



Briefing Paper on

RATIFYING AND IMPLEMENTING ILO CONVENTION 188 IN ASEAN MEMBER STATES

SUBMITTERS



No.	Name of Organisation
1	Asosiasi Pekerja Perikanan Indonesia (AP2I)
2	CSO Coalition for Ethical and Sustainable Seafood
3	Environmental Justice Foundation (EJF)
4	FORUM-ASIA
5	Global Labor Justice - International Labor Rights Form (GLJ-ILRF)
6	Greenpeace Southeast Asia
7	Indonesia Ocean Justice Initiative (IOJI)
8	Lembaga Bantuan Hukum Bandung (LBH Bandung)
9	Oxfam International - Asia
10	Plan International
11	Serikat Awak Kapal Perikanan Bersatu (Sakti) SULUT
12	Serikat Awak Kapal Transportasi Indonesia (SAKTI)
13	Serikat Buruh Migran Indonesia (SBMI)
14	Serikat Pekerja Perikanan Indonesia (SPPI)
15	Serikat Pelaut Sulawesi Utara (SPSU)
16	Stella Maris Manila
17	The Migrant Workers Rights Network (MWRN)
18	Verité Southeast Asia

ENDORSERS

No.	Name of Organisation
1	Amnesty International - Indonesia
2	Destructive Fishing Watch (DFW)
3	Human Rights Working Group (HRWG)
4	MARUAH Singapore
5	Raks Thai Foundation
6	Solidaritas Perempuan (SP)



© Tommy Trenchard/Greenpeace

ACKNOWLEDGMENTS

This paper was authored by the team from Greenpeace Southeast Asia namely Tashryn Mohd Shahrin, Ephraim Batungbacal, and Annisa Erou who took overall responsibility and led the entire writing and coordination process. Special thanks to our Greenpeace colleagues who rendered invaluable assistance and advice, also in terms of peer review of earlier drafts of the paper - including Greenpeace Southeast Asia (GPSEA) Executive Director: Naderev Saño; GPSEA Oceans team: Afdillah, Anastasia Kriestella, Annisa Dian Ndari, Arifsyah Nasution, Galuh Izma Hasanah, Ja Surinsirirat, Kevin Chrisnanda Haryanto, Kisha Muaña, Nichanan Tanthanawit, Sheila Maharani Berlian, Songwut Jullanan, Vela Andapita, and Wipavadee Amsungnoen; Greenpeace colleagues: Andy Shen (GPUS), Amy Jacobsen (GPI), Pavel Klinkhammers (GPEA), Shuk Wah Chung (GPEA). Invaluable technical and logistical support was given by Adhi Ariebowo, Ahmad Fauzi, Anita Yuniarti, Ayip Fahmi Faturochman, Dessy Erivianti, Figo Kurniawan, Griselda Raisa, Idaman, Jaki Mandigma, Salsa Nofelia Franisa, and Worrowan. Thanks also go to Arief Rizky for designing and completing the layout.

Our deepest appreciation to all civil society organisations, trade unions, national and regional institutions who contributed significantly as regards materials, new developments, and advice and were involved in the national/regional workshops and webinars: ASEAN Committee on Migrant Workers (ACMW), ASEAN Intergovernmental Commission on Human Rights (AICHR), ASEAN-USAID PROSPECT, Asosiasi Pekerja Perikanan Indonesia (AP2I), CSO Coalition for Ethical and Sustainable Seafood, Environmental Justice Foundation (EJF), Department of Justice of the Republic of the Philippines, FORUM-ASIA, Global Labor Justice - International Labor Rights Form (GLJ-ILRF), Inter-Agency Council Against Trafficking (IACAT), International Labour Organization (ILO), Indonesia Ocean Justice Initiative (IOJI), International Organization for Migration (IOM), International Transport Workers' Federation (ITF), Koalisi Rakyat untuk Keadilan Perikanan (KIARA), Lembaga Bantuan Hukum Bandung (LBH Bandung), Ministry of Foreign Affairs of the Republic of Indonesia, Ministry of Manpower of the Republic of Indonesia, Migrant Workers' Concern Desk of Taipei Archdiocese (MWCD), Oxfam International - Asia, Plan

International, RARE - Philippines, Scalabrini Development Office, Scalabrini Migration Center, Senior Officials Meeting on Transnational Crime (SOMTC), Serikat Awak Kapal Perikanan Bersatu (Sakti) SULUT, Serikat Awak Kapal Transportasi Indonesia (SAKTI), Serikat Buruh Migran Indonesia (SBMI), SENTRO, Serikat Pekerja Perikanan Indonesia (SPPI), Serikat Pelaut Sulawesi Utara (SPSU), Stella Maris Kaohsiung, Stella Maris Manila, Stella Maris Seafarers' Centre, The Migrant Workers Rights Network (MWRN), and Verité Southeast Asia. We also acknowledge the active participation and contributions of our endorsers for this publication: Amnesty International Indonesia, Destructive Fishing Watch (DFW), Human Rights Working Group (HRWG), MARUAH Singapore, Raks Thai Foundation, and Solidaritas Perempuan (SP).

We also thank the representatives from governments, ASEAN bodies, social partners and civil society organizations from ASEAN Member States and international organizations such as IOM and ILO who helped to provide information and inputs on relevant parts of the paper: Among Pundhi Resi, Benjamin Harkins, Dina Nuriyati, Dominic Thomson, Fadilla Octaviani, Hariyanto Suwarno, Japar Malik, Jon Hartough, Judha Nugraha, and Yuyun Wahyuningrum; and last but not least, participants of all national/regional workshops and webinars: Achdiyanto Ilyas, Andi Lolo, Anwar, Anwar Maarif, Apinya Tajit, Arnon Hiborang, Astried, Azizah Nur Hapsari, Baso Hamdani, Carina Urbano, Carla Nitura Calugay, Daryll Delgado, Dennis Calvan, Emilio Pana, Franchesca Regala, Fr. Ansensius Guntur, Fr. John Thiet, Fr. Paulo Prigol, Gianna Francesca Catolico, Gita Agnestasia Simanjuntak, Icha Alysa, Imam Syafi'i, Ingpat Pakchairatchakul, JoePres Gaudiano, Joy Viray-Gatmaytan, Keren Kaumbur, Leoni Ngo Pascual, Jenny Rose Avelano, Kanoknit Tankulratana, Louis Hoffmann, Marguerite Afra, Maruja Asis, Moh Abdi Suhufan, Malaya Montesur, Nattaya Petcharat, Nicha Phannajit, Rossen Karavatchev, Sanushka Mudaliar, Sara Sunisa Lehman, Sujintana Hemtasilpa, Wisnu Prima, Yasser, Yunety Tarigan, and Zullia Saida. ●

ABBREVIATIONS

ACMW	ASEAN Committee on Migrant Workers
ACTIP	ASEAN Convention Against Trafficking in Persons, Especially Women and Children
AFML	ASEAN Forum on Migrant Labour
AICHR	ASEAN Intergovernmental Commission on Human Rights
AHRD	ASEAN Human Rights Declaration
ALMM	ASEAN Labour Ministers Meeting
AMMTC	ASEAN Ministerial Meeting on Transnational Crime
AMS	ASEAN Member States
APA	ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
COVID-19	Coronavirus Disease 2019
CSOs	Civil Society Organizations
DO	Department Order
DOLE	Department of Labour and Employment
DWF	Distant Water Fishing
EEZ	Exclusive Economic Zones
FAO	Food and Agriculture Organization of the United Nations
FYWP	Five Year Work Plan
ILO	International Labour Organization
ILO C-138	ILO Minimum Age Convention 138
ILO C-188	ILO Work in Fishing Convention 188
ILO C-87	ILO Convention on Freedom of Association and Protection of the Right to Organise 87
ILO C-98	ILO Convention on the Right to Organise and Collective Bargaining 98
IUU	Illegal, Unreported and Unregulated
NGOs	Non-Governmental Organizations
OSH	Occupational Safety and Health
SDGs	Sustainable Development Goals
SOMTC	Senior Officials' Meeting on Transnational Crime
TIP	Trafficking in Persons
TOR	Terms of Reference
UNCLOS	United Nations Convention on the Law of the Sea
WG	Working Group

TABLE OF CONTENTS

Submitters	i
Endorsers	iii
Acknowledgments	iv
Executive Summary	viii
Introduction	1
Background	5
COVID-19	7
ILO Convention 188 (ILO C-188)	9
Benefits for Contracting Parties	11
ILO Convention 188 - Status of ratification	13
Urgent Appeals to ASEAN	15
ASEAN Perspectives: Regional Analysis and Responses	17
Recommendations	27
Country Contexts	39

© Jiri Rezac/Greenpeace

EXECUTIVE SUMMARY

There is rapidly growing concern over acts of forced labour and human trafficking in the fishing industry on a global scale.

In Southeast Asia, this can be seen from the increasingly reported cases of poor working conditions, unethical recruitment schemes and tragic deaths of Southeast Asian migrant fishers on distant water fishing (DWF) vessels. As a result of this situation, companies hailing from these industries have had their products blocked and received warnings from the European Commission and the United States Custom¹.

