



Investigation Report

No. 192/2564

November 22, 2021

(Petition No. 45/2521)

Human Rights Watch's
31st Annual Review of Human Rights Practices
in The World Report 2021 in Reference to
The US Government Listing
Thai Fishing Industry in its
“List of Goods Produced by
Child Labor or Forced Labor”

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Subject: Human Rights Watch’s 31st annual review of human rights practices in the World Report 2021 in reference to the US government listing Thai fishing industry in its “List of Goods Produced by Child Labor or Forced Labor”

1. Background

The National Human Rights Commission has considered the World Report 2021 on the situation of human rights in Thailand of Human Rights Watch (HRW), which published its 31st annual review of human rights practices around the world. In 2020, it summarizes key human rights issues in 102 countries. On the human rights situation in Thailand, the report detailed 9 human rights situations between pages 654 – 661. On the issue of refugees, asylum seekers, and migrant workers, the report states that “Despite government-instituted reforms in the fishing industry, many migrants’ workers still face forced labor, remain in debt bondage to recruiters, cannot change employers, and receive sub-minimum wages that are paid months late.” The Thai fishing industry in its 2020 was on the “List of Goods Produced by Child Labor or Forced Labor.

According to the above findings of the situation, the National Human Rights Commission deems it appropriate to investigate the human rights violations under Section 26 (1) and (4) of the Organic Act on the National Human Rights Commission B.E. 2560.

2. Opinion of the National Human Rights Commission

The National Human Rights Commission as follows: (1) Government agencies: Ministry of Labor, Ministry of Social Development and Human Security, Ministry of Foreign Affairs, Department of Fisheries, Marine Department, Department of Rights and Liberties Protection, Anti-Human Trafficking Division, and the Labor Protection and Welfare Office in 9 provinces (Chumphon, Chanthaburi, Ranong, Phuket, Surat Thani, Songkhla, Prachuap Khiri Khan, Samut Sakhon and Rayong), which are coastal provinces with fishing industry and have

a high concentration of migrant workers; (2) Civil society organizations, consisting of the Labor Rights Promotion Network Foundation (LPN), the Migrant Workers Rights Network (MWRN), and the Civil Society Network on Migrant Workers and Labor in the textile industry in the northern region; (3) representatives of the Fisheries Association including the Thai Fisheries Justice Network Association, Samut Sakhon Provincial Fisheries Association, Trat Provincial Fisheries Association, Bang Saphan Fisherman's Association, Prachuap Khiri Khan Province and the Fisheries Association of Pattani Province; (4) Human Rights Watch (HRW) ; and (5) migrant workers in the fishing industry. The committee conducted an analysis of the aforementioned facts, and deliberated the information together with the provisions of the law and human rights principles and would like to address two issues as follows:

2.1 Does the Thai fishing industry use child labor and forced labor? If yes, how?

Considering that, in general, the problem of labor rights violations in the Thai fishing industry is a feature of the Labor Protection Act B.E. 2541 (1998), the Labor Protection Act in Fisheries B.E. 2562 (2019) and the Royal Ordinance on Fisheries B.E. 2558, the three laws are related and connected in terms of their enforcement. The nature of the problem arises is cases related to recruitment, employment contracts, preparation of seafarers' books, overtime pay, holiday pay and holiday overtime pay, welfare and benefits, holidays and breaks periods, change of employer or job description, workplace safety and health protection. These have been the issues that arise both in the case of working on fishing boats and in continuous operations.

On the use of child labor, the Labor Protection Act B.E. 2541 (1998) prohibits employers from employing children under the age of 15 as employees. In the case of employing a child under 18 years of age as an employee, the law requires employers to strictly adhere to the prescribed rules. In regards to marine fisheries, the Ministerial Regulation on Labor Protection in Marine Fisheries B.E. 2557 (2014) that is issued under the Labor Protection Act B.E. 2541 (1998) clearly states that employers are prohibited from employing an employee under the age of 18 to work on a fishing boat. The investigation found that the problem of child labor in the Thai fishing industry has decreased. In 2020, there was no information about offences on fishing boats. However, the problem remained in the fisheries and service sector. For example, the Labor Protection and Welfare Office in the Prachuap Khiri Khan Province found that employers were employing child workers under the age of 15 years and imposed underage workers, under the age of 18 years, working from 10:00 p.m. – 6:00 a.m. which is an offense under the Labor Protection Act B.E. 2541 (1998). The case is in the process of the Pak

Nam Pran Police Station or another case, which is under the Anti-Trafficking in Persons Division for human trafficking offense. Both cases were of exploitation of forced labor or services. In the one case, the victim is a girl of Cambodian nationality whose offender is not a Thai person. Investigation Officers are of the opinion that both cases should be filed and are currently underway.

