

Report of the Proceedings

Enhancing Capacities of Fishing Communities: ICSF-BOBLME Sub-regional Dialogue on Labour, Migration and Fisheries Management



11 to 13 December 2013
Maha Chulalongkorn Building, Chulalongkorn University,
Bangkok, Thailand

Published by



**International Collective in Support of
Fishworkers (ICSF)**

With support from



**Bay of Bengal Large Marine Ecosystem
(BOBLME) Project, Phuket, Thailand**

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International Collective in Support of Fishworkers
www.icsf.net

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Migrant fishers on medium scale crab trap boat, Gulf of Thailand

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A mother and child watch a fishing vessel at port in Ranong, Thailand

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Acronyms and Abbreviations

ANM	Action Network for Migrants, Thailand
ARC	Alien Resident Certificate, Taiwan
ASEAN	Association of Southeast Asian Nations
BOBLME	Bay of Bengal Large Marine Ecosystem Project of FAO
C87	Freedom of Association and the Right to Organize Convention, 1948
C98	Right to Organize and Collective Bargaining Convention, 1949
C182	Worst Forms of Child Labour Convention, 1999
C188	Work in Fishing Convention, 2007
COFI	Committee on Fisheries of FAO
CSO	civil society organization
DLPW	Department of Labour Protection and Welfare, Thailand
DOE	Department of Employment, Thailand
DOF	Department of Fisheries, Thailand
DSI	Department of Special Investigation, Ministry of Justice, Thailand
EEZ	exclusive economic zone
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FAR	Foundation for AIDS Rights
GDP	gross domestic product
GEF	Global Environment Facility
GLP	good labour practices
GMS TRIANGLE	Greater Mekong Sub-region Tripartite Action to Protect Migrant Workers from Labour Exploitation
GSP	Generalized Scheme of Preferences
ICSF	International Collective in Support of Fishworkers
IEC	information, education and communication
IGO	intergovernmental organization
ILO	International Labour Organization
IMO	International Maritime Organization
IOM	International Organization for Migration
IPEC	International Programme for the Elimination of Child
IUU	illegal, unreported and unregulated (fishing)
LAO PDR	Lao People's Democratic Republic
LCC	Labour Co-ordination Centre, Thailand
LPN	Labour Rights Promotion Network
LRCT	Law Reform Commission, Thailand
MLC	Maritime Labour Convention, 2006
MMTU	Myanmar Maritime Trade Union
MOL	Ministry of Labour, Thailand
MoU	memorandum of understanding
MSDHS	Ministry of Social Development and Human Security, Thailand
MWC	Migrant Workers' Convention, 1990
MWRN	Migrant Worker Rights Network

NFAT	National Fisheries Association of Thailand
NGO	nongovernmental organization
NT\$	New Taiwan Dollar
OSCC	‘one-stop-crisis-centre’
OSH	occupational safety and health
PSMA	FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009
RFPN	Regional Fisheries Policies Network, SEAFDEC
SDF	Sustainable Development Foundation
SEAFDEC	Southeast Asian Fisheries Development Centre
SEA-SOFIA	Southeast Asia State of Fisheries and Aquaculture
SSO	social security office
TFFA	Thai Frozen Food Association
THB	Thai Baht
TLS	Thai Labour Standards
TSA	Thai Seafarer Association/Thai Shrimp Association
UNCLOS	1982 United Nations Convention on the Law of the Sea
US\$	United States Dollar
WCPFC	Western and Central Pacific Fisheries Commission

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Simon FungeSmith, Senior Fishery Officer, FAO Regional Office for Asia and the Pacific, Bangkok.

We also gratefully acknowledge the Chulaongkorn University, Bangkok, for co-hosting the Dialogue.

Summary

Title and Venue

The Sub-regional Dialogue on Labour, Migration and Fisheries Management was organized at Chulalongkorn University, Bangkok, Thailand, from 11 to 13 December 2013 as a collaborative event between the Sustainable Development Foundation (SDF), the Action Network for Migrants (ANM), Chulalongkorn University (CU), the International Collective in Support of Fishworkers (ICSF), the Global Environment Facility (GEF) and the Bay of Bengal Large Marine Ecosystem (BOBLME) project of the Food and Agriculture Organization of the United Nations (FAO).

- *Sub-regional Dialogue on Labour, Migration and Fisheries Management, Chulalongkorn University, Bangkok, Thailand, 11 to 13 December 2013*
.....

Dialogue Partners

Participating in the Dialogue as partners were intergovernmental organizations (IGOs), such as the International Labour Organization (ILO), the International Organization for Migration (IOM) and the Southeast Asian Fisheries Development Centre (SEAFDEC), and representatives of academia, labour unions, civil society organizations (CSOs), non-governmental organizations (NGOs), vessel owners and fish processors, the Thai Ministry of Labour (MOL) and the Thai Department of Fisheries (DOF).

- *Participants included IGOs like ILO, IOM and SEAFDEC, and representatives of academia, labour unions, CSOs, NGOs, vessel owners and fish processors, the Thai Ministry of Labour (MOL) and the Thai Department of Fisheries (DOF)*
.....

Dialogue Focus

Based on the Migrant Workers' Convention, 1990, the Dialogue treated all fishers employed on board a vessel, registered in a State of which they are not nationals, as migrant fishers. By focusing on migrant fishers, the Dialogue sought coherence in the Association of Southeast Asian Nation (ASEAN) region across sea safety, labour conditions and fisheries-management measures. Since Thailand employs the largest number of migrant fishers in the ASEAN region, the focus of the dialogue naturally turned to that country. Over 80 per cent fishers on board Thai vessels originate from Myanmar, Cambodia and Lao PDR. Most of the migrant fishers on Thai fishing vessels are irregular or undocumented migrant fishers, or fishers without any authorization to work.

- *By focusing on migrant fishers, the Dialogue sought coherence in the ASEAN region across sea safety, labour conditions and fisheries-management measures*
.....

Dialogue Structure

The Dialogue was spread over eight sessions. Sessions 1 to 4 were held on Day 1 with partners other than government and industry representatives.

- *Eight Sessions*
.....

Session 1

Session 1 focused on recruitment and employment conditions of irregular migrants on Thai fishing vessels, based on the testimonies of two Burmese fishers on board Thai trawlers in the Thai and Indonesian waters. The testimonies drew attention to the plight of migrant fishers on board Thai fishing vessels, especially to issues such as the lack of a written work agreement, poor working conditions, lack of healthcare, poor safety at sea, human trafficking and low levels of payment, as well as exploitation by brokers and forced transfer of fishers at sea.

- *Recruitment and employment conditions of irregular migrants on Thai fishing vessels*
.....

Session 2

- *Compelling reasons behind the migration of fishers*
.....

In response to these testimonies, Session 2 discussed the importance of ensuring that migrant fishers worked willingly and enjoyed greater freedom of movement. It sought the compelling reasons behind the migration of fishers, especially of young ones below 18 years of age, and discussed existing mechanisms—or their lack—in the State of origin and the State of employment to manage migration, the paucity of training in sea safety and fisheries management, and the poor capacity of State authorities to monitor and prevent illegal recruitment and abuse of labour on board fishing vessels.

- *A pan-ASEAN parity of legislation necessary to improve working and living conditions*
.....

The testimonies made clear that migrant fishers of certain nationalities are treated less fairly than others. Unskilled migrant fishers are more at the receiving end of ill treatment on board fishing vessels. While good employers do exist who pay decent wages that allow fishers to send money to their families, there is generally a dearth of legislation to deal with the minimum age for fishing, and medical examination of fishers and their hours of rest while fishing. A pan-ASEAN parity of legislation is necessary to improve working and living conditions, it was suggested.

Session 3

- *Key challenges and priorities in protecting the rights of migrant fishers*
.....

Session 3 focused on key challenges and priorities in protecting the rights of migrant fishers. It reviewed existing legal instruments, and proposed amendments to protect the rights of migrant fishers. General labour laws in Thailand do not apply to fishers and workers in the agriculture, maritime, transport and domestic sectors, which had special, sector-specific regulations. The 1998 Thai Ministerial Regulation No. 10 applies to labour issues in the fishing sector. It provides protection to marine fishers, including regular migrant fishers, especially those who receive remuneration as a share of the catch value. The regulation applies to vessels operating from Thailand and only if the number of fishers on board is above 20. Vessels operating continuously outside the Thai maritime zones for periods exceeding one year are excluded from the purview of this instrument.

Employees, including fishers, who are Thai citizens, enjoy the right to establish labour unions under the Thai Labour Relations Act, 1975. Documented or registered migrant fishers can join these unions, but are not eligible to contest elections or seek appointment as office bearers. Undocumented or unregistered migrant fishers cannot, however, be made members of these unions, nor can they form any association or labour union on their own.

- *Legislation must be improved to recognize the rights of migrant fishers to form their own labour unions*
.....

There are few labour unions in fishing since there are not many Thai workers in the fishing industry. Only recently have Thai labour unions and federations begun to look at sectors such as fishing, especially to support migrant fishers and fishworkers who are unprotected or abused. Legislation must be improved to recognize the rights of migrant fishers to form their own labour unions, which would enhance their negotiation power, it was observed.

A comprehensive understanding of the labour dimension of fishing in Thai national waters and in the high seas, as well as in land-based fish-processing activities, is necessary, it was noted. Often health protection and welfare of migrant fishers are overlooked. There are no memorandums of understanding (MoUs) with countries like Myanmar, Cambodia and Lao PDR that supply labour for fishing. Fishers are not trained before starting work on board a vessel; they learn by doing on the job. There is no survival training or inspection of fishing vessels at sea to verify compliance with sea-safety measures or onboard hygiene standards.

Enhancing the capabilities of migrant fishers was called for to make them confident in negotiations with employers. Thai fisheries rules and regulations

should be translated from Thai to Burmese or Khmer, it was suggested. Migrant fishers should be informed whom to contact in an emergency. Crew lists must be maintained to establish expeditious contact with family members of accident victims. Legal protection mechanisms should be made operational, and communication with migrant fishers should be improved to enhance the protection of migrant fishers, especially on matters of health and legal aid.

Only workers under a wage system are insured under the Thai Social Security Act, 1990. Since fishers, including migrant fishers, are paid a share of the catch in value terms, they are not insured. They are not entitled to contribute to the Social Security Fund, either. As a result, they cannot draw on social-security benefits from the Fund, unlike insured wage workers.

Unlike the Social Security Fund, to which employers, workers and the government make contributions, the Workmen’s Compensation Fund, which is used to pay workers in the event of occupational accidents and diseases, is entirely based on contributions from the employers, it was noted. Although migrant fishers are entitled to benefit from the Workmen’s Compensation Fund, the compensation is often meagre.

Session 4

Session 4 discussed the need for capacity building of migrant fishers towards addressing some of the issues highlighted, including through raising awareness, in the light of some of the current activities of ILO and IOM on migration and fishing in Thailand and the ASEAN region. A Taiwanese migrant fishers’ union made a presentation on good migrant fisher-management practices in Taiwan.

ILO presented its five-year project (since 2010) in the Greater Mekong sub-region to protect migrant fishers in labour-sending and destination countries, and its activities in Thailand, in particular, in collaboration with relevant Thai government ministries and departments, especially to revise or develop laws and regulations to protect migrant fishers. It is building the capacity of employers, fishers and the government, preparing training material on labour and safety inspection in fishing, developing a complaint mechanism for fishers and assisting the Ministry of Labour in setting up national labour co-ordination centres in fisheries. It also provides information on the rights of migrant fishers. ILO also shared information on guidelines for good labour practices in fishing that are developed in partnership with the Thai vessel owners.

IOM gave an overview of the cycle of migration and the type of information that migrants need to protect themselves from exploitation. Pre-departure training for migrants was a right under the ILO Migration for Employment Convention (Revised), 1949 (No. 97), it was pointed out. However, such training focused on migrants in the regular channel, not those who entered a country in an irregular or unauthorized, manner. IOM’s post-arrival trainings targeted the migrant workers, including fishers, who came to Thailand through both illegal and legal channels.

The migrant fishers’ union of Taiwan highlighted several legal instruments that successfully protect the rights of migrant fishers as a model for the Thai fishing industry. All migrant fishers in Taiwan had the benefit of a written contract. They were entitled to a minimum monthly wage, had regular working periods not in excess of eight hours and were entitled to overtime if fishing hours extended from eight to 12 hours. Like other fishers, migrant fishers also enjoyed a day off from fishing every week.

The discussion that followed noted that there is very little information about the Thai fishing industry. Neither is it clear how many fishing vessels are in operation, nor how many tour boats transfer catch, provisions and

- *Legal protection mechanisms should be made operational, and communication with migrant fishers improved to enhance their protection, especially on matters of health and legal aid*
.....

- *Need for capacity building of migrant fishers*
.....

- *ILO is building the capacity of employers, fishers and the government, preparing training material on labour and safety inspection in fishing, developing a complaint mechanism for fishers and assisting the Ministry of Labour in setting up national labour co-ordination centres in fisheries*
.....

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.....

- *Very little information about the Thai fishing industry*
.....

fishers at sea. Over two-thirds of fishing vessels are unregistered. There are no reliable estimates of the total number of migrant workers in Thailand and migrant fishers on Thai vessels, in particular—in transit on tour boats and on board fishing vessels—for several reasons. Many migrant workers use fake documents and forged passports to establish false identity as Thai citizens. Some migrants also fake documents from their own country to establish a national identity.

- *MoUs on fishing with neighbouring countries could be signed to ensure all regular migrant fishers benefit from social security*
.....

It was alleged that the majority of vessel owners are not interested in solving the problems of migrant fishers. These can be solved only if the vessel owners co-operate. It was suggested that MoUs on fishing with neighbouring countries be signed to ensure all regular migrant fishers benefit from social security. In addition to complying with catch-certification schemes of import markets, Thai fishing vessels should demonstrate no forced labour or human trafficking of fishers on board, it was suggested.

Session 5

Sessions 5, 6 and 7 were held on Day 2, with the Thai Ministry of Labour, the Thai Department of Fisheries and the fishing industry also joining the Dialogue. At the outset, the relevance to migrant fishers of the 1990 United Nations International Convention on the Protection of the Rights of Migrant Workers and Members of their Families—known as the Migrant Workers’ Convention—was flagged by ICSF.

- *Promotion and protection of the human rights and fundamental freedoms of all migrants, regardless of migration status*
.....

The reference in the *Rio+20 Outcome Document, The Future We Want*, to promote and protect the human rights and fundamental freedoms of all migrants regardless of migration status was mentioned, as well as the 2013 Declaration of the UN High Level Dialogue on International Migration and Development to address issues of international migration through co-operation and dialogue at various levels. At the ASEAN level, the 2012 Southeast Asia State of Fisheries and Aquaculture (SEA-SOFIA) report of SEAFDEC was cited in addition to the 2012 BOBLME study on migrant fishers. While the former recognized the importance of improving the conditions of work and the status of migrant fishers, the latter had recommended fisheries action programmes to protect the rights of migrant fishers.

- *Thailand has now 4 mn migrants, the largest population of migrant workers in Southeast Asia, mainly employed in agriculture, construction, manufacturing and domestic work*
.....

Referring to the reports of the UN Secretary General on International Migration and Development, the emergence of Thailand as a major destination country for labour migrants in Southeast Asia was mentioned. Thailand has now four million migrants, the largest population of migrant workers in Southeast Asia, mainly employed in agriculture, construction, manufacturing and domestic work.

- *Fishing is the hardest among all jobs that migrants can take up in Thailand.*
.....

It was further pointed out that with a conservative estimate of 100,000 migrant fishers, Thailand, arguably, had the largest number of migrant fishers anywhere in the world engaged under a single flag. Almost the entire unskilled workforce in trawl and purse-seine fishing operations comprised irregular or undocumented migrants. Fishing is the hardest among all jobs that migrants can take up in Thailand. Trafficking and forced labour are reported much more in fishing than in other sectors where migrants are engaged.

- *Improving safety, working and living conditions of fishers can also help fight illegal, unreported and unregulated (IUU) fishing*
.....

Adopting and implementing labour standards in fishing and improving safety at sea would be consistent with a human-rights-based approach under the FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication, and in the process, lead to effective fisheries management and enhanced market access. Improving safety, working and living conditions of fishers can also help fight illegal, unreported and unregulated (IUU) fishing, it was noted.

The Dialogue was then formally inaugurated by Sunee Chaiyaros, Vice-President, Law Reform Commission of Thailand. She stressed the importance of resolving the issues facing migrant fishers by adopting a human-rights approach, especially to deal with forced labour and human trafficking in fisheries. Women and children are particularly affected when they are trafficked. Labour-rights protection enjoyed by workers should extend to migrant fishers as well, she said, and requested employers to come forward and offer a minimum wage to migrant fishers.

Session 6

Session 6 discussed employment and social protection in Thai fisheries. It was formally opened by Surichai Wan'gao, Centre for Peace and Conflict Studies, Chulalongkorn University. He hoped the Dialogue would broaden the understanding of policymakers on an issue such as migration into fishing. He also highlighted the importance of human rights and human security, and wanted ASEAN to be made more responsive to issues in the region.

The ILO representative introduced the Work in Fishing Convention (C188) and pointed out it provided the necessary reference points for the development of national labour standards in the ASEAN region. In the context of Thailand, at least five provisions of C188—on minimum age, hours of rest on board a fishing vessel, work agreement of a fisher, crew list, and payment of fishers—were relevant in revising the Thai Ministerial Regulation No. 10, he said. A list of hazardous activities for children, jointly developed by ILO and FAO, was mentioned, which included night work, fishing in inclement weather, fishing in offshore waters and diving.

The kind of work children can do on board a fishing vessel should be defined, it was suggested. Minimum hours of rest, as prescribed under C188 for those vessels remaining at sea for over three days, should be considered while revising the Thai Ministerial Regulation No. 10, to protect both national and migrant fishers. Work agreements based on C188 should be adopted to provide greater protection to fishers in terms of setting norms for working hours, wages and deductions, and regularity of payment. The crew list provision of C188 was relevant for migrant fishers traded to other fishing vessels at sea, especially to maintain a link between the vessel, the skipper and the fisher. The representative of ILO suggested that the Thai Ministerial Regulation No. 10 should stipulate making a basic payment to fishers, on a monthly or regular basis, and compensating workers affected by occupational diseases.

The representative of SEAFDEC said for a socially sound fisheries-management regime, it was pertinent to know the extent of dependence of domestic and migrant workers on fishing. He drew attention to the regional policy documents such as the 2009 ASEAN Socio-Cultural Community Blueprint and the 2009 ASEAN Political-Security Community Blueprint that defined—at the highest political level—the rights of migrant fishers. The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and the 2012 ASEAN Human Rights Declaration are also relevant for the protection of the rights of migrant fishers, he added.

Fisheries agencies in the ASEAN region were not equipped to directly deal with labour issues; they should be strengthened to do so in co-operation with the institutions responsible for labour, he said. Fisheries management and labour protection could be inter-linked. He gave the example of the Philippines where the issue of fishing licences was inter-linked to complying with labour laws in fishing.

- *Employment and social protection in Thai fisheries*
.....
- *In the context of Thailand, at least five provisions of C188—on minimum age, hours of rest on board a fishing vessel, work agreement of a fisher, crew list, and payment of fishers—are relevant in revising the Thai Ministerial Regulation No. 10*
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.....

- *Thailand has transformed from a net migrant-sending country to a migrant-receiving country*
.....

The representative of the Department of Employment (DOE) of the Ministry of Labour, (MOL), Thailand, said the country has transformed from a net migrant-sending country to a migrant-receiving country. He narrated measures adopted to suppress human trafficking of fishers, such as streamlining recruiting procedures, and the registration of migrant fishers on board fishing vessels in all Thai coastal provinces.

- *Since fishing was considered dirty, difficult and dangerous ('3D'), the sector particularly suffered from a shortage of labour*
.....

The representative of the Department of Labour Protection and Welfare (DLPW), MOL, said Thailand has now transformed into a country of origin, transit as well as destination for migrant workers, including those in fisheries. She identified both push and pull factors behind migration into Thailand. While poverty and aspirations for a better quality of life in the countries of origin acted as push factors, labour shortage and higher wages in Thai industry acted as pull factors. Since fishing was considered dirty, difficult and dangerous ('3D'), the sector particularly suffered from a shortage of labour. Guaranteeing decent work was the goal of her department, she said.

- *Duties of agencies responsible for employment, working conditions, labour protection and sea safety in the Thai fishing industry*
.....

She listed the duties of agencies responsible for employment, working conditions, labour protection and sea safety in the Thai fishing industry: to prevent engagement of child labour; to prevent trafficking and forced labour; to check on the legal status of fishers on board; to register migrant fishers and to issue work permits; to inspect fishing vessels, and to issue licences and registration certificates to seaworthy vessels as well as licences to skippers; to issue licences to operate fishing gear; to check for epidemics and sanitation conditions on board fishing vessels; and to check employment practices and working and safety conditions on board vessels, crew lists and work permits, and to check if the fishing vessel meets the requirements of a standard workplace.

She said her Department, together with ILO, the Law Reforms Commission of Thailand and the National Fisheries Association of Thailand (NFAT), was revising relevant national fishing regulation to protect migrant fishers. It was strengthening labour-inspection regimes, setting up information, education and communication programmes on labour rights and occupational safety and health, and organizing awareness-raising programmes, especially to prevent child labour, human trafficking and forced labour in fishing. It was also developing good labour practices in fishing in collaboration with ILO and the vessel owners' association. Inspection of fishing vessels at sea was, however, an area that needed improvement. Crew lists are also reportedly difficult to maintain. Towards addressing labour shortage in fishing, she wanted fishing vessels to be made more capital-intensive in future.