While these issues remain widespread in Southeast Asia, this briefing paper serves to incentivize the Association of Southeast Asian Nations (ASEAN) Member States (AMS) to ratify and implement ILO Work in Fishing Convention 188 (ILO C-188), which is the most comprehensive international instrument concerning the working conditions and labour rights of fishers. The gap analysis on responsible ASEAN bodies, namely the ASEAN Committee on Migrant Workers (ACMW) and the ASEAN Intergovernmental Commission on Human Rights (AICHR) along with the Senior Officials' Meeting on Transnational Crime (SOMTC), reveals that the existing regional mechanisms lack identification of migrant fishers as migrant workers, and that these bodies have limited coordination between them in specifically targeting migrant fishers' issues. In addition, the current ASEAN frameworks do not meet the majority of the key provisions of ILO C-188.

Given that the ordeals of migrant fishers cut across different layers of amoral issues, the recommendations provided are directed at the multiple stakeholders involved

in the DWF industries. This includes AMS, social partners (bodies representing employers and workers), flag States and buyers of fish produce - all of which have migrant workers of Southeast Asian descent in their labour supply chains. The main areas of focus are identified as efforts on developing pathways for safe and ethical recruitment, and grievance mechanisms of abuses or accidents that occur onboard fishing vessels. On top of that, the push for amendments to national legislation and providing training and education will be additional duties for the respective stakeholders to take on. Overall, the need for greater cooperation between AMS and flag States as well as the obligation of businesses to implement rigorous human rights due diligence processes in collaboration with civil society and worker unions, is pertinent in changing the fates of migrant fishers at sea. ●

¹ [Out of Sight: Modern Slavery in Pacific Supply Chains of Canned Tuna](#)

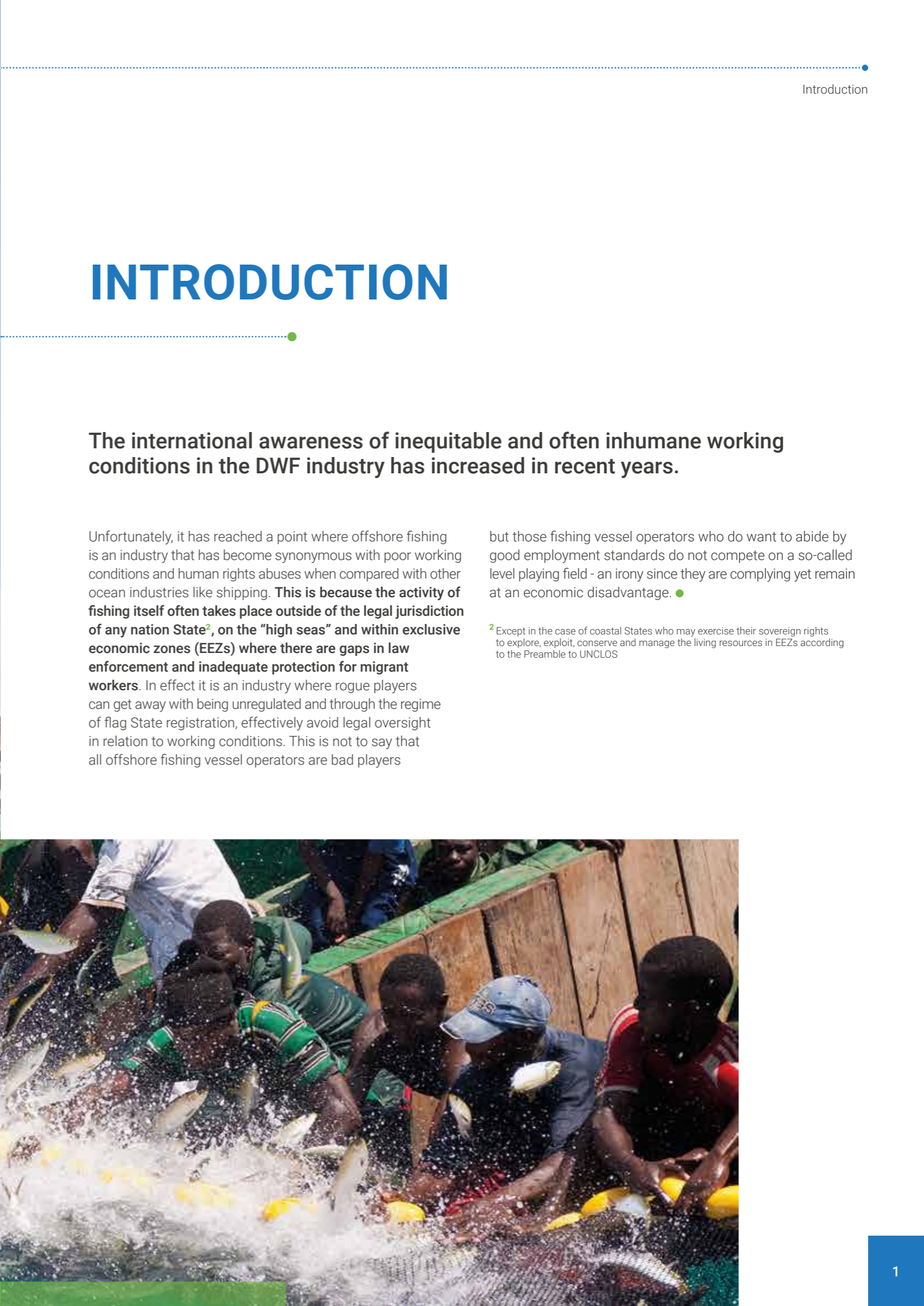
INTRODUCTION

The international awareness of inequitable and often inhumane working conditions in the DWF industry has increased in recent years.

Unfortunately, it has reached a point where offshore fishing is an industry that has become synonymous with poor working conditions and human rights abuses when compared with other ocean industries like shipping. **This is because the activity of fishing itself often takes place outside of the legal jurisdiction of any nation State², on the “high seas” and within exclusive economic zones (EEZs) where there are gaps in law enforcement and inadequate protection for migrant workers.** In effect it is an industry where rogue players can get away with being unregulated and through the regime of flag State registration, effectively avoid legal oversight in relation to working conditions. This is not to say that all offshore fishing vessel operators are bad players

but those fishing vessel operators who do want to abide by good employment standards do not compete on a so-called level playing field - an irony since they are complying yet remain at an economic disadvantage. ●

² Except in the case of coastal States who may exercise their sovereign rights to explore, exploit, conserve and manage the living resources in EEZs according to the Preamble to UNCLOS



© Clément Tadjif/Greenpeace

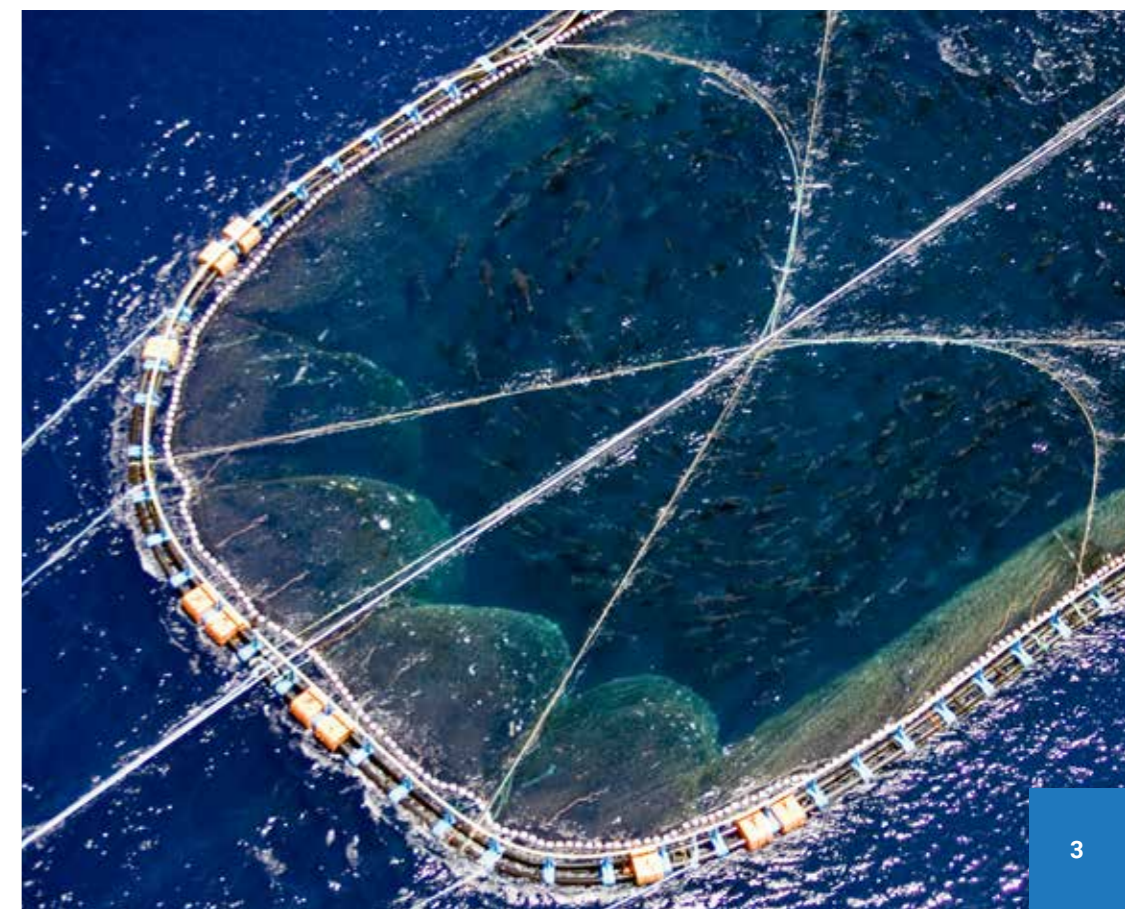


© Paul Hilton/Greenpeace

METHODOLOGY

The methodology adopted for this paper included a desk-based literature review of information on IUU practices and related acts of forced labour in the ASEAN region. This included grey literature, published secondary data, materials on current practices and legislation, conventions, and guidelines, with a focus on migrant fishers.

