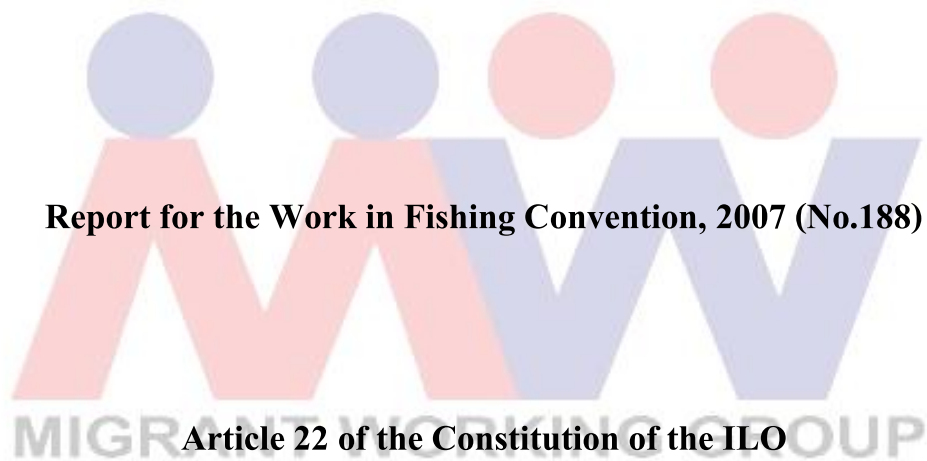


**The Implementation of Laws and Policies
relevant to the Fisher Rights' Protection
under the ILO Working in Fishing Convention 2007 (No. 188)
in Thailand**



Report for the Work in Fishing Convention, 2007 (No.188)

Article 22 of the Constitution of the ILO

Report for the period from January 2020 to August 2021

made by the Migrant Working Group (MWG)

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the Migrant Working Group (MWG)

Abbreviation

EJF	Environmental Justice Foundation
FED	Foundation for Education Development
FIP	Forward Inspection Point
HRDF	Human Rights and Development Foundation
ILO	International Labour Organization
ILRF	International Labor Rights Forum
IUU	Illegal, Unreported and. Unregulated Fishing
MWG	Migrant Working Group
MWRN	Migrant Workers Rights Network
PIPO	Port In Port out Controlling Center
RTF	Raks Thai Foundation
SERC	The State Enterprises Workers' Relations Confederation
SR Law	SR Law Firm
Stella Maris	Stella Maris Seafarers' Centre

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Report on the Implementation of Laws and Policies relevant to the Fisher Rights' Protection under the ILO Working in Fishing 2007 (Convention No. 188) in Thailand

Background of the Report

Thailand has ratified the ILO Working in Fishing Convention (ILO Convention NO. 188) in January 2019. The Convention came into force in January 2020. The ratification by Thailand to C188 is one of several attempts by Thai government to solve problems concerning sea fishery workers in the country. This report aims to reflect the progress as well as identify the problems in applying C188 by Thailand after the ratification. The report further proposes recommendations in implementing laws and policy from the private sector experiencing in working with and assisting the sea fishery workers in Thailand.¹

The data collection comes from the document review, the in-depth interview with private sector, government officials and the employers' association as well as non-participant observation on the performance evaluation of the officials working at Port In Port Out Controlling Center (PIPO) and Forward Inspection Point (FIP) in Prachuap Khiri Khan and Chumphon Province during 3-5 March 2021.

Nevertheless, due to the coronavirus (COVID-19) pandemic, the interview with migrant workers in this study has been limited. Migrant Working Groups (MWG) partners therefore assist in contributing information about legal cases they have handled and arranging for interview with migrant workers in sea fishery during the COVID-19 pandemic. Topics in this report are set from the problems considered to be urgent by the private sector and these problems are needed to be consulted in order to protect the rights of the fishers to be in line with international standards provided in C188.

¹ Data collected in this report is part of the research on the Implementation of Laws and Policies relevant to Fisher Rights' Protection under the ILO Convention No. 188 Working in Fishing Convention 2007 funded by Migrant Working Group (MWG).

Section 2: Research Outcome

Executive Summary

1. Legal mechanisms and cooperation among public authorities (Article 6 and Article 7 of C188)

Findings and recommendations

- 1.) Each law features different scopes and applicability depending on the varying types and sizes of the fishing vessels. As a result, the inspection of fishing vessel and sea fishery workers does vary according to each law. Therefore, some groups of sea fishery workers might not be inspected according to the law. The revised version of the Draft Ministerial Regulation for Labour Protection in Sea Fishery Work fails to offer clear definition of each category of work and the employers. As a result, some categories of sea fishery work and employers may fall off the scope of the law.

Recommendation Review the scope of each law that exempts certain categories of sea fishery work or other work and revise definition of “sea fishery work” to ensure it includes all categories of vessels and the definition of “employer” to ensure it complies with the employment condition in reality. All legislations concerning fishery should be subject to regular and long-term review with the involvement of stakeholders and their input to ensure their compliance with international labour standards including the ILO C188.

- 2.) The collaboration based on coordinated legal mechanisms has given rise to labour protection in sea fishery work in Thailand. It has been found that each component of labour protection in sea fishery work involves a variety of authorities including the PIPO officials and other agencies. All these officials are vested with power according to each specific law and have their own specific scope of duties.

Recommendations Overall, an attempt should be made to integrate all the efforts of concerned agencies and to gauge how such integrated effort can be enhanced and optimized.

2. The rights to collective bargaining and consultation process (Article 1 Consultation, Article 3-4 of C188)

Findings and recommendations

- 1.) The law prohibits migrant workers who are the majority of workers in Thailand’s sea fishery work from forming a labour union. It affects the protection of their labour rights which should normally be exercised through the employee representatives exerting their demands. A lack of unionization in this specific sector therefore weakens the bargaining power of the employees and raise questions about the tripartite system which many be made impossible according to international standards and it may be a breach to the requirements in the Consultation and C188.

Recommendations The state should review and revise the laws that stymie freedom of association and collective bargaining rights to ensure proper working relations through a labour relations system and promote the atmosphere conducive to freedom of and collective bargaining based on the fundamental rights of sea fishery workers. The meaningful representatives of employees should be allowed to participate in the consultation process through a tripartite system.

- 2.) As to the consultation, it has been found that civil society sector has been actively involved with law and policy advocacies and legal assistance, the task of which should have in fact fallen into the hand of employee organizations. Nevertheless, civil society sector has had experience working to protect labour rights and offer legal assistance to sea fishery workers. Such experience of civil society sector should therefore be imparted to employee organizations which shall undertake the work to uphold labour protection further on.

Recommendations The state should promote unionization in sea fishery work. Such groups or labour unions should learn from existing experience to offer legal assistance to sea fishery workers and various litigation processes concerning sea fishery workers so that they can effectively help to uphold the rights of sea fishery workers.

3. **Duties and responsibilities of vessel owners, skippers, fishers, and licensees according to the fishery law (Article 8 of C188)**

Findings and recommendations

- 1.) Responsibilities of the vessel owner, the skipper and the fisher are different between what is provided by law and the reality. In some case, a skipper may perform the duties similar to the employer or may take on duties more than what is prescribed by law. This may not comply with the responsibilities provided by law for the vessel owner, the employer and the skipper.

Recommendations The actual power relationships between the vessel owner and the skipper should be studied and the laws which determine duties and responsibilities of holders of different positions in the vessel should be reviewed to ensure they comply with the context of fishing in Thailand.

- 2.) In the real situation, a skipper may have different duties including taking charge of the vessel and offering training on fishing skills for the fisher. The skill training is not clearly required by the law. It gives rise to a question if such skill training offered by the skipper to the fisher is made adequately to ensure occupational safety of the fisher or not, and how the state should be involved with the promotion of such skill training to ensure it is offered universally to all fishers.

Recommendations The state should offer more fishing skill training to fisher apart from the training under responsibilities of the skipper. The outcome should be evaluated to promote proper awareness and occupational safety of workers in sea fishery work.

4. The use of child labour in sea fishery work (Article 9 of C188)

Findings and recommendations

- 1.) The Draft Ministerial Regulation on the use of child labour in fishery which proposes to lower the minimum age has garnered support from the employer who claims it helps to pass on the local wisdom, promote skill training and sustain family business in sea fishery work. But it has been met with opposition from the civil society sector who finds such regulation could be in breach of labour protection law and child protection law and may contravene our international obligations concerning the use of child labour.

Recommendations Provisions on the use of child labour in sea fishery work should be subject to comprehensive studies before their enactment. It should take into account the context of fishing in Thailand and the conditions set out in C188 as well as leads to the organization of a consultation process among stakeholders and experts to ensure comprehensive input is obtained.

5. Employment conditions and working conditions in sea fishery work: Personal document of sea fishery workers, medical certificate for sea fishery workers, nature and hours of rest, the crew's list, their accommodation and food

5.1 Personal document (Article 18-20 of C188)

Findings and recommendations

- 1.) Although the law prohibits the employer from withholding the documents, but in reality, the authorities continue to allow the employer to keep the documents. According to the research and experience of civil society sector, it was found that the withholding of the sea fishery workers' documents continues and there is concern about the inspection methods the labour inspector, whether they can examine if the employee really gives consent to have their documents kept by other people all the time or not. And when the withholding of documents is found, the question remains on how the labour inspector respond to such practice.

Recommendations That practice of leaving documents with the employer should be reviewed whether it complies with domestic laws and international standards or not. The method of inspection adopted by the labour inspector should also be reviewed as far as the withholding of documents is concerned. In addition, an attempt should be made to raise the awareness about rights and duties of the

employers and the employees concerning the keeping of documents to ensure compliance with applicable law.

5.2 Medical certificate for sea fishery workers and medical examination (Article 10-12 of C188)

Findings and recommendations

- 1.) The requirement to have medical examination prior to the commencement of work is an indication of progress by the state. An emphasis is placed on medical examination and examination of prohibited diseases. Nevertheless, since the outbreak of Covid-19, sea fishery workers are also required to have Covid-19 testing for another disease. The civil society sector is concerned about the extra expense from Covid-19 testing which creates a burden for the employees. In addition, the civil society sector is also concerned about mental readiness of the workers which may correlates with work-related injury.

Recommendations Clear measures should be forced to assist the sea fishery workers and their employers to cope with the increased expenses from Covid-19 testing and other response during the Covid-19 pandemic, At the same time, the assessment of physical and mental readiness of sea fishery workers should be conducted on a regular basis.

5.3 Conditions and hours of rest (manning and hours of rest, Articles 13-14 of C188)

Findings and recommendations

- 1.) The inspection of working hours of sea fishery workers relies on the logbook entries and an interview of labour inspectors. It should be noted that the record of hours of rest in logbook depends chiefly on the skipper. The civil society sector is concerned how the inspection of hours of rest which relies on examining the logbook entries and an interview may reflect the actual number of working hours and hours of rest. And there are no clear guidelines to interpret the hours of rest.

Recommendations Guidelines to determine hours of rest should be clearly defined. The record of entries in logbook should be made in the language understood by the employers. Also, the employees and a comprehensive inspection method should be considered the utilization of data technology to aid the inspection of hours of rest to reflect the working hours and hours of rest most realistically as much as possible to avoid the use of forced labour and trafficking in persons.

5.4 A crew list (Article 15 of C188)

Findings and recommendations

- 1.) The crew list is a requirement for inspection of sea fishery workers in fishing vessel. The employer finds it an indication of progress to have list of seamen, while the civil society sector is concerned

about the change of employer procedure which requires that a contact is made with the Department of Employment. Such required procedure may lead to an inaccurate crew list. During the inspection, if the workers' documents are found to not match their actual ages or personal information, the question remains on how the PIPO officials handle with the case.

Recommendations The inspection of a crew list should be conducted on a regular basis and the employers and the employees should be informed of the process to change the entries in the crew list and registration book.

5.5 Accommodation and food (Article 25-48 of C188)

Findings and recommendations

- 1.) The employer is required to provide accommodation and food. Nevertheless, there are no clear guidelines for the inspection of food and drinking water. It is subject to the discretion of the officials. Despite the inspection of food and drinking water by officials from the Department of Fisheries, several seamen are still concerned about the quality of water provided by the employer and decide to buy their own drinking water.

Recommendations Clear criteria for the provision of food and drinking water should be determined to ensure the standards and an inspection should be carried to ensure the vessel owner strictly abide by the regulation.

- 2.) The accommodation in fishing vessels and safety standards of the vessels are subject to inspection by officials of the Marine Department pursuant to the standards prescribed in C188 Convention which applies to new or modified vessels. It should be noted that the conditions of accommodation on board could correlates to the accidents there such as the case of seamen falling off the vessel.

Recommendations Risk area on board should be clearly marked with signs or symbols to alert the seamen and prevent accidents. In addition, guidelines for the improvement of accommodation on board should be reviewed to ensure seaman's safety during their work and living.

6. Employment contract/work agreement (Articles 16-20 of C188)

Findings and recommendations

- 1.) The law sets a standard of employment contract, although it does not require that it be made in the language understood by the employee and to contain provisions concerning the rights and duties such as benefits of the employees, dispute resolution mechanism, complaint procedure, emergency contact person, and the criteria to appraise the value of aquatic animals caught for profit sharing. Without these

provisions in the employment contracts, it makes the employees unaware of their rights and vulnerable to rights violation.

Recommendations The employment contracts should be made in language understood by the employee, and this should apply to all groups of employees in sea fishery work. Criteria to appraise the value of aquatic animals caught for profit sharing should be spelled out in the employment contracts and they should contain provisions concerning the rights and duties of employees.

7. Recruitment and placement of migrant workers (Article 22 of C188)

Findings and recommendations

- 1.) Due to a labour shortage in sea fishery work, the state has been prompted to arrange for the recruitment in sea fishery work via various channels including the government to government MoU and recruitment via specific clauses of law. Nevertheless, it has been found that such recruitment process incurs high costs. If such expenses are not clearly shared between the employers and the employees according to the law, it may give rise to a never-ending debt cycle of the employee.

Recommendations The high costs in recruitment should be subject to review since they become a burden for both the employers and the employees. There should be an inspection to ensure the deduction of recruitment expenses from the employee's pay is made according to the law including an effort to minimize recruitment costs through the negotiation with the sending countries.

- 2.) There has not been an assessment of readiness of the migrant workers before their work in Thailand's sea fishery work. There has been insufficient training about the working conditions in sea fishery work and the benefits they should receive. Also, there has been a lack of inspection as to the alleged rights violation in the recruitment process or the lack of compliance with recruitment laws.

Recommendations During the recruitment of migrant workers to work in Thailand, the recruitment agency or the employer is obliged to offer them well-rounded information and to assess their readiness for the positions before they depart to work in sea fishery work. The state should place an importance on such inspection and receive more complaints related to the recruitment process to ensure the overall labour protection.

- 3.) The migrant workers recruited to work in sea fishery work are subject to rather strict restrictions regarding the change of employer. Even though it has been relaxed to some extent to allow the worker to change their employer by paying a service fee, it is far from clear as to who should bear with the expenses. It may give rise to a dispute during the change of employer including indebtedness of the employee.

Recommendations It should clearly provide as to who should bear with the expenses from the change of employer which shall have an effect on the deduction of wage, and it has to decide who should bear the responsibilities, whether the employer or the employee.

8. Repatriation of fishers, regulations concerning repatriation and expenses incurred from the repatriation of fishers from oversea ports (Article 21 of C188)

Findings and recommendations

- 1.) Thai law prescribes that it is the duty of employer/vessel owner to bring seamen working abroad back to the country save for if it is caused by the fault of the employee. But the employer often denies such responsibilities. The state thus has to help bring the Thai seamen who do not afford travel expenses back by asking them to sign the acknowledge of debt agreement. It is possible apply for a waiver to pay off such debt, and the decision shall be made by the state committee. Nevertheless, civil society sector finds that such procedure does not comply with the law which prescribes that it is the duty of the employer/vessel owner and this simply pushes the burden to travel back the employee. Also, the legal action against the employer or the recruitment agency often takes a long time. The workers have not been given sufficient information prior to embarking on the overseas journey, particularly about their rights and duties and the channels through they can seek help when encountering any problem from their employment abroad as well as risks concerning rights violation.

Recommendations The state should review the repatriation process of Thai seamen by not pushing the burden to the employee whose rights have been violated by the employer. An emphasis should be placed on offering training to raise the awareness of Thai seamen prior to their embarking on sea fishery work abroad to give them comprehensive information, particularly on their rights and duties and the channels to seek help when their rights are violated.

9. Payment of fishers (Article 23-24 of C188)

Findings and recommendations

- 1.) It is prescribed by law that wage has to be paid on a monthly basis via bank transfer and the employer shall pay any transfer fees. Still, the illegal payments have been found and there have been problems with the use of ATM cards and bank transfer. For example, issues concerning the availability of ATM machines near the fishing ports, the withholding of ATM cards by the employer and knowledge about how to use ATM of the employee.

Recommendations The inspection of bank transfer should be reviewed to ensure the employee actually receives the money. The ATM machines should be made available, and the training on how to use ATM should be given to the employees.

- 2.) Deduction can be made by law, although it specifies the items which are deductible and the deduction ceiling. Nevertheless, deduction continues to happen normally in sea fishery work. Such deductions of expenses and debt servicing between the employer and the employee were made far from clear and no clear records were made leading to an endless cycle of debt. This could give rise to the use of forced labour and trafficking in persons.

Recommendations The criteria for the deduction should be developed and the records of the deduction should be given to the worker. The payment for advance money could be treated as a form of payment of wage but the employer is also prohibited from charging interest from the advance money. The instrument of e-banking should be made to ensure the worker can review their financial transactions regularly.

10. Medical care, health protection and social security (Article 29 – 30 of C188)

Findings and recommendations

- 1.) Thai law leaves it open for the employer to choose either health insurance or social security. The use of health insurance makes it convenient for employer in fishery sector, although it deprives the worker of long-term benefits in the social security system. Nevertheless, the use of social security in coastal hospitals may subject one to different practices. It creates a burden for the employers and the employees in terms of their access to the services. Also, the requirement to receive benefit from the state's relief program and the social security system discriminates against non-Thai insured persons.

Recommendations The state should explore impacts from the use of health insurance in the two systems for workers in sea fishery work and advocate the registering of sea fishery workers in the social security system to ensure they benefit in a long run. Meanwhile, Social Security Fund's relief program should be reviewed to make them inclusive of migrant workers and to improve the practice of hospitals which provide services to insured persons so that their practice is streamlined. In addition, the state should inform the sea fishery workers of their benefits in each of the health insurance systems in order that they are aware of their rights to health.

11. Occupational safety and health and accident prevention (Article 31-33 of C188)

11.1 Occupational health and accident prevention

Findings and recommendations

- 1.) The employer or fishing licensee is obliged to provide for safety in the fishing vessel and the labour inspector has the power to instruct the actions need to ensure the boat and its equipment comply with safety standards. Nevertheless, on-site safety prevention efforts such as the provision of training to skippers and seamen have not been made systematically. It is not mandatory, and it is not required to

test the seamen of their knowledge. When facing an accident, the seamen appear to have little awareness about occupational safety and concerned rights.

Recommendations The state should offer training on safety and rights of seamen when suffering from a work-related injury. The training should be offered to all seamen before they start working and during their work regularly. There should be some methods of assessment to gauge the training outcome as part of accident prevention while working in the fishing vessel. The training should include knowledge about medicines and medical equipment, first aid, boat equipment, risk spots in the vessel, how to protect oneself from work-related injury and various rights of the workers. The state may allow private sector to organize such training for the sea fishery workers. In addition, the state should adopt innovative approaches to ensure proper safety equipment are provided for the sea fishery workers to minimize work-related injury such as life vest appropriate for wearing while performing sea fishery work.

- 2.) As to safety inspection in the vessel, it has been found that officials at PIPO Centers continue to adopt different practices including the instruction to rectify the provision of safety equipment before the vessel's departure, assistance of the workers and the interpretation of work-related injury. There is also no clear guideline on how to cope with the situation that risk to the occupational safety. For instance, when the seamen are drunk, there is no clear guidelines as to how the officials should respond to such situation.

Recommendations The vessel inspection to ensure safety of fishing vessel and safety equipment should follow the same guidelines in all areas. Concerned agencies should compile data and analyze cases of accidents and see how they are related to occupational safety and should explore ways to prevent various forms of accidents including accidents from drinking and other kinds of intoxication.

11.2 Protection in the case of work-related sickness, injury, or death (Article 38-39 of C188)

Findings and recommendations

- 1.) The PIPO officials can help to raise the awareness on accident prevention and receiving the report of accidents in the vessel. To determine if the accidents in the fishing vessel are a work-related injury or not depends on the discretion of the labour inspector who may rely on guidelines in the Workmen's Compensation Fund Act. Nevertheless, it was found that the investigation by labour inspector has failed to establish the actual causes of accidents due to constraints regarding the available information and the guidelines for investigation, i.e., on the cases of seaman falling into the sea and suicide.

Recommendations Guidelines for the investigation by labour inspectors should be reviewed to ensure the establishment of the true causes of accidents. This should be made in concerted effort with

concerned agencies or the appointment of outside people into the inquiry committee to explore the reasons and to develop the prevention measures. A manual for response to the fall into the sea of seamen could be published, particularly on the referral of the cases to concerned agencies and the follow up on the legal proceeding.

- 2.) Access to the Workmen's Compensation Fund still depends on the interpretation of the accidents from sea fishery work in the context that the fishers have to live and work all the time in the workplace. How such interpretation should be made, and it could be compared with interpretation based on international standards. As to access to the Workmen's Compensation Fund, migrant workers often encounter more problems than their Thai counterparts, i.e., how to contact their relatives in the sending countries, the paperwork, etc. Civil society sector has been playing a big role to help them in this regard.

Recommendations Guidelines for the interpretation of accidents in the context of fishery sector and the roles and duties of public agencies should be reviewed to ensure assistance is given to enable migrant workers to have access to remedies and justice process.

12. Control and inspection to ensure compliance with the requirements for sea fishery worker working on fishing vessel and at fishing port (Article 40-42 of C188)

Findings and recommendations

- 1.) Regarding the inspection standards of sea fishery workers in fishing vessel, the state has developed PIPO Centers to carry out the inspection of fishing vessels and sea fishery workers before leaving the port and after arriving at the port. An operational manual has been published for officials at the PIPO Centers and capacity building has been offered to labour inspectors and interpreters. There are still gaps in the inspection of sea fishery workers since the inspection of sea fishery workers varies depending on the technics adopted by each labour inspector to obtain as much information as possible. The coordination among authorities involving with labour standard inspection still leaves much to be desired. The inspection of sea fishery workers thus depends chiefly on each labour inspector. In addition, there is no clear mechanism for case referral among the agencies. There are other practical problems such as a lack of incentive among officials at the PIPO Centers, close relationships between the inspector and the employer and the high turnover of personnel causing disruption to the prevention work. As to vessels outside the Thai waters, there is a problem with the interpretation of the law to ensure proper guidelines among concerned officials.

Recommendations The labour inspection approaches of the authorities should, be further enhanced and streamlined. It should capitalize on the integration of knowledge and information among

officials from various agencies. The labour inspectors at PIPO Centers should receive support and capacity building regularly and receive incentives to encourage them to work.

- 2.) Regarding problems in labour inspection, it has been found that the labour inspectors continue to adopt a conventional labour inspection approach applied to workers in general sectors which are not suitable to the sea fishery work. The reliance on inquisitorial approach based on document examination, the interview of worker based mostly on close ended questions, inaccurate interpretation in some areas, the requirement for the worker to file the complaint about rights violation by themselves, and the requirement for the worker to contact various public agencies directly pose as an obstacle for labour inspection. As to the employers, they are concerned about redundancy in the inspection of sea fishery workers and an emphasis on document examination with a hefty fine. At the policy level, there is no committee to review the overall law and policy concerning labour protection in sea fishery work.

