



Human Rights Watch Submission to Australia's Joint Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into Establishing a Modern Slavery Act in Australia

May 2017

The inquiry into establishing a Modern Slavery Act modeled on the UK Modern Slavery Act is a unique opportunity to also address corporate human rights due diligence in global supply chains. It creates room to develop binding legislation governing companies based on international standards including the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines on Multinational Enterprises, the International Labour Organization (ILO) Conventions, especially the 2014 Forced Labor Protocol. We present information here regarding two areas of ongoing Human Rights Watch research: labor abuses in global apparel supply chains, and trafficking and forced labor in Thailand's seafood industry (products exported to Australia).

Labor Abuses in Global Apparel Supply Chains

We note the terms of reference of this inquiry covers "modern slavery (including slavery, forced labor and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally." Human Rights Watch research on garment workers' rights in Cambodia and Bangladesh found many labor abuses in factories which form a part of the global supply chains of apparel companies.¹

We found that transparency and reporting in global apparel supply chains, that is, publishing the names, street addresses and other key information about factories, is critical to worker rights. When brands are transparent and report about their supply chains, it allows workers and their advocates to more quickly alert brands to labor abuses and seek remedies.²

¹ Human Rights Watch, "Work Faster or Get Out: Labor Rights Abuses in Cambodia's Garment Industry," March 11, 2015, <https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry> (accessed May 9, 2017). "Whoever Raises their Head Suffers the Most: Workers' Rights in Bangladesh's Garment Factories," April 22, 2015 <https://www.hrw.org/report/2015/04/22/whoever-raises-their-head-suffers-most/workers-rights-bangladeshs-garment> (accessed May 9, 2017).

² Human Rights Watch et al., "Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry," April 20, 2017, <https://www.hrw.org/report/2017/04/20/follow-thread/need-supply-chain-transparency-garment-and-footwear-industry> (accessed May 8, 2017).

Labor abuses in garment supply chains are rampant. Forced overtime was a common worker grievance in Bangladesh and Cambodia. Workers told Human Rights Watch that they were pressured by employers to undertake overtime work. Many workers repeatedly complained that factories set high production targets, sometimes even threatening not to pay overtime wages if workers did not meet the targets within regular working hours. Brands contribute to problems of forced overtime in factories through their purchasing practices. For example, brands may place or alter orders last minute without changing the turnaround time for production, indirectly putting pressure on workers.

Workers often choose to form unions at the factory level and collectively bargain for their labor rights. Independent unions are an important vehicle for labor rights. Unions can raise labor and complaints, including those related to the use of underage child workers, forced overtime, non-payment of wages and negotiate for their rights to be better protected. Factory retaliation against union organizers in factories is a common labor rights abuse, and a barrier to advancing other labor rights in apparel supply chains.

Forced Labor and Trafficking in Thailand's Seafood Industry

Australia is a major importer of Thai seafood, including pond-grown prawns and fish, both of which have major problems with human trafficking, forced labor, and other abuses in their supply chains. According to the Australian Department of Agriculture:

Fresh and frozen imports make up around half of all Australia's edible seafood products imports. More than half of all fresh and frozen imports are frozen fillets (61 per cent) and frozen prawns (18 per cent). These products, predominantly from Thailand, China, New Zealand and Vietnam, meet consumer demand for low-cost seafood products.³

A major expose by the *Guardian* found that so-called "trash fish," any sort of low-value or juvenile fish that could be swept up by trawlers operating with trafficked migrant laborers from Burma and Cambodia, were a key part of the shrimp feed being used to raise prawns in aquaculture ponds that are exported to countries around the world.⁴ Trash fish of slightly higher value are also used to produce *surimi*, a ground fish paste made with mixed types of fish and other additives that is frequently made into artificial crab sticks and other similar low-cost seafood products.

Trafficked men on these fishing boats are deceived or simply forced to work on the fishing boats, where they endure 20 hours or more workdays, physical abuse by captains and

³ Australian Government, Department of Agriculture, "Australia's Seafood Trade," updated January 2015, <http://www.agriculture.gov.au/SiteCollectionDocuments/fisheries/aus-seafood-trade.pdf> (accessed May 19, 2017).

⁴ Kate Hodal, Chris Kelly and Felicity Lawrence, "Revealed: Asian slave labour producing prawns for supermarkets in US, UK," *Guardian*, June 10, 2014, <https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour> (accessed May 10, 2017).

boatswains, dirty and dangerous working conditions that result in injuries or sickness for which they get no time off, inadequate nutritious food and potable water, and little or no pay. Migrant workers, predominantly from Burma and Cambodia, who voluntarily decide to work on fishing boats still face systematic and pervasive abuses, including forced labor characterized by a mix of debt bondage, seizure of worker identification documents, unlawful payment systems that require completion of six months to two years of work before the worker gets paid in a lump sum, inability to change employers, excessive working hours and menace of physical abuse if the work is deemed to fall short of expectation.