Bilateral consultations were held with representatives of government institutions and relevant ASEAN sectoral bodies who are involved in the protection of migrant fishers. The consultations which took place on multiple occasions between September and December, were aimed at supplementing the desk review. Input was also sought from representatives of civil society organizations, non-governmental organizations, trade unions and international organizations - first through an online [regional webinar](#), then a series of national workshops that was conducted virtually in [Indonesia](#), the [Philippines](#) and [Thailand](#), and followed by a [regional workshop](#) to consolidate and align participants' feedback with the priorities of this paper. Responses from stakeholders were triangulated with the information collected during the desk review and consultations. ●



© Gavin Newman/Greenpeace

BACKGROUND

The international awareness of inequitable and often inhumane working conditions in the DWF industry has increased in recent years.

The fight against IUU fishing (illegal, unreported and unregulated fishing) is inextricably linked to the fight against forced labour according to the Food and Agriculture Organization of the United Nations (FAO)³. Fishers who are mostly migrant workers remain vulnerable to severe forms of human rights abuse on board fishing vessels.

Asia is home to 68 percent of the world's active fishing vessels, wherein fishing industries rely heavily on migrant workers from countries where employment is scarce and who are willing to work for starvation wages⁴. Recruitment agencies reportedly pursue the poorest workers they can find, luring them with promises of higher wages only to leave them indebted due to salary deductions used to cover recruitment, transport or daily living costs including emergency expenses⁵. Workers often report finding themselves working on fishing vessels in horrendous conditions for an extraneous period of time that can amount to as long as two years just to recoup their recruitment costs and other expenses that ought to be rightfully borne by their employers.

Greenpeace Southeast Asia recently published a report entitled *Forced Labour at Sea*⁶ that illustrates forced labour risks on DWF vessels, containing details of 104 allegations of human rights and labour violations from Indonesian migrant workers in 2020. These allegations are pervasive across the region and include many of the indicators of forced labour as established by the International Labour Organization⁷ (ILO) – deception, physical violence, wage deductions, passport confiscation and excessive working hours. This report is a follow up to the *Seabound*⁸ report published in 2019.

Another report by Greenpeace East Asia entitled *Choppy Waters*⁹ in 2020 identifies that Taiwanese vessels were still associated with IUU fishing and forced labour, which allegedly happens consistently aboard these vessels operating mainly in the Atlantic ocean. Investigations based on interviews with migrant fishers

from Taiwanese vessels have revealed that infringement of labour and human rights related laws are easily detected in Taiwan's DWF fleets¹⁰ where more than 20,000 migrant workers of Indonesian and Filipino origins are employed¹¹.

³ International day against illegal fishing | United Nations

⁴ Seabound: The Journey to Modern Slavery on the High Seas

⁵ Study on the recruitment and placement of migrant fishers from Indonesia

⁶ Forced Labour at Sea: The Case of Indonesian Migrant Fisher

⁷ Special Action Programme to Combat Forced Labour

⁸ Seabound: The Journey to Modern Slavery on the High Seas

⁹ Choppy Waters: Forced Labour and Illegal Fishing in Taiwan's Distant Water Fisheries

¹⁰ Ibid 5

¹¹ The statistics of the foreign crew on board Taiwanese fishing vessels



Such accounts of forced labour and exploitation are also reflected in scenarios involving Chinese DWF vessels. The IUU Fishing Index Report 2019¹² claims that China Mainland ranks as the worst-performing country out of 152 countries. Accounts of physical violence^{13 14} towards migrant fishers onboard Chinese vessels and constant breaching of international law by Chinese fishing fleets worldwide¹⁵ serves as a particular threat to human rights protection, fish stocks and food security. The severe lack of government and public scrutiny adds on to the harrowing conditions of migrant fishers that constitutes forced labour and human trafficking.

“ *The severe lack of government and public scrutiny adds on to the harrowing conditions of migrant fishers that constitutes forced labour and human trafficking.*

In totality, these aforementioned reports expose the prevalence of forced labour and human rights violations in the Taiwanese¹⁶ and Chinese DWF industry due to the high frequency of issues including debt bondage, withholding of wages, excessive overtime, discrimination against migrant fishers, irregular and ineffective labour inspections and lack of oversight by incompetent authorities on labour matters¹⁷ in some countries. Solving these issues demands for the pressing need to hold these states accountable for their actions (or lack thereof), to monitor progress and to take remedial action where appropriate. ●

¹² The Illegal, Unreported and Unregulated Fishing Index

¹³ Indonesian man's frozen body found on Chinese fishing boat

¹⁴ Hold on brother: final days of doomed crew on Chinese shark finning boat

¹⁵ It's terrifying: can anyone stop China's vast armada of fishing boats?

¹⁶ Labour Disputes Reveal a Worrying Power Imbalance and Vulnerability of Migrant Fishermen in Taiwan's Fishing Industry

¹⁷ Ibid 7

COVID-19

Greenpeace Southeast Asia has collected information on the effects of the COVID-19 pandemic to inform our ongoing efforts to combat modern slavery at sea, and support the identification and documentation of emerging challenges and trends.

There is evidence that COVID-19 has exacerbated forced labour and labour trafficking situations and that actors in the industry are exploiting the increased vulnerability of migrant fisheries on DWF vessels in forced labour or trafficking activities. However, information related to COVID-19 and the new challenges it has posed is not incorporated into this paper.



© Liu Yuyang/Greenpeace

ILO CONVENTION 188¹⁸ (ILO C-188)

In 2007, the ILO Work in Fishing Convention 188 (ILO C-188)¹⁹ was adopted with the aim of ensuring decent working conditions for fishers aboard fishing vessels, specifically with regard to “conditions of service, accommodation and food, occupational safety and health (OSH) protection”.

The Convention applies to all fishers and fishing vessels²⁰ engaged in commercial fishing activities, where only recreational and subsistence fishing is excluded. The ultimate purpose of ILO C-188 is to establish minimum international labour standards that are applicable to all fishers, regardless of the scale of the fishing operation²¹, and that is flexible enough to be enacted by governments of different development phases worldwide. It ascertains that fishers have decent work conditions on board fishing vessels by establishing a set of minimum requirements to be complied with. The following are some of the key provisions included in the Convention:

- Establishes the responsibilities of fishing vessel owners and skippers for the safety of fishers on board and for the safety of their vessels (Article 8).
- Sets a minimum age of 16 for work on board fishing boats and requires special protection for young fishers (Article 9).
- Requires fishers to undergo periodic examinations of their medical fitness for work on fishing vessels (Articles 10-12).
- Requires that fishing vessels are sufficiently and efficiently crewed, are under the control of a competent skipper, and that the fishers on board are provided sufficient rest periods (Articles 13-14).
- Requires fishing vessels to have a crew list and fishers to have the protection of a signed work agreement setting out the terms of the work they will perform (Articles 15-20, and Annex II).
- Entitle fishers to be repatriated when their agreements expire – and for other reasons. Prohibits making fishers pay to obtain their jobs. Prohibits the blacklisting of fishers (Articles 21-22).
- Addresses how fishers are paid and requires that they shall have the means to send money home to their families at no cost (Article 23-24).

- Sets standards for living accommodation and food on board fishing vessels (Articles 25-28, and Annex III).
- Establishes requirements for occupational safety and health, as well as a basic level of medical care on fishing vessels; (Articles 31-33).
- Ensures that fishers benefit from social security protection no less favourable than that provided to other workers in the country.
- Provides protection in cases of their work-related sickness, injury, or death (Articles 34-39).
- Establishes flag and port state enforcement guidelines concerning living and working conditions on board fishing vessels, including guidelines on the labour inspection of vessels. ●

¹⁸ Convention C188 - Work in Fishing Convention, 2007 (No. 188)

¹⁹ International Labour Standards on Fishers

²⁰ Applicable to vessels of 24 metres long and over, and possibly for shorter vessels after government consultation according to Art. 2 of ILO Convention 188

²¹ For example, C188 must also be applied even if fishing companies have only 1 vessel operating

BENEFITS FOR CONTRACTING PARTIES

If properly enforced, ILO C-188 can level the playing field domestically in reducing accidents and injury at sea, assisting in attracting and retaining fishers and setting standards vessel owners and/or employers must follow on recruitment costs, work agreements, OSH and medical care at sea and ashore and social security protection.

If properly enforced, ILO C-188 can level the playing field domestically in reducing accidents and injury at sea, assisting in attracting and retaining fishers and setting standards vessel owners and/or employers must follow on recruitment costs, work agreements, OSH and medical care at sea and ashore and social security protection.

As a whole, the Convention puts in place measures to ensure compliance with, and enforcement of, its provisions by port States while providing that large fishing vessels and those on extended international voyages may be subject to labour inspections in foreign ports and detained if they are found to be violating ILO C-188.

