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WITH



AND

HRWG

SBMI

A STUDY ON HUMAN RIGHTS VIOLATIONS
OF VESSEL CREWS IN SOUTHEAST ASIA:

OMISSION OF MODERN SLAVERY



ORGANIZATIONS' PROFILES

GREENPEACE

Greenpeace Indonesia

Greenpeace opened its Indonesian office in 2005 and built its campaign focus on several issues, namely forestry, energy, urban, and ocean issues. Greenpeace Indonesia's Ocean Campaign has been running since 2013. Ending overfishing and illegal, unreported and unregulated fishing (IUU fishing) is the focus of Greenpeace Indonesia's campaign which is part of the global campaign to save the oceans from the effects of climate change, pollution, and destructive fishing. Greenpeace exists because this fragile earth needs a voice. Needs solutions. Needs change. Needs action.



SBMI

Serikat Buruh Migran (SBMI)

Serikat Buruh Migran Indonesia (SBMI) or The Indonesian Migrant Workers Union is an organization of migrant workers and their family members. Founded on February 25, 2003. Previously it was named the Federation of Indonesian Migrant Workers Organizations (FOBMI). It was initiated and nurtured by the Consortium for the Defenders of Migrant Workers (KOPBUMI) since 2000 through the forerunner of an organization called the National Network for Migrant Workers. SBMI is the antithesis of the bad condition of the many problems faced by Indonesian migrant workers. SBMI was later recognized as a Labor Union since 2006. The vision of SBMI is the realization of dignity, gender equality and welfare for Indonesian Migrant Workers (BMI) and their families.

HRWG

Human Rights Working Group (HRWG)

The Human Rights Working Group (HRWG) is a working group of Indonesian Non-Governmental Organizations (NGOs) for international human rights advocacy, consisting of more than 48 non-governmental organizations working to promote human rights in Indonesia. HRWG was established in 2003 with the aim of promoting government accountability on constitutional obligations and international standards to respect, protect and fulfill human rights in Indonesia by maximizing human rights mechanisms available at different levels at the United Nations (UN), Organization of Islamic Cooperation (OIC) and Association of Southeast Asian Nations (ASEAN).

French purse seiner vessel Trevignon hauls a catch of skipjack and yellowfin tuna associated with a fish aggregating device (FAD) in the Mozambique Channel. Greenpeace is on patrol documenting fishing activities in the Indian Ocean.



PREFACE

The authors express their **deepest** gratitude to God Almighty who has given the opportunity to complete this “Study on Human Rights Violations of Vessel Crews in Southeast Asia Omission of Modern Slavery”. In addition, the authors also thank the colleagues from Greenpeace and the Indonesian Migrant Workers Union (SBMI) who encouraged the authors to write this study and also for taking the time and providing many valuable inputs so that this study can be completed properly.

The omission of modern slavery is something that continues to happen and many actors at the national and regional levels are actually responsible for it. This study aims to explore various aspects of vulnerability experienced by crew members that are potential to result in human rights violations. The study is then divided into several parts, namely: transnational organized crime and its relation to business and human rights, an analysis of several countries in Southeast Asia, namely Indonesia, Thailand, Singapore, Malaysia, and Vietnam, as well as a map of vulnerability and

potential human rights violations and ends with conclusions and recommendations.

Apart from a number of limitations, especially the time and available resources (especially during the pandemic), this study was made as complete as possible with the hope that it can be a catalyst for the massive protection efforts of the human rights of migrant crew members and side with the victims and their families both at the local level and at the national as well as regional level. No one may be enslaved. Slavery and the slave trade are prohibited in all its forms.

The authors are always open to criticism and suggestions from fellow readers as well as further discussion related to this topic. In the end, the author hopes that this study can provide benefits in our joint efforts to eradicate modern slavery that continues to occur.

Jakarta, 15th March 2022

Authors

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GLOSSARY

ABK	<i>Anak Buah Kapal/Vessel Crew</i>	Kementerian PPPA	<i>Kementerian Pemberdayaan Perempuan dan Perlindungan Anak/ Ministry of Women Empowerment and Child Protection</i>
ACMW	ASEAN Committee on Migrant Workers	Kemlu	<i>Kementerian Luar Negeri/Ministry of Foreign Affairs</i>
ACTIP	ASEAN Convention Against Trafficking in Persons, Especially Women and Children	Kemnaker	<i>Kementerian Ketenagakerjaan/ Ministry of Manpower</i>
AFML	ASEAN Forum on Migrant Labour	KKP	<i>Kementerian Kelautan dan Perikanan/ Ministry of Marine Affairs and Fisheries</i>
AICHR	ASEAN Intergovernmental Commission on Human Rights	Komnas HAM	<i>Komisi Nasional Hak Asasi Manusia/ National Human Rights Commission</i>
ASEAN	Association of Southeast Asian Nations	MLC	Maritime Labour Convention
BNP2TKI	<i>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia/National Agency for Placement and Protection of Indonesian Migrant Workers</i>	MSO	Merchant Shipping Ordinance
CCPCJ	The Commission on Crime Prevention and Criminal Justice	PBB	<i>Persatuan Bangsa-Bangsa/ United Nations</i>
CSO	Center for Sustainable Ocean Policy	Permen	<i>Peraturan Menteri/Ministerial Regulation</i>
CTA	Cape Town Agreement on Safety of Fishing Vessel	PSMA	Port State Measures Agreement
DOE	Department of Employment	RPP	<i>Rancangan Peraturan Pemerintah/ Draft Government Regulation</i>
DUHAM	<i>Deklarasi Universal Hak Asasi Manusia/Universal Declaration of Human Rights</i>	SBMI	<i>Serikat Buruh Migran Indonesia/ Indonesian Migrant Workers Trade Union</i>
ECHR	European Convention on Human Rights	Setkab	<i>Sekretariat Kabinet/Cabinet Secretariat</i>
FAO	Food and Agriculture Organization	SOMTC	Senior Officials Meeting on Transnational Crime
GPSEA	Greenpeace Southeast Asia	STCW-F	Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel
HAM	<i>Hak Asasi Manusia/Human Rights</i>	TIP	Trafficking in Persons
HRWG	Human Rights Working Group	TOC	Transnational Organized Crimes
ICCPR	International Covenant on Civil and Political Rights	TWC2	Transient Workers Count Too
ILO	International Labour Migration	UNCLOS	The United Nations Convention on the Law of the Sea
IMO	International Maritime Organization	UNGA	United Nations General Assembly
IUU	Illegal, Unreported, and Unregulated	UNGP	United Nations Guiding Principles on Business and Human Rights
Kemhub	<i>Kementerian Perhubungan/Ministry of Transportation</i>	UNODC	United Nations Office on Drugs and Crime
Kemenkumham	<i>Kementerian Hukum dan Hak Asasi Manusia/Ministry of Law and Human Rights</i>	UNTOC	United Nations Convention Against Transnational Organized Crime
Kemenko PMK	<i>Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan/Coordinating Ministry of Human Development and Cultural Affairs</i>	UU	<i>Undang-undang/Law</i>
		ZEE	<i>Zona Ekonomi Eksklusif/Exclusive Economic Zone</i>



1 BACKGROUND

Seafarers working as vessel crew [known as *Anak Buah Kapal* (ABK, vessel crew)] are considered migrant workers, as they work overseas for economic reasons along with its entailing vulnerabilities. Human trafficking, forced labor, and other phenomena that can be categorized as contemporary forms of slavery¹ are just the tip of the iceberg.

A report from the Indonesian Migrant Workers Trade Union (SBMI) investigating cases between 2015-2020, revealed how Indonesian fishers worked barely within minimum protection: worked ridiculously long hours, had their wages unpaid, and endured poor labor conditions that in some cases resulted in death.²

In “Seabound: The Journey to Modern Slavery on the High Seas” (2019), Greenpeace Southeast Asia (GPSEA) analysed the complaints from Indonesian migrant vessel crews over 13 months from 2019-2020. The report unveils the modes and types of forced labor that frequently occur onboard distant water fishing vessels, and various indicators that indicate how forced labor has been increasing. GPSEA identified several forced labor elements, including wage deduction (87%), horrible working and living conditions (82%), fraud (80%), and abuse of vulnerability (67%). The report also noted an increasing trend of reported cases: from 34 cases (eight months from December 2018 - July 2019) to 62 cases (13 months from May 2019 - June 2020).³ This indicates a lack of serious effort by the government to properly address these issues for years.

Other than the lack of protection for vessel crews from forced labor, omission and deprivation of vessel crews’ rights often occur in border

areas or in areas that are jointly managed, such as an Exclusive Economic Zone (EEZ), international straits, or the high seas, which allow for a gap between law enforcement and protection for migrant vessel crews.

The efforts to combat illegal, unreported, and unregulated fishing (IUU) at national, regional, and international levels remain so far ineffective. Problem mapping on the supply chain of the global fish trade, modality of legal protection guarantee, modus operandi of the perpetrators, and cooperation of inter-stakeholders to solve this problem are therefore critical.

The absence, unclarity, and overlap in the placement, arrangement, and protection of vessel crews have therefore become an issue worth scrutinizing. For example, the deadlock in the Draft Government Regulation on Indonesian Vessel Crew Protection, which was supposed to be passed at the latest on 22 November 2019, or two years after the passing of Law No. 18 of 2018 on Indonesian Migrant Worker Protection (UU PPMI), is a structural issue that shows the state’s failure in providing clear legal guarantees for vessel crew protection.

The same vulnerability is true not only for Indonesian vessel crews, but also for those of other nationalities. The issues faced by migrant vessel crew are always cross-territorial and cross-jurisdictional in nature, which adds to the complexity of the problem. However, this has yet to become a serious concern at the regional level, particularly for the Association of Southeast Asian Nations (ASEAN). Migrant-related issues become more complex since various cases involve many perpetrators from various countries, while the incidents take place in several countries’ jurisdictions at the same time.

An artisan fisher rides a longtail boat under the morning sky in Thepha, Songkhla district, Thailand. Small-scale fisheries drive the local economy, largely dependent on the productive marine and coastal resources.



Excerpted from ohchr.org

To address this problem more holistically, other than applying a human rights-based approach to defend victim rights and demand the states' accountability, another approach is needed; one that can unveil the transnational organized crimes (TOC) involved, including an approach that can hold irresponsible business actors liable. From that point, several things can be identified: gaps that need to be addressed both from the perspectives of a legal protection norms framework, as well as law enforcement.

This study aims to delve deeper into various vulnerability aspects experienced by vessel crews, which in turn might lead to human rights violations. These vulnerabilities might take place before the crew depart, whilst onboard, and after sailing. It is related to a cross-

territorial issue involving the origin country, transit country, and destination country. Furthermore, this study also aims to generate various recommendations to address the cited problems in the region.

Question Formulation

- What is the common situation of forced labor and human trafficking experienced by vessel crews in Southeast Asia?
- How is the guarantee of respect, protection, and fulfillment of human rights of the vessel crews being implemented?
- What are the vulnerabilities that the vessel crews are facing?
- What are the types of human rights violations that often happen to them?
- Who are the main actors of such human rights violations?
- What are the opportunities to be leveraged to address those

vulnerabilities and various human rights violations?

Methodology

The mapping of key issues and actors (stakeholders) in human rights violations toward fishing vessel crews were reviewed by combining qualitative and quantitative data collection methods. Quantitative data is the main element to help identify the amount of distribution; type of problem, location, and key actors. Meanwhile, qualitative data is crucial to describe the need, incident, limits, and interests of each actor. The data was divided based on the needs to answer various research questions mentioned above.

The scope of this study is in Southeast Asia, with Indonesia, Singapore, Vietnam, Thailand, and Malaysia as the main focal areas.



Left: Activists carrying portraits of former human trafficking victims during the protest in front of the Ministry of Manpower, Jakarta. The Indonesian Migrant Workers Union (SBMI) and Greenpeace Indonesia held a peaceful protest to urge improvement for placement policies and protection of migrant worker crews from Indonesia working on foreign fishing vessels outside the country.