- *The Thai government is working towards legalizing irregular migrant fishers in collaboration with the private sector since it realizes how dependent the fishing industry is on migrant workers*
.....

The representative of the Thai Department of Fisheries (DOF) said in Thailand there are about 45,000 registered commercial fishing vessels (of which 3,000 were certified to catch fish for export to the European Union) and about 400,000 fishers and fishworkers in the fisheries and aquaculture industries. All these vessels, however, are not in operation. She shared an Action Plan developed by her Department to address labour issues in fisheries and to promote better working conditions. Her Department was working towards legalizing irregular migrant fishers in collaboration with the MOL and the private sector since it realized how dependent the fishing industry is on migrant workers.

The DOF, on the one hand, is keen to co-operate with neighbouring countries to provide education to workers who are potential fishers on board Thai fishing vessels. On the other hand, it is also working simultaneously with SEAFDEC to introduce labour-saving fishing techniques to reduce dependence on migrant labour. Registration of migrant fishers is being undertaken to make them regular. Identity cards are being issued to registered migrant fishers and they would be entitled to welfare and social-security benefits, she said. Together with NFAT, her Department is also working to prevent involuntary transfer of fishers from one vessel to another at sea.

Responding to the above, it was suggested that Thailand should grant amnesty to all irregular migrant fishers in order to meet the shortage of labour in the fishing industry. It was proposed that the fishing vessel owners should contribute to the Workmen’s Compensation Fund as they are presently exempted from doing so, and that the Labour Relations Act, 1975, should revoke the ‘Thai nationality by birth’ clause and allow migrant workers, including migrant fishers, to found a labour union and to become members of its board of directors. It was further proposed that Thailand should ratify not only C188 but also the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (C87) and the ILO Right to Organize and Collective Bargaining Convention, 1949 (C98).

Clarification was sought on what has been done so far to implement the provisions of existing regulations—for example, how often labour inspectors examine documents kept by employers and complaints filed by fishers. Without proper enforcement, it is meaningless to bring about legal reforms, it was observed. Doubts were raised whether introducing capital- and technology-intensive fishing is a better alternative to the problem of migrant fishers than regularizing them. The SEAFDEC representative responded in the affirmative since labour shortage was bound to become more acute in the near future. Also, the flow of migrant fishers was bound to dry up once States of origin of migrants, such as Myanmar and Cambodia, improved economic standards, he said. The ILO representative said the greater species diversity in tropical waters predicated a larger crew size on board fishing vessels not only to catch fish, but also to sort fish on board.

It was cautioned that addressing abuses of migrant fishers in one country should not lead to these abuses emerging in another. It is, therefore, necessary to raise the bar on labour standards in the ASEAN region, it was observed. ILO clarified that migrant fishers in transit on tour boats did not seem to come within the purview of C188.

Surichai Wun’gao of Chulalongkorn University said human trafficking was a serious issue and demanded an inter-agency approach to fight it. He also wanted to engage with ASEAN to bring greater awareness on this issue in relation to fisheries.

Session 7

Reporting on the discussions on Day 1, the CSO representative raised the importance of adopting measures for the Thai fishing industry such as employing MoUs to import workers from neighbouring countries, ensuring written work agreements, providing legal protection of migrant fishers, improving working conditions, dealing with fraudulent recruitment agents, ensuring regular payments, establishing a dedicated cadre of labour inspectors in fishing, permitting migrant fishers to form their own labour unions, and educating migrant fishers about their rights. It was clarified that a national subcommittee has been created under the Permanent Secretary, Ministry of Labour, as Chair, to set up Labour Co-ordination Centres to resolve major problems besetting migrant fishers on board Thai fishing vessels. He reiterated the demand for ratifying C188, C87 and C98 of ILO.

The representative of the Department of Fisheries clarified since 2007 very few Thai-flagged vessels are fishing outside the Thai maritime zones. ASEAN member countries, such as Indonesia and Malaysia, require Thai vessels to operate under joint ventures with local companies in their maritime zones and to fly their respective national flags. In this context, the issues of 'beneficial ownership' and 'flag hopping' were raised, in addition to the issue of migrant fishers on board these vessels originating from altogether different States. To keep track of vessel movement in the region, it was proposed that ASEAN should maintain a record of fishing vessels of its member States.

- *It was suggested that Thailand should grant amnesty to all irregular migrant fishers in order to meet the shortage of labour in the fishing industry*
.....

- *Doubts were raised whether introducing capital- and technology-intensive fishing is a better alternative to the problem of migrant fishers than regularizing them*
.....

- *It was cautioned that addressing abuses of migrant fishers in one country should not lead to these abuses emerging in another*
.....

- *Adopting measures for the Thai fishing industry*
.....

- *'Beneficial ownership' and 'flag hopping'*
.....

- *The issue of migrant fishers should be viewed in the regional context of ASEAN community building and of improving transborder relations, particularly in the fish-processing and seafood trade*
.....

The representative of SEAFDEC, said the issue of migrant fishers should be viewed in the regional context of ASEAN community building and of improving transborder relations, particularly in the fish-processing and seafood trade. From the fisheries-sector perspective, existing standards should be implemented, and scope for illegal activities should be minimized. He suggested a sub-regional approach involving different national institutions.

The representative of NFAT, an association of Thai vessel owners, said it would be premature to discuss adopting international labour standards in fishing on Thai vessels. Most Thai vessels and fishing operations are legal, he claimed. Current legislation, including immigration laws, needed amendment to address all the problems. The industry has to adapt and apply good practices by improving the knowledge of employers as well as fishers on working conditions and sea-safety issues.

Session 8

- *The Dialogue recognized the problems facing migrant fishers to be multidimensional, and highlighted the need to broaden the perspective of CSOs/NGOs as well as that of the fisheries and labour authorities at the national level to seek collaborative solutions*
.....

Session 8 on Day 3 with Dialogue partners except the government and industry representatives developed a plan of action for protecting migrant fishers on Thai vessels. It was highlighted by ICSF that sustainable fisheries and responsible labour practices were equally essential dimensions to satisfactorily improve the prospects of business, work, livelihood and food security related to fishing. The Dialogue recognized the problems facing migrant fishers to be multidimensional, and highlighted the need to broaden the perspective of CSOs/NGOs as well as that of the fisheries and labour authorities at the national level to seek collaborative solutions. Labour, sea safety, migration and fisheries management are inter-related issues, and effective co-operation is also needed between the flag State, the coastal State, the port State, the State of origin and the market State to improve the working and living conditions of migrant fishers.

- *Seven-point action plan to be shared around three categories*
.....

Seven-point Action Plan

A seven-point action plan to be shared around three categories was proposed, namely, (i) recruitment and employment in fishing; (ii) labour protection; and (iii) regional mechanisms and collaboration with academic and research organizations.

(i) Recruitment and employment in fishing

- *First*, grant fishers, including migrant fishers, the protection of a contract or a written work agreement when being recruited to work on board fishing vessels.
- *Second*, build networks with the States of origin of migrant fishers/workers to provide them pre-departure preparation and assistance. Specific reference was made to the Myanmar Maritime Trade Union (MMTU), and the Migrant Worker Rights Network (MWRN) in the context of Myanmar and Thailand. At the regional level, ILO, IOM and SEAFDEC may be involved.

(ii) Labour protection

- *Third*, modify the Thai Ministerial Regulation No. 10, based on the draft prepared by the MOL, in collaboration with LRCT and ILO.
- *Fourth*, work with the Labour Co-ordination Centres to protect labour in the fishing industry as well as to provide access to information on employment and labour protection in fishing.

- *Fifth*, create a dedicated set of labour inspectors knowledgeable about fishing and fishing labour to ensure labour protection on board fishing vessels rather than drawing on an ad hoc basis from the marine police and the Thai Navy. A training course should be developed for these inspectors.

(iii) Regional mechanisms and collaboration with academic and research organizations

- *Sixth*, bring the fishing industry under the ASEAN Labour Standard, which is currently being developed by LRCT.
- *Seventh*, collaborate with organizations like SEAFDEC and academic and research groups to work on employment and labour issues in the fishing industry.

It was suggested that not only Thai labour laws but Thai fisheries laws also needed amendment to deal with the issue of migrant fishers. It was proposed that the labour network in Thailand should be asked to support the amendment to the Thai Ministerial Regulation No. 10. A labour destination country such as Thailand ought to be the starting point in addressing the problem of migrant fishers.

Working Group

A working group was formed to take the action programme forward, and to follow up on the Dialogue through activities such as legal reforms, pilot projects, training and capacity building and awareness raising. SEAFDEC was requested to help follow up with the governments of Myanmar and Cambodia, especially to ensure that both civil society and the government collaborated in implementing the action plan.

Capacity building should ensure migrant fishers would be legalized with adequate labour protection in Thailand. There should be active collaboration in Thailand between the government and civil society to monitor initiatives to improve conditions of migrant fishers, it was proposed.

The working group would facilitate access to information for migrant fishers, documenting and regularizing migrant workers, and reporting complaints to the authorities about poor working conditions, it was noted. The activities of the working group should be reviewed after a year, to ascertain progress, it was suggested. The working group would engage with the LRCT to incorporate human-rights standards into the ASEAN labour standard.

- *Working Group formed to take the action programme forward, and to follow up on the Dialogue through activities such as legal reforms, pilot projects, training and capacity building and awareness raising*
.....

Report of the Proceedings

Enhancing Capacities of Fishing Communities: ICSF-BOBLME Sub-regional Dialogue on Labour, Migration and Fisheries Management

**11 to 13 December 2013, Maha Chulalongkorn Building,
Chulalongkorn University, Bangkok, Thailand**

“Migrants don’t come to countries where there is no employment. Migrants want jobs because then they can send money home, which is what they want to do most. They don’t come to beg...We should understand that the war on migration will not be won because it can’t be.”

—**Francois Crépeau**, United Nations Special Rapporteur on the
Human Rights of Migrants (in an interview with Vaiju Narvane,
The Hindu, 24 October 2013)

The Sub-regional Dialogue on Labour, Migration and Fisheries Management was organized at Chulalongkorn University, Bangkok, Thailand, from 11 to 13 December 2013 as a collaborative event between the Sustainable Development Foundation (SDF), the Action Network for Migrants (ANM), Chulalongkorn University (CU), the International Collective in Support of Fishworkers (ICSF), and the Bay of Bengal Large Marine Ecosystem (BOBLME) Project of FAO. It was attended by intergovernmental organizations (IGOs) such as the International Labour Organization (ILO), the International Organization for Migration (IOM), the Southeast Asian Fisheries Development Centre (SEAFDEC), academia, labour unions, civil society organizations (CSOs), non-governmental organizations (NGOs), industry representatives of vessel owners and fish processors, the Thai Ministry of Labour (MOL) and the Thai Department of Fisheries (DOF).

Day 1

Introduction to the Dialogue

Introducing the Dialogue, Sebastian Mathew, Programme Adviser, International Collective in Support of Fishworkers (ICSF), said Day 1 of the Dialogue was on labour and migration from a migrant worker perspective. Day 2—the main day of the Dialogue—would discuss labour, migration and fisheries-management issues in Thailand. In addition to IGOs, academia, unions, CSOs and industry representatives, the Dialogue expected the Thai government departments also to speak on Day 2. A detailed introduction would be made on Day 2 when all invited stakeholders were expected to be present. A plan of action would be developed on Day 3.

Day 1's programme—primarily attended by CSOs, NGOs, IGOs and observers from the Ministry of Labour, Thailand (MOL)—would discuss issues of concern to migrant fishers in the ASEAN region in four sessions. The migrant fishers in Thailand were mostly irregular or undocumented migrants—those from other ASEAN countries entering Thailand without authorization to work, including in fishing. Session 1 would examine recruitment, employment and conditions of work and retention of migrants in fishing in Thailand, followed by Session 2, which would discuss issues raised in Session 1. Effectiveness of existing mechanisms such as MoUs in regularizing migration to Thailand, and why migrant fishers were reluctant to complain against the kind of irregularities reported on board Thai fishing vessels, would be discussed.

Fishing on Thai vessels, reportedly, was not the final destination of migrants. It often served as an entry point to the Thai labour market, especially for migrants originating from less advantaged or least-developed countries in the region. The reasons for such a high turnover of workers in fishing and why those who joined did not want to stay too long in fishing would be discussed. How existing legal instruments protected migrant fishers would be examined. It would be considered if improving conditions of work and offering social protection could lead to better retention of migrant fishers on board Thai fishing vessels.

Session 3 would discuss protecting migrant fishers' rights in Thailand, the kind of challenges to be overcome and priorities to be set, especially from a worker perspective. It would examine public perceptions about migrant fishers in Thailand. It would, *inter alia*, seek views on what role national workers' organizations such as labour unions could play in protecting the rights of migrant fishers.

Session 4 would discuss capacity building of migrant fishers towards addressing some of these issues, including through raising awareness, developing guidelines for protecting migrant fishers, organizing training programmes, developing good practices, and promoting regional and inter-regional dialogues in the light of some of the current activities of the International Organization for Migration (IOM) and the International Labour Organization (ILO) in the ASEAN region.

At a sub-national level, the Su-Ao Migrant Fisherman's Union from Taiwan would discuss its genesis, to provide some useful lessons in organizing migrant fishers for social protection.

The summary of key proposals from Day 1 would be presented on Day 2 for consideration of the authorities and other stakeholders. Day 2 would also afford an opportunity to discuss international/regional instruments, mechanisms, and institutions in protecting the rights of migrant fishers.

On Day 3, CSOs/NGOs would be expected to develop a plan of action to address the problems faced by migrant fishers on Thai fishing vessels.

Sessions 1 and 2

Recruitment, Employment, Conditions and Retention of Irregular Migrants on Thai Fishing Vessels

FACILITATOR: **Satian Tunprom, Committee Member, Action Network for Migrants (ANM)**



Satian Tunprom, Committee Member, ANM, said conditions that brought migrants to Thailand should be better understood, as also the conditions of work of migrants on Thai fishing vessels. He introduced Surachai Meentun of the Labour Rights Promotion Network (LPN), a Burmese volunteer who had worked on board Thai trawlers for 20 years, and Ko Ko Aung, Vice-President, Myanmar Maritime Trade Union (MMTU), also a Burmese who had worked on Thai trawlers for some years.



Surachai Meanthun, Volunteer, Labour Rights Promotion Network Foundation (LPN), said he had worked on board Thai fishing vessels, both trawlers and purse-seiners, for six years in Thai and Indonesian waters. There were three channels for migrant workers from Myanmar to work on board Thai fishing vessels—via brokers, friends, or of one’s own volition. Migrant workers would choose to work on Thai fishing vessels because: (i) they cannot speak Thai; (ii) their entry into Thailand was illegal and therefore to prevent detection; and/or (iii) brokers recruited them in Myanmar and put them on board when the vessel was in Myanmar’s maritime zones. Migrant fishers did not enter into written agreements with brokers. They did not discuss remuneration, rights or welfare. When they voluntarily entered fishing, they wanted to explore how much they would get paid.

As an undocumented but voluntary migrant, he and his friends decided to work on a trawler for a year to escape arrest and detention in Thailand. He presented himself to a trawler owner. He was not issued any work permit when he first started work 20 years ago, although he currently holds one. The working and living conditions on board trawlers differed, depending on if they were targeting shrimp or fish. From 2007, Meanthun was fishing on Thai trawlers in Indonesian waters. He was on a trawler for six years, often working 19 hours (11 p.m. to 7 p.m.) a day. The work involved releasing, retrieving and repairing trawl gear, removing and sorting fish or shrimp, and storing them in fish holds.

“Even when it’s cold, or people are sick, we cannot complain and look up to anybody for help”, he said. Healthcare on board was almost non-existent. Laotians, Burmese and Khmer fishers did not enjoy access to their rights or welfare on Thai vessels. “We have to rely on ourselves. We think of the skipper as our father; we listen to whatever he says but we are not treated like human beings”, he recalled. “Skippers cheat us because they think we are uneducated”. He gave instances of migrants being beaten with iron pipes, causing broken arms and legs. Hot water was often thrown on them to make them work. Sometimes they were dragged down to the sea when they got entangled in the foot-rope while releasing the trawl gear to fish. Fishers were also expected to salvage the fish that slipped overboard, sometimes leading to injury. If a fisher fell into the sea, he would not be rescued, and if a worker died on board, he would be simply tossed out into the sea. Sometimes, fishers would kill each other over petty quarrels due to fatigue, arising from long hours of work, lack of sleep and inadequate rest. Fishers were separated and transferred from one vessel to another if they got into a situation of stabbing each other.

Other than the skipper, the assistant skipper, the engine driver and the chef, fishers on board were not paid well. After deductions, Meanthun earned a net payment of THB 260,000 for working

72 months at sea (US\$8640 or US\$120 per month at the December 2013 exchange rate). Often Burmese and Cambodian migrants were looked down upon. Although there were no children who were Thai or Myanmar nationals, there were Laotian and Cambodian children below the age of 15 working on board fishing vessels. There was no written agreement regarding payment. The verbal agreement was that fishers would be paid 5 to 10 per cent of the value of catch, after making deductions for fuel expenses. Communication with vessel owners was often through brokers. Threat of payment deductions would be used to extract maximum work. Fishers were free to board tour boats¹ and return to port but without receiving their payment. In short, migrant fishers did not enjoy any rights, whatsoever, on Thai fishing vessels, Meanthus said.



Max Tuñón, Senior Programme Officer/Project Co-ordinator, TRIANGLE Project, ILO, asked if alcohol and drug use and sexual harassment were reported on board fishing vessels at sea. Although he had heard rumors of marijuana/amphetamine/methamphetamine abuse on board some fishing vessels, drug use was rare, replied Surachai Meanthun, but alcohol consumption was common. Referring to migrant Cambodian fishers, Satian Tunprom reported neither drug abuse nor alcohol consumption among the Cambodians fishing in Rayong, Thailand.



Ko Ko Aung, Vice-President, MMTU, said migrant fishers were under intense pressure while at work. Their working conditions were far worse than those of migrant workers on land. Migrant fishers on board Thai vessels could be found both in the Thai exclusive economic zone (EEZ) and in the Indonesian maritime zones. Vessels fishing in the Indonesian maritime zones often operated from the port of Ranong, Andaman Sea, Thailand. The crew size could go up to 40. Some migrant workers were hired from Myanmar under written contracts between the broker and the worker. Written contracts, however, were no guarantee against human trafficking.² There were cases in Myanmar of migrant workers, recruited under the MoU between Thailand and Myanmar by brokers to work in Thai factories, being trafficked to fish at sea. The brokers always took money away from migrant fishers, he alleged.

Although seaman books were issued to individual fishers they were often counterfeit with no proper, identifiable, photograph of the fisher and with no information regarding the compensation the fisher was entitled to if there was an accident on board. Even if sick, the fisher was forced to work at gun point, he said. There were occasions when fishers were shot and thrown into the sea for refusing to work. Laotian and Cambodian fishers were treated far worse than Burmese fishers. While at port, the Cambodian fishers often stayed on board their vessels. There were Cambodian children below the age of 15 working on these vessels. A drug called 'asean' was often administered to fishers to enhance their work at sea, he claimed.

Migrant fishers on board Thai vessels were transferred at sea. The number of migrant fishers returning to the Thai port after a fishing trip would be fewer than those embarking on the same trip. Ko Ko Aung shared his experience of meeting a migrant fisher who was sold by his skipper to another boat, and, in turn, to yet another boat; he had spent seven years fishing at sea before finally being abandoned on shore with paralyzed legs. There were cases of migrant fishers jumping

¹ Refers to boats that transport food, supplies and fuel from the mainland to fishing boats at sea and also remove the catch from the fishing boat for transport to market (See ILO, 2013. *Employment Practices and Working Conditions in Thailand's Fishing Sector*. International Labour Organization, Bangkok. 105pp.)

² Recruiting, transporting, transferring, harbouring, or receiving persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, which includes forced labour (2004 Palermo Protocol of the United Nations Convention against Transnational Organized Crime).

vessel and resorting to farming in Indonesia due to harsh working conditions at sea. They were unable to return home since they did not have proper travel papers. Some of them got married and settled down in remote Indonesian islands. In his view, both the State of origin³ and the State of employment⁴ were at fault for the plight of migrant fishers. Frequent transfer of officers in the Thai labour ministry hindered justice to migrant fishers. While there are NGOs/CSOs supporting Burmese migrant fishers in Thailand, there are few to take up the case of Cambodian migrant fishers, he noted.



Sunee Chaiyarose, Vice President, Law Reform Commission, Thailand (LRCT), said Thai labour laws could equally protect both the national and migrant fishers. These laws, however, currently applied only to Thai vessels fishing in Thai waters and employing more than 20 workers, and had to be renewed every year. They could not protect workers in other maritime zones or the high seas. Payment of fishers should be protected under a written contract, after specifying all deductions, she observed. She was working with the National Fisheries Association of Thailand (NFAT) to amend national labour legislation addressing the type of fishing vessels and type of fishing operations. There was a draft to change the law. Attempts were afoot in MOL to extend protection beyond one year. Not only skippers but employers would also be held accountable for working and living conditions under the new draft.

