

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THAILAND

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF THAILAND

(Geneva, 26 and 28 November 2007)

EXECUTIVE SUMMARY

Thailand has ratified five of the eight core ILO labour Conventions. In view of restrictions on trade union rights and the prevalence of child labour and forced labour as well as discrimination, determined measures are needed to comply with the commitments Thailand accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work.

Thailand has not ratified either of the core ILO Conventions on freedom of association and collective bargaining. There are serious restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. State enterprise workers and civil servants face even further restrictions. Migrant workers are effectively unable to form trade unions and anti-union discrimination in Thailand is common.

Thailand has ratified the core ILO Convention on Equal Remuneration but not the Convention on Discrimination. There are various legal shortcomings and a substantial number of workers are not covered by legislation. In practice there is discrimination in employment and wages and women are concentrated in low-pay low-skilled jobs and in informal employment relationships. Women migrant workers and domestic workers are among the most badly affected.

Thailand has ratified the core ILO Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Despite targeted programmes and projects, child labour remains a serious problem in Thailand and includes the worst forms of child labour.

Thailand has ratified both Conventions on Forced Labour. There is trafficking of people for forced labour and forced prostitution, including of children.

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Introduction

This report on the respect of internationally recognised core labour standards in Thailand is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC affiliates in Thailand are the Labour Congress of Thailand (LCT) with 25,000 members, the National Congress of Private Industrial Employees (NCPE) with 150,000 members and the Thai Trade Union Congress (TTUC) with 8,000 members.

Agriculture accounts for 10.7% of GDP in Thailand (2006). Industry accounts for 44.6% (of which 35% is manufacturing) and services account for 44.7%.

Total exports accounted for US\$ 128,220 million in 2006, of which rice accounted for US\$ 2,568 million, rubber US\$ 5,394 million and manufactures US\$ 113,382 million. Total imports in 2006 accounted for US\$ 125,975 million, of which food accounted for US\$ 1,920 million, fuel and energy US\$ 25,043 million and capital goods US\$ 33,103 million. Total exports of goods and services accounted for US\$ 152,360 million in 2006, whereas total imports of goods and services accounted for US\$ 145,452 million. The top five export products are non-electrical machinery and parts, electrical machinery and equipment, vehicles, rubber and its products, and mineral fuel oil and wax.

Thailand is a member of ASEAN (Association of South East Asian Nations). Thailand, as part of ASEAN has signed or is in the process of negotiating trade agreements with Australia, New Zealand, India, China, South Korea, Japan and the European Union (EU). Thailand is also negotiating with the US, European Free Trade Association (EFTA), Bahrain and Peru.

I. Freedom of Association and the Right to Collective Bargaining

Thailand has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise or ILO Convention No. 98 on the Right to Organise and Collective Bargaining.

Trade Union Rights in Law

The 1975 Labour Relations Act provides for the right to organise for private sector workers. At least ten workers in the same factory or industry are needed to form a trade union. Trade unions must be registered with the Ministry of Labour (MOL). A number of standard provisions have to be included in all union charters.

Anti-union discrimination is prohibited but workers are not protected against dismissal for any other reason, provided that they receive severance pay. The provision of severance pay is often not respected however. A tripartite Labour Relations Committee takes decisions on disputes but these are, however, often subject to appeal in labour courts.

Members of a trade union have to be workers for the same employer of the enterprise or company represented by the union, and leaders from unions have to come from the active membership of the union. Trade union office bearers need to have Thai nationality which prevents legal migrant workers from forming trade unions. Therefore over 700,000 workers from Burma, Cambodia and Laos that are legally in the country do not have the right to form a trade union.

Private universities are exempted from the Labour Protection Act and the Labour Relations Act.

The support of at least 15 per cent of the workforce is needed for employees to engage in collective bargaining, or otherwise, the presence of a trade union with a membership that represents at least 20 per cent of the workforce. In order to undertake collective bargaining, the union must vote in its annual meeting on collective bargaining demands. Without these demands, which also need to be sent to the Ministry of Labour, a trade union cannot engage in collective bargaining.

A revision of the Labour Relations Act has been on the agenda for eight years but not much progress has been made so far. The bill issued by the Council of State in 2004 contained major shortcomings and flaws.