Recommendations Labour inspection approaches should be further developed as well as the interpretation services. The inspection methods should be reviewed to really expose the offences against the law and a committee should be set up to review the inspection and give an input on legal compliance concerning sea fishery workers.

13. Complaint procedures (as the state of the flying flag and the state of fishing port) (Article 43 of C188)

Findings and recommendations

- 1.) The state provides for complaint procedures to accept complaints from the sea fishery workers through various channels. The PIPO Centers can accept complaints from the sea fishery workers directly. Nevertheless, it has been found few complaints have been filed with the PIPO Centers, probably due to a lack of trust in public authorities, language barrier and a lack of awareness of rights among the workers. Some workers choose to seek help from civil society sector which offers legal assistance to Thai and migrant workers. When offering legal assistance, the civil society sector often coordinates with the state and the state demands that civil society sector should fully disclose such information and start from coordinating with local authorities.

Recommendations The state should review channels to accept complaints and see how effective they are and if they should be improved to make them fit the context of sea fishery workers in Thailand. This should make sea fishery workers dare to complain through the mechanisms provided by the state. Meanwhile, sea fishery workers should be educated comprehensively about their rights and duties according to the law. The state and civil society sector should develop the mechanisms to collaborate on legal cases.

- 2.) The civil society sector reflects that after receiving complaints, the labour inspectors have no mechanisms for case referral making the case referral to concerned agencies among PIPO Centers varies from place to place. In addition, it is unclear how to follow up on the inspection and the outcome of the cases as well as the progress of the case handled by the labour inspector and what kinds of mechanism used by the state to inspect the complaint procedures.

Recommendations The state should set out clear guidelines on case referral. An operational manual could be published to spell out the case referral, to determine concerned agencies and scope of responsibilities. The manual should then be distributed to all concerned parties to enhance the understanding about the case referral system and to enable the monitoring of the solution. In addition, the state should review mechanisms used in the inspection and the complaint procedures to ensure actions are taken on complaints received from the workers.

- 3.) As to assistance to help sea fishery workers to have access to remedies, the civil society sector has found that the migrant fishers have to face restrictions concerning the filing of complaints through the existing official channels such as the requirements of documents, the language used, the need to contact various agencies and the monitoring of the outcome of the complaints. Civil society sector can play a role to help coordinate in this regard.

Recommendations The state should review problems and obstacles concerning access to rights of sea fishery workers, particularly migrant workers who often face obstacles when demanding their rights due to the requirements and procedures in the bureaucracy. This should ensure the state mechanism are designed to offer assistance and services to sea fishery workers, both Thai and foreign, in a long run.

14. Impacts of Covid-19 on labour protection in sea fishery work

Findings and recommendations

- 1.) During the Covid-19 pandemic, the state continued to help bring Thai seamen back from abroad amidst travel restriction. As to domestic measures, the state has introduced various measures for the prevention of the spread of Covid-19 including the permit to allow migrant workers to temporarily stay and work in Thailand, awareness raising about the prevention of communicable diseases, distribution of PPEs and testing services in high-risk areas. Nevertheless, the restriction of interprovincial travel and by adding Covid-19 to the list of prohibited diseases have increased burden of the seamen. The employers are affected the shortage of sea fishery labour, even before the outbreak of Covid-19, since new migrants are unable to cross over into the country.

Recommendations The state’s relief programs should include workers in all sectors and all groups of Thai and migrant workers. Any measure that increases the burden of the employees should be reviewed, particularly expenses from Covid-19 testing including the proactive testing in the area and the procurement of antigen test kits for the workers. This should fall under the joint responsibilities between the state and the employers.

- 2.) Relief programs for the workers during the Covid-19 pandemic by the Social Security Office such as the “Section 33, We Love Each Other” program impose requirements which discriminate against migrant workers depriving them of access to additional benefits to the normal ones under the social security system. This is because it prescribes that an eligible person must only be a Thai national.

Recommendations Such requirement should be rescinded to allow migrant workers who are insured persons to have access to the cash handout like other insured persons who are Thai nationals. This is to prevent discrimination against the migrant workers and the deprivation of access among migrant workers to the support by the state.

- 3.) Fishing vessels have been used as a quarantine facility for seamen who test positive for Covid-19 and seamen who belong to a high-risk group. The fishing vessels are, however, not appropriate for quarantine. Also, a quarantine in fishing vessel cannot help to prevent the spread of Covid-19 due to limitations in terms of space, the environment and facilities. In addition, the state has yet developed a clear policy to provide medical care to migrant workers who test positive for Covid-19.

Recommendations The quarantine measure of seamen in the fishing vessel should be reviewed since the condition of Thai fishing vessels is inappropriate for quarantining the infected persons and high-risk persons. Seamen should have access to on-site medical care and appropriate treatment. Clear guidelines for the exercise of the right to medical care among migrant workers who test positive for Covid-19 should be clearly determined.

Section 2: Research Outcome

1. Legal mechanisms and cooperation among public authorities (Article 6 and Article 7 of C188)

Relevant laws Primary laws which apply to labour protection in sea fishery work include the Labour Protection in Fishing Work Act BE 2562, the Labour Protection Act BE 2540, and the Ministerial Regulations concerning Labour Protection in Sea Fishery Work. All these legislations determine standards concerning employment conditions for workers on board fishing vessels, cargo boats, and at the fishing ports and determine rights and duties according to the law regarding the relationships between employers and employees.

In addition, other laws also offer labour protection in sea fishery work including the Social Security Act, the Workmen's Compensation Fund Act, the Royal Decree Concerning the Management of Foreign Workers, the Fisheries Act and the Navigation in the Thai Waters Act. Each law specifies the types or the sizes of vessels subject to its enforcement. For example, the Labour Protection in Fishing Work Act only applies to commercial fishing, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work applies to all types of fishing vessels and sea fishery work, the Royal Ordinance on Fisheries BE 2558 applies to fisheries in fishing vessels at 10 gross tonnages and upward or particular types of vessels as prescribed by the law. In addition, each law spells out the particular and distinct positions and responsibilities of vessel owner, skippers, seaman or sea fishery workers.

Table 1 Scope of legal application of the relevant laws

Topic	ILO Convention No.188	1.) Labour Protection in Fishing Work Act BE 2562	2.) Ministerial Regulation concerning Labour Protection in Sea Fishery Work BE 2557 and its amendments	3.) Royal Ordinance on Fisheries BE 2558 and its amendments	4.) Navigation in the Thai Waters Act BE 2456
Types of fisheries	Fishing vessels for the purpose of commercial fishing	Applied to commercial fishing	Applied to fishing vessels and all kinds of sea fishery work	Applied to various kinds of fisheries including commercial fishing	Applied to various kinds of vessels, defining that fishing vessels includes boats used for catching aquatic animals or other marine living resources

Table 2 Definition of vessel owner and sea fishery workers in the relevant laws

Types of law	Vessel owner	Sea fishery workers ²
1.) Labour Protection in Fishing Work Act	Vessel owner means an owner of a fishing vessel and shall also include a lessee of a fishing vessel but shall exclude an owner of a fishing vessel leased to another person or used for engaging in a fishing business without the owner's involvement. Vessel owner according to this law shall be treated as employers.	Sea fishery workers means a fishing vessel skipper and a vessel worker under the law on fisheries. Sea fishery workers according to this law shall be treated as employees.
2.) Ministerial Regulation (pending revision)	Vessel owners are employers according to the Labour Protection Act	Sea fishery workers are employees according to the Labour Protection Act
3.) Royal Ordinance on Fisheries	The law defines and determines duties of vessel owners and licensees Status of vessel owner is determined by ownership or right to ownership.	Seaman means a crew member or any person who is assigned with a position on board a vessel, excluding the master thereof.

² C188 Convention defines that fishers also include skippers.

Types of law	Vessel owner	Sea fishery workers ²
4.) Navigation in the Thai Waters Act	The law determines duties of vessel owners	Seaman means a seafarer to who the Marine Department issues a seaman's book. Seaman means a seafarer other than a master. Master means a person who controls a ship or any other vessel but does not include a pilot.

At present, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work is subject to revision. It is concerning for the scope of the Draft Ministerial Regulation including the scope of sea fishery work. The Migrant Working Group (MWG) finds that the term “sea fishery work” as defined in the Draft Ministerial Regulation is vague and unclear as to whether it includes artisanal sea fishery work or subsistence sea fishery work or not. Similarly, the Labour Protection in Fishing Work Act fails to define if it includes artisanal sea fishery work or not or if there shall be any waiver for artisanal sea fishery work. The lack of clarity of the definition of sea fishery work asides, the scope of “employer” is controversial. The Draft Ministerial Regulation tends to define an employer to include a person designated to work on behalf of the employer. In this light, the skipper might be considered an employer according to the Draft Ministerial Regulation since a skipper in sea fishery work can be divided into two categories as a skipper who works as an employee but acts according to the employer’s instructions and a skipper who is a partner to the vessel owner and has similar commanding power as the employer.

The Marine Department’s Seafarer Standard Division recommends that given a variety of laws involved, it affects the vessel owner who has to act in compliance with many laws. Therefore, relevant laws should be reviewed for streamlining and flexibility. Also, all stakeholders including those in private and state sectors should collectively make an effort to explore and design the laws based on mutual understanding and revision.

The National Fisheries Association of Thailand finds that Thailand’s domestic laws already offer protection beyond what is provided for in C188. Therefore, it is necessary to review any provisions beyond what is provided for in C188 and see if they are contradictory to Thailand’s fishery work or not. Meanwhile, the civil society sector recommends full compliance with C188. Since adapting certain regulations the state can operate may give rise to some loopholes or excuses to not enforce the laws. MWG finds that a lack of legal committee in this kind has resulted in a lack of representation from concerned parties to help review the existing laws. Forums should thus be organized to assess and revise existing laws with cooperation from all sectors. Also, they should be held regularly, i.e., every year or three years, in order to review if the laws are still appropriate and to allow the workers to raise their issues.

The State Enterprises Workers’ Relations Confederation (SERC) finds that the draft law on sea fishery workers still fails to comply with the standards and has elicited opposition from public agencies. In addition,

Thailand has yet to sign the International Labour Organization Conventions No. 87 and 98 since there is concern that the workers may use the unions as a platform to raise and advocate for their issues which could become a threat to national security. SERC finds that the immigration of migrant workers only takes place on a temporary basis, or even they make an effort to unionize, they may still face language barrier and may not be able to mobilize to powerfully until it poses a threat to national security.

Legal mechanisms for labour protection Given a number of laws involved, it makes be challenging to harness the legal mechanisms to ensure labour protection in sea fishery work since it has to rely on cooperation among public authorities who are in charge in each of the law. The challenges include the development of law and policy and the establishment of agencies or appointment of competent officials at the operation level as well as cooperation among public agencies and officials in order to materialize labour protection in sea fishery work. A clear state mechanism to protection the rights of sea fishery workers is the inspection of sea fishery workers by Port-in Port-out (PIPO) Centers led by the Department of Labour Protection and Welfare and the Department of Employment in collaboration with the Marine Department which is in charge of fishing vessel and the Department of Fisheries in charge of fisheries.

Efforts made by the state to develop mechanisms for the inspection of fishing vessels and sea fishery workers are attested to be the information from the Office of Permanent Secretary for Ministry of Labour which refers to staff from the Department of Labour Protection and Welfare who have inspected fishing vessels in 22 coastal provinces in collaboration with other agencies.³ The Department of Labour Protection and Welfare has posted one labour inspector with the inspection team at each Port-in Port-out (PIPO) Center, altogether 85 teams.

In the fiscal year of 2019, the Department of Labour Protection and Welfare has posted labour inspectors to 30 Port-in Port-out (PIPO) Centers to work in collaboration with other concerned agencies. They have conducted inspection in 72,349 fishing vessels at the fishing ports covering 1,008,442 employees a year. And in the fiscal year of 2020 (October 2019 – September 2020), an inspection has been carried out in 34,248 fishing vessels at the fishing ports covering 412,254 employees.⁴

According to the Fisheries Resources Management and Measures Determination Division under the Department of Fisheries, such integrated effort to inspect fishing vessels with the Thai flag was initially made between the Department of Fisheries and the Marine Department. It has later involved the Department of

³ Representatives from various agencies including the Marine Department, the Department of Fisheries, the Department of Special Investigation, the Royal Thai Navy, the Royal Thai Police (Thai Marine Police Division, the Anti-Trafficking in Persons Division, the Immigration Bureau) and other concerned agencies

⁴ According to the Office of Permanent Secretary for Ministry of Labour, Ministry of Labour, interview conducted via email, 27 April 2021

Labour Protection and Welfare to help with the inspection. Online inspection has also been added to minimize paperwork including the use of online system to vet documents which are going to expire. And even though random inspection has been adopted, in reality, the authorities have carried out the inspection in almost all boats.⁵

Another integrated effort among concerned authorities and officials is an attempt to help Thai workers abroad. This includes agencies including the Department of Consular Affairs, the Ministry of Foreign Affairs (MoFA), to coordinate the rescue and the repatriation of Thai seafarers according to the Labour Protection in Fishing Work Act. Nevertheless, the Ministry of Foreign Affairs' officials are not competent officials according to the Labour Protection in Fishing Work Act. This is different from the case of the Labour Protection in Fishing Work Act BE 2558 which designates the Minister of Foreign Affairs as one of the Ministers with the power to execute the Labour Protection in Fishing Work Act. Therefore, the MoFA is not directly involved with the sea fishery workers since their officials are not legally competent officials. However, cooperation has been made and MoFA sits as members of the committees or subcommittees on certain issues including the combating of Illegal, Unreported and Unregulated Fishing (IUU Fishing) or fisheries in Thailand.⁶

Findings and recommendations

- 1.) Each law features different scopes and applicability depending on the varying types and sizes of the fishing vessels. As a result, the inspection of fishing vessel and sea fishery workers does vary according to each law. Therefore, some groups of sea fishery workers might not be inspected according to the law. The revised version of the Draft Ministerial Regulation for Labour Protection in Sea Fishery Work fails to offer clear definition of each category of work and the employers. As a result, some categories of sea fishery work and employers may fall off the scope of the law.

Recommendation Review the scope of each law that exempts certain categories of sea fishery work or other work and revise definition of “sea fishery work” to ensure it includes all categories of vessels and the definition of “employer” to ensure it complies with the employment condition in reality. All legislations concerning fishery should be subject to regular and long-term review with the involvement of stakeholders and their input to ensure their compliance with international labour standards including the ILO C188.

⁵ Fisheries Resources Management and Measures Determination Division. Department of Fisheries, interview at the Fisheries Resources Management and Measures Determination Division, the Department of Fisheries, 20 April 2021

⁶ Protection of Thai Nationals Abroad Division, Department of Consular Affairs, Ministry of Foreign Affairs , interview at the Department of Consular Affairs Ministry of Foreign Affairs , 22 April 2021

2.) The collaboration based on coordinated legal mechanisms has given rise to labour protection in sea fishery work in Thailand. It has been found that each component of labour protection in sea fishery work involves a variety of authorities including the PIPO officials and other agencies. All these officials are vested with power according to each specific law and have their own specific scope of duties.

Recommendations Overall, an attempt should be made to integrate all the efforts of concerned agencies and to gauge how such integrated effort can be enhanced and optimized.

2. The rights to collective bargaining and consultation process (Article 1 Consultation, Article 3-4 of C188)

Restrictions for sea fishery workers in Thailand In Thailand's sea fishery work, employer organizations such as the National Fisheries Association of Thailand⁷ has been able to offer their input on law and policy. As to the employees, civil society sector that works with sea fishery workers has been invited to offer their legal opinions but there were no sea fishery workers or their representatives appeared in this process. One restriction can be traced back to the fact that Thai laws only allow workers with Thai citizenships to form a labour union. But most of the sea fishery workers in Thailand are migrant workers. Despite their forming themselves as groups such as the Fishers' Rights Network (FRN), a group of sea fishery workers in Songkhla with support from the International Transport Workers' Federation (ITF) and the State Enterprises Workers' Relations Confederation (SERC),⁸ such groups cannot register themselves as a labour union due to the legal obstacle.

The groups of migrant workers in local area including the Fishers' Rights Network (FRN) which has been collaborating with Thai labour unions such as SERC has made the effort to promote the right to freedom of association and collective bargaining of the sea fishery workers. SR Law has found that overall, the Thai labour unions offer scant support for the formation of groups and collective bargaining of sea fishery workers. There have been the employees themselves trying to get organized to help each other. According to the International Labour Rights Forum (ILRF), challenges to the organization among workers could be attributed to their lack of awareness of the Thai laws and international standards as well as their lack of awareness that sea fishery workers are able to unionize. As a result, ITF has developed proactive plans to promote the organization among workers from Myanmar and Cambodia employed in sea fishery work by enhancing their

⁷ National Fisheries Association of Thailand has been formed by fishers from 22 coastal provinces in Thailand.

⁸ State Enterprises Workers' Relations Confederation (SERC) is a Thai workers' organization composed of 44 labour unions and more than 200,000 members.

awareness on health and occupational safety. Meanwhile, the Thai sea fishery workers have not formed themselves as labour unions as well since there are only few Thais employed as sea fishery workers in Thailand. The organization of sea fishery workers remains a key challenge and there have been international efforts to promote the right to unionize rather than the unionization initiated by the workers themselves. Nevertheless, such predicament has prompted the civil society sector to become actively involved with the protection of labour rights in sea fishery work.

The State Enterprises Workers' Relations Confederation (SERC) added that both SERC and ITF have been promoting the right to organize among sea fishery workers based on the models developed by the Migrant Workers Rights Network (MWRN), formed by migrant workers in Samut Sakhon. The effort has been made to help sea fishery workers to form their group and appoint one person who acts as their coordinator and develop leaderships within their groups, although they are not registered as labour unions. Such formation aims to ensure mutual help among the workers. Initially, SERC has offered help to such groups including their submission of letters of petition, such as the submitting of letter to the ILO. Later, such groups have increasingly been able to organize activities by themselves.⁹ Attempts to form labour union in the fishery sector can be quite challenging more than in other sectors. Given the working condition on fishing vessels, it makes it difficult for the workers to meet and discuss their problems when compared to workers in other sectors. Nevertheless, the advocacies to raise the workers' awareness among their rights to organize have already begun, although they have to confront legal restrictions. This has made it not possible yet for the workers to make use of various tools of the collective bargaining process. According to SERC, at least advocacies by domestic and international labour unions to help fishers in fishing vessels in Thailand to form their organizations have helped to raise awareness about labour relation issues among groups of sea fishery workers in Thailand.

According to the survey by CSO Coalition, 61% of the respondents have never participated in any formal union. 14% of the respondents have participated in a social and religious organization. 9% of the respondents have participated in a volunteer group. 4% of the respondents have participated in a Thai labour union. And 1% of the respondents have participated in a labour union in their sending countries.¹⁰ Even though

⁹ SERC has offered help to form organization including SSWG based in Hat Yai which focusses on workers employed in sea fishery industry in Songkhla and workers from Myanmar. Meanwhile, ITF helps to form FRN for fishers from various provinces.

¹⁰ The Thai CSO Coalition for Ethical and Sustainable Seafood, "Falling through the Net: A survey of basic labour rights among migrant working in Thailand's fishing sector," Retrieved on August 23, 2021, from http://hrdfoundation.org/wp-content/uploads/2020/07/7efcb5_627b85f92d9a4cb3a962db669b06351c.pdf (July 2020), p.53. Conducted from July-November 2019, the survey relied on qualitative research approaches with participants including 476 workers from Myanmar and Cambodia in fishing vessels. The data collection was made in right provinces in the North and East of the Gulf of Thailand and the Andaman Sea and has been compared with data collected in 2018.

most of the fishery workers have never participated in any formal union, but they express their need to participate in a employee organization. According to a survey by the ILO, 47% of the respondents want to participate in an employee organization. Most of them, 27%, want to participate in in the Migrant Workers Association, followed by 19%, who want to participate in a labour union. Nevertheless, only 3% of the respondents have ever participated in such organization.¹¹

As to their bargaining with the employers, the CSO Coalition's survey has found that when asked if they have ever bargained with their employers, 90% said no, 10% yes. Such bargaining has been collectively made with other employees to demand a pay rise and change of payment methods.¹² The civil society sector has given similar information that the exercise of the right to collective bargaining by the employees does still exist to some extent. For example, the workers may refuse to get on the boats if they have concern about the conditions of the boats. This has taken place mostly among employees of the same employers and it has not been the case of the exercise of collective bargaining rights for workers of the whole industry. Given a lack of collective bargaining, it has impeded the leverage of the workers and the employers have gained the upper hand during the negotiation.

A lack of meaningful representation of employees in Thailand's sea fishery work A lack of meaningful representation in Thailand's sea fishery work has begged questions as to during the insofar process, has the state conducted the national consultation based on the ILO tripartite system or not. In such case, the ILO has set out in the ILO Convention no. 144 on National Consultation.¹³ The question is whether the Thai state's implementation complied with such international standard or not. The issue warrants a review since such the process to determine labour law and policy has the ramification on the protection of labour rights and both the employers and employees shall be affected by such law and policy.

According to the Environmental Justice Foundation (EJF), a lack of labour union in sea fishery work has resulted in the existing laws being influenced by the employers including the Draft Ministerial Regulation concerning Labour Protection in Sea Fishery Work. ILRF finds that the restriction imposed on collective bargaining by labour union is a key issue at the policy level. This has made it challenging for sea fishery workers

¹¹ International Labour Organization, "Endline research: finding on fishers and seafood workers in Thailand," Retrieved on August 23, 2021, from https://shiptoshorerights.org/wp-content/uploads/Endline-Research-Findings-on-Fishers-and-Seafood-Workers-in-Thailand_EN.pdf (2020), p.33. The survey was conducted in 2019 among 219 workers in sea fishery work and another 251 in downstream industries of sea fishery in 11 provinces.

¹² *supra note* 10, p.54.

¹³ ILO Convention on Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) The Convention refers to a effective consultation process among representatives of the state, the employers and the employees. If such process does not yet exist, it should then be developed in each country through consultation with concerned representative organizations.

to defend their rights. And it has enabled the employers to have so much power of the design of the laws applied to labour protection. Nevertheless, as to the employers, the employer association shares that during the consultation process, the state has invited entrepreneurs to participate. Even that, they have found most of their proposals have not been well received during the process. They have thus proposed that the state to pay the attention to the input from fishing operators in terms of the design of the laws to be enforced in sea fishery work as well.

The attempt to unionize ILO emphasizes that government-led inspection is not the only vehicle towards the eradication of labour exploitation. The employer and employee organizations can play a role by collaborating with their member organizations and the government to promote the unionization of workers and their collective bargaining and this can be of significance in a long run and can ensure sustainable measures to ensure decent work in fishing.¹⁴ Meanwhile, ILRF's finds that within the restrictions imposed by laws, various groups including NGOs, private organizations or employee organizations under the influence of employers or the government including the Worker Welfare Committee cannot function as representatives of the workers and should not make an attempt to imitate the roles of labour union.¹⁵

Similarly, SERC opines that according to the law, without a labour union, the Worker Welfare Committee shall be established to represent the migrant workers when negotiating their benefits with the employers. This has been used rather as an excuse by the employers for Thailand to not ratify the C87 and C98 Conventions since by ratifying the Conventions, the employers have to allow the employees to participate in the same platform of negotiation with the employers. SERC notes that even without a labour union in sea fishery work, the civil society sector has been playing a role to immensely help the sea fishery workers. In some cases, even labour unions have no outreach to such aggrieved workers.

