

**BEFORE THE UNITED STATES  
TRADE REPRESENTATIVE**

**PETITION TO REMOVE THAILAND FROM THE LIST OF  
ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES PURSUANT TO  
19 USC § 2462(d) OF THE GENERALIZED SYSTEM OF PREFERENCES (GSP)**

**filed by**

**THE AMERICAN FEDERATION OF LABOR &  
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

**NOVEMBER 13, 2018**

## **A. Preliminary Information**

### 1. Party Submitting Petition:

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### 2. Country Subject to Review: Thailand

### 3. Basis for Petition:

Thailand has not taken steps to afford internationally recognized worker rights, including the rights to freedom of association, organizing and collective bargaining and the prohibition on forced or compulsory labor. As demonstrated in prior AFL-CIO submissions, as well as in this update, egregious abuse of worker rights in Thailand is longstanding and continuous.

Thailand's labor laws fall far short of affording internationally recognized worker rights and those laws that do exist are not effectively enforced. Approximately 75 percent of Thailand's approximately 38.3 million workers are not guaranteed the rights to freedom of association and collective bargaining under law.<sup>1</sup> Employers retaliate with impunity against workers who attempt to exercise their rights. Human trafficking for forced labor is widespread, including in the production of goods exported to the United States, and this is facilitated in part by the law that prohibits migrant workers from forming unions. Draft legislation to replace the Labor Relations Act and the State Enterprise Labor Relations Act has not been acted upon; further, the drafts remain deeply flawed due in part to a lack of government willingness to seriously consider or include recommendations by representative trade unions. Despite numerous opportunities, the Government of Thailand does not appear to have any intention to take steps to afford workers their internationally recognized worker rights, as required by 19 U.S.C. § 2462(c)(7). Therefore, the AFL-CIO recommends that it be removed from the list of eligible beneficiary countries. The government has been given ample opportunity to comply with its obligations to take steps to afford internationally recognized worker rights to its workers. The AFL-CIO encourages the U.S. government to consider the targeted suspension of tariff benefits for key exports in order to create a greater incentive for compliance with 19 U.S.C. § 2562 (c)(7).

## **B. Introductory Note**

This petition is divided into three main sections:

- 1) Freedom of association and collective bargaining rights,
- 2) Right to strike and freedom of expression, and
- 3) Discrimination against migrant workers.

## **C. Background**

The previous Constitution of Thailand, in Section 64, provided for Thais to “enjoy the freedom of association in the form of leagues, unions, cooperatives, farmers’ associations, private organizations and other groups.” In 2016, however, a new constitution was passed.

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<sup>1</sup> National Statistical Office, Thai Ministry of Information and Communication Technology (2016) available at [http://web.nso.go.th/en/survey/lfs/data\\_lfs/2016\\_iep\\_Executive\\_Summary.pdf](http://web.nso.go.th/en/survey/lfs/data_lfs/2016_iep_Executive_Summary.pdf)

Like its predecessor, the new constitution under Section 42 allows for persons to “enjoy the liberty to unite and form an association, co-operative, union, organization, community, or any other group.” This right, however, can be restricted “for the purpose of protecting public interest, for maintaining public order or good morals, or for preventing or eliminating barriers or monopoly.” These restrictions are too broad and inconsistent with the right of association.<sup>2</sup>

The Royal Thai Government (RTG) has also ratified the UN International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides for the “the right of everyone to form trade unions and join the trade union of his choice.” The RTG has also ratified the UN International Covenant on Civil and Political Rights (ICCPR), which stipulates “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

In practice, however, the RTG fails to promote or protect these rights. Thai labor laws fall far short of internationally recognized labor standards. The vast majority of workers are prohibited from exercising freedom of association and the right to organize and bargain collectively. The Thai labor movement has long campaigned to encourage the RTG to ratify two ILO core labor standards that underpin fundamental worker rights, including Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Convention No. 98 on the Right to Organize and Collective Bargaining, and to bring domestic labor laws in compliance with them. The RTG, however, has failed to do so, most recently backing away from ratifying No. 98. As a result, Thailand’s unionization rate, about 1.6 percent, is the lowest of any country in Southeast Asia, including Bangladesh, Cambodia, Indonesia, Malaysia, Pakistan and Sri Lanka.<sup>3</sup>

Thai labor relations are governed primarily by three laws: 1) The Labor Relations Act (LRA) 1975 covers employees in the private sector; 2) The State Enterprise Labor Relations Act (SELRA) 2000 covers employees in state-owned enterprises; and 3) The Civil Service Act (CSA) 1992 covers employees in the civil service and public sector. Additionally, a number of laws and regulations govern the rights of migrant workers and aim to combat human trafficking.<sup>4</sup>

Numerous efforts going back to the 1990s have been made to reform the LRA. As the ILO has observed, the reform process has been ongoing for many years without tangible progress. Further, as discussed in the AFL-CIO 2016 and 2017 briefs, the Thai Government has not held meaningful consultations with representative trade unions, instead relying heavily on ‘unions’ that appear to exist for the primary purpose of engaging with the working group itself rather than representing workers. As explained in the detailed memo annexed to the 2017 update, the most recent drafts of a new labor law also remain far out of compliance with international law, though they would extend the right to freedom of association to migrant

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<sup>2</sup> See Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva, International Labour Office, Fifth (revised) edition, 2006 (hereinafter “CFA Digest of Decisions”), ¶ 309 (“309. The right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in fact.”)

<sup>3</sup> พบจำนวน 'สหภาพแรงงาน-สมาชิก' ในไทยลดลงจากปี 2558, Prachatai Journal (September 2016) available at <https://prachatai.com/journal/2016/11/68627>

<sup>4</sup> Critics, including Human Rights Watch, characterize Thailand’s policy framework for migrants as “haphazard”. <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry>

workers. For example, the proposals appear to continue to restrict workers in the informal economy from forming a union.<sup>5</sup> The government's process for registering unions includes significant discretion on the part of the authorities, and the draft too narrowly describes the objectives of trade unions. The draft does not protect workers from anti-union retaliation prior to hiring. The right to strike would be limited and could only be legally called in response to disputes which can be addressed through dispute settlement. The fines for violation of the laws remain too low to be dissuasive to employers. This draft does not reflect a genuine commitment to bring laws into compliance with internationally recognized worker rights.

This petition identifies how Thailand's laws fail to protect the rights of workers to freely associate, organize and form unions, and bargain collectively. The petition also identifies cases of employer violations of worker rights and how the RTG fails to protect workers who attempt to exercise their freedom of association and collective bargaining rights.