The Labour Protection Act also contains a number of loopholes that have increased subcontracting arrangements in production and led to a rapid growth in the hiring of contract workers in factories on production lines. A draft law of 2005 would worsen the situation even further.

Workers in state enterprises are subject to different legislation, the State Enterprise Labour Relations Act (SELRA) and have the right to organise and collective bargaining. At least ten workers (representing at least 10 per cent of the workforce) are needed to apply for establishment of a trade union. Each state enterprise can only have one union. If membership comes below 25 per cent of the eligible workforce the union can be dissolved administratively.

Individual state enterprise unions can only affiliate to the State Enterprise Workers' Relations Committee (SERC) and not to a national labour congress.

Civil servants cannot form and join trade unions and are excluded from coverage by the LRA and the SELRA. The government sets wages for civil servants. The government has refused to recognise the National Thai Teachers Union (NTTU).

The SELRA prohibits strikes and lock-outs in state enterprises. Civil servants do not have the right to strike and are subject to disciplinary measures and dismissal if they do so. Private sector workers have the right to strike but the government can restrict strikes that affect national security or cause severe negative repercussions for the population at large. The LRA forbids strikes in essential services, which have been defined in a much broader sense than the terms set out by the ILO.

Trade Union Rights in Practice

Only a small proportion of the workforce is unionised (3.5%) and only around 5% of them is covered by collective bargaining agreements. Although anti-union discrimination is prohibited, workers are often subject to harassment, due to loopholes in the legislation. Workers are frequently dismissed when they try to form unions and penalties for unfair dismissal are too low to be effective.

Registration of unions at the Ministry of Labour is biased towards registration in favour of "in house" unions rather than "industrial" or "sectoral" unions. Registration for industrial unions is frequently delayed. The registration process is also used to constrain trade union confederation coverage.

The difference in legal coverage between private and public sector unions has led to problems during privatisations of state enterprises where the state enterprise union is dissolved at the moment of privatisation, just when workers most need the union to negotiate on their behalf for their protection.

Article 75 of the Labour Protection Act is frequently abused. This article allows an employer temporarily to halt operations fully or partially for any cause other than force majeure provided that he pays employees at least 50 per cent of their normal working day wage. Employers have used this provision to keep union leaders out of the factory.

In relation to labour disputes the courts are very slow in handling cases and are biased towards employers in cases of dismissals. Courts often try to negotiate compromises which are not advantageous for the worker.

Outsourcing is also an important way to circumvent legislation. In particular in the garment and textiles industries, contract labour is used increasingly. Other industries such as autoparts, plastics and metals have also been affected.

Migrant workers that are legally registered enjoy the same rights as Thai workers, but are not permitted to change jobs without their current employer's permission. This is used to prevent freedom of association for migrant workers. In the event of protests, the workers can be deported.

Investors increasingly set up production in border areas where trade unions are almost absent and often use legal migrant workers from Cambodia, Laos or Burma who are not allowed to organise unions. The Federation of Thai Industries has pushed for expanded tax incentives for border investments, claiming that there is a shortage of labour for textiles, garments, footwear and electronics.

Several reports of violations of trade union rights in Thailand were summarised in the ITUC Trade Union Rights Violations Report of 2007.

In 2006, the Yan Sam transport company, part of the Isuzu Thailand group, tried to destroy the Logistics Relations Workers Union using a series of tactics that discriminated against union members. These included putting union members at the end of assignment lists, delaying the pay of salaries to union members, and offering more lucrative transport routes in exchange for resignation from the union. A non-union trucking firm was hired to drive routes and unionists were targeted for harassment, which resulted in one dismissal and ten resignations. Letters of no confidence in union leaders were drafted and workers were intimidated into signing these. They were sent to the Ministry of Labour and resulted in the two trade union leaders being suspended. A court case is pending now that asks for their dismissal.

Workers at Tesco in Ayuthaya province got organised in 2004, but have since been undermined by management. There is discrimination against union members and collective bargaining demands have not been responded to. The company continues to discourage and undermine union activity so as to prevent the setting up of unions in other Tesco stores.

In December 2006 over 230 union members were locked out at the Thai Summit factory that produces autoparts for Ford and Mazda because they wanted to join the Auto Alliance union and made collective bargaining demands. Thai Summit wanted the workers to form an “in house” union and refused to bargain, which was followed by the lock-out. Replacement workers were hired on the condition that they would not engage with the union or its demands.

