

MEASURES TO PROTECT FISHING WORKERS AND SOLUTIONS TO HUMAN TRAFFICKING

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ABSTRACT

The current article aimed to investigate problems as well as barriers associated with policies and measures to protect labor rights in Thailand's marine fishery industries. According to the study, the policies and measures seem controversial and those implemented by each of the governments find discrepancies. Consequently, the rights of fishery labor are unlikely to ensure adequate protection. Based on this study, the proposed solutions are that the government sector adopts specific policies and practical measures and take guidelines or suggestions from relevant agencies into account and that the government sectors are required to cooperate. Furthermore, fishery labor must be conferred equal rights and full protection without discrimination.

Keywords: Labor Rights, Fishery Labor, Human Trafficking, Rights of Fishery Labor

INTRODUCTION

Since the enforcement of the Anti-Human Trafficking Act B.E. 2551 (2008) on June 5, 2008, the overall situations concerning human trafficking in Thailand particularly labor, child, and woman trafficking have become deteriorating. That, According to the assessment of the trafficking in person Report (TIP Report) by the US State Department, the status is divided into four tiers: Tier 1 refers to a country whose government can achieve in prevention and protection of victims of human trafficking; Tier 2 refers to a country whose government fails to comply with the minimum standard outlined in TIP report but attempts to achieve: Tier 2 Watch list refers to a country where the constant high number or increasing number of victims of human trafficking exists: and Tier 3 refers to a country whose government neglects prevention or protection of victims of human trafficking nor suppresses human traffickers. From 2010 to 2011, Thailand had been graded Tier 2 Watchlist. This may suggest that despite several human trafficking cases, yet the governments ignore the perceived problems. In 2010 based on the TIP report, there were a total of 12 victims of human trafficking reported worldwide. Separate countries were given a different status. For instance, the countries graded Tier 1 included Australia, New Zealand, the United States of America, the countries graded Tier 2 including Malaysia; the countries graded Tier 2 Watchlist including 58 countries (e.g., Thailand, Vietnam, Lao PDR, Brunei, Afghanistan, China, India; and, 13 countries falling in Tier 3 included Burma, Papua New Guinea, Iran, Saudi Arabia).

In 2012, the US State Department evaluated and graded Thailand's performance on human trafficking management Tier 2 Watchlist; besides, (Legal Gap Analysis of Thailand's Anti-Trafficking Legislation, June 2017) Thailand was issued a warning that the effort made by the government failed to meet the compliance of the minimum standard. Thailand had been graded Tier 2 Watchlist from 2010 to 2012; E. KumchomKhae. Not for sale Center, (Volunteer mirror, 2010), however, despite the warning and three consecutive years in the Tier 2 Watchlist; but in 2015 Thailand was downgraded to Tier 3 (Shamir, 2012), referring to a country whose government is considered unable to fulfill the compliance with the minimum standards. Indeed, such status downgrading makes a significant impact on Thailand; however,

there was a doubt whether Thailand encountered the worse trafficking situation (Allais, 2013); thus, the government needs to compare and evaluate the performance in the preceding year 2011 to that of last three years (2011–2014) until the present year (2015-2019).

However, in 2014 U.S. State Department's Office to Monitor and Combat Trafficking in Persons delivered 2014's TIP Report (Prachatai, 2014). As per the report, Thailand is one of the four countries subjected to downgrade the attempt to respond to human trafficking to Tier 3, which is the lowest rank. To address this challenge, the government by Prime Minister Prayuth Chan-Ocha took prompt action to eliminate human trafficking so significantly and continuously that in 2018 U.S State Department returned the placement of Thailand in the preceding position Tier 2 Watch List. However, on April 29, 2015, the EU prescribed a "yellow card" on Thailand's fishing section on account of the fact that Thailand has not implemented strict and appropriate measures to eliminate illegal labor, unreported and unregulated fishing, which leads to the illegal fishery and particularly in labor abuses and slavery.

The Report of Policy Development on the Problems of Illegal, Unreported and Unregulated Fishing, Forced Labour and Human Trafficking in Sea Fisheries in 2016. Status of Forced Labor and Human Trafficking in Thai Fisheries. 3.1 Situation ... Thailand was "yellow-carded" by the EU due to the prevalence of illegal, ... (1) The framework for Thai law to control and punish violators in the fishing industry.

