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Международная федерация транспортников
التنظيم عالمياً، النضال من أجل حقوقنا

Submission of the International Transport Workers' Federation to the UPR Session for Lao People's Democratic Republic, 18 July 2019

1. In advance of the Universal Periodic Review of Lao People's Democratic Republic (Lao PDR) due to take place in January 2020, the International Transport Workers' Federation (ITF), a global union federation representing 18.5 million members, from around 670 affiliates in 147 countries submits the following information on behalf of all workers in the Lao PDR, but in particular those migrating from Lao PDR to work in the Thai fishing industry.

2. For many years, the ITF has made dedicated efforts to force action to tackle the desperate conditions and egregious human rights abuses prevalent in the Thai commercial fishing industry. Though the national union system in Lao PDR does not permit unions independent of the state and thus eligible for ITF affiliation to represent workers, an injustice to workers anywhere is an injustice to all.

Background

3. It has been estimated that 2 million workers are employed in the Thai commercial fishing sector. For a number of reasons, including a major natural disaster in 1989, many Thai crews abandoned the sector leaving vessel owners in desperate need of labour.¹ This gap has been filled by migrant workers from Myanmar, Cambodia and Laos.² The vast majority of crews on Thai flagged fishing vessels engaged in coastal/short haul and deep sea/long haul³ fishing come from these neighbouring countries.⁴ Forced labour, trafficking and debt bondage are prevalent.

4. The state in which workers are employed is responsible for ensuring workers in its jurisdiction are guaranteed decent work and adequate labour conditions, and for eradicating modern slavery, forced labour and exploitation within its borders. The ITF, along with the ITUC, brought its complaints against the Government of Thailand to the ILO most recently in 2016; that the state is in serious breach of its obligations under ILO Convention 29 and deprives migrant workers of the fundamental right to freedom of association, which further facilitates the exaction of forced labour. Thai labour law specifically prohibits migrants from forming their own unions although they are permitted to join Thai unions as long as they do not take leadership roles.

¹ International Organization for Migration, *Trafficking of Fishermen in Thailand (IOM Report)*, 14 January 2011.

² There is still a reported shortage of 50,000 fishers. See, International Labour Organization, *Employment practices and working conditions in Thailand's fishing sector (ILO Report)*, 2013, page ix

³ Higher incidences of forced labour and trafficking have been reported on deep sea/long haul vessels. See, ILO Report, page 72.

⁴ ILO Report, page 35

5. There are clear additional difficulties in enforcing labour laws in the commercial fishing sector where activities may be carried out on the open seas and on vessels that may be flagged to a state other than the state where it offloads its catch.⁵ It is the flag state that has jurisdiction on board the ship. Furthermore, transshipment is an ongoing practice on vessels supplying the Thai fishing industry. This practice of transferring catch from one vessel to another while at sea allows many fishing vessels to only rarely return to port, depriving many seafarers of shore leave and effectively imprisoning them at sea, with decreased opportunity to access services and organisations concerned for their welfare.

6. Despite significant continuing action required on the part of Thailand, the state of Lao PDR also has obligations to its nationals, particularly when such a key part of trafficking process takes place internally in Laos. The recruitment of migrant fishers is generally handled by brokers who charge the individuals for their transfer and placement with vessel owners and/or operators. The broker usually provides transportation to a border crossing point into Thailand and then either continues with the worker or hands them over to another broker on the Thai side of the border. Once these migrants reach Thailand, they are usually sold off to fishing boat captains.

State Obligations under International Law

7. Lao PDR ratified the International Covenant on Civil and Political Rights (ICCPR) in 2009 and International Covenant on Economic, Social and Cultural Rights in 2009, relatively recently. Article 8(1) and (2) of the ICCPR hold that “no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited” and “no one shall be held in servitude”.

8. In accordance with articles 7 and 8 of the ICESCR, the state is obliged to respect the right to just and favourable conditions of work and the right to form and join trade unions of one’s own choice, including the right to take industrial action. Article 22 of the ICCPR protects the right to freedom of association with others, including the right to form and join a trade union to protect one’s interests.