Max Tuñón, ILO, said taking advance from vessel owners restricted the mobility of fishers across vessels, and asked if workers from all provinces and nationalities took an advance in order to work on board a fishing vessel. Working without taking an advance would help protect the mobility of fishers. Additional means were important, he said, to ensure that fishers worked willingly and that they enjoyed greater freedom of movement.



Ravadee Prasertcharoensuk, Executive Director, Sustainable Development Foundation (SDF) and Member, ICSF, asked why migrants seek work on board fishing vessels in spite of hard working conditions.

Nalini Nayak, Member, ICSF, said migrant Burmese fishers did not seem to be holding any identity papers, which made them illegal in Thailand. She asked if pre-departure registration in the State of origin should be made mandatory for migrants to work abroad. She also sought a minimum age of 18 to work on board fishing vessels. **Ko Ko Aung, MMTU**, clarified it was difficult and expensive to get a passport in Myanmar. While the Myanmar seafarers and factory workers, in general, held passports, fishers rarely did so. **Surachai Meanthun, LPN**, said if a migrant held a passport and if he had legally entered Thailand, his preference would always be to work in a land-based job, especially in the manufacturing sector. The conditions of work on board fishing vessels were far worse outside the Thai maritime zones. Brokers were paid between THB7,000 (US\$233) to THB15,000 (US\$500) to work in Thailand. Since migrant fishers had no money, they were forced to take advance payments from vessel owners to pay the broker fee.

3 “The State of which the person concerned is a national” (Article 6 (a), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990).

4 “A State where the migrant is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be” (Article 6 (b), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990).



Kimchhea Chhuon, Deputy Director of Fisheries, Ministry of Agriculture, Forestry and Fisheries Affairs, Cambodia, asked if the Cambodian migrant fishers received the same wages as migrant fishers from Myanmar, and whether fishers were forced to take drugs. There was no national legislation to protect Cambodian fishers working in other countries, he said. A large number of Cambodians were illegally recruited to work on board Thai, Vietnamese and Malaysian fishing vessels. Many fishermen were recruited across the Cambodian maritime boundaries. These migrant fishers were, reportedly, abused by some of their employers and would return to their families sick and often financially broke. Neither the Cambodian Fisheries Administration nor the Cambodian Ministry of Labour has the capacity to monitor and prevent such recruitment. There was lack of sufficient data on migrant fishers. At the national level, the Cambodian labour law was yet to recognize the rights of fishers and the duties of employers, and guarantee protection of labour in fisheries. There was, however, a proclamation on work in inland and marine fisheries in Cambodia, which mentioned marine fishing vessel owners' responsibility towards working conditions, occupational safety and hygiene of fishers, and about adopting 18 as the minimum age for fishing. **Surachai Meanthun, LPN**, observed that 70 per cent of the migrant fishers working on board the Thai vessels operating in the Indonesian maritime zones were Cambodians and the rest, more or less, were Myanmar citizens.

Sunee Chaiyarose, LRCT, said children above the age of 16 could work in fishing along with their parents, according to Thai law. The new labour legislation, currently being drafted, was aiming at making 18 as the minimum age for fishing.

Sebastian Mathew, ICSF, said according to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the duties of the flag State extend to sea safety and labour conditions on board of vessels flying its flag, irrespective of where the vessels operate. How were working conditions and fishers' safety protected, he asked, on board vessels reflagging to third countries (for example, Indonesia) when beneficial ownership⁵ was in Thailand, and migrant fishers were recruited in Thailand to fish in its maritime zones, as well as in the maritime zones of flag and non-flag States, and in the high seas. It was not clear, he said, if the flag State upheld its duties in regard to vessels under beneficial ownership. The situation warrants adopting and implementing uniform legal measures in the ASEAN Member States to protect the working and living conditions of migrant fishers across the region, he stressed, so that if one ASEAN Member State tightens up legislation to protect migrant fishers, there would be no rush then to reflag vessels to the jurisdiction of another Member.



Nopodol Kaewsuan, Adviser, Thai Seafarer Association (TSA), pointed out if the fishing vessels were flying the Thai flag and if the owners were Thai nationals, then the Thai law would apply to these vessels. If the fishing vessels, on the other hand, were flying the Indonesian flag, and the ownership was a joint venture between Thailand and Indonesia, then the Indonesian law would apply. He stressed the importance of improving sea safety and in gaining knowledge to conserve fisheries resources through training.

Bandit Thanachaisetavuth, Director, Arompongpan Foundation, said the Thai citizens are aware of the huge danger of working on board fishing vessels. Thai skippers, he alleged, are constantly on the lookout for illegal migrants to work on their vessels.

5 'Beneficial ownership' of a fishing vessel refers to the actual, as distinct from registered, ownership of a fishing vessel flying another flag, where the beneficial owner receives the majority of benefits from fishing operations of the said vessel, much more than the registered owner.

“Even though there are significant abuses in the industry, there are some good employers as well”, said **Max Tuñón, ILO**, responding to a query on why people continue to work in the fishing sector. Referring to the 2013 ILO study *Employment Practices and Working Conditions in Thailand’s Fishing Sector* (see footnote 1), he pointed out that nearly 50 per cent of the sample size of 600 fishers were reportedly keen to continue work under their current employer, and another 10 per cent were keen to continue work in the fishing sector. There were good employers who paid decent wages that helped fishers to send money back to their families.

Summarizing the discussion, **Sebastian Mathew, ICSF**, said it was disheartening to note that working and living conditions continued to throw up many challenges to be addressed on Thai fishing vessels both within and outside the Thai maritime zones. Several reasons were provided why working and living conditions were tough. Migrant fishers of certain nationalities were being treated less fairly than others. The less-skilled migrant fishers are more at the receiving end of poor treatment on board vessels than skilled fishers. Some of the incidents narrated were not just distressing but criminal acts that needed to be prosecuted and those responsible for them needed to be punished, he said.

Mathew highlighted the need for reforming legislation to address these challenges. These included minimum age for fishing, medical examination, and hours of rest. He hoped the ILO Work in Fishing Convention (C188) could provide the necessary guidance to develop national legislation to effectively address these issues.

Recognizing the regional dimension of these issues, he sought establishing parity to improve and protect working and living conditions on board fishing vessels across the ASEAN region. Although it was pointed out there were good employers in the fishing industry, they had to exercise greater responsibility towards workers. It is important to explore the various dimensions of flag State responsibility in terms of safety and working and living conditions of fishers, and to seek coherence across the ASEAN region in labour and fisheries legislation to protect the human rights of migrant fishers.

The documentation or registration of workers in the countries of origin was highlighted and, in this context, the issue of obtaining a passport was raised. A mechanism could be established by labour-sending or receiving States to underwrite the costs of obtaining a passport for regular or registered migrants. Such a mechanism could be modelled after the MoUs that Thailand had signed for its migrant workers with countries such as the Republic of Korea and Japan, he suggested.

SESSION 3

PROTECTING MIGRANT FISHERS’ RIGHTS

FACILITATOR: **Adisorn Kerdmongkol, Member, Action Network for Migrants (ANM)**



Bandit Thanachaisetavuth, Arompongpanan Foundation, said general labour laws in Thailand did not apply to fishers, agriculture workers, maritime workers, transport workers, and domestic workers, and that there were special regulations to protect them. Rights to a minimum wage did not extend to fishers. The 1998 Thai Ministerial Regulation No. 10 was to provide protection for workers in marine fishing, including migrant fishers, only if the number of workers on a vessel was more than 20 and if the vessel was operating

from Thailand. It did not apply to fishers on vessels operating continuously outside Thailand for not less than a year.

The 1998 Thai Ministerial Regulation No. 10 provides protection to fishers who receive remuneration as a share of the catch value. The remuneration arrangement was in favour of employers, not fishers, he pointed out. Fishers were not in business and they were unable to ascertain the real value of their fish catch. Fishers did not have the power to negotiate and they were being exploited, he alleged. Although all persons below the age of 18 are defined as children under the Worst Forms of Child Labour Convention, 1999 (C182), which was ratified by Thailand in 2001, the minimum age prescribed for work under the Thai Labour Protection Act, 1998, is 15. According to the Ministerial Regulation No. 10 for marine fishing, the minimum age was prescribed as 16 to work on a fishing vessel, and 15 if the child worked with his parent or guardian on the vessel, or if there was written consent from the parent or guardian that he could work on the vessel.

According to the Thai Ministerial Regulation No. 10, an employer—a fishing vessel owner or a person consented by the owner to use the vessel in marine fishing for their mutual benefit—has the duty to prepare a list in Thai of employees maintained at his/her office that could be verified by the labour inspector. The list should be retained for at least two years from the date of termination of each fisher. It must be sent to the Director General of the Department of Labour Protection and Welfare (DLPW) within 30 days from the date of commencement of fishing. An employer must also prepare documents in Thai specifying payment of remuneration and holiday pay, which should be kept at his/her office for inspection by a labour inspector. These documents should carry the first name and last name of fishers; their position and duty in respect of marine fishing; the rate and amount of remuneration; and holiday pay and other benefits that the employer agreed to pay to the fisher. These documents must be maintained for two years to prevent labour disputes from arising. But, in reality, there might be no such documents, he feared. Payment of remuneration was to be made at least once a month. Fishers have the right to file a complaint with the DLPW, and demand an annual 15 per cent interest for the period of default if an employer did not pay remuneration and holiday pay. Fishers enjoy the right to have annual holidays for a period of at least 30 days in a year with payment. They have the right to sick leave for the period of their sickness and could collect basic pay equivalent of 30 working days per annum.

An employer is also responsible for paying fishers if they work in foreign waters. In the eventuality of a fisher being unable to work, an employer must pay no less than 50 per cent of his basic pay. An employer did not have to pay this amount if he/she expressed an interest in sending the fisher back home after paying for his return trip. Repatriation of a fisher at the employer's expense was considered: (i) if a fishing vessel broke down; (ii) if the fisher was in danger or was suffering from occupational illness; (iii) if an employment contract was terminated before the term of the contract was completed; and (iv) if the term of the contract was completed when the fisher was working in an area away from the place where the employment contract was made.

There should be legal protection for both marine and inland fishers, Thanachaisetavuth said. Fishers on inland fishing vessels must be able to receive wages. Pregnant women in fish processing or inland fisheries are entitled to 90 days of maternity leave without pay, and are protected from carrying weight exceeding 50 kg. Inland fishers are entitled to the same rate of payment as in their regular work if they did overtime or if they worked on holidays. They had a right to sick leave and annual leave if they had already worked 180 days a year. Children below the age of 15 should not be employed. Children above the age of 15 could, however, be employed in non-hazardous inland fishing if approved by their parents or guardians.

From labour protection law Thanachaisetavuth then moved to labour relations law, which was about promotion of freedom to establish unions and to participate in them. Under the Thai Labour Relations Act, 1975, employees who were Thai nationals enjoyed the right to establish labour unions. While documented or registered migrant fishers could join these unions, they were not eligible for election or appointment as office bearers. Migrant fishers who were part of these unions had the right to strike work. Undocumented or unregistered migrant fishers, however, could not be made members of these unions nor could they form any association or labour union. Regarding social security, the rights guaranteed under the Thai social security legislation did not apply to those in farming, fishing and livestock rearing, he pointed out.

Satian Tunprom, ANM, said labour unions divided migrant workers into two sections: migrant workers in non-fishery business and migrant workers in the fishery business. Labour unions engaged only with factory workers. In the past, there were workers in fishing from the northeast of Thailand, but they had now disappeared, and were replaced by migrants from Myanmar, Cambodia and Lao People's Democratic Republic (Lao PDR). There is hardly any labour union in fishing in Thailand because there are not many Thai workers in fishing. Thai labour unions and federations, however, have now begun to look at sectors such as fishing, especially to support migrant workers who are unprotected or abused. ILO should build capabilities and co-operation between labour unions to extend such support to migrant fishers, he suggested.

There was need for a comprehensive understanding of the labour dimension of fishing in the Thai national waters and in the high seas, as well as in land-based fish-processing activities. Thai employers and skippers see fishing only as a profitable economic enterprise where remuneration was based on the value of fish caught. Often health protection and welfare of migrant fishers are overlooked. There are no MoUs with labour-sending countries such as Myanmar, Cambodia and Lao PDR regarding supply of labour into fishing. Tunprom gave the example of an initiative between Thailand and Bangladesh to recruit 50,000 fishers from Bangladesh into Thai fishing vessels as a good practice that could be followed with other sending States as well.⁶ In the absence of such MoUs, it was important to invest in training migrant fishers in fishing operations and sea safety in a labour-receiving country such as Thailand. Currently, there is no training for fishers before they start on board; it has always been learning by doing on the job. There is no survival training either nor any inspection of fishing vessels at sea to verify compliance with sea-safety measures, or onboard hygiene standards, he observed.

Thai fisheries rules and regulations should be translated, for example, from Thai to Burmese or Khmer. Migrant fishers should be provided information regarding whom to contact in an emergency. It was important to maintain the crew list so that if there was an accident, one could expeditiously alert the family of the victim. It was important to improve hygiene on board fishing vessels.

Migrant fishers want access to legal protection mechanisms; it is important to ensure that these mechanisms are operational. Improving communication with migrant fishers is important to enhance the protection afforded to migrant fishers, especially to strengthen their access to health protection and legal assistance. It is important, therefore, to provide migrant fishers with access to interpreters. The hotline "1546" made available by MOL to assist in translation should be open to assist migrant fishers to file complaints, he said.

6 According to press reports, the Bangladesh-Thailand agreement to recruit fishers was unlikely to be signed due to the insistence of the Bangladesh government on a government-to-government arrangement rather than a private sector-to-private sector arrangement to recruit migrant fishers through private employment agencies, as preferred by the Thai government and the Thai fishing industry. See news report <http://www.dhakatribune.com/labour/2013/sep/14/bangladesh-may-miss-out-thai-job-offer->

Satian Tunprom sought better understanding of terms such as ‘remuneration’, ‘wages’, ‘social security’, ‘Social Security Fund’ and ‘Workmen’s Compensation Fund’ in the context of Thailand. Only workers under a wage system are insured under the Thai Social Security Act, 1990. Fishers, including migrant fishers, are remunerated⁷ for their work and not paid monthly wages and are, therefore, not insured. They are not entitled to contribute to the Social Security Fund, either. As a result, they cannot draw on social-security benefits such as sickness benefit, maternity benefit, disability benefit, child benefit, old-age benefit and unemployment benefit from the Fund, unlike insured wage workers. Unlike the Social Security Fund where employers, workers and the government made contributions, the Workmen’s Compensation Fund was entirely based on contributions from the employers to compensate workers in cases of occupational accidents and diseases, and was confined to disability benefit, death benefit, medical benefit and rehabilitation benefit. The migrant fishers are entitled to benefit from the Workmen’s Compensation Fund. But the compensation was often meagre. Tunprom gave the example of a Cambodian fisher who was paid a paltry THB4,000 (US\$130) as disability benefit after losing an arm in a fishing accident at sea. The fisher returned home and allegedly committed suicide. A letter from the Thai income tax authorities to employers was mentioned, which required undocumented migrant fishers to also pay income tax, which was unfair, he argued. He wanted unlocking social-security provisions to benefit migrant fishers as well. Any gathering of migrant fishers, even cultural gatherings, was currently seen as a security threat. Migrant fishers should be allowed to gather to vent their grievances, he said.

Bandit Thanachaisetavuth, Arompongpanan Foundation, said although no social security benefits were given to marine fishers under the Social Security Act, 1990 since they were under a remuneration system, such benefits were extended to inland fishers and fish-processing workers who worked for an employer in return for wages. Documented migrant workers who earned wages were also covered by the Act.

Sebastian Mathew, ICSF, queried about the attitude of Thai labour unions to migrant workers not being permitted to form their own unions. Considering that migrant fishers form the majority of workers in fishing, legal provisions were required to allow them to register their own associations or unions, he observed.

Bandit Thanachaisetavuth, Arompongpanan Foundation, said Thailand could not avoid welcoming migrant workers into many industries, including fisheries within its national borders. Although the Thai labour union leaders understood the problems faced by migrants as labour problems, the rank and file of labour unions were biased against migrant workers as they believed the migrants took away their jobs, were unreliable, were a threat to national security and social security and that they spread diseases. They did not believe the migrant workers deserve the same level of protection as Thai workers. However, some factories provided protection and welfare, and allowed migrant workers to be part of their unions but not as members of the management committee. He agreed there was need to improve legislation to recognize the rights of migrant fishers to form their own labour unions. This would enhance their negotiation power, he observed.



Concluding the discussion, **Adisorn Kerdmongkol, ANM**, said the Thai labour law had limitations in protecting migrant fishers’ rights. There were problems of implementation. There was no mechanism for migrant fishers to access information about their rights. There were problems about whom to contact in an emergency. The issue of language prevented effective communication between migrant fishers and the authorities. Migrant fishers had no negotiation

7 Fishers were paid a share of the value of fish catch.

power either, since the Thai Labour Relations Act, 1975, prevented them from setting up labour unions. Sea-safety issues were neglected. There was need for more labour inspectors. Thai society also needed to remove the stigma attached to migrant workers, he held.

SESSION 4

CAPACITY BUILDING OF MIGRANT FISHERS

FACILITATOR: Adisorn Kerdmongkol, Member, Action Network for Migrants (ANM)



Kuanruthai Siripattanakosol, National Project Co-ordinator, the Greater Mekong Sub-region Tripartite Action to Protect Migrant Workers from Labour Exploitation (GMS TRIANGLE), speaking about

ILO-supported initiatives to protect migrant fishers in labour-sending and destination countries in the GMS region (Cambodia, Lao PDR, Malaysia, Thailand and Vietnam) said the GMS TRIANGLE is a five-year regional project that started in October 2010 and would continue until June 2015. The objectives of the project are to protect migrants and to encourage capacity building, mainly through the collaboration of governments, employers and employees. The main activities of the project included assisting in the development of laws and regulations to protect migrant fishers. Her presentation focused on Thailand. Fishers on fishing vessels have working conditions different from workers in other sectors, she said. In Thailand, the project works with the Department of Labour Protection and Welfare (DLPW), the Department of Employment (DOE), and the Social Security Office (SSO), MOL, the Department of Fisheries (DOF) and the Ministry of Social Development and Human Security (MSDHS), to provide advice on protecting fishers and in revising the ministerial regulation on marine fishing. Together with DOE, an identity document has been prepared for fishers. The project is working on developing guidelines on payment of fishers; a model written work agreement; and on the duration of work on board fishing vessels in regard to fishing. The ILO C188 is a useful reference in developing these guidelines, she said.

The project not only helps develop policy and legal instruments, but also assists in building capacity of its tripartite constituents. The project, to improve knowledge and understanding of its members, undertook a study in 2013 on working conditions in fishing. The study recommended regular payment of fishers on a monthly basis. It recommended the duration of work of fishers on board a fishing vessel be taken as the time taken from leaving the fishing port to the time the vessel returned to the same port. It also recommended a minimum period of rest for fishers. The findings of the study, based on a survey of 600 fishers, would be beneficial to the Law Reform Commission, Thailand (LRCT), and competent agencies responsible for drafting concerned legislation. The project is helping to improve the registration of migrant fishers and assisting in improving onshore and at-sea labour inspection. The project, in this regard, is preparing a training course in 2014 on labour and safety inspection in fishing, and also assisting the development of a complaint mechanism for fishers, including migrant fishers, to file complaints with the MOL.

Under the project, ILO is a member of a national subcommittee in Thailand, which is under the Committee for Anti-trafficking in Persons, to support and supervise the implementation of the national Labour Co-ordination Centres (LCCs) in fisheries. It is assisting the setting up of pilot LCCs in two coastal provinces in three phases. The first phase would focus on registering fishers twice a year in collaboration with DLPW, DOF, Marine Department and the MSDHS to disseminate information on fisher's rights drawn from the Thai Ministerial Regulation No. 10. The second

phase would focus on developing a framework on labour safety in collaboration with DLPW. The third phase would focus on reducing labour intensity in fishing and on strengthening labour inspection on board fishing vessels. The project is also assisting NFAT to develop voluntary standards in the form of a Code of Conduct for fishing. Together with NFAT and the LCCs, the project has developed good labour practices (GLP) guidelines for the fishing industry and is in the process of implementing them.

The project is collaborating with the Foundation for AIDS Rights (FAR) in Rayong to provide health information to migrant fishers. It is also providing information regarding the rights of migrant fishers. In the fish-processing sector, the project is initiating an occupational safety and health programme in 2014 in collaboration with the Thai trade unions in eastern Thailand.



Claudia Natali, Labour Migration and Counter Trafficking Programme Co-ordinator, International Organization for Migration (IOM),

said IOM works on several areas related to migration, not just on labour migration and rights, and takes up many challenges in this regard. It works on issues related to health, counter-trafficking and refugee settlement. She gave a general overview on the cycle of migration and the type of information that migrants needed in order to protect themselves from exploitation. She also spoke of IOM's work in relation to awareness raising.

The migration cycle involved several steps. The migrants were, in most cases, looking for better economic opportunities. The migration process involved departing from one country, often transiting through another and finally reaching a destination country. Once the migrants had accumulated enough wealth, they might decide to return home. From a migration perspective, IOM would put risks and vulnerabilities specific to fishers in the conceptual framework of risks and challenges in relation to migration cycles. Some of the risks at origin, transit and destination could be identified to inform the importance of pre-departure training and awareness raising.