This study used three indicators to monitor a number of human rights violations that occur onboard fishing vessels. The indicators are: structure, process, and result. Structure highlights the current state of legal protection for the vessel crews.

In describing the problem, the authors used the human rights-based approach. The basic characteristics of human rights are universal, inalienable, interrelated, interdependent, and indivisible (Image 1.). Using this basis, the monitoring indicators were developed based on the international human rights standards and norms.

The development of human rights indicators is aimed to obtain a specific description of a situation or circumstance, incident, as well as activities that can be associated with human rights norms and standards.⁴

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and result. Structure highlights the current state of legal protection for the vessel crews. This element helps map a state's human rights accountability that is reflected by its existing law or regulation. However, further analysis is needed to see whether such laws and regulations have been in compliance with the norms and principles of human rights. In the event some matters are not yet governed, it is referred to as the absence of law, or, a possibility of overlap between one legal product with another, which requires harmonization.

The second indicator is process. It has to do with how mandates from a law or regulation are implemented. It further scrutinizes if there is any kind of national action plan or program, and is also about law enforcement

and implementation in the field. The discussion in this indicator is focused on what gaps need to be filled between regulations and its implementation to ensure the protection of vessel crews' human rights.

The last indicator (result) is obtained by observing a number of case studies in several countries, the mapping of issues and actors (stakeholder, perpetrator, and victim), and the interaction of various entities in the field. The voices and needs of the victims will be deemed as a phenomenon showing whether there is any human rights violation as the result of interaction between the two other indicators, namely structure and process.

In the next part, the authors analyzed the vulnerabilities which lead to human rights violations onboard. Mapping various types of vulnerabilities and trying to figure out which mitigation efforts are needed to fill such vulnerability gaps will be the next recommendation for supporting future defense or advocacy.

Study Limitation

This study has several limitations, particularly due to the limited timeframe and resources available. The pandemic prevented the researchers from conducting direct investigation, hence they relied on existing reports. 📍

A blue fishing boat is visible on the water, with a large fishing net in the foreground. The scene is set against a blue sky and water. The net is dark and textured, and the boat is a bright blue color. The overall tone of the image is blue and somewhat somber.

2 TRANSNATIONAL ORGANIZED CRIME AND BUSINESS RESPONSIBILITY FOR HUMAN RIGHTS

Fishery products are global trade commodities, and fishing activities go across borders. Communication between trans-boundary fishing vessels takes place at sea and is hard to monitor. Over time, the market demand for fishery products has steadily increased. However, the increase in demand is not matched with the availability of resources. Fish stocks in the sea are dwindling. The dwindling fish stock in several marine areas are caused by mismanagement of the fishery industry, due to the use of non-eco-friendly fishing gears, the abuse of fishing licenses that lead to draining of resource capacity, the overly high number of fishing vessels that exceed the quota, and illegal fishing activities. These activities all result in overfishing.

The Food and Agriculture Organization (FAO) estimated that 29.9% of global fish stock has vanished and has been excessively exploited. More than half of the world's fish stocks (57.4%) have been fully exploited, and fishing business therefore cannot develop better. Only 12.7% of fish stocks are still available for development. However, these fishing areas are commonly filled with fish with low selling value.⁵

Issues of overfishing, illegal fishing, and scarcity in fishery resources have brought negative impacts on fishers. Declining fish stocks from their territorial sea has forced traditional fishers, who

are supposed to easily catch fish in their shores, to stop working in the sector. Many fishers who have tried to meet their economic needs have lower educational backgrounds, and are trapped and forced to work as fishing vessel crews undergoing harsh and arduous working conditions. This situation has forced traditional fishers who do not possess any professional fishing skills to be migrant workers.

In addition, to maintain the competitiveness of product prices, vessel owners often hire low-wage crew workers. This puts fishers in a very serious and risky situation from a safety aspect, especially when they work in a competitive fishery, compared to a quota-based one.⁶ All these factors have caused the emergence of transnational organized crime, since exploitation and deprivation of rights of migrant vessel crews often take place in the high seas, EEZ, and bordering seas.

According to the *United Nations Convention Against Transnational Organized Crime* (UNTOC), transnational organized crime (TOC) involves an organized criminal group that consists of three or more people, which exists for a certain period of time and acts together to commit one or more crimes or serious violations, to gain, directly and indirectly, financial or other benefits.

Globally, the issues related to TOC is an issue that falls under

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Activists hold a theatrical protest commemorating International Migrant Worker Day every 18 December in front of the Central Java Governor office in Semarang, Central Java.

the responsibility of the *United Nations Office on Drugs and Crime* (UNODC), which in conducting their oversight and law enforcement associated with this issue, adhere to the United Nations Convention Against Transnational Organized Crime (UNTOC) and its complementary protocols, as well as the United Nations Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

With regard to TOC on the sea, *The Commission on Crime Prevention and Criminal Justice* (CCPCJ), in its 20th session in 2011 brought up the issue of combating transnational organized crime at sea. Resolution 20/5 mandated the UNODC to hold expert meetings to “facilitate investigation and prosecution of such cases by its member states, including by identifying gaps or possible areas for harmonization, and steps to strengthen the national capacity, particularly in developing countries, to combat transnational organized crime more effectively.”⁷

TOC has close connections with human rights issues. Many rules associated with TOC were developed by taking references from laws that govern human rights. Such rules include the Refugee Convention 1951, the International Covenant on Civil and Political Rights 1966 (ICCPR), and various regional treaties such as the European Convention on Human Rights 1950 (ECHR). In addition, international customary law also has its own advantage to complement the legal framework of agreements on transnational organized crime at sea, particularly with regard to the reaffirmation of jurisdiction at sea or principles that govern the use of force in the relevant maritime interception operations.⁸

Human Trafficking at Sea

The sea can be a locus for exploitation of human trafficking victims or of the transport of facilities from one place to another. This is the very reason why many

Right Greenpeace activists hold up a banner reading “No fish No future” in the hold of the ship ‘Heng Xing 1’ in an area of international waters near the exclusive economic zone of Indonesia. The Cambodian flagged vessel, was caught illegally transshipping frozen tuna from a Philippine fishing vessel and two other Indonesian vessels in the Pacific high seas, where none of the ships have licenses to operate.

TOC cases take place at sea. Human trafficking and smuggling, as well as forced labor are forms of TOC. Most victims have had to sacrifice themselves and undergo the consequences of human trafficking to escape poverty - all while maintaining expectations of being in a better economic situation. This is often linked with another aspect of TOC at sea: involved vessels can be used in illegal, unreported, and unregulated fishing (IUU fishing), and at the same time for migrant smuggling and human trafficking.⁹

On 15 November 2000, the United Nations General Assembly (UNGA) passed the Convention Against Transnational Organized Crime through Resolution 55/25, which came into effect in September 2003. The convention is structured into 41 articles and three protocols. The three protocols are: (1) Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children; (2) Protocol Against Migrant Smuggling by Land, Sea, and Air; (3) Protocol Against The Illicit Manufacturing of and Trafficking in Firearms, Their Parts, and Components and Ammunition;

There have been a number of important international instruments aiming to address this issue, such as the International Maritime Law, which is the extended regime of the United Nations Convention on the Law of the Sea (UNCLOS), Maritime Labour Convention (MLC), Torremolinos Protocol and Cape Town Agreement, ILO Forced Labour



Photo Credit: © Alex Hoffmann / Greenpeace





Convention, and Seafarers Identity Documents Convention (revised) 2003.¹⁰

In 2007, the ILO Convention on Work in Fishing 188 (C188) was adopted in order to ensure decent working conditions for fishers onboard fishing vessels, particularly with regard to “conditions of service, accommodation and food, occupational health and safety (OHS), and protection.”

Social protection provisions in the maritime industry are extremely challenging because seafarers often work habitually under the law of a country that is not their origin country. In such circumstances, protection from unfair, hazardous,

and unhealthy working conditions and access to health services and social security protection for vessel crews and their families are extremely hard to apply.

The ILO attempted to address these problems by introducing comprehensive maritime labor standards that comprise various aspects of social protection. As part of its collaboration with other UN agencies that share concerns in the maritime sector, namely the International Maritime Organization (IMO), the IMO/ILO Ad Hoc Working Group was established to address various crucial problems faced by seafarers, namely Seafarer Medical Examination (2010), Fair Treatment of Seafarers in Maritime

A fisherman repairs a Thai purse seine in Ranong, southern Thailand.

Accident (2004), and Liability and Compensation regarding Claims for Death, Personal Injury, and Abandonment of Seafarers (2009).¹¹

The IMO has also set various global standards on security, safety, and environmental performance in international seafaring. Over the years, the IMO has promoted more than 50 conventions and protocols associated with maritime security and safety, and has

Other than social security and work safety, human trafficking and smuggling are some other serious issues that frequently occur in maritime areas, with migrants often being forced to travel onboard unsafe (substandard) vessels and in hazardous conditions.

provided technical assistance, such as training and expertise to developing countries to achieve the international standards set forth in the Maritime Convention.

Other than social security and work safety, human trafficking and smuggling are some other serious issues that frequently occur in maritime areas, with migrants often being forced to travel onboard unsafe (substandard) vessels and in hazardous conditions. Such activities are often facilitated by organized criminal networks.¹² Human smuggling with forced migration due to economic or security reasons often become the excuse for forced labor. Human trafficking and smuggling can endanger a person's life and safety, and push them closer to exploitation, blackmailing, and slavery.

The high number of cases and risks of TOC in ASEAN have prompted the creation of various law enforcement instruments aiming to protect people in the region from such vile practices. ASEAN sectoral bodies that are linked with TOC include the Senior Officials Meeting on Transnational Crime (SOMTC), ASEAN Committee on Migrant Workers (ACMW), and ASEAN Intergovernmental Commission on Human Rights (AICHR). As key stakeholders, their mandates enforce commitment to materialize security and protection of the rights and welfare of migrant workers in ASEAN.

The adoption of the legally binding ASEAN Convention Against

Trafficking in Persons, Especially Women and Children (ACTIP) in 2015 is another evidence of ASEAN's serious commitment to tackle this issue. In addition, specifically for migrant workers, the Cebu Declaration or ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007, and the ASEAN Consensus in 2017, reflects ASEAN's efforts to develop norms of protection and respect toward migrant workers, including to ensure their freedom from human trafficking.


The problem is, however, ACTIP, Cebu Declaration, and ASEAN Consensus simply do not cover migrant vessel crews. In ASEAN, the main focus of migrant workers is that of those working on land, hence migrant fishers are absent in any protective regulations. Migrant workers in the fishery sector are barely mentioned in the recommendations of the 7th, 8th, 9th, and 12th ASEAN Forum on Migrant Labour (AFML), despite the fact that it is one of the most vulnerable sectors to human rights violations. In addition, there are still no regulations that focus on the protection of vessel crews' rights.¹³

This indicates that although ASEAN has prepared various instruments for protecting humans from TOC risks, it still has a weakness which is the lack of more comprehensive protection of workers' rights at sea. The absence of any special law to guarantee protection for fishing

vessel crews in ASEAN must be solved through ratification and implementation of ILO C188 by all ASEAN member states.

Business and Human Rights

Another agenda that needs to be pushed further is reaching out to fishing vessel owners to participate in upholding human rights. The United Nations Guiding Principles on Business and Human Rights (UNGPs) were agreed on by the UN Human Rights Council in 2011, and have now been adopted by dozens of countries. Amid the rapid investment trend, the UNGPs have become very relevant to fishery business actors. They cover three important pillars: government (to protect), corporate (to respect), and recovery (access to remedy).

