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## Child Labour in Fishery Value Chains in Thailand and its Inter-linkages with Migration\*

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### Abstract

The research on "Child Labour in Fishery Value Chains in Thailand and its Inter-linkages with Migration" has 4 objectives namely: (1) to find out the characteristics and conditions of household situations, as well as adults and children working in the value chain of small-scale fishing (2) to analyse the causes and consequences of child labor, and how laws are designed to protect them (3) to analyse how migration affect child labor, directly or indirectly, and what conditions and government efforts have caused migrants to worsen or reduce child labor in the fisheries sector(4) to analyse how child labour can be eliminated in the fishing sector. The research employed mixed methods to answer the objectives, The research results reveal that (1) the fishery business in Thailand now demands a high number of migrant workers. The majority of Thai adults and children have declined to work in this business; (2) the Thai labor protection law has complied with the International Labour Standards (ILS) on minimum age, ILO C 138, beginning at 15 years of age with light and non-hazardous work by notifying a labor inspector and keeping records as required by the law. However, law enforcement is not strong enough, especially with migrant child workers. (3) Thailand ratified two ILO conventions to make progress in social protection for labor in 2016. (4) The government policy has always improved since 1992. However, the problem of laws enforcement needs to be solved.

**Keywords:** Child labor, fisheries, migration, Thailand, labour policy

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## Introduction

Thailand located in the heart of mainland Southeast Asia. It is a country of mountains, hills, plains and a long coastline along the Gulf of Thailand (3,565 km) and the Andaman Sea (865 km)<sup>1</sup>. Fisheries products generate about 20% of Thai food exports. Thailand's total fishery exports increased by 4% from US\$5.6 billion in 2016 to US\$5.8 billion in 2017. Major exports in 2017 included canned tuna (US\$2.1billion); processed shrimp/prawns (US\$1.8billion); processed squid/cuttlefish (US\$345 million); and canned sardines (US\$108 million), which account for three-quarters of total fishery exports. The top five markets for Thai fishery products are Japan, the United States, Australia, Canada, and China.<sup>2</sup>

In 2020, the export value of chilled and frozen fish, including fish livers and eggs from Thailand was approximately 4.67 billion Thai baht (143,780,800 USD). In that same year, the total export value of fish products in Thailand amounted to around 12.54 billion Thai baht (386,083,777 USD).<sup>3</sup>

It is generally recognized that Thailand has attracted millions of migrants from neighbouring countries looking for a better standard of living. Sectors such as fishing, agriculture, hospitality, domestic work and manufacturing are heavily reliant on migrant workers for manpower. As of November 2020, there were 2,323,124 registered migrant workers in Thailand<sup>4</sup> (Ministry of Labour, 2020). Women and men migrant workers make a substantial contribution to Thailand's economic performance. According to a study by the ILO and OECD, migrants were responsible for 4.3 - 6.6 per cent of Thailand's GDP in 2010, while representing 4.7 per cent of the employed population (ILO/OECD, 2017). The USAID Asia Counter Trafficking in Persons (CTIP) project conducted a desk review of research from the previous five years (2015-2020) on migration into Thailand's fishing sector<sup>5</sup>. The key findings include 90% of Thailand's fishing workforce, or an estimated

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<sup>1</sup> Royal Thai Embassy, Washington D.C. Thailand in brief. Retrieved 2 September 2021, from <https://thaiembdc.org/about-thailand/thailand-in-brief/>

<sup>2</sup> Ngamprasertkit, Srisuman (8 May 2018). "Thailand Seafood Report" (GAIN Report Number:TH8067). USDA Foreign Agricultural Service. Bangkok: US Department of Agriculture. Retrieved 23 December 2019. This article incorporates text from this source, which is in the public domain.

<sup>3</sup> Statista. (2021). Export value of fish product from Thailand in 2020, by type, Retrieved on 4th September 2021, from <https://www.statista.com/statistics/1195031/thailand-export-value-of-fish-product-by-type/>

<sup>4</sup> ILO, Australian Aid, and Canada. TRIANGLE in ASEAN Quarterly Briefing Note. Retrieved 2 September 2021, from [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro/documents/generic\\_document/wcms\\_735108.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro/documents/generic_document/wcms_735108.pdf)

<sup>5</sup> USAID and WINROCK. USAID Asia CTIP – Quarterly Progress Report, FY 20, Q2. Retrieved 2 September 2021, from [https://pdf.usaid.gov/pdf\\_docs/PA00WR3M.pdf](https://pdf.usaid.gov/pdf_docs/PA00WR3M.pdf)

60,000 fishers, are from Myanmar and Cambodia<sup>6</sup>. Based on findings from an International Labour Organization (ILO) survey conducted in 2019 with 219 fishers, 100% fishers were males and 44% were under the age of 40. This profile is consistent with other studies that have collected demographic information on fishers. Findings from a Rapid Asia survey with 598 fishers in 2019 showed migrants from Cambodia and Myanmar work as fishers for an average of 4.5 years. The Ship to Shore rights survey found 39% fishers reported migrating through the MOU process (practical-legal framework for migration between Thailand and Myanmar/ Cambodia). Most fishers reported obtaining a job through family & friends. The cost to migrate through the MOU process is roughly \$240 USD and includes all required documentation, but workers reportedly often pay \$365 USD for 'processing' services. A shift from the use of registered agents and brokers in recent years appears to have reduced recruitment fees, but fishers continue to report owing debts to employers for migration costs coupled with reports of wage withholding, deception and coercion. However, the MOU implementation helps decrease illegal expense and pushes lessen undocumented migrant workers and increase legal employment.

The MOU of a joint practical-legal framework for migration and employment between Thailand and the neighboring countries is changed from focusing on Myanmar, Cambodia, Lao PDR and Vietnam. Thailand has signed MOU with Myanmar and Cambodia. The objectives and scopes of the MOU are related to employment, worker rights protection and anti-illegal migration for legal employment as of the following elements.

In the study area, there were 936 fishing vessels in Samutprakarn Province during 2020 to 2021. They were classified as commercial fishing vessels (10 gross tons or more) and local fisheries (boats less than 10 gross tons) as follows:

1) 357 commercial fishing boats include:

Mueang District	141
Phrasamut Chedi District	48
Bang Bo District	168

2) There were 579 traditional fishing boats. Most of them used krill nets and persistent nets.

The migrant workers working in the fishing boats in Samutprakarn Province and conducting "Seabook" with the Samutprakarn Provincial Fisheries Office from 29 December 2016 – 31 July 2021 can be classified by nationality as follow: 1,481 Burmese, 1,224 Cambodians, 301 Laotians.

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<sup>6</sup> ILO. Less is more: How policy and technology can impact the Thai labour market for work in fishing. Retrieved 2 September 2021, from [https://www.ilo.org/asia/publications/WCMS\\_733899/lang--en/index.htm](https://www.ilo.org/asia/publications/WCMS_733899/lang--en/index.htm)

### Overview of child labour and migrant workers in the Thai fishery sector

Child labour has been remarkably existing for decades in Thailand due to the rapid industrialization and the demand of a large number of labourers in the growing industries. Thailand has been in a state of a labour shortage in many industries for more than three decades when the population growth rate has been decreasing, and the concentration of workers is increasing in service sectors faster than in the agricultural and industrial sectors. The economic growth (GDP) of Thailand of 8-11% in 1990-1995<sup>7</sup> was a pull factor encouraging the immigration of millions of workers into Thailand.