Recently research findings from NGOs in cooperation with the UN reveal the considerable number of victims of human trafficking in Thailand. According to the estimation of the United Nations Inter-Agency Project on Human Trafficking (UNIAP), of the 23,000 Cambodians who were subject to dispatch to their home country, over 23% experienced victimization of human trafficking; of all Laos, migrants returning home, among 50-100 experienced human trafficking; of all Burmese labor working in seafood processing factories located in Samutsakorn province, 57% were reported to experience being forced labor. According to the report of the International Organization for Migration (IOM) presented in May 2011, there was a high rate of forced labor and bonded labor particularly among Burmese and Cambodian labor, who had been forced or deceived to work in Thai fishing vessels. It is added that Burmese, Cambodian and Thai labor were the victims of labor trafficking on Thai fishing boats at sea on Southeast Asia seas. Those laborers were confined to work at sea for many years without wage payment and work in excessive hours of 18-20 hours per day for a whole week. They are subjected to menace or abuse (Command Center of Prevention on Labor. 2012).

Furthermore, the survey of UNAIP revealed that of 49 migrant workers on Thai fishing boats, 29 (58%) witnessed crimes whereby their colleagues were murdered by boat captains, who usually decided to murder a weak or vulnerable boat crew. In practice, workers on fishing boats do not have a written contract with employers. It is observed that unlike trafficking Thai workers to work abroad, those traffickers work as an organization, human traffickers (including brokers) who manage to bring illegal migrants into Thailand work individually or with an unorganized group. Some brokers who ease or involve human trafficking are both Thai and foreigners and they do business with employers or even the relevant officials (International Labor Office. 2018).

Ministry of Labor, which is in charge of addressing labor-related issues, enacted the ministerial regulations to protect labor in marine fishery 2014 and repealed the one of 10th (2011) (Ministry of Labor. 2018), as provided in Labor Protection Act 1998, which limits the coverage of fishing workers in several respects and appears impractical to enforce or control cruelly ill-treat workers as its enforcement does not cover fishing activities off Thai territorial waters over one year (Maesuwankun, 2004).

Thus, the current ministerial regulations are subjected to redefine "marine fishing activity" to cover any marine fishing operations by using all types of boats or vessels. In other words, in addition to traditional fishing boats, all types of boats used for fishing purposes (e.g., supply boat, shipping boat, and cargo ship) meet the definition of marine fishing except for boat preparation, maintenance of fishing equipment. Moreover, the

definition of “employer” is conveyed more precise meaning; in that, in addition to the definition following the Labour Protection Act B.E. 2541, it also encompasses boat owners who allow other persons to use their fishing boat for marine fishing for the purpose of sharing benefit except for that fishing boat owner who agrees to have their boats for marine fishing without benefit involvement. Meanwhile, hereafter the definition of “wage” refers to the wage following the Section 5 of the Labour Protection Act B.E. 2541 and also to dividend employers agree to pay to employees based on the capacity of fish caught.

The amendment of the ministerial regulations is aimed at responding to the current situations and addressing the problems of workers in marine fishing, thereby increasing benefit to fishing workers and reducing exploitation of fishing workers by employers. To illustrate, these regulations are enforced in all fishing operations hiring more than one worker regardless of the time length of doing fishery outside the territorial waters. Hereto, it is prohibited to hire workers younger than 18 years (Hebert, 2016). Workers are given a minimum duration of ten-hour break based on 24 hours and a minimum of 77 hours per week. In case of an emergency whereby workers may be required to work during their given break, employers have an obligation to promptly compensate or overtime pay for such break. Additionally, it is obliged for employers to make a worker logbook ready so that the authorities can conduct an examination. The regulations stipulate that employers prepare a written employment contract and both parties keep a separate copy and that employers must accompany their employees for reporting at least once a year. Besides, it is required by law for all employers who employ more than 10 employees to file employment records and submit them to the authorities within 30 days, keep them for two years after employment termination, and in the event that employment records are subjected to change, it is essential to complete the procedures within 60 days and report the record to the authorities. As for payment of employment or holiday pay, provided that wage is calculated and paid by monthly pay, daily pay, hourly pay, or duration not longer than one month, it is stipulated to make payment at least once a month unless there be an agreement providing otherwise for the sake of employees. As for the regulations, payment of the dividend from fish caught must be made within three months minimum per time but provided that employers are in default on payment or severance pay, they are subjected to paying interest at a 15% rate per year. In particular, if employers intend to be in default on severance pay in bad faith, they are subjected to punishment by an increased rate of 15% of the unpaid wage after the due date of 7 days in the inception of the due date and every other seven days. In the event that employers leave their employees stranded on account of the assigned work, employers are stipulated to pay their employees 50% of the minimum wage over time of being struck except that employers agree to pay more than the minimum rate, thereby using such rate as a basis of evaluation. Regarding holidays, employers are required to entitle their workers for at least a minimum number of 30 days or by mutual condense; meanwhile, workers are paid the minimum wage unless employers agree to pay higher than the minimum rate in accordance with the mutual agreement. Besides, if working on the annual holidays, workers must be paid at least one time higher than the normal pay. It is mandatory for employers to provide workers adequately and appropriately with basic supplies and facilities onboard (e.g., food, safe and sanitary drinking water, toilets, medications, and first aid kits). As for working safety, regulations make it mandatory for employers to, prior to work, provide their workers with essential knowledge of working conditions and training on the use of sanitary facilities, living onboard, and safety equipment.