## **D. Specific Workers' Rights Violations**

### **1. Freedom of Association and Collective Bargaining**

#### **a. Freedom of Association**

As discussed in previous submissions, Thai law restricts the rights to freedom of association and collective bargaining for many classes of workers. The Civil Service Act forbids all public sector workers and civil servants, at any level of government, from organizing unions or engaging in collective bargaining. This includes health care providers, teachers, and even administrative employees.<sup>6</sup> The Private University Act of 2003 extends these prohibitions to teachers and professors at private schools and universities.<sup>7</sup> Agricultural workers have no guaranteed rights to form unions or bargain collectively. Neither do workers in the informal economy, which accounts for over half of Thailand's 38.3 million workers.<sup>8</sup> In October 2016, the International Labor Organization's (ILO) Committee on Freedom of Association concluded there are significant restrictions on workers' abilities to freely form and join unions and collectively bargain.<sup>9</sup> The RTG has failed to respond to two requests from the Committee on Freedom of Association for an update as of November 2018. Thailand's labor laws must be amended to ensure all workers may equally exercise such rights.

Thai law and practice leaves workers exposed to retaliation for engaging in union activities. Courts have ruled that critical worker protections — including prohibiting employers from

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<sup>5</sup> The right of association belongs to workers across sectors, including those in domestic work, agricultural work, in temporary employment, those that may be considered "self-employed," and other participating in what might be termed "informal" work. CFA Digest of Decisions, Chap. 3.

<sup>6</sup> The prohibition violates the right of "[a]ll workers, without distinction whatsoever, including without discrimination in regard to occupation . . . to establish and join organizations of their own choosing." CFA Digest of Decisions, ¶ 216; see also ¶¶ 218-22.

<sup>7</sup> *Private Universities Act* B.E. 2546 (2003). Summary at: [www.albany.edu/dept/eaps/prophe/data/Country\\_Law/ThaiPHEActSummary.html](http://www.albany.edu/dept/eaps/prophe/data/Country_Law/ThaiPHEActSummary.html).

<sup>8</sup> National Statistical Office, Thai Ministry of Information and Communication Technology (2016) available at [http://web.nso.go.th/en/survey/lfs/data\\_lfs/2016\\_iep\\_Executive\\_Summary.pdf](http://web.nso.go.th/en/survey/lfs/data_lfs/2016_iep_Executive_Summary.pdf)

<sup>9</sup> Report in which the committee requests to be kept informed of development - Report No 380, Committee on Freedom of Association, International Labor Organization (October 2016) available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:3302068](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068)

dismissing or otherwise taking action against workers who join unions, organize a rally, file a complaint or lawsuit, submit a demand or provide evidence to the government — apply only when a labor union is registered with the Ministry of Labor.<sup>10</sup> This means that the activities that go into forming a union, like holding meetings and informal or spontaneous collective action, such as protesting poor working conditions, are completely unprotected.<sup>11</sup> Troublingly, when workers begin the process of registering, the Ministry of Labor often contacts the employer to confirm the workers are their employees. When the employer learns the names of the workers who are involved, employer can and do dismiss the workers legally since their union has not yet been registered.

If a union manages to successfully register, Thai law permits interference in the internal affairs of union operations and activities in ways inconsistent with the internationally recognized rights of association. Only full-time employees may serve on union committees or as elected union officials. If a union official loses his or her job for any reason, including layoffs, downsizing or outsourcing, they can no longer be union members or serve as elected union officials or union committee members.<sup>12</sup> Workers report that employers routinely dismiss union leaders and committee members on the pretense of layoffs or downsizing to remove them from leadership positions. When a union leader is dismissed or laid off, he or she is prohibited from even entering the workplace to communicate and represent members, and the employer is not required to negotiate with them.<sup>13</sup> By undermining the right of workers to choose their representatives, these restrictions undermine the right of association.<sup>14</sup>

The ILO Committee on Freedom of Association (CFA) examined multiple cases in which workers were pressured to resign, including many raised in the AFL-CIO's 2015 brief. The CFA observed that in many cases, the Thai government's response essentially confirmed the workers' assertions that they were dismissed improperly and "simply states that the workers decided to resign voluntarily and accept compensation as a result of negotiations, and that the labour disputes were thus successfully resolved."<sup>15</sup> This exemplifies how the Thai

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<sup>10</sup> Sonja Vartiala, Henri Purje, Andy Hall, Katariina Vihersalo, Anu Aukeala, *Cheap has a High Price, Responsibility problems relating to international private label products and food production in Thailand* (Finnwatch) January 2013.

[http://www.finnwatch.org/images/cheap%20has%20a%20high%20price\\_exec%20summary\\_final.pdf](http://www.finnwatch.org/images/cheap%20has%20a%20high%20price_exec%20summary_final.pdf)

<sup>11</sup> Workers who sign a demand proposed to an employer do get protection. That is why, in practice, when workers organize a union, they will propose a demand (with signatures of members) at the same time as they file for union registration so that they will be protected as "workers who submit a demand."

<sup>12</sup> Labor Relations Act, B.E. 2518 (1975), Section 95 A person to be a member of the labor union shall be the employee of the same employer of the promoters or being employees working in the same undertaking of the promoters at least fifteen years of age. Furthermore, Section 101 A person who is eligible for election or appointment as a director or member of a sub-committee under Section 100 shall have the following qualifications: (1) being member of such labor union; (2) being of Thai nationality by birth; (3) being not less than twenty years of age.

<sup>13</sup> The ILO Committee on Freedom of Association holds that it is inappropriate for a government to require elected trade union officials to be employed in workplaces at which they represent union members CFA Digest of Decisions ¶ 407-08.

<sup>14</sup> See, e.g., CFA Digest of Decisions ¶ 390 ("It is the prerogative of workers' and employers' organizations to determine the conditions for electing their leaders and the authorities should refrain from any undue interference in the exercise of the right of workers' and employers' organizations freely to elect their representatives, which is guaranteed by Convention No. 87.")

<sup>15</sup> Report in which the committee requests to be kept informed of development - Report No 380, Committee on Freedom of Association, International Labor Organization ¶ 1061 (October 2016) available at

government allows and even encourages a workplace environment where employers bust unions with impunity. When union leaders and members have taken cases of anti-union retaliation to court, the cases often drag on for years. Even in the rare cases where workers win, workers report employers often ignore court rulings with impunity.

#### Freedom of Association for Migrant Workers

Migrant workers cannot freely join or form trade unions or engage in collective bargaining. Under the Labor Relations Act (LRA) only Thai nationals by birth may organize a union.<sup>16</sup> The LRA allows migrant workers to join pre-existing unions led by Thai nationals by birth,<sup>17</sup> but they cannot hold leadership positions, such as serving on union committees or offices. In practice, migrant workers are usually concentrated in industries that employ very few Thai nationals, such as commercial fishing and seafood processing, and therefore there are no unions to join. It is no coincidence that these industries are rife with abuses. Without sufficient legal protections and the right to freedom of association, migrant workers are particularly vulnerable to wage theft, dangerous working conditions, exploitation, extortion by police, and trafficking and forced labor. They are also routinely denied access to health care and worker's compensation and frequently have unnamed or illegal deductions made from their paychecks.

