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Report of the Director-General

Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF)

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I. Introduction

1. In a communication dated 12 February 2016, the International Trade Union Confederation (ITUC) and the International Transport Workers' Federation (ITF) made a representation to the International Labour Office (ILO), pursuant to article 24 of the Constitution of the International Labour Organization, alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), ratified in 1969 and currently in force for Thailand.
2. The following provisions of the ILO Constitution relate to the representations:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of Thailand and brought the matter before the Officers of the Governing Body.
4. At its 326th Session (March 2016), the Governing Body decided that the representation was receivable and appointed a committee for its examination composed of Mr Dongwen Duan (Government member, China), Mr Kamran Tanvirur Rahman (Employer member, Bangladesh) and Ms Mary Liew Kiah Eng (Worker member, Singapore).
5. The Government of Thailand submitted its written observations in a communication dated 30 June 2016.
6. The Committee held its meeting on 13 March 2017.

II. Examination of the representation

A. The complainants' allegations

7. In their communication of 12 February 2016, the ITUC and the ITF (the complainant organizations) allege that every year significant numbers of migrant workers from Myanmar, Cambodia and the Lao People's Democratic Republic as well as Thai nationals are trapped into situations amounting to forced labour, including trafficking in persons in the Thai fishing sector. Many fishers are particularly vulnerable to deceptive and coercive

employment practices, and face deplorable working conditions. The placement of these workers is generally facilitated by agents or brokers leading to situations of debt bondage.

8. While recognizing that the Thai Government has recently adopted new sector-specific laws, the complainant organizations consider that it nevertheless fails to implement and enforce the legal framework that currently does exist in order to ensure that the system of employment of fishers does not place the workers concerned in a situation of increased vulnerability which might lead to forced labour practices.
9. Therefore the complainant organizations allege that the Thai Government is in serious breach of its obligations under the Forced Labour Convention, 1930 (No. 29). According to the complainant organizations, forced labour and trafficking in the Thai fishing sector result from the following: the weak legislative framework, the lack of effective complaints mechanisms, and the ineffectiveness of law enforcement mechanisms.
10. The complainant organizations assert that every year, significant numbers of migrant workers and Thai nationals fall prey to human trafficking for the purpose of forced labour on Thai fishing boats. Once on the boats, fishers face deplorable conditions, including non-payment of wages, 20-hour work days, debt bondage, physical abuse and murder.

1. Weak legislative and regulatory framework

11. With regard to the legal framework regulating the employment of fishers, the complainant organizations observe that before 2014, fishers were not covered by the Labour Protection Act, B.E. 2541 (1998) (LPA) but only by Ministerial Regulation No. 10 on Fisheries Work, 1998. In 2014, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work (Ministerial Regulation) was enacted to regulate the sector with a view to tackling trafficking in persons, labour exploitation and forced labour. The complainant organizations highlight a certain number of key provisions of the 2014 Ministerial Regulation, such as: prohibition of employment of persons under 18 years of age; minimum hours of rest; compulsory records of employment and documents concerning payment of wages and holiday pay; and provision of written contracts.
12. The complainant organizations point out that there are still significant gaps in law and practice that leave fishers vulnerable to forced labour and trafficking. They refer to the Recruitment and Job-Seekers Protection Act (1985) (the Recruitment Act), stating that it does not stipulate procedures for regulating brokers, subcontracting agencies and manning agencies supplying migrant labour to Thailand. Moreover, the Recruitment Act has no practical application to the recruitment of migrant fishers, and the Thai authorities are not actively monitoring informal brokers and agents. The complainant organizations also refer to the Anti-Trafficking in Persons Act (2008) (the Anti-Trafficking Act) stating that while the Act stipulates measures for victim assistance and witness protection, as well as sanctions for offences occurring outside Thailand, a low number of prosecutions indicates a failure in the enforcement of the Act.
13. The complainant organizations acknowledge, however, that following the adoption of the Royal Ordinance on Fisheries, B.E. 2558 (2015), a certain number of key provisions have been established. For instance, in order to obtain a fishing licence, boat owners must ensure that fishers hold valid Seafarer Identification Documents (SIDs) and work permits. Moreover, the competent authorities are permitted to detain a fishing vessel following a Port in-Port out (PIPO) inspection for, among other things, not having in place a system ensuring the occupational safety, hygiene and well-being of fishers as stipulated in the 2014 Ministerial Regulation.

14. While welcoming the adoption of the 2014 Ministerial Regulation and the 2015 Ordinance, the complainant organizations raise several points of concern. They stress that both pieces of legislation do not seek to tackle the root causes of forced labour in the fishing sector, since the new laws fail to address minimum manning requirements for safe navigation. Furthermore, the provisions regarding adequate food, potable water and decent accommodation lack sufficient detail and do not meet the internationally accepted standards as set out in the ILO Work in Fishing Convention, 2007 (No. 188). The complainant organizations further point out that although the 1998 Ministerial Regulation extended the detailed occupational safety and health provisions contained in the 1998 LPA to the fishing sector, the 2014 Ministerial Regulation does not. In addition, the definition of “employer” in the 2014 Ministerial Regulation excludes managers or chatteringers who may have assumed the responsibilities for the boat owner. Lastly, the complainant organizations state that while the 2014 Ministerial Regulation provides fishers with employee assistance fund coverage, it is unclear whether the law fully guarantees social protection benefits for local and migrant fishers.

