



August 11, 2020

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The Honorable Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C., 20230

Re: Response to Thailand's Tier 2 ranking in Trafficking in Persons Report 2020

Dear Mr. Secretary:

The Global Labor Justice-International Labor Rights Forum (GLJ-ILRF) recognizes the U.S. Department of State's 20-year commitment to ending human trafficking by releasing the Trafficking in Persons (TIP) Report each year. However, we want to share our concerns with you about the Thailand section of the recent TIP Report released in June 2020. Those concerns are contained in this [statement](#) on which we collaborated on with the Seafood Working Group (SWG). The SWG is a global coalition of labor, human rights and environmental organizations coordinating to end forced labor in the Thai seafood industry.

The 2020 TIP Report maintained Thailand's ranking at Tier 2, despite also providing comprehensive evidence of severe weaknesses in the Thai government's efforts to prosecute, prevent, and protect people from human trafficking in 2019.

This action came despite a submission from the SWG to the TIP office in March 2020, in which the SWG [recommended](#) that Thailand be downgraded to Tier 2 Watch List. This recommendation was based on evidence that the country does not fully meet the minimum standards set forth in the U.S. Trafficking Victims Protection Act of 2000 and did not make sufficient progress to address trafficking in persons in 2019. The March SWG submission was based on consultations with frontline organizations in Thailand and documented 23 potential labor trafficking cases.

The TIP Report provides a crucial mechanism for engaging governments on human trafficking each year. The report is utilized by workers, frontline organizations and advocates to hold governments accountable for making progress in combatting human trafficking. For example, the downgrade of Thailand to Tier 3 in 2014 provided important leverage to anti-trafficking advocates to use with the Thai government, and triggered an important period of legal reform to address the most egregious cases of human trafficking and murder in the Thai fishing industry. With the 2020 TIP Report, the U.S. missed an important opportunity to send a clear message to the Thai government that its efforts to combat trafficking need to be more robust.

We ask that you consider the enclosed Seafood Working Group [statement](#), which demonstrates how the Thai government's progress has fallen short and puts forward recommendations for strengthening the TIP report's effectiveness in combatting and eradicating human trafficking.

Please contact Ms. Esmeralda Lopez, Legal and Policy Director at GLJ-ILRF, at esmeralda@ilrf.org with any questions. We look forward to working together to combat human trafficking.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer (JJ) Rosenbaum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jennifer (JJ) Rosenbaum
Executive Director
Global Labor Justice-International Labor Rights Forum (GLJ-ILRF)

CC

Mr. John Richmond, Ambassador-At-Large, Office to Monitor and Combat
Trafficking in Persons



Sufficient progress not made to warrant Tier 2 ranking for Thailand in TIP Report 2020

Seafood Working Group responds to Trafficking in Persons Report 2020

World Day against Human Trafficking
July 30, 2020

The U.S. State Department’s [Trafficking in Persons \(TIP\) Report 2020](#) has maintained Thailand’s ranking at Tier 2, despite detailed and comprehensive evidence demonstrating the weaknesses of the Thai government’s efforts in the areas of prosecution, protection and prevention of human trafficking in 2019.

The [Seafood Working Group](#), a global coalition of labor, human rights, and environmental non-governmental organizations, [recommended](#) that Thailand be downgraded to ‘Tier 2 Watch List’ since it does not fully meet the minimum standards set forth in the U.S. Trafficking Victims Protection Act (TVPA) of 2000 and did not make sufficient progress to address trafficking in persons in 2019. The Working Group’s report relied on consultations with frontline worker organizations and documented 23 potential labor trafficking cases. Indeed, the evidence presented in the TIP Report itself is much more in line with the criteria for the Tier 2 Watch List ranking.¹

The TIP Report is the U.S. Government’s principal diplomatic tool for engagement with foreign governments on human trafficking and is released each year, ranking countries across four tiers based on their anti-trafficking efforts. The lowest ranking, Tier 3, triggers possible aid sanctions. Tier 2 does not lead to such consequences. With the 2020 TIP Report, the U.S. missed an opportunity to send a clear message to the Thai government that its efforts to combat trafficking need to be more robust.²

The 2020 TIP Report highlights five areas where the Government of Thailand purportedly demonstrated increasing efforts compared to the previous year.³ However, the report also provides clear evidence that these efforts have been weak and ineffective. The following analysis demonstrates how the Thai government’s progress has fallen short in four of these areas.