Child labourers in Thailand are mostly migrant children who have been accompanied by their job-seeking parents or relatives while immigrating to Thailand. Migrant workers in the fishery sector in Thailand are mostly coming from the bordering countries: Myanmar, Cambodia and Lao PDR. Migrant workers in Thailand are now restructured and managed to be legalized. The current status is different from what happened in the last 20-25 years. Lots of undocumented workers are however decreasing from the human trafficking businesses due to the Thai and neighbouring governments' MOU is better functioning in the latter part of the last decade. The recent intensive practice of the MOU that is the MOU of labour cooperation between two countries is now stressed more on agreement on employment (Sakulsri, 2020: 553-554). The fishery workers are also affected to turn from undocumented to document workers. The entry of migrant workers from the borders illegally is lessening to be more through a legal challenge of the neighbouring governments' cooperation, mechanism and approvals.

Thailand, a leader in the seafood industry, found that there is a large number of child labour in the fishery sector. They work in fish-catching activity under the value chains of seafood production. According to a study on Migrant Children & Child Labour in Thailand's Fishing and Seafood Processing Industry conducted by Labour Rights Promotion Network Foundation (LPN) in 2015, most migrant children were under 15 years of age. They worked in the seafood processing industry and/or had no opportunity to access Thai education system. They worked 9.5 hours a day, 6 days a week on average. Their long overtime periods were not included. These conditions contradicted child protection laws. The migrant child labourers were persuaded to work overtime for the extra pay. Some migrant children worked under subcontractors in primary processing plants, or peeling sheds. They were expected to work 11 hours a day, from dawn until dusk.<sup>8</sup>

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<sup>7</sup> Thailand GDP Growth Rate 1961-2021. Retrieved from

<https://www.macrotrends.net/countries/THA/thailand/gdp-growth-rate>

<sup>8</sup> LPN. (2015). Migrant Children & Child Labourers in Thailand's Fishing and Seafood Processing Industry, Retrieved on 4th September 2021, from <https://lpnthailand.files.wordpress.com/2017/04/a-report-on-migrant-children-child-labourers-2015.pdf>

Moreover, the study on Migrant and Child Labour in Thailand's Shrimp and other Seafood Supply Chains in 2015, nearly 1 in 10 children under 18 years of age worked in the shrimp and seafood industries. They toiled for longer hours than Thai children. One-third of migrant children in these sectors did not attend a formal school<sup>9</sup>.

The social protection services for migrants and family members were not yet functional well enough, especially the accessibility of information and the unequal treatment between Thai and migrant workers for financial allowance during the COVID-19 pandemic in 2020-2021 to mitigate the difficulty of workers according to the government policy. The mentioned social protection services were centrally the social security scheme that allowed Thai and foreign workers be members of the scheme. In actuality, it was social insurance fund. The legal migrant workers are prone to be automatically registered with the fund after they were legally employed. The illegal workers of nearly 50% of all fishery workers may loosen away from the protection of the scheme. No ship owner can formally register an undocumented or illegal employee with the Social Security Office. However, these workers and their family members may be protected under the kinds of social assistance and mitigation when they are suffering.

In legally entering Thailand, the migrant workers had to pay for some kinds of expenditures.<sup>10</sup> According to the MOU between Thailand and the neighbouring government, during the COVID-19 epidemic, the total cost of importing for one person was between 11,490 - 22,040 THB or 370 - 711 USD. One foreigner's expenditure consisted of: (1) Two times of covid tests 2,600 THB, (2) a Visa (2 years) 2,000 THB, (3) a Work permit (2 years) 1,900 THB, (4) a Health check-up for 6 diseases 500 baht, (5) Polite insurance including COVID-19 (private insurance company for 4 months) 990 THB, (6) Medical service fee (vaccination) 50 THB, (7) the cost of detention facilities (500 - 1,000 THB per day), 7-day quarantine 3,500/7,000 THB and 14-day detention 7,000-14,000 THB.<sup>11</sup> These expenditures were the cost of entering employment in Thailand. In the aftermath of the mentioned expenditures, the migrants would earn to resume them.

In the 2020 Ship to Shore Endline, research<sup>12</sup> findings reported that only 3% of migrant workers recruited in Thailand paid a recruitment fee upfront (\$420 USD); 5% of migrant fishing workers recruited in their home country paid a recruitment fee upfront (\$377 USD).

Income in Thailand was quite higher than their homelands. The average salary was \$387 USD per month for fishers, up 15% over 2017 figures.

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<sup>9</sup> See more detail in LPN. 2015. Migrant Children & Child Labour in Thailand's Fishing and Seafood Processing tail Industry.

<sup>10</sup> See in addition "Legal ways to enter Thailand" in ILO (2020): Box 1, p. 9.

<sup>11</sup> A news, topic "1 Dec. Unlocking, accepting workers from 3 nations, entering Thailand, 7 lists, employers must pay 7 steps to import workers."

<sup>12</sup> ILO. 2020. Endline research findings on fishers and seafood workers in Thailand.

The share of workers surveyed who can recall signing a work contract increased. As it showed that approximately 6% of the fishers were signed-contracted workers in 2013, while in 2017 the proportion was raised more than seven times to be 43% (ILO, 2020: 3).

In the Ship to Shore Endline findings, 23% of fishers surveyed said that they had substandard living conditions and 17% said that they had substandard work conditions<sup>13</sup>, 50% of fishers reported accessing a health service, only 16% accessed social security, 2% received training, and 1% reported legal services and workman compensation. The forced labour situations among workers surveyed in 2019: 14 per cent among fishers and 7 per cent among seafood processing workers. Many reports found that the fishers worked excessive overtime, as highlighted in the U.S. Department of State TIP report: many of them worked 18 to 20 hours per day for seven days a week, without adequate food, water or medical supplies<sup>14</sup>.

Moreover, the study on Migrant and Child Labour in Thailand's Shrimp and Other Seafood Supply Chains conducted by the International Labour Organization (ILO) and the Asia Foundation (2015) found that 23 per cent of children in the shrimp and seafood industries were working in the unhealthy wet and dirty conditions. At the same time, about 20 per cent of them reported workplace injuries compared to 8.4 per cent in other industries, and nearly 1 in 10 children under 18 worked in the shrimp and seafood industries. Moreover, only a quarter of these labourers - aged 15-17 are said to be aware of child labour laws, and nearly 65 per cent of them did not enjoy the legal protection of a contract. The study also found that one-third of migrant children in these sectors did not attend a formal school, due to a combination of challenges and constraints that included household debt, childcare commitment for siblings, and parental mobility.<sup>15</sup>

Children are prohibited from working in hazardous conditions as compliance with the ILO's standards. Thailand has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) on 16 Feb 2001<sup>16</sup>. The Convention prohibits as well child labour working at night, work continuously for more than 4 hours without rest, do not lift heavy objects or use equipment for hazardous work.

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<sup>13</sup> The subjects of substandard living conditions and substandard working conditions of the ILO's Endline Research Report (2020) are derived from a survey. That workers were shown pictures of substandard living and working quarters and asked to indicate whether the conditions in the pictures were worse, about the same, or better – that is, cleaner, more spacious, safer – than their working and living quarters. See more details in the Endline research findings on fishers and seafood workers in Thailand ILO, 2020: 24.