Risks and vulnerabilities at origin: In the ASEAN region, one of the challenges especially is the absence of a well-developed system and mechanism that permits migrant workers, specifically lower-skilled migrant workers, to move across borders. The awareness among potential migrants as to moving legally, as well as about the costs involved and the relevant procedural details is poor. These would lead to: (i) a recruitment fee being extorted from migrants at source; (ii) limited awareness where migrants are not cognizant of what their working conditions and income level could be at the destination; and (iii) a romantic view of what migration could be and about possibilities abroad. Migrants would leave their villages because of stories they heard from their colleagues about destination countries that might not be true or correct, as migrants often do not report factually once home due to pride or fear of being seen as a failure.

Risks and vulnerabilities at transit and destination: Ill-informed migrants could be at risk also from: (i) bribes extorted at transit; (ii) confiscation of personal documents by employers who paid off 'debt'-related costs of migration into Thailand; (iii) inability to change employers related to regulations, confiscation of documents, and indebtedness; (iv) lack of understanding of labour contracts—some migrants do not know why they needed a contract; (v) hard and dangerous working conditions; (vi) delay in salary payment, wage deductions or withholding of salary or remuneration; (vii) unjust termination of contract without notice; (viii) confinement within an employer's home or the workplace; (ix) denial of days of rest—which happens a lot in Thailand, especially in fisheries; (x) inhuman living and working conditions; and (xi) difficulty in integrating and hence in accessing social and health services.

Risks and vulnerabilities on return: There might be challenges for those who desire to return to their country of origin, which include: irregular status at destination, leading to reduced savings

and limited opportunities to return and to lead a sustainable livelihood; and re-integration problems if they return.

Pre-departure training for migrants is a right under the ILO Migration for Employment Convention (Revised), 1949 (No. 97). Such a training is required to: (i) take an informed decision; (ii) be aware of rights, risks, services and living/working conditions at the destination; (iii) feel comfortable, and not feel nervous about life at the destination; (iv) reduce the possibilities of being exploited; and (v) have an opportunity to share worries and concerns regarding working abroad in peer-group discussion with migrants who might have returned.

There are two stages in pre-departure training: pre-decision and pre-departure. Pre-decision implies access to correct information in the decision-making process. This type of intervention is often necessary at the village level in areas of high migration pressure. Pre-departure is defined by IOM as training of migrants who are already in the migration channel (in Thailand, it is the MoU channel). The main drawback of pre-departure training, however, is that it is focused on migrants in the regular channel. A large proportion of migrants are left out, including fishers, who then enter the country irregularly. So, by definition, migrant fishers did not get any skills or information from pre-departure training.

IOM is working on pre-decision training to provide information on: (i) what is migration, why and how do people migrate; (ii) role of agents and risks; (iii) working and living conditions in the receiving country; (iv) regular recruitment channel; (v) worker's rights and obligations in the receiving country; (vi) human trafficking and migrant smuggling and the procedures to report; (vii) how to seek help and assistance; and (viii) do's and don'ts of safe migration. Once migrants make their decision to migrate abroad, a formal pre-departure training should be given to inform them about how to travel, specific working conditions and contract-related rules and regulations in the destination country.

Regarding pre-departure training she recommended: (i) developing curricula and supporting activities in close co-ordination with the destination country; (ii) linking pre-departure and post-arrival activities and information; (iii) providing not only factual information, but also information to change attitudes and provide additional skills (for example, language); (iv) training in migrants' native language; (v) developing pre-departure training that is holistic and addresses the family unit; and (vi) promoting gender equality in this process.

Post-arrival trainings should be given to provide migrants with information that was not given during pre-departure training. However, the post-arrival training could repeat certain information to ensure that migrants fully understand their rights/obligations at the destination country and that they have the skills to protect themselves from risks and challenges.



Thanaporn Michaud, Project Officer, IOM, said for post-arrival training, IOM targets migrant workers who come to Thailand through both illegal and legal channels. For each group, IOM's strategy would be different. For those arriving through legal channels, IOM co-ordinates post-arrival training together with the MOL. For irregular migrants, IOM goes directly to their communities and provides the knowledge necessary for them, like how to work legally in Thailand.

Post-arrival training provides information on the following areas in the destination country: (i) migrants' rights and obligations; (ii) how to work and live legitimately; (iii) how to maintain legal status (for example, how to report every 90 days, as necessary, for a re-entry permit); (iv) available social services for documented or regular migrants; (v) working and living conditions; (vi) challenges faced by male, female and young migrants; (vii) confronting human trafficking and exploitation/abuse; (viii) seeking help and reporting a crime; (ix) health and hygiene; (x) costs and finances; and (xi) returning home and coming back to work.

IOM has a regional project to work with both the origin and destination countries. It has developed curriculum and trained NGOs and recruitment agencies, and co-ordinated with government sectors and NGOs to undertake activities together with it at the village level. Regarding migration, IOM helps develop training courses and transmits knowledge to workers through local NGOs. It also provides knowledge and training on: (i) the rights and responsibilities of migrants; (ii) children's rights; (iii) human trafficking; (iv) 'We Understand' (Rao Khao Jai) project to teach Thai to the Burmese workers so that they can communicate with Thai people; and (v) basic laws of Thailand. IOM also produces cartoon books and posters on preventing human trafficking, and is in the process of producing audio material on migrant rights to be broadcast over radio in Myanmar. In fisheries, it intends to start a LCC in Ranong, Thailand, to provide post-arrival orientation for recruited fishers before they start on their new jobs.



Allison Lee, Secretary-General, Su-Ao Migrant Fisherman's Union, Taiwan, said there were several legal instruments related to migrant fishers in Taiwan. They included: Labour Standards Act, the Employment Services Act, the Human Trafficking Prevention Act, the National Health Insurance Act and the Labour Insurance Act. Taiwan currently has 475,000 migrant workers, from Indonesia, Vietnam, the Philippines and Thailand (October 2013 figures). A majority of migrant workers are in manufacturing and social welfare (as caretakers, household workers, and so on). Indonesia accounts for nearly 45 per cent of the migrant workforce, including over 8,000 migrant fishers. The Philippines had 1,320 migrant fishers, which was second to Indonesia. Vietnam had 135 and Thailand, 17. Altogether, there are nearly 9,500 migrant fishers in Taiwan and they account for 2 per cent of its migrant workforce. All members and office bearers of her union were Filipino, except herself. Indonesian migrant fishers were expected to join the union in December 2013. The union is now moving from a protest to a dialogue mode with the government, she said.

Migrant fishers in Taiwan are on a three-year contract, renewable for another three terms. They can work for up to 12 years, after which they can no longer be hired to work in Taiwan. A migrant fisher has no right to transfer or change his employer even if he did not like him, or if another employer offered him a better salary. The employers hold a quota for migrant fishers. (Each fishing vessel employer holds a quota of five migrant fishers. If one of the migrant fishers were to be transferred to work on another vessel, then the quota of that employer would be reduced to four migrant fishers.) Transfer of fishers under the quota would automatically lead to reduction of quotas held by vessel owners. The quotas were delegated to Taiwanese brokers who, in turn, work through brokers in the States of origin, such as Indonesia, the Philippines, Vietnam and Thailand to procure fishers for Taiwanese employers.

All workers were entitled to a minimum monthly wage of NT\$19,047 (US\$635), regardless of being a resident or a migrant worker. The employer would pay the worker's salary to the broker, and the broker, in turn, would pay the migrant fisher. The broker deducts a service fee from this salary. If the employer paid a monthly salary of NT\$20,000 (US\$667), the broker would deduct his service fee of NT\$1,800 (US\$60) from it every month in the first year, NT\$1700 (US\$57) every month in year two, and NT\$ 1,500 (US\$50) every month in year three of the contract. NT\$5,000 (US\$167) was deducted monthly from a migrant fisher's salary towards board and lodging fee since he stayed on board the vessel. Workers also had to repay loans back home, in addition to several other deductions made to their salary by the broker.

Migrant fishers in Taiwan have a regular working time not in excess of eight hours and they are entitled to overtime if fishing hours extend from eight hours to 12 hours. Migrant workers have one regular day off in every seven days. They are also granted recess on all holidays. Although the employers approached the government to bring fishing under Article 84-1 of the Labour

Standards Act—an article that would have permitted fishing to have its own working hours, days off and female workers' night work, different from regular work in other sectors—the proposal was rejected by the government at the behest of the union, which held the right to veto such a proposal. It was one kind of protection that the fishers enjoyed as a registered union. There was a move in 2012 to lower the minimum wage for migrant workers, which was successfully resisted by her organization on the ground that such a move would affect the employment prospects of Taiwanese workers.

Although migrant fishers were issued an Alien Resident Certificate (ARC) under the Employment Services Act, the certificate was often retained with brokers and employers. The broker had to be paid NT\$1,000 (US\$33) to get the ARC released for any use. The union was lobbying the government for the right of migrant fishers to hold this certificate with them in person.

Taiwan also had a hotline number (1955) for migrant workers to contact for help in four languages: Bahasa Indonesia, Tagalog, Thai and Vietnamese. The hotline was maintained by an NGO and paid for by the government. The hotline would refer the cases to the labour bureau officers. Subsequently the migrant fishers passed on the details to their union for follow-up.

Current legal provisions do not require labour inspectors to inspect the accommodation and workplace of migrant fishers, and to determine whether brokers are exploiting them. The union was lobbying to bring the fisheries sector under labour inspection. The union undertook protest marches to protect the wages of fishers from unfair deductions. It also undertook philanthropic activities like collecting and distributing winter jackets for fishers to help them fight the cold at sea. Their office also offered food and accommodation to migrant fishers.

It is possible to depute NGO staff to work with the government, which was useful especially to lobby for legal reforms that would benefit migrant fishers. During labour disputes, the Taiwanese government would provide social workers to accompany a migrant worker during negotiations with the labour bureau, brokers and the employers. The 'accompany' fee would be paid by the government. The migrant fisher often welcomed this assistance since it gave him some confidence in his negotiation with employers and the government. The labour bureau and the Department of Immigration run many shelters for the benefit of the victims of human trafficking, where accommodation, food and transportation costs were met. Victims were also helped to find another employer through the employment service. The shelters also provided social workers to accompany victims to assist them and ensure their protection.



Sompong Srakaew, Labour Migration and Counter Trafficking

Director, LPN, said some migrant fishers who were invited to attend the Dialogue were unable to participate because they were fishing in Indonesian waters. Thai fishing vessels were rented out to the Indonesians, he alleged. Information was scanty regarding the actual number of Thai fishing vessels; the number of tour boats transferring catch, provisions and fishers at sea; and types of fishing vessels. There were fishers, including those under forced labour⁸ on board Thai vessels in their entire range of operations. Vessel owners were often not physically present in the city where the fishing vessels were registered, he remarked.

There is no reliable estimate on the total number of migrant workers in Thailand and on Thai vessels—in transit on tour boats and on board fishing vessels—since many of them use fake documents and forged passports to establish false identity as Thai citizens. Some of them also use fake documents from their own country to establish a national identity. Even if there were

8 Defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (ILO Convention No. 29).

MoUs between Thailand and Myanmar and between Thailand and Cambodia to procure migrant workers, irregular migration into fishing would covertly be encouraged by some Thai vessel owners who cannot afford to pay normal wages or remuneration to Thai fishers and migrant fishers. They would be forced to quit fishing if they were to pay prevailing wages. Rather than using the MoU channel, they would stick to illegal procurement of workers through brokers, he alleged. Based on the presentations made at the Dialogue, it was clear problems of migrant fishers could be solved only if vessel owners co-operated, but over two-thirds of fishing vessels were unregistered, and the majority of vessel owners were not interested in co-operating to solve the problems of migrant fishers, he noted.

Although there was an MOL hotline to complain against employers or skippers, migrant fishers from Myanmar and Cambodia often preferred to complain through organizations that spoke their language. These organizations could be equipped with short frequency radio to communicate with fishing vessels. Vessel owners should trust and co-operate with these organizations. Srakaew also proposed signing MoUs on fishing with neighbouring countries of Thailand to ensure all regular migrant fishers benefited from social security. Recruiting workers into forced labour on fishing vessels should be prohibited. Currently, migrant workers lacked any motivation to work on board fishing vessels. There should be a system to motivate them, he said. Complying with the catch-certification schemes of importing countries to access their seafood market should also include measures to ascertain that Thai fishing vessels are not involved in forced labour or human trafficking. The Generalized Scheme of Preferences (GSP)⁹ enjoyed by the Thai seafood exports could be harmed if there is serious violation of international principles dealing with forced labour, he warned.

Satian Tunprom, ANM, said that to enhance capabilities of migrant fishers, it was important to make them confident to negotiate with employers. C188 could help them negotiate for better working conditions and for their effective repatriation. He called on Thai national fishers and migrant fishers to work together for ratification of C188. It was important to provide incentives to value the workplace. “Migrant fishers are partners, living human beings; they should learn about their basic human rights and know how to protect them”, he observed. In this context, it was important to ratify all relevant ILO Conventions, he added.

Day 2

SESSION 5

INAUGURAL SESSION

FACILITATOR: **Nalini Nayak, Member, ICSF**

Day 2 commenced with the interactive session between all the departments and institutions that, in one way or other, relate to the issue of labour in the fishing industry. Welcoming the Dialogue partners, **Ravadee Prasertcharoensuk, SDF/ICSF**, said Day 2 would be the principal day of the Dialogue, conducted with all invited partners. The Dialogue gave an opportunity for international organizations, national organizations, labour unions, civil society and academia to share and discuss the issues of labour, migration and fisheries management in

⁹ A scheme whereby a wide range of industrial and agricultural products including fish and fish products originating in certain developing countries are given substantial tariff reductions in the European Union (EU).

the ASEAN region. She hoped the Dialogue would come up with a concrete plan for collaboration to address issues raised and discussed during the Dialogue. She hoped different partnering organizations would synergize their efforts to pursue and address issues identified by the Dialogue. She recognized the role of the Centre for Peace and Conflict Studies, Chulalongkorn University, in helping to organize the Dialogue. She mentioned the role played by ICSF, SDF and the national migrant network in Thailand in organizing the Dialogue. She acknowledged the Bay of Bengal Large Marine Ecosystem Project (BOBLME) of the Food and Agriculture Organization of the United Nations (FAO), under the Global Environment Facility (GEF) umbrella, for extending financial support to the Dialogue.



Nalini Nayak, ICSF, said in the context of globalization, it would be better for the future if people focused on issues of rights and resource sustainability, labour, and trade. Fishing industry was globalized long before the current phase of globalization and, she hoped, the Dialogue would not only discuss issues but also seek solutions. The issues being discussed at the Dialogue are not sectoral but universal, she said.

In his introduction, **Sebastian Mathew, ICSF**, pointed to the existence of both internal migrants and international migrants. The Dialogue, following the United Nations International Convention on the Protection of the Rights of Migrant Workers and Members of their Families—known as the Migrant Workers’ Convention, 1990 (MWC), which came into force in 2003—focused on international migrants. Among ASEAN Member States, the Philippines and Indonesia have ratified the Convention. Article 2.1 of MWC defines a ‘migrant worker’ as a person who is to be engaged, was engaged or has been engaged in a remunerated activity in a State of which he or she is not a national worker. This definition includes a fisher if he is employed on board a vessel registered in a State of which he is not a national.¹⁰ Any discussion on migrant workers would, therefore, not exclude migrant fishers, he pointed out.

The 2012 Rio+20 United Nations Conference on Sustainable Development recognized promoting and protecting effectively the human rights and fundamental freedom of all migrants, regardless of migration status. Further, the Declaration of the High-Level Dialogue on International Migration and Development, October 2013, sought to address international migration through international, regional or bilateral co-operation and dialogue. It recognized the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of *all* migrants. At the regional level, the 2009 ASEAN Socio-cultural Community Blueprint made a strong reference to protecting and promoting the rights of migrant workers.

With regard to migrant fishers, the Points of Consensus from the ILO Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007—held in Geneva in May 2013—drew attention to migrant fishers facing greater risk of abandonment when flag States did not live up to their responsibilities towards abandoned fishers. At the regional level, the 2012 Southeast Asia State of Fisheries and Aquaculture (SEA-SOFIA) of the Southeast Asian Fisheries Development Centre (SEAFDEC) discussed improving conditions of work and the status of migrant fishers in the ASEAN region. Further, BOBLME undertook a major study in the ASEAN region in 2012 on migrant fishers, and had recommended developing a fisheries action programme to protect the rights of migrant fishers.

Several reports of the UN Secretary-General on International Migration and Development have recognized the emergence of Thailand as a destination country for labour migrants, Mathew said. There were over 500,000 migrants in Thailand in 2004, which had climbed to nearly four million

¹⁰ See Article 2.1(c) of MWC.

in 2013.¹¹ Thailand now has the largest migrant population in Southeast Asia and probably the fastest-growing migrant population in the world over the last 25 years or so. Migrant workers were mainly employed in agriculture, construction, manufacturing and domestic work, and made significant contribution to the Thai gross domestic product (GDP).

There has been a serious shortage of workers in the Thai marine fishing industry since the turn of the century. As a result, Thai fishing vessel operators have to rely heavily on migrant workers to operate their fishing vessels in national as well as international waters. This was recognized in a 2013 Action Plan of the Thai DOF to address labour issues and to promote better working conditions in fisheries. Migrant fishers are mainly from Myanmar, Cambodia and Lao PDR. There are over 100,000 migrant fishers in Thailand, arguably the largest number of migrant fishers in any country in the world. Commercial fishing probably has the highest share of migrants as fishers. Almost the entire unskilled workforce in trawl and purse-seine fishing operations comprise irregular or undocumented fishers.

The Thai fishing industry, on the one hand, desperately needs migrant fishers. Migrants, on the other hand, are keen to leave fishing if they can afford to do so. C188 considers fishing as a hazardous occupation when compared to other occupations. Working in fishing operations such as trawling and purse-seining is hard work, and challenging for various reasons. It is believed to be the hardest among all jobs that migrants could currently take up in Thailand. Problems of trafficking and forced labour in fishing are much more than in other sectors. Often the migrant fishers are not aware of their rights; they just cross the border in search of work. Newcomers find it easiest to get work on fishing vessels.

In such a scenario, it was pertinent to look at measures to retain fishers, especially by ensuring them decent conditions of work on board fishing vessels. It is important to integrate migration into Thailand, into national fisheries-development and management strategies by regularizing migrant fishers, by ensuring their social protection, by protecting their rights, and by strengthening their capacity to claim their rights. These measures would be consistent with the Statement made by the Thai government at the UN High Level Dialogue on International Migration and Development in October 2013, highlighting: (i) integrating migration policies into the national agenda; (ii) protecting migrants and their rights; (iii) legalizing illegal workers towards reducing their vulnerability; and (iv) greater mainstreaming of migration into national development policies. The Thai Statement demonstrated the intention of the government to deal with the issue. In this backdrop, the Dialogue had invited associations/unions of fishers and their support organizations, government departments, international organizations, academia and other stakeholders to exchange views on how to improve the working and living conditions of migrant fishers on Thai fishing vessels.

Labour standards in fishing could lead to effective fisheries management, Mathew observed. At a broader level, improving safety, working and living conditions of fishers, including of migrant fishers, and employing C188, could improve fisheries management, consistent with the 1995 UN Fish Stocks Agreement and the 1995 FAO Code of Conduct for Responsible Fisheries. Labour standards in fishing could aid better responses to the market State measures and could improve market access for Thai seafood exports to the EU, in particular.

Improving safety, working and living conditions of fishers would also be consistent with a human-rights-based approach to fisheries as developed under the FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the context of Food Security and Poverty Eradication (SSF Guidelines). The Twenty-seventh Session (2007) of the FAO Committee on Fisheries

11 See United Nations. 2013. Trends in International Migrant Stock: the 2013 Revision. <http://www.un.org/en/development/desa/population/theme/international-migration/index.shtml>

(COFI) had already recognized promoting human rights as critical for the social development of fishing communities. FAO and ILO plan to give priority to decent working and living conditions in small-scale fisheries. COFI has included rights to decent working conditions under human rights. The Twenty-eighth Session of COFI (2009) had also asked for the implementation of C188. Improving safety, working and living condition of fishers could also help in the fight against illegal, unreported and unregulated (IUU) fishing practices, Mathew added.

Fisheries conservation and management measures need interlocking with sea-safety measures as well as measures for protecting working and living conditions. This is not possible without effective co-ordination and co-operation between labour, marine transport, marine environment and fisheries authorities in the flag State and the coastal State, in particular. Different actors need to talk to each other. Citing the 2012 Convention on the Determination of the Minimum Conditions for Access and Exploitation of Marine Resources within the Maritime Zones under jurisdiction of the Member States of the Sub Regional Fisheries Commission of West Africa, a coastal State, Mathew pointed out, could authorize a foreign flag State to fish in its maritime zones only if vessels of the foreign flag were complying with international instruments for the protection of the marine environment under the International Maritime Organization (IMO) and the protection of employment of fishers under C188.

Inaugurating the Dialogue on Day 2, **Sunee Chaiyaros, Vice-President, LRCT**, said the Constitution of Thailand had set up an independent law reform body to improve and develop the law of the country by taking into consideration the opinion of those who would be affected by that law. The LRCT was also involved in consensus building to develop uniform labour standards in the ASEAN region. Migrant workers were beneficial to the Thai economy. Thailand should take care of migrant workers as much as it wanted foreign countries to take care of its nationals when they migrated abroad. Although one of the fundamental conventions of ILO, namely, the Freedom of Association and the Right to Organize Convention, 1948 (C87) was not ratified by Thailand, its provisions are incorporated into national legislation, she observed. Thailand even extends some protection to undocumented migrants.