There are 31 principles enshrined in the United Nations Guiding Principles on Business and Human Rights (UNGPs) that are related to the three pillars, which are composed of 10 principles expressing government's duties, 1 for corporate, and 7 for access to remedy. Business actors in particular are demanded to ensure that their business operations are in line with the prevailing laws and regulations and internationally-recognized human rights standards. Corporate entities must have policies and commitment to respect human rights, and possess remedy mechanisms for any human rights violations that they incur, or to process steps to remedy any human rights violations that they contribute to. 



3 SOUTHEAST ASIA AND VESSEL CREW ISSUES

Southeast Asia is a highly vulnerable region to the outreach and influence of transnational organized crime (TOC) groups. The region is a hotbed for various global illicit trades of items such as methamphetamine, heroin, wildlife, timber, fake goods, and drugs, as the source, destination, and transit locations. However, it is also in this region that diverse people from various linguistic, cultural, and religious backgrounds live in coexistence. Its typical geographic characteristics that are marked with a vast archipelago and remote mountainous areas have brought about challenges for all authorities in Southeast Asia to manage.

Various social-economic contexts in Southeast Asia have not only hindered the progress toward the creation of a joint regional market, but also strongly influenced the pattern of organized crime therein. With such diversity, it is unsurprising that organized crime groups target countries with poor law enforcement capacity and integrity, as well as low political will.

Although ASEAN has ambitiously endeavored to build infrastructure to smoothen transnational trade, it has not really performed any substantial works in parallel with public security and social protection. Neither has it made

any fully operational frameworks to address transnational crimes.¹⁵

Uneven economic development and demand for cheap labor in Southeast Asia have become the key factors that boost human trafficking in the region both from and toward other regions around the world. Many of its victims in Southeast Asia initially migrated by crossing borders irregularly to seek better economic opportunities, only to be tricked and/or fall into forced labor, including in the fishery sector as a vessel crew. They are often subjected to various pressures and coercions that prevent them from breaking free from the situation. This has increased the vulnerabilities of the vessel crews working in the region, which is where many of such crimes take place.¹⁶

This next section scrutinizes the general situation experienced by vessel crews in Southeast Asia, particularly in countries covered in this study, namely Indonesia, Thailand, Singapore, Malaysia, and Vietnam. This general description of current vessel crews' situation in Southeast Asia was developed using a monitoring methodology that focuses on structural indicators (legal protection guarantee), its enforcement, and its results.

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21-year-old worker forced to work on a fishing boat with no way to return to his homeland.

The forced labour and trafficking survivors interviewed by Greenpeace Southeast Asia detailed beatings and food deprivation for anyone who tried to escape. The tuna fishermen on their vessels were forced to work 20-22 hour days for little to no pay, often deprived of basic necessities like showers.



INDONESIA

Indonesia is geographically an archipelagic country. The country's area is spread across different islands separated by the vast sea and endowed with abundant biodiversity. Indonesia is often touted as a maritime country as its sea area far exceeds its total land size. According to data from the Ministry of Marine Affairs and Fisheries (MMAF/KKP), Indonesia has approximately 17,500 islands, with sea and other water bodies constituting 62 percent of its total area. In addition, Indonesia is one of the top countries with the longest coastline in the world, stretching across 81 thousand kilometers. Indonesia ranks second after Canada in this matter.

Such a condition allows the country to create employment opportunities in marine and fishery sectors, and in fact, many Indonesians depend on the said sectors. The International Labour Organization (ILO) recorded Indonesia as the largest supplier of fishery workers in the world, both those working in the high seas and those working in destination countries as residential seafarers. Until 8 February 2021, the number of Indonesian seafarers was 1,198,476 people.¹⁷

However, the lack of government attention for their protection is quite ironic. According to records from the Indonesian Migrant Worker Trade Union (SBMI), from September 2014 to July 2020, there were 338 complaints regarding forced labor at sea experienced by Indonesian vessel crews onboard foreign fleets. In 2020, the number of complaints received were 104, which was higher compared to 86 complaints in 2019. According to SBMI's record, slavery practices imposed on Indonesian

vessel crews included unpaid wages, violence that led to death, and disposal of seafarers' corpse without their family's consent.

There are still a lot of cases of human rights violation experienced by vessels workers a.k.a. crews. Many irresponsible vessel owners denied the crews' rights in accordance with their working contract, or coerced them to work and enslaved them. Such cases are still prevalent, showing the lack of law enforcement by the government and its commitment to ensure a safe process for working onboard vessels.

Legal Modality

With regard to the legal protection aspect, in June 2017 Indonesia ratified the Maritime Labour Convention 2006 (MLC 2006), which governs jobs onboard commercial vessels. This convention is somewhat similar to the Omnibus Law (Job Creation Law) for seafarer professions, as it serves as a legal umbrella for the other eight international conventions. The problem is, there are as yet any derivative regulations made by the Ministry of Manpower (MoM) to implement this convention.

Meanwhile, the legal frameworks that are used all this time to protect vessel crews are the following:

- Law No. 18 of 2017 on the Protection of Indonesian migrant workers, particularly artzsection 1, which contains 13 items of protection rules. This law has not been translated into government regulation, particularly for vessel crew's protection.
- Regulation of the Minister (Permen) of Marine Affairs and Fisheries No. 2 of 2017 on the Requirements and Mechanism of Certification of Human Rights in Fishery Sector, which complements the Ministerial Regulation No. 42 of 2016 on Working Agreement at Sea for Fishing Vessel Crews.



Top Fisherman unload the catches from troll ship at Tegal port, Central Java. Fishermen is one of the main livelihoods for people living in the North Coast area of Java.

- Law No. 17 of 2008 on Seafaring. Article 151 discusses the well-being of vessel crews. Well-being includes: wages, working and rest hours, guarantee of departure to destination and repatriation to place of origin, compensation if a vessel cannot operate due to accident, career development opportunities, provision of accommodation, facility for recreation, nutrition, health maintenance and treatment, as well as work accident insurance.



The deadlock of the Draft Government Regulation on Indonesian Vessel Crew Protection as the mandate of Law No.18/2017 which specifically governs human rights protection of vessel crews indicates a serious problem, which is the absence of law that guarantees human rights protection. In addition, Indonesia has yet to ratify the ILO Convention on Work in Fishing 188 (C188) which can provide norms on management and protection of vessel crews in the capture fishery sector, which shall serve as a reference to issue the Government Regulation (PP) on Vessel Crew Protection.

Indonesia and C188

The Director General of Protocol and Consular of the Ministry of Foreign

Affairs (MOFA), Ambassador Andy Rachmianto, in his keynote speech in the “Opportunities and Challenges in the Ratification of C188” which was held via webinar on 4 March 2021, explained that the issue of protection of Indonesian fishing vessel crews working onboard foreign fleets has always been a concern and priority of the Ministry of Foreign Affairs. This shows a positive step taken by the Government of Indonesia in regard to the convention’s ratification. Indonesia has realized, first, the importance of ratification of C188 for the protection of Indonesian fishing vessel crews at domestic and international levels, and second, the need for building national preparedness through the development of a national roadmap that engages all relevant

stakeholders of the ratification of C188 Convention.¹⁸

Throughout 2020, the Indonesian Ministry of Foreign Affairs and Indonesian Representatives facilitated more than 27,000 Indonesian vessel crews that worked all over the world. These included vessel crews working onboard foreign flag fishing vessels overseas. This was the result of intensive cooperation and communication with various stakeholders.¹⁹

However, despite such efforts, the absence of any national legal frameworks that specifically target vessel crews has made the protection of vessel crews remain ineffective. The existing national laws are still very general, which causes higher dependency of the vessel crews on the agreements between them and vessel owners before starting their work. This has made them vulnerable to abuse.²⁰

The lack of government attention on international regulations, which can be seen from its reluctance in ratifying C188, results in Indonesia possessing no standard protection norms that can be synergized with other national regulations. Another problem is the lack of synchronization between education and training for seafarers and vessel crews that meet international conventions (Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel/STCW-F). This situation is such because the Ministry of Marine Affairs and Fisheries (MMAF) has not yet allocated any budget to obtain the IMO standard curriculum, which must be purchased from Singapore at the rate of IDR 60 million.²¹

Another important problem is the weak regulations that govern manning agencies of seafarers and vessel crews. There is an absence of an integrated database between ministries and institutions that can serve as the main reference to track the whereabouts of Indonesian



Candidates of migrant workers learn Korean language at the agency for workers that will work in Korea at Suradadi district, Tegal, Central Java.



Photo Credit: © Jurnasyanto Sukarno / Greenpeace

Another important problem is the weak regulations that govern manning agencies of seafarers and vessel crews. There is an absence of an integrated database between ministries and institutions that can serve as the main reference to track the whereabouts of Indonesian seafarers and vessel crews working onboard foreign vessels²², and the lack of government involvement in the crew placement and recruitment process at their working place.²³

seafarers and vessel crews working onboard foreign vessels²², and the lack of government involvement in the crew placement and recruitment process at their working place.²³

As a matter of fact, the plan of C188 ratification was warmly welcomed by the Ministry of Manpower. In October 2021, the Secretary General of the MoM, Anwar Sanusi, perceived C188 as an international labor standard that aims to ensure that every worker working onboard a fishing vessel benefits from decent and safe working conditions, particularly with regard to the working requirements and conditions, accommodation and meals, occupational health and safety (OHS), social security, and health services.

Strengthening protection for fishing vessel crews can be conducted by strengthening the national legal framework and ratification/ adoption of international treaties, such as Port State Measures Agreement (PSMA); International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F); Cape Town Agreement on Safety of Fishing Vessel (CTA); and ILO Convention No. 188 on Work in Fishing (C188).

Although the MOFA has set a roadmap for ratification, some

government branches think that C188 will not bring any benefits to Indonesia. This is due to its very low ratification rate. There are so far 19 ILO member states that have ratified the convention, but not a single one is a destination country for Indonesian vessel crews. This factor deems C188 ratification as insignificant. Anwar Sanusi further explained that a ratification process must take into account technical and regulatory preparedness and post-ratification obligations, since the member states that ratify the convention will be obliged to translate its provisions into their national regulations, so as to synchronize the national regulations with the contents of the ratified convention, including in its implementation, oversight, and reporting.²⁴

Ratification is the responsibility of the MOFA and other related technical ministries. However, with regard to vessel crew protection, ratification will be suspended so long as the other ministries responsible for this issue do not immediately approve the ratification process. In the end, this bureaucracy problem adds more workload to finish the roadmap for C188 ratification, despite having been announced by the Minister of Foreign Affairs since the beginning of 2021.



Another problem is that Article 337 of Law 17/2008 on Seafaring states that labor provisions in the seafaring sector will be applied in accordance with the manpower laws and regulations. Unfortunately, there has yet to be any derivative regulation from, or amendment of Law 13/2003 on Manpower, Law 39/2004 on the Placement and Protection of Indonesian Migrant Workers, particularly article 28 on the placement of Indonesian migrant workers in certain jobs and positions is supposed to be further governed with a government regulation, however so far the government has not made any derivative regulation since the enactment of both Law 39/2004 and Law 18/2017.

Licensing Process

The government said that it is currently working on harmonizing the negotiation on the Draft Government Regulation on

Indonesian Vessel Crew Protection. The synchronization of inter-ministerial regulations in the development of this bill is still being conducted to synergize the tasks and authority division among each relevant ministry or agency. The coordination is specifically conducted through various meetings, including the one facilitated on 19 June 2019 by the Coordinating Ministry of Human Development and Cultural Affairs (Kemenko PMK), which resulted in the signing of agreement by representatives of the Ministry of Manpower (MoM), Ministry of Transportation (MoT), Ministry of Marine Affairs and Fisheries (MFAF), National Agency for Placement and Protection of Indonesian Migrant Workers (BNP2TKI), MOFA, Ministry of Law and Human Rights, Ministry of Women Empowerment and Child Protection, Cabinet Secretariat, and the Coordinating Ministry of

Top Burmese fishermen in temporary shelter in Ambon port, Indonesia. Hundreds of trafficked workers are waiting to be sent back home, with many facing an uncertain future.