#### Freedom of Association for Subcontracted and Temporary Workers

Thai labor laws and court interpretation of the laws also limit freedom of association and the right to collective bargaining for “subcontracted” workers, who make up a significant portion of the workforce. In Thailand’s industrial zones, for example, where global brands manufacture products in a variety of sectors, including automobiles, auto parts, electrical appliances, electronics, and metal—mostly for export—about 50 percent of the workforce is temporary, short-term or hired through employment agencies on short-term contracts, according to workers. Under Thai law, such workers are not considered employees of the manufacturing enterprises where they work; rather, they are considered employees of the employment agency. Thus, they cannot join an existing union in the manufacturing enterprise. They are allowed to form a service sector union and negotiate with the temporary hiring or employment agency, but in practice temporary workers who attempt to organize are often transferred to another workplace or lose their short-term contract. This makes it nearly impossible for short-term subcontracted workers to negotiate over working conditions, which are provided by the manufacturing firm, not the employment agency. Although they are considered to be working temporary jobs, these short-term contract workers often work for several years in the same position or workplace. Employers often increase the use of temporary workers to thwart permanent workers from organizing a union, to weaken an already existing union, or to replace union members or locked out workers. Consequently, in practice, only about 50 percent of the manufacturing workforce in the industrial estates— one

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[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:3302068](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068)

<sup>16</sup> Labor Relations Act, B.E. 2518 (1975), Section 101 A person who is eligible for election or appointment as a director or member of a sub- committee under Section 100 shall have the following qualifications: (1) being member of such labor union; (2) being of Thai nationality by birth; (3) being not less than twenty years of age.

<sup>17</sup> Labor Relations Act, B.E. 2518 (1975), Section 101 A person who is eligible for election or appointment as a director or member of a sub- committee under Section 100 shall have the following qualifications: (1) being member of such labor union; (2) being of Thai nationality by birth; (3) being not less than twenty years of age.

of the main engines of Thailand’s rapidly growing economy—actually has the right to form and organize a union and bargain collectively.

b. Collective Bargaining

The LRA does not guarantee the right to collective bargaining. Employers are not required to negotiate in good faith. The LRA provides only that employers must attend an initial meeting within three days of unions submitting a proposal to bargain. After that initial meeting, employers are free to ignore the union or refuse to negotiate without consequence.<sup>18</sup>

Unsurprisingly, given the complete lack of an effective enforcement mechanism to support collective bargaining, such refusals by employers are routine. By excluding many categories of workers from joining or forming union and failing to provide *any* effective avenue by which workers can collectively bargain, Thailand is in violation of its obligation to take steps to afford internationally recognized worker rights, specifically the right to organize and bargain collectively, as is required by 19 USC § 2467(4)(B).<sup>19</sup>

*Illustrative Cases:*<sup>20</sup>

Nakashima Rubber Company:

On March 20, 2018 the Supreme Court ordered Nakashima Rubber Company to reinstate eleven union activists dismissed in November 2013, and to provide them back pay from December 2013. The Supreme Court concluded that the dismissals were illegal since the members of employee committee could not be dismissed without court order, and a reduction of the workforce could not be used as a reason for dissolving the employee committee. The most recent Supreme Court order has yet to be enforced. The employer has not reinstated the 11 workers and has not paid back pay.

Y-Tec, a subsidiary of Nakashima Rubber:

Workers at Y-Tec report that the company engaged in a sustained campaign to force union leaders and members to resign after workers staged a protest and formed a union in December 2016. On March 28, 2017, rather than protect the rights of the workers, the Labor Relations Committee (LRC) informed workers that the company was offering 40,000 baht to each of them to resign and facilitated buyouts. While a few determined workers refused and were eventually reinstated, the LRC encouraged workers to leave. This includes the local union leader, who was reinstated but re-assigned to a different position with lower wages and fewer benefits. Other reinstated workers were allowed to enter the worksite but given no work. The Thai government has not taken action to address these ongoing violations. On September 7, 2017, workers reported they began receiving anonymous form letters to withdraw their union membership. As of November 2018, the union president and two affiliates have left the company and the union is inactive, as Y-Tec workers are afraid of the consequences of being involved.

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<sup>18</sup> ILO, *General Survey on Freedom of Association and Collective Bargaining of the Committee of Experts on the Application of Conventions and Recommendations, 1983*, report III (part B), para. 296.

<sup>19</sup> See, e.g., CFA Digest of Decisions ¶ 937. (“The principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided.”)

<sup>20</sup> The cases outlined in these case studies demonstrate routine labor rights violations that occur when workers organize or form a union or attempt to negotiate with their employers. The cases also reveal government indifference toward worker rights violations. Even though a particular case may be placed in a certain category, other labor violations may still be present.

Yum Restaurants International (Thailand) Co., Ltd.:

The case of the 2011 dismissal of a union leader from the Yum Restaurants International (Yum) group demonstrates the sustained series of tactics that employers use to keep union activists out of their workplaces. After a number of frustrated attempts to engage in Labor Ministry-facilitated mediation, the company continued to insist that it would not reinstate the disputed activist on December 25, 2017. A Yum group representative or staff member posted her picture and a message on social media to KFC workers advising that they should avoid her because all she wanted to do was cause disturbances. After a series of failed mediation meetings with the Labor Ministry, the union leader filed a complaint with the Labor Relations Committee (LRC) in February 2018. On April 4, 2018 the LRC ordered Yum to reinstate her, reasoning that Yum was still operating in Thailand and her position still existed. The LRC further stated that her dismissal was based on anti-union discrimination. The company refused to allow her to come back to work, opting to pay her a base salary without benefits, to stay home. On May 21, 2018 Yum filed an appeal to the Labor Court to contest the reinstatement order from the LRC, which is pending.

iSi Automotive:

iSi Automotive is an Austrian automotive part manufacturer operating in Chonburi Province. On February 7, 2018, 186 workers, of a total of 290 permanent workers, filed their collective bargaining proposal with the company. When the company did not respond within the three days required by law, the workers contacted the Chonburi Labor Protection and Welfare Office to assign an official to facilitate negotiations. The workers also registered their new union on February 21, 2018 with 170 members. On February 10, 2018 the company announced the dismissal of 28 workers, who received their dismissal letters on February 12, 2018. Out of 28 dismissed workers, 25 had signed the initial collective bargaining proposals, and seven were bargaining representatives. According to the Labor Relations Act, the workers should have been protected from dismissal as they were involved in collective bargaining. The company justified the dismissal by accusing the union members of slowing down production and trying to persuade other workers to refuse overtime. The 25 workers who signed the collective bargaining proposal filed a complaint to the Labor Relations Committee; three other workers filed a complaint to the Labor Court. While the workers reached a collective bargaining agreement with the employer on February 19, 2018, the company refused to reinstate the 28 dismissed workers and pressured them to take a buyout. The three workers who filed a complaint with the Labor Court reported that the judge also pressured them to take severance pay and resign from the company. In April 2018, all 28 dismissed workers took the buyout and left the company.

