incorporate inputs from all stakeholders, especially CSO and worker representatives with the aim to meet with the international standards.
- Include the bilingual employment contract as a mandatory requirement by the law in ‘Announcement of the Department of Labour Protection and Welfare concerning the Establishment of Employment Contract for Employees in the Marine Fishery’ in order to ensure social protection and welfare for workers in the industry.
- Promote awareness and understanding of fishery workers’ rights and require the employer to provide employment contracts available in migrants’ languages and have the contracts’ terms and conditions explained to the workers.
- Adopt a clear legal minimum standard of employers’ responsibility on occupational health and safety on fishing vessels.

The rights to freedom of association and the rights to collective bargaining

(14) Thailand has not ratified the ILO Convention No. 87 and the ILO Convention No. 98 to guarantee workers’ rights to freedom of association and collective bargaining despite its voluntary pledge during its first UPR in October 2011 and the report of Working Group on the issue of human rights and transnational corporations and other business enterprises recommended Thailand to ratify ILO Convention No.87 and 98^{20, 21} The ILO estimated a trade union density rate of 3.5% in Thailand in 2016.²² There are over 17 million

¹⁹ The Civil Society Organization Coalition for Ethical and Sustainable Seafood, ‘Falling Through the Net II: A Survey of Basic Labour Rights among Migrants Working in Thailand’s Fishing Sector,’ 2020, retrieved from <http://policy-practice.oxfam.org.uk/publications/falling-through-the-net-a-survey-of-basic-labour-rights-among-migrants-working-621030>.

²⁰ Page 19 (d) <https://undocs.org/en/A/HRC/41/43/Add.1>

²¹ Thailand made a voluntary pledge to “become a party to the Convention for the Protection of All Persons from Enforced Disappearance, ILO Conventions No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on the Right to Organise and Collective Bargaining,” on 12 October 2011. See UPR info Database, <https://upr-info-database.uwazi.io/en/entity/ooci3tdksyq?searchTerm=thailand>.

²² Statistics on union membership, ILO, <https://ilostat.ilo.org/topics/union-membership>.

workers in the formal labour force,²³ but only around 620,000 are members of trade unions.²⁴ The Labour Relations Act B.E. 2518 (1975) (LRA) and the State Enterprise Labour Relations Act B.E. 2543 (2000) (SELRA) allow limited forms of the right to the freedom of association and collective bargaining but falling short of international recognized standards. Thai laws restrict these rights for many classes of workers. For instance, the UN Human Rights Committee raised concerns that non-Thai nationals, workers in public organizations and educational personnel in private and public universities do not have the right to form trade unions.²⁵ Agricultural workers, seasonal workers and workers in the informal economy, who account for over half of Thailand's workforce, also have no guaranteed rights to form unions or bargain collectively. Section 88 of the LRA prohibits non-Thai nationals from establishing a trade union. Additionally, section 101 of the LRA does not allow non-Thai nationals to be elected as board members of a trade union. In effect, all migrant workers in Thailand are not permitted to establish a trade union and face limitations in joining existing unions or engaging fully in collective bargaining processes.²⁶

(15) Additionally, the amendment of the Labour Relation Act (LRA) that has been approved by the cabinet on 5th February 2019 still posts a concern for CSO. As the draft LRA still discriminates migrant workers to rights to organize – leaving migrant workers unable to negotiate and defend for their rights, as they are not allowed to form a union or become a committee member of one.

Recommendations:

- Ratify the ILO Convention No.87 and No.98 and reform national legislations accordingly and ensure all workers has freedom to join or form a union regardless of nationality or types of occupations.
- Amend the Labour Relation Act to allow non-Thai workers to form a union, to be a sub-committee or committee member of a trade union and to be a union advisor in a collective bargaining,

Discriminations, violence and harassment at the workplaces

(16) Thailand has yet to ratify the ILO Violence and Harassment Convention, 2019 (No. 190) The common challenges that women workers including migrant women encounter include discrimination on wages and benefits, occupational safety and health hazards, precarious work, and gender-based harassment and violence. There is currently no official statistics or records of the violence and harassment in workplace and no gender-segregated data regarding incomes, working, and living conditions of migrant workers is available, particularly on the harassment and occupational health and safety of women migrant workers in Thailand.