2. *Deceptive and coercive recruitment practices*

(i) Involvement of brokers

15. The complainant organizations assert that the vast majority of crews on Thai flagged fishing vessels engaged in coastal/short-haul and deep sea/long-haul fishing come from Myanmar, Cambodia and the Lao People’s Democratic Republic. The recruitment of migrant fishers is generally handled by brokers who charge the individuals for their transfer and placement with vessels owners and/or operators. Brokers are known to promise other types of onshore work to convince migrants to make the trip to Thailand. Some fishers reported that they were unaware they would be working on fishing boats until the broker delivered them to a fishing pier. Given the fear of arrest and deportation, as well as the need to pay off debts, these migrants have no choice but to accept whatever job is offered to them. In some other cases, brokers provide transportation to a border-crossing point into Thailand and then either continues with the workers or hands them over to another broker on the Thai side of the border. Once these migrants reach Thailand, they are usually “sold off” to fishing boat captains. The complainant organizations point out that the involvement of agents or brokers is a key element in the placing of fishers, in particular migrants into exploitative situations, with such workers frequently being subjected to forms of debt bondage (fees paid by migrants range from US\$340 to \$530). The complainant organizations further assert that Thai nationals, often internal migrants, are also being trafficked for labour exploitation on fishing boats. Thai victims are usually approached by brokers offering work in Bangkok, but they are then coerced or deceived into accepting work on fishing boats or in a seafood processing factory. The examples contained in the communication of the complainant organizations relate to workers who have been lured by brokers with false promises of onshore jobs, and who were offered large amounts of alcohol until they were inebriated and then held against their will for days before being put on fishing boats. Other examples also include situations where workers are offered food, drink, and/or sexual services and then handed a bill that they cannot afford to pay. They are then left with no choice but to accept work on a fishing vessel to pay off their debts.

(ii) Corruption

16. The complainant organizations also highlight the link between trafficking in persons and the widespread corruption among government officials. As an example, they mention the port of Kantang, where a complex human trafficking gang would routinely torture and execute migrant workers who attempted to flee, in order to serve as a warning to others. This gang was apparently allowed to flourish because local officials provided protection and assistance. They observe that the Government has done little to hold government officials who are

complicit in trafficking accountable for their crimes. Civil servants exposing corruption have had to flee the country as they might be charged with defamation. Criminal defamation has been used to silence others who speak about trafficking in persons. Witnesses in trafficking-in-persons prosecutions against government officials have also been harassed and threatened without the perpetrators facing serious consequences.

(iii) **Absence of contracts of employment**

17. The complainant organizations provide information relating to the situation of fishers who have been offered jobs without, however, signing any written contracts of employment. With vague verbal agreements governing the employment relationship, fishers often do not know the tasks they are meant to perform, not even the salary they will get. Where written contracts have been concluded, there have been reports of their being signed under duress.

(iv) **Trafficking in persons**

18. The complainant organizations further provide various examples where trafficked fishers have been held on boats indefinitely or transferred to other fishing boats. In 2015, eight fishers were rescued, after having been part of a larger group of forced labourers being transported from Thailand to be transferred onto various fishing boats. Furthermore, the complainant organizations allege that Rohingya migrants trafficked through jungle camps have also been sold to Thai fishing vessels. They also point out that the rate of re-trafficking is high, and according to research findings, the median number of days fishers spend in trafficking situations was estimated to be one year and nine months.

3. *Employment practices and working and living conditions*

(i) **Confiscation of identity documents**

19. The complainant organizations allege that most fishers have either never seen their SIDs or have fraudulent ones. As the SIDs are usually the only travel documents migrant fishers and Thai fishers working in foreign waters have, their retention by employers effectively prevent them from leaving the boat. According to the complainant organizations, in the majority of cases, employers confiscate the workers' ID upon arrival and refuse to return them, or refuse to provide the necessary documents to allow for freedom of movement. Such situations represent a means of coercion which violates Convention No. 29.

(ii) **Non-payment of wages**

20. The complainant organizations state that there are several methods of payment of wages in the Thai fishing sector. Fishers receive a share of the catch, a monthly salary, or a combination of both. Compensation varies broadly and does not reflect what was initially promised (the average salary is between 4,500 Thai baht (THB) (€113) to THB10,000 (€250)). Withholding of wages and unauthorized deductions are also common practices in the sector. The complainant organizations further report that fishers are subjected to exploitative working conditions, including excessive working hours (20-hour shifts over the course of a week); lack of medical equipment, medicine and food on board; and poor living conditions. The complainant organizations highlight that poor working conditions alone do not amount to forced labour. However, where the employer deliberately exploits the workers' vulnerability arising from their irregular status and isolation at sea to impose more extreme working conditions than would otherwise be possible, this would amount to forced labour.

(iii) Physical violence

21. Moreover, the complainant organizations state that the use of threats and physical and/or psychological violence is common in the fishing sector. They report that over 65 per cent of fishers have experienced physical abuse and numerous fishers have also reported witnessing suicides and murders. The complainant organizations stress that the threat of violence while on board, which is further compounded by the isolation of the workers on the high seas and the absence of any potential law enforcement, is another indicator of forced labour.

4. Lack of effective complaints mechanisms

22. The complainant organizations point out that although fishers are now permitted to bring complaints under the 1998 LPA using a form prescribed by the authorities, it is unrealistic to expect migrant workers to submit representations in the Thai language. They also state that there is a lack of effective complaints mechanisms to deal with trafficking in persons, as victims often face many obstacles including: (i) the ineffectiveness of the systems of identification and repatriation of victims of trafficking; (ii) the lack of information on preventive measures with regard to re-trafficking; and (iii) the lengthy legal processes that discourage victims from pursuing traffickers. While shelters set up by the Government for victims of trafficking are important for their reintegration, there is insufficient evidence to suggest that they play an effective role in the prevention of re-trafficking.

5. Ineffectiveness of law enforcement mechanisms

23. The complainant organizations allege that the most significant issue remains labour inspection and the enforcement of existing protections. The new inspection regime put in place in 2015 is insufficient to eradicate forced labour from the Thai fishing sector. They also allege that despite the Government claiming to have conducted over 100,000 inspections between June and October 2015, it appears that some of the worst known offenders have been inadequately inspected. The lack of interpreters also renders the inspections meaningless as inspectors cannot communicate with the predominantly migrant crew. Moreover, although fishers are now permitted to bring complaints under the 1998 LPA using a form prescribed by the authorities, it is unrealistic to expect migrant workers to submit representations in the Thai language. Lastly, the complainant organizations add that the new legal regime governing working conditions in the fishing industry still allows employers to deliberately exploit the workers' vulnerability to impose more extreme working conditions than would otherwise be possible. These legislative shortcomings continue to facilitate the exaction of forced labour.