From a fishers' perspective, ILO C-188 will strengthen the social dialogue between representatives of fishing vessel owners and fishers in the industry by establishing the mechanism to facilitate engagement at all levels

to improve outcomes for the fishing community. The comprehensiveness of the provisions in addressing the occupational safety and health (OSH) of fishers in multiple ways, will improve theirs and their families' lives.

ILO C-188 was developed on the basis that it remains as an instrument which can be quickly ratified by many countries. In the case of countries in the Global South, there may be difficulties of application due to insufficiently developed institutions or infrastructure, lack of human resources and financial strains. To address these challenges, ILO C-188 allows provisions such as the requirement of crew lists, employment agreements, the need for medical certificates, and risk evaluation and protection against injury or death to be applied progressively. Moreover²², the Convention also allows for flexibility in the implementation of the provisions that can raise current standards related to minimum hours of rest through substantial equivalences, which does not risk the safety and health of fishermen.

The widespread adoption of ILO C-188 is a crucial step in improving workers' rights in the industry. The implementation of minimum labour standards in the fishing industry would reduce accidents at sea, and will be helpful to standardise recruitment of crew members, which will reduce chances for forced labour and human trafficking to occur. ●

²² Where not immediately possible for Member states to comply with measures immediately according to Art. 4 of ILO Convention 188

ILO CONVENTION 188 - STATUS OF RATIFICATION

Unfortunately, the ILO C-188 lacks a solid base of support as no Asian or Association of Southeast Asian Nations (ASEAN) country except for Thailand²³ has ratified it. For Taiwan, implementing ILO C-188 is largely still a work in progress²⁴ as the government makes notable advances towards adopting ILO C-188 amidst continuously emerging evidence that “recruitment and manning agency actions are often substandard in protecting the very workers who are instrumental in upholding the fisheries supply chain”²⁵.

On the other hand, Thailand’s ratification of ILO C-188 has taken a measurable step towards eliminating labour abuses in the supply chains of international brands such as Nestlé²⁶ and Bumble Bee Foods²⁷ that sources its seafood from Thai fishing vessels. However, worker unions and CSOs observe that regulations and controls on Thai fishing vessels implemented as part of the Thai government’s policies indicate serious shortcomings. Poor health and safety conditions remain to sustain, the risk of debt bondage is high and document retention as well as movement restrictions are prevailing issues that all point towards the significant gaps in the effective enforcement and implementation of ILO C-188 in Thailand despite its ratification.

There is still much work to be done to protect the rights of migrant workers especially those who make up 90% of Thailand’s fishing industry’s workforce²⁸. The country has yet to ratify the ILO Convention on Freedom of Association and Protection of the Right to Organise 87 (ILO C-87)²⁹ and the ILO Convention on the Right to Organise and Collective Bargaining 98 (ILO C-98)³⁰, both of which are essential to protecting the rights of not only fishers, but all workers in Thailand. Until ILO C-87 and C-98 are ratified and all three Conventions are fully integrated into national labour laws and enforced, workers will remain in conditions where they are vulnerable to various forms of abuse, including forced labour. Thus, in collaboration with unions representing workers’ legal rights, coordination mechanisms between governments and

employers are needed for cooperation in working together to vigilantly protect all workers including fishers against forced labour and abuse.

How Thailand plans to further implement ILO C-188 remains to be seen, but the Thai government’s ratification of the Convention is a major leap forward that could serve migrant workers well in the fight against forced labour. By drawing on the minimum standards set by ILO C-188, law enforcement on the premise of OSH training provisions, ethical recruitment practices, quality inspections and comprehensive monitoring systems onboard cannot be compromised in ensuring the protection and welfare of migrant fishers. ●

²³ Fishing Convention - C188: Thailand ratifies Work in Fishing Convention

²⁴ Open to advice from all parties, Fisheries Agency of Taiwan Committed to Guarantee Rights and Benefits of Foreign Crews Employed Overseas - Press Release - Announcement - Fisheries Agency, Council of Agriculture

²⁵ Labour Disputes and Power imbalances in the Taiwanese Fishing Industry

²⁶ Nestlé admits to forced labour in its seafood supply chain in Thailand

²⁷ Out of Sight: Modern Slavery in Pacific Supply Chains of Canned Tuna

²⁸ On International Migrants Day, a Sea Change for Thai Fishing?

²⁹ International Labour Standards on Freedom of Association

³⁰ ILO Convention No.98 Right to Organize and Collective Bargaining Convention

URGENT APPEALS TO ASEAN

This Briefing Paper aims to enhance the speedy ratification and implementation of ILO C-188, which is the most comprehensive international instrument concerning working conditions and the labour rights of migrant fishers in the ASEAN region. ILO C-188 contains firm provisions with specific prescribed standards for the fishing industry to follow, but there is flexibility with progressive implementation measures.

This is favourable for countries to meet their respective needs as ratifying ILO C-188 marks the beginning of a process whereby the flexibility of its provisions will enable countries to gradually achieve reform in a meaningful way.

We urge the relevant ASEAN agencies such as the Senior Officials Meeting on Transnational Crimes (SOMTC), ASEAN Committee on Migrant Workers (ACMW) and ASEAN Intergovernmental Commission on Human Rights (AICHR) to act swiftly on the way forward for the formulation of regional initiatives and national legislation by ASEAN Member States (AMS) that will allow the following **concrete action points to be realized:**



Recognize migrant fishers in the DWF industry as migrant workers to be afforded the same rights and protections as migrant workers on land or in the EEZ and territorial waters of the flag State



Ratify and implement ILO C-188



Develop an ASEAN action plan for the prevention, protection and prosecution of entities involved in forced labour in the fishing industry

In doing so, SOMTC, ACMW and AICHR can empower and encourage AMS to undertake the same measures by facilitating the entry into force of ILO C-188 and addressing the social and labour problem areas within the fishing sector. ●



© Pierre Glizès/Greenpeace

ASEAN PERSPECTIVES: REGIONAL ANALYSIS AND RESPONSES

ASEAN BODIES AND MECHANISMS



Senior Officials Meeting on Transnational Crimes (SOMTC)

In 1997, the ASEAN Declaration on Transnational Crime was endorsed as a landmark instrument that broadened and intensified regional cooperation against crime. It represented a common position on transnational crime being a threat to the economic, political and societal security of AMS and the commitment of member states to cooperate against criminal activity. As the declaration supported the establishment of the ASEAN Ministerial Meeting on Transnational Crime (AMMTC), transnational crime in ASEAN became increasingly securitized.

Over two years, the ASEAN Plan of Action to Combat Transnational Crime was formulated and then finally adopted in 1999. It espoused general and specific objectives of strengthening regional commitment and capacity to combat transnational crimes, and as part of its institutional framework established the Senior Officials' Meeting on Transnational Crime (SOMTC).

Later in 2004, the ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children³¹ was adopted, establishing the groundwork for a regional approach in combatting human trafficking in Southeast Asia. Thus, this led to the adoption by AMS of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)³² in 2015. As the first legally-binding regional instrument to tackle human trafficking, it is monumental that the ACTIP provides a much needed legal framework for more coordinated and harmonized action across the AMS. The signing of ACTIP and its implementation into domestic law, is regarded as an important step in developing a stronger legislative framework for combatting human trafficking in the Southeast Asian region, and will be implemented along with the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (APA)³³.



Goals/
Plans

The commitment to combating transnational crimes under frameworks of AMMTC and SOMTC is focused on ten areas, namely counter-terrorism; illicit drug trafficking; people smuggling; trafficking in persons; illicit trafficking of wildlife and timber; arms smuggling; sea piracy; money laundering; international economic crime; and cybercrime. To date under SOMTC, five Working Groups

³¹ ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children

³² ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)

³³ ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (APA)

(WG) have been established namely the WG on Counter Terrorism; WG on Trafficking in Persons; WG on Cybercrime; WG on Arms Smuggling; and the WG on Illicit Trafficking of Wildlife and Timber.

Throughout the years, the AMMTC and SOMTC have developed strong ties and engaged positively with ASEAN external parties, in particular ASEAN Dialogue Partners, which eventually developed into AMMTC/SOMTC Plus Dialogue Partners Consultations. Moreover, various documents, including joint declarations and memoranda of understanding have been discussed, signed and adopted with ASEAN external parties in undertaking common efforts to combat transnational or specific areas of transnational crime, such as terrorism and trafficking in persons.



Current Status

The ASEAN Plan of Action in Combating Transnational Crime (2016-2025)³⁴ is established to follow up the mandate of the 2015 Kuala Lumpur Declaration in Combating Transnational Crime and contribute to the realization of the ASEAN Political-Security Community Blueprint 2025. The aim of the Plan of Action is to continue AMS' close cooperation to prevent and combat transnational crimes as well as to enhance ASEAN's capacity to address transnational crimes in an effective and timely manner.

³⁴ ASEAN Plan Of Action In Combating Transnational Crime (2016-2025)



ASEAN Committee on Migrant Workers (ACMW)

In 2007, the ACMW implemented the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers³⁵ i.e. Cebu Declaration. The Declaration implores countries of origin and destination to ensure the dignity of migrant workers by outlining their obligations in the areas of: (i) protection from exploitation, discrimination, and violence; (ii) labour migration governance; and (iii) the fight against trafficking in persons.

ASEAN leaders have also signed another instrument in 2017, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers³⁶. ACMW is thus the leading, sectoral body to advance efforts and implementation of these instruments, and is the subsidiary body of the ASEAN Labour Ministers Meeting (ALMM) that falls under the ASEAN Socio-Cultural Community (ASCC).



