



THAILAND

Hotspot report

April 2023



All images depict the Fishing industry in Samut Sakhon, Thailand.
Photo credit: Jittrapon Kaicome/The Freedom Fund

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BACKGROUND

Since 2015, the Freedom Fund has been partnering with Humanity United on a program to address forced labour in seafood supply chains in Thailand. In 2020, the focus of this partnership broadened to encompass multiple countries in the Asia-Pacific region through grants supporting national, regional, and global programs. Our collaboration continues to enable the work of local grassroots partners through the Freedom Fund's hotspot model, which operates in Thailand and Indonesia, whilst simultaneously engaging across the supply chain, policy and governance spheres with retailers, suppliers, multi-stakeholder initiatives, international NGOs, and governments to effect change. This report largely focuses on the Freedom Fund's hotspot work with local NGO partners in Thailand, although some of the work undertaken at the regional level linked to Thailand is highlighted here as well.

Thailand is one of the top five seafood producing countries worldwide, with exports reaping over USD \$6.6 billion in 2019. But the profitable industry supplying consumers around the world with cheap seafood comes at a high cost to both the environment and to workers.

The overwhelming majority of workers in Thailand's fishing and seafood processing industries are migrants from Myanmar, Laos and Cambodia. Labour brokers recruit from vulnerable communities, promising favourable employment in the construction, manufacturing, or agricultural industries. Migrants often incur debt from recruitment fees and costs associated with transportation and securing employment in Thailand. These debts are paid off through deductions from workers' earnings, with employers and brokers frequently using debt manipulation to inflate the amounts and force people into bonded labour.



OPERATING CONTEXT

Covid-19 and immigration policies

With the reduction of covid-19 cases in May 2022, Thailand's covid-19 restrictions have gradually been relaxed. The Thai government announced it was normalising business operations and travel requirements from 7 June 2022 onwards. Consequently, immigration policies and procedures have also changed to allow cross-border migration and cross-province travel.

A labour shortage has arisen in Thailand due to covid-19, immigration policies and the coup in Myanmar. The Thai government introduced a government-to-government MOU system for recruiting migrant workers in 2018 and implemented cabinet resolutions in 2020 and 2021 to: 1) allow the renewal of documents for migrant workers to stay in the country and work until 13 February 2023; 2) open the annual registration program (also known as the amnesty program) to undocumented workers; 3) allow automatic extension of MOU workers from 4 years to 6 years; 4) re-activate the border employment scheme. However, the costs and time required to use the MOU recruitment process have contributed to an increase in irregular migration and the use of often exploitative brokers.

Impact on fishing sector

In 2022, the shortage of fishery workers, together with rising oil prices, affected the seafood sector in both Samut Sakhon and Pattani. An increasing number of vessels were unable to operate, leading to decreasing quantities of fish and aquatic animals for pre-processing workers to sort. As a result, both fishery and seafood processing workers reported difficulties in making ends meet. Meanwhile, vessel owners were increasingly relying on broker networks due to difficulties in recruiting fishery workers via official channels. Many employers even let the broker take responsibility for all migrant worker management, including wage payment and document withholding. This significantly increased workers' vulnerability to debt bondage.

National Referral Mechanism

The government announced a new National Referral Mechanism (NRM) on 8 April 2022, with the stated aim of streamlining the victim identification and referral process. The impact of the new NRM is not yet clear, and partners will continue to monitor the situation and respond as appropriate.

PROGRESS TOWARDS SYSTEMS CHANGE

Policy/legislative change and political will

Strategic litigation led by Freedom Fund partners establishes that a Thai recruiter who placed Thai workers on an overseas fishing vessel is considered an employer under labour law and can be held liable to pay wages and costs

A number of Freedom Fund partners assisted in bringing a legal case that led to a new precedent being set in Thailand where a recruitment agent that controlled many employment and working conditions of fishers has been ruled to be an employer and is therefore liable for damages and unpaid wages.