MWRN finds that by invoking freedom of association, the workers may form a fisher association, and this is more realistic than an attempt to form a formal labour union since there are not enough fishers in each fishing vessel who can get organized and form a labour union. By forming such association, it can pave the way for all vessels to become members and it may constitute an exercise of freedom of association without having to seek the registration and without the interference by the state in the workers' association. In addition to such formal employee organizations, ILRF mentions that employee organizations which are a grassroots organization and has the independence to expand their membership as well as to function democratically, to

¹⁴ International Labour Organization, "Fishers First: Good Practices to End Labour Exploitation at Sea," Retrieved on August 23, 2021, from https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--declaration/documents/publication/wcms_515365.pdf, pp. 56-58.

¹⁵ International Labour Rights Forum, "Time for a Sea Change: Why union rights for migrant workers are needed to prevent forced labour in Thai seafood industry," Retrieved on August 23, 2021, from https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf, p.18.

not fall under the influence of the employers and the government, to have workers being their leaderships and to have the goals to improve working conditions of the workers similar to labour unions. Such organizations can represent the workers when negotiating the benefits of the workers, although they may not warrant legal protection due to its informal setting.¹⁶

The exercise of collective bargaining rights According to the Department of Labour Protection and Welfare Ministry of Labour, Thai law does not prohibit the exercise of collective bargaining by negotiating or bargaining in the vessel. This can be done. Nevertheless, it should be noted that it is extremely difficult for migrant workers from different countries to get organized, when compared to workers from the same country. MWG finds that public agencies tend to give importance to representatives of the groups of Thai workers rather than migrant workers. After all, it is harder for workers in sea fishery work to get organized than workers in other sectors and they are subject to the chain of command of the *Tai Kong* (skipper) or vessel owner who have close relationships with the workers. The Raks Thai Foundation (RTF) has likewise found that only when all workers on the same boat stand united to demand their rights and welfare by calling a strike, the employer would agree to negotiate with them. But such collective bargaining among sea fishery workers is rare. In addition, although there are leaders of sea fishery workers in various areas, they did not dare to get organized due to restriction in the Thai law and their fear of reprisal from the employer or being dismissed.

The employee organizations place an importance on C87 and C98 to address the problems of sea fishery workers since it might offer a procedure to listen to the problems directly from the workers. As it is hard to reach out to sea fishery workers, they are largely kept uninformed. The government is thus urged to ratify the ILO Conventions no. 87 and 98 to pave the way to listening more to voices of the sea fishery workers and to quell myths about the workers.¹⁷ As to C87 and C98, the State Enterprises Workers' Relations Confederation (SERC) opines that the draft law on labour relations pending the revision now, contains provisions which fail to comply with the core principles of C87 and C98. For example, although strike is the last resort of collective bargaining, the law sets out conditions which make it extremely difficult to organize a strike. The lack of organization among migrant workers could be attributed to the Thai law which does not allow the workers to learn about labour relations and which is supportive to unionization in workplaces. If the government allows migrant workers to get unionized, it would fulfill the campaigns of various groups. By ratifying C87 and C98, it would also benefit Thai workers as well.

¹⁶ *Ibid.*

¹⁷ Representatives from employee organizations in the “workshop to raise the awareness on the Work in Fishing Convention 2007 (no. 188)”, Friday 16 July 2021, from 9.30 – 14.30, via online conference organized by TDRI

Civil society sector can play a role in labour protection in sea fishery work. MWG opines that even though civil society sector may not be a direct representative of sea fishery workers, they have had experience working to protect labour rights and may help to organize training and offer legal assistance to sea fishery workers in legal cases and to ensure they have access to state mechanisms. On one hand, the civil society sector can also synthesize problems of the workers from the employment condition and legal requirements. On the other, the labour unions can focus on promoting organization and operation to respond to the problems of the members. MWG finds that its experience can help to empower their exercising bargaining power when negotiating with the employer.

Findings and recommendations

- 1.) The law prohibits migrant workers who are the majority of workers in Thailand's sea fishery work from forming a labour union. It affects the protection of their labour rights which should normally be exercised through the employee representatives exerting their demands. A lack of unionization in this specific sector therefore weakens the bargaining power of the employees and raise questions about the tripartite system which many be made impossible according to international standards and it may be a breach to the requirements in the Consultation and C188.

Recommendations The state should review and revise the laws that stymie freedom of association and collective bargaining rights to ensure proper working relations through a labour relations system and promote the atmosphere conducive to freedom of and collective bargaining based on the fundamental rights of sea fishery workers. The meaningful representatives of employees should be allowed to participate in the consultation process through a tripartite system.

- 2.) As to the consultation, it has been found that civil society sector has been actively involved with law and policy advocacies and legal assistance, the task of which should have in fact fallen into the hand of employee organizations. Nevertheless, civil society sector has had experience working to protect labour rights and offer legal assistance to sea fishery workers. Such experience of civil society sector should therefore be imparted to employee organizations which shall undertake the work to uphold labour protection further on.

Recommendations The state should promote unionization in sea fishery work. Such groups or labour unions should learn from existing experience to offer legal assistance to sea fishery workers and various litigation processes concerning sea fishery workers so that they can effectively help to uphold the rights of sea fishery workers.

3. Duties and responsibilities of vessel owners, skippers, fishers, and licensees according to the fishery law (Article 8 of C188)

Skippers and fishers are sea fishery workers who afford protection according to the Labour Protection in Fishing Work Act and in compliance with C188. The skippers are, however, have many responsibilities as prescribed in the Thai laws including the Royal Ordinance on Fisheries which requires that skippers shall oversee safety and decisions regarding the work on board, while the vessel owner shall facilitate the role of skippers to control the vessel.¹⁸

According to the Seafarer Standard Division under the Marine Department, a vessel owner is a main responsible person according to the Labour Protection in Fishing Work Act. But once the vessel sets sail, *Tai Kong* or the Master (skipper) shall take charge of the vessel and bear key responsibilities in lieu of the vessel owner, while the seafarers or fishers also have their responsibilities. Any dereliction of duties and responsibilities of those working in a fishing vessel can give rise to an offence, as the case may be. For example, any offence under the charge of the vessel owner may lead to the revocation of fishing license, and if the offence is under the charge of a skipper, their skipper's license could be revoked.

According to the Fisheries Resources Management and Measures Determination Division. The Department of Fisheries, the fishing skills of fisher will depend on how knowledge is imparted by the *Tai Kong* (skipper) who has the commanding power and are in charge of the fishing vessel. According to the Foundation for Education Development (FED), the actual responsibilities lie with the *Tai Kong* (skipper) and *Chew* (supervisor among fishers) rather than the vessel owner who has the power as prescribed by law since both *Tai Kong* and *Chew* earn their income from the shared profits of the fish catch.

Problems with the duties and responsibilities of skipper can be described as follows;

1.) A skipper shares similarities with the vessel owner, i.e., being able to work on behalf of the vessel owner or earning from shared profits just like the vessel owner. It has raised questions as to, should the skipper have the same responsibilities as an employer or not?

2.) A skipper may have more responsibilities than just a skipper including giving training on fishing skills on how to use fishing gears, boat equipment, safety of the fisher. The fisheries law prescribes that a skipper takes control of the navigation and responsibilities in the vessel. Main duties shall fall on the skipper who must impart working skills, provide for safety within the facilities offered by the employer. A question may arise as to, should such duties be also shifted to the public agencies with more skills or not? This will

¹⁸ Royal Ordinance on Fisheries BE 2558's Section 37 prescribes that "A commercial fishing licensee must provide an occupational safety and hygiene system, as well as provide proper working conditions for seamen as prescribed by Ministerial Regulation."

ensure the skipper's liabilities are commensurate to the reality and the law concerning the control and responsibility in the vessel.

3.) In some cases, the law may not prescribe responsibilities of the employer. For example, if the employer fails to facilitate to ensure the skipper can execute his duties safely enough, the question is if the employer be held accountable for the performance of the skippers. Or when a fisher disobeys the orders of a skipper and it has led to dispute on the vessel, how will it be dealt with?

The responsibilities prescribed in the law are found not to sync with actual performance of the holders of positions in the vessel. MWG finds that an effort should be made to explore the clear power relationship between the *Tai Kong* (skipper) and the vessel owner in order to impose responsibilities on them according to the law. For example, the change of working conditions shall be applied to the vessel owner or *Tai Kong* (skipper) as a person in charge. EJF finds that the skipper's responsibilities should be reviewed since they are the persons who issue orders regarding the work and safety on board and should afford such responsibilities as well. But according to the law, such responsibilities belong to the vessel owner and how the skipper issues the orders is a matter that is hard to inspect.

Findings and recommendations

1.) Responsibilities of the vessel owner, the skipper and the fisher are different between what is provided by law and the reality. In some case, a skipper may perform the duties similar to the employer or may take on duties more than what is prescribed by law. This may not comply with the responsibilities provided by law for the vessel owner, the employer and the skipper.

Recommendations The actual power relationships between the vessel owner and the skipper should be studied and the laws which determine duties and responsibilities of holders of different positions in the vessel should be reviewed to ensure they comply with the context of fishing in Thailand.

2.) In the real situation, a skipper may have different duties including taking charge of the vessel and offering training on fishing skills for the fisher. The skill training is not clearly required by the law. It gives rise to a question if such skill training offered by the skipper to the fisher is made adequately to ensure occupational safety of the fisher or not, and how the state should be involved with the promotion of such skill training to ensure it is offered universally to all fishers.

Recommendations The state should offer more fishing skill training to fisher apart from the training under responsibilities of the skipper. The outcome should be evaluated to promote proper awareness and occupational safety of workers in sea fishery work.

4. The use of child labour in sea fishery work (Article 9 of C188)

The ILO Convention C188 specifies the minimum age for work on board a fishing vessel shall be 16 years with compliance to applicable laws. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing. The sea fishery work which may likely jeopardize the health, safety or morals of young persons, shall not be designated to a person less than 18 years. And it is prohibited to have sea fishery worker younger than 18 years to work at night. At present, the Draft Ministerial Regulation on sea fishery work is being revised and the minimum age for working in fishing in Thai law is lowered in order to be in line with the minimum age of C188 Convention, which prescribes a minimum age lower than in the Thai law.

The Draft Ministerial Regulation provides that a vessel owner or a skipper may allow their descendants who are Thai nationals and younger than 16 years with a certificate of apprenticeship according to the Navigation in the Thai Waters Act to practice fishing skills not more than one for each fishing vessel (to have fishing apprenticeship to pass on local wisdom in fishing.) The criteria, methods and conditions for such apprenticeship shall be prescribed by the Department of Labour Protection and Welfare and the Marine Department. This has given rise to debates among concerned parties. The National Fisheries Association of Thailand supports the lowering of the minimum age since sea fishery work warrants experience and the worker should receive skill training since young. Also, most commercial fishing is a family-business and adopting C188 should let to the disadvantage of the economy.

As to the civil society sector, there has been various concerns about the use of child labour in fishing vessel including;

1.) The lowering of minimum age may lower the standards concerning the use of child labour. MWG finds that such regulation may be in breach of provisions in the Labour Protection Act BE 2541 in Chapter 4 on the use of child labour since sea fishery work is designated as harmful work and in breach of the Child Protection Act BE 2546's Section 26(6) since the use of child labour may cause harmful impacts on the child's body and mind. The National Committee on the Eradication of the Worst Form of Child Labour treats sea fishery work as one of the kinds of work which the worst form of child labour. Such regulation may contravene the commitment Thailand has given when ratifying the ILO Convention C182 on Worst Forms of Child Labour Convention.

2.) Work in fishing vessel in Thailand involves working at night, carrying heavy load, and working for long hours which are incompatible with the child labour protection standards. There is an observation that the context of Thailand's fishery industry may involve merchant marine skill training or not and what are the

criteria of the course? There is concern about a lack of clear safeguard to protect children in fishing vessel on the inspection mechanism and the complaint procedures.

3.) The ILO Convention C188 provides that in order to allow a person younger than 16 years to work in a fishing vessel, there shall be a consultation taking into account the risks concerned. The Ministry of Labour has yet to organize such consultation with either the workers or civil society organizations specifically on this issue. Therefore, it is concerning that the legal drafting process may not proceed as required to have a consultation in C188 regarding the use of child labour. Studies should be carefully made and risk assessment should be carried out prior to the enactment of the law including working at night and the fishing methods.

Findings and recommendations

1.) The Draft Ministerial Regulation on the use of child labour in fishery which proposes to lower the minimum age has garnered support from the employer who claims it helps to pass on the local wisdom, promote skill training and sustain family business in sea fishery work. But it has been met with opposition from the civil society sector who finds such regulation could be in breach of labour protection law and child protection law and may contravene our international obligations concerning the use of child labour.

Recommendations Provisions on the use of child labour in sea fishery work should be subject to comprehensive studies before their enactment. It should take into account the context of fishing in Thailand and the conditions set out in C188 as well as leads to the organization of a consultation process among stakeholders and experts to ensure comprehensive input is obtained.

MIGRANT WORKING GROUP

5. Employment conditions and working conditions in sea fishery work: Personal document of sea fishery workers, medical certificate for sea fishery workers, nature and hours of rest, the crew's list, their accommodation and food

5.1 Personal document (Article 18-20 of C188)

The law prohibits the employer from seizing employee's documents, although guidelines exist to allow the employer to keep the employee's documents based on a written consent. This practice has also been adopted by the Department of Labour Protection and Welfare. According to the Department of Labour Protection and Welfare Ministry of Labour, during the inspection of sea fishery workers, they have found no problem of the documents being withheld by the employer. It is possible to leave the documents with the employer, although it is not advisable for the fishers to keep financial documents with themselves since they have to work in a vessel, and it is difficult to keep the documents. Meanwhile, civil society sector is concerned about the keeping of documents. SR Law finds that by allowing the fisher to leave their documents with the employer, it could be

incompatible with the Anti-Trafficking in Persons Act which prohibits the withholding of the worker's documents. In addition, by leaving the documents with the employer, what would be the methods of inspection to verify if it is an act of withholding or keeping the documents. The Stella Maris Seaman' Centre (Stella Maris) points out that by allowing the employer to keep the documents and the conditions imposed on the change of employer deprive the worker of their independence to do anything. They are thus concerned about the human-trafficking like conditions in sea fishery work which in present become more complicated.

According to the CSO Coalition's report, even though the law prohibits the withholding of employee's documents, but in reality, the employer continues to be the primary keeper of the documents. Only 15% of the employees in sea fishery work who keep the documents with themselves, whereas the employers, the masters, and the managers are the persons who keep the document at the rates of 65%, 14% and 6%, respectively.¹⁹ In addition, more than 90% of the employees do not have a copy of the employment contract.²⁰ According to the ILO's report, only 23% of sea fishery workers keep the documents and ATM cards with themselves. Despite this meagre figure, it indicates some progress made since the regulation to on the keeping documents has come into force. In Thailand, workers in seafood sector keep their own personal documents and use ATM more than sea fishery workers whose documents are mostly kept with the employers and who continue to get paid in cash, rather than bank transfer as required by law.²¹ From giving legal assistance, SR Law and Human Rights and Development Foundation (HRDF) have found that how the employee's documents are kept affect their labour rights on various fronts including their right to accommodation, their right to work, their right to medical care and the change of employers. In addition, civil society sector notes that the employer is the person who keeps the employee's documents often indicates the risk of forced labour and trafficking in persons based on the cases receiving assistance from civil society sector, for example;

1.) SR Law's case whereby an employee from Myanmar asked to resign due to the hard-working condition and being subject to physical abuse. His employment contract, bank account, and personal documents were kept by the employer. He still received the pay by cash, although payment slips can be shown to the labour inspector. He had to work hard, suffered from verbal and physical abuse on the fishing vessel. As to the working condition, it was found that the number of workers in the vessel was less than half of the proper number of workers according to the size of the vessel. When the employee asked to quit, he was subject to physical abuse and suffered injuries.

¹⁹ *supra note 10*, p. 24.

²⁰ *supra note 10*, p. 25.

²¹ *supra note 11*, p. 16.

During the rescue, it was difficult to prove any offence regarding wage payment since the employer had prepared payment slips as required by law, although they did not correspond to the actual payment made. In term of criminal suit (for physical abuse), it was found the police refused to accept the report of case by the worker. SR Law noted that there were several indications of the use of forced labour in this case including the withholding of personal documents, the payment method, physical abuse, and the number of workers being less than the proper number according to the size of the vessel.

2.) HRDF's case regarding the assistance offered to a migrant worker from Myanmar who wanted his personal documents back from the employer after his dismissal. The employer asked the employee to first pay him 35,000 baht in order to retrieve his documents. The employer had an agreement with the employee to settle the account and pay him the wage in cash every three months with the deduction of document fees, ATM card fee, and outstanding debt to the employers. Three physical abuses occurred in the vessel, causing the employee to have to receive treatment in the hospital. This prompted the employer to dismiss the worker. The abuse of the sea fishery worker including physical abuse, the withholding of documents and debt incurred from deductions could make this case appear to be a case of forced labour. Nonetheless, it did not appear that the labour inspector has examined these issues. In this case, the labour inspector mediated until the employer agreed to return the documents to the employee. As to the case of physical abuse, the labour inspector asked the worker to report the case to the police.

The payment of wage and deduction which does not comply with the law persists. Due to time constrain or the methods of inspection, the labour inspector may not be able to examine the actual deduction. When a dispute arises, the labour inspector often relies on documentary evidence giving workers a disadvantage during the legal proceeding. The two cases contain features which indicate the use of forced labour. It should have led to the process to screen the victims of forced labour. But it did not appear that such issues were reviewed or there was an attempt to use the screening process to identify victims.

Findings and recommendations

- 1.) Although the law prohibits the employer from withholding the documents, but in reality, the authorities continue to allow the employer to keep the documents. According to the research and experience of civil society sector, it was found that the withholding of the sea fishery workers' documents continues and there is concern about the inspection methods the labour inspector, whether they can examine if the employee really gives consent to have their documents kept by other people all the time or not. And when the withholding of documents is found, the question remains on how the labour inspector respond to such practice.

Recommendations That practice of leaving documents with the employer should be reviewed whether it complies with domestic laws and international standards or not. The method of inspection adopted by the labour inspector should also be reviewed as far as the withholding of documents is concerned. In addition, an attempt should be made to raise the awareness about rights and duties of the employers and the employees concerning the keeping of documents to ensure compliance with applicable law.

5.2 Medical certificate for sea fishery workers and medical examination (Article 10-12 of C188)

The Labour Protection in Fishing Work Act's Section 8 prescribes that in order to be permitted to work in sea fishery work, the worker must have a medical certificate indicating readiness, as regards health, for working on board a fishing vessel, including hearing and visual health. According to the Notification of Ministry of Public Health concerning the inspection of seafarers BE 2563, the civil society sector opines that by requiring medical examination prior to work in a fishing vessel, it indicates progress of labour protection. Nevertheless, during the outbreak of Covid-19, it is mandated for every sea fishery worker to also have Covid-19 testing, which causes more expenses to the employee since expenses incurred from such medical examination have to be borne by the employee according to the law.

From the observation of case assistance by the civil society sector, it has been found that sea fishery work tends to make employees more stressed than other sectors. It is noted that accidents in fishing vessel could be attributed to the mental condition of the sea fishery workers. The civil society sector finds that hard-working condition in fishing vessel should warrant mental and physical health assessment to ensure readiness for work and such assessment should be conducted on a regular basis, not just a one-off requirement before the commencement of work since a vessel is a 24-hour-workplace and sea fishery work is dangerous work. However, at present the medical examination and examination of prohibited diseases are required only prior to the commencement of work.

Findings and recommendations

- 1.) The requirement to have medical examination prior to the commencement of work is an indication of progress by the state. An emphasis is placed on medical examination and examination of prohibited diseases. Nevertheless, since the outbreak of Covid-19, sea fishery workers are also required to have Covid-19 testing for another disease. The civil society sector is concerned about the extra expense from Covid-19 testing which creates a burden for the employees. In addition, the civil society sector is also concerned about mental readiness of the workers which may correlates with work-related injury.

Recommendations Clear measures should be forced to assist the sea fishery workers and their employers to cope with the increased expenses from Covid-19 testing and other response during the Covid-19 pandemic, At the same time, the assessment of physical and mental readiness of sea fishery workers should be conducted on a regular basis.

5.3 Conditions and hours of rest (manning and hours of rest, Articles 13-14 of C188)

The Ministerial Regulation concerning Labour Protection in Sea Fishery Work BE 2557's Clause 5 prescribes that an employer shall provide a rest period of not less than 10 hours in any 24-hour period and not less than 77 hours in any 7-day period for an employee. An employer shall prepare a rest period's record to be inspected by a labour inspector. The inspection of working hours by labour inspectors is made through the examination of the logbook coupled with random interview of workers. The civil society sector is concerned that the inspection of working hours based on logbook may not correspond to the actual working hours and hours of rest. The record of entries in the logbook depends chiefly on the skipper and the interpretation of hours of rest of sea fishery workers still varies in each vessel. For example, if the vessel does not run into any school of fish, will it be counted as hours of rest or not? It could be said that there has yet been a mutual agreement as to the interpretation of hours of rest of sea fishery workers while working in fishing vessel.

Regarding the issue, the Department of Labour Protection and Welfare under the Ministry of Labour explains that logbook is just a basic tool of labour inspection. It gives an overview of the working hours and therefore the inspection of working hours relies chiefly on an interview. According to the Fisheries Resources Management and Measures Determination Division under the Department of Fisheries, the record of time entries in logbook could be identical depending on the type of fishing vessel. If the logbook entries are not properly made, the inspection can be made using the VMS (Vessel Monitoring System) as an equipment that helps with the analysis. According to the National Fisheries Association of Thailand, the determination of working hours and hours of rest is under the responsibility of the skipper. Normally, when the catch is pulled from the water, the rest of the process has to continue until it gets completed. Therefore, the hours of rest shall vary depending on the fishing gear used. And in fishery work, the number of hours of rest normally exceeds 10 hours as prescribed by law.

Findings and recommendations

- 1.) The inspection of working hours of sea fishery workers relies on the logbook entries and an interview of labour inspectors. It should be noted that the record of hours of rest in logbook depends chiefly on the skipper. The civil society sector is concerned how the inspection of hours of rest which relies on examining the logbook entries and an interview may reflect the actual

number of working hours and hours of rest. And there are no clear guidelines to interpret the hours of rest.

Recommendations Guidelines to determine hours of rest should be clearly defined. The record of entries in logbook should be made in the language understood by the employers. Also, the employees and a comprehensive inspection method should be considered the utilization of data technology to aid the inspection of hours of rest to reflect the working hours and hours of rest most realistically as much as possible to avoid the use of forced labour and trafficking in persons.

5.4 A crew list (Article 15 of C188)

Before leaving the port, it is required by law to have a labour inspection based on the standards prescribed in the Royal Ordinance on Fisheries' Section 82 whereby the owner or the master of a fishing vessel shall submit documents related to vessel registration, the vessel use permit, the fishing license, details of the number and a list of outgoing seamen on board, evidence of authorization, license and permit under section 83, as well as evidence related to the provision of appropriate systems for ensuring occupational safety, hygiene and wellbeing of seamen as prescribed in the Ministerial Regulation to the competent official at the Port In-Port Out Controlling Centre in accordance with the rules and procedures prescribed by the Director-General. In addition, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work BE 2557's Clause 7 prescribes that whereas an employer employs 10 or more employees, an employer shall create a record of employees in Thai and keep it at a workplace to be inspected by a labour inspector. An employer shall keep a record of employees for at least 2 years from a termination date of employment of each employees concerned.

Regarding this, the National Fisheries Association of Thailand notes that it indicates some progress as to C188 since it helps to ensure a more proper labour registration and it can prevent the seamen from escaping and refusing to work in the vessel. Nevertheless, there are still too many rules and regulations to comply with. The civil society sector is concerned about the change of employer procedure which requires a contact with the office of the Department of Employment. Such required procedure may lead to an inaccurate crew list.

Findings and recommendations

- 1.) The crew list is a requirement for inspection of sea fishery workers in fishing vessel. The employer finds it an indication of progress to have list of seamen, while the civil society sector is concerned about the change of employer procedure which requires that a contact is made with the Department of Employment. Such required procedure may lead to an inaccurate crew list. During the inspection, if the workers' documents are found to not match their actual ages or personal information, the question remains on how the PIPO officials handle with the case.