Goals/ Plans

AMS remains committed to implementing the ASEAN Consensus through action plans that are undertaken by subsidiary bodies under the ALMM such as ACMW which then draws out their respective work plans accordingly. The ALMM Work Programme for 2016-2020 is focused on four key outcome areas with corresponding intermediate targets by 2020. These areas include skilled and adaptable workforce; productive employment; harmonious, safe and progressive workplace; and expanded social protection.

The current Work Plan of the ACMW for 2016-2020³⁷ includes 15 projects under four thematic areas: i) governing mechanisms of labour mobility ii) social protection of migrant workers iii) protection and promotion of the rights of migrant workers and iv) labour dimensions of trafficking in persons. Of particular interest is the project to finalize the ASEAN Consensus – the document outlines the fundamental and specific rights of migrant workers, stipulates the obligations of Sending and Receiving States, and the commitments of AMS towards protecting migrant workers' rights.

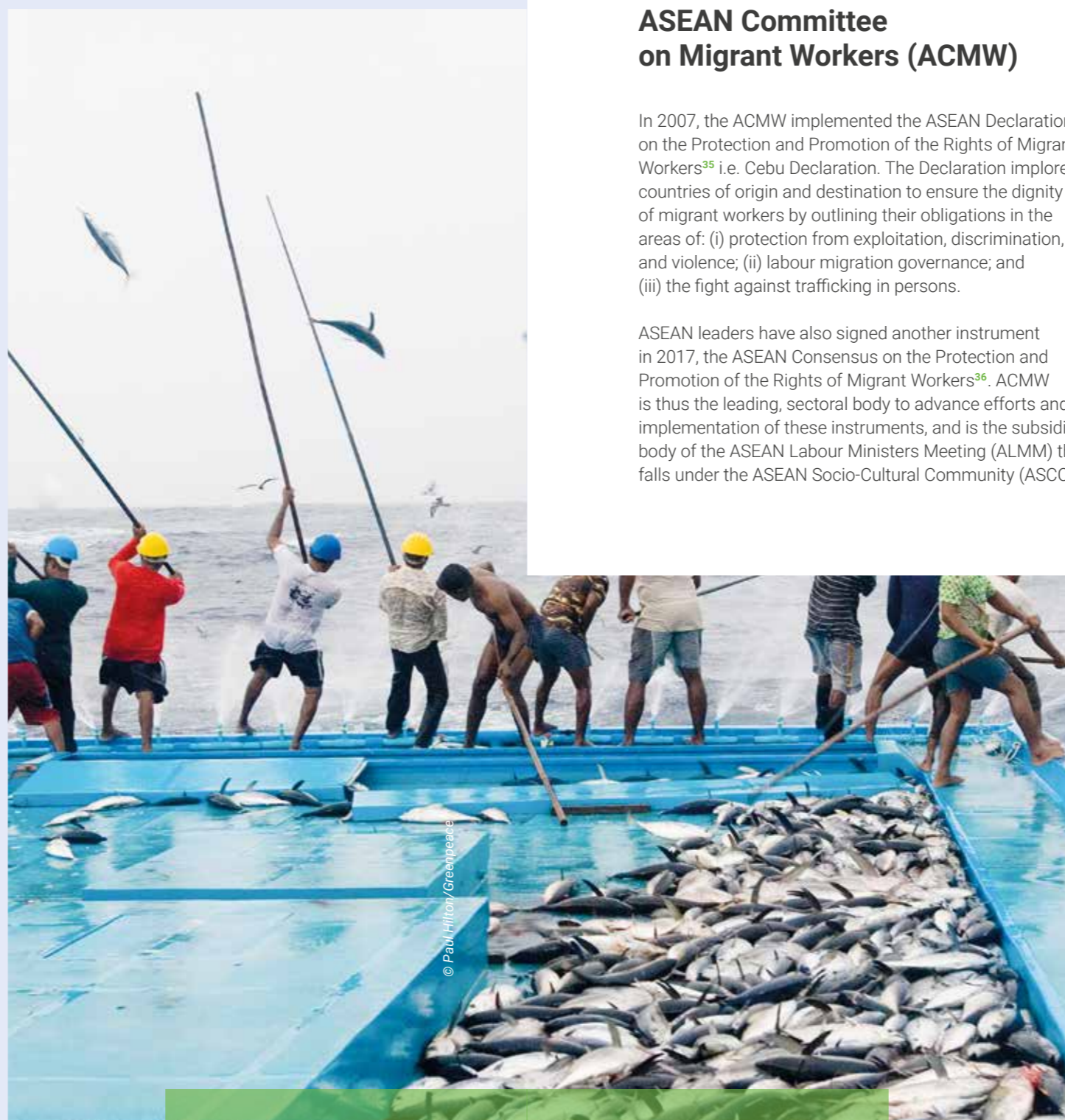
This year is a landmark year for ACMW as they will be reviewing their past work and developing their new Work Plans for 2021-2025. The new ACMW 2021-2025 Work Plan will be developed under the wider framework of the cross-sectoral ASEAN Consensus Action Plan 2018-2025³⁸ which details five broad categories namely: education/information, protection, enforcement, recourse, reintegration.

³⁵ ASEAN Committee on the Implementation of ACMW

³⁶ ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers

³⁷ ACMW Work Plan 2016-2020

³⁸ Action Plan 2018-2025 for the Implementation of ASEAN Consensus



© Paul Hiron/Greenpeace



Current Status

As one of the Committee's recommended activities, ASEAN convenes a yearly ASEAN Forum on Migrant Labour (AFML), which serves as an open platform for review, discussion and exchange of best practices and ideas between governments, workers' and employers' organisations, and civil society stakeholders on key issues facing migrant workers in Southeast Asia. The tripartite Forum seeks to develop recommendations to advance the implementation of the principles of the Cebu Declaration.

The 13th AFML meeting³⁹ that was held in 2020 and themed the 'Supporting Migrant Workers during the Pandemic for a Cohesive and Responsive ASEAN Community', focused on discussing responses to the impact of COVID-19 on labour and employment, which outlines actions to support migrant workers stranded in each other's country or third countries under two sub-themes: 1) Impact of COVID-19 on migrant workers and responses in ASEAN and 2) Inclusive and responsive labour migration policy for future preparedness in ASEAN.

³⁹ The 13th ASEAN Forum on Migrant Labour (AFML)



© Jurnasanto Sukarno/Greepeace



ASEAN Intergovernmental Commission on Human Rights (AICHR)

In 2009, ASEAN established the AICHR against the backdrop of the ASEAN Charter⁴⁰. The primary mission of AICHR is to promote and protect human rights and the fundamental freedoms of the people of ASEAN. This was the very first time a formal human rights mechanism had been founded in Asia, not without the significant efforts of NGOs who have contributed towards institutionalizing human rights monitoring in the region.

More than a decade later after its inauguration, AICHR has achieved many milestones in its efforts to enhance the envisioned ASEAN Community, most notably the ASEAN Human Rights Declaration⁴¹ (AHRD) that was adopted in 2012. The Terms of Reference (TOR) are purported to develop the AHRD, human rights public education and capacity building, facilitating AMS' accession to and ratification of international human rights treaties and implementing such obligations. AICHR's mandate and functions as outlined in the Terms of Reference⁴² (TOR) are not thorough but still important steps in building any kind of regional human rights system.

Later in 2015, through regular consultation with SOMTC, AICHR introduced a human rights-based approach to the implementation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children⁴³ (ACTIP). It is a legally binding document that signifies concerted effort from the highest level in recognition of the growing issue of human trafficking within and involving AMS. As per Article 1 that sets out ACTIP's core objectives, there is a recognition of the need for more coordinated enforcement and collaborative action across the region in order to prevent trafficking, and protect and assist victims. The ACTIP will be implemented along with the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (APA)⁴⁴.



Goals/ Plans

While AICHR strives to communicate the AHRD principles and discharge its mandate, the Commission has also completed the implementation of its Five Year Work Plan (FYWP) for 2010-2015, advancing its second FYWP for 2016-2020 and in the midst of developing the post 2020 FYWP. Through these FYWP cycles, AICHR is tasked with producing human rights strategies to complement the building of the ASEAN Community.

As AICHR gears towards the end of the FYWP 2016-2020, its activities and programmes have extended to include a broader range of human rights issues such as economic and civil political rights. These rights coincide with ASEAN priorities such as trafficking in persons, and complement the Sustainable Development Goals (SDGs) as ASEAN works towards building an inclusive ASEAN community where no one is left behind.

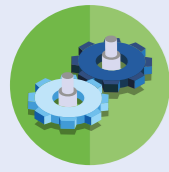
⁴⁰ ASEAN Charter

⁴¹ ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the AHRD

⁴² AICHR Terms of Reference

⁴³ ASEAN Convention Against Trafficking in Persons, Especially Women and Children

⁴⁴ ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children



Current Status

AICHR is to promote the full implementation of ASEAN human rights instruments and develop common positions on human rights related to ASEAN. These promotional activities are essential, but the TOR does not explicitly include functions necessary for human rights protection, including powers of investigation, monitoring and reporting, and enforcement procedures for those who violate the law. The highest power of scrutiny afforded to AICHR is the power to implement thematic studies on human rights issues in ASEAN and produce an annual report on the activities in the region.