Human Development and Cultural Affairs (Kemenko PMK).

During the meeting it was agreed that the MoM would act as the regulator for the placement and protection of seafarers by referring to the applicable law, while the authority in seafaring and marine & fisheries sector belong to the Ministry of Transportation and Ministry of Marine Affairs and Fisheries. The draft government regulation will govern the protection and placement of vessel crews of both commercial and fishing vessels who work

onboard foreign flag vessels, and oversee matters such as requirements of a vessel crew, requirements concerning the manning agency, and requirements and conditions of work (including wages, working hours, rest hours, leave, social security, insurance, provisions to prevent workplace accident, repatriation, health service; and access to welfare on land). The arrangement of vessel technicalities remains under the authority of the Ministry of Transportation and Ministry of Marine Affairs and Fisheries.²⁵

However, the coordination still failed to accelerate the completion of the bill. Although in April 2021, the Minister of Manpower stated that the bill had been successfully harmonized, conflicts between the relevant ministries still occurred frequently. There was a distrust among ministries, which was responsible for the delayed harmonization of the bill. This was further exacerbated by the long process of clarification conducted by the State Secretariat, which some argued was due to conflict of interest involved in license awarding that involved some fees.

Daniel Awigra from the Human Rights Working Group (HRWG) said in a webinar on 9 December 2021, which was held by Greenpeace Southeast Asia and SBMI, that the President must summon his ministers to end the conflict of interest associated with the licensing process and fees. The attitude that prioritizes individual or institutional interest and gain over the country to protect migrant workers, including vessel crews through Law 18/2017, deserves some criticism. To begin with, the draft government regulation has been postponed for more than two years, and therefore HRWG urged the National Human Rights Commission (Komnas HAM) to investigate this omission as a suspected violation of human rights. The Commissioner of Komnas HAM, M. Choirul Anam, in the press conference suggested that the licensing regime should be an entry-point for protection. Licensing and protection must not stand separate from each other.

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Other than licenses related to several ministries in the making of the government regulation (PP), another licensing process that needs to be reviewed is the one regarding roles and responsibilities of the migrant vessel crew manning agency.

that needs to be reviewed is the one regarding roles and responsibilities of the migrant vessel crew manning agency. A former vessel crew member named Abdul Rahmat, during the FGD Webinar on “Slavery Crime in Fishery Industry: Complexity of Responses in Law”, which was held by the Center for Sustainable Ocean Policy (CSOP) on 13 May 2020, said that he was trapped by his manning agency. The work permit that the agent had did not comply with the standards of other agencies. This led to the messy waging system. When Abdul worked as a vessel crew onboard a Chinese flag vessel, he was even abandoned in the Ivory Coast before he was saved by an Indonesian citizen he met later.

The Chairperson of SBMI, Hariyanto Suwarno, said that modern slavery cases in Indonesia occur very



Photo Credit: © Jurnasyanto Sukarno / Greenpeace

Left Newly recruited migrant fishermen waiting for the departure to Jakarta using a minibus at PT Novo Citra Marine, an agency for supplying fishermen that will work on the fishing ship abroad in Suradadi village, Tegal, Central Java.

In addition, wage withholding was also another problem for the crews of this vessel, as they were simply not paid throughout their working time there. Furthermore, they were also forced to work excessive hours (overtime) onboard..²⁹

frequently, and do not receive appropriate responses from the state. Hariyanto also added that although the vessel crews were spread all over Indonesia, the modern slavery market was only concentrated in Java.

“The manning agencies mainly operate in Tegal and Pematang. We suspect that there are some dirty businesses involved that created this situation in Central Java,” he said. This means, modern slavery easily exists in and around Java because the licenses are granted with leniency to manning agencies that do not meet the standard qualifications due to some shady business involved.²⁷

Furthermore, the suboptimal implementation of government’s commitment to Law 18/2017 can surely be considered as a deed against the law which can be disputed at the State Administrative Court, as it is a defiance against the law’s mandate to develop and enact the Government Regulation on Indonesian Vessel Crew Protection.

Cases of Indonesian Vessel Crews

Based on the complaint data from 2015–2020 filed to SBMI, there were 115 complaints by Indonesian vessel crews working on 57 China-flag vessels, and a total of 5 crew members who died. Based on interviews with the victims (vessel crews) or their families, their vessel mates, or from the media, some of the causes of death that happened to Indonesian vessel crews that

indicates modern slavery were violence in the form of beating, torture, and direct murder. In addition, abuses also went as far as corpse disposal, unpaid wages, neglect during sickness, transmittable disease, lack of care from the other crews, etc.²⁸

There was the case of PT. Setya Jaya Samudera that sent four crews to the fishing vessel named Fu Yuan Yu No. 062 which only moored once in six months. This means there was limited communication between the vessel crews and their family. It also limited the vessel crews’ movement as they could hardly communicate with their family. In addition, wage withholding was also another problem for the crews of this vessel, as they were simply not paid throughout their working time there. Furthermore, they were also forced to work excessive hours (overtime) onboard.²⁹

Three Indonesian vessel crews worked onboard a vessel named Fwu Maan No. 88, and they faced the same problem: no information provided by the recruitment agency to the Indonesian representative in the destination country, hence it can be considered as an abuse of vulnerability as it shows that the crews were not aware of the local laws. On the other hand, the crews also suffered from intimidation and threats, including rude words from the vessel captain, and withholding

of wages, as they were never given any certainty on when the salary would be paid.³⁰

Another case that happened to other Indonesian vessel crews was constant transfer to other vessels. They were initially hired onboard a vessel named Long Xing 629 and departed on 15 February 2019. According to their advocate, the vessel sailed non-stop for 13 months in Samoa water without mooring to the land. During that time, a crew member passed away due to an unclear disease. Four vessel crews were reported to be poisoned from indecent food provided on the vessel. For more than a year, the vessel crews consumed food from the vessel’s food stock and drank from distilled sea water. The senior vessel crews and captain consumed fresh food supplied by a vessel from another group and drank bottled mineral water.³¹



Photo Credit: © Daniel Murphy / Greenpeace



THAILAND

Thailand has a 3,219 km long coastline, more than 250 islands, and more than 4,000 km of inland water route. Although the country meets most of the prerequisites to become a developed maritime market, its maritime sector is relatively small compared to neighboring countries. Thailand is one of the developing countries that catch and process fish to be exported to the international market with a significant number of customers from the European Union, the US, and Japan.

Unfortunately, the massive scale of global trade has caused overexploitation and illegal,

Unreported, and Unregulated (IUU) fishing. Furthermore, the US has demoted Thailand on its credit rank in combating human trafficking to the lowest position since 2014, and has since limited its support to Thailand. In April 2015, the European Commission issued a yellow card as an official warning to Thailand due to the lack of measures by the Thai fishery industry to prevent IUU fishing, which the Thai Government responded to by announcing the “Roadmap to Eliminate IUU Fishing.” If Thailand did not react effectively to the extremely negative feedback, Thailand would not regain its “Level 2” status in the war against human trafficking from the US nor any “green card” from the European Commission for combating human trafficking.³⁵

Such pressures eventually forced Thailand to ratify more international treaties on vessel crews.

Legal Modality

So far, Thailand has the most complete legal modality compared to other ASEAN member states in terms of protection of vessel crews’ human rights. In June 2016, Thailand ratified the Maritime Labour Convention 2006 (MLC 2006) and in December 2016, the ILO Convention on Work In Fishing No. 188 (C188).

At national level, the country also has the so-called Thailand Maritime Labour Act 2015. The Maritime Labour Act is a full set of regulations that particularly applies to ship owners and operates as a mechanism for the state to conduct on human resources involved in maritime activities in Thailand. The regulation in total consists of 15 chapters, which respectively consists of several parts, namely:

- Article 4, which describes that vessel owners must provide protection to vessel crews with regard to social security and compensation so that they may enjoy their rights in accordance with the regulation, procedure, and conditions that are determined by the Minister of Manpower.
- Chapter VIII on protection, which describes several things that are needed by vessel crews onboard. Matters such as requirements on accommodation, facilities, and nutritional needs of the vessel crews are elaborated in this chapter. The vessel owner must guarantee the provision of decent rooms for vessel crews who stay and work onboard the vessel.



Left Burmese workers repair nets aboard a Thai purse seiner docked in Samut Sakhon, central Thailand.

A trafficked migrant worker poses for a photo. He and other crew sailed for 28 days from Thailand to the Saya de Malha Bank in the Indian Ocean. The crew was forced to work for 21-22 hours a day. In January 2016, Thai authorities rescued him along with another 14 Cambodian victims of trafficking from two fishing boats in Ranong. These boats were ordered back to port from the high seas by the Thai authorities for inspection.

- Chapter V is regarding health insurance, termination of work contract, and other matters related to repatriation.
- Chapter IV explains further about the procedure of employment conditions. Article 58 states that vessel owners must inform about regular working hours to the vessel crews as well as determine the daily start and finishing working hours. Daily working hours must not exceed 8 hours and the total working hours per week must not exceed 48 hours. The next article explains that vessel owners can request vessel crews to work overtime if necessary, but when combined must not exceed the regular working hours as described in article 58. The working hours must not exceed 14 hours within 24 hours, and must not exceed 72 hours within 7 days. Regarding the rest hours of vessel crews, chapter 62 states that a vessel owner must provide rest hours for his vessel crews no less than 10 hours within 24 hours and no less than 77 hours within 7 days. For pregnant vessel crews, they are entitled to pregnancy leave of no more than 90 days per pregnancy.



- Article 46 explains that the Minister of Manpower, upon the Committee's recommendation, can set the minimum wage for vessel crews to be applied onboard a Thai flag vessel to ensure that vessel crews receive decent and fair wage. The regulation is continued in chapter 67, which states that the vessel owner must not pay vessel crews less than the determined minimum wage. Guarantee of security and medical treatment for vessel crews were also explained in Chapter IX, which has three parts, namely: (1) medical security onboard the vessel, (2) vessel owner's accountability to the vessel crews, (3) prevention of accident and security protection.

Law Enforcement

On 26 September 2017, the government investigated a vessel named Asian Warrior, which was found to have failed to pay the full wage to its 10 crews, which was a violation to the Maritime Labour Law B.E. 2558 (2017) and Maritime Labour Convention (ILO) 2006. Eight of the crews were Filipinos and two were Indonesians. However, miscommunication frequently happened between the Department of Employments (DOEs) in different provinces. Each provincial department had different methods in handling vessel crew-related cases. This prevented them from optimally implementing the rather complete legal modality, hence

allowing for the high number of human rights violations of the crews onboard the vessels.³⁷

The Fate of the Thai Vessel Crews

The lack of government meticulousness in overseeing the implementation of the existing regulation resulted in the high rate of violation that happened to vessel crews in Thailand. The issues included the following:

- **Abused labor practice, seizure of identity documents that makes workers more vulnerable to forced labor.** By seizing workers' identity, employers can control their movement and make it difficult for them to perform mobility. The vessel crews consider the seizure of Pink Cards or work permit cards in such a circumstance as a tactic used by their employers to trap men into the forced labor situation.
- **Work contract that is not properly communicated.** The workers at sea often did not receive a written contract that specifies key terms and conditions of the job, as mandated by the law. Workers are often ordered to sign various documents without being given enough time to learn about them. Some employers and brokers trap workers to sign a work contract under the pretext that it is part of the application process for Pink Cards or other permits.

- **Ridiculously long working hours.**

The vessel captain and operator have not adjusted the pattern and practice of work at sea that meet the requirements of rest hours as set forth in the Thai Ministerial Regulation of 2014, which mandates that resting time must not be less than 10 hours a day (Article 5 of the Thai Ministerial Regulation 2014) so that the provision of work outside of the work hours can still frequently occur. One of the seafarers said that they had to work for 19 hours a day.