In 2006, Mikasa Sports staged a strong anti-union campaign at its factory at the Eastern Seaboard Industrial Estate. Union members were continuously discriminated against. They were prevented from working overtime, compelled to take unpaid leave, separated from their fellow workers and publicly humiliated. Intimidation and disciplinary measures led to firing or resignation of the whole union committee except for the union president.

At NTN Manufacturing an anti-trade union campaign was undertaken by management when workers tried to form a trade union. Surveillance, harassment and firings were all part of the campaign. The Thailand Autoworkers Federation gave support to the union and mounted a strong public campaign, which led to the reinstatement of seven union leaders and the conclusion of a collective agreement by the end of 2006.

In 2006, at Thai Garment Export six workers were fired. They had been the core of a group of workers that organised a union. An anti-union discrimination case was filed.

In Mae Sot many migrant workers were intimidated to not assert their collective rights, and workers were arrested and abused. In April 2006, Burmese workers went on strike to

demand payment of the minimum wage which was accorded by the Ministry of Labour; however, shortly after the employer agreed, the entire workforce was fired.

The dismissal of 17 workers at Goodyear Tyre in 2006 was found to be unfair by the Ministry of Labour. However, the company refused to reinstate the workers and also refused to pay the back-pay of one year.

Conclusions

Thailand has not ratified the core ILO Conventions on trade union rights. Many legal restrictions exist on the right to organise, especially for state enterprise workers and civil servants. In practice many legal loopholes to undermine trade unions are found by employers and trade union discrimination and harassment are common. The right to collective bargaining is restricted as well and in practice very few workers are covered by collective bargaining agreements. The right to strike is severely restricted. Civil servants and state enterprise workers do not have the right to strike, while private sector workers are limited in their right to strike.

II. Discrimination and Equal Remuneration

Thailand ratified ILO Convention No. 100 on Equal Remuneration in 1999 but has not ratified ILO Convention No. 111 on Discrimination (Employment and Occupation).

Discrimination in respect of employment and occupation is prohibited in Thailand. The principle of equality of opportunity and treatment is recognised as well, including with regard to remuneration.

Specific measures for the elimination of discrimination in employment have been targeted in particular to workers in the public service, workers in establishments of a certain size, workers in particular types of employment, domestic workers, and workers in EPZs.

The Labour Protection Act requires the employer to fix equal wages for men and women, as well as equal overtime pay, holiday pay and holiday overtime pay. However it does not ensure equal pay for work of equal value in respect of other additional benefits in cash or in kind such as bonuses, allowances, food or accommodation. Furthermore, equal payments are only required in cases where men and women perform work of the same nature, quality and quantity, but not for work of equal value as is stated in the Convention.

The CEACR report of 2006 notes that men and women generally receive equal pay in low wage jobs but that women are less likely to get equal wages in higher wage jobs. In the civil service women outnumber men in jobs in the first 7 wage levels but are under-represented in the last four levels. Their representation at the higher wage levels is lower as well.

The UN Committee on the Elimination of Discrimination against Women (CEDAW) report of 2004 notes that according to a survey among private enterprises (1998), men received higher remuneration at all levels of employment. It further notes that “considerable gender

differences exist in terms of work status, type of work and compensation”. Within the highest income group there are more men than women, while in the lowest income group the proportion of women is higher than that of men. Women’s lower proportion in the high earning group also indicates that women have had fewer opportunities than men in getting promotions.

The CEDAW report of 2004 notes that “among the employed labor force, 55.17% of women were in the agricultural sector and 44.83% were employed in other non-agricultural sectors, most notably, wholesale (11.6%) and production (8.99%)”. It further notes that “women predominated in commerce, service and professional sectors, while men tended to be employed more often in transportation, administration and management, as well as crafts or production”.

Results of a Homework Survey conducted by the National Statistical Office in 2002 (CEDAW 2004) show that there are 592,235 homeworkers in Thailand, whose employment rights are significantly lower than other workers. 80% are contract workers, 19.5% are unpaid homeworkers who assist the contract workers, and 0.5% are subcontractors. 78.1% of the homeworkers are women and 21.9% are men. Most of the homework takes place in manufacturing with the largest share for textiles and clothing. 70.5% of the homeworkers earn less than 30,000 baht (US \$960) per year.