9. The state has ratified few ILO conventions, though fundamental Convention 029 on Forced Labour is one such convention to which it is a longstanding state party. It thus undertakes to suppress the use of forced or compulsory labour in all its forms and in the shortest possible time. It has not ratified the Optional Protocol to the Forced Labour Convention (P029), which provides a vital update to the 1930 convention with obligations and solutions more targeted at the eradication of complex modern slavery and specifically tackling trafficking for the purposes of forced labour. Where ratified, a state’s obligations include: effective prevention measures such as education of both those vulnerable to trafficking and employers; supporting business due diligence and responses to risk in their supply chains; ensuring victim release, recovery, rehabilitation and compensation; sanctioning offenders; and addressing root causes

⁵ Though it is estimated that 60 per cent of the Thai fleet’s total marine catch comes from waters inside Thailand’s Exclusive Economic Zone (EEZ), with the remainder caught outside the EEZ. For illegal fishing in the territorial waters of neighbouring States, including Indonesia, see: <http://www.aseanews.net/illegal-fishing-costs-indonesia-3-billion-dollars-a-year/>

of forced labour. Access to justice should be ensured for any victim, whether or not they are legally resident in that state.

10. Since 2005, Lao is a party to the ILO Minimum Age Convention (C138) and the Worst Forms of Child Labour Convention (C182), which determine the minimum working age and prohibit the use of children in slavery, prostitution and illicit activities.

11. As a landlocked state, Lao PDR has not ratified ILO Work in Fishing Convention 188. However, despite the emphasis on the flag states of vessels, in the particular circumstances as a source country for migrant workers, this does not make it wholly irrelevant. A section dedicated to recruitment ensures important fair practices and authorisation of agencies, such as a prohibition of recruitment fees being borne directly or indirectly by the fisher.

Previous UPR Session

12. The 2015 UPR review of Lao PDR saw the suggestion to reform its labour laws, particularly the protection of freedom of association (Ghana, para. 121.159), reinforce efforts to combat child labour (Angola, para. 121.2) and work on the implementation of human rights conventions, including labour conventions (Russian Federation, para. 121.40).⁶

13. States were concerned about trafficking into and out of the country (Slovenia, at para. 36) and recommended a law be adopted to combat modern slavery (Serbia, para. 121.114) human trafficking, (Serbia 33, Indonesia 121.117, Lebanon 121.120), implementation of existing trafficking laws (Ghana) or that other anti-trafficking measures and programmes be implemented (Sierra Leone 121.112, Sri Lanka). Some emphasised this particularly in the context of women and girls and sexual exploitation (Holy See, Lebanon, Malaysia). Some states recommended a focus on the root causes of trafficking (Belarus, Slovenia 121.116).

14. The facilitation of unhindered action for human rights defenders and NGOs was recommended, notably through a reform of their registration system (France, para. 121.129).

National Law

15. The 2007 Laotian Trade Unions Act sets out the rules and measures relating to the functions of the one national trade union, the Lao Federation of Trade Unions,⁷ which is directly linked to the ruling Lao People's Revolutionary Party. Its officers are paid by the government and its members registered via the Party or state organs. The state points to this law as part of its implementation of freedom of association rights as set out in the ICCPR, and that its roles and functions are "to protect the rights and *legitimate* interests of the working people".⁸ However this does not incorporate workers' rights to set up, join and administer their own union organisations, rules and activities. In Lao PDR, trade unions have the status of governmental, or at least public, organisations. Though the national workers' unions have been known to approach state action and policy critically, they are not independent bodies for workers as required in international law.

⁶A/HRC/29/7, March 2015, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/29/7&Lang=E>

⁷ English version available here: http://asean.org/wp-content/uploads/2016/06/L1_LAW-on-Lao-Trade-Unions-2007.pdf.

⁸ *Emphasis added*. Lao PDR National Report to HRC WG on UPR, 21st Session, A/HRC/WG.6/21/LAO/1, 5 Nov 2014, para 22.