Recommendations The inspection of a crew list should be conducted on a regular basis and the employers and the employees should be informed of the process to change the entries in the crew list and registration book.

5.5 Accommodation and food (Article 25-48 of C188)

The Labour Protection Act in Sea Fishery Work's Section 13 prescribes that a decked fishing vessel of three hundred gross tonnage upwards shall provide accommodation on board the fishing vessel in accordance with the rules prescribed in the law on navigation in Thai waters. This requirement applies to new fishing vessels and modified fishing vessels. It should be noted that accidents in fishing vessel often happen when a seaman use toilet at the back of vessel. It raises questions about the fishing vessel's safety standards and safety inspection by officials from the Marine Department. From an observation of the performance by officials at the PIPO Centers, it was found that the officials do alert fishers about the risk spots and safety precaution on board to prevent the fall from the vessel. Nevertheless, there has yet been any signs or symbols put up to alert the crew about risk spots in the vessel.

The Ministerial Regulation concerning Labour Protection in Sea Fishery Work BE 2557's Clause 16 prescribes that an employer shall provide adequate hygienic food and drinking water, toilet, medical supplies and medicine for basic first aid and for work and living on fishing boat. Nevertheless, there are no official and clear guidelines to carry out an inspection of food and drinking water. Meanwhile, several workers complained that they had to buy their own drinking water since the water provided by their employer was not clear and was only good for non-drinking purposes. Some vessels do have water filter system installed but the processed water was still not clean enough for drinking.

Findings and recommendations

- 1.) The employer is required to provide accommodation and food. Nevertheless, there are no clear guidelines for the inspection of food and drinking water. It is subject to the discretion of the officials. Despite the inspection of food and drinking water by officials from the Department of Fisheries, several seamen are still concerned about the quality of water provided by the employer and decide to buy their own drinking water.

Recommendations Clear criteria for the provision of food and drinking water should be determined to ensure the standards and an inspection should be carried to ensure the vessel owner strictly abide by the regulation.

- 2.) The accommodation in fishing vessels and safety standards of the vessels are subject to inspection by officials of the Marine Department pursuant to the standards prescribed in C188 Convention

which applies to new or modified vessels. It should be noted that the conditions of accommodation on board could correlate to the accidents there such as the case of seamen falling off the vessel.

Recommendations Risk area on board should be clearly marked with signs or symbols to alert the seamen and prevent accidents. In addition, guidelines for the improvement of accommodation on board should be reviewed to ensure seaman's safety during their work and living.

An interview of sea fishery workers regarding the general working conditions²²

Worker 1 A sea fishery worker from Cambodia, male, 32, having been working for 3 years as MoU worker

The worker has entered Thailand to work persuaded by his friends. The employer took him to apply for a passport and the worker only paid for the passport fee. The rest of the paperwork was handled by the employer.

The worker was paid 10,000 baht a month plus the catch's share. The payment was made in cash. The worker did not know how to use the ATM card. The PIPO officials used to interview him about the payment and the worker admitted that he received his pay in cash. No further action was taken by the labour inspector.

The employment contract was made only in Thai, not in Cambodian.

The employer prepared food and drinking water on board, although the water was good for non-drinking purposes. The worker had to buy his own drinking water. Several workers put together their money to buy water for their consumption.

The worker used to use health insurance card using it at a hospital. According to him, he afforded the rights just like a Thai national.

The worker is aware of social security, although he had no social security card. When the worker falls ill, the employer would have him stop working. If he needed treatment at the hospital, the employer would arrange for a person to look after him at the hospital and continued to pay him normally. There is no annual leave for the sea fishery worker.

Working on board, it is most dangerous when lifting the nets from the water, particularly the last round of net lifting. According to the worker, without proper care, the seaman's hand could be severed. This is known well among the workers on board.

²² Interview with a male sea fishery worker from Cambodia at a fishing port in Songkhla via phone in June 2021, with coordination and support from Stella Maris

Life vests and boots were provided by the employer. The workers had to wear the equipment since fish could be sharp and they needed to work at night.

Regarding safety training, according to the worker, since working for 3 years, he has never received any safety training such as swimming skill. He has picked up the skills from working.

Regarding the inspection by the PIPO officials, the worker finds that the inspection of PIPO Centers has much improved from before. If he had any problem during his work, he dared to complain with the PIPO officials since an interpreter was provided. The worker would first approach the interpreter since they find it more convenient to speak with people from the same country. Without an interpreter, they are not sure if the officials would help them.

As to problems in his work, he wants the employer to provide adequate food to all seamen and to improve the quality of supplies in the fishing vessel.

Worker 2 A sea fishery worker from Cambodia, male, 42, having been working for 2 years as a seaman. The sea fishery worker had a passport and employment contract in Thai, but not in Cambodian. He never bothered to look into what was written in the employment contract. He kept a copy of it at his sleeping place. He was paid 12,000 baht a month and it may increase depending on the amount of the catch. He can ask for an advance money from his employer.

The payment was made in cash. The employer would first transfer it to the account and inform the worker the outstanding balance. Then, the worker would ask the employer to draw cash from ATM for him.

The employer paid for all document fees of the employee including passport fee and health insurance card. The worker has never used the health insurance card and was not aware of social security. He has never had any accident or faced any problem working in the fishing vessel.

The employer provides for water and food in the fishing vessel.

Regarding the inspection by the PIPO officials, since the officials are related to the employer, they have found no problem during the labour inspection.

Worker 3 A sea fishery worker from Cambodia, male, 40, working as *Chew* (assistant to skipper or chief of workers)

The worker has been working in Thailand for more than 20 years. He first came in to work illegally. Later, he was issued with a pink card and a passport. At present, he is among the group of nationality verification which is going to expire in 4 years on 31 March 2022. He used to change an employer but continued to work in the same vessel.

Normally, he worked on board every ten days. Sometimes, after 3-4 days, his vessel might come ashore. His work involved mending the nets and connecting robes. Marine work is challenging when there are strong currents, particularly the sea sickness problem. There used to be some fight on board among the seamen, or sometimes, the *Tai Kong* (skipper) would fight with some seamen. As accident on board, he used to encounter only minor accidents, not a major one.

As to payment, the employer would transfer it to bank account and have the skipper or the mechanic to help draw cash from the ATM and bring it to the workers. The worker never knew how much money was left in his account. He could ask for an advance money from the employer and he did request for several of such advances. The money has been mostly spent on the shore. All his personal documents were kept by the employer.

When falling ill, the worker would go to see doctor at a clinic and the expense was covered by the employer since visiting a public health facility also cost him money and he had to wait in queue.

Food and drinking water on board were provided adequately by the employer. But the worker chose to buy drinking water himself. He also had to buy his own coffee and sweets.

Some private organization came to give them medicine in the fishing vessel, but he has never seen any public authorities distributing stuff in the vessel.

If there was any problem, he dared to report it to the PIPO officials and the PIPO officials used to ask him about the employment contract and helped to translate its content for him.

6. Employment contract (Articles 16-20 of C188)

According to the Labour Protection in Fishing Work Act, an employment contract means a contract of employment under the law on labour protection. As a result, an employment contract in sea fishery work falls under the rights and duties of the employers and employees according to the Ministerial Regulation concerning Labour Protection in Sea Fishery Work BE 2557. Its Clause 6 requires the employer to prepare written employment contract in duplicate and provide one copy of such contract to an employee to be inspected by a labour inspector. It shall be in accordance with a standard form prescribed by law and the employer is required to present the employee before a labour inspector once a year they have entered into an agreement.

MWG finds that the Ministerial Regulation concerning Labour Protection in Sea Fishery Work's Clause 6 does not require the arrangement of employment contract in a local language understood by the workers. As a result, there has yet been an employment contract written in the language understood by the migrant workers, except migrant workers recruited to work with domestic employers though the Memorandum of Understanding between the states which requires the arrangement of an employment contract in Thailand

and at least the language of the sending countries.²³ At present, the Department of Employment is preparing an employment contract in the language of the migrant workers and will use it as a standard contract. Therefore, it should be prescribed in a secondary law to require a standard employment contract written in the languages of the migrant workers similar to the one being developed by the Department of Employment. This will assure that migrant workers understand their labour rights based on the agreement they have entered into with the employers.

In addition, the employment contract for sea fishery workers fails to provide for a dispute resolution mechanism, complaint procedures for the workers and other benefits regarding health insurance, social security and Workmen's Compensation Fund. The civil society sector finds that such clauses should be added into the employment contract, particularly detail of the persons to contact when the worker suffers from a danger should be added to facilitate the claim of remedies within the timeframe prescribed by law. Nevertheless, the Department of Labour Protection and Welfare Ministry of Labour finds that not all the detail should be included in the employment contract and certain conditions are required to be included in the licenses including the responsibilities of the employer already.

From the work of civil society sector, problems occur with the share remuneration on the fish catch. According to SR Law, even though the law prescribes for a share remuneration system when there is a dispute regarding the shared profits from the catch, the question is on which criteria the price or value of the catch can be appraised. Most of the data concerning the catch is kept by the employer. Also, when information from the employer does not match with information from the employee, it is difficult to determine the proper profit sharing. In addition, the period when the shared profits is paid is made based on mutual agreement and contradict to the law. According to the Ministerial Regulation concerning Labour Protection in Sea Fishery Work (no. 2) BE 2561s' Clause 10/2, shared profits in which an employer has agreed to pay according to the value of the aquatic animals being caught shall be paid according to mutually agreed payment schedule and shall be made at least once in every 3 months.

HRDF found other problems concerning employment contracts. For example, the employment contracts of MoU workers, the version signed by the employee in their sending countries, may contain provisions different from the version of employment contract signed by the employee in Thailand. For example, the wage might be lower in the version of contract signed in Thailand due to the change of employment position in the fishing vessel. This has led to disputes between the employers and the employees regarding the pay according to the contracts.

²³ A letter from MWG concerning recommendations on the employment contract of migrant workers in sea fishery work to the Permanent Secretary of the Ministry of Labour on 6 November 2020

Regarding the awareness of employment contract among workers, according to the CSO Coalition's report, 54% of the respondents were informed of detail in the employment contracts prior to the commencement of their work. 64% of the respondents said that the information about the employment was given to them by the employer. Compared with the figure of 42% on the same issue in 2018, it could be said that the workers have been better informed of detail of their employment than in 2018.²⁴ Nevertheless, 78% of the respondents have never read the contracts before signing their names and 67% had no one to explain to them the content of the contracts prior to signing them. This stands contrast to the outcome of a research that asks if the employment conditions match what is provided in the employment contracts or not, whereas 88% said the employment conditions matched what was agreed verbally. It should therefore be noted that the workers had no understanding about the content of the employment contracts.²⁵ It is noted by the civil society sector that given a lack of understanding of the content in the employment contract, this makes the employees unaware of their rights and duties according to the law and may have to accept the employment conditions which may not reflect what is written in the employment contracts.

Findings and recommendations

- 1.) The law sets a standard of employment contract, although it does not require that it be made in the language understood by the employee and to contain provisions concerning the rights and duties such as benefits of the employees, dispute resolution mechanism, complaint procedure, emergency contact person, and the criteria to appraise the value of aquatic animals caught for profit sharing. Without these provisions in the employment contracts, it makes the employees unaware of their rights and vulnerable to rights violation.

Recommendations The employment contracts should be made in language understood by the employee, and this should apply to all groups of employees in sea fishery work. Criteria to appraise the value of aquatic animals caught for profit sharing should be spelled out in the employment contracts and they should contain provisions concerning the rights and duties of employees.

7. Recruitment and placement of migrant workers (Article 22 of C188)

According to the Department of Employment, the employment of migrant workers recruited to work in Thailand has to comply with the Royal Ordinance Concerning the Management of Foreign Workers BE 2560. Given the necessity, flexibility has been offered to ensure the migrant workers can enter the country to work, particularly unskilled labour to replace Thai labour and to drive the national economy. The Memorandum

²⁴ *supra note* 10, p. 21

²⁵ *ibid.*

of Understanding on the cooperation of employment between Thailand and Myanmar, Laos, Cambodia and Vietnam has been made to address a shortage of unskilled labour, to minimize employment of illegal workers, and to ensure the migrant workers are employed legally to meet the demand of the employers.

As to the fishery sector, recruitment and employment of migrant workers have been carried through various avenues including the government to government agreements, employment in border area based on an agreement between Thailand and neighboring countries, or special employment pursuant to the fishery law according to the employment per Section 83 of the Royal Ordinance on Fisheries. Section 83 has been particularly designed to address labour shortage in the fishery sector. According to the ILO's research, the reliance on recruitment agencies among migrant workers in sea fishery work has decreased from 30% in 2017 to 9% in 2019, while there has been an increase in recruitment via families or friends or direct recruitment by employers. This is partly due to that sea fishery work is dangerous and it has made it difficult for recruitment agencies to get people to apply for such a job.²⁶

Handouts at the meeting on the situation of labour in fishery industry organized by the National Human Rights Commission refer to a number of regulations in sea fishery work which have given rise to brokers for sea fishery workers. They work to recruit the workers or facilitate the compliance with complicated procedure while the employers continue to show their constant demand of labour.²⁷ MWRN shares that the broker system continues to exist for the recruitment of fishers and the workers are told to collect money from the brokers in lieu of the employers. The brokers may operate from a grocery store, which apart from operates as a brokerage, also sells the products to the workers and charge them by deducting from their wage. It has led the workers into an endless cycle of debt.

As to the workers recruited via the MoU for sea fishery work, the Royal Ordinance Concerning the Management of Foreign Workers BE 2560's Section 49 prescribes that the employer is prohibited to demand for or receive money or any other property from the foreign workers in coming to work with themselves in the Kingdom, except from the costs which are of the foreign worker's responsibility, in which the employer has paid for in advanced, such as passports, health check, work permit or other relevant costs as prescribed by the Director-General.

²⁶ *supra* note 11, p. 7-8.

²⁷ Handouts at the meeting on the situation of labour in fishery industry, 8 July 2021, at 13.00, by the National Human Rights Commission via online conference

The service fees and expenses charged by the employer are prescribed in the Notification of the Department of Employment.²⁸ Clause 3 of the Notification provides that the licensee may charge or collect the service fees from the employer not more than 25% of the monthly pay received in the first month of work by the migrant or during the first 30 days the migrant has started working. The rates of service fee charged or collected from the employer shall be calculated based on the proportion of the importation of migrants.

The expenses incurred from recruiting an alien to work as charged by the licensee from the employer are prescribed in Clause Article 4 of the Notification of the Department of Employment. To recruit an alien to work for an employer in Thailand, the licensee may charge or collect the expenses from the employer equal to the amount actually paid as follows;

- 1.) The expenses prescribed by law to be borne by the employer or as expressed by the employer in the contract to bring an alien to work for an employer in Thailand that they shall be responsible for such expenses for the alien.
- 2.) Document arrangement fee including document production, document certification, document translation.
- 3.) Travel cost, food and accommodation cost incurred from bringing an alien to work with an employer in Thailand

Clause 5 of the Notification of the Department of Employment prescribes two personal expenses for the aliens including (1) expenses prescribed by law to be borne by an alien including medical examination fee and (2) expenses incurred in the sending countries.

If the employer has advanced their money to cover the employee's personal expenses, the Royal Ordinance Concerning the Management of Foreign Workers BE 2560's Section 49 allows the employer to deduct the expenses from the wage the alien receives, but not more than 10% of the wage the alien is entitled to each month. In the case that no agreement has been made concerning the employer's advanced payment for the employee's travelling costs, and the employer has made advanced payment, the employer may deduct the foreign worker's wages as they are entitled to.

Despite the control on recruitment service fees and expenses, the recruitment of workers via MoU between the states can still incur high costs. According to the National Fisheries Association of Thailand, recruitment via agencies yields high costs and the burden has been shouldered by the employer. In addition, there have been cases of workers being unable to come to work on the fishing vessels as recruited. The recruitment agencies have to send in new replacements. Nevertheless, in such case, it causes the employer to

²⁸ Notification of the Department of Employment on List of Items and Rates of Service and Expenses and Form of Service Fee Receipt and Expenses for Bringing Foreigners to Work with Employers in the Country 17 November 2016

have to wait for some time in order to have enough number of workers before going out to fish. There are also cases whereby the employer has paid for expenses incurred from the recruitment in advance for the worker. And if the worker asks to acquire advance pay, it may likely cause the employer to not retrieve the expenses from the employee.

The government to government MoU neither prescribes for responsibilities between the employers and the employees nor recruitment expenses. It thus subjects the control of expenses incurred from transboundary recruitment to the domestic laws of each country. In Thailand, although the law prescribes criteria regarding the responsibilities for expenses and the ceiling of deduction, it places no limits on the expenses occurred in the sending countries. This makes it fail the test of the Fair Recruitment which may give rise to a zero-fee recruitment and employment. In addition, the inspection of expense deduction can be challenging given a lack of clear evidence for such deduction.

It has been found that the recruitment process prior to entering to work in Thailand does not involve the assessment of physical and mental readiness even though work on board a fishing vessel can be dangerous and it requires a constant presence in the workplace. In addition, there is limited orientation prior to coming here to work. As a result, the workers are left unaware of legal knowledge and it gives them disadvantage when confronting a dispute. MWG has proposed a clear strategic plan to ensure fair recruitment for sea fishery workers including pre-departure training which may be conducted by international organizations or nongovernmental organizations and a plan to examine the expenses incurred during the recruitment and the deduction from wage of the sea fishery workers.

As to the employment per Section 83 of the Royal Ordinance on Fisheries, it has been designed to address a shortage of sea fishery alien workers who want to work in fishing vessels, but have no work permits. In this case, they are allowed to register, create their profile, and apply for seaman's books from the Department of Fisheries. According to the Division of Labour in Fishery Sector (under the Department of Fisheries), the registration per Section 83 of the Royal Ordinance on Fisheries is made available periodically for workers and they shall receive a permit to work for one year. But few sea fishery workers have tapped into this channel, probably due to the high costs. According to the Department of Fisheries, the seaman's book issued by virtue of Section 83 gives rise to labour protection including document examination by the multidisciplinary team of PIPO Centers, similar to the Thai workers who are issued with seaman's books. According to the Notification of the Office of the Prime Minister on the issuing of seaman's book pursuant to the Royal Ordinance on Fisheries BE 2560, the Department of Fisheries is required to issue a seaman's book to an alien at the expense of the vessel owner including for medical examination and health insurance valid for at least one year. This

obliges the employer to shoulder the expenses from the health of the worker employed by way of Section 83 of the Royal Ordinance on Fisheries.

Migrant workers recruited via MoU face restrictions when they want to change their employers according to the Royal Decree Concerning the Management of Foreign Workers' Section 51 which prescribes that the foreign worker who quits before the completion of the employment contract is not permitted to work with another employer, except be able to prove to the Registrar the reason to quit result from the fault of the employer or has paid for the damage costs to the current employer. This clause impedes the chance of changing employers. At present, the state has offered some waivers to this clause making it possible for the worker to change their employer by paying 1,000 baht. A question remains as to who should bear with the expenses from the change of employer, which has not been prescribed by the law.

As to the frequent change of employer in sea fishery work, according to the Division of Labour in Fishery Sector under the Department of Fisheries, the employer must offer incentives and explore ways to advertise their job opening among the workers. The employers in sea fishery work have to bear with the costs from the change of employer. According to the National Fisheries Association of Thailand, allowing the payment of 1,000 baht for the change of employer affect the employer as well, particularly if the employer has paid wages in advance for the worker. When the worker changes their employer, the advanced payment will be borne by the employer.

Findings and recommendations

- 1.) Due to a labour shortage in sea fishery work, the state has been prompted to arrange for the recruitment in sea fishery work via various channels including the government to government MoU and recruitment via specific clauses of law. Nevertheless, it has been found that such recruitment process incurs high costs. If such expenses are not clearly shared between the employers and the employees according to the law, it may give rise to a never-ending debt cycle of the employee.

Recommendations The high costs in recruitment should be subject to review since they become a burden for both the employers and the employees. There should be an inspection to ensure the deduction of recruitment expenses from the employee's pay is made according to the law including an effort to minimize recruitment costs through the negotiation with the sending countries.

- 2.) There has not been an assessment of readiness of the migrant workers before their work in Thailand's sea fishery work. There has been insufficient training about the working conditions in sea fishery work and the benefits they should receive. Also, there has been a lack of inspection as to the alleged rights violation in the recruitment process or the lack of compliance with recruitment laws.

Recommendations During the recruitment of migrant workers to work in Thailand, the recruitment agency or the employer is obliged to offer them well-rounded information and to assess their readiness for the positions before they depart to work in sea fishery work. The state should place an importance on such inspection and receive more complaints related to the recruitment process to ensure the overall labour protection.

- 3.) The migrant workers recruited to work in sea fishery work are subject to rather strict restrictions regarding the change of employer. Even though it has been relaxed to some extent to allow the worker to change their employer by paying a service fee, it is far from clear as to who should bear with the expenses. It may give rise to a dispute during the change of employer including indebtedness of the employee.

Recommendations It should clearly provide as to who should bear with the expenses from the change of employer which shall have an effect on the deduction of wage, and it has to decide who should bear the responsibilities, whether the employer or the employee.

8. Repatriation of fishers, regulations concerning repatriation and expenses incurred from the repatriation of fishers from oversea ports (Article 21 of C188)

The Labour Protection Act in Sea Fishery Work's Section 9 prescribes that on the occurrence of the following incidences outside Thai waters or overseas, a fishing labourer has the right to request for a return to the place where the vessel owner has taken the fishing labourer into employment or the place agreed upon in the contract of employment.²⁹ During the time in which the repatriation is unable to be carried out on account of any cause not attributable to the vessel owner, the vessel owner shall provide the fishing labourer with accommodation on board the vessel or suitable accommodation as well as sufficient food for the living, provided that the vessel owner shall bear all costs. In the case where the fishing labourer makes a request for the exercise of the right to return, if the incidence in question results from the fishing labourer's fault or the

²⁹ The conditions which can be invoked by the sea fishery worker to request for repatriation pursuant to Section 9 of the Labour Protection in Fishing Work Act include;

- (1) the duration of the contract of employment expires while the fishing labourer is working at a place other than the place for which the vessel owner has taken the fishing labourer into employment and no agreement is made for extension of the contract of employment;
- (2) the vessel owner or fishing labourer terminates the contract of employment before the expiration of the duration of the contract of employment or the vessel owner alters terms and conditions of the contract of employment without consent of the fishing labourer;
- (3) the fishing labourer is so sick as to be unable to perform duties;
- (4) the fishing labourer is taken into residence overseas on account of any cause without the fishing labourer's fault. Upon receipt of the request from the fishing labourer under paragraph one, the vessel owner shall expeditiously take action in repatriation of such fishing labourer to the place for which the vessel owner has taken the fishing labourer into employment or the place agreed upon in the contract of employment.

fishing labourer terminates the contract of employment without reasonable cause, the fishing labourer shall bear costs incurred in the repatriation.

The Royal Ordinance on Fisheries prescribes that when a violation of the law of a foreign state is made due to the fishing operation, the owner of a Thai fishing vessel or the owner of a non-Thai fishing vessel with a master or a seaman or a passenger who is a Thai national shall be held responsible for all necessary advance expenses which the State has paid for the repatriation of any such person to the Kingdom. The Department of Fisheries shall have the power to confiscate any such fishing vessel and have it sold by auction to reimburse the amount.³⁰ This requirement is part of the labour protection in sea fishery work of a Thai fishing vessel or the owner of a non-Thai fishing vessel.