LLIT Thailand:

Since forming a union in late 2015, workers have faced retaliation for advocating for their co-workers on health and safety violations and discrimination against pregnant workers, including through collective bargaining. In December 2017, the company dismissed six union activists for defamation and eight union leaders for fostering a negative attitude among workers towards the company related to bargaining (eight of the dismissed workers agreed to a buyout to resign, and six continue to seek reinstatement). On February 23, 2018, the union filed a complaint to the Chonburi Province Labor Protection and Welfare Office to investigate health and safety standards at the plant. This was provoked by fatal accidents such as the March 2018 death of a worker whose head was crushed by a machine. Subsequent to this incident, from February to May, the union registered 13 additional workplace injuries related to equipment. On May 12, 2018 the union filed another complaint to the Chonburi



Province Labor Protection and Welfare Office to complain of its inaction in resolving health and safety issues at the plant. In apparent retaliation for the union's appeals to authorities, LLIT transferred the union president to a storage room to separate him from other workers. The president has filed a complaint of anti-union discrimination with the Chonburi Province Labor Protection and Welfare Office on May 21, 2018. In September, the union president was pressured to take a buyout and resigned.

#### NTN Manufacturing Thailand:

In response to a failure to negotiate in good faith, 700 workers at NTN Manufacturing Thailand conducted a coordinated two-day sick leave protest in March 2014. The company retaliated by suspending 34 union leaders and demanding that the workers elect new leaders and representatives. Negotiations resumed but no agreement was reached. The trade union filed a labor dispute claim and requested mediation services from the Ministry of Labor. In May 2014, NTN Manufacturing Thailand dismissed nine union leaders for union activities. When the union attempted to organize a demonstration in front of the company in protest, the company dismissed 27 additional union members. The union president and two union members filed complaints to the labor court, but the other dismissed union members accepted compensation or severance to voluntarily resign. The labor court ordered reinstatement of two union members who filed a complaint but upheld the dismissal of the union president. The case was appealed, and in January 2018 the Supreme Court upheld the decision by the court of first instance to reinstate two of the NTN Manufacturing leaders but upheld the dismissal of the union leader. As of November 2018, the two leaders have still not been reinstated at work in spite of the Supreme Court's ruling. The company is paying their base wage but not allowing them to work or communicate with union members inside the plant.

In 2017, the company also filed a lawsuit against 36 workers who took sick leave in 2014, claiming that the workers caused damages due to lost production hours and demanding 170 million THB or nearly \$5.2 million USD in compensation from the workers. NTN Manufacturing Thailand dropped the lawsuit after the workers agreed to write a letter of apology to the company on September 8, 2018.

#### Sanko Gosei Technology:

On September 1, 2015 the union submitted 25 proposals to begin negotiations with the employer over a new collective bargaining agreement. The company proposed to the union that it skip negotiations for a new collective bargaining agreement and go straight to mediation. Mediation began on September 9, 2015 but on September 21, 2015 the company submitted proposals including a demand that the company be allowed to make unilateral changes to the workplace without consulting the union. This would in effect make the union superfluous and would undermine the rights of workers to collective bargaining. On September 27, 2015 the company imposed a lockout on all union members. The company later cancelled the lockout after it found that it was illegal to lock out the union members when the previous collective bargaining agreement was still in effect.

The company started to bring in new workers on September 26, 2015, including 180 subcontracted Thai workers. The company then brought in 180 Cambodian subcontracted workers on October 12, 2015, five Cambodian subcontracted workers on October 19, and 40 Thai subcontracted workers on November 16, 2015. In mediation, the company offered to provide severance to 250 additional workers to quit voluntarily. When on December 20, 2015, the collective bargaining agreement expired and no new agreement was reached, the company locked out the union members again. To sideline the union as the legitimate

representative of its members, the company directly offered non-union members and union members to exempt them from the lockout if they accepted in writing the company proposals. On January 6, 2016 the union leaders traveled to the Ministry of Labor in Bangkok to participate in another mediation meeting with the company. The mediation was still unsuccessful and no agreement was reached. The union members then planned to stay overnight at the Ministry of Labor to protest, but the police and military forces threatened to file charges against the workers for allegedly violating the new public assembly act and trespassing laws (although they were on government property). During the evening, the leaders of the Thai Labor Solidarity Committee (TLSC) were detained, and their mobile phones and ID cards seized, in some cases up to 3.5 hours. In the days following this incident, several leaders of TLSC were followed by the military. The military ordered one TLSC leader to report on TLSC activities, and visited the TLSC office to monitor a meeting the TLSC leaders organized to discuss how to resolve the labor conflict at Sanko Gosei Technology. The police also requested that union and TLSC activists inform the police in advance of their traveling and whereabouts.

In February 2016, the company dropped its proposal for unilateral changes in the workplace, but demanded that the locked out workers sign an agreement to compensate the company for any intentional or unintentional damages to the company. On February 29, 2016, the company informed over 300 union members to be present at the Pattana Golf Club in the Chonburi Province. The workers were strictly monitored and searched for weapons by uniformed men. The company managers and lawyers participated in the meeting and pressured the workers to resign and accept severance pay. Nearly every union member at the meeting gave in and resigned. The employer prevented the union from advising its members at the meeting. Following the February 29 incident, the company continued to pressure union members, and 60 more workers (including the union president and several of the committee members) later agreed to resign and receive severance pay. The company also dismissed 19 workers who were offered severance but refused to accept it. The remaining union members were pressured to disaffiliate from their national union TEAM, an affiliate of the global union federation IndustriALL, and to join the employer-friendly Automobile Labour Congress of Thailand (ALCT).

The 19 workers who were dismissed without severance filed a complaint to the Rayong Labor Court in May 2016. The court, however, scheduled the hearing for June 2017 – over a year following the dismissal of the workers. In the case of the 19 dismissed workers, the company went into mediation with the union and agreed to pay 1.6 million baht severance to the 19 dismissed workers in August 2017.

#### Yachiyoda Alloy Wheel Company:

Formed in 2013, the Yachiyoda Workers Union negotiated its first collective bargaining agreement in February 2014, which included a clause that annual bonuses would be negotiated every year. Since this negotiation, the company has not complied with the agreement, neither paying bonuses nor negotiating new bonuses, and in May 2015 used police to escort unionists to mediation meetings at the Region 11 Infantry Military Base.