16. The role of the union is to mediate and resolve disputes, rather than the furtherance of workers' rights and, according to the ILO assessment of the law, there is no compulsion of the employers to engage in bargaining with the union. This is despite the Union's involvement in the establishment of collective labour contracts in 380 labour units as at the last UPR session.

17. The Labour Law was reformed in 2013 to raise the minimum working age to 14, and to allow "light work" from the age of 12⁹ Hazardous work is not permitted for those under 18 years of age. It is permitted under Convention 138, where the "economy and educational facilities are insufficiently developed", for a state to "initially specify" a minimum working age of 14 years. This was prior to the last UPR session, and the recommendations to do more against child labour have been ignored. The initial period may now reasonably be deemed past and Laos should be encouraged to increase this to the minimum age otherwise of 15 years and after the end of compulsory schooling.

18. In November 2018, there was a revision of the Penal Code, which criminalised labour trafficking as well as sex trafficking, increased penalties and there is a record of at least one conviction for labour trafficking of a Lao national abroad. The ITF commends these steps and would encourage increased efforts in this area, which, being aware of the scale of the problem, it expects will result in a greater number of convictions.

19. Cross-border positive steps have been taken such as the signature in 2002 of a Memorandum of Understanding between the Royal Thai Government and the Government of Lao PDR on employment cooperation.¹⁰ The states agreed to cooperate to formalise the movement of migrant labour between the two countries and regularise migrant workers' documentation, health insurance and repatriation funding, as well as apply all necessary measures to prevent trafficking of labour and share information in relation to human trafficking, illegal immigration, trafficking of labour and illegal employment. In a context where these elements are controlled, there is far less risk of migrants falling into the forced labour and trafficking.

20. A further Memorandum of Understanding between these two states on cooperation to combat trafficking in persons, especially women and children signed on 13 July 2005 was superseded by another on 12 July 2017 on cooperation to combat trafficking in persons, as confirmed by article 24 of the latter. The ITF commends the revision of the Memorandum as it provides for ways that the two states can work together for the benefit all victims of trafficking, including those trafficked for labour exploitation more broadly, although women and children are still given particular emphasis in the text. It provides for cross-border law enforcement cooperation, including at the border and in prosecutions, and puts the victim at the centre of the process with a stronger emphasis on protection, role in criminal proceedings, repatriation and sensitive and effective "reintegration".

⁹ See revised articles 3(2) and 101 of Lao PDR Labour Law, at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/96369/113864/F1488869173/LAO96369%20Eng.pdf>.

¹⁰ Available at https://www.ilo.org/asia/info/WCMS_160929/lang--en/index.htm.

21. COMMIT, a similar regional Memorandum of Understanding on cooperation against trafficking in persons in the Greater Mekong Sub-region was signed in October 2004 between the countries of Thailand, Lao PDR, Cambodia, Myanmar, China and Vietnam.¹¹

22. The ILO Southeast Asian Forum to End Trafficking in Persons and Forced Labour of Fishers (“The SEA Forum for Fishers”) is the multi-stakeholder Regional Coordination Body established in Southeast Asia to improve coordination in combatting trafficking in persons, forced labour, and modern slavery at sea. We would call upon the Laotian government to fully participate in this multistakeholder forum involving governments, worker representatives and employer representatives, supported by a Technical Advisory Group, guided by a Steering Committee, and with designated Working Groups on behalf of Lao PDR’s 594,500 fishers

Labour Exploitation and Human Trafficking

23. The ITF has been working consistently to attempt to change the severe exploitative conditions in the Thai fishing industry, where fishers face poor conditions and extreme labour abuses, including low wages, document retention, debt bondage, serious lack of health and safety provisions on board, high identity document costs. It is of note that the US TIP report points out that up to thirty per cent of Laotian citizens may be without national identity documents, which increases their vulnerability to trafficking.¹²

24. Lao PDR has been graded to the Tier 2 Watch list for trafficking in human beings in the recent US State Department Trafficking in Persons Report.¹³ We note with interest that the state was upgraded from tier 3 (to which it was downgraded only in 2018), for achieving key progress in various aspects such as providing services to trafficking victims, including male victims for the first time. This is particularly relevant for victims of trafficking for the purposes of forced labour or labour exploitation. The state also issued a decree for provincial and local multi-sectoral anti-trafficking steering committees.