Nevertheless, rescue attempt by public agencies is restricted by the regulations and the Thai seaman who has been repatriated has become indebted for their self-made repatriation. The public agency tasked with helping Thai seamen overseas, the Department of Consular Affairs, the Ministry of Foreign Affairs, reveals that the repatriation of Thai national overseas is a mission of the Ministry of Foreign Affairs according to the Constitution's Chapter 6, Section 66, and such operation can be made through the coordination with the Consulate General which takes care of the interest of Thai nationals overseas.³¹ HRDF is concerned that too few states ratify C188 and the countries where Thai nationals work as seamen do not ratify C188. The concern is on what kind of mechanisms the International Labour Organization will be used to monitor or punish the countries which fail to uphold labour protection in sea fishery work pursuant to C188. The Department of Consular Affairs, Ministry of Foreign Affairs, finds that the countries in which Thai workers work should adopt standards equal to or better C188. If the countries where Thai workers work do not ratify C188, the Ministry of Foreign Affairs rely on the Vienna Convention and the diplomatic or consular relationships to coordinate the rescue of the sea fishery worker.

According to the Department of Consular Affairs, the operation to assist of the Ministry of Foreign Affairs has to follow internal guidelines which are subject to review periodically. Such assistance is made based on the exchange of information through the worldwide consular meeting mechanism. Cases which receive legal assistance include invasion of foreign waters by a fishing vessel sea, fishery workers subject to exploitation which may constitute trafficking in persons, workers being lured by brokers, and other personal problems, i.e., health problem. The Ministry of Foreign Affairs shall intervene on humanitarian ground and to communicate with concerned parties. With request from the seaman, the Consulate may carry out an inspection in

³⁰ Royal Ordinance on Fisheries BE 2558's Section 54

³¹ Protection of Thai Nationals Abroad Division, Department of Consular Affairs, Ministry of Foreign Affairs, interview at the Department of Consular Affairs, Ministry of Foreign Affairs, 22 April 2021

collaboration with local organizations to offer basic help to the worker. If the dispute involves a Thai broker, the case shall be brought into the Thai justice process through the indictment of the Thai brokers.

According to the Department of Consular Affairs, the Ministry of Foreign Affairs, the assistance can be given pursuant to the Rules of the Ministry of Finance on the advancement of money to allow Thai nationals overseas to borrow to pay for their return to the country. In 2020, the Rules of the Ministry of Foreign Affairs could exempt the reimbursement of advance money and a committee of the Ministry of Foreign Affairs inspection can review it on a case-by-case basis. This applies to all Thai nationals in distress around the world. The SR Law's question is by having the seaman signs the acknowledgement of debt agreement for expenses incurred for the repatriation, it may be incompatible with the law that requires it as duties of the employer or not. Public authorities should take action to demand reimbursement from the employer. EJF noted that the request for the state to exempt the payment of debt due to poverty simply put the burden on the seaman who has to apply for such exemption themselves and the seaman is required to have the ability to prepare such application.

In term of the rescue of Thai workers overseas, EJF finds that in cases concerning rights violation against a victim, an emphasis should be placed on their safety and protection. Diplomatic officials may not have adequate skills to help out. A standard operating procedure manual should be published to explain to concerned agencies how they should take action or how referrals of the cases should be made. According to the Department of Consular Affairs, upon their return, the workers should be subject to victim screening process to identify if they are victims of trafficking in persons. The Ministry of Labour shall take charge and pass it on to the Ministry of Foreign Affairs to offer help and give information about the dispute. The Ministry of Foreign Affairs is in no way required to ask for reimbursement from the employer for the worker, although the Consulate General could be instructed to inquire with concerned agencies in the country where the incidence took place. HRDF asked if all Thai seamen from abroad who have been returned to the country, can they apply for help from the fund to support Thai nationals working overseas or not since the fund can provide for travel expenses and compensation for the seamen.

The Department of Consular Affairs under the Ministry of Foreign Affairs finds that Thai workers who have been rescued from abroad may want to take on the same kind of work again. For workers who have travelled to work overseas illegally, after their return to Thailand, it is more difficult to ask for reimbursement for the damages from the employer. On the contrary, for workers who have travelled to work overseas legally, it is easier to take legal action against the employer. In its more proactive response, the Ministry of Foreign Affairs has been giving training in the target areas to raise the awareness among the workers and to give them an orientation of the work overseas to preempt their travelling to work there illegally. Efforts have also been

made to alert them and to actively distribute information using digital media and the Consulate mobile activities in various provinces where a lot of workers tend to work overseas. SR Law recommends that the state should offer more training to raise the awareness of overseas Thai workers about the channels through which they can seek help when encountering any problem. They should also compile the information of employers prior to the travel abroad to work of the workers. This can help to track down responsible persons. In addition, EJF proposes that the Department of Employment should work more comprehensively to raise the awareness about recruitment process and overseas work including the channels and methods to seek help in various cases, the assistance to return to the country. The Ministry of Labour should collaborate with the Ministry of Foreign Affairs and the Department of Fisheries to produce a manual on the operation to rescue Thai seamen abroad to Thailand and produce a report based on lessons learned from the violation of labour rights.³²

For the repatriation of migrant workers to Thailand, the MoU workers shall be repatriated based on the conditions in the employment contract. But for sea fishery workers, according to Section 83 of the Royal Ordinance on Fisheries, it does not provide anything on repatriation whether the worker should make the return by themselves or to find a new employee. The provision on repatriation for workers in Section 83 has to be adapted based on the contractual basis.³³

Cases about Thai workers working in fishing vessel overseas: The case of seaman in Somalia³⁴

Interview with a Thai worker who worked in fishing vessel abroad, male, 53 years old

The worker used to work in vessel no. 1 being persuaded by the employer called *Thao Kae*. The employer went to see him at his home. The worker had worked in sea fishery work abroad several times including in Australia, Indonesia and Yemen. He has since returned to work near his home but has been affected by indebtedness and has been forced to turn to overseas sea fishery work again.

This time, the worker worked as a skipper, second in line from the *Tai Kong* (skipper) and received instructions from the *Tai Kong*. He looked after food supplies, helped to cook, looked after expenses, drove the boat (taking turn every four hours) and took on other work as instructed by the *Tai Kong*. Five or six men from his village also worked with him in the vessel. This vessel has gone to fish in Iran. Then,

³² Environmental Justice Foundation (EJF) (EJF), Recommendations to the Ministry of Labours for capacity building to prevent forced labour and trafficking in persons in the Thai fishery industry

³³ Questions and Answers during the “Training Workshop to raise the awareness on the Work in Fishing Convention BE 2550 (C188)”, Friday 16 July 2021, 9.30 – 14.30, via online conference, organized by TDRI

³⁴ Interview with a male sea fishery worker, 53, via phone in June 2021 with help and coordination from HRDF

the vessel's name was changed to go to fish in Somalia. The vessel's numbers on its hull were erased and changed and the flag got changed as well.

He worked with an employment contract and the employer agreed to pay for all his documents and travel expenses. The employment contract was made available in both Thai and English. It expired in one year after which the seaman could fly home and his plane tickets would be paid by the employer. After the expiry of the initial contract, the worker has renewed it with the employer, but have never got to sign the new contract.

Given that the employer owed him his pay for his work in Iran, the seaman was told that all the outstanding debt would be paid, if he agreed to fish for the employer in Somalia and he would get a raise for his monthly pay as well. The seaman had to accept the deal since he also wanted to get his overdue pay withheld by the employer.

The working conditions of fishing in Somalia was very dire and dangerous. Fishing vessels could get fired at and could be robbed. After fishing in Somalia for 6-7 months, the employer owed him much more for the pay. The worker called to ask for his money several time but has been paid little and not as provided in the contract. Some seamen had personal documents kept with themselves. Some had contracts in Thai language, and some have jointed the fund before embarking on the journey.

After the boat engine broke, the employer left the seamen stranded on board. They tried to contact the Embassy for help since the boat was left broken in a red zone, a dangerous zone in the middle of the sea. The seamen received some food from local people.

After waiting for several days, the Embassy reached out to them and helped until they could return to Thailand. The officials told the workers that each of them owed the country and was required to pay back around 40,000 – 60,000 baht. Prior to that, the workers had never been told about such expenses.

The sea fishery workers were brought to the Ministry of Labour for an interview. During the interview, the officials did not inform them if they were victims of trafficking in persons or not. They were told that the screening process had to go on. In addition, the seamen had to participate in various legal procedures including attending the court hearings in a legal case against the employer who refused to pay them the overdue wage. Such process caused them more expenses including travel expenses. The workers received help from civil society sector on this matter.

Upon their return to Thailand, the workers have never heard back again from the Ministry of Foreign Affairs, or the Ministry of Labour or the Ministry of Social Development and Human Security. They had to attend the court hearings with help from attorneys.

The workers reported that they wanted the government to help bring them their unpaid wage along with some small amount of money as compensation. This could set an example to prevent other people from being deceived. Before going to work abroad, most workers are not aware of the fund or their benefits. During the application for seaman's book, there used to be serious training given, including getting to practice swimming. But at present, this process lasted only 30-40 minutes with some conversation and no other process as before.

Findings and recommendations

- 1.) Thai law prescribes that it is the duty of employer/vessel owner to bring seamen working abroad back to the country save for if it is caused by the fault of the employee. But the employer often denies such responsibilities. The state thus has to help bring the Thai seamen who do not afford travel expenses back by asking them to sign the acknowledge of debt agreement. It is possible apply for a waiver to pay off such debt, and the decision shall be made by the state committee. Nevertheless, civil society sector finds that such procedure does not comply with the law which prescribes that it is the duty of the employer/vessel owner and this simply pushes the burden to travel back the employee. Also, the legal action against the employer or the recruitment agency often takes a long time. The workers have not been given sufficient information prior to embarking on the overseas journey, particularly about their rights and duties and the channels through they can seek help when encountering any problem from their employment abroad as well as risks concerning rights violation.

Recommendations The state should review the repatriation process of Thai seamen by not pushing the burden to the employee whose rights have been violated by the employer. An emphasis should be placed on offering training to raise the awareness of Thai seamen prior to their embarking on sea fishery work abroad to give them comprehensive information, particularly on their rights and duties and the channels to seek help when their rights are violated.

9. Payment of fishers (Article 23-24 of C188)

The law requires the employer to pay wage and holiday pay according to the timing mutually agreed. The pay should be made at least once a month. The shared profits in which an employer has agreed to pay according to the value of the aquatic animals being caught shall be paid according to mutually agreed payment schedule, but the payment frequency shall not be less frequent than once every 3 months.³⁵ As to the payment

³⁵ Ministerial Regulation concerning Labour Protection in Sea Fishery Work, Clause 10

method, the employer is required to pay wage and holiday pay to the employee by transferring money to a commercial bank's deposit account, and any fee incurred from the transaction shall be borne by the employer.³⁶

The National Fisheries Association of Thailand finds that preferably, the payment should be made either in cash or via bank transfer, or both, rather than having the payment entirely transferred to the bank account since C188 does not prescribe the payment methods.

Regarding the payment of wage, according to research by the Civil Society Organization Coalition for Ethical and Sustainable Seafood, it has been found that monthly pay is most common in the sea fishery work in all sectors studied (fishery sector, seafood processing, shrimp farming) . The Ministerial Regulation concerning Labour Protection in Sea Fishery Work requires that a sea fishery worker is paid a minimum monthly wage between 9,390-10,050 baht depending on the province where the fishing takes place. The average monthly pay of a sea fishery worker is 11,365 baht (363 USD), which is about 10% higher than the minimum wage. Nevertheless, a sea fishery worker can work as many as 14 hours or more a day. It could be said that the sea fishery worker still earns too little, even though they may be paid higher than the rate of daily minimum wage multiplied by 30.³⁷

As to the requirement for the bank transfer, according to the research, 83% of sea fishery workers studied receive their pay in cash, and only 10% receive it via bank transfer.³⁸ In addition, among the sea fishery workers studied, 74% are paid equal to or higher than the rate of daily minimum wage multiplied by 30, or three quarters of the workers studied. Still, one quarter of them are paid lower than the minimum wage they are supposed to receive in one month.³⁹

Handouts from the meeting on the situation of labour in fishery industry organized by the National Human Rights Commission mention about the cash payment to the sea fishery workers due to a lack of facilities including the ATM, and a lack of readiness in transaction services for the migrant workers as well as the requirement that the workers are supposed to keep the payment slips with themselves. Therefore, the law that has been designed for labour protection regarding payment has not yielded actual benefits.⁴⁰

³⁶ Ministerial Regulation concerning Labour Protection in Sea Fishery Work, Clause 10/2

³⁷ Precarity and the Pandemic: A Survey of Wage Issues and COVID-19 Impacts Among Migrant Seafood Workers in Thailand, The Civil Society Organization Coalition for Ethical and Sustainable Seafood, July 2021, <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621193/bp-precarity-pandemic-thailand-seafood-workers-300721-en.pdf?sequence=1&isAllowed=y>, p.12.

³⁸ *Ibid.*, p.15.

³⁹ *Ibid.*, p.17.

⁴⁰ Handouts at the meeting on the situation of labour in fishery industry organized by the National Human Rights Commission on 8 July 2021, at 13.00 via online conference

The Draft Ministerial Regulation pending the revision (Article 13 paragroup two) prescribes that if the employee wants their employer to transfer money to their family member, the employer shall do so as requested by the employee and any transfer fee shall be borne by the employer. And once the person receives the transferred money, it shall assume that the employer has already paid the wage and holiday pay to the employee. Such family members include ascendants, descendants, spouses or adopted children. On this part, MWG finds that by allowing the transfer to a family member without charge, it complies with the C188 Convention. But allowing this practice, it is incumbent on the Ministry of Labour to mete out proper inspection mechanisms to ensure that the transfer is made in good faith. At present, it has been found that instead of transferring to a family member, the payment has been transferred to the account of a broker. Therefore, whether such transfer method is lawful or not is still debatable.⁴¹

Wage deduction is prescribed by law. For MoU workers, the employer who has advanced money for pay for the expenses responsible by the employee can deduct it from the wage later. The method and monthly ceiling of such deduction are also prescribed by law. The Royal Ordinance Concerning the Management of Foreign Workers BE 2560's Section 49 prescribes that expenses responsible by alien for which the employer has advanced money to pay including passports, health check, work permit or other relevant costs as prescribed by the Director-General, in which the employer may deduct from the wages, over time, holiday wages or over time holiday wages. The employer may only deduct the foreign worker's wages in accordance with the actual cost paid but shall not exceed ten percent of the foreign worker's monthly wages. Nevertheless, workers employed pursuant to Section 83 of the Royal Ordinance on Fisheries BE 2558 are treated differently since the Notification of the Office of the Prime Minister prescribe that the vessel owner shall pay for medical examination and health insurance valid for at least one year for workers employed under Section 83.

MWG finds that wage deduction for whatever reasons should be done based on the same standard and criteria. Such deduction should be made in compliance with the criteria prescribed in the Labour Protection Act BE 2541's Section 76, which is a basic labour protection law. It should be further prescribed that the employer is obliged to disclose detail of the deduction in the payment slips in the language understood by the workers and to have the workers give their written consent to allow such deduction.

According to the CSO Coalition's survey among workers in 2019, it was found that 71% of the respondents said their wages were deducted. The most common three deductions including registration fees such as work permit, health insurance (60%), followed by loans such as the request for advance money, borrowing money to buy home appliances (26%) and unclear deduction (17%), respectively.⁴² According to the

⁴¹ Migrant Working Group (MWG), Opinions on the Draft Ministerial Regulation concerning Labour Protection in Sea Fishery Work BE ...

⁴² *supra* note 10, p. 32-33.

ILO's research in 2019. It was found that more than 39% of sea fishery workers faced a deduction at nearly twice the amount faced by workers in seafood sector. The deductions include expenses for social security (18%), food (15%) and accommodation (11%).⁴³ Only 3% of the respondents have received payment documents detailing the amount of pay and the amount of deduction as required by the Thai law. More than a half of them have simply received a payment slip such as an ATM slip. The rest, 48%, said they have never received any kind of payment record.⁴⁴

According to Rapid Asia's research, it was found that over 75% of sea fishery workers are indebted to the employer, another 24% to their friends or families whereas only 16% of workers in seafood sector are indebted to their employer, and 84% to their friends or families. The money borrowed by the sea fishery has been spent mostly in the first three orders including (1) daily expenses (50%), (2) support for their families (37%) and (3) other debt servicing (8%).⁴⁵ The information shows that migrant workers in the Thai fishery sector are indebted to their employers. Their reliance on the employers in fishery sector is relatively high. Being subject to the chain of command in fishing vessel asides, such indebtedness make the sea fishery workers even more vulnerable than workers in other sectors.

Regarding the deduction due to the payment of advance money, which is allowed by law, the National Fisheries Association of Thailand explains that in agricultural and fishery sectors, advance money is paid given the nature of the worker which is seasonal. In several instances, such deduction to service debts cannot be made from the employee's wage, since it has been interpreted that such deduction for advance money could indicate the use of forced labour and trafficking in persons. From the view of employer, this labour protection law does not protect the employer. It causes the employer to have to shoulder the burden from the advance payment if the advance money has been paid, but the workers refuse to work in the vessel. The employer also asks that if they have paid advance money, but the sea fishery workers refuse to work, how can they enforce the payment of such debts without breaking the law.⁴⁶

As to the request for advance money, MWG has found that some employers charge interest from the advance payment. Such loan contract could give increase the indebtedness of the worker and could eventually

⁴³ *supra note* 11, p. 18.

⁴⁴ *supra note* 11, p. 17.

⁴⁵ Rapid Asia, "Evaluation of the Electronic Payment system in the Thai Fishing Industry," Retrieved on August 23, 2020, from https://humanityunited.org/wp-content/uploads/2019/11/FINAL-E-payment-study_2019.11.08.pdf, pp.31-32. The report is derived from interviews with 703 workers including 105 in in seafood sector and 598 in fishery sector. A half of sea fishery workers interviewed came from Myanmar, and the other half from Cambodia. The research aimed to assess the effectiveness of a comprehensive and neutral payment system

⁴⁶ Input from an employer in the "workshop to raise the awareness on the Work in Fishing Convention 2007 (no. 188)", Friday 16 July 2021, from 9.30 – 14.30, via online conference organized by TDRI

constitutes a condition of debt bondage. The problems of a third party receiving the wage and other pay on behalf of the worker, even though they have no legal relations with the worker or their name is not mentioned as the recipient of the pay in the employment contract continue to exist.⁴⁷ The request for advance money has also given rise to other problems. For example, FED reports that the request for advance money of seamen has prompted the employer to seize their ATM cards. The seamen only produce the cards during the labour inspection only. RTF finds that a lack of clear record of debts between the employers and the employees may result in when there is a change of employer, the sea fishery worker may find themselves being indebted to the previous employer. The previous employer would demand such money, and the new employer has to pay the amount in order to free the employee. Now, the employee becomes indebted to the new employer instead. Many workers assume it is legal to deduct from their wage for paperwork fees, but in fact, the law does not allow the deduction of such fees.

Regarding the problem with the use of ATM cards, the employer reports that ATM machines are located far away in some areas and the workers may not know how to use ATM. Similarly, the civil society sector reports that the ATM machines are not installed widely in all port cities and the workers do not know how to use the machine. It should be noted if the seamen are allowed to keep their own documents or not.⁴⁸ Regarding the problem in ATM usage, Rapid Asia's research indicates that the workers who keep the documents with themselves have the ability to use ATM more than those who have their documents kept by their employers. They also have more experience using the ATM.⁴⁹ The research finds that of 598 fishers participating in this survey, as much as 53% of them did not keep the documents with themselves (whereas only 3% of workers in seafood sector did not keep the documents with themselves) and 20% have to borrow the ATM cards from their employers when they needed to use the cards. Regarding the experience using ATM cards among workers in seafood sector and fishery sector, it was found that their five most challenging problem include language barrier, long queue, broken ATM machine, too far away ATM machines and not being able to remember the codes, respectively.⁵⁰

SR Law and Stella Maris have found cases of multi-months payment which did not match the bank payment slips. When there is a dispute, the court tends to believe in the documents provided by the bank whereas the employee had no evidence to repudiate the claim of the employer. This gives them a disadvantage during the trial. In the Thai jurisprudence, an emphasis is placed on payment records. Stella Maris has found

⁴⁷ Migrant Working Group (MWG), Opinions on the Draft Ministerial Regulation concerning Labour Protection in Sea Fishery Work BE ...

⁴⁸ Environmental Justice Foundation (EJF), Reform of the Thai fishery industry: Toward a sustainable, legal and ethical fishery 2019, p.23.

⁴⁹ *supra note* 45, p. 25-26.

⁵⁰ *supra note* 45, p. 28.

cases of the deposit was made at the same time with the withdrawal. Some workers continue to receive their pay in cash, while the unofficial records show the figures of payment which is different from the figures in the bank account. HRDF notes that the ATM codes of workers in some fishing vessels are virtually the same and their ATM cards are kept with the employer. The inspection of such cases involves the application of warrants from the court to investigate the bank transactions. Therefore, the inspection by labour inspectors at PIPO Centers is restricted by their inability to investigate the transactions regarding the payment and the deduction. EJF finds that the use of ATM poses many challenges. The state should explore other options for payment including exploring the use of deposit and withdrawal via convenient stores, or the use of e-banking which would enable the workers to manage their own financial transactions.

Offices of the Department of Labour Protection and Welfare, the Ministry of Labour, have found that the financial inspection can be made via smart phones and the migrant workers' access to technology should be promoted with cooperation from the banks. The Rapid Asia's research sheds light the awareness of mobile banking and e-wallet among sea fishery workers remains relatively low (contrasting to their use of social media to receive news and to communicate with each other). According to the research, 98% of the sea fishery workers had no idea about Thai e-wallet and 100% of them have never used e-wallet. If the bank transfer can be linked with mobile banking, it could enable sea fishery workers to check their own financial transactions and acquire records for any financial transactions.⁵¹ Therefore, the awareness raising on mobile banking among sea fishery workers should be reviewed to ensure they are aware of and have the skills to use electronic banking and the electronic payment system should be promoted as well.

Debt bondage occurs among sea fishery workers with endless cycle of debt. The screening of victims of trafficking in the form of forced labour, it is important to examine if the offender has a specific intention to exploit them through forced labour. Apart from holding them in captivity, there are other ways to compel them including by threatening to harm their family members, entrapping them in debt bondage, and stimulating them to use drug, etc.⁵² The debts incurred in such debt bondage could stem from broker's fee, travel expense, labour registration, accommodation, food, medical treatment, borrowed money, advance money, passport fee and advance money paid by the employer or the broker to their family or their spouses. This leaves the victims in such indebtedness and made them subject to forced labour to service their debts.⁵³ In cases assisted by the civil

⁵¹ *supra* note 45, p. 36.

⁵² Sornkrai Sorsorn, Siriwan Wangkiatpaisan, and Mananya Ketsakul, "Capacity building manual for private organizations working to rescue victims of trafficking in persons in the form of forced labour", retrieved on 18 May 2021, from https://drive.google.com/file/d/1nG2Ps1nC74gWk3bNQJu1S2TjJEBTEwpR/view?fbclid=IwAR1o4-ZfW3AbiBRr29_7qQ6YV-IVDcK24zWSwaOytOn1SOLS0RhVq-IAhb0, p. 35-39.

⁵³ *ibid*, p. 50-52.

society sector, there have been indications of the use of forced labour such as the withholding of documents, refusing to use systematic payment, unclear deduction, debt bondage, getting paid little or not at all for the work for employer and the indebtedness incurred from the endless cycle of expenses.⁵⁴

Cases concerning unfair debt⁵⁵

Case concerning unfair debt of a sea fishery worker from Myanmar, male, 45

Concerned issues include deduction, withholding of documents, complaint of sea fishery worker

In this case, the vessel owner deducted from wage document fees and kept the documents away from the seaman. The monthly pay was made in cash and the employer was the person making records of the expenses while the employee was left unaware of detail of such expenses. When an inquiry was made about details of the deducted expenses, it has led to a dispute between the employer and the employee prompting the former to dismiss the latter and refuse to give him his personal documents until he paid for the document fees. The employee claimed the employer owed him the last monthly pay.