A report by Amnesty International describes the situation of Burmese migrant workers in Thailand. Hundreds of thousands of Burmese migrant workers are employed in Thailand in various sectors such as fisheries, manufacturing, domestic and construction work, hotels and restaurants, and agriculture. Burmese workers make up around 80% of the migrant workers. Violations include mandatory long working hours without overtime payment; being paid far less than the already low minimum wage; lack of safe working and living conditions; and the inability to organise. The report further notes that “those migrants who worked in garment factories in particular were forced to work extremely long hours, and were seldom paid overtime rates. Their working conditions were often poor, with inadequate ventilation and water in the factories. They also lived in very crowded conditions, whether in accommodation which the factory owner provided or in other living areas. Factory workers who attempted to organise into informal unions were punished with job dismissal or arrest and deportation from Thailand back to Myanmar. They were also almost never paid the minimum wage for the province where they were employed, and most were paid at piecework rates”.

Conclusions

Discrimination in employment and remuneration is prohibited although legislation needs to be brought in line with the ILO core Convention on discrimination. Discrimination in employment is common and women have less access to high income jobs than men and earn generally less than men, in particular at higher income levels. Most women are employed in agriculture, wholesale and production. The majority of homeworkers in Thailand are women, and have fewer employment rights.

III. Child Labour

Thailand ratified ILO Convention No. 138, the Minimum Age Convention in 2004 and ILO Convention No. 182, the Worst Forms of Child Labour Convention in 2001.

The minimum age for work as specified in Convention No. 138 is 15 years. This minimum age is not enforced for informal employment relationships, which are prevalent in the fishing industries, domestic work, trading and restaurants.

Regulations are being drafted to extend the minimum age to the agricultural sector. A draft homework Act is also under consideration.

Section 48 of the Labour Protection Act prohibits the employment of young persons under 18 in 12 different categories of work, including metal melting, work involving heat, vibration and noise, work involving exposure to hazardous chemicals, underground or underwater work, work that involves the use of an electric saw, cleaning machines while in operation, slaughterhouses, gambling places and massage salons. Regulation No. 6 on hazardous work applies to persons who entered in an employment relationship with the employer, which is not the case for children working in informal employment relationships and self-employed workers, and therefore they are not protected.

Many children are employed in agriculture without being protected by any labour legislation. Children in agricultural work are exposed to hazardous chemicals such as fertilizers and pesticides. The number of children engaged in agriculture is increasing as well.

The 2005 CEACR report notes that the Office of the National Commission on Women's Affairs estimates that there are between 22,500 and 40,000 child prostitutes in Thailand under the age of 18, which is 15-20% of the total number of prostitutes in Thailand. According to Unicef, the number of child prostitutes varies from 60,000-200,000. There is also a concern around the enforcement of penalties in the case of prosecutions.

The National Plan of Action for the elimination of the worst forms of child labour (2004-2009) aims to extend free and compulsory education from nine to twelve years by 2009. Priority is given to children used for the production of pornography, children used for illicit activities like production and trafficking of drugs, children in chemical, fishing and manufacturing, domestic child workers, agricultural workers, other informal work and vulnerable children. Measures include prevention, rehabilitation and reintegration. Other objectives are to reduce the drop out rates, to facilitate access to education for children in poor families, to provide educational loans and to promote non-formal education.

There is also much child trafficking, as detailed in Section IV below.

Conclusions

Child labour is a serious problem in Thailand. Children are engaged in many of the worst forms of child labour. Despite targeted projects for the elimination of child labour and increased prevention, rehabilitation and penalties, many children remain in the worst forms of child labour, including prostitution, drug trafficking, domestic work, agricultural work and hazardous work.

IV. Forced Labour

Thailand ratified ILO Convention No. 29, the Forced Labour Convention in 1969 and ILO Convention No. 105, the Abolition of Forced Labour Convention, in 1962.

Forced labour is prohibited in Article 51 of the Constitution.

There is an Act on Measures to Prevent and Suppress the Trafficking of Women and Children (1997), the anti-Trafficking Act.