In practice, however, there are many gaps in Thai legislation and its enforcement. Fishers who worked outside the Thai maritime zones, undocumented migrant fishers, and those working for more than one year away from Thai national waters did not, for example, receive any protection. It was particularly difficult to take care of fishers on board fishing vessels, and Chaiyaros stressed the importance of a human-rights approach, collective bargaining agreements and the involvement of CSOs in resolving migrant labour issues, not only in Thailand but also in other ASEAN Member States. Women and children were chiefly affected when they were trafficked, she said. There were communication problems due to language issues and often migrant workers were denied justice and deported in human trafficking cases.

It was good to see the DLPW paying attention to the problems faced by migrant fishers, she said. Forced labour and human trafficking are the main labour issues to be addressed in fisheries. It is necessary to ensure that Thai national and migrant fishers are not subjugated to human trafficking and forced labour. The MOL, together with the MSDHS and the DOF, has already started the process of amending relevant legislation, which was expected to concretize by early 2014. Work in fishing should not be regarded atypical, and the labour protection enjoyed by workers under the Thai law should extend to fishers as well, especially in entering into a contract or work agreement and in benefitting from a minimum wage of at least THB300 (US\$10) per day. Employers should come forward to pay at least this minimum wage. Chaiyaros added that an amendment was being proposed to the Labour Relations Act, 1975, to allow migrant workers to form their own labour unions.

SESSION 6

MIGRANT FISHERS—EMPLOYMENT AND SOCIAL PROTECTION IN THAI FISHERIES

FACILITATOR: **Surichai Wun'gao**



In his opening remarks, **Surichai Wun'gao, Center for Peace and Conflict Studies, Chulalongkorn University**, said it was a great honour to welcome all the Dialogue partners on behalf of Chulalongkorn University. The University was proud to be part of this important meeting, an assembly of several national and international agencies, especially CSOs and people who worked with migrant workers. The real issue was how to broaden the understanding of policymakers in the Ministry of Agriculture and MSDHS on a substantive issue such as international migration. A new set of values was needed to strengthen national development in the universal context of human rights and human security, he observed. Chulalongkorn University would be completing a hundred years of its history in 2017. “In the spirit of universal values, we would like to see Thailand more committed, organized and co-ordinated across sectors to work on an issue such as migration for the common future of all”, he said. It was important to communicate the content and deliberations of the Dialogue to the public and media, mainly to make ASEAN more responsive to real issues that people cared about in the region, he added.

Max Tuñón, ILO, said ILO, together with MOL, NFAT, LRCT and other civil society partners, had already held a consultation on C188 in Bangkok in September 2013, discussing how certain aspects of it could be considered in the light of the revision of the Thai Ministerial Regulation No. 10 on marine fishing. He cautioned against rushing through legislation that was not applicable either to employers or fishers. The new legal instrument had to reflect the interests of the industry, especially vessel owners, skippers and the interests and actual situation of the fishers themselves. C188—adopted by the ILO Labour Conference in 2007—replaced and revised or updated a number of fishing conventions of the ILO since the 1950s. It primarily targets flag States but with some provisions also for port States. C188 is comprehensive: it covers the minimum age for work on board fishing vessels and occupational safety and health—issues that were not a concern in previous conventions. It includes provisions for accommodation and food, medical care and social security. All fishers on board fishing vessels fall within the scope of C188. Certain measures are more stringent with regard to vessels 24-m in length and over, and vessels remaining at sea for three days or more, and less stringent toward smaller vessels, or vessels more frequently returning to shore. As an example, minimum hours of rest in C188 apply only to vessels remaining at sea for more than three days.

C188 outlines responsibilities for all parties: the governments, vessel owners, skippers and the fishers. It provides guidance to the government on how to implement laws and regulations and how to designate the competent authorities and establish co-ordination mechanisms among the authorities for effective implementation and enforcement of standards. The vessel owners are obliged to provide the skippers with necessary resources and facilities to comply with C188. The skipper is responsible for the safety and health of the fishers and the safe operation of the vessel. C188 also recognizes fishing as a hazardous occupation. Statistics from developed countries show that fishing occupation has high rates of fatalities and accidents. Fishers are obliged to follow lawful orders and the applicable safety and health measures.

One of the issues relevant for Thailand under C188 is minimum age. Thai regulations allow 15 year-olds to fish with the consent of their parent or guardian. C188 made 16 the minimum age for work on board a fishing vessel, but, in certain circumstances, it allows persons of the age of 15 to perform light work during school holidays. C188, however, is clear that certain types of work should not be carried out by persons below the age of 18. It has called on countries to determine what kind of activities should, and should not, be carried out by children between the age of 15 and 18. Considering this, the type of work children of the age 16 or 17 could do on board a fishing vessel needs to be defined in Thailand. ILO and FAO had come up with guidance on child labour in fisheries and aquaculture in 2013. It included night work, marine fishing in inclement weather, fishing in offshore waters, and diving, as examples of hazardous activities for children. The Thai government and industry associations have been working towards the development of a hazardous child labour list in aquaculture, but not yet in fishing, Tuñón noted.

A second issue relevant for Thailand from C188 was hours of rest on board a fishing vessel, which was an issue faced not just in Thailand but all over the world. Given the nature of work in fishing, and considering that fishers are hunter-gatherers and that they have to catch fish when it is available, C188 itself did not set minimum hours of work as ILO did with other types of work. There is no minimum standard set on hours of work in fishing. What was included within the Convention was a guideline on minimum hours of rest and this was framed in connection with occupational safety and health. Working excessive hours could lead to fatigue and result in accidents. C188 prescribes not fewer than 10 hours in any 24-hour period and 77 hours in any seven-day period as minimum hours of rest for those vessels remaining at sea for more than three days. This could apply to fishing vessels in Thailand, and could be adapted while revising the Thai Ministerial Regulation No. 10 on marine fishing.

A third issue was the contract or work agreement of a fisher. A key measure to be considered for inclusion from C188 into the Thai Ministerial Regulation No. 10 is the protection of contract or work agreement of a fisher on board a vessel. C188 requires all fishers working on vessels to have protection of a fisher's work agreement, signed by both the fisher and the fishing vessel owner or his representative. A sample fisher's work agreement was provided as an annex to C188. It was required that the work agreement should be carried on board and available to the fisher. This is not the case in Thailand. In the GMS TRIANGLE study on the Thai fishing sector, only a very tiny proportion of the fishers interviewed, for instance, were in possession of a written work agreement. The agreement had set out the working hours and the terms of payment, but often the information was vague on how wages were calculated, how deductions were made, and how the share of the catch was translated into wages. There was confusion also about the regularity of payment. Fisher's work agreement based on C188 could provide greater protection to fishers in these areas, Tuñón suggested. ILO was encouraging a work agreement be either stipulated as a legal requirement or adopted by NFAT as part of its Code of Conduct. NFAT has been strongly urging its members to adhere to this Code, he said.

A fourth issue in Thai fisheries, addressed in C188, was related to the crew list. This is important in light of the discussions about workers being traded to other fishing vessels while at sea. The vessels coming back to shore sometimes would not have the same number of fishers as when they departed from shore. It was important to have a link between the vessel, skipper and the fisher, in Tuñón's view. The Thai Ministerial Regulation No. 10 requires vessel owners with 20 or more fishers to provide a crew list to the DLPW. However, in practice, this is not applied or enforced. Maintaining a crew list is a key component for the protection of fishers. The crew list should be provided to the authorized persons prior to departure or communicated ashore after departure, and the competent authority should determine to whom and when it should

be provided. There was already some adherence to these standards in the current ministerial regulation, but it could be further strengthened, Tuñón observed. The IMO had developed guidance on crew list on ships with a standardized format—available online—that could be adapted to fishing vessels as well.

A fifth issue was about the payment of fishers, especially about regularity of payment. C188 requires that monthly or regular payments to fishers be ensured, and that all fishers should be given a means to send their payments to their families at no cost. There should be, in the work agreement, information about the amount of the wage or remuneration and the way the wage or a share of the catch was calculated, with clear details. Comparing C188 to the Ministerial Regulation No. 10, Tuñón pointed out both instruments acknowledged that fishers be made a basic payment, both called for fishers be paid on a monthly or regular basis, and both provided compensation for workers in the case of occupational disease. The Ministerial Regulation No. 10 also has an interesting clause that is not being applied or enforced, he pointed out, which states that the document respecting payment of remuneration—basically a pay slip—should be kept by employers for inspection by labour inspectors. The pay slip provisions are a summary of the key points such as rate and amount of remuneration and provides some protection around payment of fishers and are in line with C188.

C188 would come into force when 10 members of ILO ratified it, of which eight are coastal States. C188 had four ratifications, of which two were registered in 2013. Low ratification was attributed to countries currently focusing on the Maritime Labour Convention, 2006 (MLC). Since MLC has now been ratified, the competent national authorities would take an interest in ratifying C188, Tuñón hoped. Within the ASEAN group, no ratification is foreseen, however, in the near future. What was useful about C188 was that it provided the reference points for the development of national standards like revising the Thai Ministerial Regulation No. 10 and regional standards. It is useful to seek consistency across ASEAN member countries.

ILO had held some consultations at the regional level on protecting fishers. It had organized a regional meeting at Makassar, Indonesia, in September 2013 where it looked at national legislation to protect fishers in countries of origin like Cambodia and Vietnam and countries of destination like Taiwan, China, Spain, Republic of Korea and Thailand. There was general improvement in migration management but more focus was needed on protecting migrant fishers. Vietnam had specific guidelines on sending migrant fishers abroad, especially to Taiwan, China and Korea. Cambodia and Myanmar could look at Vietnam's guidelines in developing their legislation for fishers coming into the Thai fishing industry, Tuñón suggested.



Magnus Torell, Senior Adviser, Southeast Asian Development Centre (SEAFDEC), said of late there has been a greater interest in focusing on the well-being of fishery-dependent people, both men and women in the ASEAN region. There is, however, no comprehensive assessment of the actual number of people directly or indirectly involved, full-time or part-time, as owner-operators or as contract labourers in fishing in Southeast Asia. The total number of fishers and fishworkers, including migrant fishers (mostly men) and fishworkers (mostly women), was hugely underestimated in the region. Towards adopting a socially sound fisheries-management regime, it is pertinent to know the extent of dependence of fishing on domestic and migrant workforce, he observed.

Fisheries experts often wonder what 'labour' has to do with fisheries. Since fishers are often self-employed, there is a prevailing perception in Southeast Asia that there is no need to talk about the labour dimension of fishing. Increasingly, large numbers of migrant fishers and fishworkers are contracted to take up different types of work in fisheries. "Those who have never

seen the sea before do not know what to expect when there is a storm”, Torell observed. The total number of migrant fishers and fishworkers combined in Thailand, for example, would probably be over a million, he said. Sharing responsibility towards fishers and fishworkers between different departments, including DLPW, DOF and the private sector, was important to implement different ILO conventions, especially to protect migrant fishers and fishworkers, he observed.

The rights of fishers, including migrant fishers and fishworkers, are defined not only in international legal instruments but also implicit in regional policy documents such as the 2009 ASEAN Socio-Cultural Community Blueprint and the 2009 ASEAN Political-Security Community Blueprint. These documents are keen on action to protect and promote the rights of migrant workers. The 2008 ASEAN Economic Community Blueprint also spelt out commitment to combat illegal fishing. The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and the 2012 ASEAN Human Rights Declaration are also relevant for the protection of the rights of migrant fishers. There were thus several expressions at the highest political level on protecting migrant workers, Torell said.

In addition, the 2010 ASEAN-SEAFDEC Regional Technical Consultation on Adapting to a Changing Environment recommended protecting the rights of fishers and fishworkers, including migrant workers. It recommended promoting fair and appropriate employment protection, regular payment of wages and adequate access to decent working and living conditions for fishers and fishworkers. The Consultation also highlighted improvement of safety at sea for both smaller and larger vessels, documentation of crew on board fishing vessels, training of crew in sea-safety matters, and improvement of safety and health standards of fishworkers. It further recommended recognizing the constitutional rights and livelihood rights of fishers, coastal and inland fishery communities and migrant fishers and fishworkers.

The 2011 Resolution on Sustainable Fisheries for Food Security for the ASEAN Region towards 2020 recommended improving the working conditions of people engaged in fisheries activities and strengthening measures for safety of fishing vessels (Recommendation 13) and the Plan of Action encouraged good employment practices (paragraphs 16 and 65). Torell suggested linking up national employment legislation with relevant ILO conventions to improve employment practices in fisheries.

Basic rights of citizens are guaranteed by national constitutions in the ASEAN region. Labour laws are applicable to all sectors and workers. Immigration and emigration laws include basic rules to deal with both regular and irregular migrants. The fisheries agencies in the ASEAN region are not equipped to directly deal with labour issues. They should be strengthened to deal with labour issues in co-operation with the relevant institutions responsible for labour. Fisheries management and labour protection could be inter-linked. The Philippines case was given as an example where the issue of a fishing licence was contingent upon demonstrating compliance with relevant national labour laws for the crew on board. In Thailand, the DOF and ILO were developing guidelines for recognizing labour aspects in the management of fisheries, aquaculture, processing and other aspects relating to fisheries.

On a general note, collecting and sharing information ought to be encouraged, said Torell. He sought identification of the type of information/data that would be necessary to provide baseline information on aspects related to the movement of migrant workforce and on living and working conditions, in line with national and international standards. Also, data and information-sharing should be promoted to assist bilateral and multilateral arrangements for training and capacity building.



Sitthichai Wareechananon, DOE, MOL, said his department was paying particular attention to the fishing industry since it was allegedly engaging victims of human trafficking in fishing. Thailand, which used to be a net migrant-sending country, has now turned into a net migrant-receiving country. There was shortage of labour in the fishing industry, and fishers were expected to remain at sea in a single fishing trip up to seven months. Thailand received migrant workers not only from Myanmar, Lao PDR and Cambodia, but also from Sri Lanka and Bangladesh, he observed. This had led to problems on board fishing vessels, arising from differences in language and culture. While his department was responsible for issuing work permits, DLPW was responsible for remuneration of fishers, including migrant fishers, and labour protection, and MSDHS was responsible for victims of human trafficking through its regional shelters.

The DOE had announced registration of migrant fishers on board fishing vessels in all 22 coastal provinces. Following the Cabinet Resolution of 9 October 2012 to prevent and suppress human trafficking of fishers, the DOE was setting up provincial LCCs, on a pilot basis, for marine fishers in seven provinces (Samut Sakhon, Rayong, Trat, Chumphon, Songkhla, Ranong and Satun). The vessel owners had to apply for worker quotas. Migrant workers, verified by NFAT, would be issued work permits to be engaged on board fishing vessels. The Marine Department and the DOF are assisting in other provinces to undertake similar verification process and issue work permits. From December 2013, the DOE, together with the Port Authority of Thailand, would ascertain forced labour and human trafficking cases on Thai fishing vessels and help rehabilitate victims in new employment.



Witaiwan Koykaewpring, Senior Technical Labour Officer, Labour Protection Bureau, DLPW, MOL, said economic development had shaped migration trends within the Southeast Asian region. It had transformed Thailand into a migration hub: a country of origin, transit and destination. The push factors behind migration include poverty and aspirations for a better quality of life in labour-sending countries in the neighbourhood. Fishing was considered dirty, difficult and dangerous (3D) and, as a result, the sector suffered from a domestic shortage of labour. The situation, combined with a national minimum wage of THB300 (US\$10) for all workers, attracted low-wage workers—unskilled irregular migrants—from less-developed ASEAN countries, in particular, into the Thai fishing industry. This led not only to problems of forced labour and human trafficking, but also exploitation and abuse of fishers, substandard working and living conditions, excessive hours of work and poor payment of fishers. While solving labour shortage in fishing, it is equally important to work on labour protection, especially of migrant fishers, to address overlapping issues of forced labour and human trafficking, in particular. Guaranteeing decent work, or work carried out in conditions of freedom, equity, safety and human dignity, is the goal of DLPW, Koykaewpring clarified.

The DLPW adopted the 5Ps approach – policy, protection, prevention, prosecution and partnership—especially to combat child labour, forced labour and human trafficking, including in the fisheries sector, she said. At the policy level, the Mission of DLPW is to develop Thai labour standards (TLS 8001-2546) in conformity with international labour standards to: (i) protect the rights of workers; (ii) promote, develop and supervise labour standards in relation to occupational safety and health; (iii) promote and develop labour relations; and (iv) establish a labour welfare system. Protection and prevention measures also apply to recruitment and conditions of work in fishing. Debt bondage and illegal recruitment are problems to be dealt with. Victims of trafficking or forced labour were sent back to their respective countries, in partnership with MSDHS.

Migrant workers, regardless of their nationality and legal status, should be treated on par with Thai nationals, which is one of the principles behind the Thai Labour Protection Act, 1998. The Act does not discriminate between domestic and migrant workers. Hours of work and minimum wage should be the same for both the Thai domestic workers and migrant workers, for example. Migrant workers are also entitled to social-security benefits if they are paid in wages. Wages should be deducted only for tax and social security, she said.

There are six agencies responsible for employment, working conditions, labour protection and sea safety in fishing in Thailand. These are: (i) DLPW, which undertakes inspections—on shore and on board—to prevent child labour, trafficking and forced labour; (ii) the Thai Immigration Bureau, which checks the legal status of fishers on board and detains undocumented migrant fishers; (iii) DOE, which registers migrant fishers and checks and extends their work permits; (iv) the Marine Department¹² of the Ministry of Transportation, which inspects fishing vessels and issues licences and registration certificates to seaworthy vessels as well as licences to skippers; (v) DOF, which issues licences for fishing gear; and (vi) the provincial public health office, which checks for epidemics and sanitation on board fishing vessels. On behalf of DLPW, the marine police and the Thai Navy check employment practices, working and safety conditions on board, crew list and work permits and whether the boat meets the requirements of a workplace. Inspections are also undertaken in partnership with the employers' organizations, such as the Thai Frozen Food Association (TFFA), the Thai Shrimp Association (TSA) and NFAT.

The Ministerial Regulation No. 10, under the Labour Protection Act, 1998, applies to fishing but, however, only to vessels engaging over 20 workers and to vessels operating in Thailand or outside its national waters for a continuous period of less than a year. The minimum age is 16 under this Regulation. Employers are expected to keep records of workers and records of payments. The fishers are entitled to annual holidays, periodic payment of remuneration, holiday pay, sick leave and also payment of remuneration if fishers are stranded in a foreign country. The costs of repatriation of fishers are to be borne by employers if the contract expires; if the fisher is ill; or if the vessel breaks down at sea. Fishers are also allowed to lodge a complaint.

The DLPW, together with ILO, LRCT and NFAT, is revising the Thai Ministerial Regulation No. 10 to extend provisions of minimum wage and minimum age to all commercial fishers. It was proposed to increase the minimum age for fishing to 18. Since fishers are paid a share of the catch as remuneration, a new methodology was being developed to fairly estimate the monetary value of the catch. All fishing vessels employing 10 or more fishers must register all fishers. The revised Thai Ministerial Regulation No. 10 is in the process of public hearing among stakeholders, employers and employees. It would apply, without any time limit, to all Thai-flagged fishing vessels engaging or employing one worker or more, including those operating beyond the Thai maritime zones.

Labour-inspection regimes are being strengthened, especially to prevent child labour, trafficking and forced labour in fishing. A hotline (1546) is functioning for both documented and undocumented migrant workers, including fishers, to register their complaints. There is also the 'one-stop-crisis-centre' (OSCC) hotline 1300 to register complaints. Burmese translators are being made available in some provinces to assist Myanmar workers to file complaints. Six provincial labour protection and welfare offices are functional as part of a complaint-filing mechanism for migrant workers. A multidisciplinary team comprising the marine police, DOE, DOF and the Thai Navy is co-operating to look into complaints and to inspect working conditions on board fishing vessels. Victims of forced labour and human trafficking are rescued and placed in the care of a primary shelter under the Anti-Trafficking in Persons Act, 2008.

¹² Formerly known as the Harbour Department.

Towards further preventing child labour, forced labour and human trafficking, DLPW has set up information, education and communication (IEC) programmes on labour rights and occupational safety and health (OSH) issues in the migrants' own languages. Awareness-raising programmes have been organized to impart knowledge about the rights of migrant workers and OSH issues to vessel owners and skippers. DLPW has partnered with government agencies and social partners such as NFAT and other CSOs/NGOs as well as ILO in protecting the rights of migrant workers. The partnership with ILO is to undertake research studies, and to develop appropriate policy and training in relation to labour inspection and good labour practices. ILO provides technical knowledge on rules and regulations with regard to forced labour and trafficking. ILO also assists in training labour inspectors in these areas. DLPW is also exchanging experiences and innovations in labour inspection with the Ministry of Labour and Employment, Brazil, supported by the ILO International Programme for the Elimination of Child Labour (IPEC) and the TRIANGLE project.