- **Exploitative salary system.**

An illegal payment system where the fishers' wage is withheld is often used to exercise control and force them to keep working. This was later on considered as part of forced labor, which is conducted by restricting vessel crews so that they keep working in an abusive working condition. Vessel crews were often only paid for the work they did at sea, but not for the work at port. Sometimes they were paid only based on the fish catch, and were often subjected to illegal deduction for down-payment, loan, goods, and services. An ILO survey in 2013 responded by almost 500 fishers in Thailand found that their average monthly wage was below 6,500 bahts (US\$198), with migrant workers receiving less than half the amount paid to Thai nationalities. Since the survey was done, which also found that more than half migrant workers received less than 5,000 bahts (US\$152) per month, the Ministerial Regulation of 2014 stated that fishers are entitled to minimum wage.

- **Lack of safety and health protection for workers.** Many of the vessels are not well-maintained (substandard). The steps onboard are slippery, work is done next to dangerous machinery, many vessels don't have enough toilets for the crews who have to work throughout the day, and

The vessel captain and operator have not adjusted the pattern and practice of work at sea that meet the requirements of rest hours as set forth in the Thai Ministerial Regulation of 2014, which mandates that resting time must not be less than 10 hours a day (Article 5 of the Thai Ministerial Regulation 2014) so that the provision of work outside of the work hours can still frequently occur. One of the seafarers said that they had to work for 19 hours a day.

Many of the vessels are not well-maintained (substandard). The steps onboard are slippery, work is done next to dangerous machinery, many vessels don't have enough toilets for the crews who have to work throughout the day, and not enough resting time, which dries out their stamina, and in turn makes them more prone to workplace accidents or injuries.

not enough resting time, which dries out their stamina, and in turn makes them more prone to workplace accidents or injuries. A survey on Thailand's fishery sector revealed that 20 percent of workers and almost 50 percent of victims of human trafficking were injured during work.

- **No right to form a workers union.**

Thailand's current labor law, such as the Labor Relations Law B.E. 2518 (1975) (LRA) prohibits migrant workers to form or lead their own trade union based on discriminatory provisions that only grant such right for Thai citizens. Thailand (as of 2016) has not ratified the ILO Convention on Freedom of Association (No. 87) and Rights to Organize and Collective Bargaining (No. 98).

- **Constant oversight and arrest in violation of the law.**

Crews from Thai vessels often endure continuous oversight from the captain and senior crews in a limited space. Certain business models in the fishery industry can increase isolation by emphasizing restriction of movement.³⁸

On the topic of Human trafficking, Thailand has just dropped to Tier 2 watch list related to the practice of trafficking in persons reported by the United States Department of State through The 2021 Trafficking in Persons (TIP) Report released on July 1st 2022 after some errors was found in the government's efforts to address the problem of forced labor and human trafficking, especially in the fisheries, seafood, and garment sectors. Thailand's

position now in the watch list demonstrates that the government is deemed to have not fully complied with minimum standards and has not made significant efforts to combat forced labor and human trafficking in accordance with the US Trafficking Victims Protection Act of 2000.

Thailand has occupied this position at the Tier 2 for the last three years, but the potential for it to downgrade further is very high considering the government's still low supervision in dealing with cases of human trafficking and exploitation. According to a press release from the Global Labor Justice-International Labor Rights Forum, the 2021 TIP Report highlights the critical issues that led to this year's downgrade which include the Thai government conducting fewer human trafficking investigations, prosecuting fewer suspects and punishing less traders in 2020 than in the previous year.

The COVID-19 pandemic has also exposed the fundamental weaknesses of Thailand's anti-trafficking infrastructure, especially the way Thailand has failed to see the relation between trafficking and the regularization of migrant workers. Instead of understanding the vulnerability of potential victims of human trafficking such as migrant workers in facing the pandemic, the government has actually exacerbated the vulnerability of workers by increasing their operations to crack down on undocumented workers and workers with invalid documents under the pretext of their efforts

in dealing with COVID-19. Workers are arrested and deported without examination regardless of whether they may be under forced labor conditions at a time when COVID-19 increases economic pressures which in turn tends to exacerbate human rights and labor rights violations.³⁹ This weakness is then allegedly due to the high number of corruption cases in the government. Corrupt immigration officials facilitate the trade by accepting bribes from brokers and smugglers along the Thai border. Credible reports show corrupt officials protect brothels, other commercial sex venues, factory owners, and fishing boat owners from raids, inspections, and prosecutions, and collude with traffickers. Some local police reportedly withheld information from prosecutors to protect the traffickers. Some government officials profit from bribery and direct involvement in the extortion and exploitation of migrants.⁴⁰

Although they said that they were legally ready to protect vessel crews, in reality, the Thai Government is still unable to implement their efforts optimally. Although the oversight and control over workers onboard fishing vessels has increased over the past few years, it is not accompanied with the development of a robust system to investigate the labor practice and working conditions as part of the efforts to enforce laws and regulations. Thai officials in key institutions are still not ready to, and in some cases are simply uninterested, in systematically identifying the examples of forced labor in the fishery industry.



Fishermen unload trash fish (bycatch) in Ranong, southern Thailand.





SINGAPURA

Singapore is also a country with a number of workers in the fishery and marine sector. Singapore is widely known as one of the developed economies in Asia, and it has expanded its economy to the marine industry. It is the first country in Southeast Asia that has a container port, which has grown to become one of the busiest and most connected ports in the world, and is linked to more than 600 ports in 120 countries around the world. Every year, more than 130,000 vessels arrive in Singapore. However, violation of sea workers' rights is still a common occurrence.

Legal Modality

In June 2011, Singapore ratified the Maritime Labour Convention 2006 (MLC 2006), which made it the first Asian country to sign. The implementation of this convention was materialized with the issuance of the Merchant Shipping (Maritime Labour Convention) Act 2014. The amendment was passed in March 2020 to implement the MLC 2006 in the country's shipping law, making general provisions on matters associated therewith, and to make amendments related to other specific written laws. The said amendments included:

- Under the insurance contract or any other financial guarantee, the insurance company has paid certain obligations that are payable by the vessel owner to the vessel crews, to facilitate the subrogation of any rights of the vessel crews associated with such obligations, for the interest of the insurance company.
- If a seafarer is held captive inside or outside the vessel as



a consequence of "hijacking" or "armed robbery" committed to the vessel, the working contract of the seafarer will remain effective (throughout the captivity period). This is regardless of whether the vessel crew's working contract has expired or if one of the parties to the agreement has given notification regarding its suspension or termination. The wage and rights of the captivated crews must still be paid throughout the captivity, until the day they are released and repatriated appropriately, or until the vessel crew dies in captivity. The seafarer's employer is also obliged to repatriate the seafarers after being released from captivity.

- It should be further reviewed, however, whether certain terrorist acts will be considered as part of "hijacking" or "armed robbery", as they will mostly depend on the case facts. The term "hijacking" is defined the same with that of the UN Convention on Laws at Sea

Top Workers sort fish catch onboard a bottom trawler in the Gulf of Thailand. Bottom trawl fishing uses weighted nets that are dragged on the bottom of the seafloor and can destroy whole habitats. When used with very small net mesh sizes they also catch everything in their path including non targeted species and juvenile marine life. Greenpeace is documenting illegal and destructive fishing methodologies in the Gulf of Thailand as part of its Oceans Defender tour.

(UNCLOS), while "armed robbery" is defined based on the "armed robbery on vessel" definition in the new paragraph. 7(b) Standard A2.1 has been incorporated in the 2018 amendment of MLC 2006.

- The Senior State Minister of Transportation has suggested vessel owners to consider taking additional insurance for mitigating acts of terrorism as a substitute. As an alternative, seafarers are also entitled to



terminate their work contract by giving the appropriate notice, if the vessel they work on is about to sail through a high risk area.

- Other than increasing work protection for the captive crews, the amendment provides a legal basis for insurance companies to become the subrogation of the seafarer's rights, where the insurance company has paid the seafarers under the insurance contract or other financial guarantees, for every obligation incurred by the vessel owner. Obligations to the vessel crews include the obligation to pay wage and rights of the captivated crews.

This means that if a man stays onboard a fishing vessel for several months and wants to terminate the contract once the vessel arrives at a port, he will return home without any money and in many cases, is still obliged to finish paying his loan to the agent.⁴²

- The law is applicable to all Singaporean vessels wherever they are, and non-Singapore flag vessels that are within Singapore water. Singaporean seafarers working on foreign flag vessels will not be covered, even if the vessels operate under the flag of a signatory country to the MLC. Such seafarers are likely to be covered by the 2018 MLC amendments if they sail on a signatory state-flagged vessel or in signatory state waters.⁴¹

Law Enforcement

Sea-based workers in Singapore are dominated by migrant workers who mostly come from three main sending countries, namely Indonesia, Thailand, and China. The massive scale of the fishery sector in Singapore does not necessarily mean no human rights violations occur. There are still many cases where workers have been trapped by the contract they signed, which leads to various consequences they have to endure during work. Such high-level fraud often happens during the recruitment process, both through the description provided by individual recruiters and agency representatives in the origin country and Singapore.

In the origin country, potential workers are often lured with false information on salary and remuneration, as well as working conditions onboard the fishing vessel. When they arrive on the vessel and transit through Singapore in the process of placement on the fishing vessel, they will face a different reality and are intimidated

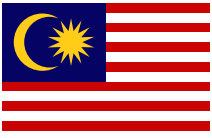
to sign an agreement and contract that describes different conditions from what they were told, which in most cases are much worse.

The contract intimidation practice by the Singaporean agent is discussed in detail in a report by Dr. Sallie Yea and TWC2 in 2016 entitled *"Diluted Justice: Protection and Redress for Trafficked Fishermen in Asia"*. The workers are told by their agents that if they breach the contract, they will not receive any salary throughout their working period. This means that if a man stays onboard a fishing vessel for several months and wants to terminate the contract once the vessel arrives at a port, he will return home without any money and in many cases, is still obliged to finish paying his loan to the agent.⁴²

Cases of Vessel Crews in Singapore

Cases involving sea-based workers in Singapore are still numerous and disheartening. Workers are often exploited, in the sense that they have to accept and endure ridiculously long working hours, which leads to mental and physical exhaustion, lack of personal protection gear that can lead to a high frequency of preventable "accidents", lack of decent medical care in the event of accidents and diseases, working in extreme environments (particularly cold temperatures in pole areas), and insufficient food and water rations for their basic survival.

Vessel crews also often receive violent treatment by the vessel owner. They will be punished if they are caught taking a break during work, or are sometimes even given expired food for meals during their extremely short break time. Vessel crews cannot do anything about this because it is difficult to confront the vessel owner while out at sea. This is aggravated by the poor implementation of Singapore's laws addressing this crime.⁴³



MALAYSIA

Malaysia is another country with a massive and highly active shipping industry. In its first Defense White Paper published in 2019, Malaysia declared itself as a “maritime country with continental roots.” Malaysia has significant economic resources in its maritime zone: most of its oil and gas reserves are located off-shore of its territorial water and EEZ. The fishing industry is also important for Malaysia, which has contributed on average 12 percent to the country’s GDP in the last 5 years. Exports of crude oil, palm oil, and other commodities, as well as manufactured products, also rely on sea transport. These facts undoubtedly affect the survival of the vessel crews who sustain the country’s economy.⁴⁴

Legal Modality

In August 2013, Malaysia ratified the Maritime Labour Convention 2006 (MLC 2006). To implement the ratification, Malaysia issued the amendment of the Merchant Shipping Ordinance Act 2016. Several points related to vessel crews’ rights are governed as follows:

- With the ratification of MLC 2006, Malaysia also amended the Merchant Shipping Ordinance 1952 (MSO 1952), which is the most important seafaring law in the country, to be in harmony with the Merchant Shipping Ordinance (Amendment) Act 2016. In this law, the main amendment is governed under the new Part III, which completely replaces the previous Part III, and offers more concise reading compared to its predecessor. The provisions in Part III are divided into several

parts that cover manning and qualification, service condition, wage, health, accommodation and provisions, as well as behavior and discipline.