1. Anti-trafficking training to judges and working with NGOs to provide trauma-informed care training to police, prosecutors, and shelter staff.

Effective trainings are certainly needed to correct longstanding issues, such as the common misunderstanding among law enforcement officials that coercion must be physical in order to constitute a strong indicator of human trafficking.⁴ However, the act of conducting trainings alone, without assessing their impact, should not be considered an “increasing effort” to combat trafficking. The TIP office itself notes serious limitations in the impact of the trainings.⁵

Furthermore, most of the trainings for law enforcement listed in the report were conducted with significant support from UN agencies, NGOs and other governments.⁶ As the TIP Report aims to assess the efforts and resources applied by the particular government in question, training that is largely funded and provided by external entities should not be used to determine tier rankings.⁷

2. Increase in investigations of suspected cases of labor trafficking compared to the previous reporting period.

The focus on the rise in labor trafficking investigations is highly selective and misleading, as the overall numbers of trafficking investigations, prosecutions and convictions all decreased, in addition to wider patterns of ineffective law enforcement.

The TIP Report states that 76 labor trafficking cases were investigated in 2019, an increase from the 43 labor trafficking cases investigated in 2018. However, the overall number of trafficking investigations decreased,⁸ from 304 in 2018 to 288 in 2019. The TIP report further notes that “the government initiated the fewest number of trafficking investigations since 2014.” In addition, the number of prosecutions decreased from 438 in 2018 to 386 in 2019 and convictions dropped from 316 in 2018 to 304 in 2019.⁹

Meanwhile, the finding that 72 percent of victims assisted in government shelters by the Thai government in 2019 were labor trafficking victims, while only 26 percent of the investigations relate to labor trafficking, indicates a failure to adequately investigate labor trafficking crimes. In any case, 76 cases reflects an extremely low number of labor trafficking investigations in the context of the millions of labor migrants in the Thai economy with known [vulnerabilities to trafficking](#). As the TIP report highlights: “Immigration authorities did not identify any victims among the 7,156 migrants screened in immigration detention centers [in 2019], compared to 15 identified in 2018; NGOs reported authorities decreased efforts to cooperate with NGOs to screen for trafficking victims among this population during the reporting period.”¹⁰ Furthermore, only four labor trafficking cases were in the fishing sector, which is extremely low. The ILO Ship to Shore Rights’ [study](#) conducted in 2019 showed that 14 percent of fishers interviewed were in a situation of forced labor. The Seafood Working Group’s [submission](#) also documented several potential labor trafficking cases in the fishing sector during the reporting period.

In addition to these weaknesses, the TIP Report states that “corruption and official complicity facilitated trafficking and continued to impede anti-trafficking efforts,”¹¹ which is a key issue warranting Tier 2 Watch List status. This included a reluctance by some law enforcement officials to investigate influential boat owners and captains, including those whom they perceived to have connections with politicians. Some police may have purposely compromised investigations and failed to provide prosecutors sufficient evidence to prosecute trafficking cases. The government reported that it convicted 14 officials complicit in trafficking crimes in 2019 (down from 16 in 2018), but utilized administrative punishments against some officials rather than criminally investigating and prosecuting them. The government did not report investigating or prosecuting immigration officials who accepted bribes at border checkpoints, which is one of the issues underpinning widespread labor trafficking.¹²

3. Increased compensation to victims through the anti-trafficking fund.

The Thai government provided 11.88 million baht (\$398,990) to trafficking victims from its anti-trafficking fund, including 1.68 million baht (\$56,430) to victims residing outside government shelters. This represented an increase from the 6.15 million baht (\$206,580) provided in 2018.¹³ Although funds have been allocated, the TIP Report notes that “civil society groups reported that

proposed implementing regulations, including those that provide permission for trafficking victims to remain in Thailand and allow victims to obtain compensation from the anti-trafficking fund, may not apply to those identified as victims of forced labor.”¹⁴ In addition, local organizations find the impact of the anti-trafficking fund to fall short of supporting reintegration for survivors. As explained by a local CSO representative, “the anti-trafficking fund merely provides initial financial remedies and assistance for victims. For the victims to reintegrate sustainably into society, further compensation is required.”¹⁵