The partnership with CSOs is for awareness raising in provinces with a large migrant worker population. Guidelines for good labour practices in fisheries, for example, are being developed for fishing vessel operators in partnership with ILO and NFAT. These guidelines are a combination of existing standards derived from the Thai labour laws and regulations, and from international labour standards. They provide a framework, especially for fishing vessel operators, in relation to issues such as child labour, forced labour, debt bondage, human trafficking, recruitment, work agreement, payment of fishers, freedom of association and safety at sea. The Thai Frozen Foods Association, the Thai Shrimp Association and NFAT, for example, have signed the Declaration of Intent for Jointly Combating Child Labour and Forced Labour in Shrimp, Seafood, Fishing and Related Industry (launched by MOL on 23 November 2012) to comply with national and international labour standards to combat child labour and eliminate forced labour.

To measure the success of the Cabinet Resolution of 9 October 2012, it would be pertinent to look at how far the recruitment of fishers is through MoUs and to what extent the registration of undocumented migrant fishers could be completed, she said. Toward solving labour shortage, fishing vessels should move from labour-intensive to capital-intensive fishing, she recommended. Regional and international co-operation, and pre- and post-departure training of migrant fishers are required to address forced labour and human trafficking. Inspection of fishing vessels at sea is an area that needs improvement.



Waraporn Prompoj, Senior Expert on International Fisheries Affairs, DOF, Government of Thailand, said there are about 400,000 fishers and fishworkers in the fisheries and aquaculture industries in Thailand.

Many newspaper articles had highlighted the negative aspects of migrant workers in Thai fisheries. There is a committee to combat human trafficking in fisheries, which has already prepared a set of good labour practices in shrimp farming and fish processing, towards preventing trafficking and protecting migrant workers. The DOF had developed a ten-step Action Plan to address labour issues and to promote better working conditions in Thai fisheries industry. C188 should be applied to fishing and integrated into the Thai Labour Standards (TLS), she suggested. To comply with the EU Regulation on illegal, unreported and unregulated (IUU) fishing, the DOF was already working with the Marine Department to register fishing vessels. Mobile units were established jointly by DOF and the Marine Department of the Ministry of Transportation to register all commercial fishing vessels. There were currently 45,000 registered commercial fishing vessels. All these vessels, however, were not in operation. About 20,000 fishing gear licences have been issued.

While the Marine Department has to inspect fishing vessels, the DOF has to inspect fishing gear and the MOL has to inspect working and living conditions. Inspection of labour conditions on board fishing vessels, however, is yet to commence. The DOF was working with the SEAFDEC to introduce labour-saving fishing techniques, and a Korean expert was helping to develop

such techniques. An exposure programme in this regard is also being organized for the Thai fisheries department in Malaysia. The DOF is co-ordinating with the Marine Department and the Immigration Bureau to inspect fishing vessels, fishing gear and fishers on board. It is working towards legalizing irregular migrant fishers in collaboration with the MOL and the private sector since it realized the dependence of the fishery industry on migrant workers. Registration of migrant workers is being undertaken and it would continue until May 2014. ID cards would be issued to registered migrant fishers for a period of one year from the date of registration.

The process of dialogue has to continue, Prompoj said, to bring all operators on board and to transform an illegal activity into a legal one. This would help protect all migrant fishers from abuse. Under bilateral MoUs, the MOL was also considering import of workers through LCCs into fishing. Although some fishing vessel operators still held reservation, the DOF was in support of LCCs. The inspection wing of DOF has 17 units in 22 coastal provinces of Thailand to inspect fishing vessels regarding conservation and management of fisheries resources. These units are assisting the DOE in spreading awareness and in verifying migrant workers on fishing vessels and in issuing work permits. The DOF is also involved in registering and certifying 3,000 fishing vessels catching fish for export to the EU market. The DOF has also assisted the Department of Special Investigation (DSI), under the Ministry of Justice, in monitoring human trafficking in fishing in Chonburi district, especially by scanning fingerprints of migrant fishers and by training them in fishing. The DOF was closely co-ordinating its activities related to migrant fishers with NFAT. Registered migrant fishers are entitled to welfare and social security. Sometimes, a trawler that needed a crew size of 12, had 30 fishers on board and the involvement of NFAT would help prevent 'laundering' of workers at sea.

Surichai Wun'gao, Chulalongkorn University, said the presentations from the DOF and MOL showed there were some serious responses to the problems of migrant fishers, forced labour and human trafficking, but in the light of new international labour standards, there are still challenges to be met.

Responding to the presentation by Max Tuñón, ILO, **Waraporn Prompoj, DOF**, wanted to know how Thai labour regulations could apply to Thai vessels under joint ventures in Indonesia and whether national labour regulations could be integrated at the regional level to protect migrant fishers.

Regarding migration management in fishing, **Bandit Thanachaisetavuth, Arompongpanan Foundation**, was keen on information from DOF and MOL regarding enforcement of the Thai Ministerial Regulation No. 10. The Regulation is 15 years old; how many times have labour inspectors examined the documents kept by employers, or complaints by fishers, he enquired. Considering the shortage of staff and given that both authorities were dependent on the Thai Navy and the marine police for inspection, what has so far been achieved through the co-operation of DOF and MOL to protect migrant fishers, he asked. Without proper enforcement, he said it was meaningless to talk about amending the Regulation and bringing about legal reforms.

Addressing Max Tuñón, ILO, **Sebastian Mathew, ICSF**, asked if the tour boats engaged between the port and the fishing ground in ferrying workers and victuals, and in trans-shipping fish catch, would come under the purview of C188. Was there any information on fisher's work agreement, documented by the TRIANGLE project classified according to (i) definite period; (ii) single voyage; or (iii) indefinite period, as classified in Annex II of C188, and if so, which was the most common type of work agreement? He asked if the DOF and MOL had additional budget allocation and staff recruitment to meet with new responsibilities to deal with forced labour and human trafficking. He expressed doubts if introducing capital- and technology-intensive fishing would be a better way to fix the problem of migrant labour in fishing, than regularizing migrant fishers.

Replying to Waraporn Prompoj, DOF, **Max Tuñón, ILO**, clarified Thai labour laws did not apply to fishers on board vessels under joint ventures in Indonesia where the vessels were under the Indonesian flag. It is necessary to raise the bar on labour standards in Thailand and in other countries in the region such as Indonesia and Vietnam. Addressing abuses in one country should not lead to these abuses emerging in other countries. Minimum standards in relation to work in fishing should be set through bilateral co-operation—as between Thailand and Vietnam—and through an ASEAN agreement to prevent abuse of fishers on board. Tuñón expressed interest in what Magnus Torell spoke about discussions happening at the ASEAN level on labour issues in fishing.

Regarding tour boats and C188, the question has been raised before, he said, and he had forwarded it to his colleagues in Geneva. The informal response from ILO was that C188 applies only to vessels engaged in commercial fishing and not to supply ships or tour boats that were just moving goods, crew members and fuel. Since this response was not a formal interpretation given by the Committee of Experts that usually gives judgement on how to interpret ILO conventions, he could find out if a more formal verdict on this issue could be obtained from ILO. With regard to contracts, the TRIANGLE project did not undertake additional analysis of existing contracts. In the survey carried out, 96 per cent of fishers did not have a written contract. And the small proportion of those who had written contracts were in senior positions or as cooks or crew supervisors, so it was thought unnecessary to do an analysis of existing contracts.

Magnus Torell, SEAFDEC, responding to the question if technology-intensive fishing was a viable alternative to regularizing migrant fishers, said it was wise to move towards technology-intensive fishing since labour shortage was to become more acute in the near future. The flow of migrant workers was likely to dry up in the next three to five years. Countries like Myanmar and Cambodia were rapidly improving economic standards, which would stem the flow of migrant workers into Thailand, particularly into fishing. It was better to prepare for this eventuality, he advised.

Talking about the high demand for labour on Thai fishing vessels, **Max Tuñón, ILO**, said discussions with NFAT showed fishing vessels in tropical waters needed a crew size much larger than fishing vessels of the same size in the Scandinavian countries, for example, due to greater diversity of the fish catch in tropical waters, which warranted hands not only to haul gear but also to sort fish on board.

Wilaiwan Koykaewpring, MOL, observed the DLPW attached importance to employment contracts. But crew list was reportedly difficult to maintain. Payroll documents were examined and it was a matter of priority for her Department. Towards assisting fishers to report working conditions on board, one should perhaps explore what role technology could play, she proposed.

Summing up, **Surichai Wun'gao, Chulalongkorn University**, said although people consume seafood, they do not realize how much they owe to people who fish, how much they owe to the sea and how much they owe to marine fishery resources. Human trafficking is becoming a serious issue. What was discussed here perhaps amounted to only the tip of the iceberg, he feared. While dealing with food security, how people exercise responsibility in relation to how much fish they catch and how far, in the process, decent work is guaranteed to fishers are important considerations. Although the line agencies are understaffed and overworked, the problems of human trafficking demand inter-agency collaboration. The subject demands new ways of collaboration and it has to move from the periphery to the centre, he said. Rather than see it only as one of 'human trafficking', the issue should be understood in the broader backdrop of fish as food. It is also important to make the ASEAN Member States aware of forced labour and human trafficking issues in fisheries and food security. CSOs should maintain their focus on the issue, and he hoped his university could join hands in dealing with it in Thailand as well as in its neighbouring countries.

SESSION 7

MIGRANT FISHERS—EMPLOYMENT AND SOCIAL PROTECTION IN THAI FISHERIES

FACILITATOR: **Ravadee Prasertcharoensuk**, Executive Director, Sustainable Development Foundation, Thailand, and Member, ICSF

Reporting on the outcome of the discussion among CSOs/NGOs on Day 1, **Satian Tunprom, ANM**, said the Thai government, since 2006, had adopted policies on management of migrant workers, including those in the fisheries sector by temporarily relaxing conditions of employment of undocumented migrant workers. In spite of the government recruiting migrant workers through MoUs and providing undocumented migrants with legal status, there are still many undocumented workers. Thailand needs labour in the fishery sector. Thai nationals normally stay away from difficult, dirty and dangerous work like fishing. There was shortage of workers for 'dirty' work in Thailand. Even NFAT acknowledged that vessels could not operate at sea if there were no migrants to man fishing vessels. Existing Thai MoUs on importing labour did not include fishing. Fishers from Myanmar, Cambodia and Lao PDR also were increasingly reluctant to work at sea because they found fishing both dangerous and difficult. The Thai government was considering importing workers from Bangladesh and Sri Lanka as fishers to meet the challenge.

The migrant fishers face high risks to their jobs, livelihoods and working conditions. Their access to labour protection is inadequate. Before leaving home, they did not have access to information on fishing. They had little knowledge about the recruitment system that works through agents/brokers to get hold of workers for the Thai fishing industry. Most migrant fishers did not have a written work contract. Their work was based on verbal agreement with brokers. Once in Thailand, the majority of migrant fishers did not have documents to prove their nationality status. Being undocumented workers, they faced many limitations not just in labour protection in the fishing industry but in other realms as well. Most migrants did not have identity cards. The employers were reluctant to invest in getting them registered due to the high turnover of migrant fishers in fishing, who often preferred onshore jobs to fishing.

In order to meet the shortage of labour in the fishing industry, Thailand should grant amnesty to all migrant fishers, it was proposed. It is important to protect migrant fishers to retain them in fishing, Tunprom said. Deportation would only lead to a loss of fishers. It was better to change their status from undocumented to documented, after undertaking nationality verification.

Recommendations on recruitment and employment: It is necessary to have binding written work agreements between employers and fishers for greater labour protection. MoUs indicating the conditions of work should be initiated on recruitment of migrant workers. MoUs should inform migrant fishers what kind of work they were to undertake in Thailand and be oriented to provide necessary training in fishing before they migrate.

Labour protection: When migrant fishers get on board the fishing vessels, they have no idea what labour protection they are entitled to and who to seek help from. Mechanisms should be instituted to provide legal protection to migrant fishers and to attend to complaints against recruitment agents. The situation is pretty bleak, with poor working conditions. It is a difficult job with little time to rest. After deductions, only a meagre payment in terms of net remuneration is received by fishers.

The Thai labour protection laws make exceptions to labour protection in the fisheries sector, indicating that its nature is different from other jobs, thus relegating it to lower levels of labour protection. The labour relations law does not recognize migrant workers' right to form unions for

negotiations or collective bargaining. The Thai laws do not have provisions for migrant fishers to form labour unions. The fishers are not required to register in the social-security system. As a result, migrant workers do not have basic social security.

Recommendations on labour protection: The Thai Ministerial Regulation No. 10 should be amended or modified to facilitate greater protection for workers in the fisheries sector. C188 should be ratified and the amended Thai Ministerial Regulation No. 10 should be made consistent with C188. Fishing operations were atypical and involve dangerous work. It was necessary to establish a cadre of regular labour inspectors in fishing and build up its capacity. The fishers on board should have a safe and healthy working environment. It is important to develop standards on safety and occupational health, and adopt punitive measures for those who do not comply with such standards.

The employers should take care of employees who happen to meet with accidents at work. The Review Order No. 2 of the Ministry of Labour and Social Welfare, dated 27 February 2004, listing types and sizes of enterprise where employers had to contribute to the workmen's compensation fund, exempts the fishing industry from its purview. As a result, the employers in the fishing industry do not bother to take any responsibility, particularly for fishers, including migrant fishers. This exemption should be revoked and fishing vessel employers be brought within the purview of the Workmen's Compensation Fund, it was proposed.

Regarding unionization of migrant fishers, the Labour Relations Act, 1975, should revoke the 'Thai nationality by birth' clause and allow migrant workers, including migrant fishers, to found a labour union and to become members of its board of directors. Thailand should ratify the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (C87) and the ILO Right to Organize and Collective Bargaining Convention, 1949 (C98).

When migrant fishers are abused or violated on board a fishing vessel, they cannot access relevant government agencies for help since they cannot communicate in Thai. Agencies dealing with labour protection of migrant workers should be provided with interpretation services. Also, agencies such as DLPW and the Department of Health should publish simple handbooks and other documents in the native language of migrant fishers to disseminate knowledge about their labour rights.

Response to the Presentation of CSOs/unions

Wilaiwan Koykaewpring, DLPW, observed labour inspection and work agreement were important, although the employers were of the view that it was difficult to retain crew in fishing. The employers also reportedly held that there was no forced labour in fishing. She was keen to know if there could be facilities installed on board fishing vessels for fishers to air their complaints directly from the sea to shore.

Claudia Natalie, IOM, clarified her organization did not specifically work in fisheries, and that it worked on migration in a holistic manner. IOM, among other things, conducts information sharing with migrant workers on regularization. It was working with the Government of Thailand in looking particularly at regularizing migrant fishers. IOM supports the idea of LCCs and it may, in collaboration with MOL, support the LCC in Ranong, especially to provide information to migrants and also to help migrant fishers deal with psychosocial and psychological issues to file complaints on human trafficking and to channel them to appropriate agencies.

As an intergovernmental agency, IOM supports action to create co-ordination between different agencies on migration, especially to ensure co-operation and cohesion in developing migration policies. IOM could do the same with migrant fishers, she said, since the topic often fell into the cracks between different agencies. Being intergovernmental and due to the need to address

migration from a holistic perspective, IOM not only works on labour migration but also on law enforcement, and provides capacity building for officers in border control and immigration. As fisheries, migration and trafficking are often linked, IOM's capacity-building modules could also specifically relate to the trafficking of persons in the fisheries sector.

Waraporn Prompoj, DOF, clarified Thai-flagged fishing vessels, in the past, used to fish outside the Thai maritime zones in the Burmese, Indonesian, and Malaysian maritime zones. Thailand had a quota of 500 fishing vessels in Myanmar, for example. There are hardly any Thai flags currently fishing beyond the Thai maritime zones. Since 2007 or so, only joint ventures with local companies have been permitted by Indonesia and Malaysia in their maritime zones, and the vessels have to fly the Indonesian or Malaysian flag, respectively.

The LCCs, under the leadership of MOL, could resolve some of the major problems faced by migrant fishers, she said. Instituting inspection and complaint mechanisms in LCCs would help migrant fishers, and she expected MOL to expedite setting up an inspection mechanism. As in the case of shrimp farming, the fishing industry would get better and upgrade its labour standards and welfare by adopting a code of conduct incorporating good labour practices, she hoped. She was keen on co-operation with neighbouring countries to create an action plan to provide education to workers who were potential fishers on board Thai fishing vessels, focusing on the Thai fishing industry and welfare schemes for migrant fishers, and to prevent migrant fishers from being trafficked into fishing.

Kuanruthai Siripattanakosol, ILO TRIANGLE Project, said a national subcommittee to support the operations of the LCCs had been set up with the Permanent Secretary of MOL as Chair. This subcommittee had also set up a working group to speed up the process. The government had already issued an order to establish these centres. The LCC is a model that should be replicated in the region, she suggested.

Kamolsak Lertpaiboon NFAT, said the seven LCCs could start functioning and later expand to all 22 coastal provinces of Thailand to address labour protection of migrant fishers, especially trafficked humans on board Thai fishing vessels. He wanted quick completion of the registration of undocumented migrant fishers.

Magnus Torell, Senior Adviser, SEAFDEC, said although it was clear that something needed to be done, it was not clear how to go about issues identified so far in a coherent manner. Often new bodies were created to address new issues in a language not familiar to all. The issue of migrant fishers involves people, and in Thailand it should be viewed in the regional context of ASEAN community building, and of trans-border relations, among other things, involving fish processing and the seafood trade. From the fisheries-sector perspective, existing standards should be implemented and there should be less and less scope for illegal activities.

From the international seafood-trade perspective, if the engagement of undocumented workforce were to render fish catch illegal then Thailand might face problems exporting fish and fish products to many countries in the world, Torell cautioned. Implementing measures such as the crew list was important in this context, which required collaboration between different ministries and departments. When ILO conventions are ratified, they became part of domestic law. Various FAO guidelines, however, are voluntary. The code on safety of fishers and fishing vessels of the International Maritime Organization (IMO) is also voluntary. Many aspects should be known, understood and integrated to deal with the issue of migrant fishers. It is important to move at the sub-regional level and across different national institutions, to begin with, he suggested.

Drawing attention to the 2001 FAO International Plan of Action to prevent, deter and eliminate IUU fishing, **Sebastian Mathew, ICSF**, asked how, under a Thailand-Indonesia joint venture for fishing in the Indonesian maritime zones and beyond, the Thai beneficial owner could be identified and held responsible if he was different from the registered or legal owner of a fishing

vessel in Indonesia. This was especially if the fishers complained of poor working conditions on board, if they were subject to trafficking and forced labour, and if the vessel was involved in IUU fishing. Were there any national mechanisms in place in the region, he asked, to prevent a fishing vessel from resorting to ‘flag hopping’, or frequent changes of its flag, to avoid its conservation and management and other legal obligations? How were the complex issues arising from beneficial ownership of an Indonesian-flagged vessel in Thailand dealt with, he asked, if the fishers on it originated from a third State and boarded the vessel in a port or in waters under the jurisdiction of a State different from the rest, and undertook fishing operations in the Indonesian maritime zones and beyond? Keeping a record of fishing vessels in the region similar to the Record of Fishing Vessels maintained by the Western and Central Pacific Fisheries Commission (WCPFC) might be useful to follow the vessel movement in the region and beyond, and to use the database, if necessary, to address labour issues on board, he suggested.

Waraporn Prompoj, DOF, responded there were three options for Thai vessels to undertake fishing overseas in a legal manner. These were: licensing, joint ventures and charter arrangements. Under licensing, the Thai fishing vessels could fish in the maritime zones of Myanmar, for example, flying the Thai flag. In Indonesia, however, licensing was not permitted and Thai vessels had to enter into a joint venture with an Indonesian company and fly the Indonesian flag. The catch should also be landed and processed in Indonesia. The Thai vessels reflagged under joint ventures as the Indonesian flag were delisted from the Thai vessel register. The situation does not involve any beneficial ownership, she pointed out. The third option was charter arrangements. Thai fishing vessels, however, were not chartered by any coastal State, she clarified.



Kamolsak Lertpaiboon, NFAT, confirmed the problem of human trafficking was being addressed through the LCCs. Migrant fishers could be recruited through these centres. Fishing vessels could enter this system of recruitment, which was affordable. His organization was co-operating with ILO and CSOs, especially by developing a code of conduct for vessel operators and skippers. It would be some time before the Thai fishing industry could talk about adopting international standards. Most Thai vessels and fishing operations are legal, he claimed. Current legislation, including immigration laws, need amendment, however, to address all the problems, he said. It was also important to improve knowledge of employers and fishers regarding working conditions and sea-safety issues. The industry had to adapt and apply good practices.

Sunee Chaiyarose, LRCT, said although migrant fishers were exploited, they rarely complain; at the same time, the employers find it difficult to retain fishers. The Ministerial Regulation No. 10 has existed for 15 years, and has caused many problems. The government agencies have to be helped to stop human trafficking. Rules and regulations must be set up in this context. The minimum wage had to be fixed according to types of fishing. Skippers who do not follow rules and regulations should be punished. The gaps in the Thai Ministerial Regulation No. 10 must be understood and addressed.

Ravadee Prasertcharoensuk, SDF/ICSF, was of the view a human-rights framework should be used not only to address labour issues in fishing, but also for food security and resource management, as well as good governance in fisheries. The LCCs would help better identify and address major gaps in policies related to migrant fishers, she hoped.