- The regulations in Part III are addressed to vessel owners, vessel crew, and various vessels, including Malaysian flag vessels and foreign vessels that are within Malaysian territory.
- The regulation sets several minimum standards, which include: (1) the number of vessel crews that must meet the security standards, (2) obligation to hire vessel crews that have a training certificate that meets the standards, (3) vessel crews must meet the minimum age to work onboard the vessel.
- Other than minimum standards, this regulation also governs the conditions of service, which include: (1) work contract of the vessel crews that are agreed on and signed by the vessel owner and vessel crews he hires; (2) rest hours are given at least 10 hours per day and 72 hours per week, with violations subjected to a penalty of RM 100,000; (3) with regard to leaves, the annual leaves that can be taken by the workers on the vessel are at least 2.5 calendar days per working month. In addition, they are also entitled to get land leave to enjoy their health and welfare rights. The vessel owners will be fined with the maximum amount of RM 50,000 if they breach this regulation; (5) with regard to contract termination, the period of notification is 14 days, or the salary as the substitute is required to terminate a work contract by one of the parties, unless in the event of deliberate violation of contract or error; (4) with regard to repatriation, the seafarers onboard a Malaysian vessel are entitled to free repatriation. The owners are prohibited to ask

With regard to vessel crew wages, Malaysia determined that vessel crews onboard Malaysian vessels must be paid in accordance with the contract. The salary in the contract shall include overtime and days off. If they are breached, the vessel owners will be subjected to fines amounting from RM50,000 to RM300,000.⁴⁵

for any down payment for such potential repatriation cost from the seafarer or to deduct it from their wage, unless in the case of breach by the seafarer.

With regard to vessel crew wages, Malaysia determined that vessel crews onboard Malaysian vessels must be paid in accordance with the contract. The salary in the contract shall include overtime and days off. If they are breached, the vessel owners will be subjected to fines amounting from RM50,000 to RM300,000.⁴⁵

Law Enforcement

It was found that Malaysia still has some issues in determining its territorial sea borders. Unclear borders and disputed maritime areas have been a persistent problem for years, which therefore enables IUU fishing to take place in the area, which was shown, for instance, when some Malaysian fishers were arrested by Indonesian authority while they were still within Malaysian waters.⁴⁶



Cases of Vessel Crews in Malaysia

Malaysia is one of the top 20 countries in capture fishery, ranking sixth in ASEAN. Malaysian fishers capture almost one million tons of seafood every year, 40,000 tons of which are stored as frozen reserves. In 2019, the Department of Fishery announced that Malaysia lost 96% of its demersal fish stocks in less than 60 years due to overfishing. Overfishing happens when fishes are captured at the point where they cannot refill or maintain their population.

This high figure indicates overfishing in the Malaysian fishery sector. Such overfishing has led to the dwindling of fish stock, which was the fishers' main source of income. As explained in the TOC part, overfishing also negatively affects the fishers as it costs them their job, and forces them to work

in bigger vessels that make them vulnerable to forced labor and other forms of modern slavery.⁴⁷

Human rights violation is a frequent occurrence on vessels. In a case of transshipment in Thailand, human rights violation claimed the lives of several crews, while the other crews suffered from beriberi and malnutrition. The case was triggered by the government's indifference in determining the border areas. It was also triggered by the prevalent IUU in the country. Without question, IUU also triggered the high number of human trafficking.⁴⁸

The most dominant form of human trafficking in Malaysia is forced labor. The US Department of State said on July 1st 2021, after demoting the Southeast Asian

Top Thai reefer Precious 9 docks at the mouth of the Thachin River in Samut Sakhon, central Thailand.

country's rank to the worst level in its annual report on human trafficking. Malaysia falls into "Tier 3" in the Trafficking in Persons (TIP) report which was strictly scrutinized in 2021, together with the country's decision to merge human trafficking with migrant smuggling, and its lack of efforts in handling or criminally prosecuting the perpetrators of labor trafficking. They also reported that the majority of human trafficking victims in Malaysia were migrant workers, with approximately two million documented migrants and more who were undocumented.



VIETNAM

Vietnam has one of the highest vessel sailing connectivity indices in Asia, and is internationally also recognized as one of the regional maritime trade hubs. Considering its location advantage and ship building potentials, Vietnam's maritime industry is relatively attractive to foreign investment.

Supporting economic growth, this sector is sustained by workers serving onboard vessels and at ports. Workers in the marine sector face various risks, including financial, social, physical, and emotional ones. More attention and efforts are needed to improve the living quality of seafarers, and to secure the safety of the personnel, vessels, and properties onboard the vessel to prevent any accident.

Seafarers' living conditions vary between different nations, hence the need for a set of international standards to unify the seafarer world with the shipping industry. This further highlights the need for more government attention on the survival of the vessel crews.

Legal Modality

Since 1994, Vietnam has become one of the parties to UNCLOS 1982 and has pledged its strong commitment to join the international community and fully support the establishment and promotion of a just maritime legal system. For example, Vietnam is an official member of IMO and ILO, has ratified 15 international maritime treaties, such as MARPOL 73/78, SOLAS 74/78, STCW 78/95, International Regulations for Preventing Collisions at Sea (Colreg) 72

and other treaties adopted by IMO (Nguyen, 2013a, p. 134) as well as 21 conventions set by ILO (ILO, 2014c). However, although the country has been active in participating in various maritime conventions and treaties, it still falls short of adequate policies to protect seafarer profession.

This situation prompted Vietnam to ratify the MLC 2006, which would benefit the country as the treaty fills in the gap in its current national legal system for vessel crew protection. The Vietnamese Government and Maritime Administration (VINAMARINE) must implement the MLC 2006 proactively by making the necessary changes so that they fit in the country's maritime industry. From the seafarers' perspective, these efforts indicate that their rights will be protected under the MLC 2006. MLC 2006 mandates the "explanation in one place and in clear language the basic work rights of the seafarers" and the fulfillment of other rights, including the rights to decent working conditions and life.⁴⁹

Law Enforcement

In several points in the MLC 2006, which Vietnam has to implement as a ratifying party to the convention, there are discussions on hiring underage labor. Vietnam cannot yet optimally implement the rules related to this matter because according to its own report to the ILO, there were still 25,000 children performing hard labor and work in hazardous conditions in 2010. A more recent report revealed that there were 1.75 million child laborers aged 5 to 17 in Vietnam, which is 10% of the total population of children in the country. It is even more serious as those child laborers work on average for more than 42 hours per week. Although not many of these child laborers work onboard the vessel as explained in MLC 2006, Vietnam has to pay more attention if it is really committed to protecting its citizens.



Top An illegal transshipment is seen taking place on board the ship 'Heng Xing 1' in an area of international waters near the exclusive economic zone of Indonesia. The Cambodian flagged vessel, was caught illegally transshipping frozen tuna from a Philippine fishing vessel and two other Indonesian vessels in the Pacific high seas, where none of the ships have licenses to operate.



A more recent report revealed that there were 1.75 million child laborers aged 5 to 17 in Vietnam, which is 10% of the total population of children in the country. It is even more serious as those child laborers work on average for more than 42 hours per week.

Lack of government oversight came up again as the root of the problem, with poor law enforcement and fulfillment of a country's commitment to the regulation they themselves agreed on. In Vietnam, many sea workers still obtain clearance to seafaring using false health certificates so they cannot be considered as well-trained. Delayed wage payments and the government's lack of responsiveness towards work safety guarantees, which include taking disciplinary action against unethical vessel owners, have

aggravated the problem of human rights violations in Vietnam.

Cases of Vessel Crews in Vietnam

An incident in June 2020 is an example of negligence that is often committed by vessel owners against their vessel crews. The case of 12 seafarers onboard Viet Tin 01 was spotlighted by the International Transportation Workers Federation (ITF) and its local affiliation, the National Union of Seafarers Peninsular Malaysia (NUSPM), when they came to evacuate on 23 June

2020. The Executive Secretary of NUSPM, Ikmal Azam Thanaraj Abdullah, said that the vessel was abandoned by its Vietnamese owner, leaving behind the vessel crews who were stranded at Malaysia's coastline without any food, water, or fuel.

The standard practice dictates that vessel owners at the end of the contract must bear all costs for repatriation, accommodation, and food. Seafarers will then be picked up by a plane at the expiration of the contract. However, the vessel owner in this case neglected all his responsibilities. This case is an example that shows how vessel crews are still distant from the government's attention. The incident garnered attention from many stakeholders who then tried to push the Vietnamese government to enforce stringent laws on such irresponsible vessel owners.⁵⁰ [🔗](#)



4 MAP OF VULNERABILITY AND POTENTIAL HUMAN RIGHTS VIOLATIONS

To identify potential human rights abuses and violations, analysis on specific vulnerabilities highlighting the works of fishing vessel crews is needed. By harnessing data and information collected, the study mapped three types of vulnerabilities often endured by vessel crews:

- **Vulnerability due to the absence of access** Exploitation, violence, and various human rights abuses and violations against vessel crews often happen in the high seas and in territories located far from protection services. At this point, vulnerability ensues due to the absence of access for vessel crews to report their cases. This was confirmed by a SBMI report on Indonesian migrant vessel crews who mostly worked on foreign fishing vessels that rarely moored at ports, because many vessels transferred their loads at sea. This is a loophole that allows for forced labor to easily take place.⁵¹ In Malaysia, this issue occurs in areas that are involved in territorial disputes.

The absence of access is also related to information. Many vessel crews are not paid, or have their wages deducted without any prior notice. The right to information for vessel crews is often kept hidden and difficult to attain due to the absence of access to information. Vessel crews are often trapped by irresponsible agencies.

- **Vulnerability due to absence of service or irresponsible service** Human rights protection is the state's obligation. According to the findings, the absence of legal guarantee at national and regional levels, overlap of authority, absence of protection, and strong indications of corrupt licensing that enables unqualified fishing vessels to operate have caused the absence, or weak protection of

services. The issue of protection of vessel crews is often neglected and untouched due to the government's unwillingness and lack of capacity in dismantling its complexity. Governments neglect and turn their backs away from this issue due to weak oversight, and leave cases to be handled by private parties, which often are irresponsible themselves. The issue of transnational organized crime also adds to the complexity of service, which is still based on the responsibility of each country's jurisdiction.

- **Vulnerability due to social identity** The lack of language skills to communicate during work is another vulnerability. The harsh work method and culture on the vessel often creates problems between crew members. Different treatments are often received by vessel crews onboard based on their identity, especially when they come from a different country, region, race, culture, and religion than the majority of the crew.

Such vulnerabilities in turn will trigger a reduction, omission, and deprivation of human rights that the vessel crews are entitled to, including:

- **Right to life** Cases of vessel crews' death and corpse disposal have opened the eyes of the public on the risk when one is a vessel crew onboard a fishing vessel. The right to life is guaranteed in Article 3 of the Universal Declaration of Human Rights (UDHR). Other than the right to life, every individual is also entitled to good life quality which includes fulfillment of nutrition and decent accommodation. Lack of nutrition intake, exploitation, and indecent accommodation also happens to vessel crews that uncommonly will end up in sickness and death.

Cambodian fishermen from fishing vessel Sor Somboon 19 recovers from beriberi at Ranong Hospital. The crew met internationally-accepted definitions of victims of forced labour.

Thai government investigations determined that the hospitalisations and deaths from the beriberi outbreak aboard Sor Somboon 19 were directly caused by a business model based on transshipment at sea.



Kiri Potret Aung Naing, mantan pekerja kapal penangkap ikan dari Myanmar yang terdampar di Ambon, Provinsi Maluku, Indonesia.