6. Absence of penalties

24. The complainant organizations point out the low number of prosecutions in cases of forced labour or trafficking in persons for labour exploitation. They refer to concrete examples: in 2011, there were 83 cases of Thai nationals who were coerced or deceived into working on fishing boats for months or years at a time and ended up in precarious situations. Other examples relate to cases where seafarers' welfare organizations have to pay off debts to rescue fishers. Perpetrators have not faced any sanctions.

B. The Government's response

25. In its written communication dated 30 June 2016, the Government provides information with regard to the following points: the national legal framework applicable in the fishing sector;

law enforcement mechanisms; the working conditions of migrant workers; and protection and assistance for victims of trafficking in persons.

1. National legal framework

(i) Current legislation

26. In relation to the allegation of the significant gaps in law and practice that leave fishers vulnerable to forced labour and trafficking, the Government indicates that it has revised and recently enacted many related laws and regulations by focusing consideration on: (1) victims who, in accordance with laws, must be comprehensively protected regardless of the sector or situation they are in; and (2) existing penalties that need to be improved to deter offenders from wrongdoing. In this regard the Government refers to the following pieces of legislation.

27. The second Amendment to the Anti-Trafficking Act B.E. 2558 (2015) came into force on 29 April 2015. The Government states that the purpose of the amendment is to motivate more cooperation from the public in observing and reporting offences of trafficking in persons to the authorities (section 3), as well as to increase penalties on legal entities which are in violation of the Act (section 6), including the temporary closure of enterprises or activities.

28. The Royal Ordinance on Fisheries B.E. 2558 (2015) came into force on 14 November 2015. The Government indicates that under section 129 of the Ordinance, persons who operate commercial fishing vessels without a legal licence shall be subject to a minimum fine of THB100,000 (\$2,840) to a maximum fine of THB30 million (\$852,000). Moreover, a factory operator under the law on factories who engages in a business relating to aquatic animals, is prohibited from employing a person if such operator is in violation of the labour protection law, or the law on hiring foreign workers. A penalty of closure of the factory and licence revocation, as well as a fine of THB400,000–THB800,000 (\$11,323–\$22,660) per each unlawfully employed person, is applicable to factories which are found to be in violation of the Ordinance (section 124).

29. The Ministerial Announcements of the Ministry of Interior dated 29 March 2016 allow both migrant workers who are witnesses for trafficking-in-persons cases and migrant workers who are victims of trafficking to extend their stay in the Kingdom of Thailand for up to one year. Their permits can be extended for another year if the cases are not yet concluded. Both groups are allowed to work in accordance with the Cabinet’s resolution dated 15 March 2016.

30. The Human Trafficking Criminal Procedure Act, B.E. 2559 (2016) came into force on 25 May 2016. The Government indicates that the Act is aimed at expediting legal procedures to enhance fair and effective prosecution of human trafficking cases.

31. The Ministerial Regulation concerning Workplaces Entitled for Employment Prohibition of Employees under 18 Years of Age, B.E. 2559 (2016) came into force on 15 January 2016. The Government indicates that the Regulation expands the list of workplaces prohibited from employing children under 18 years of age, to cover factories in the fisheries sector and seafood processing enterprises.

(ii) Ongoing revisions

32. The Government indicates that it is strengthening its legal framework with regard to migrant workers and child labour. A draft law (Royal Ordinance concerning Migrant Workers Recruitment in the Kingdom) has been approved by the Cabinet and is now under the consideration of the Office of the Council of State before coming into force. The draft law

aims to eliminate illegal and irresponsible employment brokers recruiting labour migrants from neighbouring countries to work in Thailand, which opens big loopholes for human trafficking. According to the Government, the law specifies criteria for the licenced brokers to be a legal entity with no less than THB1 million (\$28,381) start-up fund and THB5 million guarantee (\$141,903) required for paying compensation to their clients (either employer or worker) in case of breaching employment contracts. It also requires that all recruitment fees be collected from employers only and that a sentence of imprisonment between three and ten years and a penalty of between THB60,000 and THB200,000 (\$1,703 and \$5,677) or both be applied in case of a violation.

33. A draft amendment of the Labour Protection Act (revision of the Labour Protection Act B.E. 2541 (1998)) has also been highlighted by the Government, indicating that the draft was approved by the Cabinet on 12 April 2016 and is now under the consideration of the Office of the Council of State before being submitted to the National Legislative Assembly. The draft aims at increasing penalties for child labour violations, including violations of the prohibition on hazardous work for children.

2. *Law enforcement mechanisms*

34. In relation to the complainant organizations' allegations concerning the issues related to the inefficiency of the labour inspection and the need to enforce existing protections, the Government acknowledges the existence of a number of outdated laws that cannot properly respond to situations of forced labour in the fishing sector. The Government has therefore revised and developed new legislation in four areas: (a) the labour inspection system; (b) heavier penalties for offenders; (c) the prevention of unlawful brokers and illegal recruiting agencies; and (d) the installation of the Vessel Monitoring System (VMS).

(i) Labour inspection

35. The Government indicates that labour inspection is regulated by the Labour Protection Act (No. 2) B.E. 2551 (2008) (2008 LPA) and is under the mandate of the Department of Labour Protection and Welfare (DLPW). The DLPW is responsible for inspection of working and employment conditions in establishments in all sectors. Inspection of working and employment conditions of migrant workers is also a part of the responsibility of labour inspectors who are working at the DLPW's provincial centres nationwide. The Government also states that even though the 2008 LPA does not have any provisions that give labour inspectors the mandate to inspect forced labour or human trafficking directly as these fall under the mandate of the Ministry of Social Development and Human Security (MSDHS), labour inspectors are tasked to report labour exploitation or human trafficking cases to the authority to prosecute the offenders. According to the Government, there are currently 565 authorized labour inspectors appointed by the DLPW and 229 temporary employees also appointed to assist in labour inspection.
36. With regard to labour inspection in the fishing sector, the Government highlights the multidisciplinary inspection teams on fishing vessels as part of a series of measures taken to prevent forced labour and trafficking in persons in the fishing sector. It states that the Thailand Maritime Enforcement Coordinating Centre (Thai-MECC), composed of the Royal Thai Navy, Marine Police Division of the Marine Department and the Department of Fisheries, among others, is responsible for providing resources, manpower, inspection equipment and operating inspections on board. The DLPW is responsible for inspecting work contracts and crew lists. In addition, the Department of Employment is responsible for checking workers' registration documents. According to the Government, multidisciplinary teams aim at monitoring law enforcement, inspecting working and employment conditions, ensuring safety and health of workers, and interviewing maritime workers to prevent them from being deceived, forced to work and becoming victims of debt bondage and human

trafficking in the fisheries sector. The multidisciplinary operation on fishing vessels welcomes the private sector's cooperation in assisting to resolve labour exploitation.