On the use of forced labor, the Anti-Trafficking in Persons Act, B.E. 2551 (2008) and the Emergency Decree Amending the Anti-Trafficking in Persons Act B.E. 2551 (2008), B.E. 2562 (2019), define the nature of the elements, form, method of the offense as any of the following actions: (1) causing fear of danger to life, body, liberty, reputation or property of that person or that of others; (2) threats by any means; (3) using force; (4) confiscating the identity documents of that person; (5) unlawfully binding that person's or others' debt burden, and (6) using any other means similar to the aforementioned act.

The investigation, further, revealed that the problems in 2020 were more severe than forced or service labor but were of human trafficking nature. According to the Ministry of Social Development and Human Security, the Ministry assisted six victims of human trafficking in the form labor exploitation in fisheries. The Anti-Trafficking in Persons Division has also stated that one of the cases involved eight victims between the aged of 22 to 34 years. However, the offenses were committed by fishing boats of other nationality and the offender was not of Thai nationality.

On other forms of offence commitment, it was found that in the case of seizing identity documents of fishermen, including in 2020, no case appeared to have been brought to justice. Nevertheless, from listening to the facts of migrant workers, it still appears that employers, both the owner of the fishing boat and the captain of the ship, seized or kept employee's identity documents, regardless of whether the employee consented or not, and in most cases the employee had no choice but to submit their documentation This also includes financial documents such as bank books, cash cards, and personal information about migrant workers' financial transactions. In addition, the problem of seizing or retaining identity documents of employees also affects the use of freedom of movement for migrant workers. This is because employees must seek for permission to obtain their identity documents when traveling to different areas.

ILO's Special Action Program to Combat Forced Labor (SAP-FL) developed a "Forced Labor Indicators" based on the definition of "Forced Labor". With this indicator for forced

labor, the International Labor Organization Convention No. 29 on Forced Labor, 1930, stipulated eleven indicators in order to identify persons who may be in a forced labor situation and need assistance, namely: (1) violations due to vulnerability of vulnerable workers (2) deception (3) restriction on freedom of movement (4) social isolation (5) physical and sexual violence (6) coercion and intimidation, (7) seizure of identity documents, (8) failure to pay wages, (9) debt bondage, (10) deteriorating working and living conditions, and (11) long overtime hours.

When considering the indicators with the national law, it was found that certain characteristics, forms or methods according to the indicators were not considered a direct offense of forced labor under the Anti-Trafficking in Persons Act B.E. 2551 (2008), but are an offense under the Labor Protection Act, B.E. 2541 (1998), Labor Protection Act in Fisheries B.E. 2562 (2019) or the Royal Ordinance on Fisheries B.E. 2558 (2015). For example, the issue of non-payment of migrant workers working on fishing boats that has emerged from an investigation by the National Human Rights Commission. The investigation revealed that an employer who owns a fishing boat in Rayong owes wages to nine Cambodians for approximately 16 months.

In such a case, it is an offense under the Labor Protection Act B.E. 2541 (1998); it does not constitute an offense of forced labor. The Labor Inspector at the Rayong Labor Protection and Welfare Office examined and ordered the employers to pay the accrued wages to civil society organizations in the area to assist migrant workers. However, the employers still have not paid the wages consequently filing a lawsuit with the Labor Court Region 2 (Rayong Branch) which is currently being considered by the court. From these cases, it is visible that when considering the facts of occurrence with the Forced Labor Indicator, there are still instances of crimes that are considered forced labor in the Thai fishing industry.

2.2 Has the government, in particular, relevant government agencies, taken any action to address the problem of child labor and forced labor in the Thai fishing industry? If yes, how?

When considering child labor, forced labor and other forms of labor rights violations in the Thai fishing industry, it is considered part of the problem of illegal, unreported and unregulated fishing (IUU Fishing). Overall, the government has continuously solved such problems since 2015, both in terms of policies and laws, such as the enactment of the Emergency Decree Amending the Anti-Trafficking in Persons Act B.E. 2551 and B.E. 2562 to

specifically define only the offenses related to forced labor or service as enacted in the Labor Protection Act in Fisheries B.E. 2562 (2019) in order to protect the rights of fishermen and prevent forced labor in fisheries, etc. On the other hand, there are preventive measures in terms of labor preparation building understanding of the private sector, such as encouraging entrepreneurs to adopt the Good Labor Practices (GLP). At the same time, there is a systematic process of protection for victims of labor rights violations and serious prosecution to demonstrate their commitment to resolving the issue and to build cooperation among network partners, which presents the facts as clarified by the relevant government agencies. The agencies that provided clarification to the National Human Rights Commission included the Ministry of Labor, Ministry of Social Development and Human Security, Ministry of Foreign Affairs, Department of Fisheries, Marine Department, Department of Rights and Liberties Protection and the Anti-Trafficking in Persons Division. Although the above actions will not completely end child labor and forced labor but there have been advances in terms of prevention, deterrence and elimination, as well as, tougher enforcement processes, according to the statements and opinions of fisheries associations and civil society organizations. Although there are still problems with labor in the Thai fishing industry, however, government agencies have demonstrated that they aim to protect fishermen from being exploited more than ever.