Despite revisions to Thailand's Labor Protection Act in December 2014 to limit working hours and improve conditions on fishing boats, these provisions of law are widely disregarded at sea where working regimens and punishments are meted out by captains and their officers with impunity. In 2014 the European Union "yellow carded" Thailand for its Illegal, Unreported and Unregulated (IUU) fishing practices⁵ and determined that exploitative labor conditions played an important facilitating role for IUU. The US also downgraded Thailand to Tier 3, the lowest level, in the annual Trafficking in Persons Report. In response Thailand's military government took action to impose order on the fishing sector, which had grown well beyond existing legal and regulatory systems.

Over the last three years, the Thai government has overhauled fisheries monitoring, control and management regimes. New inter-agency inspection frameworks have been established across the country and teams of officials now check fishing boats each time they depart or arrive in port. Laws have been strengthened and penalties for fisheries infringements have substantially increased. But the pace of change for fishing boat workers has not been as profound as it has been for fishing boats.

Human Rights Watch research to be published later this year, based on interviews with more than 250 current and former fishing workers, found that forced labor remains pervasive on Thai fishing vessels, while networks of underground brokers, traffickers, and corrupt Thai police and other officials continue to deceive and traffic men onto fishing vessels. Given the low pay, abusive captains, and dangerous conditions of work, it's not surprising that the Thai fishing fleets are constantly short of the labor needed to effectively operate. Recent estimates presented by the National Fishing Association of Thailand to the Department of Employment at the Ministry of Labor estimated that the fishing industry has a shortage of 60,000 workers who are needed urgently.⁶ Migrant workers from Burma and Cambodia who are on these boats do not have the right to take steps to empower themselves, such as forming a trade union, because of discriminatory provisions in the Labor Relations Act 1975 that limit to Thai nationals the right to formally register a union and to be elected a union committee member, which is the only legal path to becoming a union leader.

⁵ A "yellow card" puts a country on notice that if it fails to end practices that the EU considers to contribute to IUU fishing, trade action may be taken under a "red card" to bar all seafood imported from that country to EU states.

⁶ "Deprived! 60,000 Fishers", *Kom Chad Luek*, www.komchadluek.net/news/edu-health (accessed May 10, 2017).

The Thai government and the Thai fishing industry have a record of only making substantive reforms in laws and enforcement when they must respond to external pressure brought by other governments and by private sector corporations. Australia should adopt stringent measures to ensure that Thai seafood exported to Australia is sourced ethically, without violating workers' rights to freely engage or withdraw from labor, to be paid according to law, and to be free of coercion, intimidation and abuse of all kinds.

Recommendations:

The Australian government should:

- Introduce legislation that would prohibit the import of any goods that were produced or manufactured, in whole or in part, using forced labor, slave labor, child labor, or labor of persons who have been trafficked.⁷
- In the enforcement of such legislation, report publicly on goods banned from Australia under those grounds and outline specific problems in countries in which such goods are produced allowing such abuses to occur, and communicate with those countries, and business entities tied to the production, export, or import of such goods, what steps they should take to address the use of forced labor, slave labor, child labor, or labor of persons who have been trafficked.

Any Australian legislation to address modern slavery, forced labor, and wage exploitation should address corporate human rights due diligence in their global supply chains, with the following elements:

- **Extraterritorial obligations:** The legislation should address the extraterritorial operations of companies operating in Australia in their global supply chains and not just be limited to their domestic operations.
- **Jurisdiction:** The jurisdiction of the legislation should build on good practices from the UK Modern Slavery Act and the French law on the duty of corporate vigilance⁸ and not replicate the flaws from these pieces of legislation. The proposed law should ensure that not only Australian companies but foreign companies doing business in Australia, above a minimum threshold of business, are governed by the law. The business threshold or annual turnover for companies to be brought within the proposed law should be set in such a way that a wide variety of companies are governed by it.
- **Legal remedy:** The legislation should provide methods for enforcement, including judicial recourse and civil liability for non-compliance with transparency and due diligence requirements.
- **Core pillars of the legislation:** The proposed law should incorporate three core pillars:

⁷ The United States has enacted similar legislation though enforcement was weak. In 2016, the US government closed a significant loophole that impeded enforcement and officials have expressed a new willingness to enforce this law.

⁸ "The French Corporate Duty of Vigilance Law," National Assembly, No. 924 of 2017, <http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf> (accessed May 19, 2017)

- **Transparency and reporting:** The law should create a level playing field on transparency by introducing mandatory minimum transparency standards sector-wise and require annual reporting for each company.
- **Mandatory human rights due diligence:** The law should introduce mandatory human rights due diligence for companies.
- **Freedom of association:** The law should explicitly focus on human rights due diligence by companies to ensure that they take adequate measures to protect worker rights to freedom of association.
- **Budget and transparency of the initiative:** The law should be accompanied by proper budget and infrastructure to publicly periodically report on its implementation. For instance, regarding the textile sector, the Bangladesh Accord on Fire and Building Safety, provides a useful model of transparent reporting, which can be built upon.