In its latest developments, AICHR has convened in June 2020⁴⁵ to finalise the FYWP 2021-2025 and discuss activities covering thematic issues that include a human rights-based, gender sensitive and child-friendly approach to combat trafficking in person. On a regular basis, AICHR also convenes its Special Meetings⁴⁶ to safeguard the interests of their continuing work that focuses on areas including protecting the rights of migrant workers.

⁴⁵ AICHR 31st Meeting

⁴⁶ Special Meeting 01/2020 of the AICHR



© Tommy Trenchard/Greenpeace

GAP ANALYSIS



Overall

Generally, in the aforementioned ASEAN bodies, there appears to be a lack of recognition of migrant fishers as migrant workers. Across ASEAN, migrant workers are referenced as land-based workers, not sea-based workers. Existing frameworks and mechanisms lack consideration of fishers as ‘seafarers’: migrant workers employed on board a vessel registered in a State of which they are not a national. The exclusion of this type of migrant worker in the region spells trouble for migrant fishers who are not granted the same protection and rights as other types of migrant workers. ACMW and AICHR, as the main stakeholders in migrants’ welfare, also lack coordination with one another which further segregates the issues that in fact need to be addressed collectively to ensure a more coherent and consistent approach that will translate into the eradication of forced labour and human trafficking of migrant fishers.



In SOMTC

Despite the language of security used in the ASEAN rhetoric, the cooperative policy response on transnational crime remains low among regional decision-makers. The absence of policy outcomes questions the strength of ASEAN’s securitization of transnational crime, and partly results from domestic and regional factors that weaken joint policy implementation. These factors include fragile domestic institutions, socio-economic problems, poverty and economic disparities, and poorly financed law enforcement agencies. In the case of migrant fishers, many of whom can be considered victims of trafficking considering the conditions they work in, there is currently no specific line of action (in the form of a WG) for these sea-based migrant workers. Amidst concerns of TIPs and forced labour in the high seas in the area of IUU fishing, AMS lack legal collaboration. The need to integrate existing research and data, strengthen collaboration among the relevant agencies and build on capacity development for law enforcement agencies should be prioritised in the fight against combating the trafficking and forced labour of migrant fishers in the DWF industry. To address these fundamental shortcomings, all AMS should effectively ratify and implement the ILO C-188. ASEAN nations that have adhered to the protocols under the Convention will then be forced to translate these instruments into national law once it gains international legal standing.



In ACMW

AMS consisting of both sending and receiving countries have differing national interests, leading to some states viewing migrant workers from a more economic rather than a human rights lens. Furthermore, the differing standard settings for migrant workers’ rights is particularly because not all AMS have ratified the United Nations Convention on Migrant Workers⁴⁷. It is important to note that this convention excludes migrant fishers in DWF fleets, insofar as the Cebu Declaration itself does not explicitly include migrant fishers. Between AMS, issues of non-accountability and maladministration on migrant workers persist thus creating tension as well. Where regional activism is concerned, the non-participation of civil society organizations (CSOs), trade unions and global union federations with an active presence in the region who are involved in the drafting and negotiation process of implementing the ASEAN Consensus leads to unaddressed concerns, such as the freedom of association and collective bargaining that migrant workers require to seek redress and protect themselves against situations of forced labour. Wide consultation of CSOs and unions by ASEAN is crucial, seeing as how the ASEAN Consensus’ status as a non-legally binding instrument translates into its implementation depending on the sheer political will and national context of each AMS. Their participation needs to be twofold:

1. To convene with ASEAN and thoroughly analyse migrant-related matters
2. To develop and implement action plans together with migrant worker communities

This participatory approach of CSOs and unions will in turn allow the definition of feasible policy objectives and subsequently the determination by AMS of the most appropriate solutions. For effective implementation of the ASEAN Consensus, the above activities should also be binding, have monitoring and evaluation space, and target timelines.



In AICHR

Following the aspirations outlined in the ASEAN Community Blueprints, AICHR’s activities are primarily aimed at the promotion, rather than the protection of human rights. Notably, ACTIP is legally binding on paper but efforts in combatting human trafficking of migrant workers will be in vain unless there are amendments to domestic laws to ensure the implementation of the Convention at local levels. The implementation of ACTIP also raises questions around its enforceability, monitoring of its compliance by AMS and ASEAN itself, and the resolution of conflicts between national laws and the provisions of the Convention. ACTIP does not put enough emphasis on prevention, with most of its articles focusing on prosecution and criminalization. ASEAN needs to redirect its focus and purpose to prevention programs that have extensive outreach, especially to vulnerable populations such as migrant workers. Also, AICHR activities have not specifically included migrant fishers as a targeted group and should do so to address its own mandate. For AICHR’s mission to be realised, a consultative relationship between Greenpeace Southeast Asia and AICHR needs to be constructed. ●

⁴⁷ [UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#)

RECOMMENDATIONS

For ASEAN member states

- i. In consultation with the fishing industries, AMS should draw on the standards in ILO C-188 to analyse policy gaps during strategic meetings such as ALMM, AFML, between AICHR and SOMTC, and especially during reviews of the respective bodies' FYWP. There is a particular need to set and enforce improved standards surrounding the maintenance of crew lists, clarity of payment systems (including regularity of pay), minimum rest hours and recruitment and working conditions.

All fishers on board DWF vessels should also be given access and means of sending remittances home to their families at no cost. Ministerial Regulations in individual AMS should also more clearly state the requirements for the necessary employment documents that include the fishers' name, duties and pay – all of which each fisher must be provided with their own copy of a written work agreement.

- ii. With reference to the particulars in Annex II of ILO C-188, model work agreement or contracts conform. However, deviations from such contracts remain. This includes transfer of migrant fishers to vessels not explicitly mentioned in contracts and other manifestations of ILO's indicators that are contrary to certain provisions of the model work agreement.
- iii. Establish guidelines on conducting labour inspection in accordance with the ILO's guidelines⁴⁸, both while on shore and at sea. While a combination of port and at sea labour inspections are ideal, the huge numbers of fishing vessels spread out in the vast seas makes this too difficult to manage. The case of observers on board as an example also points to the danger involved in such inspections as they face the same perils and hazards working alongside fishers in the high seas. The guidelines should be designed

by ACMW (or Departments of Labour Protection and Welfare or Ministries of Labour/Manpower belonging to AMS), and implemented in consensus with the maritime/navy police and other relevant departments. Regular on shore inspections should include a review of work agreements, pay slips, crew lists and the documents of young workers, conditions of accommodation, OSH etc. DWF vessels that are at sea for more than three months should be inspected on a regular basis prior to departure and on return to port, including interviews with the crew and a review of the crew list. Limiting the time at sea for distant water fishing vessels to less than three months should also be considered.

- iv. Together with the relevant CSOs and trade unions, establishing Labour Coordination Centres for the Fishing Sector should be part of proposed plans. These Centres should enable fishers to register as workers of the fishing sector, rather than with an individual employer. This would allow for mobility within the sector (between boats and provinces) of each AMS without losing legal status and improve sectoral bargaining in the region, thus accommodating the respective AMS governments, employers and workers.
- v. To address the issue of migrant fishers, AMS should review the issuance of temporary immigration passes by certain provincial authorities. Lessons can be learned in order to make regularization programmes more effective.

⁴⁸ Guidelines for flag State inspections under the Maritime Labour Convention, 2006

- vi. To confront the problem of brokers and sub-contractors who play a key role in the migration process but operate with limited oversight, ACMW together with AICHR and SOMTC need to align with ILO C-188 after its ratification to regulate the recruitment of inbound migrant fishers. These brokers that facilitate registration and regularization processes charge excessive recruitment fees and remain unregulated, wherein there should be closer monitoring of recruitment agencies and practices to curb the spurious administrative services and non-existent social security of migrant fishers that encourage debt bondage and document retention.
- vii. Labour protection mechanisms should be made more available to fishers, including irregular migrants. AMS should carry out national, public information campaigns to disseminate materials on fishers' rights and how they can lodge complaints with local authorities or unions/CSOs⁴⁹. Moreover, capacity building programs for law enforcement and port officers on the typology and modus operandi of human rights violations in the fisheries industry are needed to combat trafficking cases effectively. Grievance mechanisms can be effective if utilized and administered properly and effectively by authorities, and public education will ensure that migrant fishers have adequate access to justice for themselves.
- viii. We call on AMS and the relevant ASEAN bodies to monitor and enforce all relevant ASEAN instruments in their respective fisheries sectors, and AMS to mandate seafood businesses conduct human rights and environmental due diligence, including human rights and environmental risk and impact assessments, with trade union engagement.