<sup>14</sup> US Department of State (2019). Trafficking in Persons Report: Thailand.

<sup>15</sup> ILO and Asia Foundation. (2015). Migrant and Child Labour in Thailand's Shrimp and Other Seafood Supply Chains.

<sup>16</sup> ILO. (1999). Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182).

On account of the hazardous work and related conditions which are among the concerning standards against the worst form of child labour, the ILO's Convention 182, Art. 3 (d) stipulates that: *“(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Furthermore, the ILO's Recommendation No. 190, Chapter II Hazardous Work, lays as follows: (a) work which exposes children to physical, psychological or sexual abuse; (b) work underground, under water, at dangerous heights or in confined spaces; (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.”*

The Thai Labour Protection Act B.E. 2541 (1998), Section 49, stipulates hazardous and other dangerous work of young workers including risky, such as works relating to metal smelting and pressing, work involving heat cold, vibration, noise and light of an abnormal level, work involving hazardous chemical substances and poisonous microorganisms and so on. (See more details in the next chapter, topic 2.2)

The Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) stipulates two clauses on minimum age and rest period:

*“Clause 4. An employer shall not employ a person under 18 years of age to work in a fishing boat.*

*Clause 5. Any employer shall provide a rest period of not less than 10 hours in any 24-hour period and not less than 77 hours in any 77-day period for an employee. An employer shall prepare a rest period record to be inspected by a labour inspector.*

*In case of emergency or necessary, an employer may require an employee to work during a rest period, however, a compensatory rest shall be immediately given to an employee. An employer shall prepare a rest period's record.”*

Thus the international labour standards and the Thai laws are in conformity. In spite of that the minimum age of workers onboard a ship of the fishery business mandated by the Thai labour law is two years above the ILO's minimum standard.

## Research questions

This study aims to answer the following research questions:

- (1) What are the characteristics and conditions of household situations, and adults and children working in the small-scale fisheries value chain?
- (2) What are the causes and consequences of child labour, and how are they protected by laws and mitigated by public programs in the fisheries sector?

- (3) In what ways does migration impact, directly or indirectly, on child labour and under what conditions and government efforts have caused\_migrants to worsen or reduce child labour in the fisheries sector?
- (4) How can child labour be mitigated and eliminated in the fisheries sector?

## Methodology

This research employed mixed methods comprising quantitative and qualitative methodologies. The quantitative research involved a survey of adult and child respondents in small-scale fishery households. The qualitative research methods included in-depth interviews the key informants who were the government officials in the Department of Fishery, Ministry of Agriculture and Cooperative at the national and local levels, and the government officials in the Department of Welfare and Labour Protection, Ministry of Labour in the national and local levels as well an official of Sub-District Health Promoting Hospital in the research site, the NGOs working in the research site, and the chairperson of Migrant Workers Rights Network. The main data on the status of workers and the household and employment situation of migrant and child workers were collected.

The study was scoped in the small-scale sea fishery in the Klong Dan sub-district, Samutprakarn Province.<sup>17</sup> This area was more well-known for the very active employment of Myanmar and Cambodian migrants and their child workers in the fishery business than any other place in Samutprakarn Province. The targeted population for data collection by the survey are the small 936 fishing vessels or boats of less than 10 gross tonnes making short fishing trips, close to shore.

The duration of the survey was from 1 July to 15 August 2021, and the interview of key informants was during 16 August - 30 August 2021. Purposive and quota sampling was employed to survey 300 adults and working children in small-scale fishing in the Klong Dan sub-district, Samutprakarn Province. Balance in gender, 50% for male and 50% for female was the principle to select the respondents. Most migrant workers in the Klong Dan sub-district were from Myanmar, the sample size for Myanmar was 60% and 40% for Cambodian.

The questionnaires were developed by the research team from Indonesia, the Philippines, and Thailand under the supervision of FAO. The first questionnaire used for adult surveys in the household and the second one used for working children in the same household.

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<sup>17</sup> Samutprakarn Province situated in the south of Bangkok at the mouth of the Chao Phraya River. It is part of the Bangkok metropolis. According the report of Department of Fisheries, Ministry of Agriculture and Cooperatives.

Due to the sample of Myanmar and Cambodian, the criteria to include the enumerators was native Myanmar and Cambodian speaking. Before collecting data, a training for the enumerators was held for two days. After that, five enumerators spent 30 days to collect data on the research site.

The qualitative data collection method included a desk review, in-depth interview and focus group discussion. The main data on migrant workers, the Thai government's labour migration policy and administration, the laws and regulations enactment and enforcement, and the public programs in solving child labour's worst forms of employment were collected.

### **Literature Review**

Due to the research is related to fishery laws in Thailand, International Labour Standards on Child Labour, and ILO Conventions were ratified by Thailand . The relevant laws are as follows :

#### **Fisheries Laws**

The main Thai fishery law is “The Royal Ordinance on Fisheries B.E. 2560 (2017). It is responsible by the Department of Fisheries, Ministry of Agriculture and Cooperative, not the Ministry of Labour. The Ordinance has been recently updated in 2017. Under this Ordinance the general fishery business is controlled by the state. According to the Ordinance’s legal terminologies, “Fisheries” means fishing operations, aquaculture, the caretaking of aquatic animals, or aquatic animal processing, including any operation in support of a fishing operation; “Fishing” means to search, attract, catch, take or harvest fish or any activity which can reasonably be expected to result in the attracting, catching, taking or harvesting of fish at a fishing ground; and “Seas” mean coastal seas, offshore seas, seas outside Thai waters and seas lying in the jurisdiction of another coastal state. Then employment of workers under the responsibility of the Ministry of Labour comes after with the other labour laws.

#### **International Labour Standards on Child Labour**

In supporting the policy-legal-institutional framework, legal analysis is employed. The main ideas of the legal analysis are based on the ILO’s Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) and the Committee Report (CR). Especially the commitment of the Thai government appearing in the report submitted to the CEACR. The main ideas of the legal analysis which are based on the ILO-CEACR and the CR are as follows.<sup>18</sup>

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<sup>18</sup> See in details “Direct Request (CEACR) - adopted 2019, published 109th ILC session (2021). Worst Forms of Child Labour Convention, 1999 (No. 182) - Thailand (Ratification: 2001)”

- 1) On account of the ratification of the convention, since any country has ratified a few of the ILO's conventions, therefore it is a commitment of the government to prove the implementation of the conventions via the enforcement of the national laws in concern.<sup>19</sup>
- 2) On account of the ILO monitoring mechanism, a continuous monitoring of the international labour standard compliance by the CEACR with any country is in the long run that the national government has to fully commit and report back after a request from the CEACR in order to improve the practice of all aspects and points of recommendations as best as the country member could.<sup>20</sup>
- 3) On account of the concrete action, the CEACR requests the government to declare her program(s) of action and the real implementation in witnessing a compliance with the conventions and the national laws.<sup>21</sup>

Some more international legislation and guidance against child labour can be observed from the UN's CRC, ILO's conventions No. 138, 182, 188, FAO's code of conduct and guidelines for the aquaculture work.<sup>22</sup>

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<sup>19</sup> For example, the practice in accordance with the two laws: The Anti-Trafficking in Persons Act 2008 and the Child Protection Act of 2003 and their related mechanisms in supporting the compliance with the Convention No. 188 on the Worst Form of Child Labour in procuring or offering of a child under 18 years for production of pornography or for pornographic performances, production and trafficking of drugs, and engaging in hazardous work in agricultural work.