Trafficking is prohibited but does occur in Thailand. According to the ILO CEACR 2005 report, “trafficking in women and children is on the rise and the gravity of the problem has very much increased since transnational organised criminal groups use Thailand as the place for gaining huge profit from trafficking in women and children”. The CEACR report notes that internal trafficking is a significant problem, mainly involving people from poorer northern provinces to cities and tourist areas. Ethnic minorities are particularly vulnerable to trafficking and labour exploitation. Many of the girls and women are recruited for work in massage parlours, night clubs and brothels.

An ILO/IPEC assessment of 2002 on children engaged in drug trafficking found that some children are only ten years old, with the majority being between 12 and 16.

The CEACR report refers to a Memorandum of Understanding that provides common guidelines of practices for agencies concerned with cases where women and children are victims of human trafficking.

Thailand has engaged in a TICW (Trafficking in children and women in the Mekong region) project to combat the trafficking of women and children in the Mekong subregion. The first phase of the project focused on action programmes in five rural communities (2000-2003) and the second phase (2003-2008) covers the whole of Thailand as a source, transit and destination country of trafficking victims. Part of the project covers assistance to vulnerable groups, the role of employers and workers in combating trafficking, and enhancing capacities of different groups to monitor and combat trafficking. An ILO report on the TICW project found that trafficking of children is worth US \$15 billion annually and that over 80,000 women and children, mainly from Burma, Yunnan and Laos were trafficked into Thailand for prostitution between 1990 and 1998.

Another project is the TICSА project, an IPEC/ILO subregional project to combat child trafficking for sexual and labour exploitation in Bangladesh, Nepal, Sri Lanka, Pakistan, Indonesia and Thailand. Under this project specific assistance is provided to Thailand to strengthen the rehabilitation and reintegration of Thai and non Thai child victims of trafficking.

The report also refers to one project, the Se-Ma Life Development Project, which has been successful in preventing high risk girls from poor families in five northern provinces from falling into the sex trade. During the 1994-2001 period 59,895 children were helped and received allocations for scholarships.

The same report notes that there has been concern around the small number of prosecutions and the lack of information on convictions in criminal cases.

The CEACR report of 2003 notes that many children continue to work under coercion or in conditions of exploitation. This is often linked to forced or false recruitment, deception and trafficking.

Conclusions

Forced labour and trafficking are prohibited but do occur, mainly in the form of forced prostitution. Thailand has a serious problem of trafficking of women and children in particular for forced prostitution.

Final Conclusions and Recommendations

1. The government needs to ratify ILO Conventions No. 87, No. 98 and No. 111, and ensure the effective implementation and enforcement of these Conventions.
2. Legal loopholes in the current legislation need to be closed in order to ensure the effective protection of trade union rights. Anti-union discrimination needs to be addressed more effectively through higher penalties against employers that use dismissal against trade unionists and through fair legal procedures that are not biased towards employers.
3. The government should adopt an Act that effectively provides the right to freedom of association and collective bargaining for civil servants.
4. State enterprise workers and civil servants need to be guaranteed the right to strike and this right needs to be effectively enforced.
5. The government should amend legislation on the right to strike and bring several provisions in line with the Convention. The definition of essential services should be narrowed in line with the Convention as well.
6. Legislation needs to be amended in order to allow migrant workers to form trade unions and to take up trade union leadership.
7. In particular, the exploitative situation of Burmese migrant workers needs to be addressed as they suffer extremely serious discrimination.
8. The government needs to provide more statistical information on the gender wage gap, women and men's earnings and positions, and discrimination in employment.
9. An effective action programme is required to end discrimination against women in employment and remuneration and to improve the situation of homeworkers.
10. The government has to bring the Labour Protection Act in line with the Convention so that it covers children who are engaged in employment without a clear employment relationship or in agricultural employment.
11. Existing programmes and projects have to continue and additional measures have to be taken to end all forms of child labour, especially its worst forms.
12. The government should take adequate measures to end all forms of trafficking of people.
13. In line with the commitments accepted by Thailand at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the Government of Thailand should therefore provide regular reports to the WTO

and the ILO on its legislative changes and implementation of all the core labour standards.

14. The WTO should draw to the attention of the authorities of Thailand the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of Thailand in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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