This ministerial regulation is issued following Section 6, passage 1, and section 22 of the Labour Protection Act B.E. 2541, which is the subordinate law adopted to enforce marine fishery operations and expected by the Ministry of Labour that employers treat their fishing workers with equality and without exploitation of their workers both Thai and alien workers. Indeed, the objectives of such regulations are to control employers to fairly treat marine fishing workers and to increase the advantage to fishing workers.

Solutions to the Problems Under Fisheries Act B.E. 2558

Currently, Thailand has enforced the Fisheries Act BE 2558 (2015) and other measures to manage fishing marine workers; however, those laws, regulations, and measures seem obsolete and obscure, and some overlap with one another and lack specific classification. Besides, given the relevancy of the fisheries Act to the maritime labor convention B.E. 2550 (2007), the coverage of Thai laws, which have been brought in to protect marine workers, excludes fishermen not employed, self-employed fishermen, and freshwater fishermen. This is because the Thai laws do not offer precise definitions to cover all persons working on boats (e.g., boat owners, boat captains, fishing workers). Rather, the laws merely stipulate duties and responsibilities of certified employers and licensed fishermen (Royal Thai Embassy, Budapest, Hungary. 15 Jan 2016).

Due to the official warning given by the EU to the Thai government about the incompetent handling of slavery labor, Thai governments introduced measures and directives to protect illegal workers and cope with the exploitation of labor. Such measures include protection of fishing workers in both maritime and freshwater fisheries, collaboration with fishery labor networks, examination of the workplace of migrant workers and fishing entrepreneurs, the establishment of post-arrival and reintegration center for migrant workers, and provision of training on the rights of migrant workers. Furthermore, in October 2015, Thailand declared the Fisheries Act BE 2558 (2015) and it shall take effect after 180 days from the date of its publication in the government gazette. Such attempts to address the problems of migrant workers and human trafficking, on January 8, 2019, the EU overturned the yellow card having imposed on Thailand's fisheries, thereby allowing Thailand to take official responsibilities and express its roles as the flag state and flag market in the international level World Report, 2021.

Furthermore, meanwhile, General Prayuth Chan-Ocha's government also attempt to eliminate the fishing problems in Thailand, whereby on November 29, 2018, Pol Adul Sangsingkaeo, Ministry of Labour, has ratified the Fishing Convention, 2007 (No. 188) following International Labour Organization (ILO). The convention is intended to assure decent welfare and well-being for those working in fishing industries or related occupations, including the specified minimum hour of work at seas, proper working conditions, provided shelter, sanitary food, health safety protection, medical care provision, and social welfare. However, given the current laws, regulations, and measures enforced in Thailand's fisheries, they are unlikely to respond to Thailand's contexts and essence of the Convention (No.188) so effectively that Thailand's fisheries could comply with the international standards or anticipated turnover (Brennan, & Plambech, 2018).

CONCLUSION

To effectively implement the policies adopted by the government sectors and enterprises, address the perceived problems, protect workers in marine fisheries, and deter human trafficking, the recommendation proposed by the author is to amend the fisheries decree, BE. 2558 to comply with international human rights. To be more precise, it is recommended to apply outstanding attributes of the international standards and international laws so as to make them relevant to the Thai context and adopt mechanisms and strategic measures to control employment on fishing vessels. Besides, the protection of workers' benefits and welfare should make them comparable to social welfare or other types of business in case of illness or death. Particularly, wag must be accepted and agreed by both parties following the current situations. Furthermore, it is necessary to promote research projects to develop guidelines or measures corresponding to the lack of fishing workers and having an adequate workforce in marine fishing, thereby in the long term increasing productivity and the country's sustainable economic development. However, it is reminded

that to cope with labor-related problems in marine fisheries and human trafficking requires intensive cooperation with all related parties as well as stakeholders.

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