In addition, the government has integrated measures to solve the problem of child labor and forced labor in the fishing industry and in other industrial sectors, especially, sectors with large number of migrant workers such as in cane and sugar industries. This is considered a systematic approach to correction and prevention, which will prevent the same problem from occurring in other industries. These facts emerged from the clarification of the Rights and Liberties Protection Department based on the implementation of the National Action Plan on Business and Human Rights, Phase 1 (2019 - 2022) for the labor action plan.

On government action toward the US Department of Labor which has placed two items of goods, namely fish and shrimp, manufactured in Thailand on the List of Goods Produced by Child Labor or Forced Labor, including the fishing industry, it was found that the government and relevant agencies have a policy to specifically address such problems, especially from 2020 to 2021, with the Ministry of Labor as the main agency. In 2021, a sub-committee has been established to monitor and collect data on the prevention and resolution of child labor and forced labor in industries producing shrimp, fish, sugarcane and clothing products under the

National Committee for the Elimination of Worst Forms of Child Labor which is responsible for defining the framework, form, and preventive practices.

It also put in place important policies to take measures to remove items from the inventory of goods produced by child and forced labor with the goal of removing at least one item by 2022.

In doing so, there is integration between government agencies, the private sector and civil society organizations, including collaborating with the United States through the State Department by the Office of International Labor. The US Department of Labor has clarified the guidelines for removing Thai fishing industry products from the inventory of child and forced labor under the aforementioned guidelines.

3. Recommendations of the National Human Rights Commission

The National Human Rights Commission considers that in 2020, there are still facts about child labor and forced labor in the Thai fishing industry that deem a human rights violation. However, the government and relevant government agencies have taken steps to address the issue and continue to halt and eradicate child labor and forced labor, as well as, removing Thai products from the List of Goods Produced by Child Labor or Forced Labor.

However, the use of child labor and forced labor in the Thai fishing industry is an ongoing and widespread human rights issue, particularly among the large numbers of migrant workers. Therefore, in order to solve the aforementioned problems systematically, it is deemed appropriate to recommend measures or guidelines for the promotion and protection of human rights to the Council of Ministers in accordance with the Constitution of the Kingdom of Thailand B.E. 2560, Section 247 (3) and the Organic Act. 2017, Section 26 (3) in conjunction with Section 42 and to consider assigning relevant agencies as follows:

1. The National Fisheries Policy Committee, National Committee for the Elimination of Worst Forms of Child Labor, Ministry of Labor, Ministry of Social Development and Human Security, Ministry of Agriculture and Cooperatives, National Police Agency and relevant government agencies must strictly enforce the law on child labor and forced labor without discrimination as well as regularly review the guidelines and train personnel working on the above operations. The aforementioned guidelines should bring the "Forced Labor Indicators" of the ILO's Special Action Program to Combat Forced Labor (SAP-FL) to use as the basis for an initial assessment or classification of whether workers who are in a situation where they are at risk of being forced to labor. At the same time, the above measures must also

be adjusted to accommodate other complications in order to prevent gaps leading to child and forced labor, especially during the coronavirus outbreak in 2019.

2. The Ministry of Labor must be the main agency of integration between government agencies, private entrepreneur and civil society organizations to raise awareness about the prevention of child labor and forced labor and develop a common complaint mechanism about such issues so that victims or witnesses can easily access them in the language that is understandable and appropriate for each individual. Additionally, a central database system that is linked with all relevant agencies should be established for the benefit of protecting, supporting and treating of victims of the above problems.

3. The National Committee must eliminate harsh forms of child labor, provide opportunities and encourage NGOs and civil society organizations to play a role in investigating the issue of child labor and forced labor in the fishing, sugarcane, garment industries, and other industries in addition to the inspection from government agencies. Meanwhile, such sectors should be involved in presenting information on the causes of problems and/or solutions where Child Labor or Forced Labor lists Thai products in the List of Goods Produced.



Office of the National Human Rights Commission of Thailand

The Government Complex Commemorating His Majesty
The King's 80th Birthday Anniversary, 5th December, B.E.2550 (2007)

Building B, 6th and 7th Floor
120 Moo 3 Chaengwattana Road, Thungsonghong,
Lak Si District, Bangkok 10210 ,Thailand
Tel.: +66-2141-3800, +66-2141-3900

E-mail: help@nhrc.or.th