RTF offered assistance in this case and reported it to officials at the PIPO Center, but there was no reaction from the authority. Later, it was reported to the Department of Labour Protection and Welfare, and the officials explained that the issues concerning the documents were not under their charge. Their agency was not authorized by law to work on the documents. They could simply accept to review complaints about the wage. Therefore, the employee has contacted the Department of Employment.

In addition, the employee has reported the case to the police as well. It has entered the review of the multidisciplinary team under the Provincial Committee for the Prevention and Suppression of Trafficking in Persons. Most committee members agreed this case involved forced labour, but the problem was the complainant had to be a public agency. And no officials participated in the inquiry of the multidisciplinary team on that day.

In this case, the employee was unable to negotiate with the employer, even though an attempt has been made by the authorities for them to negotiate. Although the employer has said that he has returned all the documents, but the employee has not received them and has not received the unpaid wage. As to evidence, there were only the records of payment produced by the employer. In this situation, it was difficult to verify the debts between the employer and the employee.

⁵⁴ SR Law, Guidelines on labour inspection in workplaces of vulnerable and/or hard to reach groups (fishery and seafood processing)

⁵⁵ Interview a male sea fishery worker from Myanmar, 45 years, via online, June 2021 with help and coordination from RTF

Findings and recommendations

- 1.) It is prescribed by law that wage has to be paid on a monthly basis via bank transfer and the employer shall pay any transfer fees. Still, the illegal payments have been found and there have been problems with the use of ATM cards and bank transfer. For example, issues concerning the availability of ATM machines near the fishing ports, the withholding of ATM cards by the employer and knowledge about how to use ATM of the employee.

Recommendations The inspection of bank transfer should be reviewed to ensure the employee actually receives the money. The ATM machines should be made available, and the training on how to use ATM should be given to the employees.

- 2.) Deduction can be made by law, although it specifies the items which are deductible and the deduction ceiling. Nevertheless, deduction continues to happen normally in sea fishery work. Such deductions of expenses and debt servicing between the employer and the employee were made far from clear and no clear records were made leading to an endless cycle of debt. This could give rise to the use of forced labour and trafficking in persons.

Recommendations The criteria for the deduction should be developed and the records of the deduction should be given to the worker. The payment for advance money could be treated as a form of payment of wage but the employer is also prohibited from charging interest from the advance money. The instrument of e-banking should be made to ensure the worker can review their financial transactions regularly.

MIGRANT WORKING GROUP

10. Medical care, health protection and social security (Article 29 – 30 of C188)

The Labour Protection Act in Sea Fishery Work BE 2562's Section 12 provides that the vessel owner shall provide fishers with such rights and benefits as regards health and welfare as prescribed in the Notification of the Minister of Labour. Entering into the social security system is therefore not mandatory for work in fishing vessel. Section 12 leaves it open for the employer to choose the health insurance schemes for their workers, by either registering them with the social security system or buying them a health insurance. Both systems offer immensely different benefits as the social security system covers seven benefits where health insurance only covers the right to medical care.

The ILO's research in 2019 has found that there has been more progress to register sea fishery workers into the social security system, even though it still trails behind the use of health insurance. According to a survey of sea fishery workers in 2019, 67% were on health insurance and 22% on social security system. The use of health insurance among sea fishery workers declined in 2017 since the use health insurance among sea

fishery workers used to be as high as 89%.⁵⁶ MWG finds that all sea fishery workers should afford health services via social security system. By leaving it open in the law for the employer to choose health services, it may contravene C188 Convention which provides that all sea fishery workers should have access to social security protection whereas the health insurance by the state is not equal to such benefits in the social security system.

Practically, the annual health insurance policy is more popular since it caters to the need to have the worker treated promptly and the use of private clinic which is quicker than a hospital. The employer also reflects that the hospitals in coastal provinces that offer social security services adhere to different guidelines. When treatment in hospital is needed, the worker has to rely on their employer to process the paperwork. According to the National Fisheries Association of Thailand, it is not necessary for the fishers to register to the social security system since they only work around 3-6 months and therefore may not be able to tap into social security benefits. In addition, due to their working condition, the sea fishery workers may not be able to tap into some benefits including the unemployment benefit. As to medical care, if the worker seeks treatment in hospital, it will take too long time and after all the fishing ports are located from hospitals, it is therefore more convenient to apply for health insurance and the employer will take care of the worker themselves. In case of accident, the employer shall tap into the Workmen's Compensation Fund.

Regarding the use of health services in practicality, according to MWG, the state's notifications provide that sea fishery workers shall seek services in hospitals 22 coastal provinces Hospital services in the 22 provinces vary. For example, in some hospitals, the worker or the employer has to advance their own money. According to FED, some hospitals require surcharge and demand documents and the worker has to rely on help from their employer who has to issue them documents or acquire for them such documents. Stella Maris has found that the reason private insurance is more popular among the workers is it caters to the work of sea fishery workers who have less time ashore. As they have to rush back to the boats, they may tend to use strong medicines and find it more convenient to seek the treat at private clinics. Such treatment may take its toll on the sea fishery workers physically and their health in a long run. For example, there has been a case of a worker seeking treatment for fractured bones. Given the intermittent treatment he received, it has resulted in his bone deformity.

Regarding the registering into social security system, problems occur due to the interpretation of the employer and the authorities if sea fishery workers are seasonal workers or not since the employee in cultivation, fishery, forestry, and livestock is not considered a year-long employee and may not be required for

⁵⁶ *supra note 11*, p. 31.

other kind of work. And the employee employed for temporary, ad hoc or seasonal work shall be exempted from being registered into the social security system, The interpretation of the authorities whether fishery sector is seasonal work or not still varies from place to place. In addition, in some areas, the local authorities refuse to allow the employer to have access to the Social Security Fund, but to the Workmen's Compensation Fund. The practice of the authorities in some areas is therefore in breach of the law.⁵⁷

During 2020-2021, the Social Security Office has come up with measures as remedies for insured persons affected by the Covid-19 pandemic including extra benefits such as the force majeure unemployment benefit. Both Thai and migrant workers are eligible to tap into the benefits as follows;

1.) During the pandemic in 2020, the Social Security Office developed measures to address the impacts from the Covid-19 among insured persons to help them receive unemployment benefits due to the force majeure unemployment as the insured persons are unable to work or are prevented to work by their employer as they have to isolate themselves for 14 days causing them to be unable to work and to not receive any pay during that time. It could either stem from the suspension of work imposed by the employer or due to the order of the government. In such case, the insured person shall receive unemployment benefits at 62% of their wage, but not longer than 90 days.

2.) In December 2020, the Social Security Office adopted a similar measure again by offering benefits to insured persons who are not able to work or are prevented by their employer from working since they have to isolate themselves, or they are unable to work due to the suspension imposed on their work by the employer, in whole or in part, as a result of the order to shut down businesses to prevent the pandemic. This makes them unable to work as normal and the employee is not paid during the time. In such case, they shall receive the pay at 50% of their wage, but not longer than 90 days.

3.) In 2021, insured persons are affected by the government Covid-19 prevention measures as the construction workers' camps are closed, their freedom of movement was suppressed and any interprovincial transfer of labour in the ten dark red provinces was prohibited. The insured persons who suffer from force majeure unemployment due to Covid-19 and are employed in the workplaces shut down due to the government's order, shall receive compensation at 50% of their wage.

To apply for the benefits, they are required to register and acquire documents from their employers. Therefore, it is necessary for the migrant workers to have the understanding about the benefits and have to receive assistance from their employers to help with such paperwork as well as interpretation help. Nevertheless, the sea fishery workers insured in the social security system continue to face discrimination from

⁵⁷ Handouts at the meeting on the situation of labour in fishery industry organized by the National Human Rights Commission on 8 July 2021, at 13.00 via online conference

the state policies which require that an insured person eligible for Covid-19 Cash handout has to be Thai national. This deprives the migrant workers of their access to such benefits. The schemes include the following;

1.) In 2020, the Social Security Office adopted a measure to offer remedy through the “Section 33, We Love Each Other” to living costs and mitigate impacts on persons insured under Section 33 of the Social Security Act 1990, during the outbreak of Covid-19. The eligible person shall receive 4,000 baht as Cash handout, although they have to be Thai nationals. The Social Security Office claims they are not able to offer the remedy to migrant insured persons since funding for this scheme has derived from loans taken by the government to address the needs of Thai people and does not come from the Social Security Fund to which the migrant insured persons pay their contributions.⁵⁸ As a result, migrant workers insured with the social security system and affected by the Covid-19 pandemic shall not benefit from this scheme.

2.) In 2021, the Social Security Office offered remedies to insured persons pursuant to Section 33 and employed in sectors affected by the government’s measures including the lockdowns in provinces declared as maximum and strict control zones. In such case, the insured persons pursuant to Section 33 shall receive 50% of their wage as remedies and if they are Thai nationals, they shall receive an additional amount of 2,500 baht. It simply highlights such discriminatory practice between Thai and migrant workers even though they are insured persons to the same fund.

HRDF finds that the requirement of nationality deprives migrant workers who are insured persons pursuant to Section 33 of their access to remedies and it is in breach of international laws including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It may also contravene Constitution of the Kingdom of Thailand BE 2560’s Sections 4 paragraph 1 and 27 paragraph 3 which prohibit racial discrimination.⁵⁹

Table 3 Comparing benefits from social security system and public health insurance

No.	Benefits	1.) Social security		2.) Health insurance	
		Thai workers	Migrant workers	Thai workers	Migrant workers
1.	Injury or illness	/	/	/	/
2.	Childbirth	/	/	×	×
3.	Disability	/	/	×	×

⁵⁸ Social Security Journal, January-March 2021

⁵⁹ Human Rights and Development Foundation (HRDF), Press Release, Migrant workers urging Thai government To ensure migrant insured persons have access to “Section 33, We Love Each Other” handouts, 10 March 2021, and Public State, Government Urged to remedy migrant workers affected by the Covid-19 pandemic without discrimination, 30 June 2021

4.	Death	/	/	×	×
5.	Child support	/	/	×	×
6.	Old age	/	/	×	×
7.	Unemployment (resignation or dismissal)	/	/	×	×
8.	Loss of job due to force majeure unemployment as a result of response to address impact from Covid-19 pandemic during 2020-2021	/	/	×	×
9.	Cash handout from “Section 33, We Love Each Other” in 2021 and unemployment benefit due to force majeure unemployment as a result of lockdown measures in 2021	/	×	×	×

Findings and recommendations

- 1.) Thai law leaves it open for the employer to choose either health insurance or social security. The use of health insurance makes it convenient for employer in fishery sector, although it deprives the worker of long-term benefits in the social security system. Nevertheless, the use of social security in coastal hospitals may subject one to different practices. It creates a burden for the employers and the employees in terms of their access to the services. Also, the requirement to receive benefit from the state’s relief program and the social security system discriminates against non-Thai insured persons.

Recommendations The state should explore impacts from the use of health insurance in the two systems for workers in sea fishery work and advocate the registering of sea fishery workers in the social security system to ensure they benefit in a long run. Meanwhile, Social Security Fund’s relief program should be reviewed to make them inclusive of migrant workers and to improve the practice of hospitals which provide services to insured persons so that their practice is streamlined. In addition, the state should inform the sea fishery workers of their benefits in each of the health insurance systems in order that they are aware of their rights to health.

11. Occupational safety and health and accident prevention (Article 31-33 of C188)

11.1 Occupational health and accident prevention

The state has made its considerable effort to prevent accidents in fishing vessel. It has brought down the rate of accidents in fishing vessel in the previous years. Still, accidents continue to occur in some areas and in the same manner. The Ministerial Regulation concerning Labour Protection in Sea Fishery Work prescribes in its Clause 17 that an employer shall provide knowledge on working conditions, tool usage, health and hygiene, living conditions on fishing boat and safety equipment for an employee before any work performances. And the Royal Ordinance on Fisheries' Section 37 prescribes that commercial fishing licensee must provide an occupational safety and hygiene system, as well as provide proper working conditions for seamen as prescribed by Ministerial Regulation. The Ministerial Regulation also spells out detail of the duties of the fishing licensee as well.

It is important to ensure an inspection in compliance with the regulations. This falls under the charge of competent official appointed pursuant to the Labour Protection Act in Sea Fishery Work's Section 16. The competent official has the power to get on board the fishing vessel or enter into the vessel owner's place of business for inspecting working conditions, employment conditions and living conditions, making factual enquiries and gathering evidence beneficial to the examination or proof of facts, in the interest of carrying out activities in the execution of this Act. They can send written enquiries to the vessel owner; fishing labourers or persons concerned or demand them to give explanation of facts or furnish documents or relevant evidence to assist the consideration of action to be pursued under this Act. As to a non-Thai fishing vessel, Section 17 of the Labour Protection Act in Sea Fishery Work prescribes that upon receipt of a request or a complaint or upon the occurrence of convincing evidence that a non-Thai fishing vessel has conditions on board the vessel which are seriously harmful to life, safety or health, the competent official shall have the power to get on board the vessel and inspect such fishing vessel which enters the Kingdom and, in the case of inevitable necessity, the competent official may order the arrest of the vessel until rectification of such incidences is carried out.

According to the Seafarer Standard Division under the Marine Department, C188 portends an enhancement of working conditions for workers in fishing vessel. The Marine Department conducts an inspection of safety standards on board including its structure and safety and issues a certificate of standards after the inspection. C188 sets out the standards of accommodation on board the vessel but most fishing vessels in Thailand are small. It also requires that seamen receive training as according to the law. The training aims to instill knowledge, particularly workers in different positions in the vessel. The training is not mandatory. As to safety equipment including life vest, it has to be fully provided before departure from the port. Officials at the PIPO Centers have power to instruct the rectification of equipment to ensure readiness before the vessel's

departure. This is part of the vessel inspection before leaving the port. In addition, the Department of Fisheries conducts a random inspection while the vessel is in the middle of the sea.

As to training, it has not been found that safety training has been systematically organized by the state for the workers before the commencement of their work or during the course of their work. There has only been some information given during the vessel inspection at the PIPO Centers. And there has been no tests of knowledge of seaman about emergency response, i.e., how to help people who fall into water or people who get electrocuted. MWG finds that the state can increase the channels to educate them and outsource to external agencies including public health authorities. Some training has been provided to sea fishery workers by various agencies including the National Fisheries Association of Thailand which has organized training on first aid to its members. Its members are allowed to send their seamen to participate in the training in order to receive a certificate to work in the fishing vessel. Civil society sector such as FED has offered training to raise the workers' awareness on occupational safety in collaboration with governments in the sending countries of the migrant workers.

MWG finds that regarding safety, more provisions should be made to require pre-departure training for sea fishery workers and an emphasis should be placed on awareness about safety and occupational health, first aid, rescue of workers falling from the vessel. It might require workers who want to pursue sea fishery work to received training or a certificate on safety and occupational health in fishing vessel before they start working. EJF proposes that safety training safety should be offered to all seamen before they are permitted to work in the fishing vessel. The training curriculum should be up to standards and should be regularly updated and the training should be conducted every six months to ensure all seamen have the skills to use safety equipment on board including life vest, swim ring, extinguisher, and first aid and they should get tested to ensure their knowledge as well.⁶⁰ In addition, MWG proposes that the Ministry of Labour should compile statistics of workers suffering from work-related injury, conduct risk analysis, and about safety and occupational health and the environment. Preventive activities should be conducted to minimize accidents and losses and consultation should be conducted among stakeholders including civil society sector organizations on risk issues of the sea fishery workers since it is dangerous work to incentivize them to work in the fishery sector.

EJF has found varying law enforcement in each of the PIPO Center regarding boat safety equipment. Even if the equipment is not ready, some PIPO Centers still allow the boats to leave the ports, although other Centers would demand the preparation of the equipment first. From our observation of vessel inspection by the

⁶⁰ Environmental Justice Foundation (EJF), "Thailand's progress to combat illegal, unreported, and unregulated (IUU) fishing, forced labour and trafficking in persons" retrieved on 18 May 2021 from <https://ejfoundation.org/resources/downloads/EJF-tech-report-spring-2020-TH.pdf>, p. 11.

PIPO Centers, there has been attempts made to protect and remedy workers who suffered from work-related injury, i.e., during the boat fall. The interpretation of work-related injury by labour inspectors still varies in different areas. In addition, drinking and other intoxicating substances among sea fishery workers can be a cause of physical or verbal fight in the fishing vessel. This affects safety of seamen while performing their duties. If the Center's officials find a sea fishery worker in not a ready condition, i.e., being drunk, they should initiate an action to cope with it before letting the boat leave the ports.⁶¹

It has been found that the awareness of sea fishery workers about accident prevention is relatively low. According to the Department of Labour Protection and Welfare Ministry of Labour, training has been offered to the employees and materials about their rights and duties have been published in their languages and distributed to them. Still, sea fishery workers do not pay much attention to them. MWRN finds that C188 contains good provisions, although it is concerning that seamen are not quite aware of their rights. For example, the newly arrived workers barely have any knowledge about their rights. EJF notes that the highly complicated recruitment process which might take months to complete has led to a low awareness about labour rights. When first arrived, the sea fishery workers barely pay attention to their rights. HRDF notes that during the training, it has been found that workers in sea fishery work appeared less enthusiastic than workers in other sectors. This could stem from their being subject to intimidation and their working conditions which oblige that they rely on the employers. HRDF finds that on this issue, the state should help the employers and try to educate both the employers and the employees since a lack of awareness among employers could lead to rights violation which could be costly to them.

Findings and recommendations

- 1.) The employer or fishing licensee is obliged to provide for safety in the fishing vessel and the labour inspector has the power to instruct the actions need to ensure the boat and its equipment comply with safety standards. Nevertheless, on-site safety prevention efforts such as the provision of training to skippers and seamen have not been made systematically. It is not mandatory, and it is not required to test the seamen of their knowledge. When facing an accident, the seamen appear to have little awareness about occupational safety and concerned rights.

Recommendations The state should offer training on safety and rights of seamen when suffering from a work-related injury. The training should be offered to all seamen before they start working and during their work regularly. There should be some methods of assessment to gauge the training

⁶¹ Remarks by The Freedom Fund, The observation report on assessment of the officers' performance at the Port-In Port-Out Control center (PIPO) (Flying Inspection Team), to Director of the Thai maritime Enforcement Command Center – the observation report by civil society on mechanisms for fishing labour protection at Port-In Port-Out Control center (PIPO), July 2020

outcome as part of accident prevention while working in the fishing vessel. The training should include knowledge about medicines and medical equipment, first aid, boat equipment, risk spots in the vessel, how to protect oneself from work-related injury and various rights of the workers. The state may allow private sector to organize such training for the sea fishery workers. In addition, the state should adopt innovative approaches to ensure proper safety equipment are provided for the sea fishery workers to minimize work-related injury such as life vest appropriate for wearing while performing sea fishery work.

- 2.) As to safety inspection in the vessel, it has been found that officials at PIPO Centers continue to adopt different practices including the instruction to rectify the provision of safety equipment before the vessel's departure, assistance of the workers and the interpretation of work-related injury. There is also no clear guideline on how to cope with the situation that risk to the occupational safety. For instance, when the seamen are drunk, there is no clear guidelines as to how the officials should respond to such situation.

Recommendations The vessel inspection to ensure safety of fishing vessel and safety equipment should follow the same guidelines in all areas. Concerned agencies should compile data and analyze cases of accidents and see how they are related to occupational safety and should explore ways to prevent various forms of accidents including accidents from drinking and other kinds of intoxication.

11.2 Protection in the case of work-related sickness, injury, or death (Article 38-39 of C188)

From our observation of vessel inspection at the PIPO Centers, it was found the PIPO officials informed the fishers via Line chat about precautionary measures, alerting them of risk areas in the vessel, introducing them to the proper use of life vest. For vessels with frequent falls from boat, the officials would raise the awareness, particularly about how to report such fall cases. In case of such fall, the officials assisted them for reporting the cases, summoned people for inquiries and accepted the reports in order to identify the case of the fall and determined if they were related to work or not. This might give rise to legal action or a fine.

The determination if the accidents in fishing vessel are related to work or not depends on the discretion of the labour inspector. If it is a case of work-related injury, there are guidelines for such interpretation by the labour inspector. Nevertheless, working in the vessel is treated like working in a workplace; however, the worker has to live and work in the workplace all the time. The guidelines for such interpretation of work-related injury should therefore be reviewed in light of the interpretation and in line with international standards for working in vessels.

According to the National Fisheries Association of Thailand, if a seaman falls into water, the vessel would keep looking for him and report the case to the authorities. Several boats will be involved with the search

and rescue operation. For other incidents, there have been a few fights on board the boat. When it occurs, the employer would report it to the authorities which would send a rapid boat to pick up the hostile parties from the fishing vessel. Communication when such case arises is often made between the *Tai Kong* (skipper) or the Master. The employer also states that there has been no physical abuse against the seaman given the law with hefty penalty and labour shortage. Such action would not be worth it.

Common accidents in a fishing vessel include the fall of seaman into the water. The EJF's report states that in 2019, 29 fishers fell into the sea and disappeared. According to reports of the request for compensation from the Department of Labour Protection and Welfare in the first three months of 2020, at least 18 fishers have vanished into the sea. The EJF's report indicates the number of disappeared fishers in the sea during 2018 and 2019 and it was found that the number of disappeared fishers in the sea in 2019 has increased in all sizes of vessel (small size at the smaller than 30 gross tonnages, medium size at 30-60 gross tonnages and large size at 60 gross tonnages and upward.)⁶² In 2019, 4 fishers disappeared from small vessels, 10 from medium size vessels and 15 from large size vessels. In comparison, in 2018, 2 fishers disappeared in small vessels, 8 in medium size vessels, and 3 in large size vessels.⁶³

EJF points to some problem regarding the response of officials when a seaman falls into water. For example, an emphasis is still placed on collecting key detail of the incidence and the rescue of seaman rather than an attempt to fathom the reasons of the accident. There has been no clear guidelines as to how to conduct an interview to identify any problem in the vessel which might contribute to such incidence.⁶⁴ EJF notes that methods should be developed to investigate the cases and record the information using online database shared with several agencies in order to track fishing vessels with common accidents.⁶⁵ The *Stella Maris* notes that regarding evidence, when it is established as a suicide case, what are the indications used to differentiate between a suicide in the fishing vessel and the accidental fall into the water. In such cases, it was found that the decisions made by the labour inspectors largely highness on information from interviewing the Thai crew and with little information since no cctvs are installed in the fishing vessel. Therefore, when such cases arise, a committee should set up to carry out the investigation.

Regarding access to the Workmen's Compensation Fund when suffering from work-related injury,⁶⁶ migrant fishers have to rely on more assistance to coordinate with the authorities and relatives in the sending

⁶² *Supra note 16*, p. 10.

⁶³ *Ibid.*, p. 40.

⁶⁴ *Ibid.*, p. 12-13.

⁶⁵ *Ibid.*, p. 13.

⁶⁶ Notification of the Ministry of Labour regarding the types and sizes of enterprises which require the payment of contributions by the employer, the amount of contributions, the savings deposit and insurance and the collection of contributions, 21 February 2019's Clause 5 prescribes that an

countries. And if the fisher is not registered to the Workmen's Compensation Fund and social security system, the exercise of such rights is even more challenging.⁶⁷ HRDF finds that the ratification of C188 Convention helps to facilitate the request for fund from the Workmen's Compensation Fund when encountering a work-related injury making it smoother and quicker. However, there are still obstacles to access to the Workmen's Compensation Fund. SR Law offered an assistance in the case of a seaman being fatally electrocuted in the fishing vessel and had to face constraints for the limited time to make the request. It is required that an application for remedy has to be made within 180 days after the day of the incidence. There is, however, paperwork to complete including certification of the documents in foreign language by the sending countries, or the tracking down of relatives who shall beneficiaries of the benefits. This work has to be done in haste otherwise, the worker shall not be able to request for benefits from the Workmen's Compensation Fund. As the case of seaman electrocuted in the fishing vessel, the employer argued that it was not an occupational fatality. The employer basically argued that the injury of the worker in the vessel was not work-related. In addition, SR Law states that in the case of the fall into water, the relatives of the seaman were not informed by any agencies of the decease. The descendants therefore did not make the request for benefits from the Workmen's Compensation Fund. As the report of disappearance was made beyond the statute limitation, their entitlement to the benefits from Workmen's Compensation Fund was deprived.