Day 3

SESSION 8**PROTECTING MIGRANT FISHERS ON BOARD THAI FISHING VESSELS**

FACILITATOR: Ravadee Prasertcharoensuk, Executive Director, Sustainable Development Foundation, Thailand, and Member, ICSF

The discussions on Day 3 were on developing a plan of action for protecting migrant fishers on Thai vessels. Ravadee Prasertcharoensuk, SDF/ICSF, said the focus of the Dialogue on Day 3 (a half-day session) would be to develop a plan of action. The Thai CSOs under Adisorn Kerdmongkol, ANM, have prepared a draft plan of action for discussion. She clarified the plan of action was meant for the Dialogue partners to protect, individually and collectively, migrant fishers at different levels and with international support. She recommended the identification of the prime mover in different areas related to the issue.

Nalini Nayak, ICSF, highlighted that sustainable fisheries and responsible labour practices are essential to improve the prospects of business, work, livelihood and food security related to fishing. While some of the Dialogue partners worked only in their own country, others worked at the regional or international level. While some had a specific fishery focus, others had a specific labour focus. The Dialogue recognized the problems facing migrant fishers to be multidimensional, and highlighted the need to broaden the perspective of CSOs/NGOs as well as the fisheries and labour authorities. The Dialogue partners should see how each of them could contribute to improving both the labour and fisheries dimensions, she stressed. A fisheries person, concerned only with nets and fish, should look at how labour regulations could help fishing, and a labour person concerned only with labour in fishing, should look at how fishing regulations could help address labour issues. Thailand is the Southeast Asian hub for migrant fishers from across borders. It is important to also build up cross-border partnerships, she observed.

Sebastian Matthew, ICSF, said the Dialogue so far showed how labour and fisheries issues are connected. A matrix of labour, migration and fisheries management, against the duties of the flag State, the coastal State, the port State, the labour-sending State and the market State shows the interconnections very well. If a fishing vessel is registered in Thailand, then Thailand is its flag State. But if Thai citizens own a fishing vessel registered in Indonesia, then Indonesia becomes the flag State, for example. Under UNCLOS, considerable importance was given to the rights and duties of flag States.

The coastal State under an UNCLOS regime can enjoy sovereign rights up to 200 nautical miles from its baselines. Thailand and Myanmar have ratified UNCLOS, but Cambodia is yet to do so. Protection of the marine environment, under UNCLOS, is the responsibility of the coastal State. Even if it was a Thai-flagged vessel fishing in Indonesian waters, for example, the protection of the marine environment and conservation of fish stocks were the duty of Indonesia as the coastal State. The coastal State thus had the primary responsibility for protection of the environment and conservation of fishery resources in its EEZ. When a coastal State gives a foreign flag the right to fish in its maritime zones, the flag State, however, has the duty to comply with the conservation and management measures of the coastal State, Mathew pointed out.

Coming to the port State, if an Indonesian-flagged vessel lands the fish catch originating from the Indonesian maritime zones in Phuket, then Thailand would be the port State. Based on a complaint from a fisher, an association or a trade union, C188 had made provisions for a port State to set right any conditions which were unsafe to safety or health of fishers on board after

informing the flag State. The 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) rendered a hand to both the flag State and the coastal State in the sustainable use and the long-term conservation of fishery resources. Both legal instruments—yet to be in force—relied on port State inspection procedures. Thus, there were flag State, coastal State and port State measures in dealing with conservation and sustainable use of fishery resources, maritime safety and working and living conditions on board fishing vessels. In addition, in dealing with international migration of fishers and their families, there were the categories of State of origin, State of transit¹³ or State of employment under the International Migration Convention, 1990.

Due to globalization of the marketplace, the market State is also a category to reckon with along with the flag State, the coastal State, the port State and the labour-sending State. The international seafood market is increasingly dictating the type of fish and the manner in which it should be caught, and how it should be sold in the international seafood market. Ecolabels and certification schemes, food-safety labels and social labels are being increasingly adopted for this purpose. The minimum substantive criteria for addressing socioeconomic aspects in aquaculture certification schemes under the 2011 FAO Technical Guidelines on Aquaculture Certification, for example, include, consistent with ILO instruments, responsible treatment of workers and prohibition of child labour in aquaculture.

Under each of these States, there are relevant authorities or line agencies. To handle problems of migrant fishers, each of these authorities has to take responsibility for issues not strictly falling under its jurisdiction. Thus fisheries authorities have to take responsibility for labour protection and labour authorities are obliged to take interest in fisheries management. Considering that over 90 per cent of fishers on board Thai commercial fishing vessels are believed to be migrant fishers, the fisheries and labour authorities ought to share interest in the protection of migrant fishers, Mathew argued.

Nalini Nayak, ICSF, added that some of the obligations for conservation and management of fishery resources as well as sea safety had to be shouldered by the Thai skipper and he had to work with migrant fishers in ensuring compliance with such obligations. In addition, while in the act of fishing, the fishers on board also had to know about sea-safety issues and whether there was any violation of the maritime boundaries. All these point to the linkage between fishing, sea safety and labour issues, she observed. Fishers on board Thai vessels also had to be knowledgeable about the kind of arrangements, such as licensing or joint ventures, under which they fished in different maritime zones. Pre-departure training thus must also include such fisheries dimensions, she said.

Sebastian Mathew, ICSF, pointed out that the provision for training in the handling of types of fishing gear under Article 31 of C188, for example, could be broadened to serve the dual purpose of training fishers also to impart knowledge regarding their fishing grounds and conservation and management obligations. It would help them have a broader understanding not only of safety of fishing vessel, gear operations and working conditions, but also of fisheries conservation and management measures.

Adisorn Kerdmongkol, ANM, informed from a Thai CSO perspective, based on discussions over Day 1 and Day 2, there was a **seven-point action plan** around three categories, namely, (i) recruitment and employment in fishing; (ii) labour protection; and (iii) regional mechanisms and collaboration with academic and research organizations.

¹³ “Any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence” (Article 6 (c), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990).

(i) Recruitment and employment in fishing

First, grant fishers, including migrant fishers, protection of a contract or written work agreement when recruiting them to work on board fishing vessels.

Second, build networks with the States of origin of migrant fishers towards providing pre-departure preparation and assistance to workers. The network of CSOs and labour unions should be involved in such work. Specific reference was made to MMTU and the Migrant Worker Rights Network (MWRN) in the context of Myanmar and Thailand. At the regional level, ILO, IOM and SEAFDEC may be involved.

(ii) Labour protection

Third, modify the Thai Ministerial Regulation No. 10, based on the draft prepared by the MOL in collaboration with LRCT and ILO, which is currently in the process of public hearing.

Fourth, work with the LCCs to protect labour in the fishing industry as well as to provide access to information on employment and labour protection in fishing.

Fifth, create a dedicated set of labour inspectors knowledgeable about fishing and fishing labour to undertake labour protection on board fishing vessels rather than drawing on an ad hoc basis from the marine police and the Thai Navy, and also develop a training course for these inspectors.

(iii) Regional mechanisms and collaboration with academic and research organizations

Sixth, bring the fishing industry under the ASEAN Labour Standard, which is currently being developed by LRCT.

Seventh, collaborate with organizations like SEAFDEC and academic and research organizations to work on employment and labour issues in the fishing industry.



Sarawut Pratoomraj, Law Reforms Officer, LRCT, said of the seven proposed points of action, a distinction should be made between points to be implemented in the short run and points to be implemented in the long run. Considerable progress has already been made, he said, in amending the Thai Ministerial Regulation No. 10, which could be implemented soon. The issue of developing an ASEAN labour standard, however, is still progressing. It would take more time to complete the process, especially since it should be for all sectors, including fishing.

Nalini Nayak, ICSF, suggested while discussing migrant fishers' issues to be implemented in the short and the long run, it was important to discuss what kind of forum would take forward the plan of action, especially in Thailand.

Ravadee Prasertcharoensuk, SDF/ICSF, asked about the benefits for migrant fishers from amending the Thai Ministerial Regulation No. 10. **Satian Tunprom, ANM**, clarified the proposed amendments would remove the exemption clauses that often excluded migrant fishers from its scope, and would bring them direct benefits, especially by regularizing them, by providing them access to labour protection and welfare, by bringing greater transparency in their remuneration, which is based on the value of the fish catch, and by bringing greater accountability of the fishing vessel owners. Adopting these measures could lead to better retention of workers on board fishing vessels, he said. **Ravadee Prasertcharoensuk, SDF/ICSF**, proposed the labour network in Thailand should be asked to support the amendment to the Thai Ministerial Regulation No. 10.



Ploenpit Srisiri, Committee Member, Arompongpanan Foundation, said the amendment to the Thai Ministerial Regulation No. 10 should benefit not only Thai fishers but also all migrant fishers. There should be a minimum wage stipulated for fishers. Migrant fishers should receive social-security benefits, which were currently denied to migrant fishers. **Sebastian Mathew, ICSF**, said special attention should be paid to regularizing all migrant fishers since equality of treatment of migrants with the Thai nationals applied only to regular or documented migrants. The fishing vessel owners should also be required to hire only regular migrant fishers. **Nalini Nayak, ICSF**, observed the definition of a fishing vessel owner in C188—Article 1 (d)—should be kept in mind.¹⁴ **Sebastian Mathew, ICSF**, pointed out according to C188, the fishing vessel owner had the overall responsibility towards complying with the obligations under C188. Ratifying C188 would thus greatly help the cause of migrant fishers, he said.

Ko Ko Aung, MMTU, observed there was no agreement offered to workers from Myanmar in Thailand who had no training or identity papers. Currently, migration from Myanmar under agreement was possible only for skilled factory workers. Fishers had no benefits like holidays even after long periods of work at sea because they had no work agreement. **Sebastian Mathew, ICSF**, said he was aware of arrangements in the Marine Transport Department of Myanmar to send Burmese fishers to fishing vessel owners in China after imparting pre-departure training in Myanmar. Similar arrangements should be considered by Thai vessel owners towards addressing the problem of irregular engagement of fishers from Myanmar on board Thai fishing vessels.

Nalini Nayak, ICSF, queried if any labour organization in Myanmar could inform workers about the requirements of Thai fishing industry and provide them with pre-departure training and co-ordinate recruitment into fishing with CSOs in Thailand. This would prevent migrant fishers from being cheated by unscrupulous agents, she said. This was not possible, said Ko Ko Aung, since trade unions were not recognized in Myanmar.



Matthew Nicholas Rendall, Board Member, Cambodian Federation of Employers and Business Associations, was of the view that Cambodian migrant fishers were the worst off since no one was looking after their interests in fishing. He said his Federation could identify a group in Cambodia that could take up their protection in neighbouring countries.

Kimchhea Chhuon, Ministry of Agriculture, Forestry and Fisheries Affairs, Cambodia, clarified all commercial fishing vessels in Cambodia are registered. Crew lists are mandatory and all fishers on board are licensed. Although the number of migrant fishers on board Cambodian vessels is known, the number of migrant Cambodian fishers on board Thai vessels is not, he said.

Ravadee Prasertcharoensuk, SDF/ICSF, proposed the MoU route should be encouraged between the State of origin and the State of employment of migrant fishers such as Myanmar, Cambodia, Lao PDR and Thailand, in addition to transforming undocumented migrant fishers into regular, documented migrant fishers by Thailand.

14 “fishing vessel owner” means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on the fishing vessel owners in accordance with the Convention, regardless of whether any organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;”

Sebastian Mathew, ICSF, was of the view that a State of employment such as Thailand ought to be the starting point in addressing the problem of migrant fishers. Since registration of fishing vessels is almost complete in Thailand, there is, more or less, a clear picture regarding labour requirement on board Thai fishing vessels. Engagement of undocumented migrants could be prevented on board Thai fishing vessels if NFAT and the Thailand Overseas Fisheries Association (TOFA) would instruct vessel owners to engage only regular migrant fishers on board their fishing vessels. If loopholes for illegal engagement in fishing were plugged, the labour conditions would then automatically improve. The responsibility for fixing the problem of migrant fishers is thus more on the Thai fishing industry than on groups working in support of migrant fishers, he said.

Ravadee Prasertcharoensuk, SDF/ICSF, said it appeared all responsibility for the protection of migrant fishers is disproportionately falling on Thailand. She requested specific proposals on measures necessary in the labour-sending country to protect migrant fishers. **Aung Toe, Member, Regional Fisheries Policy Network (RFPN), SEAFDEC**, observed legal reforms are necessary before addressing the issue in Myanmar. The crew list of Thai fishing vessels should carry the names of fishers in Thai as well as in the language of the migrant fisher, he suggested. **Sebastian Mathew, ICSF**, pointed out it was often the case that the State of origin washed its hands off its responsibility towards migrant fishers, arguing that all undocumented fishers were victims of human trafficking and forced labour. Also, considering the huge demand for undocumented migrants in Thailand, and the lack of capacity of States of origin such as Myanmar, Cambodia and Lao PDR to effectively monitor labour recruitment and cross-border movement of fishers, it would be worth looking into good practices elsewhere in the region that could help them build up their capacity to manage migrant fishers. In this context, the experience of the Philippines as a labour-sending country in fishing may be of interest, he said.

Adisorn Kerdmongkol, ANM, said since Myanmar and Cambodia consider fishing as risky, they do not send their nationals to work in fishing in Thailand under MoUs. Moreover, migrants under MoUs had to work with employment companies in the labour-sending countries that do not supply workers to fishing. Although undocumented migrants were being registered in Thailand, migrant fishers often did not have access to such information. NFAT should, therefore, be requested to work with CSOs, INGOs and the government in planning how to regularize all migrant fishers in Thailand. International standards should be followed by Thailand while undertaking labour inspection in fishing. There should be a role for labour unions and other organizations dealing with fishing to make complaints or give evidence to labour inspectors regarding living and working conditions on board fishing vessels. Thailand lacked effective laws to prevent occupational accidents, occupational diseases and work-related risks on board fishing vessels, and he proposed organizing a workshop on occupational safety and health issues in fisheries.

Ploenpit Srisiri, Arompongpanan Foundation, requested participants from Myanmar, Cambodia and Lao PDR to spread awareness back home about conditions of migrant fishers in Thailand. Migrants, before leaving their country, should know the dangers of living and working conditions on board Thai fishing vessels so that they could decide if it was a risk worth taking to work in fishing. **Ravadee Prasertcharoensuk, SDF/ICSF**, said there was clarity regarding what had to be done in Thailand to improve working conditions of migrant fishers but there was need for action at the regional level. Workshops should be organized in labour-sending countries to provide information on working conditions. The scope of information to be provided should be discussed. SEAFDEC could be requested to organize government-to-government initiatives to organize such workshops. There should be active collaboration in Thailand between the government and civil society to monitor initiatives to improve conditions of migrant fishers.

Sebastian Mathew, ICSF, suggested IOM could be approached to prepare information leaflets on working and living conditions on Thai fishing vessels, at least in the Burmese and Khmer languages, to educate people in labour-sending countries, especially focusing on communities that were sending most of the fishers. **Nalini Nayak, ICSF**, stated IOM could be requested to prepare pre-departure material in different languages but related to migration as well as fisheries issues. Also, being intergovernmental, IOM or SEAFDEC could be asked to facilitate a dialogue between organizations working on migrant fishers in Thailand and organizations working on migration in Myanmar, especially to help develop new legislation in Myanmar on migration. A forum within Thailand should be created to monitor follow-up before organizing workshops in labour-sending countries, she said. ICSF was ready to share information and whatever support necessary in these processes.

Ravadee Prasertcharoensuk, SDF/ICSF, wanted the Thai CSOs/NGOs to be prime movers to improve labour laws in Thailand in relation to migrant fishers. Although seven LCCs were being set up in the coastal provinces to implement labour reforms in Thailand, the Thai CSOs had the capacity to work only in four provinces where planning between the Thai networks, DOF, MOL, owners of fishing vessels and academia should be initiated to bring ideas to action. This should be done, in consultation with ILO. Simultaneously, the Thai initiative should collaborate with NGOs, CSOs and government agencies in labour-sending countries such as Myanmar, Lao PDR and Cambodia as well. Capacity building of Thai CSOs/NGOs should be undertaken by ILO, IOM and SEAFDEC towards better understanding of the role and duties of the government, especially the DOF and MOL in Thailand.

Magnus Torell, SEAFDEC, stated not only Thai labour laws but Thai fisheries laws also needed amendment to deal with the current reality in fisheries. SEAFDEC had been training fishers in handling fishing vessels and engines, and in sea-safety issues, in collaboration with the DOF. SEAFDEC did not have sufficient knowledge on labour issues in fishing. It would have to seek partnerships to include labour issues in its training programmes, but at the request of its member countries. One way of building capacity was to include training material developed by DOF, in collaboration with ILO, on improved working conditions on board fishing vessels into SEAFDEC training programmes. Partners who were keen on capacity-building should, however, be identified. To some extent, such training programmes could also invite participation from labour-sending countries, he said. SEAFDEC would follow up with the Dialogue partners and the DOF on this issue.

Ravadee Prasertcharoensuk, SDF/ICSF, queried how the CSOs could help LRCT in developing an ASEAN labour standard, including for fishing. **Sarawut Pratoomraj, Law Reform Officer, LRCT**, observed, based on the 2007 Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015 as well as relevant ILO labour standards, a subcommittee had been formed under LRCT to develop an ASEAN labour standard. The subcommittee's work was in progress to identify what was labour after examining labour laws in each ASEAN Member State. Should an ASEAN Member State be disinclined to adopt the labour standard, the subcommittee would propose a mechanism for workers in that country to seek labour protection using ASEAN labour standard, especially to complain against employers or to seek help from their government. Fisheries would be brought within the scope of this labour standard, he clarified. Whatever was learnt from the Dialogue would be used for defining fishing labour. Once the draft labour standard is developed, it would be circulated for feedback from the Thai citizens, the Thai government and NGOs, he informed. An intergovernmental seminar would be organized in 2014 to discuss the draft standard.

Sebastian Mathew, ICSF, asked if the ASEAN labour standard was being developed in response to any specific request from the ASEAN community. **Sarawut Pratoomraj, LRCT**, clarified it was an LRCT initiative to develop the labour standard incorporating justice and human-rights principles such as the right to work, the right to equal pay, the right to education, and the right

to health. LRCT was hoping that the ASEAN would recognize this standard. **Sebastian Mathew, ICSF**, said that with regard to protecting migrant fishers, a lot depended on the DOF recognizing the labour dimension of fishing and taking bold initiatives to address it. The duty of putting the jigsaw of protecting migrant fishers together was that of DOF's and it should take the lead, he stressed. Once DOF decided to improve labour in fishing, things would immediately change for the better, he hoped.

Ravadee Prasertcharoensuk, SDF/ICSF, said the seven-point plan of action needed a mechanism for its implementation. **Adisorn Kerdmongkol, ANM**, said a small working group in Thailand with Ploenpit Srisiri, Committee Member, Arompongpanan Foundation, as co-ordinator, may be formed for this purpose. The Thai group would try to develop a working plan for this group, he said.

Matthew Nicholas Rendall, Board Member, Cambodian Federation of Employers and Business Associations, agreed his organization could be the contact point on the Cambodian front until an NGO was identified to liaise with others. MMTU could be the liaison in Myanmar. **Akhane Phomsouvanh, Member, RFPN, SEAFDEC**, said he will try to propose a liaison point for Lao PDR, in consultation with the Ministry of Labour. **Sebastian Mathew, ICSF**, observed ICSF's role was to set in motion the process, and that it expected local partners to follow up. Since labour in fisheries was an area of interest to ICSF, it would be happy to collaborate with local initiatives, if necessary. The ICSF Documentation Centre could be a good source of timely and reliable information on labour as well as fisheries-management issues, said **Nalini Nayak, ICSF**.



Aung Toe, Member RFPN, SEAFDEC, suggested some attention be paid to developing a document to provide guidance in implementation. **Ravadee Prasertcharoensuk, SDF/ICSF**, clarified the report of the Dialogue would offer useful guidance. The ANM was going to take up what was discussed here and follow it up through activities such as legal reforms, pilot projects, LCCs, training and capacity building and awareness-raising programmes. In the process of implementing the action plan, Thailand may have to be linked up with the labour-sending countries. She requested SEAFDEC to help follow up with the

governments of Myanmar and Cambodia, especially to ensure that civil society and government were both collaborating in implementing this action plan.

Ravadee Prasertcharoensuk, SDF/ICSF, summarized the discussion. It was decided to initiate capacity building to ensure migrant fishers were legalized and that there were adequate labour-protection mechanisms in seven coastal provinces, of which the Thai working group would engage with four. The working group would focus on capacity building, access to information for migrant fishers, documenting and regularizing migrant workers, and reporting complaints to the authorities about poor working conditions. The activities of the working group should be reviewed after one year, to ascertain progress. The working group would engage with the LRCT to incorporate human-rights principles into the ASEAN labour standard.

Sebastian Mathew, ICSF, thanked everyone on behalf of ICSF. "We are pleased to reach this far in spite of all misgivings on several fronts about the Dialogue", he said. It was a constructive Dialogue with active participation of all partners—CSOs, NGOs, trade unions, the government departments of fisheries and labour, regional organizations like SEAFDEC and international organizations like IOM and ILO. FAO and BOBLME could not be present due to unavoidable circumstances. "Migrant fishers are the engine of Thai fishing", he observed "and they should be treated with respect, as human beings with dignity." How do we implement the plan of action and how do we move forward are the key issues that lie ahead.

On behalf of Thai labour representatives, **Ploenpit Srisiri, Arompongpanan Foundation,** and co-ordinator of the Thai working group on implementation of the seven-point action programme of the Dialogue, thanked all participants. She said it was a matter of great pride and honour to work on migrant fishers, which was an issue that did not receive adequate attention in the past.