The case dates back to 2019, when two Thai ships, with a total of 32 Thai crew members, were abandoned by their employers off the coast of Bosaso, Somalia. A Thai man, Mr Nithiwat, had acted as the recruitment agent for the men and sent them to the vessels. The men suffered from lack of food and water, and were not paid for their work. The crew received help from Thai government agencies, including the Ministry of Labour, the Department of Consular Affairs, and the Ministry of Foreign Affairs, and from Freedom Fund partner Stella Maris. After returning to Thailand in August 2019, the crew members asked for assistance from Freedom Fund partners Stella Maris, Human Rights

and Development Foundation (HRDF), and SR Law to help them pursue a case against Mr Nithiwat and obtain compensation for damages incurred. All three partner organisations working on the case coordinated on fact-gathering and interviewing the crew.

In December 2019, HRDF and SR Law, representing the 32 crew members, filed a case to the Labour Court to claim unpaid wages and costs of 9,381,913 Thai baht (approximately USD \$250,000). In 2022, the court ruled that the defendant (Mr Nithiwat) met all the requirements of being an employer and therefore is liable to pay the wages, holiday pay, shared remuneration, and costs of repatriation to Thailand to the 32 plaintiffs. The court ordered the defendant to pay a total amount of 9,034,059 baht plus interest (charged at 15% per annum from August 2019) until the award is paid in full to all 32 plaintiffs.

After the court ruling, HRDF joined with other hotspot partners to develop draft guidelines on assistance to Thai fishery workers on distant water fleets. The draft guidelines were presented to the Ministry of Labour.

Draft Act on the Operations of Not-for-profit Organisations

A new Draft Act on the Operations of Not-for-profit Organisations has been developed by the Thai government. Civil society organisations (CSOs) throughout Thailand have opposed the draft Act. In May 2022, the Thailand hotspot joined a dialogue between the Seafood Working Group (coordinated by Humanity United and Freedom Fund partner Global Labour Justice - International Labour Rights Forum) and the Permanent Secretary of Thailand's Ministry of Social Development and Human Security, to advocate for the withdrawal of the draft Act. During the dialogue, the Freedom Fund highlighted the role of CSOs in providing direct services to victims of human trafficking and the role of CSOs in supply chain monitoring and transparency as well as in combating illegal, unreported and unregulated (IUU) fishing. After engagement from partners, industry bodies such as the Seafood Task Force also reiterated a similar message on the importance of civil society.

The Draft Act on Operations of Not-for-profit Organisations has now been deprioritised by the government.

Government performance

Advocacy to improve labour protections in fishing

The Freedom Fund's advocacy partner, the Migrant Working Group (MWG)¹, continued to undertake research and advocacy concerning the Thai government's implementation of laws and policies relevant to fishers' and workers' rights under the ILO Work in Fishing Convention (No. 188, 2017). The group's shadow report was presented to the Thai government and shared with the media on International Migrants Day.

As part of our work to monitor and oversee the implementation of labour reforms in the fishery sector, the Freedom Fund, MWG and another partner, the Environmental Justice Foundation, participated in a Flying Inspection Team observation of the Port-In and Port-Out (PIPO) inspection process. MWG and the Freedom Fund held a number of policy dialogues to share findings with relevant government departments including the Department of Labour Protection and Welfare, and undertook follow-up advocacy on issues including the steps PIPO officials should take in relation to labour cases and on referring relevant cases for criminal prosecution. The Freedom Fund also presented evidence relating to likely forced labour cases in fishing that had not, as yet, been recognised and investigated properly by PIPO officials. Following on from this, in early 2023 the Department of Labour Protection and Welfare issued Regulations on Labour Inspection and Criminal Prosecution against Offenders. These regulations fall underneath the broader Ministerial Regulation on Labour Protection in Sea Fishing Work that were issued in 2022.

1 All partners are members of the Migrant Working Group.

Business performance

Shift towards responsible recruitment practices, reducing costs and debts for workers

Thai shrimp and tuna processing companies continue to improve recruitment practices. In 2022, the Thai Tuna Industry Association and Thai Frozen Foods Association officially recommended that their members adopt the 'Employer Pays' principle² to reduce recruitment costs and debts of workers. The recommendation follows advocacy from Freedom Fund partners separately and as part of the CSO Coalition on Ethical and Sustainable Seafood, and from work undertaken by the associations with the ILO's Ship to Shore Good Labour Practices Program.