Reference is made in this report to cross-border cooperation assisting with the prosecution and conviction in Thailand of a trafficker who exploited a Lao national in the fishing industry. The Report recommends that border authorities screen for indicators of trafficking particularly among Laotian nationals returning from Thailand. Emphasis is often on trafficking in human beings for the purposes of sexual exploitation, but worldwide figures show that four times the number are trafficked for labour exploitation.¹⁴ Traffickers exploit Lao men and boys in Thailand’s construction and agricultural industries, as well as the fishing industry.

Due to its nature as a labour source country, Lao PDR must place strong focus on its efforts to ensure the fair recruitment of fishers in Lao PDR destined for employment in the Thai fishing industry. The recruitment stage is a key stage in the route to human trafficking and exploitation, and the source country has a responsibility to protect its own nationals. This includes monitoring of brokers and agents in Lao PDR, ensuring that deceptive and coercive practices such as charging workers recruitment fees are prohibited and adequately policed. Appropriate sanctions should be taken against abusive, fraudulent and exploitative

¹¹ Available here http://un-act.org/wp-content/uploads/2015/07/COMMIT_MoU.pdf.

¹² *US TIP report*, p288.

¹³ *US TIP Report June 2019*, US State Department, see p287 et al, at <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>).

¹⁴ See <http://50forfreedom.org/modern-slavery/>.

recruitment practices, particularly those that could result in forced labour or human trafficking.

Recommendations:

The ITF would urge the state to:

- Ratify and effectively implement the ILO Optional Protocol to the Forced Labour Convention (P029), targeted at practical steps for the eradication of complex modern slavery.
- Ratify and effectively implement ILO Convention 188 Work in Fishing Convention, and implement and enforce laws for the protection of fishers and fishing vessels under its jurisdiction - particularly relevant in ensuring safe and uniform recruitment practices and the protection of Laotian nationals from being trafficked to provide migrant labour in the fishing industry of a seafaring nation.
- Ratify and effectively implement other core fundamental conventions of the ILO, in particular Conventions 87 and 98 on freedom of association (including the right to freely form and join trade unions of choice), free collective bargaining and the right to strike.
- Combat child labour by revising article 3(2) and 101 of the Laotian Labour Law 2013 to raise the minimum age to 18 (or in any case 15 years post termination of compulsory schooling as per ILO Convention 138).
- As a major source country of migrant labour in Southeast Asia, ratify and effectively implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Ratify and effectively implement ILO Convention 97 on Migration for Employment, ILO Convention 143 on Migrant Workers (Supplementary Provisions) and ILO Convention 181 on Private Employment Agencies.
- Engage further with the Thai government on the issue of Lao nationals trafficked into, or otherwise suffering in conditions of slavery, debt bondage or exploitation, in the Thai fishing industry, by increased international cooperation between the state and other international organisations as under article 8 of the Trade Unions Act.
- Engage fully with the ILO SEA forum for fishers, in consultation with local social partners.
- Ease restrictions on civil society non-government organisations and encourage independent trade unions, which may be able to assist and focus on this work.
- Reflect the ILO General principles for fair recruitment in national legislation and regulations for employers and recruiters, including the elimination of any recruitment fees and associated costs, enforcing the “employer pays” principle in relation to any recruitment costs and providing coverage for repatriation fees.
- Work with the ILO to develop and provide strong pre-departure training for Laotian migrant workers.
- Encourage a sectoral and cross-border approach in formulating more effective policies and action plans to combat human trafficking and forced labour, for example in the fishing industry. Consider setting up, alongside provincial and local multi-sectoral steering committees, sectoral anti-trafficking steering committees in fishing and other problem industries.

- Formalise national birth registration procedures to decrease vulnerability to trafficking.