- **Right to decent work and livelihood**

The right to a job and to make a living are related to human rights. The protection and fulfillment of such rights have important meaning for the achievement of decent life standards. Article 23 of the UDHR affirms the right to work and to choose employment. Decent work is an international norm that is continuously pushed by the ILO. The definition of decent work simply is any work conducted by one's own will or choice, provides sufficient wage or income to support one's life decently and with dignity, as well as guarantees physical and psychological security and safety. Meanwhile, according to the Protection of Wage Convention 1949⁵² or C39, wage must be protected from any deduction or submission to the necessary extent for the living needs of workers and their families.

- **Right to be free from forced labor**
Forced Labor Convention No. 29

(1930) outlines legal guidelines for the implementation of the protection of workers from forced labor risks. Article 1 explains that ILO member states that ratify the convention must guarantee the elimination of all forced labor practices. However, as seen from the intensive practices particularly in the marine sector, many countries are still deemed incapable of fulfilling their commitment. Article 9 also describes forced labor that can be committed with full intention by various relevant parties. Article 14 states that if forced labor occurs, there should be remedy given in accordance with the value of the labor that has been used in such forced labor practices. The remedy shall be in the form of guaranteed work safety and wages. Common mistakes that frequently occurred according to the report show how such forced labor activities were mostly done in an impromptu manner onboard a vessel and, without any doubt, through

coercion. In addition, the high number of forced labor activities that is not accompanied with decent wage finally leads to deviation from the convention as well as violations of the seafarers' human rights.⁵³

- **Right to health**

Right to health and safety at work, including rest time, days off, and limitation of work hours are explicitly governed in the UDHR and various ILO instruments.

- **Right to social security**

Rights to health and social security are recognized in a number of human rights norms and instruments, including the Universal Declaration of Human Rights (UDHR) and the International Convention on Economic, Social, and Cultural Rights (ICESCR). According to the UN Office of the High Commissioner for Human Rights (OHCHR), social security as a basic human right is crucial to ensure dignified life and to fight against discrimination, as well as an important instrument to promote social inclusion.

- **Child rights**

Violation of a child's rights and a child's right to be free from forced labor needs to be strengthened. This has been governed in the Child Rights Convention and C138 on minimum working age. Discussions on child rights can

In an ILO survey in 2018, there were 1.7 million children participating in economic activities in Vietnam, with 1 million falling into the category of child laborers.

be linked to what happens in Vietnam. In an ILO survey in 2018, there were 1.7 million children participating in economic activities in Vietnam, with 1 million falling into the category of child laborers. With regard to the fishing sector, the evidence that Vietnam still has very low awareness on the violation of child's rights can be seen in one of the cases from 2019, where children starting from age 11 worked onboard a Vietnamese vessel to carry out illegal fishing activities, of which the catch was processed as seafood that was sold in supermarkets in the EU and USA. In addition, the Environmental Justice Foundation (EJF) stated, based on its survey, that 12 children were found working on 41 vessels. Many of them were crews' families/relatives.⁵⁴ All forms of child labor on long distant fishing vessels are illegal in Vietnam. However, the fact that such cases still prevail show that the Vietnamese government is not agile enough to tackle the problem.

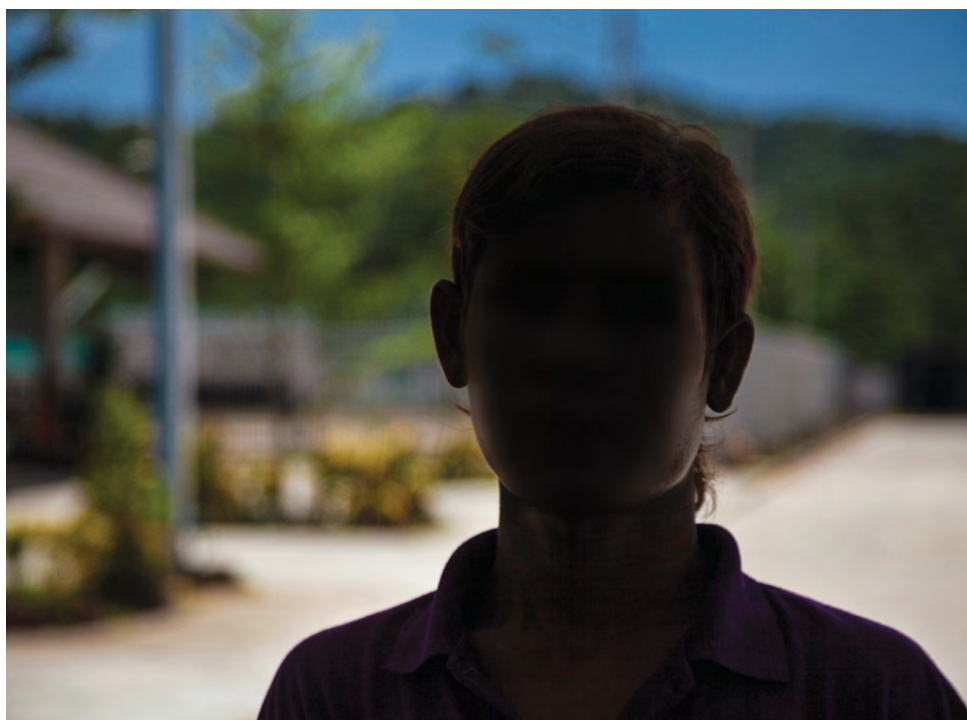
- **Right to fair treatment**
Non-discriminatory treatment in the workplace as explained in Article 7 of the UDHR.
- **Right to be free from slavery and torture**
Slavery is a derogatory action against humanity as it treats human beings as a commodity. Within this system, humans can be transacted, transferred, and

used in accordance with the owner's wishes. Such derogatory treatment is condemned by the international community and hence governed in Article 4 and 5, and particularly in the Convention Against Torture (CAT).

- **Right to freedom of religion or belief**
Freedom to practice religion and faith is governed in Article 18 of the UDHR and reiterated in Article 18 of the International Covenant on Civil and Political Rights (ICCPR).
- **Right to be free from human trafficking**
Human trafficking is a crime against human rights. In each and every case, humans must be treated fairly and with dignity. However, human trafficking has increasingly become a trending crime.
- **Right to be free from overcharging**
Overcharging practices in this context can be defined as the charging of excessive fees for worker placement that exceeds what has been agreed upon

between the contracting parties. In manpower terms, this practice commonly occurs during the recruitment process, where potential workers are imposed with an excessive fee that is beyond the previously agreed amount. Protection of the right to be free from overcharging has been discussed by the ILO in its General Principles and Operational Guidelines for Fair Recruitment and its Definition of Recruitment Fees and Related Costs, and IOM in its International Recruitment Integrity System (IRIS) standards. [🔗](#)

Bottom "Khean" (not his real name), a trafficked migrant worker, recounts how he and his crew sailed for 28 days from Thailand to the Saya de Malha Bank in the Indian Ocean. The crew was forced to work for 21-22 hours a day. In January 2016, Thai authorities rescued "Khean" along with another 14 Cambodian victims of trafficking from two fishing boats in Ranong. These boats were ordered back to port from the high seas by the Thai authorities for inspection.



5 CONCLUSION AND RECOMMENDATIONS



The structural problem that have led to massive human rights violations and the improper management of human rights cases of vessel crews in Southeast Asia are mainly rooted in the lack of political will and capacity of governments, which result in the omission of respect, protection, and fulfillment of vessel crews' human rights.

Such omissions are manifested in inadequate legal guarantees, weak law enforcement, and confusion in managing and dismantling the complexity of transnational organized crime. This situation has increased vulnerabilities and paved the way for forced labor, human trafficking, and modern slavery at sea to occur, which still and will keep happening. When such situations occur in the high seas, it is safe to say that anarchy and the absence of law and government become the order of the day.

At the international level regarding standards of norm, two agencies are present: (i) IMO, which focuses more on safety and security onboard a vessel and (ii) ILO, which focuses more on the protection of workers' rights. Various international cooperation mechanisms such as the ones covered by the ILO and IMO can essentially be good

Left Activists hold a theatrical protest commemorating International Migrant Worker Day every 18 December in front of the Central Java Governor office in Semarang, Central Java. Greenpeace Indonesia, Indonesian Migrant Worker Union (SBMI), and Student Executive Board in Brebes, Tegal and Slawi (BEM BREGAS) urged the Central Java Governor to protect the migrant fishing ship crew, that are mostly origin from cities in Central Java province and working on foreign fishing ships, from modern slavery treatment on the sea.

examples of how to translate international commitments at national level. However, the problem at the national level lies in the complexity of the issue that is meddled by power play in the licensing regime.

In Southeast Asia, initiatives that call for stronger protection guarantees for vessel crews are still far below expectations. In this region, norms that can serve as a modality or basis to cooperate to address this issue remain very limited. Although the region already has a legally binding convention to prevent human trafficking (ACTIP) and the ASEAN Consensus for the protection of migrant workers, there are no standard norms that specifically govern the protection of fishing vessel crews. There is an absence of law at the regional level, particularly laws that aim to protect vessel crew rights, and at this point the governments of ASEAN countries have failed to provide legal guarantees for their vessel crew workers.

For instance, as a maritime state, Indonesia still falls short of certain regulatory laws due to its weak political will to implement the mandate of Law 18/2017 to develop a Government Regulation (PP) on vessel crews. The national government, in this regard the Ministry of Manpower as the leading agency, Ministry of Transportation, Ministry of Marine Affairs and Fisheries, and Coordinating Ministry of Maritime Affairs and Investment have neglected their human rights-related duties and therefore must be held liable for it. Such absence of law has, is, and will add new vulnerabilities and reduce and eliminate respect, protection, and fulfillment of the rights of vessel crews. The deadlock in the discussion of the Draft Government Regulation on Indonesian Vessel Crew Protection



Top Labor activists from Indonesian Migrant Worker Union (SBMI), Women Solidarity, Migrant Worker Network, Human Right Working Group and Legal Aid Institute (LBH) Jakarta hold a theatrical action by carrying a boat to commemorate Migrant Day 2019 in front of Ministry of Manpower office in Jakarta.

is strongly suspected to have been caused by power disputes regarding who should take over the licensing processing and fees. The President shall call for his ministers to resolve such a conflict of interest.

In addition, the government's initiative through the Indonesian Minister of Foreign Affairs to chart the roadmap for C188 ratification, which specifically regulates the profession of seafarers in the fishing sector, requires a follow up. If Indonesia becomes a signatory state to C188, Indonesia will have a set of normative frameworks and norms for resolving cases as well as measures to protect vessel crew workers. There is a general paradigm among government institutions that ratification of international conventions will only add to their workload and hence reduce the effective implementation thereof.

As such, ratification efforts are often hindered by national interests, or even institutional interests, that are put above what should be the key interest, which is the protection of vessel crews.

Similar to Indonesia, the Vietnamese Government has yet to enact any specific laws for protecting their migrant workers. Vietnam only adheres to the MLC 2006 ratification and has not yet implemented any national regulations for vessel crew protection, which therefore enables the frequent occurrence of reported violations in this sector.

The issue of weak oversight in law enforcement against forced labor and human trafficking also happens in Singapore and Malaysia. Their economic progress is not matched by guaranteed work safety. The Singaporean government, for instance, is still deemed very discriminatory in implementing its oversight of migrant workers. This undoubtedly affects heavy industries, including the marine and fisheries sector which is still very vulnerable to modern slavery practices. Forced labor, massive exploitation of vessel crews by vessel owners, lack of responsibility in providing decent accommodation,

social security, health security, and work safety, as well as human trafficking practices are still common occurrences.

Thailand itself is the only Southeast Asian country that has ratified C188. However, a good legal framework does not necessarily lead to good results without optimal implementation. Several reviews previously conducted also reveal how Thailand's national government often experiences miscommunication with its sub-national counterparts. This has hindered them from implementing proper and equal regulations for vessel crew protection. Oversight that is not uniform will create injustice among vessel crews, and it also shows that the Thai Government has not succeeded in protecting its vessel crews.