In August 2015 the company brought in about 10 soldiers in the plant to monitor the workers and their activities; several out-of-uniform police officers appeared at the workplace to do the same. In 2018, only after Labor Court mandated mediation, did the company agree to pay 63 workers who filed and followed through with a lawsuit. Yachiyoda Alloy Wheel Company has also violated its employees right to collectively bargain by negotiating a parallel

agreement with non-union workers in 2016, which conceded to employer's demand to forgo the previous wage settlement and accept their unilateral decision on wage increases. This situation has prevented the Yachiyoda Workers Union from effectively negotiating collective agreements to date.

## 2. The Right to Strike and Freedom of Expression

### a. Right to Strike

The right to strike is a critical tool for workers to “promote and defend their economic and social interests.”<sup>21</sup> Section 33 of the State Enterprise Labor Relations Act (SELRA) prohibits all state enterprise employees from striking or engaging in industrial actions. Section 77 stipulates severe penalties, including jail time, for participating in or organizing a strike. The ILO has specifically recognized that Thailand's laws are a “grave threat” to freedom of association, that the penalties imposed are “extremely severe,” and “entail serious risks of abuses,”<sup>22</sup> and repeatedly called on Thailand to amend the laws to bring them into compliance with internationally recognized worker rights.<sup>23</sup> Local police and military forces are also used to intimidate workers and stifle dissent, invoking the 2015 Public Assembly Law.<sup>24</sup>

### b. Freedom of Expression

Trade unionists, human rights defenders and other civil society advocates in Thailand have been charged with criminal offenses, usually libel, when they publicize labor abuses. The LRA and SELRA both contain broad exceptions which allow employers to bring suits over what should be considered protected activities. The law states union members can be charged with a civil or criminal offense “for explaining and publicizing the facts concerning a labor dispute ... if the activities constitute criminal offenses in the nature of offenses against the employer's reputation.”<sup>25</sup> Actions that harm an employer's reputation have been interpreted broadly. Since the libel statute is in the Criminal Code, a guilty verdict carries fines and jail terms. International norms establish that the right to express opinions “is an essential aspect of trade union rights.”<sup>26</sup> In Thailand, workers report that employers continue to file charges against union leaders for libel during union organizing initiatives or in labor disputes as detailed in examples below.

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<sup>21</sup> The ILO has “always regarded the right to strike as constituting a fundamental right of workers and their organizations, it has regarded it as such only insofar as it is utilized as a means of defending their economic interests.” CFA Digest of Decisions, ¶ 520.

<sup>22</sup> CFA Effect given to the recommendations of the committee and the Governing Body – Report No. 327, March 2002, paragraph 11.

<sup>23</sup> 381st Report of the International Labor Organization Committee on Freedom of Association ¶ 580 (March 2017) available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_548465.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_548465.pdf)

<sup>24</sup> The Committee on Freedom of Association has been clear: “Workers should enjoy the right to peaceful demonstration to defend their occupational interests.” CFA Digest of Decisions ¶ 133.

<sup>25</sup> Labor Relations Act (1975), Section 99 <http://www.samuiforsale.com/law-texts/labour-relations-act.html>

<sup>26</sup> Report in which the committee requests to be kept informed of development - Report No 380, Committee on Freedom of Association, International Labor Organization ¶ 1060 (October 2016) available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:3302068](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068) (“allegations of criminal conduct should not be used to harass trade unionists by reason of their trade union membership or activities”)

### *Illustrative cases:*

#### AutoAlliance (Thailand):

As originally cited in the 2013 AFL-CIO petition, management at Auto Alliance (AAT), a joint venture between Ford and Mazda, filed libel charges against union leaders during collective bargaining. The union president won the case in the first instance Labor Court but the employer appealed the case to the Thai Supreme Court on May 6, 2015. While the Supreme Court agreed that the actions of the union president (giving a statement to the newspaper and sending a letter to the Japanese Ambassador regarding AAT's anti-union actions) did not constitute defamation in accordance with the Thai criminal code, it decided that the actions of the union president aimed to damage the company's "reputation or honor" with the aim of pressuring the company to reinstate the locked-out workers. The Supreme Court opinion held that the union leader and workers should have used the available labor dispute mechanisms under the Labor Relations Act, and consequently severely restricted the right of workers to engage in concerted activities outside traditional collective bargaining and labor dispute mechanisms. The Supreme Court found in favor of the employer and gave AAT permission to dismiss the union leader. On March 8, 2018 the company dismissed the union president.

#### General Motors and General Motors Powertrain:

The General Motors Thailand Workers Union has endeavored to collectively bargain with two GM facilities or plants (General Motors and General Motors Powertrain) since May 2014. This case is remarkable for GM's decision to use the military and captive audience meetings at remote locations to intimidate workers to accept GM's unilateral control of working conditions, wages and benefits, and to add arbitrary conditions to undermine an order to reinstate workers. On February 7, 2018, the Labor Relations Committee (LRC) ordered GM to reinstate 66 locked out workers with back pay (wages and benefits). Less than a month later, GM ordered employees to report to the Navamin Military Camp in Chonburi. This information, however, reached the media and the National Human Rights Commission (NHRC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), which then criticized GM for involving the military in labor relations, and asked to observe. Consequently, GM sent another message to the workers on March 5, 2018 ordering them to report at the Pattana Golf Club in Chonburi Province. At the golf club, GM informed the workers that they were not allowed to video record the meeting or to take pictures, and no external parties including the NHRC or OHCHR would be permitted in the meeting. GM then presented the conditions the workers had to accept to be reinstated, although the LRC already ordered their reinstatement.

According to the conditions, applicable for three years, the workers had to unconditionally accept that GM could unilaterally change all working conditions, including work schedules and hours, wages and benefits, and assign workers to work in any location even outside the Rayong Province and to work for GM suppliers or partners. They would also receive no bonuses or wage increases. The workers would be transferred to the Ayutthaya Province and receive only the legal government-mandated minimum wage. Furthermore, the workers had to agree that GM could unilaterally evaluate the workers' performance and decide their punishment if they failed the evaluations and tests. The workers would also have to take a three-day training from March 8-10, 2018 at the Pattana Golf before being reinstated. Only nine workers agreed to the conditions while the rest agreed to take severance pay. One of the workers who returned to work reported that she was forced to work in physically difficult jobs, was verbally abused by a male supervisor and threatened with relocation to an even

farther location to compel her resignation. On March 20, 2018 Ministry of Labor's Labor Protection and Welfare Department (LPWD) responded to the union's petition regarding GM's conditioning of worker reinstatement. The LPWD ruled that since the workers signed the agreements there was nothing it could legally do to aid the workers in protection of their rights.