<sup>20</sup> For example, the CEACR requested the Thai government for the providing of information on the activities of the labour inspectorate in monitoring the worst forms of child labour and their impact, including the number of violations detected and penalties imposed, as well as the progress of implementation of the programs under the ship to shore project.

<sup>21</sup> For example, the CEACR encouraged the Thai government to show the national programs of action and the real implement the programs vis a vis problem solvings to eliminate the worst forms of child labour stipulated to be conducted in 2015-2020.

<sup>22</sup> The keys substances of these international standards, codes or guidelines are as follows: Convention on the Rights of the Child (CRC) protects children's rights and abolishes child labour, affirming "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (Article 32); Minimum Age Convention, 1973 (No. 138) permits light work to be undertaken between the ages of 12/13-14/15, and sets the minimum age of employment at 14 or 15 years; Worst Forms of Child Labour Convention, 1999 (No. 182) prohibits slavery, prostitution, illicit activities, and hazardous work to be undertaken by any child under the age of 18.

Citing on child labour, one has to focus at the minimum age for employability. The minimum age of child labour according to the International Labour Standards and the Thai laws are generally consistent. For instance, the ILO Convention No. 138 and the Thai Labour Protection Act B.E. 2541 (1998), Section 44, say that the minimum age of child labour is no less than 15 years. However the minimum age for fishing business activity, the Thai law: The Ministerial Regulation Concerning Labour Protection in Sea Fishery Work BE 2557 (2014) has a better standard that the child who works onboard a shift must be no less than 18 years. While the ILO's Work in Fishing Convention (2007) (C188), the minimum age for work on board a fishing vessel shall be 16 years.<sup>23</sup>

### **Thai Labour Laws on Migrant and Child Labour, and Relevant Laws**

Working of unskilled foreigners or transmigrant workers in Thailand is regulated at the moment by some laws. The most controversial regulation relating to the unskilled labour employment and migration wave is the Royal Decree on Foreigners' Working Management Emergency Decree, B.E.2560 (2017). The Decree defines how migrants can be granted a permission to entry of employment in Thailand and how employer can employ foreign workers, the "Foreigners' Working Management Fund", and the expenses for employment.

There are several Thai labour laws being enforced for employment of workers in fishery and aquaculture. Generally, labour protection in Thailand depends on the Labour Protection Act B.E. 2541 (1998). As for the child labour protection, not only for Thai but also for the migrant workers.

It is a long controversial issue in the Thai employment regulations, especially the age of a child to be employable. In a comprehensive understanding, in sea fishery, at least the two key Thai labour laws are

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Hazardous work is work that is likely to harm the health, safety or morals of the child; Work in Fishing Convention, 2007 (No. 188) stipulates age limits for work on board fishing vessels (Article 9) and Work in Fishing Recommendation, 2005 (No. 199) provides non-binding guidance on its implementation. The Convention is also implemented through flag State and port State inspections; FAO Code of Conduct for Responsible Fisheries covers safety and health standards and adherence to international law on child labour; FAO Technical Guidelines on Aquaculture Certification guides the development, organization and implementation of credible aquaculture certification schemes; FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Reduction (SSF Guidelines) urges states to eradicate forced labour and child labour and small-scale fisheries actors to recognize children's well-being and education and to respect the CRC.

<sup>23</sup> See more details of the comparison between the ILO's standards and the Thai labour laws concerning on minimum age.

saying about how to employ and protect children, namely, (1) The Labour Protection Act B.E. 2541 (1998), and (2) The Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) Maritime Labour Act B.E. 2558 (2015).<sup>24</sup> While at the international level employment of child labour in sea fishing and maritime works, at least two ILO conventions are directly in concern. These are the Maritime Labour Convention, 2006 (MLC 2006) (ratified by Thailand on 7 June 2016), and the Work in Fishing Convention (2007) C188 (ratified by Thailand on 30 January 2019).

The stipulations about minimum age among these Thai and international laws are as follows.

- 1) The Labour Protection Act B.E. 2541 (1998); Section 44, forbids to employ of child labour under 15 years. Section 15, a young worker with the age under 18 years (or 15-17 years) can be employed (to perform the light and non-hazardous works) but with a notification to the Labour Inspector and approval by the Department of Labour Protection and Welfare, Ministry of Labour.
- 2) The Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014); Section 4, it is prohibited for a person under 18 years of age to work in a fishing boat.
- 3) The Work in Fishing Convention (2007) C188; Article 9, the minimum age to work on board of a fishing vessel is 16 years. The competent authority may authorize a minimum age of 15 for people who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.
- 4) The Maritime Labour Act B.E. 2558 (2015); Section 15, it is forbidden to allow a person under sixteen years of age to work onboard a ship. Section 16, it is forbidden to allow a seafarer under eighteen years of age to work onboard a ship at night unless it is training with an advanced plan or training by a position and duties which such seafarer shall perform during such period with the approval of the Director General of Department of Labour Protection and Welfare or assigned persons.
- 5) The ILO Maritime Labour Convention, 2006 (MLC 2006); Regulation 101 and Standard A1.1, the minimum age is 16 years as same as the age for working onboard a ship. And it is prohibited for seafarers under 18 years to do night work. An exception to strict compliance with the night work restriction may be made by the competent authority.

There is the other latest parliamentary law for the protection of fishing workers, the Labour Protection in Fishing Work Act B.E. 2562 (2019), which was legislated after the Thai government ratified the ILO's Convention No. 188 on Work in Fishing Convention (2007) in 2019. But it says nothing about the age, employment and work of child labour.

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<sup>24</sup> This research however was not included data collection of child labour in the maritime business under this law.

In general, Thailand has defined the definition of “children” under Section 4 of the Child Protection Act (2003), that “child” means “person under 18 years of age but does not include those who have reached the underage by marriage.” Nonetheless, measures to protect child labour in Thailand are stipulated in another law, Chapter 4, Section 44-52 of the Labour Protection Act 1998.<sup>25</sup>

In the case of employing a child under 18 years of age as an employee, employers apply for permission by notifying the labour inspectorate. within 15 days from the date the child enters the workforce. /Record the changed employment condition from the original/Notify the termination of employment within 7 days (Section 146).

If any employer violates section 49 (work prohibited by child employees, such as casting, blowing, casting or metal rolling, etc.) or violates section 50 (a place where a child employee is prohibited from doing work, such as a slaughterhouse, etc.) or violates the ministerial regulations issued under section 22 (work according to the type of work and the place that children are prohibited from doing) fines from 400,000 to 800,000 baht per 1 employee or imprisonment for not more than 2 years or both.

But if the above offences are committed by causing physical or mental harm to the employee or death, the punishment measures are fine from 800,000 baht to 2,000,000 baht per employee, or imprisonment for not more than 4 years or both. (Labour Protection Act (No. 5), B.E. 2560, Section 5, and added Section 148/2.

From 20 March 2019 onwards, the Royal Decree on behalf of the Workmen Compensation Act (1998)<sup>26</sup> has extended labour protection to cover the agricultural business, namely, cultivation, fishery, forestry and animal husbandry. It stipulates that employers with one or more employees of such businesses are obliged to pay contributions within 30 days from the date the employer has employees working in all areas throughout the Kingdom. This means that sea fishery workers are under the protection of medical injury and invalidity benefits while working which is in line with the workmen's compensation law that has been enforced since 1994.