It also follows on from the On The Level program, run by the Fair Hiring Initiative and funded by the Freedom Fund and Humanity United, which worked with shrimp processing companies and recruitment agencies to make practical changes to their recruitment policies and practices. Whilst this work was interrupted during the pandemic, it has now resumed, with both companies and recruitment agencies taking steps to improve their practices. Additionally, the On The Level program is being expanded to address recruitment issues related to fishing vessels as well - working to change and improve recruitment practices of both agencies and companies sending and employing Indonesian and Filipino fishers on the Taiwanese tuna distant water fleet.

Strategic litigation and media coverage highlight problems with social audits

A case managed by a Freedom Fund partner and referred by the Freedom Fund to the UK human rights law firm, Leigh Day, was reported in a front-page article in The Guardian newspaper. The significance of the case is that, for the first time, an auditing company that verified conditions in a Tesco supplier factory in Thailand is being sued for negligence as their report did not find any issues with wages or overtime. However, large issues of withholding and underpayment of wages and unpaid overtime were present, along with other worker rights violations. A series of articles was published in The Guardian, including one with a quote from Freedom Fund program advisor Roisai Wongsuban, raising public and company awareness of the need to improve monitoring and remediation of worker grievances in global supply chains. The media coverage and legal case highlight the problems with audits, in particular that they often fail to identify labour rights abuses - in contrast with models that have more involvement of and trust from workers, such as worker-driven social responsibility models.



2 No recruitment fees are charged to or paid by workers.

HOTSPOT OUTPUTS AND OUTCOMES

Headline results

- **1,793 new workers joined worker groups or community networks** that provide support and assistance in relation to ensuring labour and human rights at the workplace.
- **Partners supported worker leaders and worker groups to negotiate with employers** in a number of cases, affecting the working conditions of over 1,000 workers directly. In one case highlighted below, a partner worked together with fishers to approach and obtain collective bargaining agreements with 40 vessels in Pattani port.
- **Partners assisted with 286 legal cases** relating to labour law (wage withholding, non-payment of benefits), migration, document retention, forced labour and other legal issues.
- **2,779 individuals were provided with social or legal services**, 18 of whom were identified as victims of forced labour and/or human trafficking (although the actual number may be higher).
- **324 workers gained access to government services** that will enable them to receive greater support.



PROGRESS TOWARDS HOTSPOT OBJECTIVES

Hotspot Objective 1: Seafood workers have better access to sustainable and effective civil society and worker organisations, providing a pathway for collective action and assistance

Partner civil society organisations all worked towards strengthening their organisations during the reporting period. In the reporting period, the Foundation for Education and Development (FED), Raks Thai Foundation (RTF) and Stella Maris all completed the Organisational Capacity Assessment (OCAT) with the Freedom Fund and developed their own plan for addressing gaps they identified. The Freedom Fund has provided the funds for these organisations to implement their plans. The Labour Rights Foundation (LRF) – set up by the Migrant Worker Rights Network (MWRN) to be its legally registered arm in Thailand – did not undergo an OCAT assessment as they are being provided with more specific organisation-building support.

The Freedom Fund also worked to ensure hotspot partners were learning skills to help them improve services and outreach to workers. In particular, we focused on strengthening partners' understanding of collective worker mechanisms that can be used to help challenge working conditions and common labour rights violations. In June 2022, a special partner meeting was held in Mae Sot to allow partner staff to explore concepts of worker and community organising, and different forms of worker organising that can be undertaken depending on the experience of the partner and the context. Partners had the opportunity to discuss directly with workers who have experience of organising, to learn how worker organising can truly empower workers. With specialist input, partners were assisted to review their strategy on community and worker organising and consider whether adjustments were needed.