(17) Women workers usually receive lesser wage and benefits than their male co-workers.²⁷ In some instances, women workers have been dismissed if they are pregnant or plan to take maternity leave.²⁸ Many women

²³ Labour Statistics, Official of National Statistics, <http://statbbi.nso.go.th/staticreport/page/sector/en/02.aspx>.

²⁴ “Numbers of labour organisations in Thailand”, Ministry of Labour, Department of Labour Protection and Welfare, May 2020, <http://relation.labour.go.th/2018/attachments/category/107/669-0001.pdf>.

²⁵ UN Human Rights Committee, ‘Concluding Observations on the second periodic report of Thailand’, UN Doc CCPR/C/TH/CO/2, 25 April 2017, para 23-24.

²⁶ International Labour Rights Forum, ‘Time for a Sea of Change: Why union rights for migrant workers are needed to prevent forced labour in the Thai seafood industry’, March 2020, p. 6. https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf

²⁷ International Labour Organisation, “High rise, low pay: Experiences of migrant women in Thai construction sector,” 12 December 2016, retrieved from https://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_537743.pdf, 28 September 2020.

²⁸ Bangkok Post, “Migrant workers left destitute by economic nosedive,” 19 May 2020, retrieved from <https://www.bangkokpost.com/thailand/general/1920492/migrant-workers-left-destitute-by-economic-nosedive>, 24 September 2020.

migrant workers have also been subjected to verbal abuse at work, and many face pressures from their supervisors to work faster, and longer hours.²⁹

(18) In Section 16 of the Labour Protection Act prohibits employer for committing sexual abuse and gender-based harassment but there is no definition of sexual or gender-based harassment and criminal penalty prescribed for such heinous acts. CSO are concerned about the lack of independent grievance mechanisms as well as gender-insensitive criminal justice processes to investigate and hold the perpetrators accountable. This places additional barriers for those women migrants who are attempting to seek support and justice.³⁰

(19) The COVID-19 pandemic has placed women migrants at a higher risk of gender-based violence as, MSDHS reported doubled increase in domestic violence.³¹ Many of the legal and social protection measures such as hotlines, emergency health services, and psychosocial care that were previously available to women have been closed or downscaled during the public health emergency. Migrant women affected by violence may face additional difficulties in accessing these services because of language barriers or concerns about their legal status.³²

Recommendations:

- Ratify the ILO Convention No.190, review and amend national legislations to comply with the Convention, in particular recognize that violence and discrimination against women workers, and women migrant workers, is an issue of public interest, and requires an immediate response.
- Require business to establish an internal complaint mechanism that allow workers to report incidents and seek help without putting themselves in harmful situation or fear of retaliation. Demand business to submit monitoring reports to the authorities.
- Establish a special communication channel through the Labour Inspector and other government workers hotline to receive complaints on sexual harassment and gender-based violence at workplace. Promptly investigate the complaint and provide assistance and remedies for the victims.
- Allocate resources to keep essential quality services available for victims of violence including hotlines, shelters, healthcare, police, and psychological support.
- Improve coordinated and comprehensive responses to violence against all women workers, including migrant workers.
- Integrate gender-sensitivity and gender-responsiveness in the development of all laws, policies, and social protection measures by the government.

²⁹ Migrant Working Group, 'Access to Grievance and Remedial Mechanism under the United Nations Guiding Principles on Business and Human Rights. Case Studies of Myanmar Migrant Workers in Garment and Textiles Factories in Mae Sot District, Tak Province', 2019, <http://hrdfoundation.org/wp-content/uploads/2019/11/Full-Book.pdf>.

³⁰ Ibid

³¹ Bangkok Post, "Abuses on rise amid outbreak," 8 May 2020, retrieved from <https://www.bangkokpost.com/thailand/general/1914484/abuse-on-rise-amid-outbreak>, 25 September 2020.

³² International Labour Organization, "COVID-19 and Women Migrant Workers in ASEAN," 4 June 2020, in Spotlight Initiative, Safe and Fair Programme, retrieved from https://www.spotlightinitiative.org/sites/default/files/publication/COVID-19_and_Women_in_ASEAN.pdf, 25 September 2020.