**REPORT PREPARED
BY LEAN DELEON,
ADVOCACY AND PUBLIC RELATIONS OFFICER,
SDF**

AND

**SEBASTIAN MATHEW,
PROGRAMME ADVISER,
ICSF**



Annex I

List of Participants

No	Name	Position	Organization	Country	Gender
1	Adisorn Kerdmongkol	Member	ANM	Thailand	M
2	Akhane Phomsouvanh	Deputy Director, Fisheries Division, Department of Livestock and Fisheries, Ministry of Agriculture and Forestry	SEAFDEC	Lao PDR	M
3	Allison Lee	Secretary-General	Su-Ao Fisherman's Union	Taiwan	F
4	Andy Hall	Adviser	MWRN	Myanmar	M
5	Aung Toe	RFPN for Myanmar	SEAFDEC	Myanmar	M
6	Bandit Thanachaisetavuth	Director	Arompongpanan Foundation	Thailand	M
7	Brahm Press	Program Officer—Migrant Health and Rights	Raks Thai Foundation	Thailand	M
8	Chanchai Wongkiataroon	Pastoral Care Volunteer	Stella Maris (AOS) Center	Thailand	M
9	Claudia Natali	Labour Migration & Counter Trafficking Programme Co-ordinator	IOM	Thailand	F
10	Kamolsak Lertpaiboon	Secretary-General	NFAT	Thailand	M
11	Kannika Boonmee	Senior Labour Officer	DoE	Thailand	F
12	Kanokphon Sopitax	Researcher and Program Officer	RRAFA	Thailand	F
13	Kasinee Kwaenjaroen	Project Manager and Researcher	SDF	Thailand	F
14	Kasorn Kerdlam	Labour Specialist (Professional Level), Labour Standard Development Bureau	DPLW	Thailand	F
15	Khumklao Souksomboon		LRCT	Thailand	M
16	Kimchhea Chhuon	Deputy Director, Ministry of Agriculture, Forestry and Fisheries Affairs	SEAFDEC	Cambodia	M
17	Ko Ko Aung	Vice-President	MMTU	Myanmar	M
18	Ko Oo	Executive Committee Member	MMTU	Myanmar	M
19	Kuanruthai Siripatthanakosol	National Project Co-ordinator, Triangle Project	ILO	Thailand	F

20	Laoono Dao		DoF	Thailand	M
21	Lean Deleon	Advocacy and Public Relations Officer	SDF	Thailand	M
22	Leng Sam Ath	RFPN for Cambodia	SEAFDEC	Cambodia	M
23	Magnus Torell	Senior Advisor	SEAFDEC	Thailand	M
24	Matthew Nicholas Rendall	Board Member	Cambodian Federation of Employers and Business Associations	Cambodia	M
25	Max Tuñón	Senior Programme Officer/ Project Co-ordinator	ILO	Thailand	M
26	Nalini Nayak	Member	ICSF	India	F
27	Nattawalai Chawanapong	Office Secretary	TSFA	Thailand	F
28	Nawaporn Lertulnuoychok		DoF	Thailand	M
29	Nopadol Kaewsuwan	Chief Engineer	TSFA	Thailand	M
30	Ohm Ketjinder	Researcher and Media Officer	SDF	Thailand	F
31	Pattaratjit Kaewnuratchadasorn	Program Manager	SEAFDEC	Thailand	F
32	Pimara Pholnukolkit	Technical Manager	Asian Alliance International Inc.	Thailand	F
33	Ploenpit Srisiri	Committee Member	Arompongpanan Foundation	Thailand	F
34	Pornpoj Ngamviriyathum	Manager	TOFA, TFPC	Thailand	M
35	Prathet Sonak		DoF	Thailand	M
36	Puricha Inthawong	Director of Division of Assistance and Protection of Foreign Victims and Vulnerable Group, Bureau of Anti-Trafficking in Women and Children	DSDW	Thailand	F
37	Ratchaneewan Suwannachat	Secretary	SDF	Thailand	F
38	Ravadee Prasertcharoensuk	Director	SDF	Thailand	F
39	Rawitsara Piakhuntod		FAR	Thailand	F
40	Sarawut Pratoomraj	Law Reform Officer	LRCT	Thailand	M
41	Satian Tunprom	Committee Member	ANM	Thailand	M
42	Sawitree Chamsai	Policy and Program Officer I	SEAFDEC	Thailand	F
43	Sebastian Mathew	Programme Adviser	ICSF	India	M
44	Sikharim Singsakhorn	Co--ordinator MOL-ILO, Triangle Project	ILO	Thailand	F

45	Sitthichai Wareechananon	Head of Work Permit System	DoE	Thailand	M
46	Sompong Srakeaw	Director	LPN	Thailand	M
47	Soosai, A.J.B.		NAFSO	Sri Lanka	M
48	Sunee Chaiyarose	Vice-President	LRCT	Thailand	F
49	Supatra Rewpairoj	Executive Director	TTIA	Thailand	F
50	Surachai Meanthun	Samut Sakhon Fisher/ Volunteer	LPN	Myanmar	M
51	Surichai Wun'gao	Professor	Center for Peace and Conflict Studies, CU	Thailand	M
52	Suwaree Jaijarn	Director of Child Adoption Center	DSDW	Thailand	F
53	Than Win	Member	MMTU – S.U.B	Myanmar	M
54	Thanaporn Michaud	Project Officer	IOM	Thailand	F
55	Tharinee Limchulara	Legal Officer (Professional Level), Legal Division	DPLW	Thailand	F
56	Tu Lu	Coordinator	Living Water Center	Thailand	F
57	Ubon Romphothong	Secretary	Migrant Women Network	Thailand	F
58	Udom Chariyavilaskul	Senior Adviser for Foreign Affairs	TFFA	Thailand	M
59	Vankham Keophimphone	RFPN for Lao PDR	SEAFDEC	Lao PDR	M
60	Waraporn Praeprasent		NFAT	Thailand	F
61	Waraporn Prompoj	Senior Expert on International Fisheries Affairs	DoF	Thailand	F
62	Wilaiwan Koykaewpring	Labour Specialist (Senior Professional Level), Labour Protection Bureau	DPLW	Thailand	F

Annex II

Agenda

Enhancing Capacities of Fishing Communities: ICSF-BOBLME Sub-regional Dialogue on Labour, Migration and Fisheries Management

11-13 December 2013

Maha Chulalongkorn Building, Chulalongkorn University, Bangkok

Note: Simultaneous translation (into Thai, Khmer and Burmese) will be provided throughout the Dialogue.

Day 1: 11 December 2013

The Conference Room 105 (1st floor), Maha Chulalongkorn Building

Time	Session Details	Facilitators	Resource Persons
08.30 – 09.00	Registration	Sustainable Development Foundation (SDF)	
09.00 – 09.10	Opening session: • Welcome	Sebastian Mathew, Programme Adviser, ICSF	
09.10 – 10.00	Session 1: Recruitment, employment, conditions and retention of irregular migrants on Thai fishing vessels The Session aims to inform the participants about the ineffectiveness of the 2003 MoUs in regularizing migration into fishing. The resource persons will share the experiences and reasons why migrants are reluctant to complain against irregularities on board fishing vessels, the public perception in Thailand on regularizing migrant workers and solutions to regularization. This session will also explore how existing Thai legal instruments protect/ do not protect migrant fishers and if improved conditions of work/ protection lead to retention.	Satian Tunprom, Committee Member, Action Network for Migrants (ANM)	Surachai Meanthun, Migrant fisher, Labour Rights Promotion Network Foundation (LPN) Ko Ko Aung, Vice President, Myanmar Maritime Trade Union (MMTU)
10.00 – 10.30	<i>Tea and Snack Break</i>		
10.30 – 11.20	Session 1 continued	Satian Tunprom, Committee Member, ANM	

11.20 – 12.30	<p>Session 2: Discussion</p> <p>The session aims to get active feedback and discussion from all participants on what was shared by resource persons in Session 1.</p>	Satian Tunprom, Committee Member, ANM	
12.30 – 13.30	<i>Lunch Break</i>		
13.30 – 15.00	<p>Session 3: Protecting migrant fishers' rights</p> <p>The session will look at key challenges and priorities in protecting the rights of migrant fishers, and seeing the role of Thai national workers' associations/ unions. The session will also explore international/regional legal instruments, mechanisms and institutions to protect the rights of migrant fishers.</p>	Adisorn Kerdmongkol, Member, ANM	<p>Bandit Thanachaisetavuth, Director, Arompongpanan Foundation</p> <p>Satian Tunprom, Committee Member, ANM</p>
15.00 – 15.20	<i>Tea and Snack Break</i>		

<p>15.20 – 16.30</p>	<p>Session 4: Capacity building of migrant fishers</p> <p>The session will help to see what international, national and civil society organizations do towards awareness raising, developing guidelines; training; sharing of good practices; and promoting inter-regional dialogues. The first two speakers will speak from Thai CSOs NGOs, followed by IOM and the Su-Ao Fishermen’s Union from Taiwan.</p> <p>1) Continued presentation from Thai CSOs/NGO.</p> <p>2) ILO-supported initiatives to protect migrant fishers.</p> <p>3) The role of awareness raising and information sharing during the migration journey: pre-departure and post-arrival trainings.</p> <p>4) An example of a migrant fishers’ union abroad.</p> <p>5) Open discussion.</p>	<p>Adisorn Kerdmongkol, Member, ANM</p>	<p>Sompong Srakeaw, Executive Director, LPN</p> <p>Satian Tunprom, Committee Member, ANM</p> <p>Kuanruthai Siripattanakosol, National Project Coordinator, TRIANGLE, International Labour Organization (ILO)</p> <p>Claudia Natali, Labour Migration and Counter Trafficking Programme Co-ordinator and Thanaporn Michaud, Project Officer, International Organization for Migration (IOM)</p> <p>Allison Lee, Su-Ao Fishermen’s Union, Taiwan</p>
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Day 2: 12 December 2013

The Conference Room 105 (1st floor), Maha Chulalongkorn Building

Time	Session Details	Facilitators	Resource Persons
08.30 – 09.00	Registration	SDF	
09.00 – 10.00	Session 5: Inaugural session 1) Welcome 2) Introduction to the Dialogue 3) Inauguration 4) Opening Remarks	Nalini Nayak, Member, ICSF	Ravadee Prasertcharoensuk, Executive Director, SDF Sebastian Mathew, Programme Adviser, ICSF Sunee Chaiyaros, Vice-President, Law Reform Commission (LRC) Surichai Wan'gao, Professor, Center for Peace and Conflict Studies, Chulalongkorn University
10.00 – 10.30	<i>Tea and Snack Break</i>		
	Session 6: Migrant fishers – employment and social protection in Thai fisheries	Surichai Wun'gao, Centre for Peace and Conflict Studies, Chulalongkorn University	
10:30 – 10.50	1) International standards and national laws and practices to improve conditions for migrant fishers		Max Tuñón, Senior Programme Officer, ILO
10.50 – 11.10	2) Labour, migration and fisheries management in the context of sustainable use of fisheries resources in the ASEAN region		Magnus Torell, Senior Advisor, Southeast Asian Fisheries Development Centre (SEAFDEC)
11.10 – 11.50	3) Protecting migrant workers on fishing vessels in Thailand		Wilaiwan Koykaewpring, Labour Specialist, Dept. of Labour Protection and Welfare (DLPW) and Sittichai Warechananon, Head of Work Permit System, Dept. of Employment (DoE), Ministry of Labour, Thailand
11.50 – 12.30	6) Comments		
12.30 – 13.30	<i>Lunch Break</i>		

13.30 – 14.00	Session 7 1) Improving social protection of migrant workers on Thai fishing vessels 2) Outcome of the discussion, Day 1 3) Response to the presentation of CSOs/unions	Ravadee Prasertcharoensuk, SDF	Waraporn Prompoj, Senior Expert on International Fisheries Affairs, Dept. of Fisheries (DoF)
14.00 – 14.20			Satian Tunprom, Committee Member, ANM
14.20 – 15.00			Max Tuñón, ILO Claudia Natali, IOM Magnus Torell, SEAFDEC Wilaiwan oykaaewpring, Senior Technical Labour Officer, DLPW Waraporn Prompoj, Senior Expert on International Fisheries Affairs, DoF Kamolsak Lertpaiboon, Secretary-General, NFAT Sunee Chaiyaros, Vice-President, LRC
15.00 – 15.30	Tea and Snack Break		
15.30 – 16.30	Discussion in Plenary This session has participants addressing gaps and effective implementation of measures towards protecting migrant fishers on Thai vessels within the framework of recruitment and employment; conditions of work in fishing and retention of workers; and protecting migrant fishers' rights. Summing Up	Ravadee Prasertcharoensuk, SDF	

Day 3: 13 December 2013

Room 103 (1st floor), Maha Chulalongkorn Building

Time	Session Details	Facilitators	Resource Persons
08.30 – 09.00	Registration	SDF	
09.00 – 10.30	<p>Session 8: Protecting migrant fishers on board Thai fishing vessels</p> <p>The session will have participants develop a Plan of Action (focusing on key challenges and priorities towards protecting migrant fishers on Thai vessels in national waters and the high seas, as well as in waters under the jurisdiction of other coastal States)</p>	Adisorn Kerdmongkol, Member, ANM	
10.30 – 11.00	<i>Tea and Snack Break</i>		
11:00 – 13.30	Session 8 continued	Adisorn Kerdmongkol, Member, ANM	



Enhancing Capacities of Fishing Communities: ICSF-BOBLME Sub-regional Dialogue on Labour, Migration and Fisheries Management

BRIEFING NOTE

BACKGROUND

1. A scoping study undertaken by the Bay of Bengal Large Marine Ecosystem (BOBLME) Project¹⁵ has drawn attention to poor conditions of work and safety in marine fishing in the Bay of Bengal region and has recommended a fisheries action programme to protect the rights of migrant fishers and to improve their working conditions. Social protection, however, cannot be pursued in isolation. The purpose of the Sub-regional Dialogue on labour, migration and fisheries management, therefore, is to seek coherence between sea safety, labour conditions, and conservation and management measures in order to integrate economic, social and environmental aspects and to recognize their inter-linkages in the context of Southeast Asian fisheries. This will be undertaken within the framework of a human-rights-based approach to fisheries, consistent with the guiding principles of the FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries (FAO-VGSSF). Integration of economic, social and environmental dimensions is expected to help achieve sustainable development in all its dimensions. The Dialogue will explore how coherence, if guaranteed, could lead to better working conditions and more sustainable use of marine biodiversity, and help eradicate poverty in fishing communities. Extending greater social protection to employed fishers—defined as fishing crews engaged, formally or informally, by a vessel owner or operator in exchange for a wage and/or share of the catch—could inspire improved compliance with conservation and management measures within the framework of an ecosystem approach to fisheries (EAF).

DISCUSSION

2. In the context of the proposed Dialogue, 'labour' refers to physical work for the execution of marine fishing, acquired directly or through middlemen, either through informed consent or through deception or coercion, in the fishing locality, in another part of the country, in a foreign territory, or on board fishing vessels under the jurisdiction of a third country. It refers to the labour power of both resident and migrant fishers, which is sold to earn a livelihood or extracted without their free and informed consent. It thus encompasses voluntary and forced labour of employed fishers, including that of irregular migrants, or of people who undertake cross-border movement or are trafficked into a country to work in fisheries without that country's legal permission. Migrant workers are subject to exploitation and human-rights abuse in some cases, especially when they are employed in illegal, unreported and unregulated (IUU) fishing operations.

3. Migration, most often, is from a poorer to a richer region within the same country or from least-developed to an emerging economy. Migrants could be fishers or agricultural workers, or other

¹⁵ Kadfak, A, Bennett, N., and Prugsmatz, R. *Scoping Study on Marine Fishers and Transboundary Fishing in the Bay of Bengal*. Phuket: BOBLME, 2012. <http://www.boblme.org/documentRepository/BOBLME-2012-Ecology-03.pdf> (accessed August 29, 2013)

categories of the rural poor and disadvantaged who migrate to undertake fishing for monetary benefits. The push factors behind movement of labour within or across the border could be: land-based/sea-based factors such as natural calamities, pollution, land degradation, or resource overexploitation; social factors such as history and tradition or ethnic conflicts; economic factors such as poverty or expectations of earning better wages and income within a short period of time. The pull factor often is the shortage of labour or higher wages in certain types of fishing operations such as distant-water fishing. There are also other factors such as cross-regional trafficking, debt bondage, and deceptive and coercive recruitment practices, especially to procure forced labour for marine fishing.

4. Within the framework of an EAF, as well as reciprocity and accountability of the flag State, coastal State, port State, the migrant-sending/labour-supplying State and the market State¹⁶ towards each other, as appropriate, the Dialogue would make an attempt to understand how fisheries-management policies and programmes at the national level in Southeast Asia address social and labour issues in fisheries. How far the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers¹⁷ is adhered to for the betterment of employed migrant fishers would be assessed. The Dialogue would, on the other hand, make an effort to understand how both universal and sectoral labour and social standards take into account fisheries conservation and management obligations of the State at various levels in Southeast Asia. The Dialogue would look at the impact of movement of fishers on women and children of fishing communities in migrant-sending countries. The feasibility of measures such as registration to improve visibility of migrant worker fishers and their families would be discussed.

DIALOGUE PARTNERS

5. The Dialogue would make an effort to involve representatives of fishers' organizations, fishing vessel owners' associations, civil society organizations (CSOs) working on labour, migration and fisheries-management issues as well as fisheries, labour and maritime safety authorities at the national level. It would invite the participation of the ASEAN Intergovernmental Commission on Human Rights (AICHR); the Southeast Asian Fisheries Development Centre (SEAFDEC); the Regional Office for Asia and the Pacific of the International Labour Organization (ILO); the Regional Office for Asia and the Pacific of the International Organization for Migration (IOM); the Regional Office for Asia and the Pacific of the Food and Agriculture Organization of the United Nations (FAO); and universities/think tanks in the region. The Dialogue will be held in Bangkok, Thailand, from 11 to 13 December 2013.

QUESTIONS FOR THE DIALOGUE

6. The Dialogue would specifically discuss the following questions in the context of Southeast Asia:
- a. How can fisheries conservation and management obligations, policies and initiatives of the coastal State include measures to ensure sea safety and protection of working and living conditions on board fishing vessels?
 - b. How can labour protection and sea-safety obligations, policies and initiatives of the flag State lead to the inclusion of measures to ensure compliance with conservation and management measures of the coastal State?
 - c. What co-ordination mechanisms are needed between the flag State and the coastal State towards (i) and (ii)?
 - d. How should the flag State uphold its obligation to ensure safety at sea and to improve labour conditions on board for all fishers, including for employed fishers from third

¹⁶ The State under whose laws the market for fish and fish products operates.

¹⁷ See <http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers-3>, (accessed August 29, 2013)

countries? What role can ILO's Work in Fishing Convention, 2007, and other ILO instruments, play in this regard? If so, in what ways?

- e. What role can migrant-sending/labour-supplying States play to improve working and living conditions of migrant employed fishers and to reduce the adverse impacts of migration on women and children? What provisions do currently exist to address irregular migration and human trafficking, especially in regard to IUU fishing, and how are they being implemented in Southeast Asia? Can there be mechanisms to improve co-operation between migrant-sending/labour-supplying States, flag States, coastal States, port States and market States by introducing the concept of shared responsibility?
- f. What role can CSOs, including fisheries co-operatives, vessel owners' associations, trade unions, and others, including universities and think tanks, play in bringing about greater coherence between fisheries conservation and management, migration and labour-protection measures?

EXPECTED OUTCOME

7. The Dialogue would provide a new perspective on mainstreaming sustainable development and poverty eradication in fishing communities. It would improve awareness about poorly recognized linkages between fisheries conservation and management and social protection of fishers. The Dialogue is expected to indicate that adopting an integrated approach to labour, migration and fisheries conservation and management would give rise to a convivial outcome for both marine and coastal biodiversity, on the one hand, and fishers, on the other, as well as indicating modalities for achieving this. It would, in the process, help make a significant move towards a human-rights-based approach to Southeast Asian fisheries.

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ICSF is an international NGO working on issues that concern fishworkers the world over. It is in status with the Economic and Social Council of the UN and is on ILO's Special List of Non-Governmental International Organizations. It also has Liaison Status with FAO. As a global network of community organizers, teachers, technicians, researchers and scientists, ICSF's activities encompass monitoring and research, exchange and training, campaigns and actions, as well as communities.

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Bangladesh, India, Indonesia, Malaysia, Maldives, Myanmar, Sri Lanka, and Thailand are collaborating through the Bay of Bengal Large Marine Ecosystem (BOBLME) Project to better the lives of their coastal populations by improving regional management of the Bay of Bengal environment and its fisheries.

Report of the Proceedings

Enhancing Capacities of Fishing Communities: ICSF-BOBLME Sub-regional Dialogue on Labour, Migration and Fisheries Management

This report on the “Sub-regional Dialogue on Labour, Migration and Fisheries Management”, held at Chulalongkorn University, Bangkok, Thailand, from 11 to 13 December 2013, highlights the issue of migrant labour on board fishing vessels and the problems migrant workers face in their workaday lives. This report will be useful for students, researchers, activists and anyone else interested in matters related to fisheries and small-scale fishing communities.



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