Additionally, MAP Foundation, a former hotspot partner with wide experience in organising migrant workers, provided technical advice and support to partners during the year, particularly to FED on worker organising. Technical assistance was also provided to RTF, including a review of the organisation's vision on worker empowerment and advice on how to translate the concept of association and collective bargaining into project interventions. RTF staff applied workplace analysis tools such as employer analysis, factory mapping and workers' migration journey. In Pattani, workplace mapping helped workers identify key demands to make to vessel owners and employers, starting a negotiation that led to a successful outcome (see more details below). In Samut Sakhon, staff used the tools to help them successfully settle a dispute between an employer and employees.

The Freedom Fund also worked with partners to review and, where necessary, strengthen safeguarding policies and processes. All partners now have a safeguarding complaint mechanism in operation.

Hotspot Objective 2: More seafood workers are empowered to organise, claim rights, and demand decent working conditions

In this reporting period, more seafood and fishing workers have learned the concept of worker organising and were empowered to access different legal pathways to claim their rights.

Raks Thai Foundation

Following on from the Freedom Fund training mentioned under Objective 1 above, RTF drew on the learning and specific tools to make significant progress on collective bargaining with vessel owners. RTF and fishers have been able to reach collective agreements with 40 vessel owners in Pattani port and secure their agreement to monthly electronic payment of fishers, provision of employment contracts, and other improved conditions. Whilst these conditions are a legal requirement, vessel owners rarely implement the law and are seldom held accountable by government officials for lack of implementation, so this engagement and agreement is significant progress that will have a real impact on fishers' lives. These collective agreements will affect between 800 to 1,200 fishers. Unfortunately,

lack of oversight and enforcement of laws and processes is common, meaning that whilst good progress has been made on paper, the reality for many fishers is different. Partner organisations like RTF and worker groups play a pivotal role in helping workers ensure they get the rights they are entitled to but often struggle to access.

In relation to factory work, RTF has been working to improve workers' understanding of their rights and of the benefits of collective action. In December 2022, several worker leaders that RTF had been working with raised the issue of non-payment of severance benefits. The worker leaders collected all the relevant information from the workers and, together with RTF, filed a complaint directly to the Department of Labour, demonstrating their confidence in claiming rights on behalf of workers.

Additionally, RTF worked with three migrant groups with 65 active members in migrant communities. These groups were initially formed to provide social support and charitable assistance to migrants in their communities. RTF provided training on labour rights and other relevant topics to the groups to improve their knowledge and build their confidence in bargaining and negotiating with employers. Some of these members participated in the collective bargaining mentioned above with vessel owners.

The Sapa Café initiative designed by RTF—an initiative where worker leaders meet with government and employers—continued to be used as a platform for discussion and a space for migrant groups to voice their concerns. RTF has amended its approach to enable an inclusive environment for discussion, by holding two different meeting sessions: one for workers to raise issues to government officials without fear of retaliation from employers, and one between government and employers directly.

Foundation for Education and Development

During the year, with advice and mentoring from MAP Foundation, FED began to reach out and organise workers at the Tuna Paradise factory. Nineteen workers from the factory (10 male, 9 female) were trained in the concept of worker organising. After the first training session, workers expressed their willingness to participate in more FED training and eventually formed a workplace-based worker group. FED will work with the group to build trust and provide training to leaders.

FED's worker organising start-up activity is a significant achievement within the hotspot program - demonstrating that it is possible to empower workers to organise themselves even under the constraints of Thai law and workers' fear of their employers, and thereby contributing incrementally to improvements in working conditions for migrant workers in Thailand. International partner Global Labour Justice - International Labour Rights Forum (GLJ-ILRF) has also agreed to support FED in their efforts to organise workers, and other funders are interested in supporting FED to continue its work building worker collective action.

Labour Rights Foundation / Migrant Worker Rights Network

During 2022, LRF/MWRN continued to help train and ensure democratic election of worker welfare committees, and to promote worker organising both within the workplace and outside of the workplace at the community level. They continued to focus on expanding their worker association membership, with hundreds of new migrant workers joining the MWRN network.

Stella Maris Songkhla

Stella Maris Songkhla has recruited 45 fishing crew members as volunteers after conducting occupational, health and safety training. These volunteers act as informal community representatives and as a bridge between the work and information provided by Stella Maris and the fishing communities to which the volunteers belong.