37. The Government further provides statistics on the results of inspections carried out on fishing vessels. Hence, of the inspections carried out in Thai waters between 1 May 2015 and 31 May 2016, a total of 6,486 vessels were inspected and 287 vessels were found to be in violation of the law, with 584 charged. The Government further states that multidisciplinary inspection teams and related law enforcement agencies also inspect seafood processing factories in order to protect and prevent workers from illegal and unfair employment as well as forced labour in the fishing industry.

38. Finally, the Government underlines that labour inspectors have been trained to improve their knowledge and understanding of forced labour and debt bondage. In this regard, the DLPW, in cooperation with the Commander Centre for Combating Illegal Fishing (CCCIF) and the ILO developed a training curriculum "Training for Labour Inspectors: Enhancement of Inspection Capacity in the Industry at Risk". Since 2014, 497 officers from the CCCIF, the Ministry of Labour, the Marine Police Division, the Department of Fisheries, the Marine Department and the Thai Customs Department have been trained under this curriculum.

(ii) Penalties

39. The Government refers to the 2015 Royal Ordinance on Fisheries that defines a range of penalties (fines or imprisonment) for cases such as the employment of a migrant worker without a work permit (a fine of THB400,000–THB800,000 (\$11,323–\$22,660) per worker), or the employment of illegal workers (if repeatedly committed, the employer is liable to imprisonment in addition to the closure of the business). The Government also indicates that a draft amendment of the Labour Protection Act, 2008 (revision of the Labour Protection Act B.E. 2541 (1998)) is ongoing which will help in strengthening penalties for offences involving working children. The amendments are related to hazardous work, prohibited workplaces for children under 18, and a minimum age for working children to perform agricultural and sea fishery work. The amendments aim at imposing deterrent penalties by raising the amount of the fines imposed or the years of imprisonment.

40. Moreover, other penalties have been introduced to the labour legislation. For instance, an offender under the Working of Alien Act, B.E. 2551 (2008), shall be subject to a maximum fine of THB100,000 (\$2,840) per person; or under the second amendment to the Anti-Trafficking Act B.E 2558 (2015), the penalty for offences related to trafficking in persons has been increased to imprisonment for a maximum term of 20 years if the offence causes the victim(s) serious injuries, and life imprisonment or the death penalty if the offence causes the victim(s) death.

(iii) Monitoring brokers and recruitment agencies

41. The Government indicates that it has implemented a strict labour monitoring system which requires recruiting agencies to pay a deposit of THB100,000 (\$2,840) to the Department of Employment as a security for the safety of workers. As of 31 May 2016, there were 376 recruiting agencies that hold licences issued by the Department of Employment to provide services to migrant workers. Between February and March 2015, the Department of Employment inspected 119 recruiting agencies and found that none were guilty of labour exploitation. Moreover, provisions of a Royal Ordinance concerning rules on bringing migrant workers to work with employers in the Kingdom have been drafted to prevent illegal activities of unlawful brokers and recruiting agencies in bringing migrant workers into the country for employment. The provisions under this draft Ordinance aim at preventing the illegal recruitment of migrant workers, by limiting their recruitment to direct employment by the employers or employment through registered recruiting agencies.

42. Lastly, in relation to the allegations of unauthorized wage deductions, the Government points out that it has enforced the Employment and Protection of Job Seekers Act B.E. 2528 and the Ministerial Order on Collection of Service Fees and Expenses from Job Seekers B.E. 2547, which prohibit domestic recruiting agencies from receiving money or valuable items not exceeding 25 percent of the worker's first month's wage, besides service fees and expenses. Otherwise, the workers can legally file a complaint against the recruiting agencies or employers.

3. *Working conditions of migrant workers*

(i) Registration of migrant workers in the fishing sector and improvement of the recruitment system

43. The Government stresses that there are 2.43 million documented migrant workers in Thailand, among them 710,540 Cambodians, 228,585 Laotians and 1,492,212 people from Myanmar, who most commonly work in the fishing and seafood processing sectors. There is also a significant number of undocumented migrants, from the three neighbouring countries, who also work in the fishing sector. In order to ensure the regularization of these illegal migrants, the Government indicates that a special round of registration was opened from 2 November 2015 to 30 January 2016, for migrant workers from Cambodia, the Lao People's Democratic Republic and Myanmar who work in the fishing sector in 22 coastal provinces. In 2016, the registration period was extended by another six months. Those registered receive work permits valid from the date of registration until 31 January 2017. Such registration was also extended to migrant workers in the seafood processing sector, who also received valid work permits.

44. In addition, the Government states that it is working on improving the recruitment process of migrant workers by collaborating closely with sending countries to eliminate illegal entry of workers and obstruct unlawful brokers. In this regard, several Memoranda of Understanding (MOUs) have been signed with sending countries to cover, among other things, labour issues, skills development, and social security.

(ii) Improvement of working conditions

45. The Government stresses that since the implementation of the "Stop Illegal, Unreported and Unregulated (IUU) Fishing" policy, inspection operations have increased through two major procedures: (1) inspections at Port in-Port out (PIPO) centres; and (2) inspections at sea by multidisciplinary teams. It also adds that with regard to working conditions in seafood processing, as this activity is generally run by both large enterprises and small enterprises, the major challenge remains for labour inspectors to reach the small ones and enhance protection of employment and working conditions.