⁴⁹ Regarding what can be done and improved based on current efforts

For cooperation between AMS and social partners⁵⁰ under ILO Convention 188

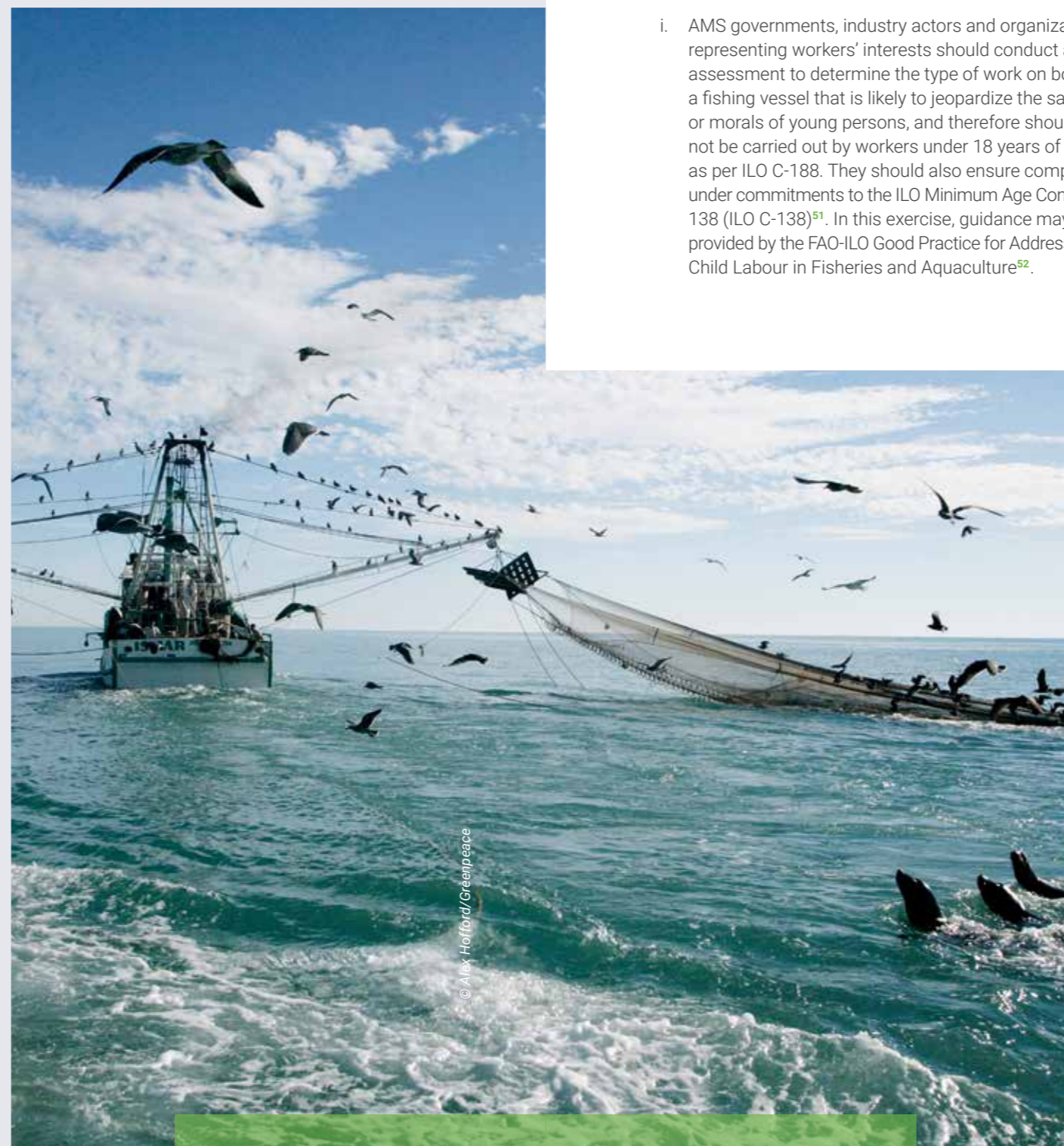
- i. AMS governments, industry actors and organizations representing workers' interests should conduct an assessment to determine the type of work on board a fishing vessel that is likely to jeopardize the safety or morals of young persons, and therefore should not be carried out by workers under 18 years of age, as per ILO C-188. They should also ensure compliance under commitments to the ILO Minimum Age Convention 138 (ILO C-138)⁵¹. In this exercise, guidance may be provided by the FAO-ILO Good Practice for Addressing Child Labour in Fisheries and Aquaculture⁵².
- ii. AMS governments should provide more detailed guidance to employers, workers' organizations, and local authorities on how the ILO Occupational Safety, Health and Environment Act⁵³ applies to the fishing sector. These parties must cooperate to promote OSH training, including risk assessments, through the local authorities and industry association, and improve the reporting of accidents on board to strengthen protection for fishers.
- iii. AMS governments should closely engage and consult trade unions and CSOs in the development of policy and legislation, in the regulation of recruitment and employment practices, and in the delivery of training and provision of information. As regular dialogue partners of the ACMW, AICHR and SOMTC, national fisheries associations will be able to engage more trade unions, local associations and vessel owners, as well as increase their influence. Dedicated and prioritized efforts should be made to ensure the whole engagement and active participation of trade unions in policy and legislative action.
- iv. AMS governments and employers should allow space for fishers to form unions to represent their interests and collectively bargain or negotiate with employers. That said, AMS governments should also proceed with plans to ratify the Freedom of Association and Protection of the Right to Organize Convention No. 87 and the Right to Organize and Collective Bargaining Convention No. 98, and extend these rights to all migrant fishers regardless of national origin or status.

⁵⁰ Social partners: bodies representing employers and workers

⁵¹ [Convention C138 - Minimum Age Convention, 1973 \(No. 138\)](#)

⁵² [Guidance on addressing child labour in fisheries and aquaculture](#)

⁵³ [Occupational Safety, Health and Environment Act](#)



© Alex Hafford/Greempix

For cooperation between AMS and flag States on labour inspection

- i. There should be greater cooperation with ASEAN countries of origin to improve access to safe migration information and legal migration channels. In particular, areas with a history of sending workers into fishing vessels should be targeted with specific information on the distinct laws and practices related to recruitment and employment in the fishing industry. Where additional countries are considered as sources of migrant fishers, it is pertinent to consider the linguistic, cultural and fishing practices differences that could potentially hamper the relationship between skippers and crew members.
- ii. Cooperation should be enhanced between countries sending migrant fishers and countries which own DWF fleets (that employ migrant fishers from AMS), and China mainland and Taiwan as flag States in the ASEAN region and beyond. This includes the sharing of information on vessel registrations and crew lists, guidelines regarding the inspection of vessels by port and flag state control officers, and procedures for the rescue and return of trafficked and stranded fishers.
- iii. The use of flags of convenience by fishing vessels should cease. Flag States should ratify all existing international conventions in regard to fisheries responsibilities, such as the United Nations Convention on the Law of the Sea⁵⁴ (UNCLOS), 1982. In particular is the need for a genuine link between the flag State and the vessel flying its flag, wherein this UNCLOS instrument will provide a comprehensive legally binding framework⁵⁵.

Flag States of commercial fishing vessels as receiving States of migrant workers are to protect migrant fishers onboard vessels flying their flag, including during their DWF operations. Flag States of commercial fishing vessels employing migrant fishers must facilitate safe, regular and orderly migration without discrimination against migrant fishers, in accordance with the ASEAN Consensus on Protection and Promotion of the Rights of Migrant Workers⁵⁸.

⁵⁴ United Nations Convention on the Law of the Sea

⁵⁵ Inaugural Plenary of SEA Forum for Fishers 2019

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

Flag States of commercial fishing vessels should take concrete steps towards ratification of ILO C-188. This includes conducting gap analysis of national legislation in preparation for ratification, and consulting stakeholders and undertaking social dialogue based on the right to freedom of association and collective bargaining, decent work and protection. We call on the ASEAN to support States in preparation for ratification⁵⁶.

- iv. Flag States of commercial fishing vessels to support the elimination of trafficking in persons on vessels flying its flag through the ratification and implementation of the ACTIP⁵⁷.

For buyers of AMS seafood products on ethical production and consumption

- i. Buyers sourcing their seafood products from flag and coastal States should continue to advocate for and develop means for monitoring of stricter regulatory standards to prevent and eliminate forced labour, human trafficking and other unacceptable forms of work occurring within supply chains.
- ii. Companies selling fish produce should collaborate with external stakeholders and partners, especially workers and trade unions, to identify risks and victims, design and implement effective elimination measures, and build consumer awareness on how important it is for fisheries products to comply with the respect for human rights.
- iii. States should effectively legislate and enforce national laws that require enterprises engaged in the sourcing, buying, and importing of fish and fish products to carry out due diligence to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts that relate to internationally recognised human rights⁵⁹.
- iv. States should enact and enforce national laws to end the sourcing, buying and importing of fish and fish products produced by trafficked victims or under conditions of forced labour, modern slavery, labour exploitation, or otherwise violating recognised international human rights or international labour standards⁶⁰.

⁵⁹ Inaugural Plenary of SEA Forum for Fishers 2019

⁶⁰ Ibid 59



© Steven Vigar/Greepeace



3rd Dec 2020 Webinar

We hope that this issue becomes a discourse not only on paper. We need real action. Among ASEAN member states, only Thailand has ratified the ILO 188 Convention. This can encourage other countries to ratify this very important convention... for all labour migrants from ASEAN states to get better protection.

–Dina Nuriyati, SBMI

To provide better protection for migrant fishers around the world, especially for Indonesia, we have to use multi-level diplomacy... If we engage at multilateral, regional and bilateral levels, it would be complementary to each other, act as building blocks, and also mutually reinforce efforts.

–Judha Nugraha, MFA Indonesia

The working paper is a great base to start building this dialogue... It has to be a complimentary holistic approach, which includes fisheries management and combating illegal fishing alongside ending modern slavery.

–Dominic Thomson, EJF

In 2016, SEAFDEC council convened a conference and came up with a draft of ASEAN guidelines on the implementation of labour standards for the fisheries sector that articulates a cohesive multisectoral vision to ensure decent working conditions for those working in the region's growing fishing industry.