Hotspot Objective 3: Government and private sector are more responsive to the rights of migrant workers, particularly in relation to improving safer migration and freedom of association and implementing laws/policies/systems to reflect this

As noted above under 'Progress towards systems change', local partners together with international partner Environmental Justice Foundation and advocacy partner MWG participated in monitoring the operations of Port-In and Port-Out operations and provided feedback. Additionally, MWG has continued to monitor implementation of local laws and policies relating to implementation of the ILO Work in Fishing Convention.

For the eighth consecutive year, the Seafood Working Group (SWG; coordinated by international partner GLJ-ILRF) made submissions to the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (TIP Office) for their 2022 Trafficking in Persons report (TIP Report). In order to produce the submissions, GLJ-ILRF held consultations with all Thailand hotspot local partners, UN agencies, unions, groups of workers, and other experts. The SWG then hosted an online briefing for the TIP Office and U.S. Embassy representatives on forced labour in the Thai seafood sector, during which GLJ-ILRF and partners presented findings and recommendations from the SWG submissions to the TIP Report and had an active and engaging discussion with U.S. government officials on the issues. In addition, the SWG hosted a public event which brought together trafficking survivors, unions and frontline organisations (including hotspot partner LRF/MWRN), and international experts to share findings and recommendations from the submissions to the TIP Report. The event was attended by more than 100 participants, including representatives from multiple U.S. government agencies (State Department, Department of Labour, National Oceanic and Atmospheric Administration), local CSOs, unions, and the media. When the 2022 TIP Report was released, announcing that Thailand had been upgraded to Tier 2, the SWG put out a statement to communicate disagreement with the rankings, stating that the U.S. government had given a pass to widespread worker abuses in the seafood sector. In Thailand, the SWG met with hotspot partner organisations to develop an advocacy plan to urge the government to implement the recommendations made in the TIP Report submissions, and the SWG was invited to present its findings and recommendations to the Ministry of Social Development and Human Security.

In early 2022, local partners organised an information exchange between themselves, international partners and the business sector on recruitment and access to covid-19 vaccines and other support mechanisms for migrant workers. Partners also used social media platforms such as Facebook to inform migrant workers about national and provincial government statements, regulations, and updated information regarding covid-19, social security compensation, and more.

Despite labour shortages, the government required migrant workers with expired MOU worker permits to return to their countries of origin and to remigrate³. Advocacy partner MWG advocated to the government about this policy and made recommendations⁴. Later in the year, the government changed its position to allow legal/MOU migrant workers from Myanmar, Cambodia and Laos who had been working in Thailand for four years to stay until 2024 after their current work permits expire⁵.

During 2022, due to the difficulty in hiring workers via the MOU process, many seafood processing and fishery companies started to recruit migrant workers who were already living in Thailand. Whilst many companies have focused on improved, responsible and transparent recruitment of workers from Myanmar, these processes were not necessarily applied when recruitment was happening within Thailand. This meant that unauthorised recruitment agencies and brokers in Thailand took advantage of vulnerable migrant workers already based in Thailand, often tricking them into paying fees that were not required. All Freedom Fund partners have been working with migrant workers who have been affected by these deceptive practices.

3 <https://www.mwgthailand.org/en/press/1643167780b>

4 <https://www.mwgthailand.org/en/press/1643167780>

5 <https://www.thaipbsworld.com/applause-for-allowing-migrant-workers-to-stay-on-in-thailand/>

Hotspot Objective 4: More seafood workers most vulnerable to or affected by forced labour are able to access legal and social services, enabling them to seek redress

Overall, Freedom Fund partners assisted with 286 legal cases from different sectors including land and sea-based fishery workers. Partners managed a broad range of cases relating to fishing and seafood workers, including cases relating to labour rights (such as wage withholding or non-payment of benefits), migration, document retention, forced labour and other legal issues.