Thailand has ratified the ILO Convention on Maritime, 2006 (MLC 2006) on 7 June 2016. Exactly, this convention is not directly for fishery work but for general business employment in the sea far. It is nevertheless worth mentioning that two kinds of economic work in the sea can employ workers differently: the fisher and the seafarer. They may be the same workers who are conscience-protected if any vessel operates fishery and seafood processing activities. In Thailand, it happens that the ship of maritime activity in the sea far can carry out fishery work according to the coverage of the other act “The Royal Ordinance

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<sup>25</sup> The Child Protection Act (2003) is responsible by the Ministry of Education. While the Labour Protection Act (1998) is responsible by the Ministry of Labour.

<sup>26</sup> Announcement of the Ministry of Labour Re: Criteria, Methods and Conditions for Providing Health and Welfare Benefits to Fishermen B.E. 2562 (2019), which came into force on November 18, 2019.

on Fisheries B.E. 2560 (2017) under the responsibility of the Department of Fisheries, not the Ministry of Labour. Since under this Act: “Fisheries” means fishing operations, aquaculture, the caretaking of aquatic animals, or aquatic animal processing, including any operation in support of a fishing operation; “Fishing” means to search, attract, catch, take or harvest fish or any activity which can reasonably be expected to result in the attracting, catching, taking or harvesting of fish at a fishing ground; and “Seas” mean coastal seas, offshore seas, seas outside Thai waters and seas lying in the jurisdiction of another coastal state.

The Maritime Labour Act B.E. 2558 (2015) is the other Act protecting child labour working onboard a ship. It is in conformity with the ILO’s MLC 2006. Section 15 of the Act states that the shipowner shall not allow a person under sixteen years of age to work onboard a ship. Section 16. A shipowner shall not allow a seafarer under eighteen years of age to work onboard a ship at night unless it is training with the advanced plan or training following a position and duties which such seafarer shall perform during such a period. It shall not negatively affect the health and good living condition of such seafarers and shall be approved by the Director-General of the Department of Labour Protection and Welfare, or a person assigned by the Director-General. In this respect, working during night time should be, at least, nine hours starting before midnight and finishing after five o’clock.

In addition, for improving Thai and migrant fishermen, but with a limited portion of working life on health and labour welfare, the Ministry of Labour has announced on the 26<sup>th</sup> November B.E. 2563 (2019), on the subject: Providing health benefits and welfare for fishermen. The key protection that the ship owner have the optional mandatory for health and welfare benefites are within four issues: (1) non-work-related health protection (2) compensation for lack of income from illness or injury that is not due to work (3) compensation in case of disability that is not due to work (4) compensation in case of death which is not due to work. The ship owners must do for workers, such as compensation for work injuries and death benefits which are not due to work, according at the rate of this announcement. However, they may voluntarily buys private services or apply for workers’ health and welfare benefits following the Social Security Act (1997).

In addition, as mentioned earlier, the labour protection law emphasizes child labour protection apart from the general protection to the adult worker. For the point minimum age of employment, the law says in general - no less than 15 years.

The working conditions of migrant child labour, especially on the boat, seem to violate the Child Protection Act 2003 (under the responsibility of the Ministry of Education), which defines “child” means a “person under 18 years of age. Measures to protect child labour in Thailand are stipulated in Chapter 4 of the Labour Protection Act B.E. 2541 (under the responsibility of the Ministry of Labour).

Moreover, it is challenging the Maritime Labour Act B.E. 2558 (2015) Section 15 which protects the seafarer worker, not the sea fishery worker:

“A shipowner shall not allow a person under sixteen years of age to work onboard a ship and Section 16. A shipowner shall not allow a seafarer under eighteen years of age to work onboard a ship at night unless it is training with the advanced plan or training following a position and duties which such seafarer shall perform during such period. It shall not negatively affect the health and good living condition of such seafarers and shall be approved by the Director-General of the Department of Labour Protection and Welfare, or a person assigned by the Director-General.”

Nevertheless, still recently the Thai high-ranking officer of the Ministry of Labour has insisted that this minimum age is continued in practice when a rumour happened that a child of fewer than 15 years of age was allowed to be employed. See the details of the interview below.

“With a commitment to combat the use of child labour and forced labour, the current law under the Labour Protection Act B.E. 2541 prohibits employers from employing children under 15 years of age to work as employees in general work, and under 18 years of age to work in marine fisheries. Failure to do so is punishable by a fine ranging from 400,000 baht to 2,000, 000 THB, maximum imprisonment of not more than 4 years per employee, or both. For children aged 15 to 18 years of employment, the employer must notify the labour inspector within 15 days from the date the child enters the workforce.” And: “The owner of the business establishment must strictly comply with the law. Any establishment that fails to comply with the law by employing workers under the age of 15 will be prosecuted immediately against that employer. All provincial labour protection and welfare offices can also asked for information.”<sup>27</sup>

Specifically for protection of the workers in the fishery business, in 2014, the Minister of Labour (MOL) has improved its regulation, the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014). Young workers less than 18 years are inhibited to work onboard a ship of sea fishery.

In 2015 and 2019 the Thai government enacted two laws concerning on maritime work and sea fishing works: Maritime Labour Act B.E. 2558 (2015) in effect on 5<sup>th</sup> April 2016 and Labour Protection in Fishing Work Act B.E. 2562 (2019) in effect on 18<sup>th</sup> November 2019. Also, in 2019 the Minister of Labour (MOL) has declared its Announcement of the Ministry of Labour Subject: Providing health benefits and welfare for fishermen, announced on the 26<sup>th</sup> November B.E. 2563 (2019).

In April 2021, the government amended the Royal Decree on the Prevention and Suppression of Human Trafficking (2008), announced in the Government Gazette on April 7, that “force to labour or service”,

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<sup>27</sup> Source: The Department of Labour Protection and Welfare counters false news. Employers are prohibited from using workers under the age of 15 to work, an interview on 25th February 2021 of Mr Apinya Sucharitanan, Director-General of the Department of Labour Protection and Welfare, retrieved , on 10<sup>th</sup> November 2021, from <https://www.labour.go.th/index.php/57429-15>

Section 6/1, is added as a kind of mal practices in human trafficking and provides additional avenues for prosecuting employers.<sup>28</sup>

The two laws of 2015 and 2019 have aimed to help improve seafarer's and fisher's quality of life through decent work approach/strategy. While the Announcement of the MOL on 26<sup>th</sup> November 2019 has imposed the employer to pay more attention and expenditure on safety at work and health injury protection and compensation during work of the fishermen.

The enforcement of laws and regulations on labour protection are lacking an efficiency especially on the point of the labour inspection. Since it is not yet the professional service of the state officer when at least one third of respondents reported having rarely or never seen inspection staff in the past 12 months. This should be seen as a poor professional service to the clients of the government officers.

In policy implementation to solve problem of migrant and child labourers, the labour inspection is a primary factor supporting a success of law enforcement for labour protection. This kind of function depends so much on the professional service of the state officers relating to the amount and officers' competency. But this is still inefficient in the fishery. As in another research work, as said earlier, from the "Endline research findings on fishers and seafood workers in Thailand" (ILO 2020: 35), it is reported by the boat fisher that: *"More than one third of respondents reported having rarely or never seen inspection staff in the past 12 months, a figure which was somewhat higher for big boats than smaller ones. Just over half of respondents (53 per cent) had ever been interviewed by Thai Government officials. None of the workers in the "seeking help" subset above reported taking their problems to a Government official."* Thus inspection work is still in a problematic situation on account of professional service to the clients of the government officers.