–Yuyun Wahyunigrum, AICHR



Indonesia Workshop

Modern slavery in the DWF industry are issues that are difficult to face by the government. There is a lack of attention and protection by the government because of the difficulty of identification of such issues in the first place.

–Icha Alysa, HRWG

The policy gap between Convention No. 188 and the Legislation, Perpres (Presidential Decree) and Permen (Minister Regulation) that Indonesia enforces regarding AKP (fishing boat crews) must be carefully observed.

–Baso Hamdani, DWF

In addition to safety training, AMS from central to regional levels need to work with NGOs and trade unions to provide training which includes language, culture, financial literacy, and fishing skills/skills in accordance with national and international standards to increase the value/bargaining position of fishers. It is hoped that this training can open up opportunities to work on better equipped fishing boats.

–Fadilla Octaviani, IOJI

The issue of modern slavery at sea is not new, however, both labour sending countries and flag states have failed to protect crew members and marine resources. For ASEAN as an intergovernmental organization with authority across country jurisdictions in the Southeast Asia region, it is time to have a dedicated task force to bring member states to address the problems of modern slavery together, and take joint corrective steps ranging from regulations to technical arrangements along fishery labour chains.

–Azizah Hapsari, EJF

Lack of synergy and coordination between AMS makes fishing vessel owners such as China, etc. pay less attention to safety and working conditions, occupational health, and welfare of fishing vessel crew from ASEAN member countries.

–Imam Syafi'i, AP2I



Indonesia Workshop

Add a scheme of health right protection of migrant workers in the migrant worker repatriation program that involves the local government after the migrant worker's return.

–Wisnu Primakov, LBH Bandung

As a regional body that has issued an ASEAN Charter and the establishment of a human rights body in article 14 of the ASEAN Charter, the issue of modern slavery at sea should be an important matter for ASEAN because it involves the commitment of member states to maintain sovereignty and security in the ASEAN region. The issue of modern slavery at sea will affect the achievement of the implementation of the ASEAN Economic Community (AEC) in which the principle of the implementation of the AEC is to respect human rights.

–Yunety Tarigan, Plan International Indonesia



Philippines Workshop

There are few companies that really want to do the right thing but they are also hesitant to stick their necks out because they fear attracting more scrutiny. Nevertheless there are concrete ways of addressing these issues and it is important to share the case studies/lessons.

Businesses and all actors of global supply chains need to be trained in the evolving legislation around human rights and anti-modern slavery.

–Daryll Delgado, Verité Southeast Asia

Fishers have to be educated. Families of the fishers should also be educated because they're the ones left behind, especially the wives. They should know the contract terms, know the risks that their husbands and sons take when they go out to sea. They should also be included in the decision making process considering all the risks involved.

–Joy Viray-Gatmaytan, Scalabrini Development Office

People focus on the profit not on the person. Agencies and employers are trying to manipulate the fishers. When we propose to ASEAN, we can ask for transparency, to make it public so everyone in the region, also in Taiwan or in China, can see which agencies are better than others.

Empower fishers with knowledge because most of the time they are afraid to report abuses. We have to give good, useful information for them to not to be afraid and also tell them the rules. Let them know the regulations. They can defend themselves. They can't depend on NGOs. They have to have a strong will to protect their own rights.

Fr. Ansensius Guntur, Stella Maris Kaohsiung, Taiwan

Many fishers work under slavery-like conditions, and some of them may even be determined as victims of trafficking. Even though there is a lot of resistance to ILO C-188, we have to find ways to go around the resistance. Otherwise, the conditions of fishers will not change. If there is no contract that specifies basic conditions of what constitutes decent work, it is going to be very hard for the fishers.

–Maruja Asis, Scalabrini Migration Center



Thailand Workshop

The pervasive use of forced, bonded and slave labor in the seafood industry is a global concern and now is the time for action. Workers in Southeast Asia and in the seafood sector across the world have all too often been denied their basic human rights and suffered abuse and violence. This Labor day, let's work together to rapidly end these abuses for good, ensuring all workers have the rights and protection they need to ensure their voices are heard and heeded.

—Steve Trent, EJF



© Paul Hilton / Greenpeace



COUNTRY CONTEXTS

Indonesia

Indonesia is the primary source of migrant fishers for Taiwanese fishing fleets. As of July 2020, an estimated 22,244 migrant fishers have been reported by the Taiwan Fisheries Agency and up till now, Indonesia has yet to ratify the ILO C-188.

The lack of synergy and coordination between AMS makes fishing vessel owners pay little to no attention to fair working conditions, and the occupational safety and health of fishing vessel crew members from ASEAN member countries. The farthest efforts that have been undertaken is that ASEAN hosts a forum for trade unions, especially for fishing vessel crews hailing from countries known to be sending large amounts of fishing crew members. This fora space could be operationalized on a larger scale by establishing a task force that specifically gathers AMS to address the issues of modern slavery together, and take joint corrective steps ranging from national regulations to technical arrangements along the fisheries labour chain. These regulations should include joint labour inspections both in the pre-departure phase on shore as well as at sea to ensure human rights standards are complied with throughout the entire journey of migrant fishers. Furthermore, AMS need to enforce the requirements of verifying business partners and prospective employers in countries of destination, and publicise a list of partners and employers for migrant fishers to avoid should they exhibit indicators of forced labour and malpractice.

To concretize these steps, AMS should conduct regular compliance audits to detect various violations committed by these companies and impose clear administrative sanctions when necessary. As a regional institutional body whose primary responsibility is its people, member states are obliged to take firm, legal action against recruitment and placement companies that charge recruitment and placement fees to migrant workers, including migrant fishers. Thus, a comprehensive monitoring system to monitor unethical and illegal violations

in all stages of a migrant fishers' journey should be implemented and provisions of legal aid abroad should be made accessible to migrant fishers.

As with all matters that need to be pushed forward, AMS should start with education - to educate migrant fishers about their basic rights, the different modes of illegal recruitment by recruitment and placement companies, the various forms of violence that occur in the high seas of which they are vulnerable to, and about grievance mechanisms that are available should they experience criminal acts or labour-related issues. Training related to language and cultural adaptation, financial education, and fishing expertise according to the flag State are also needed to increase fishers' bargaining position and ensure the protection of their rights. By working with NGOs and trade unions with similar aims, AMS have the capacity to facilitate the fulfilment of these goals by ratifying and implementing ILO C-188.

Philippines

The Philippines is another key source of migrant fishers for Taiwanese fishing fleets. In July 2020, around 7,757 Filipino migrant fishers joined these fleets as a means to improve their livelihoods. Despite governmental and industry efforts in regulating its recruitment industry, Filipino migrant fishers who undergo formal recruitment processes still end up in trafficking situations thus their continuous exposure to serious risk during recruitment⁶¹.

While the country faces opposition in the ratification of the ILO C-188, the Philippines has the Department of Labour and Employment (DOLE) Department Order (DO) No 156 s. 2016 which outlines rules governing the employment of Filipino fishers including: 1) Responsibilities of fishing vessel owner, captain, master, and fisher; 2) Minimum requirements for work onboard fishing vessels; 3) Terms and conditions of employment; 4) Compensation scheme; and 5) Occupational safety and health; among others. Unfortunately, this law only applies to Philippine-registered fishing vessels and only 30-50, out of more than 3,500 commercial fishing vessels have been inspected.

Moving forward, it is important to empower the families of migrant fishers by providing them with information in cases of emergency involving their relatives on board. Migrant fishers' families need to be educated because they are the ones left behind, especially wives and mothers. They should be aware of the contract details, know the risks that their husbands are taking when they go out to sea and they also play a part of the decision before the signing of contracts in consideration of all these risks.

Thailand

Compared to Indonesia and the Philippines, Thailand has fewer migrant fishers working on Taiwanese fishing vessels. Thailand is also the only ASEAN member state which has ratified the ILO C-188 which came into force on 30 January 2020⁶². However, its full implementation and benefits have yet to be observed as reports documenting abuses of workers tracked on Thai fishing vessels including forced and slave labour are on the rise. Such reports produce evidence and broadly reflect trends in Thailand of the government's ongoing failure to address corruption and prosecute those engaging in and benefiting from criminal activity⁶³.

The commercial seafood and fishing industry contributes around US\$6 billion to Thai exports, with Thailand being among the top global exporters of seafood products. The Thai fishing and seafood processing sectors together employed more than 600,000 workers in 2017, of whom 302,000 were registered migrant workers. The Thai fishing industry alone registered more than 57,000 migrant fishers in 2017 on approximately 10,550 commercial fishing vessels⁶⁴.

Several issues hinder the full implementation of ILO C-188. This includes recruitment, industry influence on fishery reform policy, children working on board, grievance mechanisms, welfare and safety among others. Most of all, ineffective collaboration between agencies within Thailand, and the lack of engagement and cooperation with trade unions contribute to severe gaps in implementation. The Thai government needs to set in motion a nationwide programme of intelligence-led enforcement with meaningful deterrent penalties to eliminate human rights abuses and IUU fishing. In short, several laws in Thailand would need to be revised or issued to align with provisions of ILO C-188. ●

⁶¹ Recruitment and Hiring Practices in the Philippine Tuna Handline Fishing Sector

⁶² Fishing Convention - C188: Thailand ratifies Work in Fishing Convention

⁶³ SEAFOOD SLAVES

⁶⁴ Ibid 59