MWRN which assisted the case about a capsized vessel causing a seaman to fatally drown notes that in this case, the seaman could not swim and the vessel could carry too much ice more than the limits or not. The establishment of the causes of the accident is therefore very important to develop safety measures in fishery. FED has found that the fishers are not aware of their rights and duties when suffering from a work-related injury and have no idea how to report the case to the police. Response to such accidents has to depend mainly on the employer. Several civil society organizations note that when an accident arises in the vessel, it could stem from mental health problem of the sea fishery worker such as depression or from the working condition in the vessel such as a lack of sleep or having to work in a confined space.

During the PIPO/FIP inspection, it has been proposed that regarding the fall into the sea of the seaman, if precautionary measures at the fishing port could not address the problem, measures at the provincial levels should be adopted. The Chief Officers of PIPO Centers can report to the provincial mechanisms to explore

employer who employs at least one employee to work throughout the Kingdom is obliged to pay contributions, save for (1) the employer who is a natural person and whose work is not related to business, and (2) an employer who is engaged in vendor trade.

⁶⁷ Remarks from the Freedom Fund, The observation report on assessment of the officers' performance at the Port-In Port-Out Control center (PIPO) (Flying Inspection Team), to Director of the Thai maritime Enforcement Command Center – the observation report by civil society on mechanisms for fishing labour protection at Port-In Port-Out Control center (PIPO), July 2020

solutions for the problem since contexts in each area are different. Otherwise, the Thai Maritime Enforcement Command Center may invite employers for a meeting. The Stella Maris proposes that people from outside should be invited to sit in the inquiry committee to ensure transparency such as from the Royal Thai Police, the Ministry of Social Development and Human Security, etc., in order to establish the true cases of the accidents.

Cases concerning work-related injury⁶⁸

A case concerning work-related injury: a sea fishery worker from Myanmar, male, 44, MoU worker
While working in the fishing vessel, the worker helped to lift and shake the nets and was stabbed in his eyes by fish. After the incidence, he reported the case to *Chew* (assistant to skipper) and was told by the *Chew* to have a rest without reporting the case to public authorities.

The worker suffered from two days from eyesore and recovered. A couple of days later, he observed that his eyes developed a cataract. One month later, he began to lose his vision and went to hospital for treatment. The doctor told him to seek a surgery. The surgery was done using his health insurance card. The employer had to file some documents to have the surgery conducted for the worker. After the surgery, he was given one month to rehabilitate.

Regarding the medical care for work-related injury, the worker states that it does not matter which medical care, either way is always challenging for workers to have access to them. For example, when he used health insurance card, he usually needs someone to help interpret for him.

The worker kept the health insurance card with himself, whereas the financial records were kept with the employer.

The worker has heard about social security and the Workmen's Compensation Fund but was not aware of the benefits they can give.

In this case, the worker used his health insurance card to receive treatment without informing the Workmen's Compensation Fund by the employer.

The worker's knowledge comes from *Chew* as the person who taught the worker how to use equipment in the boat. *Chew* told him to be careful when getting near the winch. He used to receive training from the Post-Arrival and Reintegration Center for Migrant Worker with trainers from the Center in Myanmar, staff from Raks Thai Foundation, and ILO but there were no Thai officials in the training. The training focused on onboard safety, the environment, i.e., not to kill sharks and about various rights.

⁶⁸ Interview with a male sea fishery worker, 44 years, via phone in June 2021 with help and coordination from RTF

During the inspection, the PIPO officials often ask the worker if he has been subject to physical abuse in the vessel, but not questions about the accidents in the vessel.

As a result of the accident, the fisher feels fishers should be provided with accessories to help them when they work in the vessel such as eye goggles since when shaking fish, there are a lot of them and many kinds of them. There is other debris including sand. He has to be very careful when doing the shaking. In addition, he has to spend a long time in the vessel each time, 15 days for example, before returning to the shore.

Cases of being stabbed in the hand by fish causing an injury to happen almost every day, albeit the injuries were not serious. There should be equipment given to the workers which they can help to give first aid to their injured fellow workers.

Findings and recommendations

- 1.) The PIPO officials can help to raise the awareness on accident prevention and receiving the report of accidents in the vessel. To determine if the accidents in the fishing vessel are a work-related injury or not depends on the discretion of the labour inspector who may rely on guidelines in the Workmen's Compensation Fund Act. Nevertheless, it was found that the investigation by labour inspector has failed to establish the actual causes of accidents due to constraints regarding the available information and the guidelines for investigation, i.e., on the cases of seaman falling into the sea and suicide.

Recommendations Guidelines for the investigation by labour inspectors should be reviewed to ensure the establishment of the true causes of accidents. This should be made in concerted effort with concerned agencies or the appointment of outside people into the inquiry committee to explore the reasons and to develop the prevention measures. A manual for response to the fall into the sea of seamen could be published, particularly on the referral of the cases to concerned agencies and the follow up on the legal proceeding.

- 2.) Access to the Workmen's Compensation Fund still depends on the interpretation of the accidents from sea fishery work in the context that the fishers have to live and work all the time in the workplace. How such interpretation should be made, and it could be compared with interpretation based on international standards. As to access to the Workmen's Compensation Fund, migrant workers often encounter more problems than their Thai counterparts, i.e., how to contact their relatives in the sending countries, the paperwork, etc. Civil society sector has been playing a big role to help them in this regard.

Recommendations Guidelines for the interpretation of accidents in the context of fishery sector and the roles and duties of public agencies should be reviewed to ensure assistance is given to enable migrant workers to have access to remedies and justice process.

12. Control and inspection to ensure compliance with the requirements for sea fishery worker working on fishing vessel and at fishing port (Article 40-42 of C188)

The Royal Ordinance on Fisheries' Section 82 provides that all fishing vessels fishing inside and outside the Thai waters have to be subject to a pre-departure inspection at the fishing port.

The types of vessels subject to the control of the Port-in Port-out (PIPO) Centers include;

1. Commercial fishing vessel of a size from 10 gross tonnages and upward with the use of all kinds of pulling nets, all kinds of surrounding nets and anchovy falling nets
2. Commercial fishing vessel of a size from 30 gross tonnages and upward with for all types of tools
3. Vessel for transshipment or storage of catch registered with the Department of Fisheries of all sizes
4. Frozen seafood vessel and frozen vessel of a size from 30 gross tonnages and upward
5. Fishing support vessel pursuant to the Notification of the Ministry of Agriculture and Cooperatives including freshwater carrying vessel, petrol for fishing carrying vessel
6. Fishing vessel and transshipment vessel outside the Thai waters

The Labour Protection in Fishing Work Act sets waivers to its application on certain types of fishing vessels including subsistence fishing vessels which are exempted from the inspection. According to the Seafarer Standard Division under the Marine Department, that the Labour Protection in Fishing Work Act exempts subsistence artisanal fishing vessels, or a vessel of a size less than 10 gross tonnages could post a problem in the future, if the law is changed to apply to such type of vessel.

Vessel inspection is subject to various legislations including the law on sea fishery workers, the fishery law, and the Navigation in the Thai Waters Act, and the law on occupational health. According to the Ministry of Labour, labour inspection has been currently enhanced by the publishing of manuals by the Department of Labour Protection and Welfare for labour inspectors working with the PIPO Centers. Compared to relying on the issuing of orders by the labour inspectors and the prosecution of the inquiry officials, these manuals guide the officials the regulations on labour inspection issued by the Department of Labour Protection and Welfare and the criminal prosecution of violators according to the Ministerial Regulation concerning Labour Protection in Sea Fishery Work BE 2561. As a result, the labour inspectors can now initiate a legal action on certain violations including failure to provide the employee with clean food and drinking water, failure to arrange for hours of rest, failure to arrange for written employment contracts, failure to pay the wage as provided by law,

etc. The Seafarer Standard Division under the Marine Department has found that the prosecutions have been made mostly for the violation of the Royal Ordinance on Fisheries BE 2558 including the use of illegal fishing tools, or an offence about seaman's books.

According to the Ministry of Labour, labour inspectors in 22 provinces with PIPO Centers and the interpreters receive regular training with cooperation from the Ship to Shore Rights Project. The Ministry has increased the number of labour inspectors to ensure proper ratio and attempted to work to ensure comprehensive labour protection of fishing vessels in 22 coastal provinces with representatives from various agencies including the Marine Department, the Department of Fisheries, the Department of Special Investigation, the Royal Thai Navy, the Royal Thai Police (Thai Marine Police Division, Anti-Trafficking in Persons Division, Immigration Bureau) or other concerned agencies.

According to the Department of Labour Protection and Welfare, the Ministry of Labour, the labour inspection focuses on collecting information from the employee based on their interview and is not concerned just documentary evidence. The inspection therefore depends on the information given by the employee. The problem is the workers do not pay enough attention to their own benefits and are not aware of the content in the employment contracts. The inspection by other agencies at the PIPO Centers can be done via online system, although the Department of Labour Protection and Welfare still reach out and interview the fishers directly. With interpretation, the workers can complain about any problem, but many workers dare not report the problems.

According to the Department of Labour Protection and Welfare, the Ministry of Labour, document examination alone such as the employee list might not reflect the real number of fishers working in the vessel. They can, however, tap into the Crew list of the Marine Department for crosscheck. During the vessel inspection, since the PIPO database is shared with other agencies, it enables the officials to identify the vessels that should be the target of inspection. According to the Fisheries Resources Management and Measures Determination Division, the Department of Fisheries, for vessels in the Thai waters, an offence against the law can be detected via the use of Vessels Monitoring System (VMS). The data can be sent to the local authorities to determine if such offences are caused with an intention or not and the vessel owner can be summoned for questions. The Royal Ordinance on Fisheries BE 2558 applies to offences in fishing vessels and transshipment vessels. As to vessels outside the Thai waters, there have been no problems detected yet since it is in the process of issuing licenses after the amendment of the law to ensure compliance with the criteria set by the Regional Fisheries Management Organization (RFMOs).

From our observation during the inspection of PIPO Centers and Forward Inspection Point (FIP) in Prachuab Khirikhan and Chumphon during 3-5 March 2021, we have discovered obstacles to the performance

of duties of the PIPO officials including a lack of incentives due to a lack of subsidies for their work at the PIPO Centers. Close relationships between the inspectors and the employers could influence how law is enforced subject to the discretion of the officials including how to choose between issuing a warning and imposing a fine. EJF notes that the officials are the ones to fulfill provisions of C188. Therefore, the high turnover of personnel at the PIPO Centers can interrupt the transfer of knowledge among the officials and could affect labour protection in sea fishery work. For example, the process of labour protection in sea fishery work could begin anew every time a new batch of personnel are posted. Similarly, RTF opines that an obstacle of labour inspection is the need for personnel at the PIPO Centers to receive capacity building. Currently, there has been a high turnover and there is a lack of job security among the officials.

From observing the inspection by PIPO Centers, the civil society sector has found the labour inspectors at PIPO use close-ended questions during the interview with the workers causing them to receive limited information, particularly about their rights and welfare. It has been proposed that open-ended questions be used instead. The labour inspectors do not include the examination of records of the payment from the Workmen's Compensation Fund and social security. The inspection of the Workmen's Compensation Fund and social security is not included in the labour inspector manual. There has been too little inspection of wage payment including the verification of the payment based on the written records. Or even the inspection of the payment made on a multi-month basis instead of a monthly basis, the inspectors in each locality adopt different guidelines for the inspection.⁶⁹ EJF has observed that the inspection of fishing vessels at sea carried out by a multidisciplinary team has applied the different standards of inspection from the inspection at the PIPO such as the victim-centered inspection approach and interpretation problem for foreign seamen.⁷⁰

Problems in the performance of duties during the inspection and the violation of rights of sea fishery workers can be reflected by the civil society sector as follows;

1.) Concerned about the inspection guidelines, MWG notes that the vessel inspection by labour inspectors relies in the inspection approaches applied to land workers, i.e., the inspection of wage which relies chiefly on documents. The workers themselves barely have any involvement in this inspection process. HRDF finds that the inspection methods of the Ministry of Labour focus on an accusatorial system based on the asking to examine documents from the employers.

⁶⁹ Remarks from the Freedom Fund, The observation report on assessment of the officers' performance at the Port-In Port-Out Control center (PIPO) (Flying Inspection Team), to Director of the Thai maritime Enforcement Command Center – the observation report by civil society on mechanisms for fishing labour protection at Port-In Port-Out Control center (PIPO), July 2020

⁷⁰ *supra* note 61, p. 30-32.

2.) Concerned with the inspection methods, the Stella Maris notes about the interview conducted by the labour inspectors that how to gain trust from the workers. Such interviews should be conducted in an isolated area from where the vessel is docked, and interview should be conducted randomly among the sea fishery workers to ensure a sense of safety and freedom as to how much information they can give. RTF has found that some interpreters at the PIPO Centers did not translate straightforwardly and might instead opt to give advice to the workers even though such advice should have been given by the labour inspectors.

In addition, despite the available PIPO's guidelines of operation and labour database, when filling complaints with the PIPO Centers, the workers still have to travel to contact various agencies. Staff in each agency do not understand the scope of their work due to the complicated nature of the problems among sea fishery workers. Therefore, the integrated complaint procedures at the PIPO Centers do not yet materialize. MWRN opines that the requirement for writing complaint for the labour inspectors has raised question as to why, since this is a minimum protection, are the workers required to fill out and file the complaint form? And why do the labour inspectors not just exercise their power to issue an order or to make a ruling according to the law?

As to the employers, the National Fisheries Association of Thailand states that the inspection of PIPO Centers is subject to different standards including the inspection of attendance logbook, port-in-port-out notification, or legal action. As to other rules such as the requirement of worker to report oneself once a year, the employers find this redundant with the inspection of the PIPO Centers whose charge is concerned with vessel inspection and worker inspection at the fishing ports already. Problems can stem from the employers. For example, the employers may submit an inaccurate crew list due to similar names of the migrant workers. For the employers, it should be treated as a mistake of entry, an office error. They could verify the real persons according to the crew list; however, such mistake warrants a hefty fine. Other problems found during the inspection including problems with the VMS and it becomes a burden for the employers subject to the inspection. When the equipment was down, the seamen might not be aware of it, but according to the law, if it is down longer than 4 hours, the vessel has to be brought ashore. The Department of Fisheries should offer leniency on a case-by-case basis to allow the fishing vessel to remain at sea and after all the VMS is pricey and warrants high maintenance costs.

As to vessel inspection outside the Thai waters, according to the Fisheries Resources Management and Measures Determination Division, the Department of Fisheries, as far as the determination of labour protection standards in sea fishery work for vessels outside the Thai waters, there has been a problem with the interpretation concerning the seamen's access to communication devices on board the vessel as prescribed in

the secondary law.⁷¹ Each agency tends to interpret the law differently making it impossible for officials at the operational level to perform their duties. It affects the vessel owners and sea fishery workers in terms of their access and use of equipment or a system of satellite communication to contact the officials or public agencies, their spouses or relatives at all times as prescribed by law.

The power to enter and carry out an inspection on a non-Thai vessel is prescribed in Section 17 of the Labour Protection in Fishing Work Act. In such case, the competent official has the power to get on and inspect the non-Thai vessel. But in practicality, questions remain about the enforcement of the law including Section 17. For example, if there are no Thai workers working in the non-Thai vessel, can Section 17 still be enforced and how much powers the official has?⁷²

As to the policy inspection for sea fishery work, no committee has been set up pursuant to the Labour Protection in Fishing Work Act BE 2562. This makes it different from the Maritime Labour Act BE 2558 which sets up the Labour Committee At Sea. The mechanism is important for it can be instrumental for the management and the enforcement of the law concerning marine worker effectively. It regulates the performance of duties of concerned agencies, the inspection and rescue of seaman to ensure they receive benefits fully and comprehensively according to the law based on the integrated collection with all sectors. The review of guidelines and problems from the enforcement of the specific laws and the inclusive manner of a tripartite system shall give rise to inspection among the state, the employers and the employees.

EJF notes the low number of prosecutions in sea fishery work which reflects how the injured parties have not received justice and appropriate compensation. The sentencing so far is also lenient.⁷³ In addition, according to the report of the International Labor Rights Forum, the low number of prosecutions on trafficking in persons cases could be attributed to the inability to identify victims of labour trafficking. It partly stems from how the labour inspectors and the vessel inspections have not delved deeper enough to identify the signs of compulsion or intimidation or failed to establish if the withholding of documents or indebtedness and debt bondage which could offer indication of trafficking in persons.⁷⁴

Regarding the screening of trafficking victims, even though the authorities regularly conduct an inspection of sea fishery workers, but no cases of forced labour or trafficking in persons have been identified.

⁷¹ Ministerial Regulation concerning Labour Protection in Sea Fishery Work (no. 2) BE 2561's Clause 16/1

⁷² Questions and Answers during the "Training Workshop to raise the awareness on the Work in Fishing Convention BE 2550 (C188)", Friday 16 July 2021, 9.30 – 14.30, via online conference, organized by TDRI

⁷³ Environmental Justice Foundation (EJF), Reform of the Thai fishery industry: Toward a sustainable, legal and ethical fishery 2019

⁷⁴ Comment submitted by Global Labour Justice – International Labor Rights Forum on behalf of the Seafood Working Group, March 31, 2021

TIP Report 2021⁷⁵ provides that the Thai government's low number of identified trafficking victims is incompatible with the information of reports of the use of forced labour among migrant workers in several sectors. Part of the problem has stemmed from a lack of understanding about trafficking in persons among workers while the government lacks a standard procedure for labour inspectors to refer high-risk cases to law enforcement. In addition, Thai officials have never identified trafficking victims from workers subject to the vessel inspection at the fishing ports.⁷⁶ Therefore, Section 6 regarding an offence against trafficking in persons and 6/1 on forced labour in work or services according to the Anti-Trafficking in Persons Act BE 2551 have not been applied due to a lack of understanding, the investigation of trafficking in persons cases using the same indicators as in labour rights violation cases and mediation in trafficking in persons cases.⁷⁷

TIP Report 2021 recommends that coordination within the state sector be enhanced to ensure that a complaint on labour rights violation and the likeliness of migrant workers being a victim of forced labour based on the forced labour indicators shall warrant an investigation as if they are a crime of trafficking in persons. It can give rise to a standard procedure for labour officials to refer potential cases of labour trafficking to the multidisciplinary team and to have the law enforcement.⁷⁸

Findings and recommendations

- 1.) Regarding the inspection standards of sea fishery workers in fishing vessel, the state has developed PIPO Centers to carry out the inspection of fishing vessels and sea fishery workers before leaving the port and after arriving at the port. An operational manual has been published for officials at the PIPO Centers and capacity building has been offered to labour inspectors and interpreters. There are still gaps in the inspection of sea fishery workers since the inspection of sea fishery workers varies depending on the technics adopted by each labour inspector to obtain as much information as possible. The coordination among authorities involving with labour standard inspection still leaves much to be desired. The inspection of sea fishery workers thus depends chiefly on each labour inspector. In addition, there is no clear mechanism for case referral among the agencies. There are other practical problems such as a lack of incentive among officials at the PIPO Centers, close relationships between the inspector and the employer and the high turnover of personnel causing disruption to the prevention

⁷⁵ The U.S. State Department, "Trafficking in Persons Report" Retrieved on August 23, 2021, from <https://www.state.gov/reports/2021-trafficking-in-persons-report/> (2021). The U.S. State Department's 2021 Trafficking in Persons Report. Thailand has since been downgraded from Tier2 to Tier 2 Watch List. In Southeast Asia Thailand sits in Tier 2 Watch List, jointly with Cambodia, Vietnam, and Brunei. Countries in Tier 3 in Southeast Asia include Myanmar and Malaysia.

⁷⁶ *Ibid.*, pp. 543-544.

⁷⁷ *Ibid.*, pp. 544-545.

⁷⁸ *Ibid.*, p.544.

work. As to vessels outside the Thai waters, there is a problem with the interpretation of the law to ensure proper guidelines among concerned officials.

Recommendations The labour inspection approaches of the authorities should, be further enhanced and streamlined. It should capitalize on the integration of knowledge and information among officials from various agencies. The labour inspectors at PIPO Centers should receive support and capacity building regularly and receive incentives to encourage them to work.

- 2.) Regarding problems in labour inspection, it has been found that the labour inspectors continue to adopt a conventional labour inspection approach applied to workers in general sectors which are not suitable to the sea fishery work. The reliance on inquisitorial approach based on document examination, the interview of worker based mostly on close ended questions, inaccurate interpretation in some areas, the requirement for the worker to file the complaint about rights violation by themselves, and the requirement for the worker to contact various public agencies directly pose as an obstacle for labour inspection. As to the employers, they are concerned about redundancy in the inspection of sea fishery workers and an emphasis on document examination with a hefty fine. At the policy level, there is no committee to review the overall law and policy concerning labour protection in sea fishery work.

Recommendations Labour inspection approaches should be further developed as well as the interpretation services. The inspection methods should be reviewed to really expose the offences against the law and a committee should be set up to review the inspection and give an input on legal compliance concerning sea fishery workers.

13. Complaint procedures (as the flag state and the port state) (Article 43 of C188)

The state shall provide for various channels of complaint procedures for migrant workers. Migrant workers can complain with agencies under the Department of Employment and the Department of Labour Protection and Welfare, in Bangkok and other provinces and ten Migrant Workers Assistance Centers. For online channel, they can complain via DOE's website 'Help Me' or www.doe.go.th/helpme or the Ministry of Labour's hotlines which offer the services in different languages understood by the migrant workers. As to the sea fishery workers, they can also complain with the labour inspectors of the Department of Labour Protection and Welfare at the PIPO Centers with help from interpreters stationed at the Centers. If the complaint received at the fishing ports are concerned with criminal cases, it has to be reported to the police, which may lead to a

prosecution and a trial. In such case, the monitoring of the legal proceeding after reporting the case is very important since it can help shed light on the process to remedy the injured party.⁷⁹

From its experience helping the workers, the State Enterprises Workers' Relations Confederation (SERC) describes that labour unions do not focus on offering services, but rather on organizing the workers since they believe in the power of unionization and do not focus on offering a case-by-case help. Rather, they emphasize advocating policies to help the workers. The labour union's strategies are thus geared toward organizing the migrant workers in various sectors. After smaller groups have been founded, they can be combined as a large group with leaderships in sea fishery work and with tremendous help from the civil society sector. The civil society sector can help bridge the gap to offer services that labour unions cannot do.

From the experience of civil society sector, it has been found that the state's complaint procedures for sea fishery workers continue face the following obstacles.

1.) After lodging the complaint by labour inspector, there is no clear case referral mechanism. As a result, the case referral shall be subject to the discretion of each labour inspector. If such complaints fall under responsibilities of other agencies not affiliated with PIPO such as the Social Security Fund or the Workmen's Compensation Fund, it has been found that the labour inspector would advise the complainant to contact such agencies directly, even though they are agencies similarly under the Ministry of Labour.

2.) It is hard to contact sea fishery workers given the nature of their work which requires that they have to work in the fishing vessel including when they change their employers. This has disrupted assistance to their legal cases.