### Government Policy on Migration and Implementation

The economic growth of Thailand from the late 1980s to the beginning of the 1990s<sup>29</sup> was one of the pull factors encouraging the immigration of millions of workers into Thailand. The push factors that drove the migrants were the economic stagnation affecting to poverty of the people in the neighbouring countries, and the political disruption, especially in Myanmar. Since 1992, the immigration of low-skilled

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<sup>28</sup> A minimum prison punishment term is 6 months or a fine of 50,000 baht, and the maximum penalty is death if the victim is killed. (See more in a news "Trafficking in Persons : The Trafficking in Persons Act The revised version has come into force, making "forced labour" a crime. The maximum penalty is the death penalty."

<sup>29</sup> GDP growth (annual %). See more detail from from <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=TH>

migrant workers from the neighbouring countries to Thailand was recognized as a serious situation and problem. The number of migrant workers has been increasing from year to year to now about 2.5 million in 2021. It accumulated for the past 26 years. A tremendous number of migrants have been working due to lack of Thai workers, especially in the dirty, difficult, and dangerous work. (Paitoonphong and Chalamwong 2012 and Sangthog 2021)

With regard to lack of Thai workers in many industries and the majority in the fishery business, Thai workers refused to do the dirty, difficult and dangerous jobs. A large number of the child workers of migrant families were employed.

Daring to take a risk and do hard work aboard of the poor migrants, it was well-known that 75-80 per cent of migrant workers in the fishery and seafood businesses sought good-paid jobs to remit money back to their original homes (ILO 2020: 18).

Women and men migrant workers are making benefits to Thailand's economic growth. It is so rational that they should be well of social protection. ILO and OECD once studied that migrants were responsible for 4.3 - 6.6 per cent of Thailand's GDP in 2010 while representing 4.7 per cent of the employed population (ILO/OECD, 2017). Most of the migrants were employed in low-skilled jobs, including fishing, agriculture, construction, manufacturing, domestic work, and other services.<sup>30</sup>

Currently, according to the legitimation and policy of the government, migrant workers can be classified into four types. They are as follows: (1) Registered migrants (legal and or documented migrants); (2) Migrants under the Memorandum of Understanding (MOU) between the Thai government and neighbouring countries; (3) Migrants under the temporary period of nationality verification (NV); and (4) Unregistered migrants (illegal and undocumented migrants).

During 2013 to 2019, most of the migrant workers were the ones coming by the Memorandum of Understanding (MOU) between the Thai government and the Myanmar, Cambodian and Lao People's Democratic Republic (Lao PDR) governments. They were documented and legal migrants. Whereas many migrant workers were undocumented vis a vis illegal. This kind of workers were always permitted to work. They were in the waiting list of nationality proof by the regularization procedures. Before 2015, it was observed that the MOU migrant workers were only a small proportion of migrants who entered to Thailand.<sup>31</sup> The improvement of immigration was complicated work. However, millions of workers were protected to be exploited by employers. In 2021, it was reported that more experienced workers entered to Thailand through the legal MOU channel. The MOU base of immigration was restarted on the 1<sup>st</sup>

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<sup>30</sup> See more detail from International Labour Organization, Regional Office for Asia and the Pacific, TRIANGLE in ASEAN Quarterly Briefing Note, Thailand (July - September 2021, p. 1.

<sup>31</sup> op. cit.

December 2021 to employ 400,000 foreign workers as demanded by the employers after the COVID-19 pandemic in 2019-2021. The intended future attempts of the Ministry of Labour's Department of Labour Protection and Welfare in solving child labour problems as the outlines for the next phase for the elimination of the worst forms of child labour in accordance with national policies and plans were as follows:

- Accelerating the monitoring and evaluation of performance by national policies and plans to decrease the use of child labour in the worst forms for the fiscal year of 2015-2020 to make the next national policies and plans to eradicate the worst forms of child labour
- Establishing a working group from relevant agencies to jointly discuss plans, projects, and activities and follow up on the results of operations to make plans, projects or activities can be responded to new policies and plans in eliminating the worst forms of child labour by integrating the involvement of the multiple agencies in dealing with plans, projects or activities, involving data collection systems or statistics
- Planning to conduct a survey of working children in Thailand in 2022 in a comparison with the results of the survey conducted in 2018 to obtain in-depth information for planning further actions with cooperation from the National Statistical Office and the International Labour Organization
- Giving priority to the competency development of the staff being responsible for the enforcement of law by educating them about the law enforcement action guidelines and child labour patterns in the worst form to make work go rapidly and continuously.”<sup>32</sup>

The mixture of the migrant workers in Samut Prakarn Province which is one of the most congestion income fortunes in Thailand reflects the proportion of the choices above. It needs, however, a future systematic database improvement to see the paths of migration that links with their working areas.

The economic gain of Thailand in employing foreign workers has been positively confirmed (OECD/ILO, 2017) and led to the encouragement of the Thai government to improve the employment practice of the foreign workers. The Thai government has been trying to cope with the dynamic migration. The increasing demands of the entrepreneurs in employing of foreign workers coming from neighbouring countries have been served by Thai government continuously.

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<sup>32</sup>Situational report to eliminate the use of child labour in the fiscal year 2019, p. chor-ching (in Thai),

Immigration of transnational workers into Thailand has not only allowed the migrant workers themselves to be (re)employed but it also opened the opportunity of the children of migrant workers to enter the employment market through various channels. Since there are not only adult migrants who have been immigrating to Thailand, their children are also accompanied by their parents, relatives or caregivers to seek for employment. Working of the child labourers in a prohibited area or activity is happening by the conformity of the parents and going on into a regular practice of correct and wrong actions according to the Thai labour laws along the success and failure spectrum of implementation.

Another national mechanism, the National Policy Committee on Anti-Trafficking in Persons and Illegal, Unreported, and Unregulated Fishing coordinates anti-trafficking in persons, policies, and activities and oversees five subcommittees, including the Subcommittee on Child Labour, Forced Labour, and Migrant Workers chaired by the MOL.

These two national committees and their subcommittees are reacting for the better situation of the worse form of child labour employment relating to human trafficking. However, the publicity of these two committees' attempts and the results of their works are rare to be known.

The Tambol Administrative Organization (TAO) falls into this category that fishing should be paid attention to how it could help improve migrant and child labor's quality of life in the locality and cooperate with the community members in the specific area where fishery business is congested.

These pieces of information inside and outside the country showed that the institutionalization of the Thai public labour administration and implementation of public programs and services for migrant workers and child workers do not yet well. However, more improvements need to be made.

## Research results

The research results is presented by answering the research questions and offering the concluding remarks that the main force behind these phenomena is the poverty of the migrant workers in their home countries. Child labour immigrating into Thailand with their parents or guardians is the opportunity to solve their poverty. So they are doing the rational action, with the allowance of their parents or guardians in, (1) helping their families' business, and (2) increasing income of the family for living, saving and remitting money back to their homeland for paying debt. The factor on the Thai side pushing the child migrants to work is the less professional work of the Thai government offices and their officers in promoting child migrants for formal education.

**1. The effect of migration on schooling.** The finding revealed that that parents of the child labour have taken their children from the bordering countries into Thailand. The household opens the opportunity for their children to work for the whole family. Even a number of them are working for getting income by each labour capacity but the earned income is for the use of the family and sending back home in Myanmar,

Cambodia and Lao PDR. Furthermore, increasing family income is for saving of all migrant nationalities which is about 10-56 per cent of their income. Thus, getting more income motivates the migrant and child workers to accept poor and health risky conditions of employment and during their work.

**2. The surplus of labour of migrant and child workers in the study area** help the ship owners find free workers to be employed so easily. This situation affects to the limitation of workers' bargaining power demanding for the better conditions of employment with the multiple employers that ignores the physical and social protection of their own child workers.

Characteristics of child working is differentiated along the four main value chains' fishery procedural tasks' activities designed: pre-harvesting, harvesting, post-harvesting, pre-processing and processing and storage.<sup>33</sup> The main use of more than 80% labourers are on pre-harvesting and harvesting, and pre-processing (especially cleaning/repairing boat after fishing, and grading).

**3. Working conditions** which cover working time (hours of work, rest periods, and work schedules), remuneration, as well as the physical conditions and mental demands existing in the workplace appear differently along the pre-harvesting, during-harvesting and post-harvesting activities. Child workers work for more than 8 hours a day. This violate the law in a strict sene. The rest periods is on the boat and at the harbour or at home. While the work schedule is mainly depended on the ship owner's direction. A smaller boat may sail out every day. Generally, the small boat works for fish harvesting about 3-13 day-round. However, how it really lasted long for a round is also depended on the size or capacity of boat and income from selling fishes the boat owner gets.<sup>34</sup> More money gets, less frequency goes catching fish. Income payment for child labour is roughly said in term of weekly pay. But this does not always mean fishing of every boat is conducted every week and then pay. Since there is a rest period of fishing activity that the ship owner will not sail the boat out into the sea which is about seven to fifteen days after the last fishing. The bigger boat the longer days of harvesting per round implies the same longer days child worker spends working time on the boat. However, as child labour is a free labour on a daily or week basis. One is not

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<sup>33</sup> In details: At the pre-harvesting tasks, the characteristics of work are working about plan fishing operations, establishing the fish to be sought, the fishing location, the method of capture, and the duration of the trip; preparing supplies like bait, ice, fuel, ingredients; checking/cleaning/repairing the boat; mending fish nets. At the harvesting tasks, the characteristics of work are about harvest/fish/catch fish and onboard handling (putting ice, sorting. At the pre-processing tasks, the characteristics of work are about hauling/unloading, cleaning/repairing boat after fishing, and grading. At the processing and storage tasks, the characteristics of work are about removing entrails, gutting or cleaning; peeling; and smoking, sun drying, salting

<sup>34</sup> Safety practice guidelines in sea fishery work. (2013). Department of Labour Protection and Welfare, Ministry of Labour, p. 17-27.

depended only on a single employer and work continuously of one ship owner in the full year. But a child labour works for many ship owner. Thus, there are about 1/3 of the Myanmar and about 1/2 of the Cambodian young workers are working every day onboard a ship of the different owners. This would make the child labour earn a lot but they would have not enough time for the physical rest.

At the pre-harvesting and post-harvesting works, workers are taking less risk and dangerous than in the harvesting period as the jobs are manageable to be the light and non-dangerous work, such as preparing equipments, selling fish at the harbour, and so on. But facing chemical substances is possible that needs to be aware by the employers and child workers. Most of child workers of harvesting work have no real fear of taking risks on the ship board without a proper personnel protection equipment. As the fishery business is in nature a small size of boat and mostly no more than ten employees that working conditions are generally poor to be provided for its employees.

A non-professional work of labour inspectors is one of the factors maintaining poor conditions of works and prolonging the working of the child on the boat. Though the government has already strengthened the labour inspectors through the training program but the numbers of them to be produced out still in limitation from the rigidity of the annual government budget. So that the labour inspection of small-scale fishing boats is never enough and in time of necessity.

## Discussions

Based on findings, the working conditions of migrant child labour in sea fishery business may violate the Child Protection Act 2003, which defined “child” means “person under 18 years of age. Measures to protect child labour in Thailand are stipulated in Chapter 4 of the Labour Protection Act B.E. 2541. The employer may violate the Section 45 as stated that:

“Employers are prohibited from employing children under 15 years of age as employees. In fact, many workers in the small-scale fishing and value chain are under 18 years old.”

Moreover, according to the focus group discussion of the migrant workers in small-scale fishing including the in-depth interview employer, a number of the employers didn't comply rightly with the Section 46 regarding (1) Employers must provide one continuous hour of rest per day within the first 4 hours of work and to have a break time as specified by the employer. (2) Prohibit employers from employing children under 18 years of age to work between 22.00 - 6.00 o'clock unless permitted in writing by the Director-General (Section 47, paragraph one) and prohibited to work overtime or to work on holidays (Section 48). (3) Prohibit employers from allowing employees under 18 years of age lifting, carrying, hauling, dragging, or pushing heavy objects over 20 kg for a female employee or 25 kg for a male employee is prohibited. (Ministry Regulations Prescribing Weight Rates for Employers Allowing Employees to Work, B.E. 2547). (4) For the benefit of improving the quality of life, employees under 18 years of age are entitled to

leave for meetings, seminars, training, or other leave organized by an educational institution or government, or private agency approved by the Director-General by notifying the employer in advance of the reason for the leave and provide relevant evidence, if any the employer shall pay the wages to the child employee equal to the wages on a working day throughout the leave period. but within one year must not exceed 30 days (Section 52)".

However, the child migrant workers, from 18 years of age, in Thailand under the sea fishery employment of this study are legally better protected than those working in maritime work in the sea far of the bigger ship which is usually beyond 200 sea nautical miles from the coast of a country, both in terms of age and working onboard a ship, regardless of the types of workers and labour activities. As it is known that the Maritime Labour Act B.E. 2558 (2015) Section 15 states as already mentioned that "A shipowner shall not allow a person under sixteen years of age to work onboard a ship and Section 16, shipowner shall not allow a seafarer under eighteen years of age to work onboard a ship at night unless it is training with the advanced plan or training following a position and duties which such seafarer shall perform during such period. It shall not negatively affect the health and good living condition of such seafarers and shall be approved by the Director-General of the Department of Labour Protection and Welfare, or a person assigned by the Director-General. In this respect, working during nighttime would be, at least, nine hours starting before midnight and finishing after five o'clock." which matches with the fishing activity that usually performed during nighttime.

In general, without a professional and efficient labour inspection, how it would be assured that such work at night of the child labour onboard a ship is following the laws and regulations.

It could be concluded that almost all working child of the migrant workers in fishery business work is the child labour under 15 years of age. More Cambodian than Myanmar children start working lower than 13 years which is violating the Labour Protection Act 1998 that permits only no less than 15 years. Most of the child labour, 80-100 per cent, access to liquid chemical substance, noisy physical environment and bacterias.

In fish harvesting period, more than two times of Cambodian child workers are working on the ship board more than Myanmar children in the day and the evening times. That is too illegal since working in harvesting time is usually at the late night. Because an employer is prohibited from employing a child employee under the age of 18 to work between 10:00 PM and 6:00 AM unless authorized in writing by the Director-General (section 47, paragraph one).

There is links between poverty, migration, and child labour in the small-scale fishing sector and value chain. All working child migrated to Thailand with their families. They didn't attend school because they wanted to help their family to earn money as much as possible. Part of their income was sent to their family whose living in Myanmar and Cambodia to pay the debt.

At the point of social protection, the law enforcement for labour protection is not yet good enough as we have found that labour inspection is less efficient due to the limitation of government labour inspectors.

Regarding the findings on education, a great number of Myanmar and Cambodian children had to work to earn money to fulfil their family's needs, so they didn't attend formal school. The Ministry of Education declared that education opportunities must be extended to all children irrespective of whether they could produce evidence of Thai nationality or civil registration, regardless of their nationality or legal status, have the right to 15 years of free basic education. However, there are existing barriers to migrant child labour attending school due to financial constraints, and language barriers, that children face when they seek educational opportunities in Thailand. These factors make Thai schools an educational pathway that remains out of reach to many migrant child labourers.

Migrant fishermen might be excluded from the social security benefits including a financial transfer because the fishery business is just recently covered regulatorily by the social security law. Such fishery business is only operated in the full calendar year.

On the point of law enactment and enforcement, the labour ministerial regulation is improved in 2014. Young workers under 18 years were inhibited for working onboard a ship of sea fishery. In 2016, Thai government enacted two laws concerning on maritime work and sea fishing works. These two laws aimed to help improve workers' quality of life through decent work. In 2019, the human trafficking law was also amended to add the employers' "force to labour and service" over worker as one of the illegal actions relating to human trafficking that shall be prosecuted. The enforcement of law and regulation on labour protection is however lacking an efficiency especially on the point of the labour inspection. Since it is not yet the professional service of the state officer when a great number of the ship owners hardly sees the labour inspector to examine the use of labour in a year.<sup>35</sup> This should be seen as a poor professional service to the clients of the government officers.

Besides, in the Thai law, the child labourers work so hard as the same capacity of the adult workers as the law has no limitation hours for them. They are required by law to work eight hours as adult workers. Is the number of the child working hours same as the adult workers one of the worst form of child labour employment? One of the recommendations says about this observation.

On the point of public programs for improvement of decent work of migrant and child workers, the government attempts to eliminate the worst forms of child labour related to human trafficking issue. A few programs were conducted by the government offices cooperating with some international organizations, and the Thai NGOs. It found that some kind of actions are on progress such as planning and cooperating with provincial and cross-border solving mechanism.

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<sup>35</sup> This figure was confirmed by the other mentioned research work, published by the ILO (2020).

Such attempts confirm the significance of the institutionalization of cooperation among all stakeholders in solving the problems in the long run. More synergy of the international and national forces is needed to help Thailand. Along the spectrum of success and failure, on the education issue, the rate of migrant children were increasing. However, there are still a great number of children who are abandoned the compulsory education.

Thai government started to reopen the country, after the COVID-19 pandemic since the 1<sup>st</sup> November 2021. If Thailand is still poor and non-professional in balancing the management of migrant and child labour for economic and social protection successes, the immigrating of the transnational workers through the legal MOU system that aims at 400,000 persons to fulfill the lack of the labour forces in various industries starting in December 2021 will heap the chronic existing problems facing forever. Thailand's agricultural economic activity and the seafood production is successful in term of an economic gain worldwide but on the suffering of the migrant fishermen and their child labours. It needs the strong measurable commitment and progressive of implementation of the social protection of the Thai government to the entire migrant adult and child workers.

### **Recommendations**

Based on the above findings, the researcher recommends that the Royal Thai Government should improve its labour policy concerning migrant workers and child labourers as follows:

(1) The Ministry of Labour and its Department of labour Protection and Welfare should get more annual budget for labour protection work in the formal and informal employment of migrant workers and child labours.

(2) The Ministry of Labour and its Department of labour Protection and Welfare should review national laws and regulations regarding child labour in all employment sectors and occupations to meet the ILO's standards; enforce efficiently the Labour Protection Act B.E. 2541 by assigning the labour inspectors to specifically protect the child labour rights in the small-scale fishing sector; and remove children from high number of working hours, risk and hazardous work.

(3) Apparently, most of the children of migrant workers work as the child labours by the allowance of the parents, the Ministry of Labour should improve the capacity of the labour inspectorate to enforce the provisions of the Labour Protection Act, the Occupational Safety, Health and Environment Act and the relevant ministerial regulations in the fishing and agricultural sectors. It could be done by increasing the numbers of the labour inspectors and assign them to frequency examine the working places and boats to protect the child labour rights in the small-scale fishing sector.

(4) Thailand should ratify the ILO's conventions No. 97 on Migration for Employment Convention (Revised), 1949 and No. 143 on Migrant Workers (Supplementary Provisions) Convention, 1975 that workers and their family shall be well treated in employment, social security protection and related benefits of worker's quality of life.

(5) The Ministry of Labour should review the national and provincial data requirements concerning child labour in fisheries and integrate these needs into existing information collection systems. At least the national data base about family, education, health and work should be involved separately amongst nationalities of workers and child labours. This kind of data work improvement should be done in cooperation of the Ministry of Labour, the National Statistic Office and the Ministry of Digital Economy and Society.

(6) The Ministry of Labour should recreate a registration system capable of indicating the legal and illegal status of migrant children in all sectors, namely agriculture, industry, and service. The system will enhance follow-up and monitoring and inspecting practices aiming at protecting migrant populations. It will also help address issues of incorrect information, such as, name, age, education, nationality, working status, and so on.

(7) The Ministry of Labour and the Ministry of Agriculture and Cooperative should mainstream child labour in sectoral employment policies, and develop the special programs in collaboration for a long run implementation according to the age and status of children working in different agriculture, industry and service sectors of employment.

(8) The Ministry of Education and the education centers of migrant workers and child labour in the community areas should review curricula and school hours to suit the needs of families and to attract them. Additionally, compulsory education through the computer online service should also focus on child migrants.

(9) The revision of the law to set the maximum working hour numbers of child labours, such as no more than six hours, may be one of the measures to lessen the worst form of child labour. Since the Thai law, in general not for some kinds of works, has no limitation of hours of work for child labour but weights them as same as the adult worker.

(10) The Thai government may move to improve the MOU with the neighbouring countries on immigration and child labour employment to follow the ILO's standards. Re-entry of employment of the adult migrants and under the employers' co-responsibility should be based on the experience with a clean record on the legal employment of child labour.

(11) The government should treat the members of the social security fund equally. Since they are the members contributing to the fund stipulated by the virtue of law without distinction, regardless of member nationalities. This suggestion comes from lesson learned during the period of the COVID-19 pandemic in 2020-2021. The government transferred an allowance to only Thai people affected by the

disease. The migrant workers were not given because that amount of money comes from a public foreign debt not the Fund in itself.

(12) According to the limitation of national budget, the public programs implementation in solving problems of the transnational migrant workers, the expenses for them could be considerably supported from “Foreigners’ Working Management Fund”. It stipulates in the Section 75 of the Foreigners’ Working Management Emergency Decree, B.E.2560 (2017), as the third subsection of the Section 77 lays the possibility how to make use of the Fund that: “The money of the Fund shall be expended for the following objects: (3) assisting and subsidising State agencies or non-governmental organisations which have proposed projects or work plans in connection with working management, welfare provision, education, public health and labour protection for foreigners.

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