#### Mitsubishi Electric Consumer Products Thailand:

In December 2017, 1,800 members of the Confederation of Thai Electrical Appliances, Electronic Automobile and Metalworkers (TEAM) were locked out by Mitsubishi Electric Consumer Products Thailand. The union and company then reached an agreement through collective bargaining on January 29, 2018, ending the dispute. Mitsubishi Electric agreed to reinstate all the locked-out workers, which is a legal requirement. However, before reinstatement, workers were called into a meeting to "check their attitudes" and pressured to disclose compromising information about union leaders. The company forced the locked-out workers to attend a four-day camp at a military base to "learn discipline and order", undergo five days of training by an external human resources firm, where they were expected to "reflect on their wrong doing", one day of cleaning old people's homes to "earn merit", and three days at a Buddhist temple, with no regard for their religious beliefs. The workers were also made to post apologies to the company on their personal social media accounts.

Despite this process of deliberate humiliation, not all workers were reinstated. The company claimed it had no open positions to reinstate the workers but began advertising new job openings. On May 31, 2018, 55 workers filed a complaint to the Labor Relations Committee (LRC), the tripartite committee under Ministry of Labor, regarding the company's failure to reinstate. On August 22, 2018, in retaliation, Mitsubishi Electric laid off 24 workers, including ten members of a new union committee elected in June 2018, and filed for permission with the labor court to dismiss two others. The company also sent a letter to the LRC saying that there is no need for the LRC to make any decision on the complaint raised by the workers in late May as all related workers had either been laid off or reinstated. On August 30, 2018 the company told 48 reinstated workers that they were making too much trouble and had military personnel escort them out of the plant.

The company has required workers who have been called back to sign individual contracts to replace the collective bargaining agreement that expired at the end of September 2018. It includes a clause where the worker must agree to not be a member of the union—and if they are, to return any of the additional wage increases and benefits gained through collective bargaining to the company. On September 24, 2018 the LRC released a statement mirroring the Company's version of events, specifically, that all the petitioning workers had been laid off or reinstated. As of the time of the filing, in order for the union members to seek remedy through the Ministry of Labor, they would have to initiate a new LRC complaint process, entering into a repeating, vicious cycle.

#### State Railway of Thailand:

The AFL-CIO initially described a case involving the State Railway of Thailand in our 2015 petition. Union leaders organized demonstrations for better safety standards following a deadly train derailment, and seven leaders were ordered to pay a substantial fine. The Supreme Court upheld the ruling on July 3, 2017 and increased the total amount to 21 million baht (\$630,000 USD). The State Railway of Thailand does not currently have a governor with the authority to negotiate with the union or make decisions about the fate of the seven union leaders, leaving them, and the union, in limbo.

### Thammakaset Farm:

On October 6, 2016, the employer Thammakaset Farm filed criminal defamation charges against 14 migrant workers who came forward to report serious abuses, including grueling 20-hour workdays, forced overtime without pay, confiscation of passports and identification cards, and being forced to sleep alongside chickens. The company also brought criminal defamation and computer crime charges against human rights defender Andy Hall, who publicized the case.<sup>27</sup> In addition to making use of libel laws, Thammakaset also filed a criminal case against two of the workers for stealing company documents after the workers gave their timesheets to officials at the Lopburi Department of Labor Protection and Welfare. The Lopburi public prosecutor dismissed the criminal charges against the two workers and the Thailand coordinator of worker rights organization, MWRN, for theft, which the company has since appealed. On May 31, 2018 a Thai appeals court dismissed Thammakaset Farm's case against Andy Hall, and in July 11, 2018 a Thai court dismissed criminal defamation charges against the 14 migrant workers from Myanmar. Thammakaset Farm is filing an appeal to the dismissal of defamation charges for the 14 migrant workers.

In spite of these seemingly favorable judicial rulings, rights advocates are concerned about the example that Thammakaset Farm has set for employers that filing civil and criminal defamation charges against human rights defenders and workers is an acceptable tactic to stifle legitimate expression of concern on abusive working conditions. Andy Hall was found guilty of defamation on March 2018 for an interview he gave to Aljazeera about labor conditions at the Thai company Natural Fruit and fined 10 million baht (€262,000). Mr. Hall appealed the defamation conviction in September 2018. The adverse legal decisions have not deterred Thammakaset Farm from taking new actions against workers who speak out about poor conditions. As of October 2018, rights advocates report that police and public prosecutors have undertaken investigations of three former Thammakaset Farm employees, and leaders from labor rights NGOs MWRN and Fortify Rights for violations of the Computer Crime Law.

### **3. Discrimination against Migrant Workers and Forced Labor**

Labor and human rights groups continue to uncover widespread forced labor and human trafficking.<sup>28</sup> There has been enough domestic and international pressure to prod the Thai

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<sup>27</sup> Kate Hodal, Workers claiming they had to sleep with the chickens face Thai court charges, The Guardian (June 6, 2017) *available at* <https://www.theguardian.com/global-development/2017/jun/06/workers-claiming-they-had-to-sleep-with-the-chickens-face-thai-court-charges-burmese-migrants>

<sup>28</sup> See, e.g., Assessing Government and Business Responses to the Thai Seafood Crisis, Freedom Fund and Humanity United (May 26, 2016) *available at* <https://humanityunited.org/report-finds-despite-progress-forced-labour-thai-seafood-significant-gaps-remain/>; Errughim Lorenza, Ivanka Mamic and Birgitte Krogh-Poulsen, Global Supply Chains: Insights into the Thai Seafood Sector, International Labour Organization Asia-Pacific Working Paper Series (April 2016) *available at* [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_474896.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_474896.pdf); Turn The Tide: Human Rights Abuses and Illegal Fishing in Thailand's Overseas Fishing Industry, Greenpeace (December 15, 2016) *available at* [www.greenpeace.org/seasia/Press-Centre/publications/Turn-The-Tide/](http://www.greenpeace.org/seasia/Press-Centre/publications/Turn-The-Tide/); Rebecca Napier-Moore and Kate Sheill, High rise, low pay: experiences of migrant women in the Thai construction sector," International Labour Organization (2016) *available at* <http://un-act.org/wp-content/uploads/2017/01/High-rise-low-pay-1.pdf> ; Bridget Anderson, Worker, helper, auntie, maid? : Working conditions and attitudes experienced by migrant domestic workers in Thailand and Malaysia, International Labour Organization, Regional Office for Asia and the Pacific (2016) *available at* <http://un-act.org/wp-content/uploads/2017/01/Worker-Helper-Auntie-Maid.pdf>

government to take steps to enact laws and international conventions that provide the appearance of advancing migrant worker protections, described in more detail below. However, the Thai government has failed to follow through with implementation of these laws and conventions to effectively combat forced labor and trafficking in persons and other migrant worker rights abuses and has avoided taking steps that would address some of the country's most pernicious violations. The government, for example, considered but recently backtracked on ratifying ILO Work in Fishing Convention C188, which prescribes decent working conditions for workers in the fishing sector. The government also retreated from ratifying ILO Convention 98 on the Right to Organize and Collective Bargaining and amending the Labor Relations Act to allow migrant workers to organize and negotiate with their employers. The U.S. government should refrain from concluding that legal changes, in the absence of a record of implementation and enforcement, constitute steps to afford workers internationally recognized worker rights pursuant to 19 U.S.C. § 2462(c)(7).