4. Successful restitution to victims of trafficking for the first time.

The Thai government has regularly failed to ensure restitution is paid by traffickers, who are oftentimes the victims’ employers—an accountability issue that some CSOs consider to be crucial to tackling the root causes of trafficking.¹⁶ The government did not report how many restitution claims prosecutors filed on behalf of victims in 2019 (116 in 2018) but reported that courts ordered 3.3 million baht (\$110,850) in restitution for 14 victims in two cases in 2019. The government reported that for “the first time, two victims successfully received court-ordered restitution from their traffickers.” Despite these court orders, however, the TIP Report finds that “the execution of court orders to pay restitution for victims remained ineffective, particularly for non-Thai victims.”¹⁷ For example, in the case of 15 persons from Myanmar who were trafficked into the fishing sector in Kantang, the judicial process began in 2017 and concluded at the Supreme Court in 2019 with a decision for money to be allocated, yet to date the funds have still not been successfully provided to the 15 victims.¹⁸

Thailand’s wider failure to prevent human trafficking

More broadly, Thailand did not warrant the Tier 2 ranking in 2020 because it has demonstrably failed to prevent human trafficking of migrant workers. As was documented in the [SWG submission](#) to the Department of State TIP office, there are several structural issues underpinning risk of forced labor and human trafficking that remain to be addressed. First, the government’s system for registering migrant workers in Thailand is insufficient and ineffective, and often leaves migrants without protection under labor laws. Second, the Thai government has failed to effectively prohibit recruitment fees and related costs, which violates the ILO’s [General principles and operational guidelines for fair recruitment](#) and forces migrants to routinely go into debt to brokers, recruitment agencies and employers. Third, the government has failed to remove significant barriers to changing employers. The current policy affords workers with the limited opportunity to change employers under certain conditions but, in practice, it has been nearly impossible for migrant workers to use these provisions even when laboring under abusive conditions. These factors – lack of labor protection, debt, and inability to change employers – are built into the legal framework, represent indicators of involuntariness and coercion, and are strong risk factors for forced labor and human trafficking.

The Thai government has failed to ratify core ILO Labor Conventions 87 (Freedom of Association) and 98 (Right to Organize and Collectively Bargain) or to revise its labor legislation to ensure that these fundamental, internationally-recognized worker rights are respected. As such, Thai law explicitly bans non-Thai citizens from the right to form trade unions or play leading roles in them. Thailand remains one of the three countries in Southeast Asia that have [not ratified](#) ILO Conventions 87 and 98. In addition, the Thai government and companies continued to use Strategic Litigation against Public Participation (SLAPP) lawsuits against trade unionists, workers, human rights defenders, and other individuals who spoke out against labor abuse in 2019 and 2020.¹⁹ Barriers to freedom of association and collective bargaining rights, as well as the threat of SLAPP lawsuits, silence workers and prevent them from reporting abuse and seeking relief. As

the TIP Report states: “Weaknesses in Thailand’s labor laws preventing migrant workers from forming labor unions may have contributed to exploitation.”²⁰

The decision to keep Thailand at Tier 2 in 2020 despite significant evidence warranting a downgrade raises questions about how the ranking was determined. The Seafood Working Group further notes that Taiwan remained at Tier 1 in 2020 despite the significant body of evidence documenting systemic labor trafficking in Taiwan’s fishing industry and the government’s failure to make serious and sustained efforts to eliminate it.²¹

The Seafood Working Group makes the following recommendations:

1. The TIP office should make public the Implementation Guidelines for the TVPA Minimum Standards, used by J/TIP analysts to evaluate governments’ efforts in Protection, Prosecution, and Prevention, including any revisions. In addition, it should continue working to increase transparency on how ranking determinations are made, including greater clarity on how distinctions are made between Tiers 1, 2, Tier 2 Watch List, and Tier 3. This would lead to more objective rankings and help organizations compile more appropriate and strategic data.
2. In assessing whether a country is demonstrating “serious and sustained efforts” to eliminate trafficking, the TIP Report should ensure equal consideration is given to prevention, protection, and prosecution. It is important to not disproportionately focus on criminal justice responses, given the importance of preventing human trafficking from occurring and affording remedy to victims to prevent re-trafficking.
3. The J/TIP office should strengthen direct communication with non-governmental and civil society organizations to ensure that independent research and documentation is utilized as effectively as possible to support the TIP report process each year.