46. The Government further indicates that the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) prohibits the employment of those under 18 years of age on fishing boats and at seafood processing plants, compulsory rest hours, mandatory signed work contract (available in the official languages of the three neighbouring countries), reporting before the labour inspector, minimum wage, annual leave, stricter conditions for leaving employees on board, and decent minimum living conditions and welfare of workers. Under the (Agriculture and Cooperatives) Ministerial Regulation concerning safety, health and welfare system for seamen, 2016, the ship owner or the employer shall provide a health examination for fishers coming to work on board a vessel for the first time. Regular health checks shall be done at least once a year.

(iii) Permission to change employer

47. In addition, the Government highlights that migrant workers in the fisheries sector and seafood processing sector, unlike migrant workers in other sectors, are allowed to change employers within the same business or industry with an unlimited time and area of work. For instance, as of 25 May 2016, 8,709 migrant workers received permission to change employers in the fisheries sector, and 4,018 migrant workers received permission to change employers in the seafood processing sector.

4. Access to complaints mechanisms

48. With regard to the allegations of vulnerability of migrant fishers who face language barriers to communicate with government officials, the Government underlines a series of measures that have been taken in this regard. For instance, the DLPW, employed 19 interpreters in 2015 and increased this to 21 interpreters in 2016. Moreover, language services in call centres and hotlines have been increased with operators who can speak Khmer, Lao and Burmese. Official documents such as complaint forms, leaflets and flyers are now also produced in these three languages. The Government also states that hotlines, call centres, mobile applications, and Skype have been established to help fishers who are facing difficulties. Other mechanisms have also been set up, such as local offices of the Ministry of Labour, complaint centres under the Ministry of Interior, and complaint centres under some NGOs in all 76 provinces. The most recent service launched was the mobile application used for filing complaints which is available in six languages including Khmer, Lao, Burmese, Vietnamese, English and Thai.

5. Prevention, protection and assistance for victims of trafficking

49. Regarding the alleged lack of practical measures that provide prevention, protection and assistance to victims of trafficking, the Government indicates that the MSDHS has prioritized preventive measures by providing trafficked victims with knowledge and useful information before they return home in order to prevent them from being re-trafficked. Moreover, the Government indicates that awareness-raising campaigns have been initiated to bring this problem to the attention of the public. Some 1,300 hotlines have been established to urgently report suspicious cases or incidents related to trafficking in persons.

50. The Government also points out that in 2015, the MSDHS helped and provided protection to 471 victims of human trafficking. They are now living in the centre for social welfare protection for the victims of human trafficking shelter run by the MSDHS. Out of the 471 victims, 324 are victims of trafficking in persons for the purpose of forced labour (32 Thais and 292 non-Thais).

51. In addition, significant efforts were made to help Thai fishing crews caught in Indonesia. Since October 2014, the Ministry of Foreign Affairs, the MSDHS, the Ministry of Labour and the Royal Thai Police have cooperated with the Indonesian Government to send these Thai crews back to Thailand. In addition, the Thai Government has placed importance on the policy of victim identification in line with international standards based on the principle of human rights. Between October 2014 and May 2016, a total of 1,494 Thai fishing crews returned to Thailand. The result of the victim identification process, found that 53 persons were victims of human trafficking. These victims were provided protection by concerned government agencies upon their arrival until being sent back home. The Government also indicates that the repatriation of the victims is supported by the Anti-Human Trafficking Fund and the private sector. According to state-to-state repatriation, during the journey, police officers and social workers will accompany the victims back home. After the victims

have returned to their respective countries, the public sector and international organizations in the country of origin will do the follow up and report to the case management meetings (CMMs).

III. The Committee's conclusions

- 52.** The Committee observes that the representation raises two major sets of allegations with regard to compliance with Convention No. 29. The first concerns the situation of workers on board Thai fishing vessels, particularly migrant workers, who due to the nature of the work in fishing which at times involves abusive employment practices, are likely to be vulnerable to forced labour and trafficking in persons. The second concerns the responsibility of the State to fulfil its obligations under the Forced Labour Convention, 1930 (No. 29), by taking the necessary measures to address all forms of forced labour and ensuring that the exaction of forced labour is punishable as a penal offence. The Committee notes that the issues raised in the representation relate to Articles 1(1), 2(1) and 25 of the Convention.
- 53.** By ratifying the Convention, States engage themselves in taking concrete actions to suppress all forms of forced labour, including the adoption of measures, in law and practice, to ensure that no form of forced labour is tolerated in their territory within the shortest period possible. States also have the obligation to punish the exaction of forced labour as a penal offence and to strictly enforce the law. The Committee notes that the complainant organizations refer to the three elements of forced labour as defined under Article 2(1) of the Convention: the exaction of work or service, the absence of voluntary offer (consent) and a menace of a penalty. They also refer to the ILO indicators of forced labour, including the abuse of vulnerability, non-decent working and living conditions, and excessive overtime. The Committee also notes that the Government emphasizes its commitment to implementing the Convention and highlights that it has continued to implement various measures aimed at eliminating forced labour and human trafficking for the purpose of forced labour.
- 54.** In order to analyse the information provided by the complainant organizations and to assess the measures taken by the Government to apply the Convention to workers in the fishing sector, the Committee will examine the national legal framework regulating the employment practices and working conditions of fishers on Thai fishing vessels, as well as the manner in which this framework is applied in practice.

A. National legal framework

- 55.** The Committee notes that the complainant organizations allege that there are still significant gaps in law and practice that expose fishers to forced labour and trafficking. Of particular concern for the complainant organizations is the poor regulation of recruitment that facilitates the exaction of forced labour by making it impossible for fishers to leave abusive employment relationships. The Government stresses that it has revised and recently enacted many laws and regulations which provide the necessary safeguards to prevent and address forced labour issues as well as child labour and trafficking in persons in the fishery sector.
- 56.** The Committee notes that both the complainant organizations and the Government refer to several pieces of legislation applicable to the fishing sector, including: the Royal Ordinance on Fisheries (2015) and the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014). The Committee observes that while welcoming the adoption of the abovementioned legislation, the complainant organizations raise several concerns with regard to: (1) recruitment practices; and (2) employment practices.