In conclusion, this study concludes that Southeast Asian countries still neglect modern slavery practice in its region. No one shall be held under slavery or servitude. Slavery and slave trade are prohibited in any form. Modern slavery consists of at least three elements: imbalanced power relation between perpetrator-victim, coercion, and victims' inability to escape from the slavery they endure.

The situation is alarming, and neglecting it reflects the region's political crisis in addressing the issue of vessel crews protection. The crisis is marked with the absence or lack of legal guarantees to process and prosecute the modern slavery cases of vessel crews, which can be an indicator of how a state is unable to address the issue. The attitude of turning a blind eye and governments' negligence to provide an adequate legal umbrella shows the state's unwillingness to be the bearer of human rights responsibilities. Southeast Asian countries have failed to protect their vessel crews. 📍



RECOMMENDATIONS

The study concludes that there is still omission to/neglect of modern slavery in Southeast Asia. Therefore, it is imperative to map and prevent various human rights violations against vessel crews.

As such, this study recommends the following:

1. Prompting the creation of standard protection norms of vessel crews should be a priority agenda both at national and regional levels. The ratification of C188 by ASEAN member states, which is an initial step to ensure the standards of protection for fishing vessel crews. In addition, there needs to be a revision of the ASEAN Consensus for migrant worker protection, which incorporates the issue of vessel crews protection and ratification of various protection instruments for vessel crews;
2. Improve licensing and protection governance by merging and harmonizing licensing regime with protection regime. All this time, there has been disharmony between stakeholders at sea due to conflict of interest. Every business permit that does not respect, protect, and fulfill the rights of vessel crews must have their business permit revoked. We suggest the proper implementation of accountable and responsive institutional governance;
3. Strengthen oversight on human rights violations of vessel crews. As the locus of incident is far from protection outreach, it is important to put in place an embedded and multi-layered oversight system to reduce the possibility of human rights violation of vessel crews. Oversight work must also be supported with a reliable database on this issue;
4. Increase the capacity of law enforcers by equipping them with a human rights perspective to ensure respect, protection, and fulfillment of basic rights of the vessel crews;
5. Call for the National Human Rights Institutions (NHRI) to take roles in investigating human rights violations of vessel crews at national and regional levels through the ASEAN Inter-governmental Human Rights Commission (AICHR) and push for case settlement through the justice system and business dispute settlement mechanisms;
6. Call for every country to provide reporting and protection mechanisms for witnesses and victims that are integrated, responsive and effective, and provide rights to remedy for vessel crews who fall victim to human trafficking and forced labor;
7. Address vulnerability by holding international, regional and bilateral cooperation on vessel crews' safety and health, including strengthening cooperation through SOMTC, AICHR, and ACMW through ACTIP mechanism, particularly to prevent and punish the perpetrators of human trafficking at sea;
8. Promote United Nations Guiding Principles on Business and Human Rights (UNGPs) to prevent and address human rights violations in business practice. These guidelines must be socialized to the vessel owners, captain, and crews. The guidelines explain the business sector's responsibility to continuously protect, respect, and provide access to remedy for the victims;
9. Call for the fulfillment of basic rights of vessel crews, such as social security, freedom from slavery, torture, right to decent work and accommodation, freedom from arbitrary levy and salary deduction etc., by making the protection issue of vessel crews a priority for cooperation between countries;
10. Conduct a human rights-based feasibility study regarding the necessary and appropriate governance to ensure the fulfillment of vessel crews' rights at national, regional, and global levels.

ENDNOTES

1. <https://www.ohchr.org/Documents/Publications/FactSheet14en.pdf>
2. <https://sbmi.or.id/laporan-investigasi-sbmi-kasus-abk-meninggal-sepanjang-2015-2020/>
3. <https://www.greenpeace.org/southeastasia/publication/44492/forced-labour-at-sea-the-case-of-indonesian-migrant-fisher/>
4. https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf (page: 16)
5. FAO, 2012, Guidance on Addressing Child Labour in Fisheries and Aquaculture (Rome and Geneva), p. 49
6. https://pure.coventry.ac.uk/ws/portalfiles/portal/4074065/IUUreport_IOM_KKP_Coventry_ENG.pdf, 23-24
7. UNODC, “Combating Transnational Organized Crime Committed at Sea”, Issue Paper, (Maret, 2013), 1
8. UNODC, “Combating Transnational Organized Crime Committed at Sea”, Issue Paper, (Maret, 2013), 2
9. UNODC, “Combating Transnational Organized Crime Committed at Sea”, Issue Paper, (Maret,2013), 17-18
10. *IUUreport_IOM_KKP_Coventry_ENG.pdf, 31
11. https://www.ilo.org/global/standards/maritime-labour-convention/text/WCMS_162318/lang--en/index.htm
12. *1-s2.0-S0308597X20300270-main.pdf, 4
13. The ASEAN Forum on Migrant Labour (AFML) Background information booklet (fourth edition)
14. Annisa Erou & Tashryn Mohd Shahrin, “Dear ASEAN, modern slavery at sea is worsening on your watch” <https://www.thejakartapost.com/academia/2021/09/26/dear-asean-modern-slavery-at-sea-is-worsening-on-your-watch.html> (accessed on 15 December 2021, at 11:28)
15. UNODC, “Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact”, Report, (2019), 15
16. UNODC, “Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact”, Report, (2019), 65
17. <https://ekonomi.bisnis.com/read/20210218/98/1357734/alasan-perlindungan-awak-kapal-indonesia-masih-lemah> (accessed on 13 December 2021, at 20.55 WIB)
18. <https://mission-indonesia.org/2021/03/04/indonesia-bersiap-ratifikasi-c188-untuk-lindungi-awak-kapal-perikanan-indonesia/>
19. Keynote speech in the Webinar “Peluang dan Tantangan Ratifikasi C188 (Work in Fishing Convention)”, 4 March 2021
20. Riza Amalia, Ade Irma Fitriani, Bayu Sujadmiko, Ph.D, Scientific article: “Perlindungan Hak Anak Buah Kapal Dalam Kerangka Hukum Nasional Dan Hukum Internasional”, (Lampung: UNILA), p. 2-5
21. Nindya Aldila, “Alasan Perlindungan Awak Kapal Indonesia Masih Lemah” <https://ekonomi.bisnis.com/read/20210218/98/1357734/alasan-perlindungan-awak-kapal-indonesia-masih-lemah> (accessed on 4 December 2021 at 12.39)
22. M Ambari, “Masih Ada Kekosongan Hukum untuk Melindungi Awak Kapal Perikanan” <https://www.mongabay.co.id/2021/10/22/masih-ada-kekosongan-hukum-untuk-melindungi-awak-kapal-perikanan/> (accessed on 4 December 2021 at 13.34)
23. Fathiyah Wardah, “ABK Indonesia Kurang Dapat Perlindungan” <https://www.voaindonesia.com/a/abk-indonesia-kurang-dapat-perlindungan-/5689027.html> (accessed on 4 December at 13.57)
24. Kemnaker, ” Kemnaker Sambut Baik Wacana Ratifikasi Konvensi ILO” <https://kemnaker.go.id/news/detail/perkuat-pelindungan-awak-kapal-perikanan-indonesia-bersiap-ratifikasi-konvensi-ilo> (accessed on 7 December 2021)
25. Reza, “Pemerintah Siapkan Penyusunan RPP Bagi Awak Kapal Migran”, <https://www.liputan6.com/news/read/4177875/pemerintah-siapkan-penyusunan-rpp-bagi-awak-kapal-migran> (accessed on 7 December 2021)
26. Greenpeace, “ ABK Terjaring Perbudakan, Siapa Pelanggar HAM?” <https://www.greenpeace.org/indonesia/siaran-pers/45787/abk-terjaring-perbudakan-siapa-pelanggar-ham/> (accessed on 10 December 2021)

27. <https://www.hukumonline.com/berita/baca/t5ebfae6b53f09/ragam-masalah-hukum-yang-dialami-abk-indonesia?page=all> (accessed on 16 December 2021, at 23:12)
28. <https://sbmi.or.id/laporan-investigasi-kasus-abk-indonesia-di-atas-kapal-cina-2015-juli-2020/>
29. <https://sbmi.or.id/laporan-sbmi-gp-sebut-kapal-ikan-asing-yang-menindas-abk-indonesia/>
30. *ibid.*
31. <https://tirto.id/fakta-fakta-baru-perbudakan-14-abk-indonesia-di-kapal-cina-fqSs>
32. US Department of State, 2017
33. FAO, 2018a
34. US Department of State, 2019
35. European Commission, 2019
36. MFA Thailand, "Thailand provided assistance on wage non-payment to the crews on Asian Warrior vessel" <https://www.mfa.go.th/en/content/5d5bd0d215e39c30600218c8?cate=5d5bcb4e15e39c306000683e> (accessed on 1 December 2021, at 14.00)
37. Human Rights Watch, "Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry", Human Rights Watch, 2018, p. 46
38. Human Rights Watch, "Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry", Human Rights Watch, 2018, p. 43-87
39. Prachatai, "Thailand gets US TIP downgrade over forced labour of migrant workers" <https://prachatai.com/english/node/9324>
40. US Department of State, "2021 Trafficking in Persons Report: Thailand" <https://www.state.gov/reports/2021-trafficking-in-persons-report/thailand/>
41. Clyde & Co, "Singapore Set to Amend the Law to Enhance Seafarers' Rights under the MLC 2006" <https://www.clydeco.com/en/insights/2020/05/singapore-set-to-amend-the-law-to-enhance-seafarer> (diakses pada 5 Desember 2021 pukul 10.12)
42. Sallie Yea & TWC2, "Diluted Justice: Protection and Redress for Trafficked Fishermen in Asia", 2016, p. 21
43. Troubled_waters_sallie_yea.pdf
44. <https://thediplomat.com/2021/05/is-malaysia-really-a-maritime-nation/>
45. Trishelea Sandosam, "The Seafarers' Bill of Rights" <https://www.skrine.com/insights/newsletter/april-2017/the-seafarers-bill-of-rights> (accessed on 4 December 2021 at 12.38)
46. Kasthuri Patto, "MP SPEAKS | M'sia should ratify treaties to protect our fisherfolk, oceans" <https://www.malaysiakini.com/columns/596039> (accessed on 6 December 2021 at 09.34)
47. Siva Selan, "There aren't plenty fish in the sea anymore, Malaysians warned", (accessed on 16 December 2021, at 21.54)
48. Kasthuri Patto, "MP SPEAKS | M'sia should ratify treaties to protect our fisherfolk, oceans" <https://www.malaysiakini.com/columns/596039> (accessed on 6 December 2021 at 09.34)
49. Nguyen Viet Hoang Son, "Vietnam towards the Maritime Labour Convention, 2006 : benefits, challenges and reality", 2014, p. 13
50. <https://www.itfseafarers.org/en/news/help-us-no-food-no-salary-abandoned-vietnamese-seafarers-finally-home-union-support>
51. <https://sbmi.or.id/siara-pers-27-agustus-2020-sbmi-greenpeace-desak-pemerintah-sahkan-rpp-pelindungan-abk>
52. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/legaldocument/wcms_149911.pdf
53. ILO Forced Labor or Mandatory Work Convention (C29)
54. <https://www.theguardian.com/environment/2019/nov/19/vietnam-boats-using-child-labour-for-illegal-fishing>



Tuna is trans-shipped from an illegal, unregistered and unlicensed (IUU) purse seine fishing vessel onto a reefer, or cold storage vessel, on the high seas, close to the border with Indonesia's Exclusive Economic Zone (EEZ), 24 November 2011. The pirate fishing vessel, which had no discernible markings or name visible on the hull, was painted with word 'pirate' by the activists. Greenpeace earlier caught the vessel breaching international law by trans-shipping large quantities of tuna onto a reefer, or cold-storage ship, in international waters.



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