Sincerely,

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Be Slavery Free
Center for Alliance of Labor and Human Rights (CENTRAL)
Ethical Trading Initiative (ETI)
FishWise
The Freedom Fund
Freedom United
Global Labor Justice-International Labor Rights Forum (GLJ-ILRF)
Green America
Greenpeace USA
Human Rights and Development Foundation (HRDF)
Human Rights at Sea
Human Rights Watch
Humanity United
Lawyers’ Rights Watch Canada
MAP Foundation
Mark B. Taylor, Independent Human Trafficking Consultant and former J/TIP staff
Migrant Working Group (MWG)
Verité

¹ According to the State Department's definitions, countries are placed on Tier 2 Watch List if they "do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards, and for which a) the estimated number of victims of severe forms of trafficking is very significant or is significantly increasing and the country is not taking proportional concrete actions; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials", Trafficking in Persons (TIP) Report 2020, p. 40, <https://www.state.gov/trafficking-in-persons-report-2020/>.

² Thailand was downgraded to Tier 2 Watch List in 2016 and it is understood that this pressure led to significant reforms, particularly in regulating the fishing sector.

³ TIP Report 2020, p. 482.

⁴ TIP Report 2020, p. 484.

⁵ The report states "first responders, prosecutors, and judges sometimes did not properly interpret or apply trafficking laws, especially for labor trafficking. Prosecutors and multi-disciplinary teams (MDTs) frequently looked for evidence of physical abuse, and cases of labor trafficking were frequently directed to labor courts rather than criminal prosecution", TIP Report 2020, p. 483.

⁶ TIP Report 2020, p. 483.

⁷ "Tier rankings and narratives are not affected by the following: efforts, however laudable, undertaken exclusively by nongovernmental actors in the country; general public awareness events—government-sponsored or otherwise—lacking concrete ties to the prosecution of traffickers, protection of victims, or prevention of trafficking; and broad-based law enforcement or developmental initiatives," TIP Report 2020, p. 40.

⁸ In addition to labor trafficking (also referred to as "human trafficking for forced labor"), other categories of human trafficking investigated by the Thai government include prostitution, pornography, other forms of sexual exploitation, forced begging, enslavement, coerced removal of oranges for the purpose of trade, or any other similar practices resulting in forced extortion. These categories are set out under the Thai Anti-Trafficking Act (2008).

⁹ TIP Report 2020, p. 483.

¹⁰ TIP Report 2020, p. 484.

¹¹ TIP Report 2020, p. 484.

¹² TIP Report 2020, p. 484.

¹³ TIP Report 2020, p. 486.

¹⁴ TIP Report 2020, p. 484.

¹⁵ Explained to GLJ-ILRF by email communication with a CSO representative who wishes to remain anonymous, July 2, 2020.

¹⁶ Explained to GLJ-ILRF by email communication with a CSO representative who wishes to remain anonymous, July 2, 2020.

¹⁷ TIP Report 2020, p. 485.

¹⁸ Explained to GLJ-ILRF by email communication with a CSO representative who wishes to remain anonymous, July 2, 2020.

¹⁹ "FACT SHEET: Thammakaset vs. human rights defenders and workers in Thailand," The Observatory for the Protection of Human Rights Defenders, May 2019, <https://www.fidh.org/IMG/pdf/obsthailande2019web.pdf>; see also "Thai court sentences journalist Suchanee Cloitre to 2 years in jail for defamation," Committee to Protect Journalists, January 3, 2020, <https://cpj.org/2020/01/thai-court-sentences-journalist-suchanee-cloitre-1/>.

²⁰ TIP Report 2020, p. 486.

²¹ "State Department Report Underplays Taiwan's Abuse of Migrant Fishers," Greenpeace USA, June 29, 2020, <https://www.greenpeace.org/usa/news/state-department-report-underplays-taiwans-abuse-of-migrant-fishers/>.