1. **Recruitment practices**

(i) Brokers and recruitment fees

57. The Committee notes the allegations of the complainant organizations that the recruitment of fishers, particularly migrant workers from Myanmar, Cambodia and the Lao People's Democratic Republic, is generally handled by unscrupulous brokers. The Committee notes the various examples provided by the complainant organizations where fishers have been lured by brokers with false promises of work, and deceit about working conditions. The Committee also notes that the complainant organizations have provided some examples in which migrant workers are alleged to have paid exorbitant recruitment fees to brokers and have seen brokerage fees deducted from their monthly wages.

58. The Committee notes the Government's indication that it is strengthening its legal framework with regard to migrant workers and that a draft law, the Royal Ordinance concerning migrant workers recruitment in the Kingdom (Migrant Workers Recruitment Bill) has been approved. The draft aims at preventing the illegal recruitment of migrant workers by limiting direct recruitment to the employers, or by employment through registered recruiting agencies. The Committee further notes the Government's indication that the draft law specifies criteria for licenced brokers to operate in a legal way. Moreover, according to the Government, the Migrant Workers Recruitment Draft Bill requires that all recruitment fees should be paid by the employers, and provides for a sanction of imprisonment (between three and ten years), as well as a fine in case of violations of such a provision.

59. With regard to the legal framework regulating the recruitment process, the Committee notes that the Recruitment and Job-Seekers Protection Act (1985) is the main piece of legislation that regulates the recruitment practices of private employment agencies by providing legal protection to jobseekers. It notes however, that the Act does not contain specific provisions related to the protection of migrant workers during the recruitment process, and does not stipulate procedures for regulating brokers, subcontracting agencies and manning agencies supplying migrant workers. Moreover, the 1985 Act does not regulate the payment of recruitment fees by workers.

60. The Committee underlines that the involvement of brokers in the recruitment process of migrant fishers could contribute to increasing their vulnerability and potentially leads them to fall into situations that amount to forced labour and trafficking. The Committee also considers that the payment of recruitment fees by migrant workers is a serious and widespread problem that induces workers into indebtedness and increases their vulnerability. *The Committee therefore urges the Government to meaningfully collaborate with the countries of origin with a view to addressing the use of brokers, subcontracting agencies and manning agencies in the migrant workers' home states. It further urges the Government to adopt without further delay the Royal Ordinance on Migrant Workers Recruitment Bill and to take measures to ensure that its application will prevent the illegal recruitment of migrant fishers. The Committee also expects that the Bill will provide for appropriate safeguards to protect migrant fishers from being subjected to deceptive and coercive recruitment practices. The Committee also urges the Government to take the necessary measures to ensure its effective implementation, once adopted.*

(ii) Contract substitution

61. The Committee notes that, according to the allegations of the complainant organizations, the majority of fishers do not have any form of written contract of their employment. Where contracts have been concluded, it is alleged that signatures were carried out under duress. The Committee notes the Government's reference to the 2014 Ministerial Regulation under

which fishers have to sign a written contract in the official languages of the three neighbouring countries. It further notes that other relevant provisions, including those on minimum wage, termination of employment contract, submission of complaints and labour inspection are regulated by the 1998 LPA. **Recognizing that such provisions can contribute to protecting workers against the risk of contract substitution, the Committee urges the Government to take the necessary measures to ensure the effective implementation of these provisions, including the establishment of adequate and deterrent penalties for violations. Moreover, in light of the nature of work on fishing boats, the Committee also encourages the Government to establish procedures to ensure that the competent authorities register and verify that the signed contract corresponds to the original offer of employment consented to by the worker.**

(iii) Corruption

62. The Committee notes the allegations concerning the corruption of officials in the recruitment process. The Committee deeply regrets that the Government does not provide any information in this regard. The Committee considers that corruption of government officials can create an environment of impunity that exacerbates the vulnerability of migrant fishers and constitutes a major obstacle in the identification of the victims of forced labour and trafficked victims. **The Committee expects the Government to ensure that government officials complicit with human traffickers are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice, and requests the Government to take urgent action in this regard.**

(iv) Trafficking in persons

63. Regarding the allegations of trafficking for labour exploitation of Thai nationals as well as migrant workers from Myanmar, Cambodia and the Lao People's Democratic Republic, the Committee notes that the Government has taken a series of measures to prevent trafficking in persons and to enhance the identification of victims. In this regard, the 2008 Anti-Trafficking Act criminally prohibits all forms of trafficking and specifies the enforcement of strict penal sanctions against offenders. The Committee notes that the Government has developed awareness-raising campaigns targeting the general public, and has established 1,300 hotlines to urgently report suspicious cases or incidents related to trafficking in persons.

64. The Committee notes the statistics provided by the Government with regard to the number of victims that have been assisted by the MSDHS in 2015. The Committee notes that of the 471 victims, 324 are victims of trafficking in persons for the purpose of forced labour (32 Thais and 292 non-Thais). It also notes the collaboration that is being enhanced between the Ministry of Foreign Affairs, the MSDHS, the Ministry of Labour and the Royal Thai Police with the Indonesian Government with regard to the repatriation of Thai fishers. Out of the 1,494 Thai fishers, 53 persons have been found to be victims of trafficking. The repatriation of the victims is supported by the Anti-Human Trafficking Fund and the private sector. According to the Government, after the victims have returned to their respective countries, the public sector and international organizations in the country of origin will do the follow up and report to the case management meetings (CMMs). **The Committee encourages the Government to continue to pursue its efforts to combat trafficking in persons, particularly with regard to migrant workers in the fishing sector. It also requests the Government to continue to take measures to strengthen the capacity of law enforcement bodies, to ensure that they are provided with appropriate training to improve the identification of the victims of trafficking.**

2. **Employment practices**

(i) Confiscation of Seafarer identification Documents (SIDs)