Entrenched structural discrimination against the estimated two to three million migrant workers in Thailand leaves them particularly vulnerable to forced labor and trafficking. Migrant workers make up about 10 percent of the Thai workforce, but have no right to join or form union or engage in collective bargaining. These restrictions “prevent migrant workers from playing an active role in the defense of their interests, especially in sectors where they are the main source of labour.”<sup>29</sup> Migrant workers often confront threats, coercion, blackmail and physical violence by employers, recruiters, brokers, traffickers, and even state authorities and officials.<sup>30</sup> Many do not speak out for fear of being identified and deported.

The commercial fishing sector has come under sustained international scrutiny, but abuse remains rampant. Over 65 per cent of workers in the fishing sector report experiencing physical abuse and numerous workers recount witnessing suicides and murders.<sup>31</sup> However, forced labor and human trafficking are by no means confined to commercial fishing. It is present in many industries, including agriculture, food processing, domestic work and construction. Another exacerbating factor in these sectors is the high prevalence of sub-contracting of migrant workers in an effort to avoid liability, as reported by the United Nations Working Group on Business and Human Rights in their report in April 2018. The Working Group recommended that the RGT should require businesses to provide workers’ compensation and social security benefits to migrant workers injured on the job.<sup>32</sup>

In a 2014 analysis of Thailand’s migration laws, the ILO found that the country’s domestic laws pose serious obstacles to effectively combating forced labor. Thailand lacks, for example, a clear legal definition of trafficking victims, an effective screening process for

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<sup>29</sup> Report in which the committee requests to be kept informed of development - Report No 380, Committee on Freedom of Association, International Labor Organization ¶ 1052 (October 2016) *available at*

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:3302068](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068)

<sup>30</sup> Human Rights Watch World Report: Thailand (2017) *available at* [www.hrw.org/world-report/2017/country-chapters/thailand](http://www.hrw.org/world-report/2017/country-chapters/thailand)

<sup>31</sup> Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF) International Labor Organization ¶ 21

[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_549113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf)

<sup>32</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22915&LangID=E>

identifying victims, oversight and regulation of brokers, and effective coordination among government agencies to combat trafficking for forced labor.<sup>33</sup> As the United States Department of State has concluded, inspections into forced labor and trafficking remain inadequate,<sup>34</sup> particularly the screening process which frequently identifies victims as criminals.<sup>35</sup> There are still not sufficient procedures for monitoring recruitment agencies.<sup>36</sup> Further, there is not a robust effort to address the corruption that too often shields perpetrators from accountability. Workers still report that police solicit bribes,<sup>37</sup> and victims “remain fearful of reporting trafficking crimes or cooperating with Thai authorities due to lack of effective protection.”<sup>38</sup>

While the Thai Government has enacted a series of measures, including the Prevention and Suppression of Human Trafficking Act, a ministerial regulation concerning Labor Protection in Sea Fishery Work, and the Royal Decree on Management of Foreign Workers, effective implementation of these laws remains elusive. Notably, none of the laws aimed at preventing trafficking or forced labor address the legal restrictions that prevent migrant workers from acting to demand better or equal treatment. Migrant worker advocates critique the Government’s effective implementation of the Royal Decree, which among other measures, calls for the registration of undocumented migrant workers through a nationality verification process. In one example, they cite the gross under-registration of migrant workers—as many as 811,437 undocumented migrant workers who are vulnerable to arrest, prosecution and deportation to their country of origin. According to the advocates, raids and arrests related to this policy began on July 1, 2018.<sup>39</sup> Undocumented migrant workers report that they have been warned they risk arrest if they lodge a complaint with the Labor Welfare and Protection Office, which effectively gives impunity to employers to violate undocumented migrant workers.

The AFL-CIO recognizes the importance of Thailand’s June 4, 2018 ratification of the Protocol of 2014 to the Forced Labor Convention, but there are indications that the government is backtracking on passing the promised complementary law to the convention,

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<sup>33</sup> Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF) International Labor Organization [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_549113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf)

<sup>34</sup> United States Department of State Country Reports on Human Rights Practices: Thailand (2016) available at <https://www.state.gov/j/drl/rls/hrrpt/>

<sup>35</sup> Remarks of Ms. Puttanee Kangkun, Thailand Human Rights Specialist at Fortify Rights, delivered at the public forum, One Year After the Andaman Sea Refugee Crisis: End Detention and Bring Justice to Survivors of Human Trafficking, Bangkok, Thailand (June 8, 2016) available at [www.fortifyrights.org/downloads/Remarks\\_20160608.pdf](http://www.fortifyrights.org/downloads/Remarks_20160608.pdf)

<sup>36</sup> Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF) International Labor Organization [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_549113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf)

<sup>37</sup> [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265376](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265376)

<sup>38</sup> Human Rights Watch, World Report: Thailand (2017) available at [www.hrw.org/world-report/2017/country-chapters/thailand](http://www.hrw.org/world-report/2017/country-chapters/thailand)

<sup>39</sup> <http://hrdfoundation.org/wp-content/uploads/2018/08/30-07-20-18-%E0%B8%82%E0%B9%89%E0%B8%AD%E0%B9%80%E0%B8%AA%E0%B8%99-NAP-BHR-Eng-22-aug-2018.pdf> (page 2)



the “Act on the Prevention and Elimination of Forced Labor” (Forced Labor Act). Nonetheless, significant modifications to Thai law are necessary in order to provide adequate protection for potential victims and access to appropriate remedies, as required by the ILO convention and protocol. Specifically, the proposed definition of forced labor in the Forced Labor Act must be made consistent with the ILO’s definition laid out in the Forced Labor Convention. Similarly, the provision for penalties established by the Act must be strengthened and forced labor should qualify as a criminal offence under a stand-alone anti-forced labor law. The law-making process itself must also ensure participation by the workers most vulnerable to forced labor in public hearings that reflect genuine social dialogue, free from intimidation and hostility from employers. The actions by employers, including the National Fishing Association of Thailand, to shut down a public hearing on September 19, 2018 are troubling and require clear, decisive action on the part of the Government to demonstrate its commitment to continuing a meaningful tripartite process for the development of the Forced Labor Act.

The lack of labor law enforcement in Thailand creates an environment where forced labor and human trafficking thrive in clear violation of the obligation to take steps to afford workers internationally recognized worker rights under 19 U.S.C. § 2462 (c)(7).