During the year, Stella Maris built the confidence of workers to access legal pathways to claim their rights from employers and seek protection from law enforcement officials, by coordinating their concerns and supporting their cases. A significant example is a case involving 41 Thai fishery workers who were returned from Malaysia as irregular migrant workers. With assistance and support from Stella Maris, the workers were recognised as potential victims of trafficking in persons by Thai authorities and supported to access the criminal justice process in Thailand to claim their rights. The Thai Central Police arrested 11 alleged offenders including the employer, captain, and brokers in connection to the case. Although the employer was released on bail, the Anti-Money Laundering Office was able to impound 8,000,000 Thai baht from brokers. Stella Maris and the police are planning to expand the investigation across the supply chain.

Another local partner, RTF, identified a case of human trafficking for forced labour in the fishery sector and has been working with the public prosecutor and the survivor to pursue the case. Our international partner, the Environmental Justice Foundation, has also assisted in a number of cases in Thailand.

SUPPORTING A COMMUNITY OF PRACTICE

In 2022, the Freedom Fund continued to use online and virtual platforms to share learning among partners. We organised a series of learning webinars on various topics suggested by partners: worker organising and lessons from migrant worker leaders; a separate presentation on strategies and successes in worker organising; online training on report writing and on financial reporting.

In June 2022, the Thailand hotspot held its first in-person Community of Practice meeting with partners in Mae Sot since the covid-19 outbreak in 2019. This meeting aimed to facilitate partner learning on worker organising from worker organisations in Mae Sot. This supported partners to put lessons learned on worker organising into practice in their respective locations. GLJ-ILRF was also invited to observe the Community of Practice meeting between RTF, FED, Stella Maris and LRF/MWRN, and to deliver a presentation on different models of worker organising.



CASE STUDY

Fishery worker group successfully negotiates for improvements to wage payment system

Delayed, inaccurate and unfairly deducted wage payments is a long-standing issue faced by migrant workers in the Thai fishery sector. Most vessel owners/employers claim that as fishing vessels do not have a consistent operating schedule, it is more 'practical' to pay fishery workers a lump sum on an annual basis, while advancing petty cash to them in the meantime if needed. However, this approach has a number of drawbacks for workers, including financial insecurity as they have to rely on handouts from petty cash throughout the year, and confusing and inaccurate annual wage calculations. In particular, it creates the potential for unfair wage deductions, such as for documentation fees, and could eventually lead to debt bondage. In many cases, exploited workers found it difficult to trace back and prove whether their annual wages were in fact lower than their alleged debt. They consequently ended up either having to pay off their alleged debt, or not being able to change their job and having their documents withheld until they had repaid the debt.

This long-standing issue was impressively addressed through the collective efforts of a group of Pattani-based fishery workers called the Fishery Network. Consisting of a total of 22 fishery workers and crew chiefs, the Fishery Network was founded with the aim of increasing fishery workers' bargaining power to claim their rights. The group was supported by Freedom Fund partner RTF to conduct a problem analysis to identify the issues they wanted to focus on, and to develop plans to address these issues.

Since May 2022, the Fishery Network has been negotiating with around 40 vessel owners, requesting them to change their payment method to monthly payments. The Network also asked the employers to follow the regulation regarding a maximum 10% monthly wage deduction for documentation fees. They argued that paying monthly while having a ceiling of 10% for documentation fees would benefit employers as it would be a more manageable system than annual wage calculations. They also argued that, given the current challenges for employers in recruiting enough fishery workers, the employers would gain a reputation among migrant workers for being responsible and fair, which would help them with recruitment.

As a result of these negotiations, the employers agreed to change their practices. After a trial period, they provided positive feedback about the advantages of the monthly payment system. Fishing workers also reported improved financial security and increased satisfaction with their employers. This successful negotiation between the Fishery Network and the employers can thus be considered a win-win for both sides.

The Fishery Network now plan to expand to cover more fishery workers in Pattani, aiming to create unity among all of them. They believe that strengthening unity and solidarity among fishery workers will enhance the Network's power when negotiating with employers and help them achieve long-lasting change not only for themselves but also for all fishery workers.





VISION

Our vision is a world
free of slavery.

MISSION


Our mission is to mobilise the
knowledge, capital and will
needed to end slavery.

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