65. The Committee observes that, according to the complainant organizations, the majority of fishers, particularly migrant workers, have their SIDs withheld by employers. The Committee notes that according to the Government, the 2015 Royal Ordinance provides that boat owners must ensure that fishers hold valid SIDs and work permits (section 83). Violation of this obligation is punishable by a fine. The Committee observes that it appears that there is no specific prohibition in the legislation for the confiscation of identity documents. The Committee recalls that the practice of confiscation of identity documents is a serious problem that may increase fishers' vulnerability to abuse, by leaving workers undocumented, reducing their freedom of movement and preventing them from leaving an employment relationship. **Accordingly, the Committee requests the Government to take the necessary measures to ensure that the confiscation of identity documents is prohibited by law, to investigate such abuses and to punish those responsible who are in breach of the law.**

(ii) Withholding of wages

66. The Committee observes that, while acknowledging that under the 2014 Ministerial Regulation, the non-payment and/or withholding of wages is prohibited and compulsory records of employment and documents concerning payment of wages should be kept, the complainant organizations state that such practices as well as unauthorized deductions are a common practice in the fishing sector. The Committee notes that, according to the Government, the DLPW, in cooperation with the Labour Rights Promotion Network (LPN) and the Embassy of Myanmar has assisted 21 workers from Myanmar to obtain their wages from the employers and facilitated their repatriation. The Committee considers that the failure to pay wages constitutes an element of forced labour. **While regretting the absence of information on the penalties applied in this respect which makes it difficult to assess the effectiveness of the application of the legislation in practice, the Committee encourages the Government to continue to strengthen its efforts to address the non-payment of wages, including by taking prompt action to ensure the effective application in practice of the 2014 Ministerial Regulation. It requests the Government to ensure that employers face appropriate sanctions for the non-payment of wages, and to provide information on the concrete measures taken in this regard.**

(iii) Physical abuse

67. The Committee notes the allegations of the complainant organizations that a certain number of fishers face physical violence that could in certain cases amount to murder. The Committee deeply regrets the absence of information on this point in the Government's reply. It notes however that under the second amendment of the Anti-Trafficking Act B.E. 2558 (2015), the penalty for offences related to trafficking in persons has been increased to imprisonment for a maximum of 20 years if the offence causes the victim(s) serious injuries, and life imprisonment or the death penalty if the offence causes the victim(s) death. The Committee also notes that under the Human Trafficking Criminal Procedure Act, B.E. 2559 (2016) legal procedures have to be swiftly expedited to enhance fair and effective prosecution of human trafficking cases. **Recalling the particularly vulnerable situation of fishers, due in part to the hidden nature of their work, the Committee requests the Government to ensure that the Anti-Trafficking Act, as amended, is effectively applied and that the appropriate sanctions are imposed on perpetrators.**

(iii) Safety and health

68. The Committee notes the allegations of the complainant organizations that many fishers face poor living conditions and food, and lack medical equipment and medicine on board, which increases their vulnerability to exploitation. The Committee notes that the Government enacted the Ministerial Regulation concerning Safety, Health and Welfare System for Seamen in 2016. According to the Government, the Regulation aims at providing fishers proper safety and health while working on board, including rest areas, medicine and medical supplies, drinking water, food and medical check-ups. *While welcoming the adoption of the 2016 Regulation, the Committee urges the Government to continue to strengthen its efforts, in consultation with employers' and workers' organizations to enhance the living and working conditions of fishers, including by ensuring the effective implementation of the 2016 Ministerial Regulation.*

B. Law enforcement

69. The Committee observes that under Article 25 of the Convention, States are required to take the necessary measures to ensure that the prohibition of forced labour is accompanied by effective penal sanctions that are really adequate and strictly enforced. In order to examine the manner in which the legal framework is implemented and enforced, the Committee will proceed with the examination of the role of the labour inspection in the identification of violations in the fishing sector and the penalties that the perpetrators are likely to face, as well as the available complaints mechanisms and the access to justice for victims of forced labour and trafficking.

1. Labour inspection

70. The Committee notes the allegations of the complainant organizations that the most significant issue remains labour inspection and the enforcement of existing protections. It also notes the different measures taken by the Government to strengthen labour inspection in the fishing sector, including the establishment in 2015 of the multidisciplinary inspection teams on fishing vessels that aim, among other things, at interviewing workers to prevent them from being deceived, forced to work and becoming victims of debt bondage and human trafficking in the fisheries sector. Moreover, the Committee notes that the DLPW, in cooperation with the Commander Centre for Combating Illegal Fishing (CCCIF) and the ILO have developed a training curriculum for labour inspectors which permitted the training of 497 officers from the CCCIF, the Ministry of Labour, the Marine Police Division, the Department of Fisheries, the Marine Department and the Thai Customs Department, since 2014.

71. The Committee further notes the statistics provided by the Government on the number of inspections carried out in May 2016 and the number of vessels found in violation of the law. The Committee takes due note of these measures and highlights the important role of labour inspection in enforcing the labour rights of fishers, as the proactive detection of such violations is an important first step towards the identification of forced labour practices. *The Committee accordingly requests the Government to continue to take measures to strengthen the capacity of labour inspectors, including through the proactive undertaking of random inspections not based on complaints, further training for labour inspectors on the detection of forced labour, the hiring of more inspectors able to speak the languages spoken by migrant workers and the regular verification by inspectors of matters such as passport confiscation, conditions of work, in particular hours of rest, accommodation and timely wage payments.*