### *Illustrative Cases:*

#### Fishery Sector:

Registered migrant workers comprise 302,000 of the 600,000 workers employed in the Thai fishing and seafood processing sectors. Analysis of interviews with 248 workers in the fishing industry conducted by Human Rights Watch over a two-year period provided insight into “recruitment practices, salaries and payment systems, working hours, occupational health and safety, and a range of other issues.” Of their sample group, HRW interviewed 95 individuals that Thai authorities or others had designated as victims of trafficking, and identified 20 cases of forced labor.<sup>40</sup> HRW research found significant evidence of forced labor in cases of voluntary migrants perpetrated by boat owners, skipper, and labor brokers. “(These workers) work alongside individuals who secured their jobs through similar channels but who are not victims of forced labor, or alongside individuals who can be considered trafficking victims as a result of the way they were recruited.”<sup>41</sup>

Inadequate implementation of the RGT’s ministerial regulation concerning Labor Protection in Sea Fishery Work and the Royal Decree on the Management of Alien Workers has resulted in systematic and sustained violations of the rights of migrant fishermen ostensibly covered by these measures, including excessive working hours, lack of contract protections and identity document confiscation. The current lack of effective enforcement leaves some 57,000 migrant fishermen working without controls regarding the hours of work, rest, annual leave or compliance with paid sick leave. While the ministerial regulation requires that employers provide written contracts, most fishermen report not having received a copy. And employers regularly seize migrant worker’s IDs, in spite of the Royal Decree that renders this illegal. A recent report by the ILO found that forced labor and the withholding of salaries are the main problems that migrant workers in this sector face. Additionally, only 36 percent of

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<sup>40</sup><https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry>

<sup>41</sup> *Ibid.*

the fishing and seafood workers have signed a work contract and 34 percent, or one out of every three workers, reported being paid less than the minimum wage.<sup>42</sup>

#### Migrant Workers along the Thailand Border:

Current Thai migrant worker policy allows seasonal migrant workers employed along the Thailand-Myanmar and Thailand-Cambodia borders to work on temporary permits in low-skilled labor and domestic work. In practice, employers, including in Special Economic Zones in Mae Sot, employ these technically “temporary” migrant workers as regular workers without registering them through the national verification program or complying with workplace protections in the Labor Protection Act.<sup>43</sup> This illicit use of lower-cost migrant workers to replace domestic labor under the guise of legal commuter and seasonal employment is concerning not only because of the vulnerability and exploitation that these workers face in Thailand, but also because it foments illegal labor recruiting in origin countries.

#### Irregularities in prosecution of traffickers and re-victimization of trafficking victims:

On July 19, 2017, the largest case against traffickers in Thailand concluded with guilty verdicts for almost 60 people, including a high-ranking general and local officials.<sup>44</sup> While the guilty verdict is a welcome development, there are also troubling irregularities in the case that suggest it does not represent a systemic or transparent approach to addressing the problem. While many individuals were prosecuted, there are indications that many more involved were not held accountable. The original investigator in the case fled Thailand, stating that he feared for his life, and there are troubling reports of witnesses, court interpreters and police investigators being threatened, harassed and even beaten.<sup>45</sup> In March 2016, the Thai government announced it would provide witnesses protection, but the actual measures offered included suggesting witnesses sleep overnight in a police station. The resolution did not extend any protection to witnesses confined to government-run shelters.<sup>46</sup> One Rohingya witness testified in court that he was beaten by a police officer, and when he reported the incident, he was told the officer would be merely transferred. More than 121 Rohingya are still detained in government-run shelters despite their status as victims.

#### Systemic barriers to justice for victims:

Meanwhile, lower-profile cases demonstrate how victims of forced labor and human trafficking continue to face barriers to accessing justice. On February 22, 2017, the Ranong Provincial Court acquitted a fishing boat captain and fish market owner of human trafficking in a case brought by 15 Cambodian fishers who were forced to work 22 hours days for 13 months with only two meals a day. The court’s decision included a variety of reasons for the dismissal, among them that the workers were likely subjected to physical and verbal abuse because they were clumsy; that the long hours were necessary to prevent fish from spoiling; and that the workers, whom the court acknowledged did not speak Thai, did not make gestures to indicate they were victims of forced labor when they encountered a police officer

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<sup>42</sup> [https://shiptoshorerights.org/wp-content/uploads/ilo-shiptoshore\\_A4-EN\\_2018-02-23\\_web-v2.pdf](https://shiptoshorerights.org/wp-content/uploads/ilo-shiptoshore_A4-EN_2018-02-23_web-v2.pdf)

<sup>43</sup> [http://hrdfoundation.org/wp-content/uploads/2018/08/30-07-20-18-%E0%B8%82%E0%B9%89%E0%B8%AD%E0%B9%80%E0%B8%AA%E0%B8%99\\_-NAP-BHR-Eng-22-aug-2018.pdf](http://hrdfoundation.org/wp-content/uploads/2018/08/30-07-20-18-%E0%B8%82%E0%B9%89%E0%B8%AD%E0%B9%80%E0%B8%AA%E0%B8%99_-NAP-BHR-Eng-22-aug-2018.pdf) (page 5)

<sup>44</sup> See, e.g. Aria Bendix, Dozens Found Guilty in Thailand's Largest Human Trafficking Trial, The Atlantic (July 20, 2017) available at <https://www.theatlantic.com/news/archive/2017/07/dozens-found-guilty-in-thailands-largest-human-trafficking-trial/534279/>

<sup>45</sup> Thailand: Ensure Human Traffickers are Held Accountable, Fortify Rights (July 18, 2017) available at <http://www.fortifyrights.org/publication-20170718.htm>

<sup>46</sup> *Ibid.*

after attempting to escape.<sup>47</sup> Other instances of high-profile corruption have not been addressed, like the human trafficking ring operating in the port of Kantang that “would routinely torture and execute migrant workers who attempted to flee,” apparently with the protection and assistance of local officials.<sup>48</sup>

## **E. Conclusion**

The Government of Thailand has not taken steps to afford internationally recognized worker rights, including the right of association, the right to organize and bargain collectively and the right to be free from forced labor, as required by 19 U.S.C. § 2562 (c)(7). To the contrary, the government continues to restrict internationally recognized worker rights under law and fails to enforce these rights in practice, instead facilitating violations by employers. The government has been given ample notice of its failures and opportunity to take meaningful action to demonstrate that it is “taking steps” to comply with its obligations to its workers. The AFL-CIO encourages the U.S. government to consider the targeted suspension of tariff benefits for key exports in order to create a greater incentive for compliance with 19 U.S.C. § 2562 (c)(7).

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<sup>47</sup> HRDF press release, “Provincial Court of Ranong acquitting defendants in Black Case no.KM2,4.2559 in trafficking cases against 11 migrant fishing workers from Cambodia,” March 24, 2017, <http://hrdfoundation.org/?p=1816>

<sup>48</sup> Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF) International Labor Organization ¶ 16 [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_549113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf)