

**AN ASSESSMENT OF THE EFFECTIVENESS OF PROTECTION  
MECHANISM FOR MIGRANT FISHERMEN FROM MYANMAR IN  
THAILAND: A CASE STUDY FROM SAMUT SAKHON PROVINCE**

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A Thesis Submitted in Partial Fulfillment of the Requirements  
for the Degree of Master of Arts in International Development Studies  
Faculty of Political Science  
Chulalongkorn University  
Academic Year 2012

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บทคัดย่อและแฟ้มข้อมูลฉบับเต็มของวิทยานิพนธ์ตั้งแต่ปีการศึกษา 2554 ที่ให้บริการในคลังปัญญาจุฬาฯ (CUIR)

เป็นแฟ้มข้อมูลของนิสิตเจ้าของวิทยานิพนธ์ที่ส่งผ่านทางบัณฑิตวิทยาลัย

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การประเมินประสิทธิผลของกลไกการคุ้มครองแรงงานประมงจากพม่าในประเทศไทย: กรณีศึกษา  
จังหวัดสมุทรสาคร

นายเคลลี่ เกรน ชูล

วิทยานิพนธ์นี้เป็นส่วนหนึ่งของการศึกษาตามหลักสูตรปริญญาศิลปศาสตรมหาบัณฑิต  
สาขาวิชาการพัฒนาระหว่างประเทศ  
คณะรัฐศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย  
ปีการศึกษา 2555  
ลิขสิทธิ์ของจุฬาลงกรณ์มหาวิทยาลัย

|                   |  |
|-------------------|--|
| Thesis Title      | AN ASSESSMENT OF THE EFFECTIVENESS OF<br>PROTECTION MECHANISM FOR MIGRANT<br>FISHERMEN FROM MYANMAR IN THAILAND:<br>A CASE STUDY FROM SAMUT SAKHON<br>PROVINCE |
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จากพม่าในประเทศไทย : กรณีศึกษาจังหวัดสมุทรสาคร (AN ASSESSMENT OF THE  
EFFECTIVENESS OF PROTECTION MECHANISM FOR MIGRANT FISHERMEN FROM  
MYANMAR IN THAILAND: A CASE STUDY FROM SAMUT SAKHON PROVINCE) อ.ที่  
ปริกษาวิทยาพนธ์หลัก: ศ.ดร. สุภางค์ จันทวานิช, อ.ที่ปริกษาวิทยาพนธ์ร่วม: ดร. รัชดา ไชย  
คุปต์, 142 หน้า.

ประเด็นเรื่องการคุ้มครองเพื่อใช้แรงงานอย่างผิดกฎหมายเป็นปรากฏการณ์ที่เกิดขึ้นอย่าง  
ต่อเนื่องในกลุ่มผู้อพยพชาวพม่าซึ่งทำงานอยู่ในอุตสาหกรรมประมงในประเทศไทย ปัญหายังคงเกิดขึ้นอย่าง  
ต่อเนื่องควบคู่ไปกับการเติบโตของประชาคมเศรษฐกิจอาเซียน (AEC) และการเปิดเขตการค้าระหว่างชายแดน  
ตราบไคที่ยังไม่สามารถทราบถึงต้นตอที่แท้จริง

มีความพยายามที่จะศึกษาวิธีการที่กระบวนการคุ้มครองและการแสวงหาผลประโยชน์อย่างไม่  
เป็นธรรมที่เกิดขึ้น แต่อย่างไรก็ตามมีเพียงงานวิจัยจำนวนหนึ่งเท่านั้นที่ศึกษาโครงสร้างที่ถูกนำมาใช้ในการ  
ป้องกันความรุนแรงและความปลอดภัยในสิทธิมนุษยชน วิทยานิพนธ์ฉบับนี้กล่าวถึงกระบวนการอันหลากหลาย  
ของกลไกการป้องกันทั้งจากทางภาครัฐและภาคชุมชนในประเทศไทย โดยชี้ให้เห็นว่ากลไกไคที่มีประสิทธิผล  
ที่สุดในการแก้ปัญหาแรงงานและปัญหาสิทธิมนุษยชนของกลุ่มชาวประมงผู้อพยพ และปัญหาไคที่ต้องการ  
เยียวยาอย่างเร่งด่วนที่สุด

งานวิจัยครั้งนี้ค้นพบปัจจัยหลายอย่างที่สามารรถแสดงให้เห็นถึงปัญหาหลักของกลุ่มชาวประมง  
อพยพในจังหวัดสมุทรสาคร รวมถึงธรรมชาติของกลไกที่สามารถปกป้องพวกเขา จากการศึกษพบว่ากลุ่ม  
ชาวประมงอพยพจำนวน 21 คนที่ถูกสัมภาษณ์ครั้งนี้ ถูกล่องละเมิดสิทธิมนุษยชนและใช้ความรุนแรงในการ  
ทำงาน เช่น ไม่ได้รับค่าจ้างเต็มจำนวน ถูกล่องละเมิดทั้งทางร่างกายและจิตใจจากการทำงาน ถูกกระทำ ความ  
รุนแรงจากหัวหน้าผู้คุมเรือและนายจ้าง ถูกกีดกันในการเข้าถึงการรักษาพยาบาล หรือได้รับเงิน ค่า  
รักษาพยาบาลอย่างไม่เป็นธรรม ไม่อนุญาตให้ทิ้งเรือประมง ถูกจำกัดเสรีภาพบนเกาะ รวมถึงขณะถูกจับใน  
ขณะที่มีหนี้ในระบบ งานวิจัยพิเศษเกี่ยวกับชาวประมงผู้หนึ่งได้ถูกนำมาใช้เพื่อเปิดเผยว่าเพียงความตระหนัก  
ถึงสิทธิที่พึงได้รับในฐานะผู้ใช้แรงงานอพยพในประเทศไทยสามารถนำไปสู่ความสำเร็จในการปกป้องแรงงานใน  
หลายปีที่ผ่านมาได้อย่างไร

งานวิจัยชิ้นนี้ยังได้วิเคราะห์ถึงมุมมองจากตัวแทนของทางภาครัฐ องค์กรการประมง รวมไปถึง  
องค์กรไม่แสวงหากำไรท้องถิ่นและองค์กรในพื้นที่โดยชี้ให้เห็นถึงจุดแข็งและจุดอ่อนของการปกป้องในครั้งนี้

สาขาวิชา การพัฒนาต่างประเทศ .....ลายมือชื่อ.....  
ปีการศึกษา 2555 .....ลายมือชื่อ อ.ที่ปริกษาวิทยาพนธ์หลัก.....  
ลายมือชื่อ อ.ที่ปริกษาวิทยาพนธ์ร่วม.....

# # 5481104724 MAJOR: INTERNATIONAL DEVELOPMENT STUDIES  
 KEY WORD: HUMAN TRAFFICKING / LABOR EXPLOITATION / HUMAN  
 SECURITY / MIGRATION / MIGRANT WORKERS / FISHERMEN / MYANMAR

KELLY GLENN SCHULZ: AN ASSESSMENT OF THE EFFECTIVENESS  
 OF PROTECTION MECHANISM FOR MIGRANT FISHERMEN FROM  
 MYANMAR IN THAILAND: A CASE STUDY FROM SAMUT SAKHON  
 PROVINCE. ADVISOR: PROF. SUPANG CHANTAVANICH, PH.D., CO-  
 ADVISOR: RATCHADA JAYAGUPTA, PH.D., 142 pp.

The issue of trafficking in persons for the purposes of labor exploitation is a growing phenomenon amongst migrant workers from Myanmar who are working in Thailand's commercial fishing industry. Along with the development of the ASEAN Economic Community (AEC) and the opening up of cross-border trade and work flows, this problem can only be expected to continue grow so long as the root causes remain unaddressed.

Attempts have been made in order to understand the methods by which this form of human trafficking and exploitation takes place. However, little research has been done to understand the structural system of protection mechanisms that have been put in place to try and prevent these violations of human rights and security from occurring in the first place. This thesis project examines the various government and community-based protection mechanisms in Thailand by determining which mechanisms are most successful in upholding the fundamental labor and human rights of these migrant fishermen and which ones are in greatest need of correction.

This research project was able to uncover several new findings that shed light onto the specific situation of migrant fishermen in Samut Sakhon and the nature of the system of mechanisms that are available for their protection. It was found that the twenty-one migrant fishermen interviewed in this study faced human rights abuses and labor violations such as: not receiving the full payment of their wages, being physically and mentally abused through the use of threats as well as violence from their boat captains and employers, prevented from receiving access to medical treatment or to an appropriate compensation for that treatment, not being allowed to leave the fishing boats, being restricted to move around while on land, and being caught in situations of illegal debt bondage. A special case study of a lone migrant fisherman is used in order to reveal how the simple awareness of one's rights as a migrant worker in Thailand can lead to many years of successful protection from this kind of labor exploitation.

In addition, this paper also analyzes the perspectives of representatives from the Royal Thai Government, fishery associations, as well as from local NGOs and community-based organizations in order to determine the strengths and weaknesses of their provided protection mechanisms.

|  |                               |
|--|-------------------------------|
| Field of Study: <u>International Development</u> | Student's Signature: .....    |
| <u>Studies</u> .....                             | Advisor's Signature: .....    |
| Academic Year: <u>2012</u> .....                 | Co-advisor's Signature: ..... |

## ACKNOWLEDGEMENTS

My undergraduate degree is in the field of Intercultural Studies and it has enabled me to travel all around Southeast Asia and learn from the many different peoples and cultures that make up this fascinating corner of the world that we live in. Those experiences have translated into a passion and a desire to continue to learn more about this region's exciting new opportunities and challenges that it is facing in the Twenty-First Century. This thesis is dedicated to my wife Angela, who has been there right beside me throughout these experiences and has supported me every step of the way – thank you.

I would like to thank my Advisor Dr. Supang Chantavanich and Co-Advisor Dr. Ratchada Jayagupta, for their support and guidance throughout the development, data collection, writing and rewriting stages of my thesis. I would also like to express my appreciation to my thesis committee members, Dr. Amara Pongsapich and Mr. Jerrold Huguet for their astute critique and thoughtful advice regarding this project. In addition, I would like to thank the Asian Research Center for Migration (ARCM) for providing resources and support to my thesis research.

My sincere appreciation goes out to the Labor Rights Promotion Network (LPN) and the Raks-Thai Foundation (RTF) for exposing me to the issue of the trafficking of migrant fishermen for the purposes of labor exploitation and taking the time to show me around Samut Sakhon as well as provide me with numerous contacts, resources and documentation. Most of all, I would like to thank the many migrant fishermen that took the time to share information about their lives, experiences, issues that they face, as well as about their dreams for the future.

Last but not least, I would like to thank the entire staff and faculty of the Masters or Arts in International Development Studies Program at Chulalongkorn University for their guidance and assistance throughout the entire year. It would not have been possible to complete this program without their support and encouragement.

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## LIST OF ABBREVIATIONS

|        |  |
|--------|--|
| AHTD   | Anti-Human Trafficking Division  |
| ARCM   | Asian Research Center for Migration  |
| ASEAN  | Association of South East Asian Nations                                      |
| ATN    | Anti-Trafficking Network   |
| ATIPA  | Anti-Trafficking in Persons Act  |
| COMMIT | Coordinated Mekong Ministerial Initiative against Trafficking                |
| DLPW   | Department of Labor Protection and Welfare                                   |
| DOF    | Department of Fisheries  |
| DSDW   | Department of Social Development and Welfare                                 |
| DSI    | Department of Special Investigation  |
| FAO    | Food and Agriculture Organization of the United Nations                      |
| GMS    | Greater Mekong Sub-Region  |
| ILO    | International Labor Organization   |
| IOM    | International Organization for Migration                                     |
| LPA    | Labor Protection Act   |
| LPN    | Labor Rights Promotion Network Foundation                                    |
| MAIDS  | Master of Arts in International Development Studies Program                  |
| MOL    | Ministry of Labor  |
| MOU    | Memoranda of Understanding   |
| MSDHS  | Ministry of Social Development and Human Security                            |
| MWRN   | Migrant Worker Rights Network  |
| NFAT   | National Fisheries Association of Thailand                                   |
| NGO    | Non-Government Organization  |
| NOCHT  | National Operation Center on Prevention & Suppression of Human Trafficking   |
| NSO    | National Statistics Office of Thailand                                       |
| OHCHR  | Office of the High Commissioner for Human Rights                             |
| OPP    | Office of Welfare Promotion, Protection and Empowerment of Vulnerable Groups |
| POCHT  | Provincial Operation Center on Prevention & Suppression of Human Trafficking |
| RTF    | Raks-Thai Foundation   |
| RTG    | Royal Thai Government  |
| RTMP   | Royal Thai Marine Police   |
| RTN    | Royal Thai Navy  |
| RTP    | Royal Thai Police  |
| SIREN  | Strategic Information Response Network                                       |
| UNESCO | United Nations Educational, Scientific and Cultural Organization             |
| UNIAP  | United Nations Inter-Agency Project on Human Trafficking                     |
| UNODC  | United Nations Office on Drugs and Crime                                     |
| VTVPA  | Victims of Trafficking and Violence Protection Act                           |

# CHAPTER 1

## INTRODUCTION

### 1.1 Background of Study

The issues of human trafficking and exploitation have exploded onto the scenes of discussion and collective action amongst the international community as the fight to bring an end to this “modern form of slavery” has gained tremendous support over the last decade (Batstone, 2010). However, despite the international attention that it has received, global levels of human trafficking, including both labor and sexual exploitation, are believed to be on the rise as increasing globalization makes it easier for people to illegally flow across international borders and traffickers are able to make larger and larger profits off of their activities (Brewer, 2009: 46; DeRuyver, Vermeulen and Beken, 2002: 395).

In 2005, the International Labor Organization (ILO) estimated that the global annual profit from human trafficking and its related activities was approximately \$31.6 billion US dollars (Belser, 2005: iii). It is impossible to know exactly how many people are forced into situations that constitute human trafficking due to the fact that it is difficult to research such an underground and clandestine practice, but the most reliable estimates fall somewhere between 600,000 and 2.44 million people who are trafficked annually around the world (UNESCO Trafficking Project, 2011: online).

In the Greater Mekong Subregion (GMS), Thailand functions as a hotspot for internal and international migration. As a result, the trafficking and exploitation of migrant labor are problems that are widespread across the country (UNIAP, 2010: 24; US Department of State, 2011: 351). It is estimated that there are around 3.1 million migrant workers who are living and working in Thailand (Huguet and Aphichat Chamrathirong, 2011: 3). Since the 1990s, the Thai economy has been one of the fastest growing economies in the region and this growth has caused the wages across

many sectors of Thailand to increase substantially (Martin, 2004: 15). However, over the same period of time, the wages in the neighboring countries of Myanmar, Laos and Cambodia have remained relatively the same. For instance, in comparable sectors, the minimum wage in Thailand is approximately ten times that of the minimum wage in Myanmar (Supang Chantavanich et al., 2007: 1). In 2003, the GDP per capita of Thailand, adjusted for purchasing power, was 3.7 times that of Cambodia and 4.3 times that of Lao PDR, with the likelihood of similar values for Myanmar (Huguet, 2007: 3).

This motivation for migration is further amplified by other push factors such as civil conflicts, poverty, scarcity and harsh living conditions that are common within the GMS (Huguet and Sureeporn Punpuing, 2005; Sompong Sakaew and Patima Tangpratchakoon, 2010: 15). As a result, hundreds of thousands of migrant workers have arrived in Thailand over the past couple of decades from the surrounding countries in hopes of earning a better quality of life for their families than what was perceived to be possible in their own nations. Many of these migrants, the majority of whom are from the neighboring country of Myanmar, are extremely vulnerable to exploitation and human trafficking for the purposes of forced labor in fishing-related industries, agriculture, factories, construction, domestic work and begging (UNIAP, 2010: 24).

The fishing industry in Thailand is plagued with the exploitation and trafficking of migrant workers as they are forced, deceived and/or coerced during the recruitment stage of their migration onto fishing boats for little or no remuneration. At the same time, there are numerous labor violations and cases of severe exploitation of workers while they are out at sea (Solidarity Center Thailand, 2009: 6-12). These problems continue to take place despite new and improved government-sponsored counter-trafficking measures, stronger labor protection laws, and leniency programs for illegal migrant workers, who are often the most vulnerable. Many fear that these patterns of exploitation will only continue to get worse unless there is a strong, coordinated effort by the Royal Thai Government, the Royal Thai Police, fishery

associations, NGOs and other relevant stakeholders to truly tackle this highly complex problem (Pravit Rojanaphruk, 2012).

## **1.2 Statement of Problem**

The vast majority of the research that has been carried out on the subject of exploitation or human trafficking has tended to focus on the issue of human trafficking for the purpose of sexual exploitation, specifically amongst women and children. This limited focus can be attributed in part due to international treaties such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol), or to the Victims of Trafficking and Violence Protection Act (VTVPA) in the United States (Federal Government of the United States of America, 2000; United Nations Office on Drugs and Crime, 2000). Both of these fundamental pieces of legislation place a special emphasis on the specific issues of female and child sexual exploitation within their definitions of ‘Trafficking in Persons’ (Haynes, 2008: 91; Montgomery, 2011: 778).

Much less research has been carried out on the issue of labor trafficking and labor exploitation amongst men in vulnerable situations. Even less research has focused on the protection of male victims or the policies that can put a stop to their situations of exploitation. Instead, researchers have tended to mainly focus on only two ‘P’s’ of action to combat trafficking and exploitation. The aspects of prevention and prosecution have received the vast majority of the attention, while traditionally the aspects of protection and policy have been neglected (Jayasinghe and Baglay, 2011: 493; US Department of State, 2011: 16).

For the most part, it is clear how and why the exploitation of migrant fishermen is taking place. There is also an abundance of formal legislation and other mechanisms that are supposed to be protecting these migrant fishermen working in Thailand, but it is not clear how well they are working or what specific problems and gaps in their protection are still remaining (Robertson, 2011: 26-28). The overall

impact of these protection mechanisms, especially those provided by NGOs and other community organizations, is not fully understood in Thailand and it remains highly ambiguous as to how the relationship between the government and civil society is working, or not working, to address these issues that are plaguing the migrant working community.

### **1.3 Research Questions**

This research project was guided by four main research questions that it sought to answer:

- What is the role of government agencies and non-government organizations (NGOs) in protecting migrant fishermen from Myanmar from labor exploitation and human trafficking in Samut Sakhon?
- What is the effectiveness of government-based and NGO-based protection mechanisms for migrant fishermen from Myanmar in Samut Sakhon?
- How are government agencies and NGOs successfully protecting the rights of migrant fishermen during the recruitment stage and while at sea?
- What are the gaps remaining in the protection of these migrant fishermen from Myanmar from the practices of exploitation and trafficking in Samut Sakhon?

### **1.4 Research Objectives**

This research project has four key objectives:

- To identify the role of both government agencies and non-government organizations (NGOs) in the protection of these migrant fishermen from labor exploitation and human trafficking in Samut Sakhon.
- To evaluate the effectiveness of these protection mechanisms for migrant fishermen from Myanmar in Samut Sakhon.
- To determine which practices and mechanisms carried out by NGOs and government agencies are most successful in the protection of migrant fishermen from labor exploitation and human trafficking.



- To identify any gaps in the full protection of migrant fishermen from Myanmar from becoming victims of labor exploitation and/or human trafficking.

### **1.5 Hypotheses**

This research project initially posed several primary hypotheses at the onset of the study. The three major hypotheses are:

1. That the protection mechanisms that are available today for migrant fishermen from Myanmar are much better than they have been in the past due to recent changes of policy such as the establishment of Thailand's Anti-Trafficking in Persons Act B.E. 2551 (2008) as well as increased international awareness from various advocacy groups and NGOs.
2. That current protection mechanisms are still not adequate to fully ensure the protection of migrant fishermen from labor exploitation and human trafficking because of at least three factors:
  - a. The lack of cooperation between NGOs and government agencies working to combat trafficking and exploitation leads to inefficient policy-making and uncoordinated protection mechanisms.
  - b. Structural impediments such as discrimination, corruption and lack of training prevent these protection mechanisms from being successful.
  - c. The inconsistent enforcement of labor protection and trafficking legislation allows for the exploitation and trafficking of migrant fishermen to continue to take place unhindered.

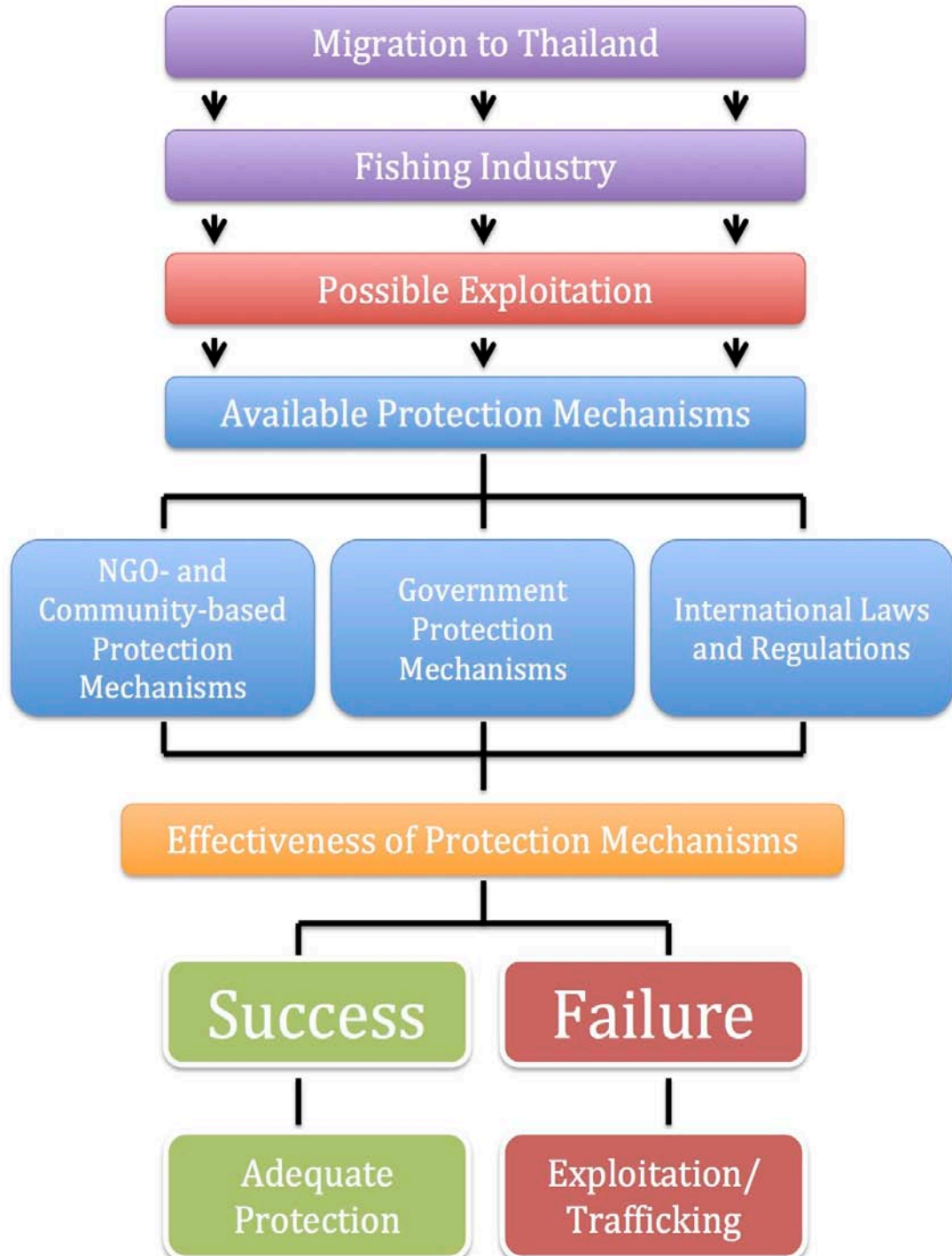
3. The protection mechanisms that are the most successful in providing full protection of migrant fishermen from Myanmar from labor exploitation and trafficking are those that are jointly developed and provided by both government agencies and NGOs working in coordination.

## **1.6 Research Concepts**

This research project was designed and understood by the following key research concepts: international migration, exploitation, trafficking in persons, and protection mechanisms, both government and non-government based. The relationships between these concepts have been conceptualized into Figure 1.1 below. Migration takes place from Myanmar into Thailand through either the assistance of a broker or through individual effort. These migrants end up in Samut Sakhon, which is a popular destination for migrants from Myanmar. Once in Samut Sakhon, the migrants begin working as fishers on the fishing boats that are based out of this port either by their own choice and free will or through the use of force, deception, or coercion from the brokers. Through the possibility of encountering extremely poor working conditions, lack of payment, debt bondage schemes, illegal recruitment procedures or physical abuse, these migrants are exposed to exploitation and/or human trafficking. It is at the point where exploitation takes place that the protection infrastructure in Thailand is able to then step in and protect the victims.

This research will examine the impact of this protection infrastructure and its effectiveness to do what it promises to do. It recognizes three distinct factions within this protection infrastructure: NGO and community-based protection mechanisms, government-based protection mechanisms, and international laws and regulations. This research project will seek to determine the roles of the government and of the NGOs that are working to implement this system of protection mechanisms for migrant fishermen in the province of Samut Sakhon. The project will also attempt to identify which practices and mechanisms are most effective in providing sufficient protection for migrant fishermen as well as to identify what gaps are still remaining that allow for the exploitation and trafficking of fishermen to continue to take place.

Figure 1.1 Conceptual Framework



### 1.6.1 Migration to Thailand

Migration, defined by the International Organization for Migration (IOM), is “the movement of a person or a group of persons, either across an international border, or within a state. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes” (International Organization for Migration, 2011: 52). This research project focuses only on international migration, which is when migration takes place across a geographical border from one country to another.

The term “migrant worker” is defined by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as, “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (OHCHR, 1990: Article 2). Thailand has not signed or ratified this international treaty and instead uses the definition of “alien worker” in the Alien Worker Act B.E. 2551 (2008). This Act defines an “alien worker” as a person who is not of Thai nationality and is engaged in work in Thailand through the use of physical energy or knowledge, whether or not he or she is receiving any kind of wages or benefits (Royal Thai Government, 2008a: Section 5).

For the purposes of this research project, a migrant worker in Thailand will be considered to be someone who is not a citizen of Thailand and has migrated from another country to become involved in some type of remunerated activity. This research specifically focuses on male migrants from Myanmar that end up working in the fishing industry in Thailand.

A fisherman, or fisher, simply refers to someone on board a fishing vessel that performs its operations inside or outside of Thai national waters for long- or short-term durations. This definition excludes the boat captain as well as any other senior leaders of the crew (Supang Chantavanich et al., 2007: 25).

### 1.6.2 Exploitation, Forced Labor, and Trafficking in Persons

“Exploitation” is defined by Thailand’s Anti-Trafficking in Persons Act B.E. 2551 (2008) as the seeking of benefits of slavery, “causing another person to be a beggar, forced labor or service... or any other similar practices resulting in forced extortion, regardless of such person’s consent” (Royal Thai Government, 2008b: Section 4).

“Forced labor” or service is then described as the compelling of a person to participate in work, or some other activity, by the use of threats, intimidation, or similar means to conspire potential injury to the life, body, freedom, reputation, or property of that person, thus causing a state of being unable to resist (Royal Thai Government, 2008b: Section 4).

“Trafficking in persons” refers to the process by which an individual or group of persons is recruited, transported, transferred, harbored or received, through the use of force or other means of coercion, abduction, fraud, deception, power abuse, or the exchange of payments or benefits in order to achieve the result of someone having control over an individual or group of persons, for the purpose of exploitation.<sup>1</sup>

Low-skilled migrant workers are particularly vulnerable to becoming victims of trafficking as a result of several critical structural factors: relative and absolute poverty that create a lack of options for migrants in their home country; labor migration, which is fueled by the process of globalization and the high expectations of migrants to increase their personal incomes in order to send remittances back to their families; cultural differences and tensions that cause migrants to be discriminated against both in their home countries and in their places of destination; and political

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<sup>1</sup> “Trafficking in Persons” is defined by Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime as, “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (UNODC, 2000).

instability or conflict that drives migrants to flee their home countries (Cameron and Newman, 2012: 21-51). These structural factors are built into the fabric of a society and they play a large role in enabling individuals and organizations to be better equipped to traffic other vulnerable people through the tools of deception, coercion and exploitation. The most effective anti-trafficking strategies, migration policies and protection mechanisms for migrant workers are those that recognize and seek to address these types of structural factors (Castles, 2004: 222-224).

### **1.6.3 Protection Mechanisms and Policies**

A “protection mechanism” is a structural set of procedures, formal legislation and guidelines that is designed to prevent a particularly undesired outcome and ensure the enforcement of these policies. Protection mechanisms are created and implemented at State, regional and international levels and they involve the coordination of various government institutions and non-government agencies in order to carry out their mandates successfully and efficiently. Protection mechanisms in this research project specifically refer to those that have been designed to protect the rights and security of migrant fishermen from Myanmar working in Samut Sakhon from human rights violations such as labor exploitation and human trafficking.

The practical application of these mechanisms, which are rooted in formal legislation, first takes place when the providers of these mechanisms receive specific complaints and requests for protection. These mechanisms and policies are then designed to be able identify who is a victim and what he or she is a victim of before moving on to provide ongoing care and protection with the purpose to remedy the situation (Castles, 2004: 205-207).

This research project will examine how and why these protection mechanisms break down once the complaints are received before they are able to move to the next steps of greater protection of migrant fishermen who are victims of labor exploitation and trafficking in persons.

## **1.7 Literature Review and Background**

Existing data on the protection of migrants from exploitation and human trafficking in Thailand is typically focused on the areas of child labor exploitation and the trafficking of women and children for the purposes of sexual exploitation. There is a growing effort to research the trafficking and exploitation of male migrant workers in Thailand, including migrant fishermen. However, this research has tended to concentrate on the methods of exploitation and the causes of human trafficking rather than on the actual system of protection mechanisms that are already in place for migrant workers in Thailand. This section provides a review of the current literature, as well as critical background information, regarding the situations of the thousands of migrant fishermen working in Thailand.

### **1.7.1 International Migration Issues in Thailand**

Thailand has been identified as a hotspot of internal and cross-border migration within Southeast Asia. Every year there are thousands of migrants who come to Thailand in search of better sources of income, better jobs and an improvement in the quality of life for themselves and for their families. However, the vast majority of these migrants enter into the country without proper identification documents and work permits. In 2008, the National Statistical Office (NSO) of Thailand officially reported that out of 1,847,371 migrants that were found to be living in Thailand, only 735,422 were registered under the Department of Employment's migrant registration scheme (NSO Thailand, 2008). The remaining migrants are considered by the government to be undocumented workers that have illegally made their way to Thailand and are in violation of its immigration laws (Huguet and Aphichat Chamrathirong, 2011: 9).

Philip Martin (2004: 36) writes that many migrants in Thailand are forced to live in constant fear of deportation, harassment and abuse from the authorities, the police or even their employers because of their status as illegal aliens within the country. Therefore, the majority of migrant workers in Thailand have little or no form

of bargaining power when it comes to their job placements or working conditions and they are afraid to report instances of exploitation. As a result, these workers often end up working in low-paying '3-D' jobs that are dirty, dangerous and difficult, and are concentrated within Thailand's agricultural, fishing and domestic service industries (Huguet and Sureeporn Punpuing, 2005: 53; Supang Chantavanich et al., 2007: 3).

This phenomenon takes place in accordance with the Neoclassical Theory of Migration, which states that migrants from the surrounding countries continue to come to Thailand in search of a better life because the promised wages of the jobs in the destination are significantly more than the wages in the places of origin. Therefore, these patterns of cross-border migration continue to take place despite the increased likelihood of ending up in situations of harsh working conditions and the higher potential for labor exploitation (Massey et al., 1993: 434).

### **1.7.2 Human Trafficking and Labor Exploitation**

The issue of human trafficking has gained a lot of prominence in the past ten years within the debates surrounding migration policy and amongst various humanitarian discussions. The term, which was rarely used twenty years ago, has become a buzzword that represents the growing international concern about this gross form of violation of basic human rights (Laczko and Gramegna, 2003: 179). Despite the international attention that it has received, global levels of human trafficking are believed to be on the rise as increasing globalization makes it easier for people to flow across borders and enables traffickers to make large profits off of their activities (Brewer, 2009: 46). The International Labor Organization (ILO) estimates that the global annual profit from human trafficking and its activities to be around 31.6 billion US dollars (Belser, 2005: iii).

The estimated numbers of trafficked persons varies according to the source. The US Department of State and the International Organization for Migration (IOM) place the number of annual trans-border trafficked individuals to be approximately 800,000 (Goodey, 2008: 427; US Department of State, 2011). In contrast to this



number, the ILO has reported that the annual number of trafficked persons is closer to 2.44 million people (ILO, 2008a: online). Many argue that these statistics are completely based on guesswork or poor statistical methodologies and that some of the numbers may be grossly inflated in order to increase the aid advocacy of anti-trafficking NGOs or the anti-trafficking policies of governments (Andreas and Greenhill, 2010: 136; Kangaspunta, 2007: 27). Therefore, due to its underground and clandestine nature, all statistics surrounding the issue of human trafficking should be taken with a grain of salt, but most estimates fall somewhere between 600,000 and 2.44 million people who are trafficked annually around the world (UNESCO Trafficking Project, 2011).

### **1.7.2.1 Trafficking for Labor Exploitation**

The particular sub-issue of human trafficking that has gained the most prominence and attention in the international community is that of trafficking for sexual exploitation (Aromaa, 2007: 24). However, many argue that it has often come at the expense and neglect of attempting to understand the widespread issue of trafficking for labor exploitation and that this is especially damaging for its male victims. This limited focus within trafficking research can be attributed in part due to international treaties, such as the UN's Trafficking Protocol or the Trafficking Victims Protection Act of the United States, which both place a special emphasis on female and child sexual exploitation within at heart of their definitions of 'human trafficking' (Haynes, 2008: 91; Montgomery, 2011: 778).

Much less research has been carried out on the issue of labor trafficking and exploitation amongst men in vulnerable situations. Betz argues that, "The Thai government has been slow to act in combating labor trafficking when compared to the aggressive actions that it has taken to curtail sex trafficking" (Betz, 2009: 37). At the same time, even less research has focused on the protection of those male victims or the policies that can put a stop to their situations of exploitation (Jayasinghe and Baglay, 2011: 493; US Department of State, 2011: 16). Therefore, the purpose of this research project is to explore the root causes behind the trafficking of male migrant

workers in Thailand's fishing industry and the effectiveness of the available protection mechanisms that have been set up to protect them once they have been trafficked and exploited.

### **1.7.3 Rapid Growth of the Thailand's Fishing Industry**

As a result of an increase in demand from international consumers, mainly in Europe and the United States, the seafood-processing and commercial fishing industries in Thailand have grown tremendously in recent years to become vital components of the emerging Thai economy (Solidarity Center Thailand, 2009: 3). The lucrative deep-sea fishing aspect of this booming economy alone brings in well over an estimated four billion US dollars on an annual basis (Bollinger and McQuay, 2012: online). This increase in economic development, which is characteristic of a more general form of economic prosperity that the entire country has been experiencing over the past twenty years, has had a profound impact upon the landscape of the labor force in Thailand. As a result of their relative economic prosperity, masses of Thai workers no longer desire to work in labor-intensive sectors such as fishing and fish processing.

This labor shortage has caused a tremendous increase in the flow of migrant workers coming from the neighboring countries of Myanmar, Laos and Cambodia in order to work in these jobs (Supang Chantavanich et al., 2007: 1). For instance, it is estimated that there are currently more than 400,000 migrant workers in the coastal province of Samut Sakhon alone, or approximately four times that of the local population, and the majority are employed within the fishing industry (Sompong Sakaew and Patima Tangpratchakoon, 2010: 9). The most difficult jobs for employers to fill are those on long-haul fishing boats that fish in international waters, primarily because of the low and unpredictable payment of wages that is common within the industry as well as the fact that some of these boats may stay out at sea for months or even years at a time without returning to shore. Therefore, employers look towards migrant labor in order to fill the gap (Martin, 2004: 42).

The rate of growth in Thailand's fishing industry has forced long-haul fishing boats to expand their territorial range beyond Thai waters. It is common for the boats to fish in the waters of Myanmar, Cambodia, India, Indonesia, Malaysia, Vietnam, and as far away as Somalia and East Africa in search of a more profitable catch (Robertson, 2011: 9). As a result of this rapid expansion, Thailand has become one of the world's top-ten fishing nations in terms of total catch and profitability. According to the Food and Agriculture Organization of the United Nations (FAO), Thailand ranked third in 2010 on the list of the top-ten exporters of fish and fishery products with a value of more than five billion US dollars (FAO Fisheries and Aquaculture Department, 2010: 10).

Thailand's fishing industry is an important economic powerhouse that shows no signs of slowing down in the near future as it continues to function as a major driving force behind the growth of the national economy. It is also believed that foreign labor migration will continue to flow into the country in order to fuel this massive industry (Sompong Sakaew and Patima Tangpratchakoon, 2010: 11). This sector's explosive growth is indebted to the process of globalization in that it has enabled it to capitalize on the usage of cheap migrant labor in order to become an exporter of fresh and processed seafood products to sell to a large base of domestic and international consumers.

#### **1.7.4 Working Conditions of Migrant Fishermen**

Despite the fact that the fishing industry in Thailand is an increasingly sophisticated and multi-billion dollar industry, the working conditions for many fishermen continue to be extremely grueling and even life threatening. In a study of migrant fishermen conducted in 2009, fishermen had difficulty describing 'typical' or 'usual' working hours because their working times were dependent upon the size and type of catch that were brought in at any given time (Solidarity Center Thailand, 2009: 10). Many long-haul boats fish for continual stretches of 45-60 days without days of rest or returning to shore. Some migrant fishermen report having worked 24-hour shifts with as little as 2-3 hours of rest in between such shifts.

Supang Chantavanich et al. (2007), in a report by the Asian Research Center for Migration (ARCM), Institute of Asian Studies at Chulalongkorn University, describes the nature of the working conditions on such boats:

All of the fishing boats start laying nets at night time and early in the morning and then repeat the process 4 times a day. The boats have at least 2 or 3 sets of fishing nets: one net is always in the water while the others are on board being repaired. Rocks or coral reefs can damage nets, and the nets must be repaired before the next cycle of laying them in the sea. Once a net is lifted from the sea, workers have to select, clean and store the fish. This process takes about 4 hours, which means that workers can rest for approximately 2-3 hours in each 4-6 hour cycle (Supang Chantavanich et al., 2007: 3).

These working conditions fall under the 3-D nature of employment because they are dirty, dangerous and difficult. Fishermen often must live in very small quarters, face shortages of fresh water and work up to 18-20 hours of intensive exertion even when they are fatigued or ill (Robertson, 2011: 9). When these working conditions are combined with the low pay that the fishermen receive, it makes this type of work highly undesirable and miserable for many of the workers. Wages for migrant fishermen range from approximately 600 to 4,000 Baht per month depending on their levels of experience (Supang Chantavanich et al., 2007: 4).

Due to these severe working conditions, as well as the low and unpredictable payment of wages for working on these fishing boats, the fishing industry in Thailand has suffered major labor shortages as employers find it increasingly difficult to keep their workers. The Department of Fisheries (DOF) of Thailand acknowledges this problem in a report that states:

The chronic shortage of fishing hands has plagued the Thai commercial fisheries for quite some time... actual pay has in recent

years been less competitive... The facts [sic] that fishing hands work in a less secure conditions [sic] (being far away from home, higher risks with comparatively less pay) have turned away from the sector most Thai workforce. At present, commercial fishing vessels are largely manned by foreign crews (Robertson, 2011: 24).

Therefore, the majority of employers in Thailand's commercial fishing industry are forced to seek out migrant labor in order to continue manning their fishing boats. In 2000, it was estimated that there was a labor shortage of 27,168 workers in Thailand's fisheries and employers believed that they needed 206,189 migrant workers over the next 3-5 years in order to solve this problem (Martin, 2004: 31). In 2011, the Mirror Foundation reported that these labor shortages are continuing to take place and they estimated that there are still more than 10,000 jobs that need to be filled on fishing boats and in seafood-processing factories (Mirror Foundation, 2011: 1). It is this shortage of labor that continues to fuel the practices of human trafficking and forced labor in order to meet the demand.

### **1.7.5 Vulnerabilities of Migrant Fishermen**

Migrant fishermen are extremely vulnerable to exploitation and trafficking for a variety of reasons. First, the fact that they are migrant workers in the first place is cause for concern because they are more susceptible to harassment and/or exploitation from those in power over them such as their employers, boat captains, brokers, government authorities and the police (Cameron and Newman, 2008: 27-29). The vast majority of migrant fishermen on Thai fishing boats are undocumented migrant workers who have not registered under the Ministry of Labor's registration system and are in violation of Thailand's immigration laws (Robertson, 2011: 20). Any foreigner who does not possess evidence of entering the Kingdom of Thailand as required by Section 12 of the Immigration Act B.E. 2522 (1979), or who is lacking a background-indicating document and not having a foreigner's ID card, is presumed to be a foreigner who has illegally entered the country (Supang Chantavanich et al., 2007: 43). As a result, many migrant fishermen live in fear of being caught as illegal

migrants to Thailand and choose to silently suffer through exploitative working conditions or harassment in order to maintain a low profile.

Those migrant fishermen who manage to register with the Ministry of Labor and obtain the correct work permits to be legally employed in Thailand usually do so through the assistance of a broker or an agent. The registration fees and work permits for migrant fishermen cost about 3,800 baht, but the agent may charge 4,500-15,000 baht per worker and profits from the difference (Sompong Sakaew and Patima Tangpratchakoon, 2010: 19). According to a report by Philip Martin from the ILO in Bangkok, many migrants believe that this is a fair price to pay for “freedom from police harassment” because they are considered to be legally within the country (Martin, 2004: 43). However, this only places the migrant fishers into different situations of vulnerability since their employers, agents, or boat captains can seize their legal documents and use them as leverage to keep the workers in a submissive state. Also because many of the migrants are unable to pay the brokerage fees upfront, they find themselves in situations of severe debt bondage to their employers or to their brokers whereby they are forced to work without remuneration in order to pay for their fees (Sompong Sakaew and Patima Tangpratchakoon, 2010: 29; Supang Chantavanich et al., 2010: 72).

Second, migrant fishermen are also vulnerable due to the very nature of their work. The boat captains have absolute power over their crew while they are out at sea and there are many recorded instances of abuse that the captain has inflicted upon the members of his crew (Supang Chantavanich et al., 2007: 27). This vulnerability is especially problematic for migrants on long-haul fishing boats because they do not return to Thai shores for many weeks or months at a time and it is not possible for them to escape if their working conditions become unacceptable or exploitative. There are various reports of migrant fishers who were starving or became ill and did not receive proper treatment because of the negligence of the captain (UNIAP, 2011). The US State Department’s annual Trafficking in Persons Report tells a story of a fleet of six fishing vessels that returned to a Thai port in June 2006. Upon arrival the crew members reported the deaths of 39 seafarers, most of them Burmese who had

reportedly died from conditions of malnutrition as a result of the captain's failure to provide food and freedom to the seafarers who had been confined to the fishing boats for over three years (US Department of State, 2009: 280).

The workplace of migrant fishers takes place in the open seas where there is little or no form of observation or protection structure. The boat captains are able to maintain strict control over every aspect of the migrant workers' lives with almost no accountability. The Solidarity Center Thailand states, "What is clear is the fact that these fishing boats, which operate in the isolation of the open seas, offer the unscrupulous employer the perfect conditions for exploiting workers with little threat of being caught, and even less threat of being punished" (Solidarity Center Thailand, 2009: 3). There is also a risk of the workers being cheated out of large sums of money because pay is not received very frequently on long-haul boats (Robertson, 2011: 11). This places migrant fishers in a unique situation of vulnerability that is almost entirely dependent on the character of the captain and whether or not he is an honest man that will not cheat his workers.

Third, even when adequate labor protection does exist for migrant fishermen in Thailand, they are still highly vulnerable to exploitation and trafficking due to the inconsistent nature of the government in addressing the needs of migrant workers and responding to areas of concern. The government, especially the police, is often criticized for "adopting an off-and-on approach to alien worker problems on an ad hoc basis" and some officials even "facilitate or undertake human trafficking themselves" (Martin, 2004: 36).

This inconsistent, sometimes hostile, approach by government authorities further places migrant fishers into situations of severe vulnerability for exploitation even though they are already in a vulnerable situation due to their status as a migrant worker and the nature of their employment. For those who do seek protection as victims of human trafficking, they often get placed within a detention facility for upwards of six months while their cases are being processed. The research of Gallagher and Pearson (2010: 107) claims that migrant workers who are victims of

exploitation and trafficking, especially those who are in Thailand, would rather choose to be criminally charged as illegal migrants and deported to their home countries than be sent to a detention facility or a victims shelter in the country of their exploitation. Therefore, rather than seeking out protection or filing complaints to the proper authorities, migrant fishermen will often choose to keep quiet and keep a low profile. Meanwhile, they are continually taken advantage of and exploited (Solidarity Center Thailand, 2009: 13).

### **1.7.6 Gaps in the Research**

Robertson (2011: 26) argues that the current system of employment and labor protection mechanisms for migrant fishermen in Thailand is a work in progress, but at the moment it is not effective. This coincides with the US Department of State's 2011 Trafficking in Persons Report, which had downgraded Thailand's ranking to the Tier 2 Watch List for the second straight consecutive year. The report states:

Despite significant efforts, the government has not shown sufficient evidence of increasing efforts to address human trafficking over the previous year, particularly in the areas of prosecuting and convicting both sex and labor trafficking offenders, combating trafficking complicity of public officials, and trafficking victim protection (US Department of State, 2011: 352).

The 2012 Trafficking in Persons Report has since decided to maintain Thailand's status on the Tier 2 Watch List for a third year in a row only because the government has presented a written plan to significantly reduce trafficking over the next year (US Department of State, 2012: 339).

Even though Thailand's status was not downgraded, this is a major blow to the international image of Thailand, as it remains only a half step above the worst possible ranking according to the US State Department's report. The government has been warned that it cannot stay on the Tier 2 Watch List forever and that if it does not



follow through on its plan to significantly improve its efforts to combat human trafficking over the next year that it will surely be downgraded to a Tier 3 status country and become in danger of low-level sanctions.

It is clear that Thailand's fishing industry is plagued with the exploitation and trafficking of many migrant workers who are forced, deceived and coerced during the recruitment and while they are out at sea. Research has indicated the methods and reasons behind this phenomenon within the fishing industry. There is also no shortage of formal legislation and other international protection mechanisms that are supposed to be protecting migrant fishermen in Thailand. However, according to organizations such as the US State Department, the International Labor Organization (ILO), the International Organization for Migration (IOM), the United Nations Inter-Agency Project on Human Trafficking (UNIAP), as well as other NGOs, the trafficking of migrant fishermen is continuing to take place and it may even be getting worse. The legislation and protection mechanisms are there, but it is not clear how well they are working and what problems still need to be addressed (Coordinated Mekong Ministerial Initiative against Trafficking [COMMIT], 2011: 35). At the same time, the overall impact of these protection mechanisms, especially those provided by various NGOs and other civil society actors, is not fully understood and the relationship between the Thai government and civil society remains ambiguous.

## **1.8 Research Methodology**

This research project was designed and conducted through the principles of qualitative research methodologies and fieldwork that took place on multiple trips to the cities of Mahachai and Thachalom in the coastal province of Samut Sakhon. Primary data was collected directly from in-depth interviews with migrant fishermen from Myanmar at various fishing ports located along the Tha Chin River that feeds directly into the Gulf of Thailand. This case study was supplemented with an in-depth individual case study of Maung Maung, a migrant fishermen from Dawei in Myanmar who has been working in Thailand for more than nine years without any major problems and serves as a model example of how the simple awareness of one's

rights as a migrant worker can lead to effective protection from labor exploitation and human trafficking.

This research project was also supported through key-informant interviews with experts from the ILO, different government agencies, various NGOs and representatives from the fishing industry. Translators/interpreters were hired to accompany the researcher during the fieldwork and to translate all formal interviews, meetings and documents in both the Thai and Burmese languages.

### **1.9 Data Collection**

Data was collected directly from migrant fishermen from Myanmar who were working in Samut Sakhon through a combination of semi-structured interviews, two impromptu focus groups, and direct observation. Semi-structured interviews were conducted at several different fishing piers located in Samut Sakhon by asking each individual fisherman a series of questions about their working conditions, problems, complaints, and general experiences.<sup>2</sup>

In order for a fisherman to qualify as a candidate for an interview or to participate in one of the focus group discussions, he needed to be a migrant that was originally from Myanmar, he had to have experienced some form of work-related problem or labor exploitation, he had to have sought assistance in order to resolve such problems, and he then had to have followed through by making a formal or semi-formal complaint to a person of relevant authority such as his employer, his boat captain, an NGO, the local police, or to someone from a pertinent government department like the DSDW or DLPW. These criteria were chosen so that the interviewed fishermen would be able to provide relevant and insightful information regarding their personal experiences with Thailand's system of protection mechanisms for its migrant workers. If a fisherman was found to not be in possession

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<sup>2</sup> See Appendix A: Sample Interview Questions for Migrant Fishermen.

of any of the aforementioned criteria, then he was not interviewed or considered within the scope of this research project.

A total of 21 migrant fishermen from Myanmar participated in these semi-structured interviews.<sup>3</sup> In addition to these individual interviews, focus group discussions were also conducted with two distinct groups of migrant fishermen in Samut Sakhon. A group of six fishermen was informally interviewed during their break at one of the fishing piers in Mahachai as they were encouraged to share their stories and experiences working in Thailand for approximately one hour. Another group of five fishermen was also interviewed at a drop-in center for migrant workers provided by an NGO in Samut Sakhon. In this second focus group discussion, the fishermen discussed their experiences and interactions with several different NGOs that they had encountered in Samut Sakhon and they also described the process of migration by which they came to Thailand.

These in-depth interviews sought to seek each one of the migrant fishermen's personal experiences and interaction with Thailand's system of protection mechanisms, through government agencies and/or NGOs, and the steps that may have been taken to make a complaint and receive protection under these mechanisms. The interviews also purposed to collect data regarding the fishermen's knowledge and understanding of their rights as migrant workers in Thailand.

It should also be noted that the researcher chose to gain access to the migrant fishermen by going directly to their places of work at several different fishing piers located in Samut Sakhon rather than having local organizations or government officials set up interviews with the fishermen that they were already connected to. This was done in order to increase the natural and unbiased selection of the fishermen, who may or may not have been already connected to a local NGO or government department, who could then participate in this research project. This approach was not without its own set of challenges as the researcher faced several instances of

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<sup>3</sup> See Appendix B: Overview of Interviews with Migrant Fishermen.

moderate opposition in being able to gain access to the fishermen for interviews. On multiple occasions, the researcher was told by several different Thai fishing pier managers to leave their area and not return again. Several different fishermen also reported to the researcher that their employers or boat captains had told them not to talk to the “foreigner” that had been seen in their area and who was trying to talk to the fishermen. Therefore, in order to maintain personal security, respect the wishes of the fishing pier managers, and protect the safety of the migrant fishermen, the researcher was forced to limit the amount of time for interviews at any one fishing pier to a maximum of one or two days. However, overcoming these challenges resulted in the researcher successfully gaining access to groups of migrant fishermen that are not easily accessed by local research groups, NGOs, and even government departments. This approach also led the researcher to be able to conduct brief, semi-formal interviews with two Thai boat captains, one Thai fishing pier manager, and one Thai fishing boat owner. These representatives from the fishing industry are often very difficult to gain access for interviews, but due to the fact that the researcher was able to go directly to their places of employment, such interviews were made possible.

Formal interviews were also conducted with key information who were directly involved in the field of protection for migrant fishermen in Samut Sakhon.<sup>4</sup> The experts that were considered came from three major groups of stakeholders: government officials, NGO practitioners, and representatives from the fishing industry. From the government, formal interviews were conducted with representatives from the local departments of the Ministry of Labor (MOL), the Ministry of Social Development and Human Security (MSDHS), and the Department of Fisheries (DOF) in Samut Sakhon. This was done in order to gauge their perceptions on the situation of the protection of migrant fishermen, their agency’s role in the provision and implementation of those protection mechanisms, and the specific challenges that need to be overcome in order to improve it. Due to the sensitive and critical nature of some of the information that was shared by several of the key-

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<sup>4</sup> See Appendix C: List of Key-Informant Interviews.

informants, it should be noted that those particular individuals will remain anonymous in order to protect their identities and personal safety.

In addition, practitioners from NGOs such as the Labor Rights Promotion Network (LPN), Raks Thai Foundation (RTF), and the Mirror Foundation were interviewed in order to ascertain their perceptions and experiences regarding the implementation of protection mechanisms for migrant fishermen in Samut Sakhon. These NGOs represent the frontlines for much of the work that is done in Thailand to combat the exploitation and human trafficking of migrant fishermen as they are often contacted first by those fishermen seeking protection or wanting to make a complaint. Therefore, the insights and understandings gained from these interviews provide a vital understanding into the effectiveness of Thailand's protection mechanisms for migrant workers.

Key-informant interviews were also conducted with representatives from the fishing industry who are involved in the employment of migrant workers, such as the National Fisheries Association of Thailand (NFAT). Semi-structured, informal interviews were also conducted with two Thai boat captains, a fishing pier manager, and a Thai fishing boat owner along the Tha Chin River in Samut Sakhon. These interviews were able to reveal the interests of the fishing industry and the difficulties that are faced when employing migrant labor and trying to protect them from exploitation and human trafficking at the same time.

### **1.10 Research Design**

The research design, including the concept of interviewing the migrant fishermen directly along with other stakeholders involved in the protection process, is based on a series of recommendations made in 2011 by the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT). The report outlines a list of best practices for conducting research within this field of study and it argues that data should be collected primarily from the victims of exploitation and trafficking, from

NGOs, and from government enforcement agencies. The report states, in addition to input from both the government and NGOs, that:

Data is best collected from the intended beneficiaries of these laws and systems, to learn whether improvements in policies and laws, and capacity building for anti-trafficking responders, is really translating into making a positive difference in the lives of people affected by human trafficking and respect for their human rights – thus, from victims of trafficking, or vulnerable populations (Coordinated Mekong Ministerial Initiative against Trafficking [COMMIT], 2011: 35).

Therefore, this research attempted to incorporate the recommendations of this report into its design and collect data from four primary sources: representatives from local government authorities, NGO practitioners, representatives from the fishing industry and the migrant fishermen themselves.

It should be noted that, in addition to various government agencies and NGOs, the private sector of the fishing industry also plays a very important role in the protection of migrant workers as well as in the reporting of any complaints and issues that may arise during day-to-day operations. However, the private fishing sector in Thailand lacks a clear, unified system of protection mechanisms for its migrant laborers, and is often viewed as the primary culprit for the exploitation and trafficking of its workers, whereas there exists a formal system of protection mechanisms for migrant workers in Thailand that places government-NGO partnerships as the primary sources behind the development and implementation of these mechanisms. Therefore, it was determined that the scope of this research project would be limited to an analysis of only those mechanisms that are provided by government agencies and members of civil society.

Secondary sources were gathered from published, peer-reviewed academic books, journals and articles in both online and print format. Publications from

international organizations, NGOs, governments and newspapers were also used to support the findings of this research project.

### **1.11 Research Ethics**

Research subjects included the vulnerable populations of migrant fishermen from Myanmar who were working in Samut Sakhon. Full disclosure and consent was obtained before the conduction of any interviews with the fishermen. The subjects were never asked to provide their names, and if they were given, they were never recorded. This was done to protect the identity of these workers, who may or may not have entered the Kingdom of Thailand illegally and who are at risk to be further exploited and/or trafficked. Therefore, their responses will be completely voluntary and kept entirely anonymous. All key-informant interviews with government agency representatives and NGO staff members were conducted in an open and transparent manner. All research objectives, interview questions and relevant background information was submitted to the government agencies and NGOs for their consent and approval.

### **1.12 Scope of Study**

Primary data collected from interviews with the migrant fishermen took place from the beginning of June 2012 to the end of July 2012. These interviews took place in and around the town of Mahachai and at several different fishing piers along the Tha Chin River in the province of Samut Sakhon, Thailand. Primary data collection from key-informants took place in Samut Sakhon and in Bangkok, Thailand from June 2012 until July 2012. Secondary data collection began in January 2012 and was ongoing until July 2012. Three preliminary observation visits to the research locations in Mahachai took place in February and May 2012. The organization and analysis of the data from the interviews was ongoing throughout the process of data collection and continued until July 2012. The results and findings from this research project represent only a snapshot of the effectiveness of the current system of

protection mechanisms for migrant fishermen in Thailand, as this system is continually being changed, updated and improved as time moves forward.

### **1.13 Limitations**

This research project's primary data collection was based on the principles of qualitative research. Although there are many insights and knowledge that can be gained from a qualitative study, it must be recognized that there are some limitations within its practice. For instance, a heavy reliance was placed on the usage of translators and interpreters for the collection of all primary data and even some secondary data sources. In order to overcome this limitation, both native Thai and Burmese speakers, each with a post-graduate level education and experience working on issues of human rights and migration, were hired to conduct the interpretation and translation of all data and written documentation.

The relatively small sample size of migrant fishermen that were interviewed during this research project presents another, but understandable limitation. The fishermen that were interviewed rarely spend any time on shore and they only have time to rest when the size of the catch is lower than normal or when they are finished repairing the nets. The hours that these fishermen keep are also very unpredictable and they can change at any time. When these factors are combined with the fact that many of the Thai boat captains do not want their migrant fishermen talking to anyone that could potentially expose their exploitative practices, it makes this target group very difficult to gain access to. The researcher was fortunate enough to conduct field research during a slower than average fishing season, which meant that some of the migrant fishermen had more time to be able to participate in the interview process. The sample size, although relatively small, contains the perspectives of a broad range of fishermen from a number of different fishing boats and employers, each with different levels of experience and interaction with Thailand's system of protection mechanisms.



It should also be mentioned that this research project would have benefited from more extensive and lengthier collection of primary data. However, due to the structure and time constraints of the MAIDS Program at Chulalongkorn University, the collection of primary data was carried out over a 8-week period and it represents a snapshot of the current situation of Thailand's system of protection mechanisms for migrant fishermen. The research project was not able to take into account the ongoing and rapid developments in Thailand's effort to combat trafficking and labor exploitation nor is it able to consider the seasonal changes that take place within the fishing industry. However, despite these limitations, this research project sets a fundamental starting point for future, more in-depth research that needs to take place in order to improve the situation of the thousands of migrant fishermen in Samut Sakhon for the years to come.

#### **1.14 Significance of Research**

There is currently a growing movement to understand the complex patterns of exploitation and human trafficking that exist for the thousands of migrants from Myanmar who are living and working in Samut Sakhon. Research on this topic has typically focused on the exploitation of women and children within the seafood-processing factories of Samut Sakhon. It is the ultimate goal of this research project to draw attention to the fact that thousands of migrant men from Myanmar, Laos and Cambodia are also heavily exploited in Thailand's booming fishing industry and to call for further measures to ensure the protection of their human rights and human security.

This research hopes to reveal the significant gaps in Thailand's system of protection mechanisms that are allowing for these gross violations of human rights to continue to take place so that they can be properly addressed and their negative consequences reduced. While conclusions of this study are the researcher's own, they represent an honest evaluation of Thailand's protection mechanisms that are based on the discussions that took place with all of the relevant stakeholders, both on the providing and receiving ends of those mechanisms.

## **CHAPTER 2**

### **MIGRANT FISHERMEN IN SAMUT SAKHON**

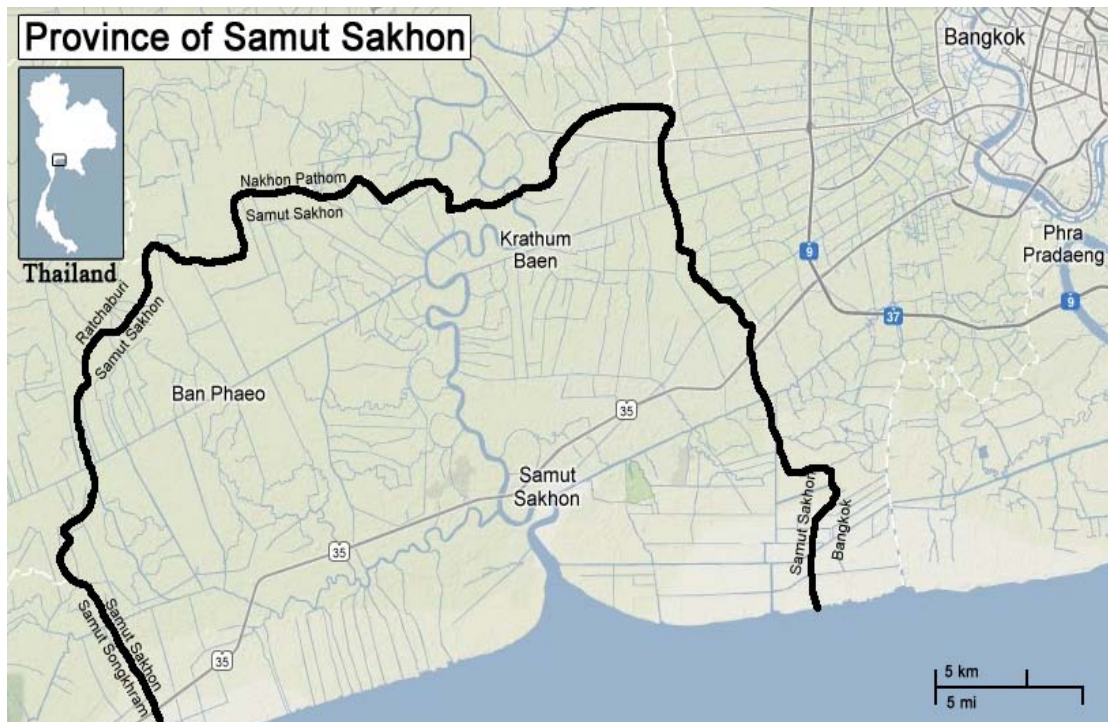
#### **2.1 Introduction**

The coastal province of Samut Sakhon is home to an estimated 400,000 migrant workers, with as many as half of those migrants working as fishermen on boats that are based out of Thailand (Pearson et al., 2006: 113; Sompong Sakaew and Patima Tangpratchakoon, 2010: 9). This chapter will provide an understanding of the experiences of migrant fishermen from Myanmar, that were interviewed by the researcher in Samut Sakhon, and their interaction with Thailand's system of protection mechanisms for migrant workers.

#### **2.2 Area Profile**

The town of Samut Sakhon, popularly referred to as Mahachai by the locals, is located on either side of the Tha Chin River and is the capital of Samut Sakhon province. Mahachai, as pictured in the map below (see Figure 2.1), is only 2 kilometers from the Gulf of Thailand and only 36 kilometers from downtown Bangkok. This prime location, due to its access to the sea and close proximity to Bangkok, is what makes Mahachai a major industrial hub and important economic center; this is especially true for its booming fishing and seafood-processing industries. Interviews with the migrant fishermen from Myanmar were conducted along either side of the Tha Chin River at several different privately owned and operated fishing piers.

Figure 2.1 Map of Samut Sakhon Province



Source: Adapted from Google Maps, 2012: online.

### 2.3 Demographics of Interviewed Fishermen

This research project aimed to evaluate the effectiveness of Thailand's protection mechanisms in its ability to protect migrant workers from such human rights violations as exploitation, forced labor and human trafficking. This evaluation was carried out, in part, through conversations with migrant fishermen from Myanmar who were based out of Samut Sakhon. In-depth, semi-structured interviews were conducted with a total of 21 individual migrant fishermen. In addition, two semi-structured group interviews took place with a group of six and a group of five migrant fishermen. The interviews were conducted by asking the fishermen who agreed to participate in the study to leave their fishing piers during their breaks and go to a location just down the street, usually at a local convenience store where they were offered a drink for their participation. This was done so that the fishermen could speak freely without worrying if anyone was listening in on the conversations.

This research project required that all of the interviewed fishermen had to be migrant workers who were originally from Myanmar, they had to have experienced work-related problems or some form of labor exploitation, they had to have sought assistance in order to resolve their situations, and they had to have each followed through by making a formal or semi-formal complaint to a person of relevant authority. This set of criteria was selected in order to maximize the amount of relevant information that interviewed fishermen could be able to provide about their personal experiences of labor exploitation on Thai fishing vessels as well as about their interaction with the system of protection mechanisms that exists for them in Thailand.

Table 2.1 Demographics Summary Table

| <b>1. In-depth, Semi-Structured Interviews with 21 Individual Migrant Fishermen</b> |                  |                  |                  |
|---|------------------|------------------|------------------|
| <b>Hometown</b>   | <b>Age 15-18</b> | <b>Age 19-30</b> | <b>Age 31-50</b> |
| Dawei   | 2                | 5                | 3                |
| Myeik   | 1                | 3                | 1                |
| Palaw   | -                | 1                | 2                |
| Thandwe   | -                | 1                | -                |
| Pathein   | -                | -                | 1                |
| Yangon  | -                | -                | 1                |
| <b>TOTAL</b>  | <b>3</b>         | <b>10</b>        | <b>8</b>         |
| <b>2. Focus Group Interviews with 11 Migrant Fishermen</b>                          |                  |                  |                  |
| <b>Focus Groups</b>   | <b>Age 15-18</b> | <b>Age 19-30</b> | <b>Age 31-50</b> |
| Group #1  | 1                | 4                | 1                |
| Group #2  | -                | 2                | 3                |
| <b>TOTAL</b>  | <b>1</b>         | <b>6</b>         | <b>4</b>         |

Source: Migrant Fishermen Interviews

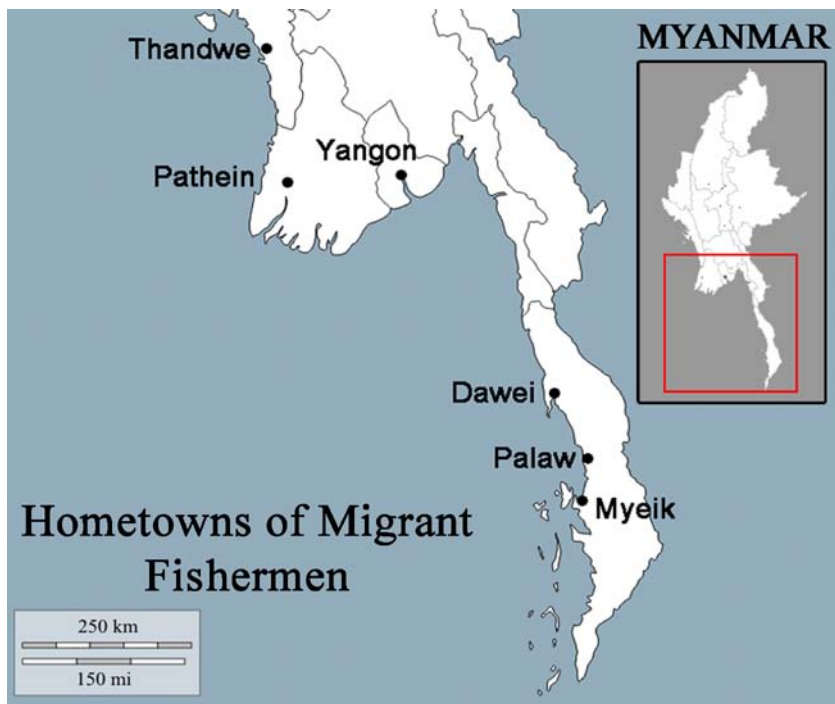
### 2.3.1 Age

The ages of the fishermen who took part in the interviews ranged between 15 and 47 years old with an overall average age of approximately 28 years old. Two of the migrant fishermen were under the age 18 and therefore must be classified as children according to the Anti-Trafficking in Persons Act B.E. 2551 (Royal Thai Government, 2008b: Section 4).

### 2.3.2 Hometown in Myanmar

The 21 migrant fishermen who were interviewed in Samut Sakhon originated from three different regions and one state in Myanmar before coming to Thailand to work in the fishing industry, see Figure 2.2 below. The Thanintharyi Region, the southernmost administrative division in Myanmar, was home for eighteen of the fishermen. In this region, ten of the fishermen were from Dawei, five were from Myeik, and three were from Palaw. It is unsurprising that the vast majority of the interviewed fishermen would be from this region. The Thanintharyi Region is the closest region in Myanmar in terms of distance to Samut Sakhon, it shares a very long and porous border with Thailand, and fishing has traditionally been a mainstay of the region's economy for hundreds of years. The remaining fishermen were each from different parts of Myanmar: one was from Yangon, which is located in the Yangon Region; one was from Patheingyi, which is located in the Ayeyarwady Region; and one was from Thandwe, which is located in the Rakhine State.

Figure 2.2 Hometowns of Migrant Fishermen



Source: Adapted from Google Maps, 2012: online.

### 2.3.3 Years Working as a Fisherman in Thailand

The migrant fishermen that were interviewed by this research project had been working in Thailand's fishing industry between one and nine years. On average, the fisherman had been working in Thailand for approximately three years.

### 2.3.4 Method of Entry into Thailand

The migrant fishermen were asked if they had any assistance in coming from their hometown in Myanmar and crossing the border into Thailand. There were a total of 16 fishermen who said that had the help of a broker in getting to Thailand and the remaining 5 claimed that they had come on their own.

Table 2.2: Method of Entry into Thailand

| <b>Method of Entry into Thailand</b>                               | <b>Number of Fishermen</b> |
|--|----------------------------|
| Had the assistance of a broker or an agent to enter into Thailand. | 16                         |
| Had no external assistance to gain entry into Thailand.            | 5                          |

Source: Migrant Fishermen Interviews

## 2.4 Working Conditions of Migrant Fishermen

Interviews with the migrant fishermen confirmed much of what previous research has found about the working conditions of Thailand's fishing industry. None of the fishermen were able to specify when exactly they would start working during the day and for how long they would be expected to work for. The majority of the fishermen were from medium-sized boats that would only be at sea for up to a week. These fishermen reported that their hours depended entirely upon the amount of fish that they were catching. If there was a good catch of fish, they could expect to work for at least twelve hours to as many as eighteen hours, usually starting from mid-afternoon until the early morning of the next day. If the catch was low, the fishermen said that they would only work for about eight hours.

The fishermen reported that their main duties included: the laying out and pulling in of the fishing nets, selecting and sorting the fish, moving the fish into cooling rooms, and repairing the nets that had been badly damaged while they were out at sea. The majority of the fishermen stated that they did not get any time for breaks or rest while they were out at sea during the working hours. If they were only out at sea for one day, they claimed that they would only get a break once they reached the shore. Those who worked on boats that would be at sea for multiple consecutive days reported that they would only get as little as two to four hours of rest between shifts.

According to Supang Chantavanich et al. (2007: 3), the working conditions of the fishing industry in Thailand can be classified by the 3-D nature of the work: dirty, dangerous, and difficult. The migrants were in unanimous agreement regarding the difficult aspect of their work, readily admitting that it was very strenuous and exhausting. However, only about half of the fishermen believed that their working conditions presented any kind of physical danger to their own safety and health. This is in contrast to the fact that the majority of the interviewed fishermen reported having been injured while on the job and had to seek medical treatment. The long hours, poor working conditions, and demanding nature of this job were the main reasons behind the commonly held sentiment among the fishermen that they did not enjoy their current form of employment and only continued to work out of economic necessity. Only three fishermen reported that they enjoyed being a fisherman, despite the poor working conditions.

## **2.5 Awareness of Rights**

Boutros Boutros-Ghali, the sixth Secretary-General of the United Nations from January 1992 to December 1996, once said, “It has long been recognized that an essential element in protecting human rights was a widespread knowledge among the population of what their rights are and how they can be defended” (United Nations, n.d.: online). In an attempt to more accurately evaluate the effectiveness of

Thailand's system of protection mechanisms for the rights and security of migrant fishermen it was important to understand the level of awareness that these workers had regarding those rights and how they could be protected (see Table 2.3 below).

Table 2.3: Awareness of Rights Amongst Migrant Fishermen

| <b>Awareness of Migrant Worker's Rights in Thailand</b>   | <b>Number of Fishermen</b> |
|---|----------------------------|
| Aware of rights as a migrant worker in Thailand.  | 1                          |
| Aware of rights, but only in relation to the right to receive medical treatment and compensation. | 9                          |
| Not aware or unsure of rights / Never been told about those rights.                               | 11                         |

Source: Migrant Fishermen Interviews

The vast majority of fishermen that were interviewed in Samut Sakhon had very limited interpretations and understandings about their rights as migrant workers in Thailand. A total of nine fishermen said that they were aware of their rights, but only when it came to seeking medical treatment and compensation for sicknesses and injuries sustained while on the job. Many of these fishermen said that they had personally experienced a health-related issue while they were fishing and that their employers or boat captains paid for them to receive medical treatment once they returned to the shore. Some of the men reported that their employers had tried to get out of paying for them to get treatment or to not let them go to the clinic. However, they claimed that because they were aware that they were supposed to be given these particular rights, they were able to get to a clinic and receive the proper compensation that they deserved. When each of these nine fishermen were asked if they knew anything about any other kinds of rights that they had in Thailand, they were unable to come up with any other rights or were simply unsure about them. The right to seek medical treatment and compensation for that treatment was the extent of their knowledge of their rights as migrant workers in Thailand.

A total of eleven fishermen reported that they had no previous or current understanding of what their rights were as migrant fishermen in Thailand. Four of the men in this group were able to suggest that their rights might have something to do



with getting paid properly or with receiving access to medical treatment, but were not sure exactly if those were indeed their rights entitled to them. The majority of these fishermen were convinced that they had given up many of their rights when they left their own country or they believed that the laws protecting workers in Thailand was only for the Thai workers. In addition to the data collected from the individual interviews, a focus group discussion with five fishermen revealed that they believed that it did not matter even if they even were supposed to have rights because they were not from Thailand and could not speak the Thai language. They believed that only Thai fishermen and workers actually had any kinds of rights in Thailand.

This lack of knowledge and awareness of basic rights amongst the migrant fishermen also contributed to their reluctance to report any problems that they had experienced to a relevant authority such as the local police, a government office, or a local NGO in Samut Sakhon. A total of eleven fishermen who participated in the two focus group discussions of this research project unanimously confirmed that they would be more likely to report a complaint against their boat captains or employers to the police if they were confident that their rights had been violated (Focus Group Discussions, July 2012). However, as long as these men continue to have an unclear understanding of their rights as migrant workers in Thailand, they maintain that they will continue to be reluctant to report any problems that they may experience while out at sea on the fishing boats.

All but one of the fishermen who were interviewed in Samut Sakhon had a significantly limited understanding, if any at all, about their rights as migrant workers in Thailand. This places the system of protection mechanisms in Thailand for these workers at a severe disadvantage because so many of them are not even aware of what they need to be protected from, let alone where they can go to receive that protection and defend their rights. It is not that these fishermen had absolutely no understanding of their rights or about how they ought be treated by their captains and employers, but because they were unsure or not confident that anything could be done to legally protect and uphold these rights, it prevented many of them from asking for assistance, making complaints, and seeking protection beyond their immediate places of

employment. Therefore, the fishermen who had a vague understanding of their rights functioned in the same manner as the fishermen who had no understanding of their rights due to their lack of clarity surrounding those rights and whether or not they could be adequately protected.

### **2.5.1 The Story of Maung Maung<sup>5</sup>**

Maung Maung is a migrant fishermen from Dawei in Myanmar, age 31, and he has been able to successfully work in Thailand's fishing industry for more than nine years without any major problems due to the knowledge that he had about his rights as a migrant worker in Thailand and his confidence in his own ability to protect and receive protection for those rights. Maung Maung reported, "I was able to escape from two boats where the conditions were very bad and I was not paid the full amount. I knew my rights, so I knew that this was wrong and I escaped" (Interview, 5 July 2012). Regarding the knowledge of his rights, Maung Maung went on to say:

"Before I came to Thailand, I heard that the fishing work was very difficult and that there were many problems of fishermen being attacked or killed by the captain when they are at the sea [sic]. I decided to come to work as a fisherman because I wanted to make good money for my family. I know the problems, so I can protect myself. Some of the others [migrant fishermen] do not know about the danger, so they cannot protect themselves" (Interview, 5 July 2012).

It is important to note that Maung Maung became aware of his rights as a migrant worker before he ever came to Thailand. According to him, he first learned of these rights through a local television advertisement that was purposed to warn people about the dangers that face migrants in Thailand. Maung Maung said that he had already made the decision to want to go work as a fisherman in Thailand, but this television advertisement prompted him to go and search out more information about

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<sup>5</sup> A pseudonym, used in order to protect the true identity of the lone migrant fisherman who reported that he was fully aware and confident about his rights as a migrant worker in Thailand.

how he could protect himself from others who had already been to Thailand as well as from a local recruitment agency that was trying to send workers to Samut Sakhon. He said that the information and advice that he received was very simple regarding his right to receive his promised wages every month, his right to be treated with respect, his right to have medical treatment, and his right to be able to leave his job at any time. According to Maung Maung:

“Some of my fishermen friends [co-workers] know how they should be treated and to get the payment [sic] every month, but they do not believe that they can do anything about it if they are treated bad or do not get the payment [sic]. For me, I know my rights and how to be treated from the government information on the television and the worker recruiting office in Myanmar. Because I know, I can protect myself” (Interview, 5 July 2012).

The story of Maung Maung reveals that the simple awareness of one’s rights as a migrant worker can dramatically improve a person’s ability to protect his or her self from different situations of exploitation and injustice. This awareness of rights did not prevent Maung Maung from encountering some forms of labor exploitation on Thai fishing vessels, as witnessed by his multiple experiences of not getting paid his full salary. However, this awareness enabled him to have the confidence to take matters into his own hands by leaving the two different exploitative boat captains in order to find another job. Maung Maung desired to be treated with respect and to be given the rights that he believed were owed to him, and it was this awareness of rights that allowed him to be successful in doing so.

## **2.6 Common Work-Related Problems Experienced**

Commercial fishing in Thailand is a tough, grueling and poorly rewarded job for thousands of migrant workers. This situation is also made worse by the reality that the fishing industry is often extremely difficult to regulate and enforce proper labor legislation, due to its irregular and non-stationary nature (Mirror Foundation,

2011: 6; Robertson, 2011: 24). Therefore, the Thai boat captains often have complete and total dominance over their migrant subordinates while they are out fishing at sea. The nature of each migrant fisherman's experiences is almost entirely dependent on whether or not their boat captain is an honest man or not (Supang Chantavanich et al., 2007: 27). In addition, the fact that the majority of migrant fishermen in Samut Sakhon have entered into the country illegally, or they do not possess the right work permits and/or documentation to be able to stay in Thailand, results in a situation of increased vulnerability whereby employers are able to extort money from the fishermen, or they not pay them their full salaries, because they can simply threaten to have the migrants arrested or deported by the police for violating Thailand's immigration laws (Pearson et al., 2006: 30-31).

The migrant workers who participated in this research project were asked if they had experienced any work-related problems while working as a fisherman in Thailand. The problems that they reported have been summarized in Table 2.4 below.

Table 2.4: Prevalence of Work-Related Problems Amongst Migrant Fishermen

| <b>Type of Work-Related Problem Experienced</b>   | <b>Number of Fishermen</b> |
|---|----------------------------|
| Not getting paid full amount of salary.   | 10                         |
| Paid salary late by employer.   | 8                          |
| Threats of violence made by boat captain.   | 6                          |
| Threats of violence made by employer/boat owner.  | 4                          |
| Verbal abuse and insults from boat captain, a senior worker, the employer, or the boat owner.                     | 6                          |
| Violent/physical abuse from the boat captain, a senior worker, the employer, or the boat owner.                   | 3                          |
| Not given medical compensation for sickness or injury at work.  | 2                          |
| Forced to work even when sick or injured.   | 3                          |
| Not allowed to leave the job.   | 3                          |
| Having to pay back large debts that were more than originally agreed upon (either to the broker or the employer). | 6                          |

Source: Migrant Fishermen Interviews

It was found that the most common problems that the fishermen faced in the workplace were: not getting paid their full salaries, not getting paid their salaries on time, receiving threats of violence from their boat captains, receiving verbal abuse from someone in authority over them, and being stuck in situations of high debt that made them feel trapped in their current situation, also referred to as debt bondage, and that they were continuing to pay these debt payments even though they believed that they had already paid off the full amount. Other problems that were reported amongst the fishermen were: threats of violence by their employers and boat owners, actual violent or physical abuse from someone in a position of authority over them, not receiving promised medical treatment or compensation, being forced to work even when sick or injured, and not being allowed to leave their place of employment.

In some of the most extreme cases, violent abuse and forced confinement were experiences shared by several of the fishermen that were interviewed. One of the men, who had been in Thailand for two years, was told that he would be working in a factory in Bangkok but was then deceived by his broker onto a fishing boat in Samut Prakan. He said that all of the men on this boat did not want to be there, but they could not escape because they would be at sea for two or three months at a time. When they would return to shore, the captain would gather the migrants into some kind of room and keep them locked in there until they would go out to fish again. This particular boat captain would always carry a gun around with him and threaten to kill the workers who did not work hard enough or complained too much and “dump their bodies into the sea”. During this whole time, the workers were paid very little and they did not always have enough food to eat while they were out at sea. After about nine months of this, this fisherman said that he and some of the other workers were able to escape when the captain was not paying attention to them. He was then able to find another job on another fishing boat, this time in Samut Sakhon, but he is now trying to save up enough money to go back to his family in Myanmar and bring some extra money back with him. Even though that the conditions that he faced on his previous boat were highly exploitative and can be considered as a case of trafficking in persons, this fisherman said that he did not consider himself to be a

victim because he knew about the risks that migrant workers face when coming to Thailand (Interview, 13 June 2012).

## 2.7 Primary Actions Taken to Report Complaints

In order to be considered as a candidate for the interviews, the fishermen were required to have made some type of complaint, for either one or several of the problems that they had experienced with their work in fishing, to someone with the relevant authority or capability to resolve that problem. This requirement was in addition to other key requirements such as being migrants originally from Myanmar, having experienced some form of work-related problems and/or labor exploitation, and having sought out some form of assistance in order to resolve their poor or exploitative situations. This section explores the actions that the fishermen have taken in the past to report these problems and to where they primarily went to for help in resolving these problems. It should be noted that some of the fishermen have made complaints to two or more different relevant agencies, but the focus of this section is to find out the primary person or agency that each of the fishermen goes to in order to make a work-related complaint.

Table 2.5: Primary Actions Taken to Report Complaints

| <b>Who / Where Migrant Fishermen Made Primary Complaints</b> | <b>Number of Fishermen</b> |
|--|----------------------------|
| Employer / Boat Owner  | 13                         |
| Boat Captain   | 3                          |
| Non-Government Organization / Other Community Organization   | 5                          |
| Local Police   | 0                          |
| Department of Labor Protection and Welfare (DLPW)            | 0                          |

Source: Migrant Fishermen Interviews

It was found that the overwhelming majority of the fishermen went directly to their employer, either the boat owner or a sub-contractor, to report any of the problems mentioned above. Thirteen of the fishermen said that their employer is the

first person that they will go to in order to make a complaint about a work-related problem, including problems related with not getting paid the full amount. Some of the fishermen from the larger companies said that their employers had an office located directly at the pier where there was someone that handled all of these complaints on behalf of the boat owner.

Three of the fishermen said that they reported all of their problems directly to the boat captains. Each of these men said that they believed that the captain was the only one with the real power over their daily lives and could solve any of the problems that they have. They said that sometimes the captain would even try to fight on their behalf for problems with the payment of wages and conflict with the employer, but usually to no avail. These fishermen also said that they wished that the employer would come out on to the fishing boats and actually see the conditions that they face in order to pressure them to make things better. However, they believe that the employers purposely avoid spending time on the boats because then they can more easily deny or ignore the problems that take place while those boats are out at sea.

Five of the fishermen said that they had received basic health training about HIV/Aids from an NGO that was working in the area.<sup>6</sup> They reported that they have primarily channeled all of their labor-related complaints through this organization, especially those complaints that were related to not receiving access to or compensation for medical treatment.

None of the interviewed fishermen had ever reported these problems to the local police or to the Department of Labor Protection and Welfare (DLPW). Most of the fishermen admitted that they were afraid of the Thai police. They believed that the police would discriminate against them or harass them for money. If they could afford not to pay them, they believed that they would be arrested and/or sent back to Myanmar. Therefore, most of the fishermen said that they just avoided contact with

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<sup>6</sup> The NGO that the fishermen were referring to was the Raks-Thai Foundation. This NGO has an office based in Samut Sakhon, as well as a drop-in center for migrant workers, and educates migrant workers and their families about various health-related issues as well as information about labor protection and rights.

the police altogether. Some of the men also believed that they could not go to the DLPW office because they thought that the department would only provide assistance to Thai workers. A couple of the fishermen mentioned that they might have tried to go to the DLPW office to make a complaint, but that it was located on the other side of the river from their fishing piers and their identification cards do not allow them to travel that far unless their employer accompanies them.

## **2.8 Outcomes of Complaints Process**

The results of the complaints that were made by the migrant fishermen ranged from amicable resolutions of some problems, to ignorance of the problems on the behalf of the employers and boat captains, and even to hostility against the fishermen for making such complaints. It seemed that the most successful outcomes were for those complaints that had to do with not getting access to health care, not receiving compensation for medical treatment, or not being paid during required time off for significant injuries. It also seemed like the likelihood of these types of problems being successfully resolved, in what the employees agreed was a fair solution, was greatly increased if a fisherman was connected to an NGO in the community.

Nearly half of the fishermen reported that they had previously experienced not being paid the full amount of the salary that was agreed upon between themselves and their employers and that they made a formal complaint about it, usually directly to the employer or through the employer's office on shore. However, most of the fishermen reported that these types of problems, including those about being paid late, were not always solved. At best, the men said that they would get paid a little more for the month in question, but almost never received the full amount as promised. Several of the workers reported that their employers had threatened to physically harm them or have them turned over to the police if they brought up the matter again. They said that most of the time the employers had a list of excuses as to why he could not pay the workers the full amount or that they would tell the workers that they were being deducted salary because they were lazy or that they had made too many mistakes.



Those who had experienced verbal or physical abuse from a boat captain or senior co-worker did not always report the problem. Those who did report the case went directly to the employer as soon as they got on shore. However, they said that nothing was ever done about it because the boat captain would simply deny the incident and then it was a case of the word of the migrant versus the word of the captain and the employer always took the side of the captain's. These fishermen also said that they were afraid to report these types of problems because they had heard stories of retaliation from the boat captains where they were attacked by "hired gangs" of men on shore or by the captain himself at sea. They said that the best thing for them to do in this type of situation is to keep quiet and simply try to avoid any further contact with the abusive boat captain or senior co-worker.

The fishermen who had experienced not being allowed to leave their jobs and/or who were in situations of large debts to their employers or their brokers did not report these specific problems to anyone. The three individuals who were not allowed to leave their jobs shared similar stories of how they were forced to work in three-month contracts where they would only be paid at the end of that term. During those three months, they said that the conditions would get progressively worse and the boat captains would force them to work even harder and longer hours. However, they felt trapped in their situations, especially during the second and third month, because they were told that they would not get paid anything if they tried to leave. When the time came around for the workers to receive their wages, their employers only gave it to them if they promised to work for another three-month contract. These fishermen had to endure through multiple of these types of cycles, some for as many as five years.

Those who had problems with relatively large debts had payments deducted directly from their salaries in order to pay it off. They claimed that they never reported this specific problem because they either did not understand why they even had any debt in the first place or because they had heard stories of brokers who did terrible things to their workers that did not pay off their debts.

## 2.9 Experiences of Discrimination

The fishermen were also asked if they had experienced any form of discrimination while they have been working in Thailand. The results were divided as to the nature of the discrimination that exists for migrant workers in Samut Sakhon. About half of the fishermen said that they had experienced discrimination from someone in a position of authority over them and that it affected their work. Most often, discrimination came from the boat captain who would shout orders directed at the migrants and curse them because they were foreigners who could not speak the Thai language. These fishermen said that the number one reason they felt discriminated against in Thailand was due to the fact that most of them could not really speak Thai. Others mentioned that they felt discrimination from their encounters with the police because they would be asked to pay higher fines, or bribe fees, simply because they were not from Thailand.

The other half of the fishermen said that they did not really experience any significant forms of discrimination while they have been working in Thailand. Many from this group even credited their employers with looking out for them and protecting them because they were migrants. Some of the fishermen reported that they had been arrested by the local police for reasons such as public drunkenness or for being in violation of immigration laws. These men were then bailed out by their employers and the majority of them were never asked to pay them back or were ever punished in any way. These workers believed that discrimination was a problem for some migrant workers in Thailand, but that their employers were looking out for them and treating them the same as Thai workers. The experiences of these fishermen are in line with what the Director of the Provincial Fisheries Office of Samut Sakhon told the researcher in a personal interview. He said that the fishing boat owners and employers are starting to treat the migrant workers much better than they have in the past because they know that they need to treat them good in order to keep them from leaving and finding a new job (Interview, 9 July 2012). These fishermen believed that they were treated in the same way as the Thai workers and that they had not

experienced any forms of significant discrimination, but they still acknowledged that it was a major issue for migrant workers in Thailand.

### **2.10 Interactions with the Police**

The perceived relationship between the migrant fishermen and the local dispatch of the Royal Thai Police in Samut Sakhon is complicated at best. Not one of the fishermen said that they were confident that they could rely on the police to protect them if they had a labor problem or safety concern. Six of the fishermen reported that they were aware that they could go to the police at any time and report any of their problems. However, all of them said that they would likely never take this action because of their distrust of the police. The fishermen said, and it was later confirmed during an interview with an officer from the Raks-Thai Foundation, that migrant workers in Samut Sakhon are often expected to pay between 500 and 3,000 Baht per complaint in order to have it acknowledged and addressed by the police (Interview, 5 July 2012).

The majority of the fishermen claimed that they would never think of going to the local police to make a complaint, not only because they did not trust the police, but also because they were afraid that they would be deported back to Myanmar. Many of the fishermen reported that their employers help them to deal with the police by resolving fines and arrests for issues such as getting drunk in public, drug abuse, motorcycle accidents, and even immigration status. However, several of the fishermen stated that they believed that their employer would no longer help them if they made a report to the police about problems at work. Some of the fishermen even reported that their employers and boat captains had explicitly told them to never go to the police and had threatened them not to do so. Therefore, even when the police are not involved in corruption or in the facilitating of labor trafficking, they are still not able to protect migrant fishermen simply because they are not trusted and the fishermen would almost never choose to come to them for protection.

## 2.11 Interaction with NGOs and Community Organizations

The fishermen were also asked if they had ever talked to or received any kind of support from any local NGO or community-based organization in Samut Sakhon. The fishermen's responses to this question were able to fit into three general categories regarding their interaction with these types of organizations and they have been presented in Table 2.6 below.

Table 2.6: Interaction with Local NGOs or Community-based Organizations

| <b>Has ever talked to or received support from any local NGO or community-based organization working in Samut Sakhon</b>      | <b>Number of Fishermen</b> |
|---|----------------------------|
| Has talked to and has received support/protection from one of these organizations.  | 6                          |
| Has never talked to or received support from one of these kinds of organizations, but has heard about or seen them in action. | 5                          |
| Not aware of such organizations working in this area.   | 10                         |

Source: Migrant Fishermen Interviews

Six of the fishermen reported that they were able to successfully connect with and receive support from an NGO in Samut Sakhon. One of these men sought the help of an organization working near the place where his fishing boat would dock during the day. Through this connection, this fisherman was able to successfully receive compensation for medical treatment that he had been promised, but had not received. Workers from this NGO were able to help him with his complaint and they helped to pressure the employer to fulfill his responsibilities. He said that, through the NGO's assistance, his problem was resolved peacefully without involving the police in order to fix the problem. Another fishermen reported a complaint to a similar organization regarding not being paid the full amount of his salary. However, he said that the NGO never kept their promise to help him and nothing was ever done to help him in the end. This man was very critical towards these types of "outside organizations" that "do not keep their promises" and are "only good at talking, but not at doing" (Interview, 14 June 2012).

The other four fishermen who had reported receiving support from an NGO or community-based organization had all been connected to the Raks-Thai Foundation through their health-based seminars and training sessions for migrant fishermen. Each of these men said that this organization was able to help them better protect themselves from some of the health and safety hazards of working in the fishing industry. These men also stated that they knew if they were ever to have a major problem in Thailand that they could go seek help from this NGO because they knew them and trusted them very well (Interview, 5 July 2012).

Five of the interviewed migrants had never personally interacted with someone from one of these types of organizations, but they were aware of their existence or they had seen them working in the area before. Several of these fishermen reported that they even knew the contact information for someone who could speak the Burmese language and could connect them to one of these organizations.<sup>7</sup> These fishermen were not sure if they could fully trust these types of organizations seemingly because they had a difficulty in understanding why someone would want to offer these kinds of services and protection to them free of charge.

The remaining ten fishermen had never heard about or seen any such organization working in their area before. However, even though many of the fishermen had never heard about such organizations, more than half of all of the interviewed migrants said that they had been told by their employers and/or boat captains not to talk to anyone asking questions about their working conditions whenever they were on shore. Some of the men who were completely unaware of the existence of any NGOs working in their area had heard rumors and stories about organizations that go around making promises to migrant workers about better jobs, but that they would then capture and force the migrants to work in very bad jobs, with no pay or remuneration, and that they would be worked to death. Those who had heard these rumors said that they could not trust any organization that claimed to

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<sup>7</sup> These migrant fishermen were most likely referring to “Mr. Toon”, also a migrant from Myanmar, who works for LPN. He is reportedly very well known amongst migrant workers in Samut Sakhon and his phone number acts as a virtual emergency hotline that the migrants can call at any time if they have any type of labor-related problem or concern (Piyakrai Seelakote, Interview, 4 July 2012).

provide some type of service and that they could only trust themselves for their safety and protection.

## **2.12 Trust of Migrant Fishermen**

Finally, the fishermen were asked who they trusted the most, apart from their co-workers and relatives, to be able to protect their rights and safety as migrant workers in Thailand. It should be noted that the Burmese language has multiple words in order to understand and describe different forms of trust. The Burmese word that was used during these interviews describes trust in terms of accountability and responsibility. Therefore, the migrant fishermen answered this question regarding who they trusted the most to be able to protect them in terms of who it was that they believed would be the most accountable and the most responsible to protect their rights and personal safety as migrant workers in Thailand.

Thirteen of the fishermen reported that they trusted their employers the most, usually because they believed that they are the only ones who can adequately protect them by helping them with any legal issues, by dealing with the police, and by solving any problems with the boat captains. Two of the fishermen reported that they trusted their boat captains the most because they are the ones with the actual power and influence over their daily lives while they are out at sea. These men said that they have never had any kind of problem with an honest captain, but they had also both experienced captains who were not honest and that this made their work miserable and dangerous. These two men said that their current boat captains were honest men who look out for their workers, help them to get paid the proper amount, and to make sure that they are healthy. Therefore, the majority of the interviewed fishermen trusted someone from their current working environment the most in order to protect them rather than someone from an external source.

Five of the fishermen interviewed said that they trusted an NGO in order to best protect them while they are in Thailand. In this case, each of the fishermen was referring to the Raks-Thai Foundation with whom they had received medical training

and interacted with its volunteers on a regular basis. A group interview conducted with five migrant fishermen nearby the outreach office of the Raks-Thai Foundation in Samut Sakhon concluded that an NGO was their best source of protection because they knew that they could trust them and that they would help them contact the right people if they needed to report any major problems.

Finally, one of the fishermen was adamant that he was unable to trust anyone in Thailand and could only trust himself for his own protection. He said that he has witnessed other migrant workers turn against each other and employers who have their workers arrested by the police and deported just because of some minor conflict. He also claimed to have heard several stories of boat captains on the long-haul fishing boats who would kill fishermen that were lazy or made too many mistakes. In addition, he reported that he had managed to escape a fishing boat with an abusive captain that would beat the fishermen with anything that he had in his hand. For all these reasons, he maintains that the only way to protect himself as a migrant worker in Thailand is to trust no one and look out for his own wellbeing.

### **2.13 Conclusion**

The fishing industry is a vital component of Samut Sakhon's booming economic development and migrant labor is providing the majority of the driving force behind its increasing growth over the past decade. The migrant fishermen who participated in individual and group interviews were able to convey experiences that ranged from mostly positive to extremely negative. Some of these experiences could be classified as cases of human trafficking, but the majority of them can be considered to be varying degrees of labor exploitation. All of the men had personally experienced some form of work-related problems and had made some type of complaint towards a relevant authority.

The data collected from these fishermen's experiences points towards a major challenge within the system of protection mechanisms for migrant workers in Thailand, which is simply that the majority of the fishermen had no understanding of

their rights and who could help them protect those rights. Most of the fishermen said that they not only predominantly made all of their complaints to their boat captains or to their employers, but that they also trusted them the most in order to protect themselves as migrant workers. However, this is difficult to reconcile with the fact that the employers and boat captains were also the primary sources behind many of the work-related problems that the fishermen had experienced.

It seemed that as long as an employer or boat captain was an honest individual, then the migrants fully trusted that person to protect their rights and safety. However, when this was not the case, very few of the migrants had any knowledge of where they could go to seek protection and assistance. Thus, a general lack of awareness is another key challenge in the effectiveness of Thailand's protection mechanisms for migrant workers. If they are unaware of their own rights and/or of the relevant NGOs and government agencies that can defend those rights, then the system of protection mechanisms are unable to be effective simply because they cannot be accessed due to a lack of awareness of their existence.



## **CHAPTER 3**

### **GOVERNMENT PROTECTION MECHANISMS**

#### **3.1 Introduction**

Due to its position as an economic leader in the Greater Mekong Subregion (GMS) and its growing influence in the Association of South East Asian Nations (ASEAN), Thailand serves as a focal point for international migration both in and out of that country. Thousands of low-skilled workers flow into Thailand every single year from its neighboring countries in order to supply cheap labor for the country's commercial fishing, seafood-processing, low-end garment production, factories and domestic service industries (Srawooth Paitoonpong, 2011: 13-14). At the end of 2009, there were approximately 2,455,744 migrant workers from Cambodia, Lao PDR, and Myanmar living and working in Thailand, mostly within these types of low-skilled industries (Huguet and Aphichat Chamratrithirong, 2011: 9).

This massive influx of migrant labor requires an extensive system of legislative and practical protection mechanisms in order to ensure that the fundamental human rights and human security of these migrants are preserved. The Royal Thai Government is charged with the creation, implementation and enforcement of these mechanisms. The purpose of this chapter will be to explore the role of the government within this system of protection mechanisms in order to gain a better understanding of how this system function on a provincial, national, and international level. The chapter begins with a discussion on the domestic and international legislative frameworks for the protection of migrant workers in Thailand, and moves to a discussion on the roles of the key government agencies responsible for the implementation of these protection mechanisms as applied to the case study of migrant fishermen in Samut Sakhon. The chapter concludes with a look into the procedures behind the complaints process and the identification of trafficking victims in Thailand, as well as about the services for migrants who have already been victims of trafficking and/or exploitation.

### **3.2 Legislative Protection Mechanisms for Migrant Workers**

A major feature of the protective structure for migrant workers in Thailand is centered on several key pieces of legislation that are designed to cover different aspects such as immigration, labor rights and welfare, anti-trafficking, health and safety provision, and industry-specific guidelines. Since the borders of any one country do not limit the exploitation and trafficking of migrant workers, Thailand is part of a growing network of protection mechanisms that are designed to include both domestic and international legislation.

#### **3.2.1 Domestic Legislation**

According to a senior member of the provincial office of the Ministry of Social Development and Human Security (MSDHS) in Samut Sakhon, there are no less than thirteen separate domestic laws that are related to the protect of migrant workers (Interview, 4 July 2012). This section will explore the domestic laws that are most relevant to the protection of migrant workers from Myanmar who working on fishing boats based out of the province of Samut Sakhon.

##### **3.2.1.1 Labor Protection Act**

The Labor Protection Act B.E. 2541 (1998), henceforward referred to as the LPA, provides the benchmark of standards for wages, holidays, working conditions, compensation, and other labor related issues and provisions in Thailand. Any person who is exploited through the means of forced labor, physical or verbal abuse, lack of payment of wages, poor working conditions, or through any other of the violations under the LPA is then able to make a complaint to and receive protection form any local Department of Labor Protection and Welfare office, a service that is provided by the Ministry of Labor (MOL).

The main purpose of the LPA is to set out a clear and common understanding of the rights and duties of all employers and employees within the Kingdom of Thailand. The key provisions of LPA are in regards to setting guidelines for such things as normal working time, rest periods, holidays, overtime, leave, remuneration, work suspensions, business suspensions, termination of employment, evidence of employment, and the penalties for the failure to comply with these provisions. The MOL, through various local and provincial offices of the Department of Labor Protection and Welfare (DLPW), is charged with the responsibility of the enforcement these provisions and standards (Labor Protection Bureau, n.d.: pamphlet).

Migrant workers are able to seek protection under this law because according to the LPA, an employee is defined as, “a person who agrees to do work for an employer in return for a wage, regardless of the name given to describe his status” (Royal Thai Government, 1998a: Section 5). Therefore, because the LPA does not make the distinction between employees based on their citizenship or immigrant status, all migrant workers in Thailand have the right to the provisions set forward by this law and the right to make a complaint when those rights have been violated. As a result, the LPA is technically able to protect the rights of both legal and illegal migrant workers because they simply fall under the category and definition of an employee.

In 1998, the MOL adopted the Ministerial Regulation Number 10, B.E. 2541 as issued under the provisions of the LPA. This regulation takes the legislative framework and protection mechanisms that are mandated by the LPA and applies them specifically to the marine fishing industry in Thailand. The Ministerial Regulation Number 10 acknowledges that the fishing industry is a special case that requires additional provisions and legal clarification due to the nature of its work. The main thrust of this legal addendum is to put the responsibility of day-to-day labor regulation between the employer and the employee, except for several aspects of labor protection contained in the LPA such as occupational health and safety, submission and consideration of complaints, employee welfare, labor inspections, and delivery of notices (Royal Thai Government, 1998b: Clause 1).

However, the provisions set forward in the Ministerial Regulation Number 10 do not apply under two critical circumstances: if there are less than twenty employees on any given fishing boat or if a fishing vessel performs its operation regularly outside of Thailand's territorial waters for more than one year (Clause 2). For these types of fishing boats, the only provisions of this regulation that apply are those in respects to the payment of remuneration and holiday pay. Robertson (2011: 12) argues that this regulation places significant portions of Thailand's fishing industry outside of the coverage of more than 90 percent of the provisions contained within the LPA in part because it places the responsibility of regulation between the employers and employees rather than on the government to uphold and enforce these regulations.

These exemptions of the Ministerial Regulation Number 10 exclude a major portion of small and medium sized fishing vessels from the protection of one of Thailand's fundamental labor laws and it leaves thousands of migrant fishers even more vulnerable to exploitation and trafficking than they already were (Sompong Sakaew and Patima Tangpratchakoon, 2010: 47). All of the fishermen interviewed in this study would be exempted from the majority of the provisions and protection mechanisms of the Ministerial Regulation Number 10, as well as from many of those that are contained within the LPA, simply because they were working on fishing vessels that employed less than twenty workers.

In an interview with both the Senior Labor Protection Officer and the Senior Migrant Labor Specialist at the Department of Labor Protection and Welfare in Samut Sakhon, it was explained that the Ministerial Regulation Number 10 also negates any of Thailand's minimum wage standards (Interview, 10 July 2012). The regulation requires that both parties, the fishermen and the employers, agree upon a set monthly wage before any work is started. These officers said that the majority of complaints from fishermen regarding not getting paid the full amount are difficult to arbitrate because the agreements between the employers and the employees are rarely done in a written or formal contract, which then makes it a case of one person's word against another's. That being said, according to Clause 2 of the Ministerial Regulation

Number 10, provisions regarding the payment of remuneration shall apply to all workers in the marine fishing industry, including those that are except from the rest of its application. While these provisions do not include a minimum wage, they do require that all employees get paid at least once a month (Royal Thai Government, 1998b: Clause 8). The majority of the fishermen interviewed in Samut Sakhon were only paid once every three months according to a payment scheme that was put in place by their employers in order to keep them from running away to find a better job. Even though all of these migrant fishermen were exempt from the majority of the provisions of the LPA and its ministerial regulation regarding their industry, many of them could also make a legitimate complaint to the DLPW because of the frequency of their remuneration payments and seek protection through this legislative framework.

The MOL appears to be responding to the concerns that have been expressed by migrant workers' interest groups, NGOs, IOs, and other relevant stakeholders regarding the loopholes and exemptions that the Ministerial Regulation Number 10 seemingly creates to the detriment of effective protection for migrant fishermen in Thailand's fishing industry. According to an interview with a Senior Program Officer at the International Labor Organization (ILO), the MOL has begun working on a draft version of a new ministerial regulation for work in the fishing industry (Interview, 17 July 2012). The new regulation, if passed into legislation, will attempt to address some of the key vulnerabilities of fishermen by developing policies such as: making it easier for migrants to obtain and hold onto valid work permits even when changing employers by allowing the National Fisheries Association of Thailand (NFAT) to act as a cooperative on behalf of all migrant fishermen; establish regular pay schedules and minimum wage for all fishermen in the industry; improved occupational health and safety standards for work in fishing; and to require a written contractual agreement between the employer and the fisher that is written in the language of the fisher. The aim of this ministerial regulation is to increase the protection of all fishers in Thailand and to address some of the critical gaps in this protection mechanism that have been created by previous legislation.

### 3.2.1.2 Anti-Trafficking in Persons Act

In 2008, Thailand passed the Anti-Trafficking in Persons Act B.E. 2551 (ATIPA), which was specifically designed to increase protection for victims of trafficking and to increase the power of the government to deal with this problem more effectively (Head, 2008: online). In an interview with the Chief Director of the Pathumthani Provincial Protection and Occupational Development Center for Men, a shelter facility for male victim of human trafficking in Thailand, he said that the Royal Thai Government has had a long history with the development of anti-trafficking legislation, dating back almost 85 years, and that the country has made much progress for it to be where it is today (Interview, 13 July 2012). In 1928, Thailand adopted the Trafficking in Women and Girls Act B.E. 2471. This act defined trafficking in persons as a crime that could only be committed against a women or girl and usually for the purposes of sexual exploitation. Almost 70 years later, in 1997, Thailand passed the Trafficking in Women and Children Act B.E. 2540, which expanded the definition of trafficking in persons to include boys under the age of 18 years old.

One of the reasons why the ATIPA was so groundbreaking for the anti-trafficking movement in Thailand was that it was able to define the issues of exploitation and human trafficking in such a way that, for the first time, it was possible to have adult male victims of trafficking, as they were now included within the scope of these definitions. Labor exploitation also featured more prominently within the ATIPA, whereas the previous acts had tended to focus primarily on the issue of trafficking for sexual exploitation. According to this Act:

‘Exploitation’ means seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labor or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person’s consent (Royal Thai Government, 2008b: Section 4).

The ATIPA then builds upon this definition as it proceeds to define the act of “trafficking in persons,” which is defined as:

...the action of procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control (Royal Thai Government, 2008b: Section 6).

The Act also states that the act of trafficking in persons has taken place if any of the above actions are committed against a child under eighteen years old regardless of means or elements of consent (UNIAP, 2010: 26). These definitions have enabled the police, immigration officers, government officials and other authorities in Thailand to become more aware as well as to have a better understanding of the process of human trafficking. It also helps them to recognize instances where such criminal action has taken place and to properly identify its victims.

An important feature of the ATIPA is that it defines the roles for several key government agencies that are charged with the enforcement of this law. The real value of this legislation is the promises of victim protection that are outlined within this law and extend protection for potential victims beyond the step of only being able to file a complaint. According to this law, the Ministry of Social Development and Human Security (MSDHS) is responsible to:

...provide assistance as appropriate to a trafficked person on food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, the return to the country of origin or domicile, the legal proceedings to claim compensation... the right to receive protection, whether it be prior to, during and after the

assistance providing, including the timeframe in delivering assistance of each stage, shall be informed the trafficked person. In this connection, the opinion of trafficked person is to be sought (Royal Thai Government, 2008b: Section 33).

According to this legislation, the government (specifically the MSDHS, but also including the police, immigration officers, public prosecutors, etc.) is required to ensure that the issue of providing and upholding the fundamental human rights of trafficking victims is positioned as the primary goal of the enforcement of this piece of legislation (Gallagher, 2009). A senior official with the provincial department of the MSDHS in Samut Sakhon claimed that this is a good step forward in the direction of the movement to combat the trafficking and exploitation of migrant workers because it places their rights and security as the main priority of this legislation, which can lead to a policy of decriminalization and leniency towards migrants who have entered into the country illegally (Interview, 4 July 2012).

### **3.2.1.3 Other Key Domestic Legislation**

In addition to the LPA and the ATIPA, there are at least eleven other pieces of domestic legislation in Thailand that can be specifically applied to the protection of migrant workers from exploitation and human trafficking. The following is a list provided by the MSDHS of the relevant anti-trafficking laws in Thailand, each of which must be consulted for every single potential case of human trafficking:

- Immigration Act, B.E. 2522 (1979)
- Employment and Job Seeker Protection Act, B.E. 2528 (1985)
- Workmen's Compensation Act, B.E. 2537 (1994)
- Prostitution Prevention and Suppression Act, B.E. 2539 (1996)
- Criminal Code Amendment Act No. 21, B.E. 2552 (2009)
- Money Laundering Control Act, B.E. 2542 (1999)
- The Criminal Procedure Code Amendment Act No.29, B.E. 2552 (2009)
- Witness Protection Act, B.E. 2546 (2003)



- Child Protection Act, B.E. 2546 (2003)
- Compensation Paid to Injured Person and Compensation and Expenses Paid to Accused in Criminal Case Act, B.E. 2544 (2001)
- Alien Working Act, B.E. 2551 (2008)

According to the National Operation Center on Prevention and Suppression of Human Trafficking (NOCHT), this multitude of domestic legislation in Thailand is all part of a growing and comprehensive anti-trafficking strategic network that is designed to protect Thai citizens and migrant workers alike from the evils of trafficking and exploitation (NOCHT, 2011a: online). However, this legislative framework is not without its challenges. A senior government official in Samut Sakhon explained in an interview:

“One of the biggest challenges in the protection of migrant workers from human trafficking and labor exploitation is that there are too many laws that need to be consulted for every single [potential] case. The Anti-Trafficking in Persons Act is only one of at least thirteen laws that need to be fully understood in order to make the right identification of trafficking victims. So this many laws make the process very slow and you need to have highly trained officers to do this work” (Interview, 4 July 2012).

The decision to identify an individual as a victim of trafficking or not must take place within the first 24 hours of the official complaint being made known to the local office of the DSDW. The complex array of domestic legislation that must be consulted for every potential case of trafficking is a challenging feat to carry out within 24 hours, especially when cases are complicated, unclear, or lacking in hard evidence. The fact that there are so many laws applying to the protection of migrant workers from exploitation and human trafficking may make Thailand’s anti-trafficking strategy a comprehensive one, but it also makes it a confusing one that is often very difficult to interpret.

### **3.2.2 International Legislation**

In addition to its system of domestic legislative protection mechanisms, Thailand has also been a part of several key international treaties and agreements to combat the trafficking of migrant laborers and individuals all around the world. International legislation is more than just another series of laws and regulations that need to be enforced, but it represents a commitment between governments and between different nationalities to addressing a specific problem or issue at hand. In the case of the protection of migrant workers from labor exploitation and trafficking, international legislation can be highly effective because addressing internationally-based problems requires internationally-based policies and strategies (Hayes, Mullen and Johns, 2009: 21-28; Srawoath Paitoonpong, 2011: 26-32).

#### **3.2.2.1 United Nations Trafficking Protocol**

In 2000, in response to the growing international problem of human trafficking, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (henceforward referred to as the Trafficking Protocol) was adopted by the United Nations in Palermo, Italy. This protocol essentially defined human trafficking as the buying, selling, receipt, or movement of persons through the use of force, deception, coercion, or similar means for the purposes of exploitation (UNODC, 2000). The Trafficking Protocol set an international precedent for nation-states to begin to agree upon a comprehensible definition of human trafficking, however much confusion remains, as it is often difficult to agree upon a common vocabulary and framework when discussing the problem (Bertone, 2008: 12).

The Trafficking Protocol was initially designed to cover the 3 “Ps” of the fight against human trafficking: prevention, prosecution and protection. The language that is used in this protocol has been effective in criminalizing the act of trafficking, therefore making it much easier to prevent trafficking in persons from taking place

and allowing for much stronger prosecution of traffickers. While the protection of trafficking victims is not a forgotten component of the Trafficking Protocol, it is clearly not the focus as many of the obligations for protection are only framed in discretionary terms that can be easily negated (Gallagher, 2001: 990-993). State Parties are only required to ensure these optional protection measures “in appropriate cases and to the extent possible under domestic law” (Gallagher, 2002: 26). This has led many to claim that the weak nature of victim protection is the single biggest issue that remains to be properly addressed when discussing the international community’s response to human trafficking (Gallagher, 2009: 792; Smith, 2011: 271).

Despite these criticisms, since the adoption of the Trafficking Protocol, it is believed that at least 98 different countries have passed comprehensive domestic anti-trafficking laws in order to uphold the principles of this international treaty, including Thailand (Gallagher and Pearson, 2010: 75). Thailand, a country that has become well known to be a major destination, transit, and source country for trafficking in persons, has since created its own version of domestic anti-trafficking legislation when it adopted the Anti-Trafficking in Persons Act B.E. 2551 (2008). This piece of domestic legislation was largely inspired by the principles of the United Nation’s Trafficking Protocol and it owes its very existence to the worldwide movement that was created by this treaty in order to make sure such a law was established in Thailand.

### **3.2.2.2 International Labor Organization Conventions**

In addition to the Trafficking Protocol, Thailand has also adopted several international conventions regarding the protection of the workers within its borders. In regards to forced labor, Thailand is a signatory member to two critical International Labor Organization (ILO) conventions against forced labor and exploitation. First, Thailand has signed the ILO Convention No. 29 on Forced Labor, which requires that “the illegal exaction of forced or compulsory labor shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”

(ILO, 1930: Article 25). Even though this convention is more than eighty years old, it is traditionally viewed as one of the fundamental agreements that began the movement to end forced labor around the world.

Second, Thailand has ratified the ILO Convention No. 105 on the Abolition of Forced Labor, which requires that member countries undertake every possible means to “suppress and not make use of any form of forced or compulsory labor” (ILO, 1957, Article 1). This convention prohibits any country from knowingly benefiting in any way from the use of forced labor and other forms of exploitation. Unfortunately, the government in Thailand is often criticized for turning a blind eye to the issue of migrant workers being forced or coerced into low-skilled labor situations by being effectively “bought and sold”, thus making them victims of human trafficking (US Department of State, 2009: 280).

Specifically, the fishing industry in Thailand is a multi-billion dollar industry that shows no signs of slowing down, but it is also known for widespread instances of force labor, migrant exploitation, and human trafficking (Mirror Foundation, 2011: 23-25). If it is true that the government is turning a blind eye to these problems, it may account for why Thailand has not ratified the ILO Convention No. 188 on Work in Fishing, which for the first time established a set of international standards for working conditions in the fishing sector. According to Robertson (2011: 42), “If key provisions of this Convention were adopted by the government of Thailand, many of the issues related to trafficking in persons in the Thai fishing sector could be addressed.” One of the most important aspects of this Convention requires that a public service is established in order to provide recruitment and placement services for fishers and that any private recruitment or employment businesses must be standardized within a system of licensing or certification in order to ensure the seamless enforcement of this convention (ILO, 2007: Article 22). The protection of fishermen in Thailand, both migrant and Thai workers, would be dramatically improved if the provisions of this convention were to be implemented and enforced by the Royal Thai Government.

### 3.2.2.3 Bilateral and Multilateral MOU Agreements

Apart from its adoption of the Trafficking Protocol as well as several ILO conventions, Thailand has also been a major part in the development of a series of key bilateral and multilateral Memoranda of Understanding (MOU) agreements with its neighboring countries in order to regulate the process of labor migration and to protect the rights of migrant workers. The Kingdom of Thailand is situated as a central country, both geographically and economically, within the Greater Mekong Subregion (GMS). As a result, it is considered to be a hotspot for international migration as migrants from surrounding countries continue to flow into the country by the thousands in order to try and increase the quality of life for themselves and their families (Huguet and Aphichat Chamrathirong, 2011: 3). Therefore, in order for any counter-trafficking policy to be truly effective in the GMS, it is widely believed that it must be done so through careful coordination and collaboration amongst the various policy-makers at the government level within the region.

In 2004, the six countries of the GMS signed a MOU designed to aid in the fight against human trafficking. The inception of this agreement came out of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), which commits the governments of the GMS to work towards the development and implementation of a comprehensive set of policies designed to combat human trafficking in a way that meets all international standards and specifically highlights the need for multi-lateral, bilateral, and government-NGO cooperation to fight human trafficking (COMMIT, 2011: 2). The COMMIT Process and its subsequently inspired agreements have enabled the entire GMS region to develop a wide-ranging strategy that counters all forms of trafficking in persons and helps to promote the rights of migrant workers during recruitment, transport and destination stages (Betz, 2009: 61).

The COMMIT Process governs itself through the setting up of six national taskforces in each one of its member countries and is made up of local government representatives who are most involved in the fight against human trafficking such as police, justice ministries, social welfare ministries, labor ministries and women's

affairs ministries. These taskforces are charged with making all of the major policy decisions concerning anti-trafficking measures within their respective countries and are committed to contributing to annual COMMIT program strategies and reports (UNIAP, 2010).

Another function of the COMMIT Process is the development of Sub-regional Plans of Action (SPAs), which are bilateral and multilateral agreements that are implemented in specific member countries in response to specific issues and challenges. These SPAs are usually created and implemented through the partnership between relevant government departments and other non-government entities in order to coordinate anti-trafficking efforts, combine various resources, and reduce areas of redundancy. For example, the COMMIT 2nd Sub-Regional Plan of Action was an agreement made in 2007 amongst all six of the member countries in order to specifically address issues of anti-trafficking policy related to victim identification and international prosecution (COMMIT, 2007: 3).

In addition to the COMMIT Process, a Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation to Combat Trafficking in Persons, Especially Women and Children, was signed in Naypyidaw, the capital city of Myanmar, on the 24<sup>th</sup> of April, 2009. This MOU officially joins Thailand and Myanmar together in the fight against human trafficking and it recognizes several of the key area that need to be addressed between these two nations in order to improve the situation. The parties of this MOU are required to take specific measures for the prevention and suppression of trafficking victims as well as for the protection of its victims. In regards to prevention, the parties are required to: provide educational and vocational training programs for persons in vulnerable situations, provide improved social services in areas such as employment and health care for persons in vulnerable situations, and to increase the public awareness of the multiple risk factors that lead to trafficking in persons (Article 3). For the protection of trafficking victims, Article 7 of this MOU calls for mutually agreed-upon victim identification criteria and procedures between the two countries. Furthermore, this MOU demands the decriminalization of the

victims of trafficking and that they must be considered as victims of a crime and not in violation of any immigration law (Article 8). This is an important provision, due to the fact that the vast majority of migrant workers from Myanmar who are living and working in Thailand, and are most vulnerable to human trafficking, are currently in violation of the country's Immigration Act B.E. 2522 as they do not possess the proper work permits and/or identification documentation. Finally, the MOU calls for increased cooperation between the two parties, with the common goal of the suppression of all forms of human trafficking. The government of Thailand and Myanmar are required to share information between law enforcement agencies related to trafficking and they must meet regularly for joint training sessions between concerned government agencies in order to enhance their capacities for implementing laws and responding to the most recent trends (Articles 13-17). This MOU not only represents a significant step forward in the relationship between Thailand and Myanmar, but it also represents a significant step forward in the protection of migrant workers, including fishermen, from the dangers of human trafficking and labor exploitation.

In total, Thailand has been heavily involved in the signing of no less than seventeen MOU agreements with other members of the GMS; each of which are specifically designed to tackle a particular regional issue of trafficking in persons (Srawooth Paitoonpong, 2011; UNIAP, 2010). This is in addition to other bilateral and multilateral MOUs that Thailand has signed with Myanmar, Laos and Cambodia in regards to cross-border labor migration and recruitment (Huguet, 2007: 8). It is these types of agreements that have spawned higher levels of cooperation between the countries of the GMS, which has proven to be a successful ingredient in the protection of migrant workers from forced labor, exploitation, and human trafficking.

### **3.3 Key Government Departments and Agencies**

This next section will examine the key government departments and agencies that are involved in the implementation of Thailand system of protection mechanisms

that can be used to protect migrant fishermen from Myanmar, who are based in the province of Samut Sakhon.

### **3.3.1 Ministry of Labor**

The Ministry of Labor (MOL) is an agency of the Royal Thai Government that is responsible for overseeing and implementing activities related to administration of labor resources, labor protection, occupational standards, development of skills, and employment opportunity promotion. In January 1998, the Department of Labor Protection and Welfare (DLPW) was established under the MOL in order to be the frontline of defense for the protection of all workers in Thailand (Ministry of Labor, 2011: online). According to the Specialist on Migrant Labor at the provincial office of the DLPW in Samut Sakhon:

“The first part of the role of this department [DLPW] is to make sure that the employer is doing everything according to the Labor Protection Act and that he is following his responsibilities. The second part is to ensure that the rights of all workers in Thailand are upheld, both Thai and non-Thai” (Interview, 10 July 2012).

The DLPW is able to protect migrant fishermen in Samut Sakhon in several ways. First, they are the primary government agency concerned with the protection of all workers in Thailand from poor working conditions and labor exploitation. Any worker may come in to the DLPW in Samut Sakhon, or call the office directly on the telephone, and report a labor dispute or a case of exploitation. Second, the DLPW, under the power of the MOL, is responsible to enforce the provisions of the Labor Protection Act B.E. 2541 (1998). The enforcement of the LPA is carried out, in part, through regular workplace inspections and case-by-case responses to specific complaints. In Samut Sakhon, the DLPW has a mobile truck that conducts monthly inspections of both small and large fishing piers. However, these inspections do not take place all year due to the seasonal nature of the fishing industry. Finally, the DLPW is able to protect migrant fishermen in Samut Sakhon through several key



awareness-raising campaigns that are designed to inform the workers and their families about their labor rights in Thailand. The Senior Labor Protection Officer at the DLPW office in Samut Sakhon said that he organizes an information booth at the local Big-C Supermarket in Mahachai, which happens to be a central location in the community and a meeting point for thousands of migrant workers. For three days on the first weekend of any given month, this booth is equipped to receive all types of labor complaints from migrant workers and provide them with information, in their own languages, about their rights in Thailand and who they can contact if they ever are in need of assistance (Interview, 10 July 2012).

### **3.3.2 Ministry of Social Development and Human Security**

The Ministry of Social Development and Human Security (MSDHS) is another key government agency that is directly involved in the protection of migrant workers in Thailand. The mandate of the MSDHS is to maintain the system of social welfare in Thailand in order to ensure the security of people's lives, to protect people and society as a whole from social changes and fluctuations, and to promote social development in all areas of life (Ministry of Social Development and Human Security, 2012: online). In Samut Sakhon, the office of the Department of Social Development and Welfare (DSDW) carries out the local day-to-day operations and objectives of the MSDHS.

In regards to the protection of migrant workers, the MSDHS is the primary enforcement agency of Thailand's Anti-Trafficking in Persons Act B.E. 2551 (2008). Therefore, the DSDW in Samut Sakhon functions as the secretariat for the Provincial Operation Center on Prevention and Suppression of Human Trafficking (POCHT) in that province. This means that the MSDHS is the lead agency in Thailand's national anti-trafficking efforts and the local DSDW is the lead agency in any given province's anti-trafficking efforts.

The DSDW in Samut Sakhon is able to protect that province's migrant working community from human trafficking through its power to implement and

enforce the POCHT's anti-trafficking strategy. All organizations and projects that seek government funding for work to combat human trafficking must first seek approval through the local DSDW, which then sends approved requests to the central ministry for the allocation and distribution of funds. The DSDW is also highly involved in the coordination of the government's partnership with relevant NGOs to increase the effectiveness of their anti-trafficking efforts. In Samut Sakhon, the DSDW specifically mentioned both the Labor Rights Promotion Network Foundation and the Raks-Thai Foundation as its primary NGO partners. The DSDW received assistance from these organizations in areas such as translation for migrant workers, trafficking investigation support, awareness campaigns, and complaints management (Senior DSDW Official, Interview, 4 July 2012).

The DSDW is also the frontline agency that handles all of the potential cases of trafficking in persons and coordinates the resources that are required in order to make a proper identification of each case. This department is required to screen every trafficking complaint and interview each potential victim in order to determine if there is enough evidence or not to prove that a person is indeed a victim of human trafficking. All of the reports and claims made by potential trafficking victims must be verified in coordination with the DLPW, the local police, local NGOs, medical doctors, and even psychologists in order to determine the validity of each case (Senior DSDW Official, Interview, 4 July 2012). Once a victim has been successfully identified, the DSDW will then turn over the formal investigation to the Royal Thai Police and transfer the victim to one of the nine Protection and Occupational Development Centers, which act as shelters for the protection of trafficking victims across Thailand (NOCHT, 2011b: online). Therefore, the DSDW protects the rights and security of migrant workers by combating the practice of human trafficking through measures of protection, prevention and suppression.

### **3.3.3 Department of Fisheries**

The Department of Fisheries (DOF), under the Ministry of Agriculture, was established in 1926 in order carry out the following responsibilities: to implement and

enforce various laws regarding the fishing industry, to conduct ongoing research regarding all aspects of all different types of fisheries, to determine strategies for the location of fishing grounds, to develop sustainable fishing techniques and strategies, and to promote the development of all occupations related to the fishing industry (Department of Fisheries, 2010: pamphlet).

Despite the prevalence of the trafficking and exploitation of both Thai and migrant workers in the fishing industry, the DOF is not specifically involved in the handling of labor complaints or in the prevention of human trafficking. According to the Chief Director of the Provincial Fisheries Office in Samut Sakhon:

“The role of the DOF is often misunderstood by the media and NGOs who are looking at the problems of human trafficking from the outside. This department is not responsible for labor protection, immigration, or anti-trafficking; there are other departments responsible to take care of that. We [the DOF] make sure that employers are following rules according to the Fisheries Act, that is how we protect the fishermen” (Interview, 9 July 2012).

The primary role of the DOF is to implement and enforce the laws that are relevant to work in fishing. The Fisheries Act B.E. 2490 (1947) is a primary piece of legislation for the fishing industry in Thailand and it serves as a foundation for all other laws related to fisheries. The purpose of this act is to set out standards and regulations for the methods of production and harvesting in the fisheries as well as to establish a system of licensing and registration. However, even though the DOF and the Fisheries Act are unable to explicitly protect migrant fishermen in Thailand, they do play vital roles in the inspection and data collection processes. Routine inspections are made of fishing vessels as they return to port in order to make sure that they are complying with the terms of the Fisheries Act in that they are using the proper equipment, possess valid licenses, and are registered with the provincial fisheries office. The Chief Director of the Provincial Fisheries Office in Samut Sakhon said that his office has encountered situations where they have stumbled upon migrant

fishermen who have been trafficked and exploited during routine inspections of fishing vessels (Interview, 9 July 2012).

Even though they do not have the authority to make an arrest of the boat captains, they are able to report the case to the police and hold the vessel until the marine unit arrives. The DOF can also help in the protection of migrant fishermen in Samut Sakhon even when they do not directly encounter trafficking and exploitation firsthand because the department is continually collecting data regarding many different aspects of each boat that is inspected. These data are then shared with other government agencies and allows them to coordinate an investigation upon a fishing vessel that is suspected of exploiting its workers. The DOF may not be the most obvious government agency involved in the protection of migrant fishermen, but its role of enforcing laws related to the fisheries and conducting ongoing surprise inspections of fishing boats is able to provide a unique layer to the complicated system of protection mechanisms for migrant workers in Thailand.

### **3.3.4 Other Government Agencies**

In addition to the MOL, MSDHS, and the DOF, there are also other government agencies involved in the protection of migrant workers such as the Royal Thai Police, the Department of Special Investigation, and the Office of Welfare Promotion, Protection and Empowerment of Vulnerable Groups. The Royal Thai Police is the national police force of Thailand and is able to protect migrant workers through responding to complaints and reports of violations to the criminal code, which includes the abuse and exploitation of migrant workers on fishing boats that are based in Thailand. Furthermore, the Anti-Human Trafficking Division (AHTD) is a special police task force that is designed to prevent and suppress all forms of trafficking in persons within the Kingdom of Thailand. The main objective of the AHTD is to strive for the protection of human rights, for all individuals in Thailand, through combating human trafficking through the coordination of other government agencies, private companies, NGOs, and international organizations.

The Department of Special Investigation (DSI) is a law enforcement agency under the Ministry of Justice that is designed to prevent, suppress, and control serious crime in Thailand and also coordinates with various agencies of public and private sectors, both in Thailand and overseas, during the course of its investigations. The DSI is especially involved in the fight against trafficking in persons, which is a serious crime and often one of an organized nature in need of special attention (UNIAP, 2010: 28). Due to the fact that many alleged cases of human trafficking and labor exploitation are very complicated and rarely easy to sort out, the DSI plays an important role in the protection of migrant workers by helping to identify the victims of trafficking and to prosecute those who are responsible for its crime.

The Office of Welfare Promotion, Protection and Empowerment of Vulnerable Groups (OPP) is a government agency under the MSDHS that was established in October 2002 in order to create and increase effectiveness of the networks and protection mechanisms that have been designed to protect and promote the rights of vulnerable groups in Thailand. The goal of the OPP is to establish sustainable solutions to the problems that vulnerable populations in Thailand face by helping them to achieve their own wellbeing, autonomy and by enabling them to make increased valuable contributions to society (MSDHS, n.d.: pamphlet). Migrant workers fall under the definition of vulnerable people for many reasons, thus the measures taken by the OPP are significant to the system of protection mechanisms for the migrant community in Thailand and it is another example of a government agency that is involved in this process.

### **3.4 Provincial Operation Center on Prevention and Suppression of Human Trafficking (POCHT)**

Another key government-based protection mechanism for migrant workers in Samut Sakhon is the Provincial Operation Center on the Prevention and Suppression of Human Trafficking (POCHT), which was established according to Section 15 of the Anti-Trafficking in Persons Act B.E. 2551 (2008). In Samut Sakhon, POCHT is responsible for the coordination of all anti-trafficking efforts across the province and

is made up of different government and non-government officials who are working in the province. According to an interview with the Secretary of the Board of the sub-committee of POCHT in Samut Sakhon, this committee is comprised of government officials from the MSDHS, the MOL, the Ministry of Defense, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Tourism and Sports, the Ministry of the Interior, the Department of Fisheries, the Royal Thai Police, as well as experts from NGOS and other private organizations, including representatives from the LPN and Raks-Thai Foundations (Interview, 10 July 2012).

The Governor of the Province of Samut Sakhon is the chairperson of this committee and an official from the MSDHS takes the role as the vice chairperson of POCHT. Based on several interviews with different government officials and representatives from NGOs who are directly involved in the sub-committee of POCHT in Samut Sakhon, the office of the DSDW takes a lead role in the organization and implementation of POCHT's anti-trafficking strategies around the province. In addition, the majority of suspected cases of trafficking in persons are first channeled through this department in order to determine who is a victim of trafficking and who is not.

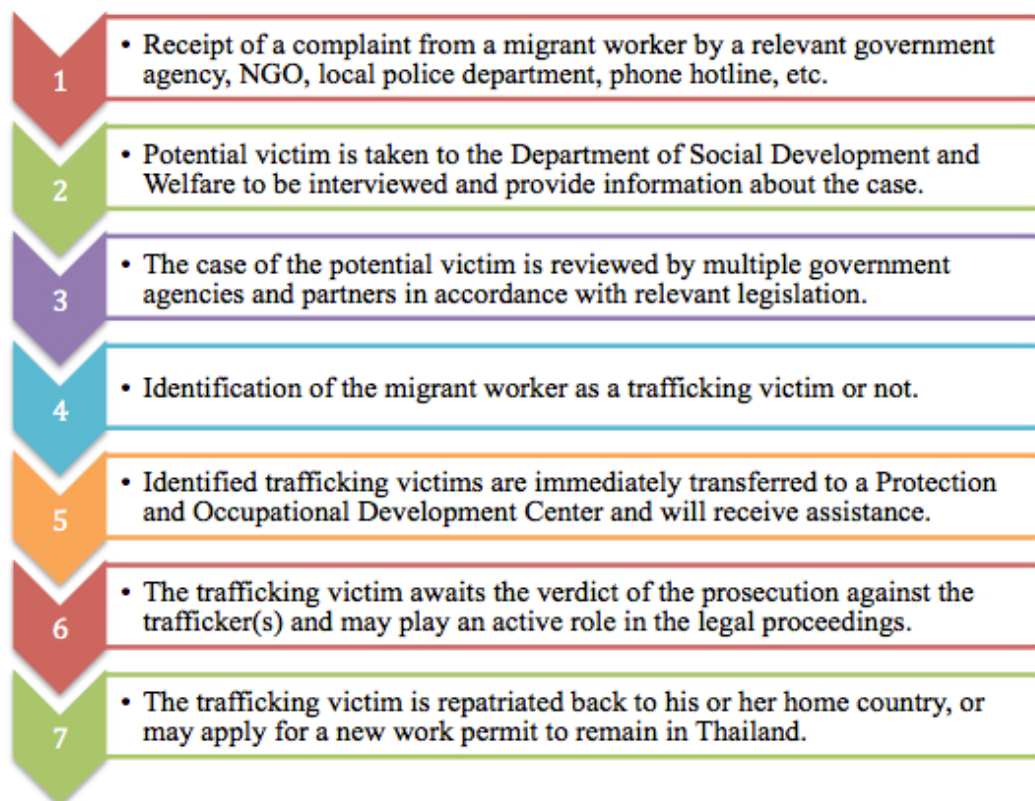
The official duties of this Provincial Sub-Committee are as follows: to establish strategies and measures of the prevention and suppression of trafficking; to ensure the implementation of international obligations; to coordinate with foreign bodies regarding anti-trafficking measures; to conduct and supervise research projects for the increased data collection in relation to trafficking in persons; to establish and implement regulations regarding the registration of NGOs and the rules relating to their anti-trafficking activities; to allocate and manage provincial funding to projects and organizations that are involved in the prevention and suppression of trafficking in persons; and to implement the strategic plans and guidelines that come from the National Operation Center on Prevention and Suppression of Human Trafficking (NOCHT), which is located in Bangkok (MSDHS, 2009: 6-10).

In Samut Sakhon, POCHT plays an important role in the overall big picture for the protection of migrant fishermen in that province. In an interview with a senior official from the office of the MSDHS in Samut Sakhon, it was said that this committee develops specific strategies as well as further sub-committees and research teams in order to try and tackle the issues of trafficking and exploitation of migrants because they are “all too common and growing problems in the [fishing] industry” (Interview, 4 July 2012). The Secretary of the Board of the Provincial Sub-Committee reported that the Royal Thai Government allocates one million Baht every single year to the committee in order to conduct a detailed survey regarding the migrant residents of Samut Sakhon in order to discover the key challenges and gaps in protection for these migrants from human trafficking and labor exploitation (Interview, 10 July 2012). In Samut Sakhon, POCHT is not able to handle individual complaints and alleged instances of trafficking or labor exploitation, but they are the main entity, comprised of both government and non-government agencies, that is responsible for setting the overall strategy of for the protection and suppression of trafficking in persons.

### **3.5 Overview of Government Protection Mechanisms and Process for the Identification of Trafficking Victims**

The official procedure for the handling of complaints from migrant workers that are related to specific allegations of human trafficking and labor exploitation in the province of Samut Sakhon, and the resulting protective services that are provided to those successfully identified as victims, is established by the Memorandum of Understanding on Operational Procedures for Concerned Agencies in Prevention, Suppression, and Solution for Human Trafficking Problem in 9 Lower Central Provinces in Thailand (Office of Welfare Promotion Protection and Empowerment of Vulnerable Groups [OPP], 2008). An overview of this official process is show in Figure 3.1 below.

Figure 3.1 Overview of Protection Mechanism and Victim Identification



Source: Interviews with Government Officials from the MSDHS.

The first step in this process is for the actual complaint to be received by a relevant government agency, NGO, local police department, trafficking phone hotline, or any person with an understanding of this complaints process. According to an interview with a senior official from the Provincial Department of the MSDHS in Samut Sakhon, a person who may be a victim of trafficking is most likely to make the report to someone that he or she trusts and knows can provide assistance (Interview, 4 July 2012). The results from the interviews with migrant fishermen proved that it is very difficult for the fishermen to trust anyone outside of their current situation of employment. However, as the Anti-Trafficking Case Manager of the Labor Rights Promotion Network Foundation pointed out, if it becomes bad enough, migrant workers will eventually take any means necessary to escape from their exploitative situation and find someone to confide in that can actually provide assistance to them (Interview, 6 July 2012).



Once the initial complaint or report of a potential situation of trafficking or labor exploitation has been made, it must then be taken to the Provincial Social Development and Human Security Office for review of the case. In this step, the potential victim will be interviewed regarding the facts and information about his or her situation of exploitation. In this preliminary investigation, the operating officers from the provincial office of the MSDHS will provide, or coordinate with various NGOs to provide, social worker(s), psychologist(s), psychiatrist(s), interpreter(s), or any other relevant specialist(s), depending on each case, to participate in the aforementioned investigation (OPP, 2008: Article 9.1). Both LPN and the Raks-Thai Foundation reported that they have provided translators, interpreters and other experts during this step of the complaints process.

After the preliminary investigation and interview step has been completed, it is the responsibility of the provincial office of the MSDHS in Samut Sakhon to determine whether or not the individual(s) in question is a victim of trafficking in persons. This decision is made through the consultation and consideration of at least 13 different pieces of government legislation and their corresponding implementing government agencies, but most importantly under the provisions of the Anti-Trafficking in Persons Act B.E. 2551 (2008). According to multiple government officials representing the provincial departments of the MSDHS and MOL, as well as the Chief Director of the Pathumthani Provincial Protection and Occupational Development Center for Men, the officers in charge of determining whether or not a person is a victim of trafficking must make a decision within 24 hours of having first received the complaint (Interviews, July 2012). If they are unable to do so within 24 hours, they are required by Article 9.4 of the MOU on Trafficking between the nine lower central provinces of Thailand, to make an urgent request to the provincial courts to extend temporary custody of the potential victim(s) for a maximum of seven days in an approved temporary shelter location. The identification of trafficking victims is done according to the definition of the three key elements of trafficking in persons by Section 4 of the Anti-Trafficking in Persons Act. An English version of the actual checklist that is used by the provincial office of the MSDHS in Samut Sakhon is shown in Figure 3.2 below.

Figure 3.2 Preliminary Checklist for Identifying Trafficked Persons

No. \_\_\_\_\_

### Preliminary Checklist for Identifying Trafficked Persons

Place of Interview \_\_\_\_\_  
Date \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_

Today, at \_\_\_\_\_ hrs, the following officials and relevant individuals: \_\_\_\_\_

\_\_\_\_\_ interviewed the following individual to determine whether they had been subject to trafficking in persons. The following information was obtained:

**1. Personal information of interviewee**  
Name-Surname \_\_\_\_\_ ( ) Male ( ) Female  
(If the name-surname cannot be obtained, please indicate any other identifying characteristic or distinguishing feature that may identify the individual \_\_\_\_\_)

Date of Birth \_\_\_\_\_ Age \_\_\_\_\_ years  
Nationality \_\_\_\_\_ Race \_\_\_\_\_  
Name-Surname of Father \_\_\_\_\_ Name-Surname of Mother \_\_\_\_\_  
Address \_\_\_\_\_

Identification Card No. \_\_\_\_\_ Passport No. \_\_\_\_\_  
Other Identification Documents ( ) Yes, please specify \_\_\_\_\_ ( ) No  
Enter-Depart Thailand at: \_\_\_\_\_  
Means of Transport ( ) On foot ( ) Car ( ) Bus ( ) Plane  
( ) Other Please specify \_\_\_\_\_  
Name-Surname of persons(s) assisted with the traveling \_\_\_\_\_

**2. Subjected to one of the following:**  
( ) procuring/buying ( ) selling/vending ( ) bringing from  
( ) sending to ( ) detaining/confining ( ) harbouring  
( ) receiving

**3. The acts in (2) were committed by any of the following methods:**  
( ) threat ( ) use of force ( ) abduction  
( ) fraud ( ) deception ( ) abuse of power  
( ) giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control

**4. The acts in (2) and methods in (3) were done for any of the following purposes:**  
( ) Seeking benefits from the prostitution  
( ) Production or distribution of pornographic materials  
( ) Other forms of sexual exploitation  
( ) Slavery  
( ) Causing another person to be a beggar  
( ) Forced labour or service  
( ) Coerced removal of organs for the purpose of trade  
( ) Any other similar practices resulting in forced extortion, regardless of such person's consent

**5. Conclusion**  
( ) Not an act of trafficking in persons  
( ) Potentially an act of trafficking in persons. The interviewee should be given temporary care and await further consultation  
( ) An act of trafficking in persons, as defined by the following circumstances: \_\_\_\_\_

**6. Recommendations for assistance**  
\_\_\_\_\_  
\_\_\_\_\_

Recorded as evidence

Interviewee Signature  
Name ( \_\_\_\_\_ )

Interviewer 1 Signature  
Name ( \_\_\_\_\_ )  
Position \_\_\_\_\_

Interviewer 2 Signature  
Name ( \_\_\_\_\_ )  
Position \_\_\_\_\_

Interpreter Signature  
Name ( \_\_\_\_\_ )  
Position \_\_\_\_\_

Interviewer 3 / Recorder Signature  
Name ( \_\_\_\_\_ )  
Position \_\_\_\_\_

**Note:** 1. If any act under section (4) has been done to a child, irrespective of the consent of the child or the acts in section (2), such child is positively identified as having been trafficked.  
2. If the interviewee is unable to sign the document, their fingerprint of the right thumb is acceptable.

Source: National Operation Center on Prevention and Suppression of Human Trafficking (NOCHT), 2012: pamphlet.

If a migrant worker is successfully identified as a victim of trafficking in persons, the authorized officers from the MSDHS will then immediately transfer the individual to one of nine Protection and Occupational Development Centers across Thailand, which provides a shelter for trafficking victims. Migrant fishermen from Samut Sakhon who are identified as trafficking victims are transferred to the center that is located in province of Pathumthani, as it is the nearest shelter that is able to accommodate male victims over the age of 18 years old. This shelter is provided under the operation of the MSDHS, which is a requirement of the Anti-Trafficking in Persons Act. The MSDHS is also required to provide appropriate services for trafficking victims such as food, accommodation, medical treatment, physical and psychological recovery, education and occupational training, legal assistance, repatriation assistance, notification of his or her rights of protection during each

process, and in each step the victim's opinions and requests must be carefully considered (OPP, 2008: Article 9.5). It should also be noted, that if a victim is not identified as a victim of trafficking, but a victim of some form of labor exploitation only, his or her complaint will be transferred to the Department of Labor Protection and Welfare for consideration and further actions.

After an identified victim has been transferred to a protection facility, the investigating officers, in accordance with the guidelines established by NOCHT, will then begin the prosecution of traffickers and offenders in accordance to the Anti-Trafficking in Persons Act B.E. 2551 (2008), including other relevant laws such as, the Money Laundering Control Act B.E. 2542 (1999), the Labor Protection Act B.E. 2541 (1998), and the Penal Code of Thailand. According to the Chief Director of the Provincial Protection and Occupational Development Center in Pathumthani, the trafficking victim is expected to play a major role in the prosecution of his or her trafficker(s) as a key witness and source of information (Interview, 13 July 2012).

The final step in this process is the repatriation of the migrant worker. The MSDHS is responsible to coordinate with such agencies as the Immigration Bureau, the Thai-Myanmar Border Affairs Division, the Ministry of Foreign Affairs, and NGOs to return the trafficking victim back to his or her country of origin/domicile. This same coordination is also required with concerned government agencies and NGOs in the country of destination so as to ensure successful repatriation, social reintegration, and information exchange between countries to provide assistance to the former trafficking victim in the future (OPP, 2008: Article 9.11). If a foreign victim of trafficking does not want to return to his or her home country, a request for a proper work permit and extension of stay may be made, provided that he or she obtains employment with an employer that agrees to register the foreign worker and has been approved by the NOCHT as a safe provider of a vacant employment opportunity.

The whole process of these protection mechanisms, from initial complaint to repatriation of the trafficking victim, is expected to take a minimum of six months to

upwards of a couple of years (Gallagher and Pearson, 2010). This was confirmed by the Chief Director of the Pathumthani shelter for male victims of trafficking in persons, when he said that victims of trafficking typically stay in his shelter for between six months to one and a half years before their cases are finished and they are successfully repatriated. He said that the fastest he has ever seen someone go through this process was in three months because it was a very simply and straightforward case. He believed that the process is necessarily slowed down by the fact that the prosecution of traffickers is a highly complicated process and takes time to go through this process properly (Interview, 13 July 2012).

### **3.6 Conclusion**

The extensive government-based system of protection mechanisms for migrant workers in Thailand provided some evidence that the government is serious, at least on paper, about the protection of migrant labor within its country. There is no shortage of both domestic and international legislation and commitments to reduce labor trafficking and the exploitation of migrant workers, including those in the fishing industry. In addition, there are also many key government agencies that are charged with the responsibility of developing and implementing these formal protection mechanisms. In Samut Sakhon alone, there are no less than 16 different government agencies specifically involved in the prevention and suppression of labor trafficking in that province. However, according to a senior government official in Samut Sakhon, the complexity and confusion surrounding the system of legal protection mechanisms for migrant workers creates one of the biggest challenges for the system to be fully effective in the protection of migrant fishermen (Interview, 4 July 2012). Several different representatives from various local NGOs working in Samut Sakhon later confirmed this sentiment to be true of their experiences.

In order for these mechanisms to function properly, a high level of training and experience working with many different pieces of legislation and government agencies is required. This complex legislative mechanism may fail to actually provide protection for migrant workers, simply because there are not enough

government officials who fully understand and/or have been trained in all of the legal procedures pertaining to this system of government-based protection mechanisms. According to both NGOs and senior government officials in Samut Sakhon, training that was formerly provided for police officers, other government workers, and public servants in regards to the prevention and suppression of trafficking in persons, as well as in the successful identification of its victims, takes place much less frequently and has become outdated. It was also reported that there is a high-level of turn over amongst the government officials within the local offices of the DSDW and the DLPW in Samut Sakhon (Interviews, 4-18 July 2012). When this is coupled with the lack of regular training regarding the identification of cases of trafficking in persons and labor exploitation, it creates a situation whereby the number of government personnel who have received this training are potentially stretched very thin. These challenges will need to be addressed in order for the system of protection mechanisms to become more effective for Thailand's migrant workers.

## **CHAPTER 4**

### **NON-GOVERNMENT PROTECTION MECHANISMS**

#### **4.1 Introduction**

Non-government organizations (NGOs), civil society, and community-based support groups can be ideal partners in addition to the government for addressing various gaps in the protection of migrant workers. They can be highly effective in contributing to counter-trafficking initiatives through providing an assortment of protection and humanitarian services, referring complaints and violations to the appropriate channels, giving feedback and policy analysis to the government, and providing information on the latest trends and issues related to trafficking in their areas of expertise (US Department of State, 2011: 44-45). These organizations are also usually the “first-responders” to specific areas of concern and can be the primary channels that a migrant worker would gain access to protection mechanisms through. There is little doubt that NGOs and civil society can provide valuable resources alongside of government agencies in order to improve the awareness, effectiveness and enforcement of various policies and strategies.

The provisions of non-government protection mechanisms are not, however, without their own unique sets of challenges and obstacles that can leave gaps in the protection of migrant workers in Thailand. These organizations may lack any significant legal authority or enforcement powers, their operations may be severely limited due to lack of funds, or they may function in such a way undermines the government’s own policies and mechanisms (Bardhan, 2011: online). This chapter will examine the role of NGOs, civil society, and other non-government groups in providing support to Thailand’s system of protection mechanisms for migrant workers. The chapter will also look at some specific challenges as well as cases of success in the protection of migrant fishermen in Samut Sakhon.

## **4.2 Role of NGO-based Protection Mechanisms**

The International Organization for Migration (IOM) states that civil society and NGOs are able to be effective partners in a variety of global migration management issues that lead to the increased protection of migrants through activities such as: counter-trafficking, assisted voluntary returns, human rights awareness and protection, resettlement programs, labor migration assistance, public information campaigns, health management, research and data collection, and technical policy advice (IOM, n.d.: online). In Thailand, NGOs have taken on many of these roles in order to increase protection for the hundreds of thousands of migrants living and working within the country.

### **4.2.1 Rights Awareness**

A major service that civil society and NGOs are able to provide within the structural system of protection mechanisms in Thailand is in regards to the raising of awareness surrounding the rights of migrant workers within the country. As was discovered by the interviews and focus group discussions with the migrant fishermen in Samut Sakhon, many migrant workers in Thailand have a limited understanding of what their rights are, how they can protect those rights, and who they can go to for assistance if those rights have been violated.

Even when the fishermen had limited understanding of their rights, it was either in relation to their right to receive compensation for medical treatment from their employers or it was such a vague concept that they were not sure of how their rights to things such as safe working conditions and the regular payment of wages could be adequately protected. This lack of clarity and of awareness created a culture whereby the vast majority of interviewed fishermen were not at all confident about the rights that were owed to them as migrant workers in Thailand. Therefore, an important role of NGOs is to partner with existing government authorities in order to ensure that all migrant workers are not only informed of their rights, but that they also have confidence about what those rights are and that they know where they can

receive protection from to uphold or restore those rights that may have been taken away from them.

All of the representatives from the NGOs that were interviewed during the course of this research project cited that rights awareness was an important component of their work with migrant workers in Samut Sakhon. The provincial office of DLPW reported that they had partnered with such NGOs as LPN and Raks-Thai in order to put on several seminars and training sessions on the issue of migrant workers' rights within the Samut Sakhon (Interview, 10 July 2012). These kinds of activities are in accordance with research conducted by Pearson et al. (2006: 111-112), which recommends that government agencies and NGOs in Thailand should work towards empowering migrant workers with the knowledge of "their rights and access to services."

#### **4.2.2 Management and Forwarding of Complaints**

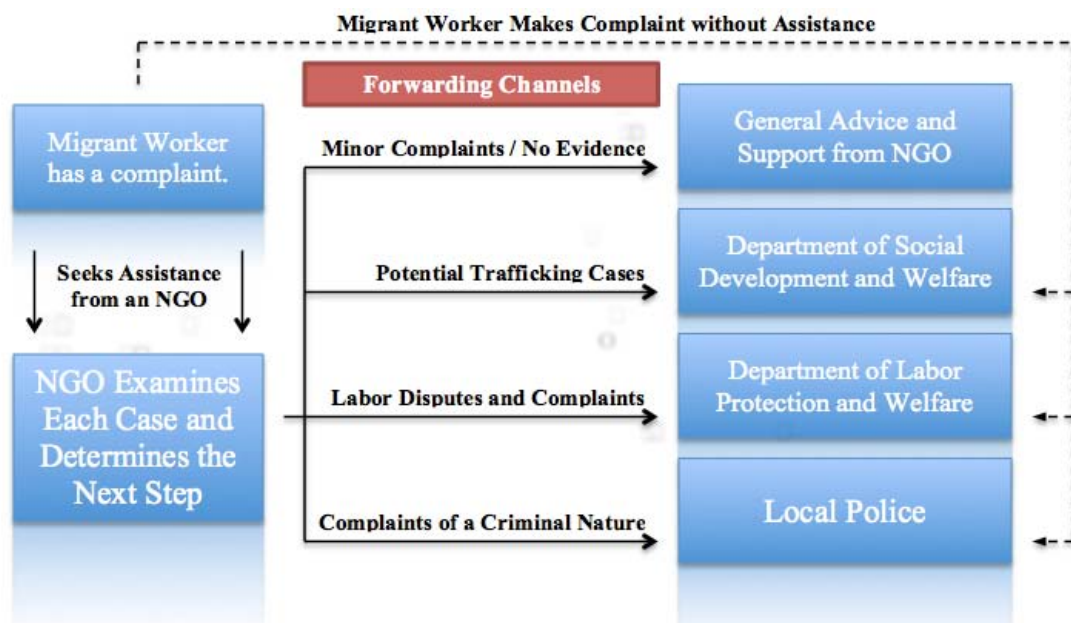
It can be intimidating for migrant worker to seek protection from or make a formal complaint to a government agency of a country of which he or she is not a citizen. Some of the migrant fishermen that were interviewed in Samut Sakhon claimed that they were not even sure if the labor protection office gave assistance to non-Thai workers, and there were many fishermen who said that they did not trust the government out of fear of being deported or arrested because of their status as illegal migrants to the country. Therefore, NGOs working with migrants in Thailand are ideally situated to handle complaints of labor issues and potential cases of human trafficking simply because they are often perceived as a safer and more inviting alternative for protection by the migrant workers.

The staff and volunteers of these NGOs are able to receive complaints from migrant workers by making sure that they are diligently spreading contact information to the workers and their families so that they can be reached if there were ever a problem or if a worker needed some kind of assistance. According to interviews with representatives from various local NGOs in Samut Sakhon, regular trips were made to



different workplaces that employ migrant fishermen and their families in order to disseminate this critical information (Interviews, 5-18 July 2012). Once these complaints are received or problems are discovered, these NGOs are then able to forward the individual cases to the proper legal channels and government departments. This important role can be visualized in Figure 4.1 below.

Figure 4.1 NGO Management and Forwarding of Complaints



Source: Interviews with Government Officials and Representatives from NGOs.

The Migrant Labor Specialist at the DLPW in Samut Sakhon reported that the vast majority of complaints that they receive from migrant fishermen are done through the assistance of an NGO that has referred each complaint to his office and even accompanies the workers throughout the processing of filing the formal complaint. He also said that it is extremely rare for any migrant fishermen to come into the DLPW on his own to make a complaint (Interview, 10 July 2012). The Senior Case Manager at the Labor Rights Promotion Network Foundation (LPN) said that one of LPN's main goals is to become "experts of investigation" so that they can assist in the complaints process by gathering concrete evidence before the complaint is forwarded to the proper government legal channel (Interview, 6 July 2012). Even a senior officer at the provincial department of the MSDHS in Samut Sakhon

admittedly reported that potential trafficking victims have a much better chance to be taken seriously and given more resources by the department if they either came in large groups to make a complaint or if they had the assistance of an external organization (Interview, 4 July 2012). Therefore, NGOs play an important role in the protection of migrant workers not only through forwarding complaints to the proper legal channels, but also through the significance of their presence and the collection of relevant evidence for each potential case of labor disputes, exploitation, and trafficking in persons.

#### **4.2.3 Policy Consultation**

NGOs and civil society can also play an important role in the development of various government policies regarding irregular migration, anti-trafficking, labor protection, and migrant workers' rights. Castles (2004: 219-220) argues that a lack of collaboration between government organizations and local NGOs can lead to the development of inadequate migration-related policies that will ultimately end in failure. The LPN, Raks-Thai, and the Mirror Foundation independently confirmed through interviews that took place with representatives from their organizations that they have each been involved in various meetings and formal discussions with different government agencies on the development of policies on migration issues in Thailand. Through these meetings, they have been able to help give technical advice and relevant expertise on the drafting of MOU agreements relating to recruitment of migrant labor and anti-trafficking. This is another important role that NGOs are able to play in the protection of migrant workers due to their unique perspectives and direct experience working with some of these issues.

#### **4.2.4 Research and Data Collection**

The importance of research and data collection is a proven step towards the increased protection of vulnerable populations from labor exploitation and human trafficking (Laczko and Danailova-Trainor, 2009: 2). NGOs and civil society are able to conduct valuable quantitative and qualitative research in the localities of the

ongoing operational activities. This research plays an important role in policy development, in revealing gaps in protection mechanisms, and in the identification of any significant trends related to the issues of irregular migration, forced labor, and labor trafficking (De Cock, 2007: 28-30; Goodey, 2008: 438). Interviews conducted with LPN and Raks-Thai indicated that both of these organizations have used data from research that they have conducted in order to influence development of government policies and inform the Samut Sakhon Sub-Committee for the National Operation Center on the Prevention and Suppression of Human Trafficking (NOCHT). A technical officer from the MSDHS in Samut Sakhon reported that research from NGOs assists in the improvement of protection mechanisms for migrant workers because they often have access to migrants in ways that are not viable for government agencies and they may have more time to conduct research that addresses specific issues facing migrant communities (Interview, 4 July 2012).

#### **4.2.5 Promotion of Health and Safe Work Practices**

In regards to a holistic protection of migrant workers, NGOs and civil society play an extremely important role in educating migrants about various health issues and in advocating for safe work practices. The Raks-Thai Foundation in Samut Sakhon regularly provides three to four day training sessions for fishermen that are returning to the shore in order to promote health treatment, HIV/AIDS awareness, and safe sex practices. According to the Operational Director of Raks-Thai in Samut Sakhon, these types of seminars and education sessions are not only able to improve the health habits of migrant workers, but it also introduces them to the volunteer staff of the organization and it starts to build trust with the migrants so that they can come to them to seek protection or assistance in the future (Interview, 5 July 2012).

#### **4.3 Relationship with Government Agencies**

The relationship between government agencies and NGOs in general is a complicated one at best, let alone for those that are working on the issues of migrant protection. NGOs are often criticized for always portraying the government in a

negative connotation and for having narrow or idealistic agendas. However, based on interviews with representatives from both NGOs and government agencies in Samut Sakhon, the researcher was surprised to learn that the state of the relationship between these two groups is in seemingly good shape and that high-level collaboration is taking place in order to tackle some of this issue's biggest challenges.

Interviews with members of LPN in Samut Sakhon revealed that this organization has had a very positive relationship and experience working with the government, especially the DLPW and MSDHS, on the issue of the protection of migrant workers (Interview, 6 July 2012). LPN reported that they are regularly called upon by different government agencies in order to provide interpreters for migrants who cannot speak Thai as well as to be involved in various strategic planning committees to address the issues of labor trafficking and exploitation in the province's fishing sector. The Director of LPN also reported that an effective partnership with the government and the Royal Thai Police has been formed in the conducting of raids on suspected abusive workplaces and that this has led to the collection of large amounts of valuable evidence to assist in the prosecution of those charged with trafficking in persons or exploiting migrant labor (LPN, 2011: 18-19).

The office of the Raks-Thai Foundation in Samut Sakhon also had a similar experience in its relationship and interaction with government agencies in that it has been highly involved in various public awareness campaigns to educate the general community about the issues facing migrant workers and they have also regularly participated in the provincial sub-committee of NOCHT in order to give input and experience to the government's anti-trafficking strategies. A technical officer and program coordinator for Raks-Thai said that they had been involved in a joint project with the United Nations Inter-Agency Project on Human Trafficking (UNIAP) several years ago in order to help train police officers and government workers about the issues of human trafficking in Samut Sakhon and how to recognize the signs of when it may have taken place. Unfortunately this program is no longer in operation and, according to this officer, the police only receive a short training session about trafficking that many of them complain is too intensive and that they cannot

remember everything (Interview, 5 July 2012). However, he maintained the argument that these types of programs have been very successful in the past and a good example of how government agencies and NGOs can work together effectively.

The relationship between government agencies and civil society on the protection of migrant workers is generally held to be in good standing and both sides view the other as vital partners in their work. However, this relationship is also not without its share of significant challenges and issues that need to be addressed throughout this process of implementing Thailand's system of protection mechanisms for the migrant working community. NGOs, especially those working with migrant fishermen, were heavily criticized by representatives from the provincial offices of the MSDHS, DLPW and DOF in Samut Sakhon for sometimes over-exaggerating the scale of trafficking in persons and labor exploitation that take place within this province in order to gain funding and drive a particular agenda. On the other hand, representatives from the NGOs that took part in this research project were critical of the government's lack of consistency in the enforcement of Thailand's labor and anti-trafficking laws as well as for widespread corruption that undermines the entire structure of these protection mechanisms. In order to express these types of criticisms, a group of NGOs called the Anti-Human Trafficking Network (ATN)<sup>8</sup> sent an open letter to the Prime Minister of Thailand, Yingluck Shinawatra, on June 5<sup>th</sup>, 2012 that specifically cited corruption, poor ethics, and a general "lack of spirit" as major issues amongst individual members and agencies of the Royal Thai Government that is obstructing the implementing of anti-trafficking activities in Thailand (ATN, 2012: online). The general feelings of mistrust and tension between these two groups seems to wax and wane over time, but it still manages to impede partnership and reduce full collaboration, which only acts as a detriment to the status of effective protection for migrant workers in Thailand.

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<sup>8</sup> The Anti-Trafficking Network (ATN) is a group of non-government organizations that seek to protect the rights of children, women, and workers both Thai and migrant in Thailand. This group includes: Labor Rights Promotion Network Foundation (LPN), Alliance Anti-Traffic (AAT), The Mirror Foundation, Friends of Women Foundation (FOW), Association for Human Rights and Women Rights in Development (AWARD), and Human Rights and Development Foundation (HRDF).

#### **4.4 NGOs working with Migrant Fishermen in Samut Sakhon**

In response to the growing problems of the labor exploitation and trafficking of migrant fishermen in Thailand, several NGOs have started working on this specific issue over the past several years in the coast province of Samut Sakhon, a province well known for its ties to the fishing industry and abundant use of migrant labor.

##### **4.4.1 Labor Rights Promotion Network Foundation (LPN)**

The Labor Rights Promotion Network (LPN), established in December 2006, is a non-government organization in Thailand that is based out of the coastal province of Samut Sakhon. The vision of this organization is to network members of civil society in order to “Promote the quality of life of workers” (LPN, 2012: online). According to the Director of LPN, his organization’s main activities are focused on working with migrant workers in order to help provide for their basic needs in education, health, counseling and practical training as well as providing legal assistance to help them with labor disputes and instances of exploitation (Interview, 6 July 2012).

In terms of legal assistance for migrant fishermen, a worker from LPN is often the point of first contact for a potential victim of exploitation to begin the process of filing a formal labor dispute complaint or to seek protection as a trafficking victim. This was confirmed by the DLPW in Samut Sakhon, who reported that almost every single case of the possible exploitation of migrant fishermen has been brought to their attention through the assistance of LPN and that it was very rare for a fisherman to find his way to the office without any external support from NGOs such as LPN (Interview, 10 July 2012).

Before a complaint is presented to the official legal channels, LPN conducts a preliminary investigation by collecting all the relevant evidence that is possible regarding the particular case. Once this has been completed, the case is then presented to the appropriate complaints mechanisms, most likely to the offices of

either the DLPW or the MSDHS. According to LPN, the advantage for a migrant fisherman in allowing their organization to file a complaint on his behalf is that his case will likely go a lot farther in reaching the appropriate authorities and that he is much more likely to receive adequate legal protection than if he tried to file a complaint on his own (Interview, 6 July 2012).

LPN is taking a lead role in the protection of migrant fishermen in Samut Sakhon. Several of the interviewed fishermen were able to identify this organization by name as they had previously interacted with some of its volunteers who were patrolling some of the fishing piers in order to raise awareness about migrant rights and the dangers of trafficking. The Senior Anti-Trafficking Case Manager at LPN claimed that more than 70 percent of the male trafficking victims who successfully received government protection and ended up in the Pathumthani shelter for male trafficking victims had done so through the assistance of LPN (Interview, 6 July 2012). The Director of the Pathumthani Provincial Protection and Occupational Development Center for Men was unable to confirm this claim outright, but he did say that many of the victims in his shelter from Samut Sakhon had previously interacted with LPN on some level before arriving to his facility (Interview, 13 July 2012).

#### **4.4.2 The Raks-Thai Foundation**

The Raks-Thai Foundation, a member of CARE International, was founded in Thailand on August 15, 1997 in order to strengthen and support disadvantaged groups and vulnerable populations all around Thailand. The current major activities of this organization are focused on the following key areas: health promotion, HIV/AIDS prevention, access to education, community business support, environmental sustainability, as well as the rescue and rehabilitation of victims of natural disasters, human trafficking, and other forms of injustice.

In Samut Sakhon, the Raks-Thai Foundation has established an office that serves as its base of operations for all of its activities around the province, which are mainly focused on providing support and assistance to the large population of migrant

workers that are located in this province. According to the Operational Director of the office of Raks-Thai in Samut Sakhon, his organization has been heavily involved in various awareness and training programs for migrant fishermen (Interview, 5 July 2012). He said that his team of staff regularly provides informal training sessions for migrant fishermen during the low season when they come back to shore and stay for longer periods of time before they go back out to sea.

These training sessions do not focus so much on awareness of labor rights and protection, but they are designed to combat the significant health issues that the fishermen face while out at sea. For instance, the fishermen can develop significant skin issues due to a combination of working around salt water and the fumes from the boat engines or they can become seriously malnourished and weak due to not having a proper diet and a lack of fresh drinking water. A group of five fishermen that were interviewed together said that they were very grateful to receive information from Raks-Thai about these kinds of issues so that they could better take care of themselves as well as to know that they could get assistance from the staff of this organization or if they ever had any health-related questions (Interview, 5 July 2012). The Coordinator for Migrant Workers at Raks-Thai also said that they have raised funds for fishermen who have had serious health-related problems, due to their extreme working conditions, and enabled them to receive life-saving surgeries and medical treatment (Interview, 5 July 2012).

In addition to health-related services for migrant fishermen, the Raks-Thai Foundation also operates an outreach center (see Figure 4.2 below) just outside of the main urban center of Mahachai in an area called Thachalom, which is home to many small and medium sized fishing piers where the boats that are returning to shore come to dock and offload the fish that has been caught. This outreach center has been able to provide a drop-in center for migrant fishermen to come during their break times in order to relax, read books that are written in their own language, and talk to some of the workers at Raks-Thai about some of the problems that they are facing. Raks-Thai also sometimes brings doctors, counselors, and social workers to this outreach center in order to provide further support to the fishermen.



Figure 4.2 Raks-Thai Foundation's Outreach Center in Thachalom, Samut Sakhon



Source: Kelly Schulz, 2012: photograph.

According to an interview with one of the workers in this outreach center, they have also been able to meet with Thai captains and boat owners that want to employ their migrant workers legally and that they have been able to give them information about the process of registration in order to assist them through this process. This worker also reported that most of the captains and boat owners actually want to operate legally according to the law in Thailand, but if they do not know how to do so or if they think that there are no incentives for them, then they will hire illegal migrant labor for their fishing boats and are much more likely to exploit their workers (Interview, 5 July 2012).

A similar sentiment was conveyed by the Chief Director of the Department of Fisheries in Samut Sakhon who said that most of the problems of trafficking and

exploitation take place within small, private fishing operations rather than in the large companies. He said that this is because the small business entrepreneurs in the fishing industry find it difficult to attract labor, therefore they use sub-contractors to hire all of their workers and that it is these sub-contractors that are the main sources of the problems because they are willing to hire illegal migrants and also use human trafficking to get workers on to the fishing boats (Interview, 9 July 2012). Therefore, the Raks-Thai Foundation is attempting to educate these boat captains and employers about how they can employ legal migrant workers and how that will bring benefits and security to their small businesses.

#### **4.4.3 Other Organizations**

Amongst all of the key-informant interviews that were conducted in this research project, LPN and Raks-Thai featured as the two prominent NGOs that are working in Samut Sakhon to protect the rights of migrant fishermen from Myanmar. However, there are also several other NGOs that are working with migrant fishermen, specifically in Samut Sakhon, in order to increase their level of protection through activities such as legal assistance training sessions, health training, research studies, education, and by facilitating safe transfer of remittances back to the families of migrant fishermen Myanmar. These NGOs include: The Mirror Foundation, Solidarity Center Thailand, World Vision Thailand, and the Migrant Worker Rights Network (MWRN).

#### **4.5 Common Challenges**

The work that is done by civil society and NGOs in the protection of migrant fishermen is not a simple task and has many challenges. This next section will explore the most common challenges that NGOs had experienced when attempting to provide various forms of protection for migrant fishermen in Samut Sakhon. Many of these challenges were also confirmed by government agencies such as the provincial offices of the MSDHS, DLPW, and DOF in Samut Sakhon as significant issues that

NGOs need to overcome in order to effectively implement their role in Thailand's protection mechanisms for migrant workers.

First, there is a general lack of awareness of NGOs and their services amongst the migrant fishermen in Samut Sakhon. The majority of the fishermen that were interviewed in this research project were completely unaware of the existence of such NGOs and of the assistance that they could provide to them. Even LPN and Raks-Thai readily admitted that it was extremely difficult for them to gain full access to migrant fishermen at all times due to the nature of their work being out at sea for most of the time and spend very little time on the shore. The efforts of NGOs are also inhibited by those employers and boat owners who are exploiting their workers the most because they explicitly tell their workers not to talk to anyone from any organization that comes around asking questions and they even spread lies about how NGOs will take the fishermen away and turn them over to the police. Many of the fishermen interviewed in this project had also encountered such instructions and even threats from their employers not to talk to NGOs such as LPN, which was named exclusively. Towards the end of the time period for data collection of this research project, the migrant fishermen that were interviewed in Samut Sakhon began reporting that they had been warned by their employers not to speak with "the foreigner that has been coming around and asking questions." Therefore, this research was able to experience firsthand one of the major challenges that NGOs deal with on a daily basis in trying to gain access to the fishermen and raise awareness about who they are and how they can help them.

A second major challenge for NGOs and civil society working to protect migrant fishermen in Samut Sakhon is the blatant opposition that many of them face when carrying out their daily operations and programs. A senior officer at the provincial office of the MSDHS in Samut Sakhon reported that there are some members in the government who refuse to acknowledge the problems of trafficking and exploitation amongst migrant workers in Thailand. These officials will often harass and refuse to support any operation by an NGO that seeks to shed light on or

attempt to combat these issues, which in the minds of these officials “do not exist in Thailand” (Interview, 4 July 2012).

However, opposition also comes from business owners as well as from labor recruiters and brokers. LPN’s Anti-Trafficking Case Manager reported that staff from his organization have been asked or even threatened to cease their work in regards to labor protection for migrant workers in the fishing and fish-processing industries of Samut Sakhon. He told a story of one occasion where LPN was offered 440,000 Baht (approximately 14,000 US dollars) by a broker, who actually had the entire amount in cash on hand, if the organization would only stop its labor protection activities and investigation into the issues of trafficking of migrant workers (Interview, 6 July 2012). These direct and indirect forms of opposition towards the involvement of NGOs in Thailand’s system of protection mechanisms for migrant fishermen presents yet another challenge for work that is done in this area.

A third major challenge for NGOs that are working for the protection of migrant fishermen is in regards to their role in the prevention and suppression of trafficking in persons. It has been established by government agencies, international organizations, and even NGOs themselves, that a major role for NGOs in the combating of trafficking in persons is through the collection of evidence through good investigative practices and then present it to the proper legal channels and authorities who are then able to use that information to prosecute the perpetrators of this crime according to the law (COMMIT, 2011: 35; ILO, 2008b: 31-32; US Department of State, 2011: 44-45).

Interviews that were conducted with LPN and Raks-Thai, as well as with the MSDHS and DLPW, concluded that for a case of trafficking to be considered, very specific and highly detailed information needs to be collected for it to be used as valid evidence in a criminal court of law. For instance, the Anti-Trafficking Case Manager at LPN said that they received a call from a migrant fisherman in distress and they were able to talk him through the process of how to obtain the proper information that would be needed to potentially charge his employer with trafficking and exploitation

such as the registration number of the fishing boat, the time when it would return to shore, the name of the boat captain, and any dates that he could remember of specific incidents of abuse and exploitation (Interview, 6 July 2012).

However, even with all of this information, it is still very difficult for the evidence to be used in the prosecution of a trafficking case because it did not come directly from a government source or from the police. Therefore, according to a representative from the provincial office of the MSDHS in Samut Sakhon, the evidence collected from NGOs on a potential human trafficking case is sometimes viewed as inaccurate and difficult to use in order to prosecute a person suspected of trafficking in persons (Interviews, 4 July 2012). This obstacle of being second-guessed and not taken seriously is another major challenge that NGOs must deal with in working towards the increased protection of migrant workers in Thailand.

#### **4.6 Conclusion**

The role of NGOs and civil society in the development and implementation of Thailand's protection mechanisms for migrant fishermen is to fill in the gaps where government agencies are unable and/or unwilling to provide full protection and support for these workers that are vulnerable to poor working conditions, abuse, exploitation, forced labor, and human trafficking. These NGOs are able to play vital roles in such key areas as: raising awareness of migrant workers' rights; referring labor complaints and potential trafficking cases to the proper legal channels; conducting preliminary investigations into potential cases of exploitation and trafficking; researching and collection data on the trends and major issues facing migrant workers; and promoting health and safe work practices.

The relationship between the government and the various NGOs that are working on the subject of protection for migrant fishermen also proves to be a critical component to the successful and effective implementation of protection mechanisms for those workers. In the case of Samut Sakhon, this relationship seems to be in relatively good standing as there are many instances of partnership, sharing of

information, and mutual assistance between government agencies and NGOs in terms of developing strategies and programs for the protection of migrant workers.

However, there are still some significant challenges in this relationship that need to be addressed, such as a general lack of trust, accusations of corruption and hidden agendas, as well as instances of both parties purposely undermining each other through opposing policies and programs.

In addition to the challenges that NGOs and civil society face with their relationship to different government agencies, they also are faced with other common challenges such as: a lack of awareness of their services amongst their target populations; limited access to those who are most vulnerable, such as migrant fishermen; direct and indirect opposition from many different stakeholders; and not always being taken seriously when it comes to matters of investigation and evidence collection for the prosecution of trafficking cases. Despite these challenges, NGOs and civil society continue to play a major role in the protection of migrant fishermen in Thailand. The interviewed fishermen that had been able to interact with these kinds of organizations in the past generally only had very good things to say about them and some of the migrants even said that they trust these NGOs the most out of anyone else in order to provide for their protection in Thailand.

## **CHAPTER 5**

### **GAPS IN PROTECTION MECHANISMS**

#### **5.1 Introduction**

The structural system of protection mechanisms for migrant workers in Thailand is supported through a vast array of government and non-government organizations that are working on the issues facing this vulnerable population group. In regards to the specific services of protection and support for migrant fishermen in the province of Samut Sakhon, there are multiple government agencies and several NGOs that have made this a target group of many of their efforts to curb issues such as forced labor, exploitation, human trafficking. However, even with such an extensive system of protection mechanisms, several major gaps in protection still exist that prevent these mechanisms from being fully effective.

The purpose of this chapter will be to examine these major gaps in protection that were revealed throughout the process of this research project such as: lack of awareness, misconceptions and fears, enforcement issues and corruption, complex legislation and legal procedures, government-NGO partnership issues, as well as the exploitation of legal loopholes.

#### **5.2 Lack of Awareness**

A major obstacle to the effectiveness of any protection mechanism is the lack of awareness of its very existence and how one can seek protection under such a structure. This problem is further enlarged when those who are being exploited or having their rights violated are not even sure what their rights are, which prevents them from seeking out any kind of protection in the first place. Based on the findings of this research project, there are three key areas where a general lack of awareness has created a gap in the protection mechanisms for migrant fishermen.

### 5.2.1 Migrant Workers' Rights

Awareness of one's rights in general enables that person to know when his or her rights have been violated. For migrant fishermen, awareness of their rights as migrant workers in Thailand enables them to know when their rights have been violated and to reduce an already long list of vulnerabilities that they possess simply from that fact that they are migrants in a foreign country. As previously mentioned in Chapter 2, only one of the fishermen that were interviewed in this research project reported that he was fully aware of his rights as a migrant worker in Thailand, while more than half of the fishermen said that they did not know what their rights were nor were they ever clearly told about those rights. This lack of clarity and awareness effectively caused these fishermen to not be fully confident about the rights that were owed to them as migrant workers in Thailand and thus rendered with an extremely limited sense of who or where they could go to in order to receive assistance or make a complaint about their situations.

The remaining fishermen were still mostly unsure of their rights in a holistic sense, but they reported that they knew for certain that they had the right to receive medical treatment and compensation if they were ever injured or became sick at work. This group was able to make complaints beyond their immediate places of employment, often to a local NGO in Samut Sakhon, because they were confident about these particular rights that were owed to them. However, this was not the case when it came to reporting complaints about issues that were not related to compensation for medical treatment because these fishermen were also not sure about those rights that were related to things such as regular payment of wages, working conditions, physical abuse, etc.

This significant lack of awareness and confidence prevented these migrant fishermen from reporting some of their work-related problems or experiences that surely amounted to cases of labor exploitation or possibly even to legitimate cases of human trafficking. As one of the migrant fishermen stated, "I am in Thailand, but I am not Thai person [sic]. So I cannot do anything about my problems" (Interview, 13



June 2012). This type of sentiment was common amongst the migrant fishermen that took part in this study. If an exploited fisherman believes that he does not have any rights in Thailand simply because he is originally from another country, then it makes it very difficult for the system of protection mechanisms to provide protection to him due to his lack of awareness of how he has been wronged according to the law.

This gap in protection may be perpetuated by a lack of promotion and awareness of migrant workers' rights in Thailand. Representatives from the government agencies and NGOs that were interviewed in Samut Sakhon all individually reported that they did not take part in regular activities that specifically promoted the awareness of human rights for those migrants in the fishing industry. At the very best, there were some isolated campaigns that had taken place in the past or the issue was addressed in a broader program or training seminar. There also did not seem to be any plans for the immediate future for any activities, training sessions, or seminars that specifically involved the raising of awareness of human and labor rights for migrant workers in the fishing industry.

### **5.2.2 Complaints Mechanisms**

A general lack of awareness about the process for making a complaint also presents a significant gap in the effectiveness of the protection mechanisms for migrant fishermen in Samut Sakhon. All of the migrants that were interviewed reported that they had indeed experienced some type of problem while working as fishermen and that they had taken some kind of action in order to try and resolve the problem. However, a combined total of 16 fishermen, representing more than 75 per cent of the sample population, claimed that they had only reported these problems to either their employers or boat captains. This is in contrast to the fact that these same employers and boat captains were also identified as the predominant sources of labor issues, abuse and exploitation for these migrant fishermen. This suggests that the majority of the fishermen were not aware, or at least not confident, that they could make a complaint to a relevant government agency, the police, or NGO.

It does not make sense for a fisherman to make a complaint and seek protection and/or support from the very same individual that may have been the cause of his problems in the first place; unless, however, he is not aware of anywhere else that he could go to and receive this kind of support. If a migrant fisherman is unable to make a complaint and seek protection from a third-party organization, such as a government agency or an NGO, simply because he is not aware of their existence, then it becomes very difficult for the structural protection mechanisms in Thailand to provide protection to these individuals.

### **5.2.3 Support from NGOs and Civil Society**

A third area where lack of awareness has created a gap in the protection mechanisms for migrant fishermen in Thailand is in regards to the available support and services that can be received from NGOs and civil society. The role of these organizations in the protection of migrant workers is extremely important as they are able to fill many of the gaps in protection that the government may be unable or unwilling to do on their own (See Chapter 4).

Interviews conducted with representatives from the DLPW and the MSDHS in Samut Sakhon revealed that the majority of complaints that they receive from migrant fishermen are facilitated through the assistance of an NGO, such as the Raks-Thai Foundation or LPN. However, according to the interviews with the migrant fishermen in Samut Sakhon, nearly half of the men had never even heard about such organizations working in their area, and another five had heard about them before, but had never talked to or received any kind of support from one. This is a significant gap in the effectiveness of the role of NGOs in the system of protection mechanisms because many fishermen are not aware that they can receive assistance from these kinds of organizations that are external to both their employers and the government in Thailand. Increased awareness would improve the likelihood that migrant workers could gain access to protection and support from NGOs and civil society.

### **5.3 Misconceptions and Fears of Migrant Fishermen**

Another major gap in the effectiveness of the system of protection mechanisms for migrant fishermen from Myanmar working in Samut Sakhon is in regards to several key misconceptions and fears that many of these men have about their situation as migrant workers in Thailand. Some of these fears and misconceptions originated long before these fishermen migrated to Thailand, while others have been reinforced by personal experiences or by rumors that are spread by other co-workers. There are also some boat captains and employers that desire to create an environment of constant fear amongst the fishermen as a means of control and manipulation. It is not clear exactly where each of the following fears or misconceptions originated from, but it is clear that they can prevent the fishermen from complaining about their situations and from receiving adequate protection.

#### **5.3.1 Government Protection is Only for Thai Workers**

It was reported by many of the fishermen that they did not even consider going to the police or to the labor protection office at the DLPW when they were making a complaint about a work-related problem. Apart from a general fear of the police, the primary reason for this, which was given by the majority of the fishermen, was that they did not believe that the labor protection office would provide assistance to non-Thai workers, especially if they did not have the proper documents and registration to qualify as a legal migrant worker in Thailand. This is indeed a misconception, as representatives from the office of the DLPW in Samut Sakhon reported that all workers in Thailand, both Thai and non-Thai, are able to receive protection from their office under the provisions that are set forward by the Labor Protection Act, B.E. 2541 and that the government's policy of leniency towards illegal migrant workers would also ensure that this protection includes those workers who are not legally within the country (Interview, 10 July 2012). However, as long as there are migrant fishermen who believe in this misconception, there will continue to be those fishermen who suffer in silence because they do not think that they can receive protection from government sources in Thailand.

### **5.3.2 Fear of the Police and Government Authorities**

The fishermen also reported a significant fear of the police as well as of the government in Thailand. Due to the majority of migrant fishermen that were interviewed being illegal, undocumented workers many reported an overwhelming fear of any type of authority that could have them arrested or sent back to Myanmar. A total of 18 out of 21 fishermen reported that they would never go to the police for protection because they were afraid that they would either be arrested or deported. Several of these fishermen had been previously deported for not having the proper documentation, so their experiences reaffirmed this fear of the police and other authorities. In other cases, some of the migrant fishermen reported that their own employers or boat captains encouraged this fear because they would threaten to turn the migrants over to the police to be arrested or sent back to Myanmar if they were making too many mistakes, did not want to work, or wanted to make a complaint. Although some of these fears are substantiated by the existence of corruption and power abuse within the local police force, they still prevent migrant fishermen from seeking protection from an important source in Thailand system of protection mechanisms. Representatives from LPN reported that the Royal Thai Police, even with widespread corruption, is one of their most valuable partners in protecting migrant workers and in rescuing those who have been victimized by human trafficking (Interview, 6 July 2012). Therefore, the culture of fear that has been established in the migrant working community regarding the nature of the entire police force and government of Thailand acts as a detriment to the effectiveness of their protection mechanisms for migrant workers.

### **5.3.3 Taught or Threatened to Fear NGOs**

A third major fear and misconception that was discovered during the interview process with migrant fishermen in Samut Sakhon was the fear of NGOs. These fears and misconceptions were not the case for those fishermen who had previously experienced talking with or receiving support from an NGO, but for those who did not

have these experiences, even for those who had never even seen workers from NGOs in their area before, the nature of organizations remained a mystery to them and were often feared by the fishermen. The source of this misinformation seemed to clearly come from employers and brokers who told the migrant fishermen, sometimes before they even arrived in Samut Sakhon, that there would be these “strange people” that would “come around asking questions” and “claim to help” them, but that they were working with the police and only interested in sending the migrants back to Myanmar. These actions were confirmed during a conversation that took place with two Thai boat captains who said that they have told their workers not to talk to anyone from these kinds of organizations because “it is none of their business” (Interview, 15 June 2012). Therefore, if these fears and threats succeed in causing migrant fishermen not to seek help from NGOs or to trust their staff members, who are working to protect their human rights and security, this creates a gap in protection because the migrants do not have access to the NGO-based protection mechanisms out of the fear that has been created surrounding them. The result of these fears and misconceptions is a reduction in the effectiveness of protection mechanisms for migrant workers.

#### **5.4 Enforcement Issues and Corruption**

Another major gap in the protection of migrant fishermen has to do with the enforcement of labor laws and other forms of protective legislation. It is no secret that the fishing industry in Thailand is a booming economy that is worth billions of dollars (Bollinger and McQuay, 2012: online; Solidarity Center Thailand, 2009: 3). As previously mentioned, this has led some to believe that the government is effectively turning a blind eye to the plight of migrant labor within this industry (Martin, 2004: 36; Robertson, 2011). A senior government official in the office of the MSDHS in Samut Sakhon reported that it is common for some government officials to be apathetic towards the issues of migrant labor exploitation and trafficking within the fishing industry because they do not want to cause problems within this massive industry. This senior officer also said these corrupt government officials make sure that temporary, low-level government employees are tasked with the job of implementing the province’s anti-trafficking activities so as to make sure that a lot of

time and resources are spent continually training seasonal workers that cannot have a large impact on the issues of trafficking and exploitation in the fishing industry during their temporary work periods (Interview, 4 July 2012).

This kind of corruption runs rampant through the structure of protection mechanisms for migrant workers in Thailand, as some members of the police and other government authorities are simply paid off to look the other way or they become active members in the trafficking process themselves (Sompong Sakaew and Patima Tangpratchakoon, 2010: 56). Interviews conducted with representatives from LPN and Raks-Thai revealed that the most common type of corruption takes place when low-level government officials or police officers, even those who are within the anti-trafficking departments, give advanced notice to fishing boats or fish-processing factories about the time and date that an inspection or trafficking raid will take place. This is done so that the corrupt official(s) can receive a payment or some kind of benefit from the businesses that have been notified and can prepare to hide their illegal and exploitative activities from the authorities (Interviews, 5-6 July 2012).

The Anti-Trafficking Case Manager at LPN reported a story where the chief of police in Samut Sakhon was able to conduct a secret raid with LPN on a business, that was suspected of being involved in trafficking in persons, and he did so without telling any of his fellow police officers because he was very concerned about any leaked information that would help tip-off the traffickers (Interview, 6 July 2012). He also said, although this type of action has proven to work in the past to avoid these “information leaks,” it is not a sustainable solution to the problems of widespread corruption as corrupt police officers in Samut Sakhon can receive anywhere between 100,000 to 3,000,000 Baht<sup>9</sup> in a single month from bribes given by brokers and employers who are engaged in trafficking in persons. This kind of corruption leads to a lack of proper enforcement, which is a major challenge that remains in the protection of migrant workers in Thailand and it prevents the system of protection mechanisms from being fully effective.

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<sup>9</sup> This is approximately \$3,000 to \$95,000 US dollars.

## 5.5 Complex Legislation and Procedures

The extensive and complex nature of Thailand's protection mechanisms for migrant workers should be working towards addressing any gaps that exist in the protection of migrant fishermen. However, this complexity is actually working in some instances to create a general sense of confusion in understanding all of the different aspects of legislation that are involved and it can cause immense difficulty in determining who is a victim of trafficking or exploitation and who is not. This confusion and increased difficulty in the application of these protection mechanisms create a gap in the actual protection for migrant fishermen in Samut Sakhon.

The process of considering and identifying a victim in a potential case of human trafficking in Thailand requires the time and effort of many high-level government officials. These officials must work together in elaborate cooperation as they consult no less than thirteen separate pieces of domestic legislation, which do not include the many international treaties and commitments that Thailand has been a part of in an attempt to combat trafficking in persons. In an interview with a senior government official in Samut Sakhon, it was reported that there is no unified procedural guideline that is effectively able to determine how different government agencies and departments are supposed to work together as well as on how so many different laws are meant to be interpreted together as a whole (Interview, 4 July 2012). This officer also reported that the process of identifying victims of trafficking amongst migrant workers is such a complicated process that other government departments around Thailand are forced to place a limit upon the number of potential trafficking cases that they are willing to investigate at any given time. This also creates a further gap in the system of protection mechanisms for migrant fishermen because they could potentially be turned away from receiving protection if a government agency is already working on what it considers to be too many potential trafficking cases.

## 5.6 Monitoring and Inspection

Another major gap in these protection mechanisms has been created due to the severe lack of regular surprise labor inspections on Thai fishing boats in Samut Sakhon. The Senior Labor Protection Officer and Migrant Labor Specialist at the provincial DLPW in Samut Sakhon both readily admitted that there is very little inspection of fishing boats that employ migrant workers. The only program that the DLPW uses for inspecting fishing vessels is a mobile vehicle that operates for a short time period on a seasonal basis and it only investigates those vessels that have returned to shore, usually due to a direct complaint that has been received (Interview, 10 July 2012). For the majority of the year, there are no inspections from the DLPW or the MSDHS that specifically target fishing boats that are going out to sea or returning to shore, and they do not inspect fishing boats that are already out at sea.

The provincial office of the DOF in Samut Sakhon does make use of ongoing surprise inspections both at sea and on shore. However, the primary purpose of these inspections are to enforce the laws and regulations that have to do with the use of proper fishing equipment, registration of fishing vessels, and operating licenses. According to the Chief Director of the DOF in Samut Sakhon, these inspections have previously discovered instances of exploitation and trafficking that have then been turned over to the marine police, but the DOF does not have any power to enforce labor or trafficking laws and his employees are not trained to look for these problems (Interview, 9 July 2012).

The Royal Thai Marine Police (RTMP) and the Royal Thai Navy (RTN) are the legal authorities responsible for law enforcement at sea and are technically able to carry out inspections of fishing vessels suspected of labor exploitation and trafficking in persons. However, the RTMP is severely under-resourced and does not have the ability to conduct these types of inspections, even though it is situated to potentially have a prominent role in suppressing trafficking and exploitation on fishing boats (Robertson, 2011: 15). In addition, the inspection of fishing boats is not a priority for the RTN. According to a Senior Program Officer at the ILO, random monitoring of



fishing boats and sanctions against employers who have been caught violating these law would together present one of the best ways to reduce the exploitation of migrant workers on Thai fishing boats (Interview, 17 July 2012). Therefore, the present lack of unannounced inspections of fishing vessels for issues such as labor exploitation and human trafficking presents a major gap in the system of protection mechanisms for the migrant fishermen that work on such boats.

### **5.7 Exploitation of Legal Loopholes**

The existence of legal loopholes, such as those that exist in the Ministerial Regulation Number 10 under the Labor Protection Act B.E. 2541 (1998), create yet another major gap in the protection of migrant fishermen in Thailand. So long as traffickers and employers are able to continue to exploit migrant fishermen through legal exemptions and loopholes, they will surely continue to do so in an effort to increase their profits. Many of the migrant fishermen who took part in this research project reported that they were currently being paid only once every three months and that this made them feel trapped into three-month contracts whereby they had to endure through all sorts of different problems until they were finally paid before they could ever consider making a complaint or leaving their job.

According to the DLPW in Samut Sakhon, this practice is neither legal nor illegal according to Thailand's labor laws as applied to the fishing industry, which only require that payment schedules be agreed upon by the employer and the employee (Interview, 10 July 2012). However, not one of the fishermen that were interviewed said that they had ever made such a verbal or written agreement with either their employers or their boat captains. This practice places the migrant fishermen into further situations of vulnerability, as they feel powerless to protect themselves out of fear that they will not get paid at the end of their three-month payment cycle. Such legislative loopholes create a gap in the protection of migrant fishermen in Thailand.

## 5.8 Conclusion

The protection mechanisms for migrant fishermen from Myanmar in Thailand is an established system that encompasses a vast array of government agencies, NGOs and representatives from the fishing industry in order to provide for this protection. It was only four years ago that men were previously excluded from the legal definition of trafficking in persons in Thailand and therefore could not be considered as victims of its crime. So it is important to recognize how this system has adapted over time and responded to current challenges as they have become apparent. However, there are still several critical gaps remaining in these protection mechanisms that prevent this system from being fully effective.

The gaps in protection mechanisms include the following: a general lack of awareness regarding migrant workers' rights, the complaints process, and of support services provided by NGOs; various misconceptions and fears about the government, the police, and NGOs; a lack of enforcement of labor and anti-trafficking laws as well as widespread corruption; confusion caused by the complex set of laws and procedures relating to combating trafficking in persons and identifying its victims; inadequate monitoring and inspection of fishing boats both at sea and on shore; and the exploitation of various loopholes in labor protection legislation for migrant fishermen. Addressing these major gaps in the system of protection mechanisms in Thailand would result in a dramatic increase in their effectiveness to protect migrant fishermen from Myanmar in the province of Samut Sakhon.

## **CHAPTER 6**

### **CONCLUSION AND RECOMMENDATIONS**

#### **6.1 Introduction**

The purpose of this research project was to determine the effectiveness of Thailand's system of protection mechanisms for its migrant workers by examining a case study of migrant fishermen from Myanmar that were working in the province of Samut Sakhon. This was achieved through determining the role of government agencies and non-government organizations in providing these protection mechanisms and comparing it with the experiences of the migrant fishermen themselves in their interaction with this system of protection. Through this process, insight into the major gaps that are remaining within these protection mechanisms were revealed in order to bring awareness to the actions that can be taken to address these weaknesses.

The purpose of this chapter is to review the case study of migrant fishermen in Samut Sakhon, to summarize the findings of this research project, to provide a series of recommendations based from the research and data that were collected, and to conclude the thesis with an overall summary.

#### **6.2 Case Study Review**

This research project was guided by four main research questions that were posed at the beginning of this paper. First, what is the role of government agencies and NGOs in protecting migrant fishermen from Myanmar from labor exploitation and human trafficking in Samut Sakhon? Second, what is the effectiveness of government-based and NGO-based labor protection mechanisms for migrant fishermen from Myanmar in Samut Sakhon? Third, how are NGOs and government agencies successfully protecting the rights of migrant fishermen from Myanmar during the recruitment stage and while at sea? Finally, what are the gaps in the

protection of these migrant fishermen from Myanmar from the practices of exploitation and trafficking in Samut Sakhon?

There were also four main objectives of this research projection: to identify the role of both government and non-government organizations in the protection of migrant fishermen from labor exploitation and human trafficking in Samut Sakhon; to evaluate the effectiveness of those government and NGO protection mechanisms for migrant fishermen in Samut Sakhon; to determine which practices and mechanisms carried are most effective in the protection of migrant fishermen from labor exploitation and human trafficking; and to identify any gaps in the system of protection mechanisms for migrant fishermen from Myanmar in Thailand.

The ultimate goal of this research project is to raise further awareness to the situations of thousands of migrant men from Myanmar, Laos and Cambodia that are currently being heavily exploited in Thailand's booming fishing industry and to call for increased measures from all of the key stakeholders in order to ensure the better protection of the rights and security of these migrant fishermen. Aided by a review of relevant available literature, data was collected for this research project through qualitative methods from the following primary sources in the province of Samut Sakhon: government agencies, NGOs, representatives from the fishing industry, and from the migrant fishermen themselves.

### **6.3 Summary of Findings**

The fishing industry in Samut Sakhon is an example of a booming economic development that has become increasingly driven by thousands of low-skilled migrant workers as these jobs are no longer desired by the local Thai labor force. Migrant fishermen are able to convey experiences ranging from mostly positive to those that are extremely negative. Based on these experiences, some of these men can be considered to be identifiable victims of trafficking in persons, while even more have clearly suffered through varying degrees of exploitation and forced labor.

All of the fishermen that took part in research project had personally experienced some form of work-related abuse or conflict that caused them to seek assistance and make a complaint to a person of relevant authority. However, the majority of these men are completely unaware of the entire system of protection mechanisms that are available to them and usually made complaints only to their boat captains and/or employers. These captains and employers sometimes acknowledge the complaints that they receive, but they rarely provided any kind of assistance to the fishermen, unless it had to do with compensation medical treatment. The migrant fishermen who had honest boat captains and employers reported much fewer incidents of work-related problems and trusted them in order to provide for their protection. However, when this was not the case, reports of abuse and exploitation dramatically increased and very few of the migrants had any knowledge of where they could go to seek protection or assistance.

This points towards a major challenge for Thailand's system of protection mechanisms for migrant fishermen, because the majority of them had little or no understanding of their rights or where they could go to receive assistance if those rights had been violated. The protection mechanisms that are in place to protect these workers will only become truly effective once they are made known to those who need them the most. The current lack of awareness of their existence results in many migrant fishermen not being able to have access to those mechanisms.

For those who are able to gain access, there is an extensive system of protection mechanisms that migrant fishermen can utilize to protect their rights and security in Thailand. There are no shortage of government legislations, policies, and commitments that are designed to reduce the trafficking and exploitation of migrant workers within the country. There are equally as many different key government agencies and departments that have been given the responsibility of developing and implementing these formal protection mechanisms. However, these government mechanisms are obstructed by serious problems such as confusing and complex procedures, insufficient numbers of trained staff, lack of resources, as well as widespread corruption and irregular enforcement.

NGOs and civil society also play a major role in the development and implementation of these protection mechanisms for migrant fishermen. These groups are able to increase the protection of migrant fishermen through activities such as: raising awareness of the rights of migrant workers; referring labor complaints and potential trafficking cases to the proper legal channels; conducting preliminary investigations into potential cases of exploitation and trafficking; researching and collection data on the trends and major issues facing migrant workers; and promoting health and safe work practices.

The relationship between the government and these NGOs in providing these protection mechanisms in Samut Sakhon appears to be in good standing as there are many instances of partnership, information sharing, and joint procedures to reduce the trafficking and exploitation of migrant fishermen. At the same time, this relationship has been plagued with mutual distrust and accusations of corruption, hidden agendas, and purposely undermining each other's activities. NGOs and civil society are also limited in effectively implementing and ensuring protection for migrant fishermen through specific challenges such as: limited access to the fishermen, direct and indirect opposition, and not being taken seriously by their counterparts in these protection mechanisms. Despite these challenges, the migrant fishermen who had the privilege of interacting with a representative or volunteer from an NGO only had good things to say about these types of organizations and that they could trust them in order to receive protection and support from them during their time in Thailand.