3.) There is a lack of guidelines to follow up on cases accepted for review by the labour inspector or the PIPO official. It is also unclear as how to monitor the progress of cases filed with the labour inspector. For example, if it is a complaint on benefits of the descendants of deceased workers, will the officials follow up the case until such benefits are paid to the descendants or not? Or when the case has gone to trial, will the official follow up through to the end of the judicial proceeding or not? There is no information as to how the Provincial Committee of PIPO Centers has set out guidelines to report outcome of the action pursuant to the complaint. EJF has found that labour inspectors only follow up in the beginning, but hardly follow through the whole process.

4.) How likely will a complaint about the causes that have yet to materialize be accepted? Stella Maris has found a case of a sea fishery worker who felt unsafe while working given the previous dispute he had while

⁷⁹ SR Law Firm, Guidelines for labour inspection in workplaces of vulnerable groups and/or hard-to-reach groups (fishing and seafood processing)

working in the vessel. Will the worker be able to complain about his concern or the unsafe working condition with PIPO Centers or not, and what would be the mechanisms to respond to such concern?

According to the Department of Labour Protection and Welfare, the Ministry of Labour, the problems encountered by labour inspectors include language barrier and trust. There are different channels to accept the complaints such as complaining with the interpreter, dropping it in complaint boxes, and emailing. No complaints have been lodged via the two latter channels. According to officials of the Department of Labour Protection and Welfare, the Ministry of Labour, the workers tend to complain with NGOs given their trust and the ability to use the same language with the migrant workers.

The CSO Coalition's report finds that 3% of the respondents used to file their complaint. This can be divided in to complaining with NGO (54%) and complaining with PIPO officials (24%). The workers who complained with NGOs tend to be relatively satisfied with the solutions (satisfied 45%, unsatisfied 8%) whereas those who complained with PIPO tend to be unsatisfied more than nearly one-fold (satisfied 8%, unsatisfied 15%). As to the workers who have never complained, they can be divided into 58% who said they have never faced rights violation and another 24% who admit to not knowing about their rights.⁸⁰ Based on the information, it should be noted that the awareness of labour rights among workers is relatively low. This can explain why the rate of complaint is low as well. In addition, ILRF notes that the reasons the seamen may not complain with the officials is workers in the same vessel are often their relatives or acquaintances such as the group of workers from Cambodia. As a result, they seek not to complain with the officials. ILRF therefore finds that the state should design an intervention appropriate to the sea fishery workers who tend to belong to a group like this.

Regarding the complaint received by civil society sector, the Department of Labour Protection and Welfare, the Ministry of Labour, finds that in terms of receiving complaints, the authorities are always ready to accept them. However, some cases have been filed out of misunderstanding of the workers, and some cases have been filed by NGOs, but the workers are yet ready to complain. The Department of Labour Protection and Welfare, the Ministry of Labour, proposes that NGOs should fully disclose information concerning their operation in order to collaborate responses to the cases. And they should inform local authorities following the hierarchy before filing it with the central administration since local authorities have the power to issue orders.

As to civil society sector which offers legal assistance to sea fishery workers, SR Law and FED have found cases whereby the PIPO officials refused to accept the complaints or asked the workers to complain with the Provincial Authorities or other agencies instead. On this issue, MWG notes that without clear guidelines to accept the complaints, when there are cases that fall under responsibilities of various agencies including

⁸⁰ *supra note* 10, p. 52.

criminal cases, it tends to prompt the agencies to refuse to accept the cases. For example, the labour inspector would tell the worker to first report the case with the police and file the complaint with the labour inspector later. It has given rise to confusion among the officials and affected the rights of workers. HRDF has found that labour inspectors tend to place the importance on documents supporting the demand of rights of the worker. This creates a cumbersome process in terms of the remedy of the workers. For example, the worker would be asked to produce a death certificate when demanding the rights of a seaman who fell into the sea. Otherwise, they might demand a birth certificate certified by the Embassy. This simply creates more burden for the affected worker. Coupled with travel restrictions and the problem contacting government officers during the Covid-19 pandemic, it is very challenging for the worker do such paperwork. EJF has found that officials in some areas hold on to certain attitudes and tend to think the problems have been caused by the workers themselves given the lack of understanding of the vulnerabilities of the sea fishery workers and the nature of work in fishery sector. Such attitudes may disrupt the work on rights protection.

Stella Maris has found that the assistance of workers can give rise to expenses along the way including for accommodation and food. But the Migrant Workers Assistance Centers restrict their services only to documented workers, contrary to the reality whereby many undocumented workers are the persons in need as well. The Migrant Workers Assistance Centers should consider offering services to both groups of migrant workers.

As to the solutions, the National Fisheries Association of Thailand proposes that PIPO Centers should be converted into One-Stop Service to offer services to the employer who needs to take their employee to contact various authorities. Instead, they can just contact the PIPO Center given the integrated collaboration among the agencies. By having to take the employee to various authorities, it would cost hidden expenses to the employer and the employer has to keep the boat ashore awaiting the paperwork of their employee. This process can take several days. Civil society sector including EJF propose that PIPO should be developed into One-Stop Service.

The compilation of incriminating evidence in labour rights violation can be a challenge of sea fishery workers. The ILO's report describes how the good practice of utilizing technology to defend migrant workers can be used including taking photo of personal document or employment contracts for the workers. The evidence can be shown to the agencies when rights violation occurs. Such photos can be sent to fellow workers, their families or kept as backup data online. The documentation of rights violation can be done with using mobile phone to take photo or video of the injuries or the unsafe practice.⁸¹ HRDF with experience working on

⁸¹ *supra note* 14, p. 22-24.

cases in the court has found that the agencies that work in collaboration with PIPO Centers share little information with each other. For example, the VMS data is made inaccessible by officials from the Department of Labour Protection and Welfare since the data is kept within the data system of the Marine Department. When there is a dispute, attorneys often need to ask for court warrants in order to gain access to such information from the Marine Department. The acquisition of data to be used in the litigation on labour rights often faces restriction, is time-consuming and requires too many steps to complete.

Findings and recommendations

- 1.) The state provides for complaint procedures to accept complaints from the sea fishery workers through various channels. The PIPO Centers can accept complaints from the sea fishery workers directly. Nevertheless, it has been found few complaints have been filed with the PIPO Centers, probably due to a lack of trust in public authorities, language barrier and a lack of awareness of rights among the workers. Some workers choose to seek help from civil society sector which offers legal assistance to Thai and migrant workers. When offering legal assistance, the civil society sector often coordinates with the state and the state demands that civil society sector should fully disclose such information and start from coordinating with local authorities.

Recommendations The state should review channels to accept complaints and see how effective they are and if they should be improved to make them fit the context of sea fishery workers in Thailand. This should make sea fishery workers dare to complain through the mechanisms provided by the state. Meanwhile, sea fishery workers should be educated comprehensively about their rights and duties according to the law. The state and civil society sector should develop the mechanisms to collaborate on legal cases.

- 2.) The civil society sector reflects that after receiving complaints, the labour inspectors have no mechanisms for case referral making the case referral to concerned agencies among PIPO Centers varies from place to place. In addition, it is unclear how to follow up on the inspection and the outcome of the cases as well as the progress of the case handled by the labour inspector and what kinds of mechanism used by the state to inspect the complaint procedures.

Recommendations The state should set out clear guidelines on case referral. An operational manual could be published to spell out the case referral, to determine concerned agencies and scope of responsibilities. The manual should then be distributed to all concerned parties to enhance the understanding about the case referral system and to enable the monitoring of the solution. In addition,

the state should review mechanisms used in the inspection and the complaint procedures to ensure actions are taken on complaints received from the workers.

- 3.) As to assistance to help sea fishery workers to have access to remedies, the civil society sector has found that the migrant fishers have to face restrictions concerning the filing of complaints through the existing official channels such as the requirements of documents, the language used, the need to contact various agencies and the monitoring of the outcome of the complaints. Civil society sector can play a role to help coordinate in this regard.

Recommendations The state should review problems and obstacles concerning access to rights of sea fishery workers, particularly migrant workers who often face obstacles when demanding their rights due to the requirements and procedures in the bureaucracy. This should ensure the state mechanism are designed to offer assistance and services to sea fishery workers, both Thai and foreign, in a long run.

14. Impacts of Covid-19 on labour protection in sea fishery work

According to the Department of Consular Affairs, the Ministry of Foreign Affairs, during the Covid-19 pandemic, assistance to seamen faces restrictions due to the prohibition from getting on shore and freedom of movement between cities. Since April 2020, during the Covid-19 pandemic, the Ministry of Foreign Affairs has offered help to more than 50 Thai fishers. According to the Department of Employment, the Ministry of Labour, during the Covid-19 pandemic in December 2020, new infections were found among migrant workers from the three countries (Cambodia, Laos and Myanmar) and they took place in the areas where many migrant workers were employed. The state allowed migrant workers from the three countries to continue living and working here and offered inspection including testing services for the migrant workers working in high-risk areas. PIPO Centers have developed emergency plans in response to the Covid-19 pandemic. According to the Fisheries Resources Management and Measures Determination Division, the Department of Fisheries, during the Covid-19 pandemic, the Department of Fisheries has dispatched officials to local areas and continued to conduct vessel inspection, although the number of vessels had to be scaled down during the initial outbreak. Although Video Call was used for the inspection, but if they were target vessels, full-fledged inspection was still carried out. According to the National Fisheries Association of Thailand, the employers have been asked by the government to not let the fishers disembark and return to their rooms on shore. During the second wave of the outbreak, fishers were required to have Covid-19 testing and the services were provided free of charge by the state. But if the vessels came to shore on the days different from when such free testing services were provided, the employers and the workers had to be responsible for their own testing costs. According to MWG,

the state measures have led to restriction of freedom of movement among the workers and during some periods, the fishers were prevented from getting on the fishing ports where their fishing vessels were docked.

RTF which worked in the province of Samut Sakhon where there was Covid-19 outbreak noted that during that time, the fishers had to live and work in the fishing vessels as they were barred from returning home. Covid testing was offered at the fishing ports, and they were required to isolate themselves in the vessels while waiting for the testing results. If they were found negative, the vessels shall be allowed to dock or to leave the port for fishing. This has made the fishing process more complicated. Nevertheless, RTF notes that during the 14-day-isolation in the vessel in Samut Sakhon, although they were provided with food by their employer, but there was no social distancing. There were also no clear measures to deal with the seamen who were after testing found to have Covid-19. RTF has also found seamen left stranded at the fishing ports during the Covid-19 pandemic and could not find a new job given there was no new employment demand.

According to the survey of impacts during the Covid-19 pandemic in Songkhla, it was found that the government's response to migrant workers during the pandemic focused on giving them the right to temporarily stay and work in the Kingdom and other measures for the prevention of Covid-19 infection. Not effort was made to enhance labour protection or to help the workers to have access to benefits and remedies. The government's response was composed of raising the awareness for the prevention of the spread of Covid-19, publishing IEC material made available in the languages of migrant workers, distributing face masks, hand sanitizers, and relief packages as well as offering the employees testing and surveillance.⁸² Nevertheless, The survey shed light on how most sea fishery workers had no access to alcohol and hand sanitizers.⁸³ In addition, access to information and assistance among the migrant workers was restricted among the migrant workers due to language barrier and the requirement to file online forms to seek support.⁸⁴

Another ramification on the sea fishery workers is as prescribed by law, Covid-19 has been listed as one of the prohibited diseases for work. According to MWG, such provision has led to the charging of 3,000 baht for Covid-19 testing fee of all migrant workers and their dependents. It has also led to the rise of the total expenses to be granted the temporary right to stay and work in the Kingdom to 7,200 baht for migrant workers employed in general business, and 7,300 baht in fishery sector. The medical examination has to be borne by the workers themselves according to the law. MWG recommends that such testing requirement and charging of expenses should be reviewed since it is the polity of the government to prevent and control the outbreak of

⁸² Stella Maris's Seafarer's Center Songkhla, Report of the Survey of Impacts from the Covid-19 Pandemic on the Employment in Fishery Industry and Seafood Processing in Songkhla, June 2021.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

Covid-19. Therefore, such expenses should not be charged and left as a burden for the workers. Instead, proactive Covid-19 testing should be adopted among the migrant workers and such requirements should not be made as a condition for them to renew their permit to continue living in the Kingdom.⁸⁵

Regarding a relief program for insured persons pursuant to Section 33 of the Social Security Act 2533, the “Section 33, We Love Each Other” requires that an insured persons who is eligible for the benefits must be Thai nationals. Such requirement discriminates against migrant workers who are also insured persons. HRDF recommends that such requirement be rescinded to allow migrant workers who are insured persons to have access to such benefits from the program similar to the Thai insured persons.⁸⁶

According to the survey of impacts during the Covid-19 pandemic, it was found that the employers in sea fishery work also wanted emergency help from the government due to the problems that had happened since before the Covid-19 outbreak including the delayed MoU process and the high expenses it cost, labour shortage in marine fishery sector, the slowdown of employment of migrant workers during the Covid-19 pandemic. According to the employers, the inspection by PIPO Centers was not made more lenient pursuant to the program by the government to extend the period of stay and work of workers whose permits were about to expire. It was compounded by the slump in the prices of goods and goods transportation during the Covid-19 pandemic.⁸⁷

As to the adaptation of migrant workers, the survey of impacts during the Covid-19 pandemic shed light on how workers have adapted their behaviors as advised by the Department of Disease Control’s (DDC). They were enthusiastic to receive information and mostly monitored news from social media. Most workers had access to clothe face masks, although more a half of them had no access to alcohol or hand sanitizers. During the pandemic, more than a half of respondents say that their income and employment have not changed that much, although some admitted to having less income from their work. Nevertheless, the workers were still concerned about their income and employment and feared being infected with Covid-19. Therefore, they wanted to receive help to relieve the suffering they had including cash handouts according to the government’s No One Left Behind program, receiving relief packages, and other supplies as well as the opening of border checkpoints to allow them to travel and testing within workplaces.⁸⁸

⁸⁵ Migrant Working Group (MWG), Press State” Review of expenses related to Covid-19 testing among migrant workers urged, dated 12 January 2021

⁸⁶ Human Rights and Development Foundation (HRDF), Press Release, Migrant workers urging Thai government To ensure migrant insured persons have access to “Section 33, We Love Each Other”, 10 March 2021.

⁸⁷ *supra note 82.*

⁸⁸ *supra note 82.*

Due to concern about forced labour, the impacts of Covid-19 on sea fishery workers and seafood industry, Freedom Fund states that there were indications in the fishery sector during the Covid-19 pandemic that there could be a rise of the use of forced labour including labour shortage during the Covid, debts among the workers, and the social distancing measure which affected the inspection of the PIPO Centers during the inspection of sea fishery workers.⁸⁹ HRDF notes that a shortage of sea fishery workers during the Covid-19 pandemic could be attributed to the inability of migrant workers to cross into Thailand leading an overload of work while the number of workers was shrinking. This could give rise to the use of forced labour or trafficking in persons.

As to other problems such as the political situation in Myanmar, FED points out that the political situation has caused the delay in response from the Embassy and a lack of policy to address the needs of Myanmar migrant workers in Thailand. It has caused problems for migrant workers with passport or CI (Certificate of Identity) which were going to expire. Even though, the Thai government has adopted a policy to allow migrant workers from the three countries including Myanmar to temporarily stay and work, but no long-term solutions are in sight.

Freedom of movement among sea fishery workers during the Covid-19 pandemic was subject to an increased restriction. For example, the Phuket Provincial Authority's order no. 4623/2021 dated 14 August 2021, applicable from 15-21 August 2021 on Restrictions of sea fishery workers of commercial vessels in Phuket" imposed restriction of sea fishery workers in commercial fishing vessels in Phuket including;

- 1.) Sea fishery workers are barred from entering and exiting fishing ports where they work, save for their travel to the vessels they work or other activities related to fishery.
- 2.) Sea fishery workers are required to live in the fishing vessels or at the fishing ports where they work.
- 3.) Sea fishery workers who are a risk group and isolated in the fishing vessels used as a field hospital, they shall receive Covid-19 testing from concerned agencies. If they are found to be infected, they shall be subject to the disease control measure for specific areas (Bubble and Seal) and the managers of fishing vessel had to ensure compliance with the measures and the orders of the Phuket Provincial Authority is duly made.

Any violation or failure to act as ordered shall be liable for punishment of an imprisonment or a fine, or both.

⁸⁹ Freedom Fund, Impacts of Covid-19 on sea fishery workers and seafood industry under Hotspot Project

HRDF and its alliances find that regarding the required isolation of at-risk fishers in the fishing vessel, the fishing vessels are not appropriate for such quarantine. Its internal environment is not appropriate for sick persons including the nature of its toilet, sleeping place, social distancing, and waste disposal, etc. It was unclear how the fishers could have access to medical care, if they tested positive, and how they could reach out for help from concerned agencies. In addition, the prohibition of the vessels to come to shore even made the sea fishery workers more vulnerable to working more than usual with less hours of rest, being deprived of legal protection and being subject to the violation of labour rights.⁹⁰

During the Covid-19 pandemic, the fishing vessel inspection by PIPO was adapted to control the arrival and departure of the fishing vessels to prevent the spread of Covid-19. After the Centre for COVID-19 Situation Administration (CCSA) declared 29 provinces red zones in August 2021 and extended the declaration of the State of Emergency, the fishing vessel inspection by PIPO was conducted in four formats depending on how they are appropriate to local areas, depending on the outbreak situation each day and according to the notifications of the Communicable Diseases Committee of each province as follows;⁹¹

Format 1 : In relatively low-risk area, inspection shall be normally conducted at the fishing port

Format 2 : In low-risk area, inspection shall be carried out, although the number of inspectors shall be scaled down and interviews shall be conducted via video conferencing

Format 3: In high-risk area, vessel inspection shall be conducted via video conferencing and the vessel owner or the person designated by the vessel owner shall follow the instructions and procedure imposed by the officials and evidence can be posted via video conferencing.

Format 4: In high-risk area with no internet access or the vessel owner or the person designated by the vessel owner finds it difficult to operate long-distance video conferencing, the inspection of fishing vessel shall be conducted at the fishing port via Line application and by taking and posting photos. Such photos must contain timestamp and coordination data and be sent to the PIPO officials via Line application.

According to the interviews of sea fishery workers from Myanmar in Southern provinces who were working in Thailand during the Covid-19 pandemic in June 2021.⁹²

⁹⁰ Human Rights and Development Foundation (HRDF), Public Statement of Human Rights and Development Foundation (HRDF) and its alliance on restriction measures on sea fishery workers in commercial fishing vessels in the province of Phuket, 20 August 2021

⁹¹ Department of Fisheries, Ministry of Agriculture and Cooperatives, for more information, please see https://www4.fisheries.go.th/index.php/dof/news_local/1210/115008

⁹² Interview a male sea fishery worker from Myanmar, via phone, June 2021 with help and coordination from FED

Worker 1 from Myanmar, male, 38, working in Thailand for more than 10 years

The worker has first entered in Thailand informally with help from a broker.

The worker was paid monthly in cash by the employer. He rose through the ranks from being a seaman to a skipper earning 30,000 baht/month.

The worker was given an employment contract, but it was kept by his employer, although he could ask for it anytime.

The worker had health insurance card, although he never used it. He used to suffer from minor accidents in the fishing vessel including being hit by the winch or running into robes on the deck, which were common problems for all workers in the fishing vessel. He never had a problem with his employer.

The worker knew about PIPO, but never reported a problem.

During the Covid-19 pandemic, the sea fishery workers was quarantined in the vessel. After completing the quarantine, he was still not permitted to return to his family.

Worker 2 from Myanmar, male, 55, working in Thailand for more than 10 years

The worker has entered in Thailand informally through the Kawthoung and Ranong.

He earned 9,500 baht/month and it was paid in in cash. There was another 1,500-baht bonus for all seamen.

The worker signed his name in a document, which was probably the employment contract, although he did not know the content of the document.

His bank documents, ATM cards and personal documents of the worker including his passport were kept by the employer.

The worker had health insurance card but never used it. He has never run into any serious problem at work and has never suffered from a serious accident. He saw some minor accidents with his colleagues such broken limbs due to being hit by the robes of the winch. There were some fight occurred on board between the skippers and the seamen.

The worker knew the PIPO officials but have never been to the PIPO Centers. He did not even know where the offices were located. During the Covid-19 pandemic, he continued to receive his pay as normal, but was prevented from going anywhere. During the interview, the sea fishery worker in Ranong has been tested for Covid-19 as arranged by the employer.

Worker 3 from Myanmar, male, 31, working in Thailand for 11 years

The sea fishery worker has entered in Thailand informally in 2008 with help from a broker. He was paid 10,000 baht/month in cash. His bank documents and ATM cards were kept with the employer although he could ask for them anytime.

The worker had health insurance card and used to suffer an accident being hit by the winch in the fishing vessel.

During the Covid-19 pandemic, he continued to receive his wage, although he was subject to various restrictions and being barred from returning to visit his family.

In response to the Covid-19 pandemic and infection cases among seamen, the government has introduced a Factory Isolation model to isolate infected workers in the fishing vessel (Boat Isolation) and to quarantine high risk persons (Boat Quarantine) for 14 days in the fishing vessel. The area inside the fishing vessel and facilities on board are, however, inappropriate for the quarantine of the seamen. For example, there is not enough space in the fishing vessel to provide an individual isolation and the environment therein does not meet sanitary requirements needed for the prevention. There is not waste management system on board and even in normal time, the fishers have a hard time finding clean water for consumption. It is thus concerning how clean water can be supplied on board for use and consumption during the quarantine. The fishing vessel is, therefore, not appropriate for the seaman quarantine and cannot prevent the spread of Covid-19. Apart from imposing quarantine on the seamen the state and the employer should be collectively responsible for introducing other measures to prevent the spread of Covid-19, including expenses to procure antigen test kits and medical examination.

Findings and recommendations

- 1.) During the Covid-19 pandemic, the state continued to help bring Thai seamen back from abroad amidst travel restriction. As to domestic measures, the state has introduced various measures for the prevention of the spread of Covid-19 including the permit to allow migrant workers to temporarily stay and work in Thailand, awareness raising about the prevention of communicable diseases, distribution of PPEs and testing services in high-risk areas. Nevertheless, the restriction of interprovincial travel and by adding Covid-19 to the list of prohibited diseases have increased burden of the seamen. The employers are affected the shortage of sea fishery labour, even before the outbreak of Covid-19, since new migrants are unable to cross over into the country.

Recommendations The state’s relief programs should include workers in all sectors and all groups of Thai and migrant workers. Any measure that increases the burden of the employees should be reviewed, particularly expenses from Covid-19 testing including the proactive testing in the area and the procurement of antigen test kits for the workers. This should fall under the joint responsibilities between the state and the employers.

- 2.) Relief programs for the workers during the Covid-19 pandemic by the Social Security Office such as the “Section 33, We Love Each Other” program impose requirements which discriminate against migrant workers depriving them of access to additional benefits to the normal ones under the social security system. This is because it prescribes that an eligible person must only be a Thai national.

Recommendations Such requirement should be rescinded to allow migrant workers who are insured persons to have access to the cash handout like other insured persons who are Thai nationals. This is to prevent discrimination against the migrant workers and the deprivation of access among migrant workers to the support by the state.

- 3.) Fishing vessels have been used as a quarantine facility for seamen who test positive for Covid-19 and seamen who belong to a high-risk group. The fishing vessels are, however, not appropriate for quarantine. Also, a quarantine in fishing vessel cannot help to prevent the spread of Covid-19 due to limitations in terms of space, the environment and facilities. In addition, the state has yet developed a clear policy to provide medical care to migrant workers who test positive for Covid-19.

Recommendations The quarantine measure of seamen in the fishing vessel should be reviewed since the condition of Thai fishing vessels is inappropriate for quarantining the infected persons and high-risk persons. Seamen should have access to on-site medical care and appropriate treatment. Clear guidelines for the exercise of the right to medical care among migrant workers who test positive for Covid-19 should be clearly determined.

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