2. Penal sanctions

72. The Committee notes the information provided by the Government with regard to the applicable sanctions for violations of the Anti-Trafficking Act. Under section 52 of the Act, trafficking is an offence punishable with imprisonment from four to ten years. Moreover, as highlighted in paragraph 67 above, the penalties for offences related to trafficking in persons have been increased considerably under the second amendment of the Anti-Trafficking Act B.E. 2558 (2015). In addition, under the 2015 Royal Ordinance, for cases such as the employment of a migrant worker without a work permit, a fine of THB400,000–THB800,000 (\$11,323–\$22,660) is applied per worker, and for the employment of illegal workers (if repeatedly committed), the employer is liable to imprisonment in addition to the closure of their business.
73. While welcoming the abovementioned legislative measures, the Committee notes that the Government has not provided information on penalties imposed in practice for violations of the Anti-Trafficking Act. In this regard, the Committee notes that the Government states that from October 2014 to May 2016, a total of 1,494 Thai fishing crews returned to Thailand and 53 persons were found to be victims of human trafficking. These victims were provided protection by concerned government agencies upon their arrival until their repatriation. However, the Government does not provide information on the measures taken to sanction the perpetrators of these violations. Moreover, the Committee observes that the definition of forced labour in the Anti-Trafficking Act, as amended in 2017, now captures more forms of coercion as envisaged by the Convention, including the loss of identity documents, debt bondage and physical coercion. However, the Committee notes with regret that the definition is still not as broad as Article 2(1) of the Convention, specifically in relation to the “menace of any penalty” and would be unlikely to encompass the loss of rights or privileges or the use of financial penalties.
74. The Committee recalls that under Article 25 of the Convention, the Government must ensure that penalties imposed by law are really adequate and are strictly enforced. The Committee recalls in this connection also that penalties should have a dual purpose, namely to severely punish the guilty and to act as a deterrent; if monetary penalties are provided for, they should be adapted in order to ensure that they exert an effective influence. *Accordingly, the Committee requests the Government to continue to strengthen its efforts to ensure that the legislation is regularly monitored, to sanction those who are in breach of the legislation, and to provide for criminal sanctions in case of serious or repeated violations. The Committee further requests the Government to provide information, to the Committee of Experts on the Application of Conventions and Recommendations in the context of its regular supervisory work, on the number of cases of forced labour practices or trafficking that have occurred in the fishing sector and examined by the competent authorities as well as specific penalties applied.*

3. Complaints mechanisms and access to justice

75. The Committee notes that the complainant organizations allege that although complaints mechanisms have been established, particularly for migrant workers, victims of forced labour or trafficked victims often face obstacles in asserting their rights. The Committee observes, however, the Government’s statements that workers are able to file complaints by contacting special hotlines, or local offices of the Ministry of Labour, complaint centres under the Ministry of Interior, and complaint centres under some NGOs. The Government also refers to the establishment of a mobile application used for filing complaints which is available in six languages including Khmer, Lao, Burmese, Vietnamese, English and Thai. It also indicates that assistance has been provided to victims of trafficking and shelters have also been established under the MSDHS in this regard. The Committee notes an absence of

information on the number of cases that have been resolved or the outcome of any cases referred to the Labour Court.

76. The Committee observes that while the legislation provides for the establishment of different complaints mechanisms, it is alleged that there exist some obstacles to their effective use by workers, such as the duration of the complaints procedure, language barriers and the lack of information on preventive measures with regard to re-trafficking. The Committee draws particular attention to the special nature of the work in fishing which is undertaken at sea where workers and particularly migrant fishers, speaking languages other than Thai, are not able to avail themselves of the labour law or anti-trafficking legislation or access justice. They are uniquely exposed and vulnerable to abusive situations. The Committee therefore recalls that the situation of vulnerability of migrant workers, particularly in the fishing sector, requires special and proactive measures to assist them in asserting their rights without fear of retaliation. *Therefore the Committee urges the Government to continue to take measures to remove such obstacles by, for instance, raising awareness of workers to their rights contained in national legislation or providing them legal and material assistance. It also encourages the Government to continue providing assistance to fishers, including shelters, and medical and psychological care. Furthermore, the Committee requests the Government to actively collaborate with the countries of origin to assist those fishers who have been victims of trafficking with a view to reintegrating them into their communities. The Committee requests the Government to provide information to the Committee of Experts on the Application of Conventions and Recommendations in the context of its regular supervisory work, on the action taken in this regard.*

C. International cooperation

77. The Committee takes note of the Government's reference to a series of regional and international initiatives related to migrant recruitment practices and labour protection. The Committee notes that Memoranda of Understanding (MOUs) have been signed with four neighbouring countries, Myanmar, the Lao People's Democratic Republic, Cambodia and Viet Nam, in order to enhance cooperation on labour issues, including the recruitment of migrant workers in the fishing sector. Other MOUs have been developed on trafficking issues with countries such as Malaysia, United Arab Emirates, Brunei Darussalam and China. The Committee further notes that the Tripartite Action to Protect Migrant Workers within and from the Greater Mekong Subregion from Labour Exploitation, known as the GMS Triangle project, has been extended until 2025. The Committee notes that new project Triangle II comprises a maritime labour component and promotes decent work for migrant workers in the fishing sector through regular channels of recruitment. *The Committee encourages the Government to continue to take measures within the framework of MOUs and the Triangle II project to enhance the protection of migrant workers, in particular those who are in the fishing sector, so as to prevent them from falling into situations that amount to forced labour. The Committee further requests the Government to provide information to the Committee of Experts on the results achieved in this respect.*

IV. The Committee's recommendations

78. *In light of the conclusions set out in paragraphs 52–77 above concerning the issues raised in the representation, the Committee recommends that the Governing Body:*

- (a) approve the present report;*
- (b) welcome the recent legislative measures taken by the Government as a significant step towards the protection of workers in the fishing sector, and encourages the Government to continue to take proactive action, particularly with regard to migrant workers;*
- (c) request the Government, in order to ensure that fisher workers enjoy the protection provided for in the Convention, to take into account the action requested in paragraphs 60, 61, 62, 64, 65, 66, 67, 68, 71, 74, 76 and 77;*
- (d) invite the Government to communicate information in its report submitted by virtue of article 22 of the ILO Constitution on the measures taken to give effect to the recommendations of this Committee, and in particular to the paragraphs referred to in (c) above;*
- (e) invite the Government to continue to avail itself of any technical assistance of the International Labour Office on this matter; and*
- (f) make this report publicly available and close the procedure initiated by the representation.*

Geneva, 14 March 2017

(Signed) Mr Dongwen Duan

Ms Mary Liew Kiah Eng

Mr Kamran Tanvirur Rahman

Point for decision: Paragraph 78