The system of protection mechanisms for migrant workers in Thailand is prevented from becoming fully effective due to several critical challenges and gaps that exist in the implementation of these mechanisms. These gaps include issues such as: the lack of awareness amongst the majority of migrant fishermen regarding their rights in Thailand and where they could go to receive assistance if those rights were ever violated; several key misconceptions and fears that the migrants have about the primary implementing agencies of these protection mechanisms; widespread corruption and intermittent enforcement of protection legislation for migrant workers,

which was commonly reported by multiple senior government officials and NGO workers in Samut Sakhon; complex legislation and legal procedures that lead to confusion amongst those who are attempting to identify victims of trafficking and exploitation; inadequate monitoring and inspection of fishing boats both at sea and on shore; and various loopholes in labor protection legislation that are used to exempt migrant fishermen from coverage under those laws. Addressing such gaps in these protection mechanisms would result in an increased level of their effectiveness to be able to protect migrant fishermen in Thailand.

This research project was able to uncover several new findings that shed light onto the specific situation of migrant fishermen in Samut Sakhon and the nature of the system of mechanisms that are available for their protection. It was found out that the specific human rights abuses and labor violations that these migrant fishermen were facing include: not receiving the full payment of their wages, being physically and mentally abused through the use of threats as well as violence from their boat captains and employers, prevented from receiving access to medical treatment or to an appropriate compensation for that treatment, not being allowed to leave the fishing boats, being restricted to move around while on land, and being caught in situations of illegal debt bondage. These specific abuses caused these migrant fishermen to be frequently exposed to situations of labor exploitation and, in some instances, to cause them to become victims of trafficking in persons.

In regards to the nature of Thailand's system of protection mechanisms for its migrant workers, it was discovered that the level of partnership between government agencies and local NGOs is much greater than was initially anticipated. In Samut Sakhon, the government-led sub-committee of the Provincial Operation Center on Prevention and Suppression of Human Trafficking (POCHT) frequently integrates the advice, experience and resources that are received from many different local NGOs. These NGOs work directly with various communities of migrant workers around the province. This sub-committee utilizes all of this on-the-ground experience in order to provide valuable input into all of their policy-making decisions. Key-informant interviews with members from both the government departments and the NGOs that

are involved in the POCHT sub-committee confirmed that the high level government-NGO partnership is one of the greatest strengths for the province's anti-trafficking activities. Although there are still several critical gaps remaining within this system of protection mechanisms, this research project was able to show that these mechanisms are actually working to protect the rights and security of migrant workers, but that much more can be done in order to improve their effectiveness before, during and after the process of migration into Thailand.

#### **6.4 Discussion**

The findings of this thesis predominantly confirm the conceptual framework and hypotheses that were used to design and implement this research project. It was confirmed that the protection mechanisms that exist for migrant fishermen in Thailand are primarily reactive rather than preventative in their nature. The process of legal migration and registration constitute preventative forms of protection for migrant workers, however the majority of migrant workers and fishermen do not have access to or awareness of this type of protection. Therefore, as portrayed in the diagram of the conceptual framework (see Figure 1.1), the majority of protection mechanisms for migrant fishermen do not become available until exploitation has already taken place.

These protection mechanisms are provided by a myriad of both government and civil society organizations, but they heavily rely on the ability of the migrant fisherman to make some type of complaint that can be prosecuted or gain access to a relationship with an NGO or government official. The conceptual framework's separation of protection mechanisms based on their provider or authority was challenged by the findings of this research project. It was determined that these mechanisms cannot be neatly divided into the three categories of NGO-based, government-based, and international legislation-based forms of protection, but rather that they are all intermingled and cannot exist or function without the other. The complexity of this system of protection mechanisms came as a surprise to the researcher and was a common complaint among those who were directly involved in the development and implementation of these mechanisms.



The research findings also confirmed that the lack of effectiveness of the system of protection mechanisms took place according to a series of fundamental failures to address several critical structural factors that are the root causes behind the ongoing practices of labor exploitation and trafficking (Castles, 2004: 205-207). According to Cameron and Newman (2012: 21-51), migrant workers are often highly vulnerable to becoming victims of exploitation and trafficking through structural factors such as poverty, globalization, discrimination, and political instability or conflict. Each of these factors played a role in the increased vulnerability of the migrant fishermen that took part in this research project. All of the interviewed fishermen cited at least one of the following factors in their decision to migrate to Thailand: the desire to increase their level of personal income; the desire to send money back to their families in the form of remittances; and the desire to leave situations of conflict in their home country Myanmar. These desires cover the structural factors of poverty, globalization, and political instability or conflict, which initially opened up these migrant fishermen to becoming more vulnerable to labor exploitation and trafficking in Thailand.

However, the factor of discrimination played the largest structural role in the breakdown of protection mechanisms for migrant fishermen in Samut Sakhon. This discrimination enabled recruitment agents, brokers, employers and those who allowed for this exploitation to take place, such as members of the police or government officials, to be able to justify their actions to willingly profit from the exploitation of migrant fishermen. It was reported by multiple government officials and NGO workers that discrimination was one of the major reasons as to why this form of labor exploitation continued to take place.

In addition, a culture of self-imposed acceptance of this discrimination was commonplace amongst the migrant fishermen, as many of them believed that they either had no rights or that their situations of exploitation were acceptable only because they were migrants in a foreign country. This effectively prevented the migrant fishermen from seeking assistance beyond their places of employment;

thereby not even giving a chance to the different government or NGO based protection mechanisms to be able to provide protection. According to Castles (2004: 222-224), these kinds of structural factors, such as discrimination and a lack of rights awareness, must be properly addressed on a long-term scale in order for migration and anti-trafficking policies to become successful.

This research project also initially posed three key hypotheses at the beginning of the study, each of which were confirmed by the findings and data that were collected. First, it was confirmed that the system of protection mechanisms in Thailand is currently much more effective today than it has been in the past. This is due to government agencies, the police and members of civil society having an increased sense of awareness regarding the issues of exploitation and trafficking of migrant fishermen as well as that they have been endowed with further authority to combat these practices.

Second, it was unfortunately confirmed that the current system of protection mechanisms is not yet full able to adequately ensure the protection of migrant fishermen from labor exploitation and trafficking in persons due to structural impediments such as corruption, discrimination, lack of training, complex legislation, lack of resources, and inconsistent enforcement of relevant legislation (Cameron and Newman, 2012: 21-51). However, an original factor of this hypothesis posed that this may also be due to a lack of cooperation between members of civil society and the government. The findings of this research project contradict this aspect of the hypothesis as it was found that there exists a high-level of cooperation between government agencies and NGOs during the development, implementation and monitoring phases of anti-trafficking and migrant worker protection policies.

This is related to the third hypothesis of this research project, which was confirmed by the findings of this study, as the protection mechanisms that appeared to be the most successful in providing full protection for migrant fishermen were those that were developed and provided by both government and non-government sources throughout all stages of their implementation.

## **6.5 Recommendations**

Based on the findings that were gathered by this research project in regards to the experiences of migrant fishermen with Thailand's protection mechanisms, the role of government agencies and NGOs in the implementation of these mechanisms, and the gaps that exist within this system, the following six recommendations are suggested.

### **6.5.1 Increased Targeted Awareness Campaigns**

Protection mechanisms are only effective if their intended beneficiaries are aware of them and are able to gain access to them. Based on the findings of this research, exploited migrant fishermen are not aware of their rights or who they can go to for protection and make a complaint. It is recommended that government agencies and NGOs increase their level of partnership together in order to raise awareness amongst migrant fishermen in regards to three critical areas: the rights of migrant workers in Thailand, where and how they can go to make a labor-related complaints, and about the work of many different NGOs and members of civil society that are seeking to protect migrant workers in Thailand.

Ideally these awareness campaigns would target migrants before, during, and after the decision to move to Thailand has been made. In the case of the migrant fishermen from Myanmar, these awareness campaigns would need to take place in their home country of Myanmar before the actual migration takes place, some place along the border during the transport stage, and at their final destination and places of work in Samut Sakhon.

The importance of the awareness campaigns that begin in the migrant's country of origin was shown in the personal case study of Maung Maung, who has been able to protect himself for more than nine years as a migrant fisherman in Thailand because he was aware of his rights, he was aware of where he could get

protection from, and he was confident in his possession of those rights. These findings and recommendations support the following statement, which was published in 2009 during an international workshop on “Human Trafficking, Turning our Attention to Labor Exploitation” and was held at Utrecht University:

“A mere legal response is not enough to properly protect possible (future) victims from exploitation; even if it protects workers’ rights and victims’ rights to some extent, those who are most vulnerable are often unaware of or not in a position to realize their rights without further assistance being provided. Therefore, it is important to provide information to potential victims, also when still in their home country” (Utrecht University, 2009: 3).

Regarding the rights that all migrant fishermen should be made aware of so as to increase their confidence in their own ability to be able to protect and seek protection for those rights, the following is a practical list of the specific rights that these migrants ought to receive and are based on the findings of this research project: the right to be paid an appropriate salary on a regular and frequent pay schedule, the right to work in an environment that is free from the use of threats and verbal abuse, the right to not be violently or physically abused in any manner, the right to receive access to medical treatment and appropriate compensation for that treatment, the right to choose not to work when sick or injured, the right to be free to leave or quit a particular job, and the right to be free from illegal situations of debt bondage and/or undue debt payments.

These are the specific rights that this research project was able to determine are the most needed by migrant fishermen working in the province of Samut Sakhon. Therefore, it is recommended that government agencies and NGOs collaborate together in order to raise awareness of these rights so as to ensure that migrant fishermen can be fully confident that they can receive these rights as well as that they can know where to go in order to receive adequate assistance in the protection of those rights.

### **6.5.2 Simplified Guidelines for Identifying Victims**

A common issue that was raised by both government officials and representatives from various NGOs is that it is very difficult to distinguish between: who is a victim of trafficking, who is a victim of labor exploitation, who is a victim of a labor violation, and who is not a victim at all. The complexity of the many different number of pieces of legislation and different government agencies that are involved in the consideration of identifying these potential victims causes much confusion amongst even higher-level officials who do not always have the time, information, or resources that are needed to make a decision.

It is recommended that this process be simplified into a simple series of procedural guidelines in order to increase the efficiency of this system and allow for there to be more qualified individuals to work on these cases by making it easier for more lower-level officials to contribute to this process rather than relying only upon high-level officials. There have been some reports that such a streamlining of these complaints mechanisms and victims' identification processes has started to take shape in Thailand. The findings of this research suggest that more resources should be poured into the creation of such a step-by-step simplified set of guidelines for the protection of migrant workers from exploitation and trafficking in persons.

This recommendation is in conjunction with the UNODC's Toolkit to Combat Trafficking in Persons, which argues that quick and efficient identification of trafficking victims is critical for their protection from further exploitation. The report makes a case for developing strong guidelines and clear procedures for a wide variety of government officials such as police officers, border guards, immigration officers and others who may be involved in the detection, detention, reception and processing of irregular migrants, in order to allow for the identification of trafficking victims to be as accurate and as fast as possible (UNODC, 2006: 104).

### **6.5.3 Easier Registration Procedures for Migrant Fishermen**

Based on the findings of this research project, migrant fishermen, by their very nature, are extremely vulnerable in Thailand. One of the ways that can significantly reduce the vulnerability of migrant fishermen in Thailand is for the government to do more to encourage and facilitate the safe and legal migration of these migrants into the country. The registration of migrant fishermen with Thailand's immigration authorities is usually tied to a specific fishing boat. Therefore, if he chooses to move to another fishing boat, his registration immediately becomes void and he would have to then be registered under the new fishing boat. Currently, opportunities to register migrant fishermen are only available at certain points throughout the year. However, employers in need of workers will still choose to hire illegal migrant labor because they cannot afford to wait for the next period where they can register their workers.

It is recommended that this process of registration for migrant fishermen is made easier, that it is made available all year, and that a fisherman's registration is not tied to a specific fishing boat, but rather to a general association or cooperative. During an interview with a representative from the ILO, he suggested that the National Fisheries Association of Thailand (NFAT) could potentially serve as a cooperative that requires all migrant fishermen to be registered under them, releasing migrants from being tied down to a specific fishing boat in order to save their registration status (Interview, 17 July 2012). Improving migrant fishermen's access to opportunities for legal registration, and the ability maintain that status, would dramatically reduce the level of their vulnerability and increase their access to Thailand's protection mechanisms.

According to interviews that took place with government officials from the MSDHS and MOL, there is allegedly a plan that is currently in development by the Royal Thai Government to improve the process of registration for migrant workers in Thailand that includes special considerations for those migrants who are working in the fishing industry. The purpose of this plan is to speed up the process of registration for migrant workers and increase their access to this important step in becoming legal

and document migrant workers in Thailand. In addition to making it easier for migrants to register, this plan could potentially increase the level of protection for those registered migrant workers from the issues of labor exploitation and human trafficking.

This appears to be Thailand's proposed plan to further prevent and suppress the trafficking and exploitation of migrant workers that was mentioned in the US Department of State's 2012 Trafficking in Persons Report. This proposed plan was listed as the primary reason for maintaining Thailand's status on the Tier 2 Watch List for a third consecutive year rather than having the country's status downgraded to the Tier 3 level, which would reportedly incur increased international pressure and the use low-level sanctions against Thailand (US Department of State, 2012: 339).

The government officials that were interviewed in this research project were aware of this plan that has been proposed by the Royal Thai Government. However, not one of these officials had ever seen any formal documentation regarding this plan and they were therefore unable to provide any further comments. The current process of registration for migrant workers in Thailand is often too difficult and/or too expensive for the majority of migrants to make use of it, therefore this important legal mechanism of protection is unable to protect these intended beneficiaries effectively (The Nation, 2012). This proposed plan to combat exploitation and trafficking in the fishing industry, if it is able to avoid self-regulation and increase access to legal registration, would have a positive impact upon the effectiveness of the protection mechanisms for migrants in Thailand by addressing a major issue of vulnerability.

#### **6.5.4 Stronger Labor Protection Laws in the Fishing Industry**

Stronger labor protection laws in the fishing industry would also increase the effectiveness of the protection mechanisms that have been put in place for migrant fishermen in Thailand. Much of the current laws regarding the fishing industry are built around the notion of an agreement that is made between employers and employees, which guides everything from payment schedules and minimum wage to

regular working hours and mandatory holidays. These agreements are rarely formalized in written or verbal form, so when there is a labor dispute about a particular issue, such as not receiving the full amount of wages that was promised, it is difficult to prove that such an agreement was ever made and if it was even violated in the first place. It is recommended that an emphasis be placed upon developing stronger labor protection laws for migrant workers in the fishing industry that eliminate exemptions from protection that are based on the number of workers, size of the vessel, or time spent out at sea. This would need to be accompanied with stronger punishments for employers that are found to be violating these laws, especially for those who severely exploit their workers or are involved in human trafficking.

#### **6.5.5 Increased Enforcement and Punishment of Corruption**

Another means of increasing the effectiveness of Thailand's system of protection mechanisms for migrant fishermen would be to seriously address the issues of irregular enforcement and corruption within this protective framework. It is recommended that government agencies and NGOs partner together in order to perform regular, unannounced inspections of fishing boats both while they are out at sea and while they are docked on shore. Such inspections would need to be carried out continuously and must strictly enforce protection legislation by checking for actual crew lists, registration information, and for cases of exploitation, forced labor, or human trafficking by conducting on-sight interviews with the fishermen. This process could also be used to disseminate information about how the fishermen could receive assistance or make a complaint if they were ever to face such instances of abuse and exploitation while they were out at sea.

Widespread corruption amongst some members of the government, the police and immigration authorities is not a new problem in Thailand, nor is it one that can easily be solved. There are many reported cases of these officials participating both directly and indirectly in the trafficking and exploitation of migrant workers in the fishing industry in Thailand. This corruption often goes unpunished and unreported; at best, the equivalent of a legal 'slap on the wrist' is given to the corrupt official. It



is recommended that the Royal Thai Government take a stronger stand against corruption that involves one of its officials participating directly or indirectly in the exploitation and human trafficking of migrant workers. Making examples of these corrupt officials by enforcing strict and severe punishments would deter others from potentially being involved and becoming corrupt themselves. This would increase the effectiveness of the system of protection mechanisms for migrant workers in Thailand because fewer members within this system would be working to undermine its purpose. Decreasing the level of corruption would also increase regular enforcement of the legislation and policies that constitute the framework for these various protection mechanisms.

#### **6.5.6 Enhancement of the Role of the Business Sector**

The business sector is often portrayed as the culprit and primary driving force behind the exploitation and trafficking of its workers, especially those who are seen to be in a particular position of vulnerability such as migrant fishermen. However, the findings of this research paper recognize and recommend that the role of the business sector in Thailand's system of protection mechanisms for migrant workers be better enhanced in order to increase the effectiveness and quality of protection that can be provided. It was found amongst the migrant fishermen that although their employers and boat captains were the primary causes of the work-related problems that had been reported, they were also the primary persons that the majority of fishermen made their complaints. In addition, these employers and boat captains were the primary persons that most of fishermen trusted the most in order to protect them during their time in Thailand. The employers and boat captains collectively represent the migrant fishermen's level of interaction with the private sector of the fishing industry on a day-to-day basis. Therefore, it is recommended that the business sector within the fishing industry take on a greater role in the protection of its migrant workers from human rights violations such as labor exploitation and trafficking in persons.

The enhancement of the role of the business sector in these protection mechanisms can be achieved through a framework such as the "Protect, Respect and

Remedy” framework, which was endorsed by the United Nations Human Rights Council concerning the human rights responsibilities of both governments and private businesses. This framework calls for governments to protect against human rights abuses from third parties, including business, through appropriate policies, regulation, and adjudication; for the business sector to engage in corporate responsibility concerning human rights by acting with due diligence to avoid the violation of others’ human rights and by addressing adverse impacts that may have taken place; and for government, private businesses and civil society to provide victims with greater access to effective judicial and non-judicial remedy (Ruggie, 2009: 3-5).

Private companies in Thailand’s fishing industry can willingly make the decision to better protect and respect the rights of migrant fishermen through such activities as: implementing human rights policies and procedures; providing staff training on human rights; conducting regular audits of all company operations to identify situations of labor exploitation or human trafficking; amending recruitment practices to recruit migrant workers directly; ensure that migrant workers are free to leave at any time; providing a grievance and remedial mechanism for workers to make complaints and voice concerns without the fear of punishment; developing a company-specific anti-trafficking strategy; and partnering with public bodies, peer companies, unions, and NGOs to address human rights issues (United Nations Global Compact, n.d.: online; ILO, 2008c: 1-14).

Through measures such as those listed above, it is the recommendation of this research project that the role of the business sector be expanded within Thailand’s overall system of protection mechanisms for migrant workers and increase the effectiveness of this system through establishing grounds for greater partnership between three key stakeholders: the government, civil society and the private sector.

## **6.6 Conclusion**

The exploitation and trafficking of migrant fishermen in Thailand is a significant issues that continues to require more resources and further efforts to be

able to effectively protect the human rights and security of those workers. Through the case study of migrant fishermen from Myanmar in Samut Sakhon, this research has attempted to bring awareness to several of the weaknesses that exist within Thailand's system of protection mechanisms for all migrant workers across the country. Through increased targeted awareness campaigns, simplified procedures for making complaints and identifying trafficking victims, facilitation of safe and legal migration, regular enforcement of strengthened labor protection laws, and the strict reduction of widespread corruption issues, the human rights and security for thousands of migrant fishermen in Thailand could be significantly improved.

Thailand has had a long history of attempting to combat the issues of trafficking in women and children for the purposes sexual exploitation and child labor. These focused efforts have resulted in the increased level of protection for these women and children across the country. However, the notion of men as victims of human trafficking is a relatively new concept that has only recently become a component within Thailand's system of protection mechanisms for vulnerable population groups.

In order for these mechanisms to become more effective at protecting male migrant workers, Thailand will need to mobilize its resources to combat the trafficking of male victims for the purposes of labor exploitation to the extent that has been done to combat sex trafficking and forms of child labor within the country. These issues are expected to become increasingly important as the booming fishing industry in Samut Sakhon continues to grow and as Thailand moves towards closer economic and political integration with the development of the ASEAN Economic Community (AEC) in 2015. In regards to the lives of migrant fishermen in Samut Sakhon, the ultimate goal of all relevant stakeholders should be the increased protection of their fundamental human rights and security under Thailand's current system of protection mechanisms.

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## **APPENDICES**

## APPENDIX A – Sample Interview Questions for Migrant Fishermen

### Interview Questions:

1. Where are you from in Myanmar? How long have you been in Thailand? How long have you been working as a fisherman? How old are you?
2. Who helped you come to Thailand? When you came to Thailand, did you know that you would be working on a fishing boat? Do you enjoy working as a fisherman?
3. Can you briefly explain your working conditions on an average day (i.e. – working hours, tasks performed, any breaks/rest, etc.)?
4. Are you aware of the rights that you have as a migrant worker in Thailand? If so, who told you about them?
5. Have you ever experienced any problems during your work as a fisherman?  
For example:
  - Not getting paid the full amount by your employer.
  - Conflict with your boat captain or other fishermen.
  - Threatened with violence, or subjected to violence, from your captain or other members of your crew.
  - Not allowed to leave your job.
  - Not allowed to seek medical treatment.
  - Forced to work even when you were sick.
  - Threatened by your employer, boat captain or any other person to be turned in to the police.
  - Other similar problems.
6. If you have experienced any of these or similar problems, did you report these problems to anyone? If not, why? If so, who? What was the result?
7. If you have never experienced any of these problems, who would you mostly likely go to in order to report these problems if they ever happened to you (i.e. police, employer, non-government organization, etc.)? Why?
8. Are there any reasons that would prevent you from reporting any of these problems to the police?
9. When you are not on the fishing boat, have you ever used any of the following services provided by your employer, the Thai government, or any other organization? If so, who provides them?
  - a. Housing?
  - b. Medical treatment?
  - c. Food?
  - d. Counseling/Mental health?
  - e. Transportation assistance back to Myanmar?
  - f. Legal assistance?
10. What do you think is the best thing that you can do to protect yourself from these kinds of problems that we have talked about? Are you doing this?

11. Do you have any suggestions that your employer could do in order to protect your rights better than they are now?
12. Are you aware of any local non-government organization (NGO) working in this area that is to help protect your rights? Have you ever talked to anyone from such an organization?
13. Who do you trust the most in being able to protect you while you are working in Thailand (Thai government, local police, employers, local non-government organizations, etc.)? Why?
14. Do you have any other comments?

**Additional Follow-up Questions:**

- Where do you get paid? Who is the one who gives you the money (does he own the boat, is he from the shore, etc.)?
- Do you know about the sale of the fish that is caught? Who sells it? Who comes and buys it? How much is it sold for?
- At the employer, to who do you make the complaints to? Is there some kind of HR (human resources) office? Can they speak Burmese?

## APPENDIX B – Overview of Interviews with Migrant Fishermen

| Code  | Origin   | Age | Years in Thailand | Method   |
|---|--|-----|-------------------|--|
| <b>Individual Migrant Fishermen (MF)</b>            |  |     |                   |  |
| MF1   | Dawei  | 31  | 9                 | Semi-Structured Interview  |
| MF2   | Dawei  | 26  | 2                 | Semi-Structured Interview  |
| MF3   | Dawei  | 41  | 7                 | Semi-Structured Interview  |
| MF4   | Myeik  | 15  | 1                 | Semi-Structured Interview  |
| MF5   | Yangon   | 33  | 2                 | Semi-Structured Interview  |
| MF6   | Dawei  | 20  | 2                 | Semi-Structured Interview  |
| MF7   | Dawei  | 16  | 1 ½               | Semi-Structured Interview  |
| MF8   | Myeik  | 22  | 5                 | Semi-Structured Interview  |
| MF9   | Thandwe  | 29  | 7                 | Semi-Structured Interview  |
| MF10  | Dawei  | 18  | 1                 | Semi-Structured Interview  |
| MF11  | Palaw  | 28  | 2                 | Semi-Structured Interview  |
| MF12  | Palaw  | 39  | 1                 | Semi-Structured Interview  |
| MF13  | Palaw  | 31  | 1 ½               | Semi-Structured Interview  |
| MF14  | Dawei  | 47  | 1 ½               | Semi-Structured Interview  |
| MF15  | Pathein  | 38  | 1                 | Semi-Structured Interview  |
| MF16  | Dawei  | 24  | 3                 | Semi-Structured Interview  |
| MF17  | Myeik  | 40  | 7                 | Semi-Structured Interview  |
| MF18  | Myeik  | 27  | 6                 | Semi-Structured Interview  |
| MF19  | Dawei  | 22  | 3                 | Semi-Structured Interview  |
| MF20  | Myeik  | 22  | 1                 | Semi-Structured Interview  |
| MF21  | Dawei  | 26  | 1                 | Semi-Structured Interview  |
| <b>Group Interviews (GI) with Migrant Fishermen</b> |  |     |                   |  |
| GI1   | From various locations in Myanmar, most were from Dawei. | N/A | 1 to 6 years      | Semi-Structured Group Interview with 6 migrant fishermen on June 13, 2012. |
| GI2   | Four were from Myeik and one was from Dawei.             | N/A | 2 to 4 years      | Semi-Structured Group Interview with 5 migrant fishermen on July 5, 2012.  |

## APPENDIX C – List of Key-Informant Interviews

### Government Officials

|                          |   |
|--------------------------|---|
| Name Withheld            | A senior official in the provincial department of the Ministry of Social Development and Human Security in Samut Sakhon on July 4, 2012.  |
| Name Withheld            | A technical officer at the provincial department of the Ministry of Social Development and Human Security in Samut Sakhon on July 10, 2012.   |
| Mr. Visanu Sawadisawanee | Senior labor protection officer at the Department of Labor Protection and Welfare in Samut Sakhon and the Secretary of the board for the Samut Sakhon Sub-Committee of the National Operation Center on the Prevention and Suppression of Human Trafficking on July 10, 2012. |
| Mr. Nopporn Kittrattana  | Migrant Labor Specialist at the provincial Department of Labor Protection and Welfare in Samut Sakhon on July 10, 2012.   |
| Mr. Arunchai Putcharoen  | Chief Director of the Provincial Fisheries Office of the DOF in Samut Sakhon on July 9, 2012.   |
| Mr. Suwan Promphol       | Chief Director of the Pathumthani Provincial Protection and Occupational Development Center for Men (a shelter for male victims of human trafficking) in Rangsit on July 13, 2012.  |

**Representatives from Non-Government and International Organizations**

- Mr. Pakpoom Sawangkhum      Technical Officer and Operational Director of the office of the Raks-Thai Foundation in Samut Sakhon on July 5, 2012.
- Mr. Zaw Zaw Latt                Coordinator for Migrant Workers and Burmese Language Translator for the Raks-Thai Foundation in Samut Sakhon on July 5, 2012.
- Mr. Mgint Aung                 Worker and Burmese Language Translator at the Raks-Thai Foundation's Thachalom Outreach Center for migrant workers in Samut Sakhon on July 5, 2012.
- Mr. Sompong Sakaew          Director and Founder of the Labor Rights Promotion Network Foundation in Samut Sakhon on July 6, 2012.
- Mr. Piyakrai Seelakote        Anti-Trafficking Case Manager at the Labor Rights Promotion Network Foundation in Samut Sakhon on July 6, 2012.
- Mr. Max Tunon                 Senior Program Officer and Project Coordinator for the Tripartite Action to Protect Migrants within and from the GMS from Labour Exploitation (TRIANGLE Project) of the International Labor Organization in Bangkok on July 17, 2012.
- Name Withheld                 Senior representative for the Mirror Foundation; an interview was conducted through telephone and email communication on July 18, 2012.



**Fishing Industry Representatives**

|                |   |
|----------------|---|
| Name Withheld  | A senior official in the provincial department of the National Fisheries Association of Thailand in Samut Sakhon on July 3, 2012. |
| Names Withheld | Two Thai boat captains at a local fishing pier in Mahachai, Samut Sakhon on June 15, 2012.  |
| “Mr. Chan”     | A Thai fishing pier manager at a local fishing pier in Mahachai, Samut Sakhon on June 14, 2012.                                   |
| Name Withheld  | A Thai fishing boat owner who employs migrant workers from Myanmar in Mahachai, Samut Sakhon on June 14, 2012.                    |

## **BIOGRAPHY**

Mr. Kelly Glenn Schulz was born in Edmonton, Alberta, Canada. He obtained a Bachelors of Arts Degree in Intercultural Studies from Vanguard College in Edmonton, Canada (2011) and will graduate with a Masters of Arts in International Development Studies from the Faculty of Political Science at Chulalongkorn University in Bangkok, Thailand (2012).

Kelly has traveled extensively around Southeast Asia, China and Eastern Europe volunteering with various Non Government Organizations (NGOs) and Christian Organizations on programs for street children, leprosy patients, homeless individuals, high school and university students, and minority people groups.